



# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:       TEMPORARY USE PERMIT       VARIANCE  
                       CONDITIONAL USE                       SPECIAL EVENT PERMIT  
                       ADMINISTRATIVE/INTERPRETATION ACTION

APPLICANT: East Mountain Protection Action Coalition (EMPAC)      TELEPHONE: \_\_\_\_\_  
 ADDRESS: 13 La Aguapa, Sandia Park, NM 87047  
 AGENT: Dennis Kellogg, President      TELEPHONE: (916) 715-7066  
 ADDRESS: \_\_\_\_\_  
 E-mail Address: kelfamdennis@gmail.com

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13      RANGE 6 East & 6 East      SECTION T12:1,2,3-T13:34,35,36  
 MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
 Subdivision \_\_\_\_\_ Lot No. See Attachment #4.  
 Block No. \_\_\_\_\_ Total Acres: 1,833      Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, we, the East Mountains Protection Action Coalition ("EMPAC"), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Planning and Zoning ("P&Z") Commission and claim that the decision by Zoning Officer, D. Beaman, Director of P&Z, to deny EMPAC request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an "abuse of discretion" by said Zoning Officer. (See Attachment #1 for details).

SIGNATURE: Dennis Kellogg      DATE: 12/27/2024

**INSTRUCTIONS:** Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>Doraida Arias</u>	Date <u>12-30-2024</u>
File Number: <u>2025000004</u>	Receipt Number: <u>check 8126</u> Fee: <u>100.00</u>
Type and Date of Appealed Action: <u>Abuse of Discretion</u>	<u>12/30/2024</u>

**ATTACHMENT #1: EMPAC Appeal to P&Z Commission re: “Abuse of Discretion” by P&Z Staff Director in the matter of ZNCH-24-005**

1. Subject Appeal: In the matter of ZNCH-24-005, we, the East Mountains Protection Action Coalition (“EMPAC”), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Planning and Zoning (“P&Z”) Commission and claim that the decision by Zoning Officer, D. Beaman, Director of P&Z (“Staff Director”), to deny EMPAC request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an “abuse of discretion” by said Zoning Officer.

2. Background: On November 26, 2024, EMPAC formally submitted, in a timely manner, a memorandum to Chair Dennis R. Trujillo, Sandoval County P&Z Commission requesting postponement of December 10, 2024, Public Hearing on the matter of ZNCH-24-005, citing good reasons therein for said postponement request (see Attachment #2). On December 2, 2024, said EMPAC request for postponement was denied by Staff Director, without explanation, thereby ensuring that the Public Hearing by P&Z Commission on ZNCH-24-005 did in fact occur on December 10, 2024 (see Attachment #3). On December 2, 2024, in a follow up discussion on postponement between Karen Yank, President, Turquoise Trail Regional Alliance (“TTRA”) and Wayne Johnson, County Manager, Johnson stated: “At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral.” (see Attachment #4)

3. Details of Aggrievement: The decision by Staff Director to deny EMPAC request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an “abuse of discretion” by Staff Director, under Section 22A, for the following reasons:

(a) EMPAC memorandum was addressed to P&Z Chair Trujillo, *not* to Staff Director, and EMPAC did expect—and have the right to expect—a considered response by Chair Trujillo, if not P&Z Commission, to EMPAC postponement request; instead, Staff Director denied request, without bringing EMPAC request to the attention of P&Z Chair or Commission, thereby abusing discretion; conclusive evidence that Staff Director failed to bring EMPAC postponement request to attention of Chair Trujillo being that:

- i. EMPAC never received a response from Chair Trujillo, or any other P&Z Commissioner, even though the Office of the Sandoval County Manager’s Office specifically informed TTRA President Yank that only P&Z Chair Trujillo could decide on the matter of the Hearing postponement.
- ii. no mention of a decision to postpone by Chair Trujillo or any other P&Z Commissioner was referenced in Staff Director’s response to EMPAC denying postponement request;

- iii. just prior to the beginning of the December 10 Hearing, Staff Director rejected EMPAC's and TTRA's request to bring their postponement request to the attention of Chair Trujillo and the rest of the P&Z Commission;
- iv. no acknowledgement of EMPAC postponement request was made by P&Z Commissioners during the December 10, 2024, Public Hearing, and the matter was never discussed by the P&Z Commissioners; and
- v. Staff Director admitted that he did not bring the EMPAC postponement request to the attention of the P&Z Chair or any other P&Z Commissioner, but instead made a unilateral decision to deny.

(b) by unilaterally denying EMPAC postponement request, Staff Director did violate the letter and the spirit of SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", thereby committing an "abuse of discretion"; basis for said "abuse of discretion" follows from the language of RESOLUTION NO. 10-16-03. 11D, which states, *inter alia*, "WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible; and WHEREAS, in order to accomplish the objective of conducting a fair and impartial hearing it is imperative that all parties, including the Planning & Zoning Department and the Board of County Commissioners, have adequate time to reasonably and adequately evaluate documents and material presented regarding a hearing item"; evidence of said "abuse of discretion" is the following:

- i. by denying EMPAC postponement request, appellant EMPAC had inadequate time to prepare and submit documents in response to Applicant PCR Investments SP4 LLC ("PCR") documents and materials, as required by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, because many of those PCR documents were submitted well-past the 72-hour deadline mandated by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D;
- ii. by denying EMPAC postponement request, Staff Director deprived Chair Trujillo and the rest of P&Z Commission of the opportunity to consider the matter of postponement, and prevented the matter of postponement from being considered in "an open and transparent" manner prior to and during the Hearing, in direct conflict with County Manager Johnson's promise to do so;
- iii. by allowing PCR to submit documents well-past the 72-hour deadline, Staff Director appeared to favor the Applicant PCR, as against EMPAC, which had no time to prepare responses to late-arriving PCR documents, thereby evincing that Staff Director failed to meet the standard, set forth by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, that "it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible"; and
- iv. upon conclusion of December 10, 2024, Public Hearing, Acting Chair, P&Z Commission, stated that he had had inadequate time to review documents submitted by entities in opposition to Applicant PCR, including EMPAC, and therefore was not

in a position to make a fully informed decision on the merits, ironically admonishing entities such as EMPAC to submit their documents and materials to the P&Z Commissioners in a more timely manner, all of which would have been avoided had Staff Director not unilaterally denied EMPAC request to postpone December 10, 2024, P&Z Public Hearing on the matter of ZNCH-24-005.

4. Request P&Z Commission Public Hearing on instant EMPAC Appeal: Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, appellant EMPAC hereby requests a Public Hearing by the P&Z Commission to consider the instant appeal.

5. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing : Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, appellant EMPAC hereby requests that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005, including any action taken—including calendaring—with respect to ZNCH-24-005 by the Sandoval County Board of Commissioners, until such time as the instant appeal is considered by P&Z Commission in a Public Hearing and a formal decision is taken on the merits of the instant appeal by the P&Z Commission at said Public Hearing or reasonably thereafter.



**ATTACHMENT #2: EMPAC Memorandum Requesting Postponement of December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005**

MEMORANDUM

TO: Chair Dennis R. Trujillo, Sandoval County Planning and Zoning Commission

FROM: Turquoise Trail Regional Alliance (TTRA) &  
East Mountain Protection Action Coalition (EMPAC)

DATE: November 26, 2024

SUBJECT: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

By this memorandum, we hereby formally request postponement, until on or about January 14, 2025, of the Sandoval County Planning and Zoning Commission (“Commission”) Hearing, scheduled for December 10, 2024, on the matter of ZNCH-24-005, Request by PCR Investments (“PCR”), agent for Diamond Tail Ltd, for a Zone Map Amendment from Rural Residential/ Agricultural District (RRA) to Special Use District (SU).

Our reasons for formally requesting hearing postponement are set forth below:

1. Holidays: As the Commission and PCR are well aware, the December 10 Hearing is scheduled well into the Holiday period. During this busy and stressful time, it is burdensome for members of the public to prepare for and participate in a public hearing on a matter as important and complex as ZNCH-25-005. A one-month postponement, to get through the Holiday period, would maximize public participation, which is surely in the interests of all parties.
2. Belated PCR document dump: PCR only recently, on or about November 22, 2024, provided to the public its background and supporting written materials relating to ZNCH-24-005 via the Commission website. This documentation includes 22 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length!). It takes time for members of the public to process this amount of material. Since written public testimony to the Commission for the December 10 hearing must be submitted no later than December 6 (72 hours in advance), this means that the public has only been given two weeks to process the PCR documentation. This compressed timeline is unduly burdensome to the public, especially as it occurs over the Thanksgiving Holiday. Finally, we note that PCR failed to provide this documentation prior to the Commission’s initial ZNCH-24-005 hearing on October 8, 2024, and again failed to do so in advance of the follow-up hearing, originally scheduled for November 12, 2024.
3. Ongoing PCR public outreach meetings: PCR is still conducting public outreach meetings, pursuant to Commission request at the initial ZNCH-24-005 public hearing on October 8, 2024.

Three of those outreach meetings are scheduled to occur on December 4 and 5 (and there may be other that we don't know about). This means that the public will have only 1-2 days to process the information provided by PCR and prepare written testimony in response. This compressed timeline is, once again, unduly burdensome to the public.

4. Follow-up hearing postponement: The follow-up hearing on ZNCH-24-005 was originally scheduled for November 12, 2024. We understand that PCR requested a postponement of one month to have more time to prepare, a postponement which the Commission accommodated and granted. We ask for a similar accommodation and for the same reason, more time to prepare, for the reasons outlined in Points 1-3 above.

5. No compelling reason to expedite: We know of no compelling reason why the December hearing cannot be postponed one month until January 14, 2025. A one-month postponement will in no way derogate from the substantive or procedural issues relating to ZNCH-24-005.

If the Commission has any questions regarding our request for postponement, we urge you to contact us:

Karen Yank, President TTRA  
hamonyank@cybermesa.com  
505-269-9959

Dennis Kellogg, EMPAC Board  
info@theempac.org  
916-715-7066

**ATTACHMENT #3: Response by Staff Director, P&Z Commission to EMPAC  
Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission  
on the matter of ZNCH-24-005**

**From:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>

**Date:** December 2, 2024 at 1:58:49 PM MST

**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>

**Cc:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>, Michael Eshleman  
<[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>

**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hi Karen,

Thank you for your email. Subject project (item ZNCH-24-005) will remain on the agenda for the December 10, 2024 Planning and Zoning Commission hearing date.

Sincerely,

<image001.png  
>

**Daniel J. Beaman**

*Director of Planning and Zoning*

Sandoval County | New Mexico | US

<https://www.sandovalcountynm.gov/>

[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)

**1500 Idalia Road, Building D**

**Bernalillo, NM 87004**

Office: (505) 867-7628

Direct: (505) 867-7617

**ATTACHMENT #4: Response by Wayne Johnson, Sandoval County Manager, to TTRA and EMPAC Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

Begin forwarded message:

**From:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 3:47:43 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Good afternoon Ms. Yank,

At this point, we have an identified applicant and a general group of opponents. While we received a memo from two organizations requesting a deferral, it's hard for us to determine the overall representation of the opponents. There may be those who have made plans to be at the December 10<sup>th</sup> meeting to voice their opposition and would be opposed to a deferral at this late date. Given this situation, and the applicant's request not to defer the matter, we made the decision to proceed with the December 10<sup>th</sup> hearing. At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral. Chair Trujillo has not been in contact with you because as you know, the county discourages any kind of ex parte communication. Doing so could jeopardize the member's ability to vote.

Best,



**Wayne A. Johnson**  
County Manager  
o. 505.867.7551  
c. 505.934.2152  
[www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

**From:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>  
**Sent:** Monday, December 2, 2024 3:35 PM  
**To:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>; Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>; Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>; Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** Re: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hello Wayne and Daniel,

Please give us your reason for denying our request for postponement of the Dec. 10th zoning meeting promptly. Our groups and their lawyers would like to know more detail.

Also, Wayne, I was told by your office that the Chair of the Planning and Zoning Commission is the only person to decide whether to approve a request for postponement. Why then hasn't Chair Dennis Trujillo responded to me instead staff?

Thank you,  
Karen Yank  
Dennis Kellogg

**ATTACHMENT #5: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275



# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:  TEMPORARY USE PERMIT  VARIANCE  
 CONDITIONAL USE  SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION

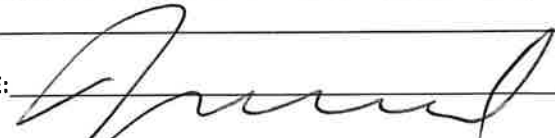
APPLICANT: San Pedro Creek Estates Homeowner's Association TELEPHONE: (505) 924-5978  
 ADDRESS: San Pedro Creek Estates Homeowner's Association c/o HOAMCO P.O. Box 67590 Albuquerque, NM 87193-7590  
 AGENT: Joel Darnold, President TELEPHONE: (505) 350-8276  
 ADDRESS: 12 La Aguapa, Sandia Park, NM 87047  
 E-mail Address: jrdarno@qcad.com

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13 RANGE 6 East & 6 East SECTION T12:1,2,3-T13:34,35, 36  
 MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
 Subdivision \_\_\_\_\_ Lot No. See Attachment #5.  
 Block No. \_\_\_\_\_ Total Acres: 1,833 Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, we, the San Pedro Creek Estates Home Owners Association ("SPCE"), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Planning and Zoning ("P&Z") Commission and claim that the decision by Zoning Officer, D. Beaman, Director of P&Z, to deny SPCE request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an "abuse of discretion" by said Zoning Officer. (See Attachment #1 for details).

SIGNATURE:  DATE: 12/27/2024

INSTRUCTIONS: Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>Doraida Arias</u>	Date <u>12/30/2024</u>
File Number: <u>202500005</u>	Receipt Number: _____ Fee: <u>100<sup>00</sup></u>
Type and Date of Appealed Action: <u>Abuse of Discretion</u>	<u>12/30/2024</u>

**ATTACHMENT #1: SPCE Appeal to P&Z Commission re: “Abuse of Discretion” by P&Z Staff Director in the matter of ZNCH-24-005**

1. Subject Appeal: In the matter of ZNCH-24-005, we, the San Pedro Creek Estates Home Owners Association (“SPCE”), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Planning and Zoning (“P&Z”) Commission and claim that the decision by Zoning Officer, D. Beaman, Director of P&Z (“Staff Director”), to deny SPCE request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an “abuse of discretion” by said Zoning Officer.

2. Background: On November 26, 2024, SPCE formally submitted, in a timely manner, a memorandum to Chair Dennis R. Trujillo, Sandoval County P&Z Commission requesting postponement of December 10, 2024, Public Hearing on the matter of ZNCH-24-005, citing good reasons therein for said postponement request (see Attachment #2). On December 2, 2024, said SPCE request for postponement was denied by Staff Director, without explanation, thereby ensuring that the Public Hearing by P&Z Commission on ZNCH-24-005 did in fact occur on December 10, 2024 (see Attachment #3). On December 2, 2024, in a follow up discussion on postponement between Karen Yank, President, Turquoise Trail Regional Alliance (“TTRA”) and Wayne Johnson, County Manager, Johnson stated: “At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral.” (see Attachment #4)

3. Details of Aggrievement: The decision by Staff Director to deny SPCE request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an “abuse of discretion” by Staff Director, under Section 22A, for the following reasons:

(a) SPCE memorandum was addressed to P&Z Chair Trujillo, *not* to Staff Director, and SPCE did expect—and have the right to expect—a considered response by Chair Trujillo, if not P&Z Commission, to SPCE postponement request; instead, Staff Director denied request, without bringing SPCE request to the attention of P&Z Chair or Commission, thereby abusing discretion; conclusive evidence that Staff Director failed to bring SPCE postponement request to attention of Chair Trujillo being that:

- i. SPCE never received a response from Chair Trujillo, or any other P&Z Commissioner, even though the Office of the Sandoval County Manager’s Office specifically informed TTRA President Yank that only P&Z Chair Trujillo could decide on the matter of the Hearing postponement.
- ii. no mention of a decision to postpone by Chair Trujillo or any other P&Z Commissioner was referenced in Staff Director’s response to SPCE denying postponement request;
- iii. just prior to the beginning of the December 10 Hearing, Staff Director rejected the East Mountains Protection Action Coalition’s (EMPAC), TTRA’s, and SPCE’s, to



- bring their postponement request to the attention of Chair Trujillo and the rest of the P&Z Commission;
- iv. no acknowledgement of SPCE postponement request was made by P&Z Commissioners during the December 10, 2024, Public Hearing, and the matter was never discussed by the P&Z Commissioners; and
  - v. Staff Director admitted that he did not bring the SPCE postponement request to the attention of the P&Z Chair or any other P&Z Commissioner, but instead made a unilateral decision to deny.

(b) by unilaterally denying SPCE postponement request, Staff Director did violate the letter and the spirit of SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, thereby committing an “abuse of discretion”; basis for said “abuse of discretion” follows from the language of RESOLUTION NO. 10-16-03. 11D, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible; and WHEREAS, in order to accomplish the objective of conducting a fair and impartial hearing it is imperative that all parties, including the Planning & Zoning Department and the Board of County Commissioners, have adequate time to reasonably and adequately evaluate documents and material presented regarding a hearing item”; evidence of said “abuse of discretion” is the following:

- i. by denying SPCE postponement request, appellant SPCE had inadequate time to prepare and submit documents in response to Applicant PCR Investments SP4 LLC (“PCR”) documents and materials, as required by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, because many of those PCR documents were submitted well-past the 72-hour deadline mandated by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D;
- ii. by denying SPCE postponement request, Staff Director deprived Chair Trujillo and the rest of P&Z Commission of the opportunity to consider the matter of postponement, and prevented the matter of postponement from being considered in “an open and transparent” manner prior to and during the Hearing, in direct conflict with County Manager Johnson’s promise to do so;
- iii. by allowing PCR to submit documents well-past the 72-hour deadline, Staff Director appeared to favor the Applicant PCR, as against SPCE, which had no time to prepare responses to late-arriving PCR documents, thereby evincing that Staff Director failed to meet the standard, set forth by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, that “it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”; and
- iv. upon conclusion of December 10, 2024, Public Hearing, Acting Chair, P&Z Commission, stated that he had had inadequate time to review documents submitted by entities in opposition to Applicant PCR, including SPCE, and therefore was not in a position to make a fully informed decision on the merits, ironically admonishing entities such as SPCE to submit their documents and materials to the P&Z Commissioners in a more timely manner, all of which would have been avoided had

Staff Director not unilaterally denied SPCE request to postpone December 10, 2024, P&Z Public Hearing on the matter of ZNCH-24-005.

4. Request P&Z Commission Public Hearing on instant SPCE Appeal: Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, appellant SPCE hereby requests a Public Hearing by the P&Z Commission to consider the instant appeal.

5. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing : Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, appellant SPCE hereby requests that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005, including any action taken—including calendaring—with respect to ZNCH-24-005 by the Sandoval County Board of Commissioners, until such time as the instant appeal is considered by P&Z Commission in a Public Hearing and a formal decision is taken on the merits of the instant appeal by the P&Z Commission at said Public Hearing or reasonably thereafter.

**ATTACHMENT #2: SPCE Memorandum Requesting Postponement of December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005**



**San Pedro Creek Estates Homeowners' Association c/o HOAMCO  
P. O. Box 67590  
Albuquerque, NM 87193-7590**

November 26, 2024

Chair Dennis R. Trujillo, Sandoval County Planning and Zoning Commission  
1500 Idalia Road, Building D,  
Bernalillo, NM 87004

Dear Mr. Trujillo,

San Pedro Creek Estates (SPCE) Homeowner's Association (HOA) hereby formally requests postponement, until on or later than January 14, 2025, of the Sandoval County Planning and Zoning Commission ("Commission") Hearing, scheduled for December 10, 2024, on the matter of ZNCH-24-005, Request by PCR Investments ("PCR"), agent for Diamond Tail Ltd, for a Zone Map Amendment from Rural Residential/Agricultural District (RRA) to Special Use District (SU).

Our reasons for formally requesting hearing postponement are set forth below:

**1. Holidays:** As the Commission and PCR are well aware, the December 10 hearing is scheduled well into the Holiday period. During this busy and stressful time, it is burdensome for members of the public to prepare for and participate in a public hearing on a matter as important and complex as ZNCH-25-005. A one-month postponement, to get through the Holiday period, would maximize public participation, which is surely in the interests of all parties.

**2. Belated PCR document dump:** PCR only recently, on or about November 22, 2024, provided to the public its background and supporting written materials relating to ZNCH-24-005 via the Commission website. This documentation includes 22 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length!). It takes time for members of the public to process this amount of material. Since written public testimony to the Commission for the December 10 hearing must be submitted no later than December 6 (72 hours in advance), this means that the public has only been given two weeks to process the PCR documentation. This compressed timeline is unduly burdensome to the public, especially as it occurs over the Thanksgiving Holiday. Finally, we note that PCR failed to provide this documentation prior to the Commission's initial ZNCH-24-005 hearing on October 8, 2024, and again failed to do so in advance of the follow-up hearing, originally scheduled for November 12, 2024.

**3. Ongoing PCR public outreach meetings:** PCR is still conducting public outreach meetings, pursuant to Commission request at the initial ZNCH-24-005 public hearing on October 8, 2024. Three of those outreach meetings are scheduled to occur on December 4 and 5 (and there may be others that we don't know about). This means that the public will have only 1-2 days to process the information provided by PCR and prepare written testimony in response. This compressed timeline is, once again, unduly burdensome to the public.

**4. Follow-up hearing postponement:** The follow-up hearing on ZNCH-24-005 was originally scheduled for November 12, 2024. We understand that PCR requested a postponement of one month to have more time to prepare, a postponement which the Commission accommodated and granted. We ask for a similar accommodation and for the same reason, more time to prepare, for the reasons outlined in Points 1-3 above.

**5. No compelling reason to expedite:** We know of no compelling reason why the December hearing cannot be postponed one month until January 14, 2025. A one-month postponement will in no way derogate from the substantive or procedural issues relating to ZNCH-24-005.

If the Commission has any questions regarding our request for postponement, you may contact us by email at [board@hoa.sanpedrocreek.org](mailto:board@hoa.sanpedrocreek.org) or call me directly at 505-350-8276.

Sincerely,

A handwritten signature in black ink, appearing to be "James", written in a cursive style.

**ATTACHMENT #3: Response by Staff Director, P&Z Commission to SPCE  
Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission  
on the matter of ZNCH-24-005**

**From:** Daniel Beaman  
**Sent:** Monday, December 02, 2024 2:08 PM  
**To:** jrdarno@gmail.com  
**Cc:** Katherine Bruch <kbruch@sandovalcountynm.gov>; Wayne Johnson <wjohnson@sandovalcountynm.gov>; Michael Eshleman <Meshleman@sandovalcountynm.gov>; Doraida Arias <darias@sandovalcountynm.gov>; 'Board' <board@hoa.sanpedrocreek.org>; 'Ana C. Moreira' <AMoreira@hoamco.com>  
**Subject:** RE: SPCE requests Delay of Dec 10 hearing on PCR Solar Farm application

Dear Joel Darnold,

Thank you for your email. Subject project (item ZNCH-24-005) will remain on the agenda for the December 10, 2024 Planning and Zoning Commission hearing date.

Sincerely,



**Daniel J. Beaman**

*Director of Planning and Zoning*

Sandoval County | New Mexico | US

<https://www.sandovalcountynm.gov/>

[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)

**1500 Idalia Road, Building D**

**Bernalillo, NM 87004**

Office: (505) 867-7628

Direct: (505) 867-7617

**ATTACHMENT #4: Response by Wayne Johnson, Sandoval County Manager, to TTRA and EMPAC Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

Begin forwarded message:

**From:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 3:47:43 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Good afternoon Ms. Yank,

At this point, we have an identified applicant and a general group of opponents. While we received a memo from two organizations requesting a deferral, it's hard for us to determine the overall representation of the opponents. There may be those who have made plans to be at the December 10<sup>th</sup> meeting to voice their opposition and would be opposed to a deferral at this late date. Given this situation, and the applicant's request not to defer the matter, we made the decision to proceed with the December 10<sup>th</sup> hearing. At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral. Chair Trujillo has not been in contact with you because as you know, the county discourages any kind of ex parte communication. Doing so could jeopardize the member's ability to vote.

Best,



**Wayne A. Johnson**  
County Manager  
o. 505.867.7551  
c. 505.934.2152  
[www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

**From:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>  
**Sent:** Monday, December 2, 2024 3:35 PM  
**To:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>; Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>; Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>; Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** Re: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hello Wayne and Daniel,

Please give us your reason for denying our request for postponement of the Dec. 10th zoning meeting promptly. Our groups and their lawyers would like to know more detail.

Also, Wayne, I was told by your office that the Chair of the Planning and Zoning Commission is the only person to decide whether to approve a request for postponement. Why then hasn't Chair Dennis Trujillo responded to me instead staff?

Thank you,  
Karen Yank  
Dennis Kellogg

**ATTACHMENT #5: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275





# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:       TEMPORARY USE PERMIT       VARIANCE  
 CONDITIONAL USE       SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION

APPLICANT: Turquoise Trail Regional Alliance (TTRA)      TELEPHONE: (505) 269-9959  
ADDRESS: 9 Luz Del Cielo, Golden, NM 87047  
AGENT: William T. Parsons      TELEPHONE: (240) 620-3170  
ADDRESS: 23 La Cantera, Sandia Park, NM 87047  
E-mail Address: parsonsfamily@starpower.net

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13      RANGE 6 East & 6 East      SECTION T12:1,2,3-T13:34,35, 36  
MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
Subdivision \_\_\_\_\_ Lot No. See Attachment #5.  
Block No. \_\_\_\_\_ Total Acres: 1,833      Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, we, the Turquoise Trail Regional Alliance ("TTRA"), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Planning and Zoning ("P&Z") Commission and claim that the decision by Zoning Officer, D. Beaman, Director of P&Z, to deny TTRA request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an "abuse of discretion" by said Zoning Officer. (See Attachment #1 for details).

SIGNATURE: William T. Parsons      DATE: 12/30/2024

**INSTRUCTIONS:** Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>			
Application Received By:	<u>Doraida Arias</u>	Date:	<u>12/30/2024</u>
File Number:	<u>2025000006</u>	Receipt Number:	<u>12/30/</u>
Type and Date of Appealed Action:	<u>Abuse of Discretion</u>	Fee:	<u>\$100<sup>00</sup></u>

**ATTACHMENT #1: TTRA Appeal to P&Z Commission re: “Abuse of Discretion” by P&Z Staff Director in the matter of ZNCH-24-005**

1. Subject Appeal: In the matter of ZNCH-24-005, we, the Turquoise Trail Regional Alliance (“TTRA”), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Planning and Zoning (“P&Z”) Commission and claim that the decision by Zoning Officer, D. Beaman, Director of P&Z (“Staff Director”), to deny TTRA request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an “abuse of discretion” by said Zoning Officer.

2. Background: On November 26, 2024, TTRA formally submitted, in a timely manner, a memorandum to Chair Dennis R. Trujillo, Sandoval County P&Z Commission requesting postponement of December 10, 2024, Public Hearing on the matter of ZNCH-24-005, citing good reasons therein for said postponement request (see Attachment #2). On December 2, 2024, said TTRA request for postponement was denied by Staff Director, without explanation, thereby ensuring that the Public Hearing by P&Z Commission on ZNCH-24-005 did in fact occur on December 10, 2024 (see Attachment #3). On December 2, 2024, in a follow up discussion on postponement between Karen Yank, TTRA President, and Wayne Johnson, Sandoval County Manager, Johnson stated: “At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral.” (see Attachment #4)

3. Details of Aggrievement: The decision by Staff Director to deny TTRA request for postponement of the December 10, 2024, P&Z Commission Hearing on ZNCH-24-005, was an “abuse of discretion” by Staff Director, under Section 22A, for the following reasons:

(a) TTRA memorandum was addressed to P&Z Chair Trujillo, *not* to Staff Director, and TTRA did expect—and have the right to expect—a considered response by Chair Trujillo, if not P&Z Commission, to TTRA postponement request; instead, Staff Director denied request, without bringing TTRA request to the attention of P&Z Chair or Commission, thereby abusing discretion; conclusive evidence that Staff Director failed to bring TTRA postponement request to attention of Chair Trujillo being that:

- i. TTRA never received a response from Chair Trujillo, or any other P&Z Commissioner, even though the Office of the Sandoval County Manager’s Office specifically informed TTRA President Yank that only P&Z Chair Trujillo could decide on the matter of the Hearing postponement.
- ii. no mention of a decision to postpone by Chair Trujillo or any other P&Z Commissioner was referenced in Staff Director’s response to TTRA denying postponement request;
- iii. just prior to the beginning of the December 10 Hearing, Staff Director rejected EMPAC’s and TTRA’s request to bring their postponement request to the attention of Chair Trujillo and the rest of the P&Z Commission;

- iv. no acknowledgement of TTRA postponement request was made by P&Z Commissioners during the December 10, 2024, Public Hearing, and the matter was never discussed by the P&Z Commissioners; and
- v. Staff Director admitted that he did not bring the TTRA postponement request to the attention of the P&Z Chair or any other P&Z Commissioner, but instead made a unilateral decision to deny.

(b) by unilaterally denying TTRA postponement request, Staff Director did violate the letter and the spirit of SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, thereby committing an “abuse of discretion”; basis for said “abuse of discretion” follows from the language of RESOLUTION NO. 10-16-03. 11D, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible; and WHEREAS, in order to accomplish the objective of conducting a fair and impartial hearing it is imperative that all parties, including the Planning & Zoning Department and the Board of County Commissioners, have adequate time to reasonably and adequately evaluate documents and material presented regarding a hearing item”; evidence of said “abuse of discretion” is the following:

- i. by denying TTRA postponement request, appellant TTRA had inadequate time to prepare and submit documents in response to Applicant PCR Investments SP4 LLC (“PCR”) documents and materials, as required by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, because many of those PCR documents were submitted well-past the 72-hour deadline mandated by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D;
- ii. by denying TTRA postponement request, Staff Director deprived Chair Trujillo and the rest of P&Z Commission of the opportunity to consider the matter of postponement, and prevented the matter of postponement from being considered in “an open and transparent” manner prior to and during the Hearing, in direct conflict with County Manager Johnson’s promise to do so;
- iii. by allowing PCR to submit documents well-past the 72-hour deadline, Staff Director appeared to favor the Applicant PCR, as against TTRA, which had no time to prepare responses to late-arriving PCR documents, thereby evincing that Staff Director failed to meet the standard, set forth by SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, that “it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”; and
- iv. upon conclusion of December 10, 2024, Public Hearing, Acting Chair, P&Z Commission, stated that he had had inadequate time to review documents submitted by entities in opposition to Applicant PCR, including TTRA, and therefore was not in a position to make a fully informed decision on the merits, ironically admonishing entities such as TTRA to submit their documents and materials to the P&Z Commissioners in a more timely manner, all of which would have been avoided had Staff Director not unilaterally denied TTRA request to postpone December 10, 2024, P&Z Public Hearing on the matter of ZNCH-24-005.

4. Request P&Z Commission Public Hearing on instant TTRA Appeal: Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, appellant TTRA hereby requests a Public Hearing by the P&Z Commission to consider the instant appeal.

5. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing : Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, appellant TTRA hereby requests that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005, including any action taken—including calendaring—with respect to ZNCH-24-005 by the Sandoval County Board of Commissioners, until such time as the instant appeal is considered by P&Z Commission in a Public Hearing and a formal decision is taken on the merits of the instant appeal by the P&Z Commission at said Public Hearing or reasonably thereafter.

**ATTACHMENT #2: TTRA Memorandum Requesting Postponement of December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005**

MEMORANDUM

TO: Chair Dennis R. Trujillo, Sandoval County Planning and Zoning Commission

FROM: Turquoise Trail Regional Alliance (TTRA) &  
East Mountain Protection Action Coalition (EMPAC)

DATE: November 26, 2024

SUBJECT: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

By this memorandum, we hereby formally request postponement, until on or about January 14, 2025, of the Sandoval County Planning and Zoning Commission (“Commission”) Hearing, scheduled for December 10, 2024, on the matter of ZNCH-24-005, Request by PCR Investments (“PCR”), agent for Diamond Tail Ltd, for a Zone Map Amendment from Rural Residential/Agricultural District (RRA) to Special Use District (SU).

Our reasons for formally requesting hearing postponement are set forth below:

1. Holidays: As the Commission and PCR are well aware, the December 10 Hearing is scheduled well into the Holiday period. During this busy and stressful time, it is burdensome for members of the public to prepare for and participate in a public hearing on a matter as important and complex as ZNCH-25-005. A one-month postponement, to get through the Holiday period, would maximize public participation, which is surely in the interests of all parties.
2. Belated PCR document dump: PCR only recently, on or about November 22, 2024, provided to the public its background and supporting written materials relating to ZNCH-24-005 via the Commission website. This documentation includes 22 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length!). It takes time for members of the public to process this amount of material. Since written public testimony to the Commission for the December 10 hearing must be submitted no later than December 6 (72 hours in advance), this means that the public has only been given two weeks to process the PCR documentation. This compressed timeline is unduly burdensome to the public, especially as it occurs over the Thanksgiving Holiday. Finally, we note that PCR failed to provide this documentation prior to the Commission’s initial ZNCH-24-005 hearing on October 8, 2024, and again failed to do so in advance of the follow-up hearing, originally scheduled for November 12, 2024.
3. Ongoing PCR public outreach meetings: PCR is still conducting public outreach meetings, pursuant to Commission request at the initial ZNCH-24-005 public hearing on October 8, 2024. Three of those outreach meetings are scheduled to occur on December 4 and 5 (and there may be other that we don’t know about). This means that the public will have only 1-2 days to process

the information provided by PCR and prepare written testimony in response. This compressed timeline is, once again, unduly burdensome to the public.

4. Follow-up hearing postponement: The follow-up hearing on ZNCH-24-005 was originally scheduled for November 12, 2024. We understand that PCR requested a postponement of one month to have more time to prepare, a postponement which the Commission accommodated and granted. We ask for a similar accommodation and for the same reason, more time to prepare, for the reasons outlined in Points 1-3 above.

5. No compelling reason to expedite: We know of no compelling reason why the December hearing cannot be postponed one month until January 14, 2025. A one-month postponement will in no way derogate from the substantive or procedural issues relating to ZNCH-24-005.

If the Commission has any questions regarding our request for postponement, we urge you to contact us:

Karen Yank, President TTRA  
hamonyank@cybermesa.com  
505-269-9959

Dennis Kellogg, EMPAC Board  
info@theempac.org  
916-715-7066

**ATTACHMENT #3: Response by Staff Director, P&Z Commission to TTRA  
Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission  
on the matter of ZNCH-24-005**

**From:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 1:58:49 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>  
**Cc:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>, Michael Eshleman  
<[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hi Karen,

Thank you for your email. Subject project (item ZNCH-24-005) will remain on the agenda for the December 10, 2024 Planning and Zoning Commission hearing date.

Sincerely,

<image001.png>

**Daniel J. Beaman**  
*Director of Planning and Zoning*  
Sandoval County | New Mexico | US  
[https://www.sandovalcountynm.gov/  
dbeaman@sandovalcountynm.gov](https://www.sandovalcountynm.gov/dbeaman@sandovalcountynm.gov)  
**1500 Idalia Road, Building D**  
**Bernalillo, NM 87004**  
Office: (505) 867-7628  
Direct: (505) 867-7617

**ATTACHMENT #4: Response by Wayne Johnson, Sandoval County Manager, to TTRA and EMPAC Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

Begin forwarded message:

**From:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 3:47:43 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Good afternoon Ms. Yank,

At this point, we have an identified applicant and a general group of opponents. While we received a memo from two organizations requesting a deferral, it's hard for us to determine the overall representation of the opponents. There may be those who have made plans to be at the December 10<sup>th</sup> meeting to voice their opposition and would be opposed to a deferral at this late date. Given this situation, and the applicant's request not to defer the matter, we made the decision to proceed with the December 10<sup>th</sup> hearing. At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral. Chair Trujillo has not been in contact with you because as you know, the county discourages any kind of ex parte communication. Doing so could jeopardize the member's ability to vote.

Best,



**Wayne A. Johnson**  
County Manager  
o. 505.867.7551  
c. 505.934.2152  
[www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

**From:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>  
**Sent:** Monday, December 2, 2024 3:35 PM  
**To:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>; Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>; Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>; Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** Re: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hello Wayne and Daniel,



Please give us your reason for denying our request for postponement of the Dec. 10th zoning meeting promptly. Our groups and their lawyers would like to know more detail.

Also, Wayne, I was told by your office that the Chair of the Planning and Zoning Commission is the only person to decide whether to approve a request for postponement. Why then hasn't Chair Dennis Trujillo responded to me instead staff?

Thank you,  
Karen Yank  
Dennis Kellogg

**ATTACHMENT #5: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275

SANDOVAL COUNTY, NEW MEXICO  
RESOLUTION NO. 11-18-10.7C  
ESTABLISHING FEES FOR ZONING APPLICATIONS

WHEREAS, Sandoval County has in the past established fees for zoning applications; and

WHEREAS, the Sandoval County Board of County Commissioners recognizes that the fees no longer represent the governmental costs associated with processing such applications; and

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners, the Governing Body of Sandoval County, New Mexico that the following fees are established for the zoning applications:

1. *Conditional Use Review*: \$65 for Family Cluster, \$85 for all other Conditional Use applications (except Wireless Communications facilities as regulated by County Ordinance #03-10-16.11A);
2. *Variance*: \$85;
3. *Zone Map Amendments*:
  - (a) Less than one acre: \$150
  - (b) One acre but less than five (5) acres: \$200 for the first acre plus \$25 for each additional acre or portion thereof;
  - (c) Five (5) acres but less than twenty (20) acres: \$300 for the first five (5) acres plus \$15 for each additional acre or portion thereof;
  - (d) Twenty (20) acres but less than sixty (60) acres: \$525 for the first twenty (20) acres plus \$10 for each additional acre or portion thereof;
  - (e) Sixty acres or more: \$925 plus .25 for each additional acre or portion thereof.
4. *Petition for Legislative Text Amendment*: \$100
5. *Appeal*: \$250 for Beneficial Use Determinations, \$100 for all other Appeals;
6. *Engineering Fees*: To cover engineering expenses related to processing applications under this Ordinance, an engineering fee equal to 105% of the actual costs to the County for engineering review shall be charged.
7. *Temporary Use Permit*: 1/2 of the applicable fee for Zone Map Amendments.
8. *Building Plan Review*: \$80 Residential, \$0.25 per square foot for Non- Residential Construction
9. *Special Event Permit*: \$200.00 plus 105 % of related County expenses.

PASSED AND APPROVED THIS 16th DAY OF SEPTEMBER, 2010.

ATTEST:

  
Sally Padilla, County Clerk

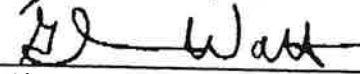
APPROVED AS TO FORM:




BOARD OF COUNTY COMMISSIONERS

  
Orlando Lucero, Chairman

  
Daryl Madalena, Vice Chairman

  
Glenn Walters, Member

David Bency, Member  
  
Don E. Leonard, Member

201002886 11/19/2010 10:30:54 AM B: 413 P: 26866

Resolutions Pg. 1 of 1

Sally G. Padilla, Sandoval County Clerk





# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:  TEMPORARY USE PERMIT  VARIANCE  
 CONDITIONAL USE  SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION → *Zone Map Amendment*

APPLICANT: Bill and Lorna Parsons TELEPHONE: (301) 957-0288  
 ADDRESS: 23 La Cantera, Sandia Park, NM 87047  
 AGENT: Bill Parsons TELEPHONE: (240) 620-3170  
 ADDRESS: 23 La Cantera, Sandia Park, NM 87047  
 E-mail Address: parsonsfamily@starpower.net

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13 RANGE 6 East & 6 East SECTION T12:1,2,3-T13:34,35, 36  
 MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
 Subdivision \_\_\_\_\_ Lot No. See Attachment #3.  
 Block No. \_\_\_\_\_ Total Acres: 1,833 Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, we, Bill and Lorna Parsons, an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change), ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error"; or (b) a decision not supported by evidence in the matter" (See Attachment #1 for details)

SIGNATURE: *William P* DATE: 01/03/2025

**INSTRUCTIONS:** Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>Doraida Arias</u>	Date: _____
File Number: <u>202500007</u>	Receipt Number: _____ Fee: <u>100<sup>00</sup></u>
Type and Date of Appealed Action: <u>Zone Map Amendment (ZNCH-25-005)</u>	

## **ATTACHMENT #1: Parsons Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

**1. Subject Appeal:** In the matter of ZNCH-24-005, we, Bill and Lorna Parsons of Sandia Park, NM, an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("County Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error" and/or (b) a "decision not supported by evidence in the matter".

**2. Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC ("PCR") to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch ("Diamond Tail Solar"), in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005. Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (Milliron Ranch); long-standing local environmental groups, such as EMPAC, with approximately 800 members, and the Turquoise Trail Regional Alliance ("TTRA"), with approximately 500 members; and the San Pedro Creek Estates Homeowners Association ("SPCE"), with 379 members.

**Significantly, everyone—including us—who opposes Diamond Tail Solar also supports renewable energy and, in particular, solar power, especially as means to combat Global Climate Change. We have spent our lives dedicated to protecting and preserving our environment. Our opposition to Diamond Tail Solar boils down to two specific concerns:**

- **First, the proposed power plant is demonstrably unsafe,** because the battery energy storage system is generically prone to fire caused by the inherent flammability of lithium storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other risks such criminal misadventure and terrorist attack and fails to meet industry "best practices" for safety and security.
- **Second, the location of the proposed power plant is demonstrably inappropriate,** because the site is too remote, with first responders too far away to effectively intervene in the event of fire or other mishap; the site is subject to recurring natural wildfires; and the site location and PCR safety plan lacks sufficient water resources to effectively fight a wildfire.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and its primary holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a huge industrial facility. For example, the solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scrapped clean to make way for equipment;
- over 500,000 plastic solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of dark, nonreflective surface area;
- 5,574 mechanical tracking arrays for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing; and
- 24 miles of internal access roads.

Moreover, the associated Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

**4. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission (“P&Z”) on December 10, 2024, was made in “error” and/or was a “decision not supported by evidence in the matter”, for many substantive reasons, including the following:

(i) **Public Safety Threat: Wildfire Evidence Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*: “Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance, Section 10, states, in part, that:

The Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“3. To assure the Special Use District will not be detrimental to the public health, safety, or general welfare of the County.”

Applicant PCR acknowledges that the Tesla Megapacks in its BESS pose fire risks, but claims that it satisfies the stringent safety criteria above because the location of Diamond Tail Solar will be in an area of minimal fire risk. Specifically, PCR states: *“In the unlikely event of a battery fire, the spread of fire off-site will also be unlikely due to the Project area’s minimal wildfire risk”*.

However, at the December 10 Hearing, we presented oral and written testimony that directly contradicted PCR’s claim of minimal wildfire risk. Specifically, we concluded that: **“we are unable to substantiate this claim, all databases consulted listed Diamond Tail area as at least “Moderate” wildfire risk (4/10 or 4/6, depending on database), thereby vitiating PCR safety analysis.”** Supporting details of our analysis are set forth in Attachment #2, Key Finding #4 and Section 4.

Significantly, no one at the December 10 Hearing questioned or disputed our analysis contradicting PCR wildfire risk claims, including P&Z Commissioners, P&Z Director, Sandoval County Deputy Fire Chief, and PCR witnesses, including the PCR expert witness for fire safety.

**We therefore conclude that either (a) all parties agreed with our analysis demonstrating that the PCR BESS facility poses a wildfire risk and is at risk from wildfire, thereby contradicting and vitiating PCR fire safety claims, or (b) P&Z Commissioners failed to consider our analysis . If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(3). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

(ii) **Public Safety Threat: Inadequate Safety Safeguards Evidence Unaddressed by PCR and P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance, Section 10, states, in part, that:

The Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“3. To assure the Special Use District will not be detrimental to the public health, safety, or general welfare of the County.”

Applicant PCR claims that their safety plan for the BESS facility is adequate. As proof they state: “The applicant will coordinate with fire and emergency agencies to develop appropriate risk mitigation and emergency response plans and to provide fire and safety training for County Fire department personnel.”

However, at the December 10 Hearing, we presented oral and written testimony that directly contradicted PCR’s safety claim and demonstrated that PCR’s safety plan and design for the BESS facility is demonstrably inadequate. Supporting details of our analysis are set forth in Attachment #2, Key Finding #5 and Section 5. Specifically, we pointed out the PCR BESS safety plan and design:

- consists of a single 3-strand, barbed wire fence for perimeter defense;
- incorporates only remotely operated fire and motion sensors for threat detection;
- has no on-site security personnel;
- has no on-site firefighters;
- is so remote that first responders are at least 30-45 minutes away;
- SOP requires first responders to stand by and let Telsa Megapack fires burn out, without any effort at fire mitigation of burning equipment, even if such fires continue for days or create the risk of explosion;
- has only a single 29,000-gallon on-site water tank to fight on-site fires and/or encroaching wildfires; and



- is completely unhardened against catastrophic risks, such as terrorist attack, which is a well-known ongoing threat against U.S. electrical grid operators; major vehicular impact, such as aircraft crash; industrial sabotage by disgruntled employees; earthquake, and it is known that the proposed Diamond Tail Solar site is situated between two active geological fault lines; or criminal mischief, such as armed poachers, who are known to trespass onto Diamond Tail Ranch.

Moreover, we pointed out that PCR safety plan and design do not meet industry “best practices”, such as those demonstrated by the Nighthawk BESS in Poway, CA, which was recently approved upon meeting the following safety conditions:

1. the facility operator having already provided a full-up fire and safety mitigation plan by an independent third-party;
2. the BESS facility would incorporate 4 fire hydrants for firefighting;
3. the BESS facility would incorporate a 250-foot perimeter anti-fire barrier (gravel apron); and
4. the Bess facility would incorporate a 12-foot-high reinforced concrete perimeter safety wall between the anti-fire barrier and the Tesla Megapack units.

We emphasize that the proposed PCR BESS facility meets none of the above “best practices” criteria, as the PCR BESS was recommended for approval without any fire or safety plan; includes only a 100-foot anti-fire barrier; has no fire hydrants, only a single 29,000 tank for firefighting; and has a 6-foot barbed wire fence instead of a 12-foot-high concrete safety wall.

Significantly, no one at the December 10 Hearing questioned or disputed our analysis demonstrating that the PCR BESS safety plan and design were demonstrably inadequate, including P&Z Commissioners, P&Z Director, Sandoval County Deputy Fire Chief, and PCR witnesses, including the PCR expert witness for fire safety.

**We therefore conclude that either (a) all parties agreed with our analysis demonstrating that the PCR BESS safety plan and design were inadequate, or (b) P&Z Commissioners failed to consider our analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(3). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(iii) Public Safety Threat: Construction Traffic Evidence Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance, Section 10, states, in part, that:

The Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“3. To assure the Special Use District will not be detrimental to the public health, safety, or general welfare of the County.”

Traffic safety and density is always of paramount concern to Sandoval County residents. PCR claims that traffic, along NM-14, to construct Diamond Tail Solar will be increased by only about 33 vehicles per day.

However, at the December 10 Hearing, we presented oral and written testimony that showed that PCR substantially under-estimated their construction traffic. We demonstrated that PCR:

- **failed to include water trucks in their traffic estimate, and**
- **substantially under-estimated their water usage during construction.**

We concluded that PCR would need 113-140 vehicles/day for construction, but noted that all traffic estimates are heavily dependent upon actual water truck traffic. Supporting details of our analysis are set forth in Attachment #2, Key Finding #2 and Section 2.

Significantly, no one at the December 10 Hearing questioned or disputed our analysis of PCR’s under-estimation of construction traffic, including P&Z Commissioners, P&Z Director, Sandoval County Deputy Fire Chief, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with our analysis of PCR’s under-estimation of construction traffic, or (b) P&Z Commissioners failed to consider our analysis . If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(3). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision**

**to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(iv) Environmental Degradation: Water Usage Evidence Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance, Section 10, states, in part, that:

The Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“3. To assure the Special Use District will not be detrimental to the public health, safety, or general welfare of the County.”

As everyone in Sandoval County knows, we are running out of water in the East Mountains. Therefore, water use is a major public health, safety, and general welfare concern. PCR acknowledges that they will require water to construct and operate Diamond Tail Solar. However, their water estimates have varied considerably over time. Furthermore, their water usage estimates do not reflect industry best practices, as evidenced by the estimates provided by AES, a seasoned solar power plant company, which is proposing to build a similar, but smaller, PV solar power plant about 25 miles away from Diamond Tail Solar.

Therefore, at the December 10 Hearing, we presented oral and written testimony that addressed the water usage estimates provided by Diamond Tail Solar. We stated that: “PCR claims 38 million gallons to construct power plant, we estimate 244 million gallons; PCR claims 130,000 gallons/year for operation & maintenance (O&M), we estimate 2-3 million gallons/year; significantly, as of 12/3/24 public meeting, PCR still has no plan how to source water.” Our conclusion was that: “**PCR appears to have substantially under-estimated the amount of water needed for both construction and operation and maintenance (O&M).**” Supporting details of our analysis are set forth in Attachment #2, Key Finding #1 and Section 1.

Significantly, no one at the December 10 Hearing questioned or disputed our analysis of PCR’s under-estimation of water usage, including P&Z Commissioners, P&Z Director, Sandoval County Deputy Fire Chief, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with our analysis of PCR’s under-estimation of water usage, or (b) P&Z Commissioners failed to consider our analysis . If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(3). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(v) Environmental Degradation: Thermal Pollution Evidence Unaddressed by PCR and P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance, Section 10, states, in part, that:

The Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“3. To assure the Special Use District will not be detrimental to the public health, safety, or general welfare of the County.”

PCR failed to address, in any of the documents they submitted to the public P&Z website prior to the December 10, 2024, hearing, the public safety threat posed by thermal pollution created by operation of the Diamond Tail Solar power plant.

Therefore, at the December 10 Hearing, we presented oral and written testimony that addressed the thermal pollution threat posed by Diamond Tail Solar. In particular, we analyzed the public safety threat posed by: (a) the “Photovoltaic Heat Island” (PVHI) effect, in which air above solar power plant likely to be heated 3-9 °F; and (b) the “Thermal Advection” effect, in which heated air from solar power plant is transferred onto adjacent properties (1-2 kilometers away from PV arrays), thereby cooling solar power plant soil but heating adjacent landowners’ soil. We concluded by stating: “PCR has not acknowledged PVHI or Thermal Advection effects, much less addressed them in a constructive manner. A thorough scientific study of PVHI and Thermal Advection, as it specifically relates to Diamond Tail Solar, should be done before going forward with a zoning change. **We owe our adjacent landowners due diligence to ensure that Diamond Tail Solar thermal pollution will not detrimentally affect them.**” Supporting details of our analysis are set forth in Attachment #2, Key Finding #3 and Section 3.

Significantly, no one at the December 10 Hearing questioned or disputed our analysis of the thermal pollution threat posed by Diamond Tail Solar, including P&Z Commissioners, P&Z Director, Sandoval County Deputy Fire Chief, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with our analysis of the thermal pollution threat posed by Diamond Tail Solar, or (b) P&Z Commissioners failed to consider our analysis . If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(3). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**6. Request County Board Public Hearing on instant Parsons Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, Appellant Parsons hereby requests a Public Hearing by the County Board to consider the instant appeal.

**7. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, Appellant Parsons hereby requests that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**ATTACHMENT #2: Parsons Memorandum submitted for the Record as part of the December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005:**

**MEMORANDUM**

**TO:** Chair Dennis R. Trujillo, Sandoval County P&Z Commission

**FROM:** Lorna & Bill Parsons, 23 La Cantera, Sandia Park, NM

**SUBJECT:** Significant Issues with PCR Proposal ZNCH-24-005

**DATE:** December 10, 2024

**ISSUE:** PCR proposal, ZNCH-24-005, requests zoning change to build a large-scale solar power plant (1,833-acres) on Diamond Tail Ranch, in East Mountains area of Sandoval County, NM.

**PURPOSE:** In an effort to promote due diligence and engender detailed transparency, we analyzed PCR documentation supporting proposed zoning change ZNCH-24-005.

**KEY FINDINGS:** Below we identify 5 significant issues, which call into question how ZNCH-24-005 can satisfy Sandoval Comprehensive Zoning Ordinance requirement that *“the Special Use District will not become detrimental to public health, safety, or general welfare of the County”*:

1. **Water**. PCR claims 38 million gallons to construct power plant, we estimate 244 million gallons; PCR claims 130,000 gallons/year for operation & maintenance (O&M), we estimate 2-3 million gallons/year; significantly, as of 12/3/24 public meeting, PCR still has no plan how to source water.
2. **Traffic**. PCR claims construction traffic at 33 vehicles/day; we estimate 113-140 vehicles/day; however, all traffic estimates are heavily dependent upon actual water truck traffic.
3. **Thermal Pollution**. PCR did not consider possible negative thermal (heating) effects from solar power plant operation, such as: (a) “Photovoltaic Heat Island” (PVHI) effect, in which air above solar power plant likely to be heated 3-9 °F; and (b) “Thermal Advection” effect, in which heated air from solar power plant is transferred onto adjacent properties (1-2 kilometers away from PV arrays), thereby cooling solar power plant soil but heating adjacent landowners’ soil.
4. **Wildfire Risk**. As part of its argument that Battery Energy Storage System (BESS) does not pose a fire risk, PCR claims Diamond Tail area is rated “Minimal” (1/6) for wildfire risk; we are unable to substantiate this claim, all databases consulted listed Diamond Tail area as at least “Moderate” wildfire risk (4/10 or 4/6, depending on database), thereby vitiating PCR safety analysis.
5. **Current BESS Design Fundamentally Flawed**. PCR severely under-estimates security risk of Battery Energy Storage System (BESS): Neither Tesla Megapacks nor proposed BESS layout will be secured against catastrophic risks, such as terrorist attack. PCR “security plan” merely consists of a 6-foot-tall, 3-strand barbed wire fence. Also, site is doubly remote, with no on-site security personnel and first responders are at least 30-60 minutes away; and site is known for trespassing criminal elements (e.g., armed poachers). This particular BESS design, coupled to this particular location, ensures Diamond Tail BESS will be the lowest of “low-hanging terrorist fruit”.

## RECOMMENDATIONS:

- A. Deny ZNCH-24-005, PCR request to re-zone, and let PCR sort it out on Appeal; or
- B. Defer further consideration of ZNCH-24-005 until PCR can clarify issues above.

**1. Water Usage. PCR appears to have substantially under-estimated the amount of water needed for both construction and operation and maintenance (O&M). *In addition, PCR provides no details on how they plan to source water for construction.***

**Construction:** PCR numbers for estimated construction water are all over the place. At the October 8 hearing they had no numbers; on October 29, they estimated 23 million gallons (70 acre-feet/year); and on December 3, they estimated 19 million gallons/year (58 acre-feet).

**At December 3 at the public outreach meeting, PCR estimated construction water at 19 million gallons per year, a 17 reduction from October 29 number. This is the number used on Point 1 on first page, multiplied by 2 to account for 2-year construction, to get an overall total of 38 million gallons for construction.**

**PCR numbers appear to be massive under-estimates.** Near Santa Fe, another company, AES, is building a 600-acre solar power plant. **AES estimates 100-150 acre-feet per year to construct.** AES has considerable experience building and operating large-scale solar power plants, while PCR never built or operated a solar power plant. Therefore, AES estimate is more credible. Using AES estimate (125 +/-25 acre-feet, 41 +/- 8 million gallons), scaled up to Diamond Tail Solar size (x 3), and using PCR two-year timeline, the likely amount of water used to construct Diamond Tail project will be:

**244 million gallons +/- 49 million gallons; therefore, PCR lowest water estimate for construction is too low by almost a factor of 6.** This is enough water to supply approximately 2,800 homes/year.

**O&M:** On page 23 of their October 29 PowerPoint, PCR states that, “During O&M period, water will be used to clean solar panels once a year, using approximately 0.4 acre-feet per year.” However, **AES estimates O&M water use for their 600-acre Santa Fe solar power plant at 2-3 acre-feet/year.** Using AES estimate (2-3 acre-feet/year), scaled up to Diamond Tail Solar size (x 3), the likely amount of water used to operate and maintain Diamond Tail project, every year for 30 years, will be:

**2-3 million gallons of water; basically, PCR water estimate for O&M is too low by almost a factor of 20!** This is enough water to supply 23-34 homes/year, all to be drawn from our local aquifer.

To be clear, AES estimates construction water at 100-150 acre-feet per year, PCR most recent estimate claims 58 acre-feet per year; AES estimates O&M water at 2-3 acre-feet per year, PCR claims 0.4 acre-feet per year; and recall that PCR power plant is 3 times the size of the AES power plant.

Water Use in Gallons

	PCR Estimates	AES Estimates (Facility 1/3 the size)	PCR Suggested Actual (AES Estimates x 3 x 2)	Change in PCR Estimates
Construction (x2x3)	38 million	32-48 million	192-285 million	5-7.5X
O&M (x3)	130,000	651-977,000	1.89 - 2.9 million	14.5-22X

Increase by 2 times for longer construction duration. Increase 3 times for size difference.

**Bottom-line: There is a massive disconnect between PCR and AES numbers for construction and operation of solar power plants in almost identical areas of New Mexico.**

**2. Traffic Estimate. PCR has substantially under-estimated their construction traffic.**

**Why? Because they:**

- **failed to include water trucks in their traffic estimate, and**
- **have substantially under-estimated their water usage during construction.**

On page 22 of their October 29 PowerPoint, PCR provides their daily traffic estimate during construction as 33 vehicles: 6 semi-trucks, 5 buses, 7 SUVs, and 15 cars.

However, on page 23 of their PowerPoint, they state: “Construction water will be transported to the site (15/20 trucks per day)”. **Those water trucks are not included in the traffic estimate on page 22. PCR just dropped the ball, due to sloppy staff work.**

Adding the water trucks to their traffic estimate boosts the PCR daily traffic estimate to 48 to 53 vehicles per day, not 33. In round numbers, that is a 50% increase in estimated construction traffic, using PCR’s *own* numbers.

Moreover, as pointed out in Point 1 above, on water usage, PCR appears to have substantially under-estimated water needed for construction. We estimate that PCR water usage is too low by a factor of 6. This means their daily water truck estimate is way too low, so daily water truck traffic should be something like 80-107 trucks per day, not 15-20.

**Therefore, taking into account likely water usage using EAS numbers, construction traffic for Diamond Tail Solar should be around 113-140 vehicles per day, not 33 as claimed by PCR.** In round numbers, PCR’s overall daily traffic estimate is too low by a factor of 4, that is, their likely daily construction traffic is 400% higher than PCR claims.

**Bottom-line: Any estimate for traffic construction is driven by water trucks. Therefore, we cannot have any confidence in PCR traffic estimates until the numbers for water usage are sorted out and how that construction water is going to be sourced (off-site water trucks or on-site wells).**



**3. Thermal Pollution.** PCR did not consider possible negative thermal (heating) effects from solar power plant operation, such as: (a) “Photovoltaic Heat Island” (PVHI) effect, in which air above solar power plant likely to be heated 3-9 °F; and (b) “Thermal Advection” effect, in which wind could transfer heated air from solar power plant onto adjacent properties, thereby cooling solar power plant soil but heating adjacent landowners’ soil.

**An unintended consequence of large-scale solar power plant operation is the creation of heated air above the facility, a “heat dome”. This phenomenon is known as the “Photovoltaic Heat Island” (PVHI) effect.** PVHI has been scientifically verified by *in situ* field measurements, for example, at a solar power plant near Tucson, Arizona, and at a solar power plant in China (G.A. Barron-Gafford *et al.*, “The photovoltaic heat island effect: larger solar power plants increase local temperatures”, *Sci. Rep.* 6 (2016) 35070, and R. Chang *et al.*, “Observed surface radiation and temperature impacts from the large-scale deployment of photovoltaics in the barren area of Gonghe, China”, *Renewable Energy* 118 (2018) 131–137). As another study put it, **“Specifically, there is a growing consensus to date that air temperature increases within solar parks, up to 3-4 °C in a hot semi-arid climate zone and 2-5 °C in a cold desert climate zone”** (Guoqing *et al.*, “Grounded-mounted photovoltaic solar parks promote land surface cool islands in arid ecosystems”, *Renewable and Sustainable Energy Transition* 1 (2021) 100008).

An increase of 2-5 °C in air temperature equates to an increase of 3.6 to 9 degrees Fahrenheit. To put that into perspective, an increase of 5 °C exceeds the 1.5 °C maximum limit set forth in the Paris Agreement on mitigating global climate change by 333%.

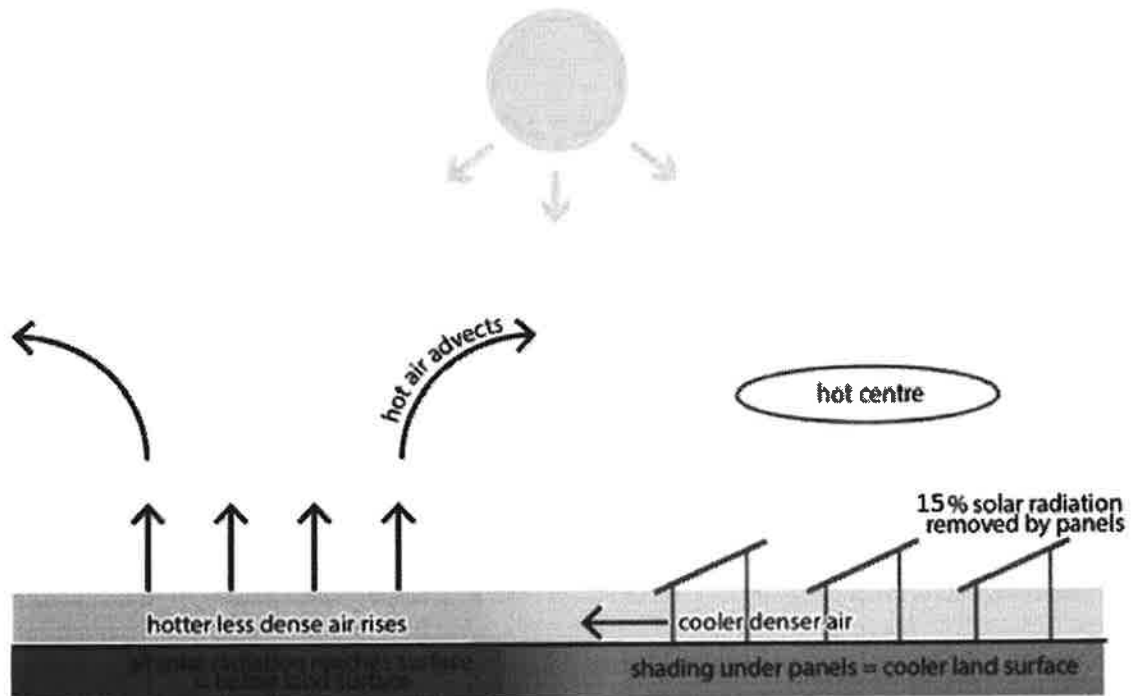
**So, what does the PVHI effect mean for us, here in the East Mountains?**

One recent study (2021) asked a very simple question: **What happens to the PVHI Heat Dome, especially when the wind blows?** Answer: Due to “Thermal Advection”, the soil underneath the PV arrays was cooled, but the soil 1 to 2 kilometers away was heated. **In our case, this means that the PVHI Heat Dome gets fractionated and moved away from Diamond Tail Solar, cooling the ground underneath PCR but heating the ground of adjacent landowners.**

**This Thermal Advection effect is very counter-intuitive, and very variable, so much so that the authors of the study stated:** “Given the potential implications for ecosystem processes, ... , improved understanding of solar park LST [land surface temperature] impacts is required. Specifically, this knowledge is needed to inform the development of sustainable land use and energy policies considering the rapid growth of solar park developments” (Guoqing *et al.*, *ibid.*)

**Bottom-line:** PCR has not acknowledged PVHI or Thermal Advection effects, much less addressed them in a constructive manner. A thorough scientific study of PVHI and Thermal Advection, as it specifically relates to Diamond Tail Solar, should be done before going forward with a zoning change. **We owe our adjacent landowners due diligence to ensure that Diamond Tail Solar thermal pollution will not detrimentally affect them.**

## Thermal Advection Diagram:



Source: Guoqing *et al.*, “Grounded-mounted photovoltaic solar parks promote land surface cool islands in arid ecosystems”, *Renewable and Sustainable Energy Transition* 1 (2021) 100008)

**4. Wildfire Risk.** As part of its argument that Battery Energy Storage System (BESS) does not pose a fire risk, PCR claims **Diamond Tail area is rated “Minimal” (1/6) for wildfire risk; we are unable to substantiate this claim**, all databases consulted listed Diamond Tail area as at least “Moderate” wildfire risk (4/10 or 4/6), thereby vitiating PCR safety argument.

People are worried about the fire risk posed by a large Battery Storage Energy System (BESS) such as the one proposed for the Diamond Tail Storage Project, which will consist of 114 Tesla Megapacks, each containing thousands of Lithium-ion batteries. These batteries are known to overheat, burn and explode, and produce toxic pollutants when doing so; and Tesla Megapacks have, on several occasions, burned. These well-documented events justifiably cause concern in our community about battery fires causing: (a) toxic air pollution; and (b) wildfires.

**Turning to wildfire risk, PCR makes this argument: No fire risk from BESS, because even if the whole thing blows up, the surrounding land is not subject to wildfire and therefore there is no risk of fire spreading to local communities.**

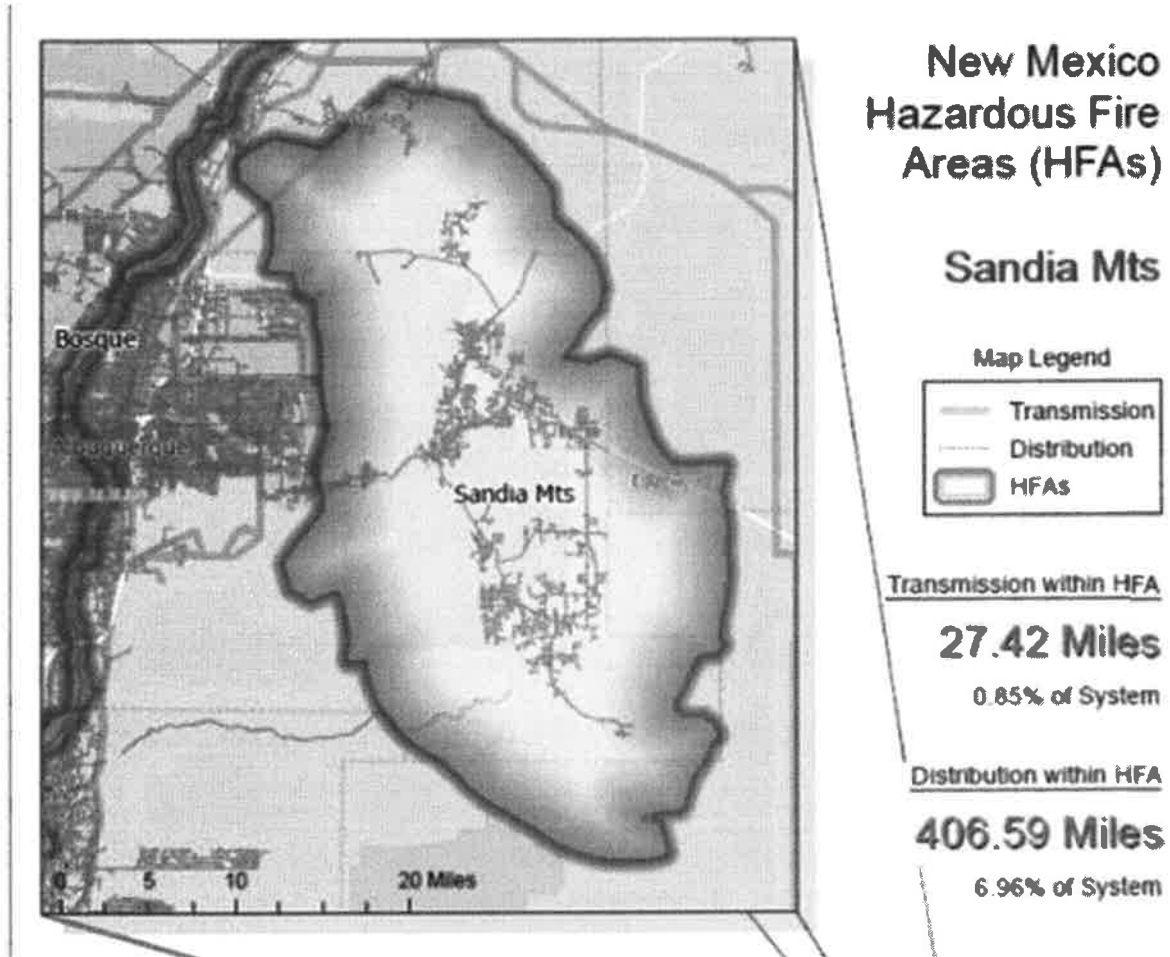
PCR states repeatedly: ***“In the unlikely event of a battery fire, the spread of fire off-site will also be unlikely due to the Project area’s minimal wildfire risk”.***

This PCR assessment is based on claim that First Street.org shows Diamond Tail Solar area as Minimal Fire Risk (1/6). **We tried to verify this claim and could not:**

- **First Street.org analysis for Sandoval County** states: (a) “99% of all properties in Sandoval County will have some risk of being affected by wildfires over the next 30 years”; and (b) “Overall, Sandoval County has a major risk of wildfire over the next 30 years”. **So, to believe that wildfire risk to Diamond Tail BESS is “Minimal”, we have to believe that PCR has the *only* location not threatened by wildfire in all of Sandoval County!**
- **First Street.org provides a checklist of factors that will increase risk of wildfire. Diamond Tail Solar area meets their listed risk factors:** electric transmission lines; lightning; nearby fuel sources, such as extremely flammable pine trees, juniper trees and tall grass; extremely dry vegetation; intense winds; and varied topography with ravines and hills.
- Cross-checked **First Street.org “Fire Checker”** for many individual addresses adjacent to Diamond Tail Solar: **All came back rated as Fire Risk 4/10 in Diamond Tail area, not one was rated “Minimal” (1/10).**
- Cross-checked **FEMA** fire assessment center: **southeastern corner of Sandoval County rated as 4/6.**
- Cross-checked **Wildfire.org** fire assessment center: **Sandoval County rated as 4/6.**

**Simple Solution:** Talk to PNM, which has thoroughly analyzed wildfire risk within their area of operations and has produced extensive Hazardous Fire Area (HFA) maps (see diagram next page). **Surely, PNM knows the wildfire risk underneath their own power lines!**

## PNM HFA Chart for Sandia Mountains



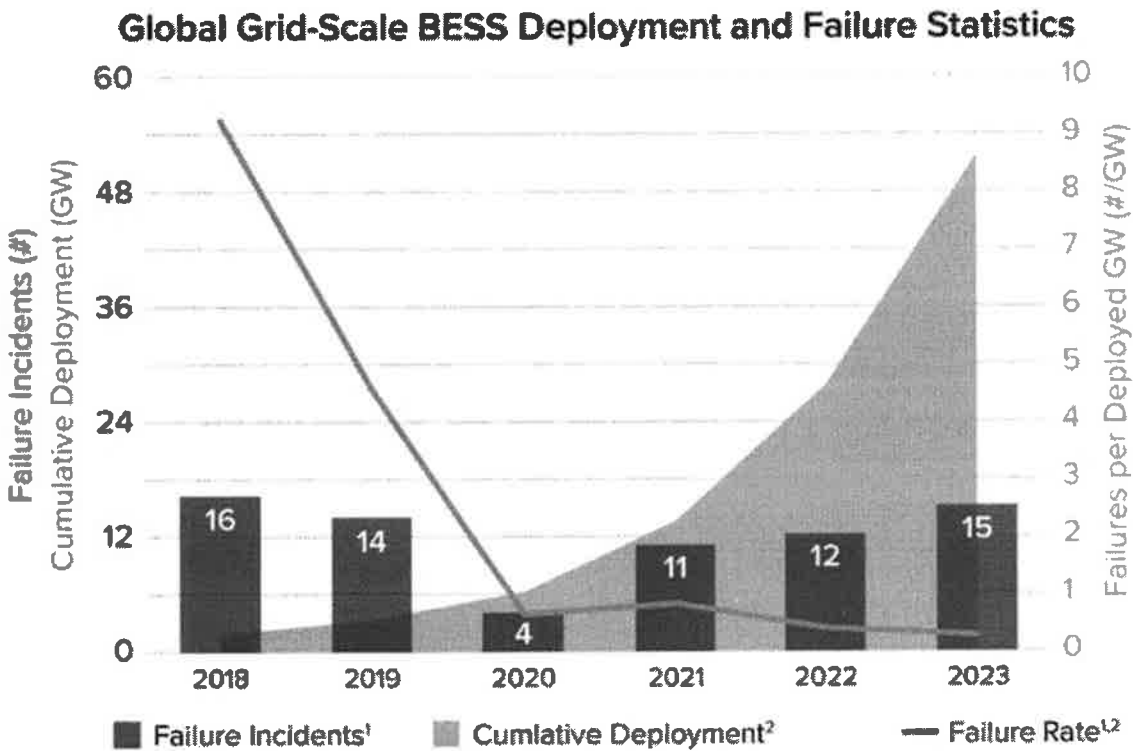
Source: PNM Wildfire Mitigation Plan (WMP) 2024.

**Note close proximity of HFA to proposed Diamond Tail Solar site, at top of Diagram, where thick PNM transmission line splits into a loop and bends toward the upper right corner of the HFA.**

Before leaving the subject of fire risk, we want to rebut PCR claim Tesla Megapacks are inherently safe, by making two simple points:

- **Moss Landing, CA Tesla Megapack Fire (9/2022)**: PCR says this fire didn't cause measurable air pollution outside BESS; true, **but here's what PCR *didn't say*: the Tesla Megapack fire caused a 12-hour Shelter-in-Place order for the entire Moss Landing community and caused a 12-hour closure of Highway 1, an "All-American Highway"**.
- **EPRI BESS Safety Chart**: PCR likes to show a chart of BESS Safety Incidents and says that BESS Failure Rate has been reduced by 97%, between 2018 and 2023, *per Deployed GW*; this is true, **but hiding in plain sight is the number of BESS Failures, per year, which has increased by almost 400% (4 to 15) from 2020 to 2023!**

### EPRI Chart



Sources: (1) EPRI Failure Incident Database, (2) Wood Mackenzie. Data as of 12/31/23.

**5. Current BESS Design Fundamentally Flawed. PCR severely under-estimates security risk of Battery Energy Storage System (BESS).**

**What we're concerned about is a catastrophic event that destroys all or most of the BESS facility.**

**One such catastrophic event would be a terrorist attack using long-range, heavy-caliber sniper rifles to shoot up Tesla Megapacks.** Without going into details in a public forum, I estimate that one or two skilled shooters, within a few minutes, could hit all (or almost all) 114 Megapacks and key ancillary BESS equipment, initiating wide-spread battery fires and numerous explosions. This terrorist attack could be accomplished with "off-the-shelf" equipment and budget of ~\$75,000.

**The risk of terrorist attack against PCR BESS is enhanced by:** (a) design of Tesla Megapacks, which are *very* susceptible to damage by shrapnel; and (b) Megapack placement, in plain view, with geometric spacing, to ensure easy targeting. **Proposed PCR BESS is a sniper's paradise.**

**The risk of terrorist attack is especially enhanced, because the proposed PCR BESS site plan is especially bad:** (a) location is remote; (b) no on-site security personnel; (c) no nearby first-responders (30–60-minute response time); (d) ample cover around facility for terrorists; (e) known criminal elements ("feral humans") already trespassing on Diamond Tail Ranch (e.g., armed poachers and hunters); and (f) no defenses, PCR "security plan" is to install a 6-foot, barbed wire fence, which is effective only against cattle.

**Question: Is terrorist attack against PCR Bess far-fetched? Answer: ABSOLUTELY NOT!** (a) There have already been two serious sniper attacks against the U.S. electrical grid, the 2013 "Metcalf Sniper Attack" near San Jose against PG&E substation, and the 2022 "Moore County Substation Attack" in North Carolina, which resulted in a homicide and a serious power blackout and (b) drone attacks or threats against U.S. electrical grid (July 2020 attack in PA, 2024 FBI arrest in TN).

**Question: What would happen if snipers attacked PRC BESS? Answer: All bad** (a) Solar power plant instantly goes down and goes dark; (b) Tesla Megapacks go up in smoke, costing ~\$101+ million; (c) multiple fires and explosions; and (d) if attack executed correctly, possibility that all or part of PNM is grid is destabilized and goes down along with Diamond Tail Solar.

**Prediction: Sooner or later bad actors will go after undefended U.S. BESS facilities.**

**Guarantee: Once one U.S. BESS gets whacked, Federal regulations will require *all* BESS facilities to be hardened against attack, requiring multiple layers of security.**

**Question: Are any U.S. BESS operators taking security threats seriously, *right now*? Answer: Yes, for example, proposed Nighthawk BESS in Poway, CA.**

**Bottom-line Question: Ask PCR what plans and preparations they have in place to deal with a terrorist attack against their proposed BESS facility.**

**Old National Security Saying: "Hope for the Best, prepare for the Worst".**

**6. SUMMARY:** We have identified what appears to be several substantive issues relating to PCR Project:

1. Miscalculation of water usage, traffic construction impact, and wildfire risk.
2. Ignoring thermal pollution and BESS security flaws and risks.

**These issues call into question how PCR's proposed "*Special Use District will not become detrimental to public health, safety, or general welfare of the County*", as required by Sandoval County Comprehensive Zoning Ordinance.**

**7. RECOMMENDATIONS:**

- A. Deny ZNCH-24-005, PCR request to re-zone, and let PCR sort it out on Appeal; or
- B. Defer (postpone) further consideration of ZNCH-24-005 until PCR can clarify issues above.

**ATTACHMENT #3: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275





# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:       TEMPORARY USE PERMIT       VARIANCE  
 CONDITIONAL USE       SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION

APPLICANT: East Mountains Protection Action Coalition ("EMPAC")      TELEPHONE: (916) 715-7066  
ADDRESS: 13 La Aguapa, Sandia Park, NM 87047  
AGENT: Dennis Kellogg      TELEPHONE: (916) 715-7066  
ADDRESS: 13 La Aguapa, Sandia Park, NM 87047  
E-mail Address: kellfamdennis@gmail.com

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13      RANGE 6 East & 6 East      SECTION T12:1,2,3-T13:34,35,36  
MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
Subdivision \_\_\_\_\_ Lot No. See Attachment.  
Block No. \_\_\_\_\_ Total Acres: 1,833      Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, we, the East Mountains Protection Action Coalition ("EMPAC"), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change), ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error"; and (b) a "decision not supported by evidence in the matter". (See Attachment #1 for details).

SIGNATURE: Dennis Kellogg      DATE: 01/08/2025

**INSTRUCTIONS:** Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>[Signature]</u>	Date: <u>1-8-25</u>
File Number: <u>2025000009</u>	Receipt Number: <u>321002</u> Fee: <u>100.00</u>
Type and Date of Appealed Action: <u>P&amp;Z Commission's Recommendation For BCC to approve ZNCH-24-005</u>	

**ATTACHMENT #1: EMPAC Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

**1. Subject Appeal:** In the matter of ZNCH-24-005, we, the East Mountains Protection Action Coalition (“EMPAC”), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners (“County Board”) and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission (“P&Z”) on December 10, 2024, was: (a) made in “error” and/or (b) a “decision not supported by evidence in the matter”.

**2. Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC (“PCR”) to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005, including: Sandoval County personnel representing the Fire Department and Economic Development Department; the manager of Diamond Tail Ranch; a solar power activist representing “Green 22”, a group with an unknown number of members; a member of the local electrician’s union, who hoped that his union membership would get work building Diamond Tail Solar; an individual who hoped his company would get the contract to build Diamond Tail Solar; and over 29 other individuals citizens, the vast majority of whom did not live in the East Mountains and many of whom either lived outside of Sandoval County (e.g., Las Cruces, NM and Buckeye, AZ) and/or provided letters in support in P&Z Public Comments that were clearly based on a form letter template.

Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (X-Milliron Ranch); long-standing local preservation and environmental groups, such as EMPAC, with approximately 800 members, and the Turquoise Trail Regional Alliance (“TTRA”), which consists of 20 alliance groups, altogether totaling thousands of members; the San Pedro Creek Estates Homeowners’ Association (“SPCE”), with 379 members; and over 20 other individuals, including District 3 Santa Fe County Commissioner Camilla Bustamante, who testified in her personal capacity.

**Significantly, while we oppose Diamond Tail Solar, we also support renewable energy and, in particular, solar power, especially as means to mitigate Global Climate Change.**

**EMPAC opposes Diamond Tail Solar for three specific reasons:**

- **First, the proposed power plant is demonstrably unsafe**, because the battery energy storage system is generically prone to fire caused by Lithium-ion storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other catastrophic events, such as criminal misadventure and terrorist attack, and fails to meet industry “best practices” for safety and security for a location such as the one proposed in the East Mountains.
- **Second, the location of the proposed power plant is demonstrably inappropriate**, because the site is too remote, with first responders too far away to effectively intervene in the event of fire or other mishap; the site is subject to recurring natural wildfires; and the size and scale of this proposed power plant would obviously detract from the scenic beauty of New Mexico, being in full view of Sandia Crest Overlook, being in close proximity to and in full view of the Albuquerque Golden Open Space; being in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico; and being situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art.
- **Third, there are other locations in Sandoval County, and in New Mexico, that are far more appropriate for an industrial facility of this type and scale**, such as so-called “brownfields” sites, in which the land has already been disturbed, is not subject to wildfire, and already has appropriate industrial-type infrastructure, including nearby first responders, access to water for firefighting, pre-existing road networks, reliable telecommunications networks, etc., and other locations which already have been developed to accommodate large-scale solar power plants. One such location, in western Sandoval County, is the “Solar Corridor” along Encino Road/Drive NW.

**SPECIAL NOTE:** On December 23, 2024, the Hearing Officer for the Sustainable Land Development Code (“SLDC”), Santa Fe County, issued an order recommending that the Santa Fe County Planning & Zoning Commission **DENY** the application for a Conditional Use Permit by solar power company, AES Clean Energy Development, to build a PV solar power plant near Ranch Viejo, approximately 25 miles north of PCR’s proposed Diamond Tail Solar. Significantly, the AES proposal was denied for exactly the same reasons why we are objecting to Diamond Tail Solar, namely, the AES solar power plant poses a catastrophic risk to public safety due to fire danger and is located in an inappropriate location. Specifically, the Hearing Officer concluded:

“The evidence indicates the Project would be detrimental to the health, safety, and general welfare of the area; the Project would create a potential hazard for fire, panic, or other danger; and the Project is inconsistent with the purposes of the property’s zoning classification and inconsistent with spirit and intent of SLDC and SGMP.”

This finding is particularly important because the AES facility (i.e., BESS) would have been one-half the size of Diamond Tail Solar and would have been located in an area that is less prone to wildfire and more accessible to first responders.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped bare to make way for equipment;
- over 500,000 solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking systems for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 1.4 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 battery cells;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

This finding is particularly important because the AES facility (i.e., BESS) would have been one-half the size of Diamond Tail Solar and would have been located in an area that is less prone to wildfire and more accessible to first responders.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped bare to make way for equipment;
- over 500,000 solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking systems for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 11 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 battery cells;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

**4. Chronology:** Below we provide a brief chronology of events to help better understand the flow of events surrounding the PCR's Diamond Tail Solar Project from the Public's perspective:

#### **2022**

- January 19, 2022: PCR files as a New Mexico Foreign Limited Liability Company, PCR privately commences site studies for a large solar facility;

#### **2023**

- PCR submits initial Specific Use Permit (SUP) application;

#### **2024**

- PCR site studies conclude with a private lease agreement with Diamond Tail Ranch in East Mountains;
- 8/15/24: PCR holds public meeting at Zocalo Plaza, in western Sandoval County, which is unpublicized in East Mountains;
- 9/10/24: PCR and Diamond Tail Ranch submit ZNCH-24-005, a request to Sandoval County P&Z for Zone Map Amendment (zoning change) to build Diamond Tail Solar;
- 9/13/24: PCR application to New Mexico Department of Transportation for special turnout on NM Route 14, a National Scenic Byway, for Diamond Tail Solar;
- 10/8/24: P&Z holds public hearing to approve ZNCH-24-005; numerous citizens object; P&Z defers further consideration to November 12 public hearing, because P&Z agrees that public was given insufficient time and notice to comment on ZNCH-24-005;
- 10/29/24: Sandoval County Fire Chief communicates to PCR that they have no objection from a public safety approach to the project, despite public objections to Diamond Tail Solar based on fire and wildfire safety issues;
- November: PCR privately contacts P&Z, requests deferral of public hearing on ZNCH-24-005, scheduled for November, until December 10; P&Z grants PCR private request without public knowledge or input;
- 12/2/2024: EMPAC/TTRA/SPCE-HOA publicly and formally jointly request P&Z defer December hearing on ZNCH-24-005 until January 2025, due to insufficient time to analyze late-arriving PCR documents; P&Z denies deferral requests without explanation;
- 12/2/24 & 12/3/24: PCR presents invitation-only outreach meetings to East Mountain residents at Vista Grande Community Center;
- 12/24: Several nearby large landowners and ranchers submit letters stating they oppose ZNCH-24-005, including the one whose land will be used for Diamond Tail Solar construction access;
- 12/5/24: SWCA, an environmental and management consulting firm, on PCR's behalf, submits visual simulations of Diamond Tail Solar, but fails to include any from long-range points of view, such as Sandia Crest Tramway & Ski area;
- 12/9/24: Sandoval County Fire Department sends memo to PCR outlining fire safety requirements, which arrives too late for public consideration for December 10 hearing;
- 12/10/24: P&Z holds second public hearing on ZNCH-24-005, during which many members of the public object to PCR Diamond Tail Solar proposal, providing detailed oral and written opposition testimony; P&Z, without responding to any of the opposition testimony, votes 4 to 0 to recommend the approval of ZNCH-24-005 to Sandoval County Board of Commissioners.

**5. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was made in "error" and/or was a "decision not supported by evidence in the matter", per Section 22A, for the following substantive reasons:

**(i) Public Input: General Comment on Treatment of Opposition Testimony and Failure of P&Z to Exercise Due Diligence.** Throughout the December 10, 2024, hearing, the record clearly demonstrates that P&Z Commissioners had little or no interest in considering Public testimony in opposition to ZNCH-24-005. In spite of compelling testimony provided by numerous concerned citizens that exposed errors, flaws, and misrepresentations committed by Applicant PCR (see Points ii-xxiii, below for more details), not one P&Z Commissioner, at any time, addressed, commented on, followed up on or questioned opposition testimony (with the exception of Chair Trujillo, who posed a procedural question to P&Z Director Beaman). Public opposition testimony was ignored by P&Z. The attitude of P&Z Commissioners was summed up by Acting Chair Commissioner Marquena, who stated:

*"Okay so we have a unanimous decision. I just want to make this statement that here we have decided to pass it on to the County Commission and I'm hoping between now and then all this information that I have and all these questions I still have in my mind are going to be answered and you know before we get a vote at the County Commission level and that's all we're doing you guys so you know stay stay stay active you know let your voices be heard please but I felt that we had to move this along you know we've been working on this for a while with these folks and I feel that this is a good way to move it on and pass it on to the County Commission. Thank you."*

By failing to address any of the substantive issues raised by the Public in opposition to ZNCH-24-005, P&Z failed to exercise its due diligence, as required under the Sandoval County Comprehensive Plan and Sandoval County Comprehensive Zoning Ordinance, to engage in fact-finding and analysis in order to assist the County Board in making an informed final decision on the matter of ZNCH-24-005. Put simply, P&Z did not do its job. In particular, based on the opposition testimony presented, P&Z failed to provide the County Board with an informed set of "CONDITIONS OF APPROVAL" based on the evidence. For the reasons stated above, P&Z erred when it decided to recommend to County Board approval of ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ii) Public Input: PCR Documents were Permitted to be Posted Late by P&Z in Error.** At least two key documents, PCR "Visual Resources Technical Memo" and the Sandoval County Fire Chief memo to PCR, were posted to the public P&Z website less than 72 hours before the scheduled December 10 hearing. These late postings violated SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", which mandates, in Section 1, that "All documents and other tangible materials, excluding materials used only for demonstrative purposes at the hearing to facilitate witness testimony, should be submitted to the Planning &

Zoning Department at least seventy-to (72) hours prior to the hearing or meeting of meeting of the Board of County Commissioners”. P&Z was in error to accept such late submissions from PCR (or to post late such submissions from PCR). Furthermore, this P&Z error was substantive, as the PCR “Visual Resources Technical Memo”, in particular, is a highly significant document which purports to detail the visual impact of Diamond Tail Solar upon surrounding communities. Unfortunately, due to its late posting, P&Z and members of the public did not have adequate time to review the PCR Technical Memo. It was only after the December 10 hearing that members of the public realized the PCR Technical Memo was both incomplete and misrepresentative (see Point 5(xv) below). Rather than accept such late PCR postings, P&Z should have required PCR to post in a timely manner or should re-scheduled the December 10 hearing to allow for adequate time to post all relevant materials by all concerned parties (see Point 5(iii) below). As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iii) Public Input: EMPAC/TTRA/SPCE Hearing Postponement Request Denied by P&Z in Error.**

In the runup to the December 10 hearing, PCR belatedly, beginning on or about November 22, 2024, began providing to the Public its background and supporting written materials relating to ZNCH-24-005 via the P&Z website, in spite of the fact that many of PCR’s documents were dated in the 2022-2023-early 2024 timeframes. This documentation included 27 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length). Also, PCR belatedly held “private invitation” meetings, for certain selected members of the Public, as late as December 3 and 4, only a few days before the scheduled December 10 hearing. In response, EMPAC, TTRA and SPCE formally requested that P&Z Chair Trujillo postpone the December 10 hearing until January 14, 2025 (see Attachment #2). The EMPAC/TTRA/SPCE postponement requests were unilaterally denied by P&Z Director, Daniel Beaman, without explanation (see Attachment #3). In a follow-up communication between Karen Yank, TTRA President, and Wayne Johnson, Sandoval County Manager, Johnson stated that: the postponement request was denied because Applicant PCR objected to the postponement; that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement; and that postponement matter was not brought to the attention of Chair Trujillo prior to the hearing because doing so would constitute an “*ex parte* communication” (see Attachment #4). The decision by P&Z Director and County Manager to deny postponement was in error, for the following five reasons: (a) the postponement request to Chair Trujillo was not an *ex parte* communication and County Manager’s description of such was a mistake; it was precisely the opposite, being a communication on a procedural matter, in manner specified by County Manager Staff, that was made publicly, as it was sent to all relevant County personal, posted on the P&Z public website, and shared with Applicant PCR; (b) as the postponement request was not an *ex parte* communication, the postponement decision should have been made by Chair Trujillo, rather than unilaterally by P&Z Director (and County Manager); (c) contrary to County Manager’s assertion that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement during the hearing, on December 10 just prior to the hearing, P&Z Director denied EMPAC/TTRA/SPCE request to raise the postponement issue before the P&Z Commission, with the result that the P&Z Commissioners were never informed, before or during the hearing, of the EMPAC/TTRA/SPCE requests to postpone; (d) P&Z and County Manager deferral to PCR on



the matter of hearing postponements evidences clearcut bias of P&Z for the Applicant and against the Public; and (e), perhaps most importantly, by denying postponement, members of the Public, including Appellant EMPAC, had inadequate time to prepare and submit documents in response to Applicant PCR's documents and materials, thereby depriving P&Z of the ability to make a fair and informed decision regarding a matter as complex and important as ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iv) Public Input: PCR Hearing Postponement Request Approved by P&Z in Error.** At the October 8, 2024, hearing on ZNCH-24-005, P&Z decided to schedule a follow-up hearing on ZNCH-24-005 for November 12, 2024. However, prior to November 12, 2024, P&Z postponed consideration of ZNCH-24-005 until December 10, 2024. This postponement was done without explanation, without Public input or comment, and without the reason for the postponement being publicly posted on the P&Z website (unlike in the case of the EMPAC/TTRA/SPCE postponement request, which was publicly posted, see point 5(iii) above). Only later did EMPAC learn, from PCR upon direct inquiry by EMPAC, that P&Z postponed the November 12 hearing at the private request of Applicant PCR.

The P&Z decision to postpone consideration of ZNCH-24-005, at the private request of PCR and without any Public input, was in fact exactly the kind of private *ex parte* communication that County Manager stated was inappropriate (see Attachment #4 for supporting details). P&Z erred when it granted PCR its private postponement request, and compounded their error by subsequently denying EMPAC/TTRA/SPCE their public postponement request. By doing so, P&Z failed to meet the "fair and impartial" standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", which states, *inter alia*, "WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible". As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(v) Public Input: PCR Witnesses Permitted to Exceed Time Limit during December Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 6., stipulates that P&Z applicants shall be limited to a total of 10 minutes of direct testimony and an additional total of 5 minutes of rebuttal testimony. At the December 10, 2024, hearing, P&Z permitted Applicant PCR to call several witnesses, many of whom exceeded the 3 minutes allotted to Public witnesses and all whom together exceeded the 10 minutes total time allocated to PCR as an applicant. To make matters worse, P&Z Acting Chair Commissioner Marquena refused to grant additional time to any Public witness speaking against ZNCH-24-005, repeatedly admonishing witnesses who exceeded their 3-minute speaking time. While P&Z Chair has the authority to grant additional time to any witness, he only did so for witnesses testifying on behalf of Applicant PCR. P&Z erred when it always granted additional time to Applicant PCR witnesses, but refused to grant additional time to any Public witness speaking in opposition to ZNCH-24-005. By doing so, P&Z failed to meet the "fair and impartial" standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A

RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(vi) Public Input: Double Testimony Permitted for PCR Witness during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 2 b)., stipulates, in part, that “No individual will be permitted to speak more than one (1) time”. At the December 10, 2024, hearing, P&Z permitted a witness to speak on behalf of Applicant PCR and then to speak a second time during Public comments in which said witness spoke again in favor of ZNCH-24-005. Many members of the Public at the Hearing objected to this action, but Acting Chair P&Z allowed the PCR witness to speak twice in spite of Public objections. P&Z erred by allowing a PCR witness to speak twice. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(vii) Public Input: Public Opposition Evidence Misrepresented during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Toward the end of the December 10, 2024, hearing, a P&Z Commissioner, speaking remotely, queried P&Z Director whether it was true that 75% of members of the Public who provided written testimony on the matter of ZNCH-24-005 were, in fact, supportive of ZNCH-24-005. P&Z Director answered in the affirmative. As explained in Paragraph 2 above, the P&Z Director’s answer is demonstrably false. P&Z erred by stating, for the record, that substantially more members of the Public supported ZNCH-24-005 than opposed it. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(viii) Public Input: Overall Pattern of Preferential Treatment for PCR by P&Z and thus in Error.** As demonstrated by Points 5(i-vii) above, P&Z evinced a clear pattern of preferential treatment for Applicant PCR—and bias against members of the Public opposing ZNCH-24-005—throughout consideration of ZNCH-24-005. P&Z erred in doing so, as P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best

interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ix) Public Safety Threat: Tesla Megapack Fire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated January 3, 2025, we concur in their assessment that PCR misrepresented the Tesla Megapack fire threat posed by the Diamond Tail Solar BESS. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under the NM Stat NM Stat § 3-21-5 (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(x) Public Safety Threat: Wildfire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR misrepresented the wildfire threat in the Diamond Tail Solar area and that, in fact, a real wildfire threat exists in the proposed BESS deployment location.

Furthermore, at the December 10, 2024, hearing, PCR produced—quietly and without fanfare—a new graphic on wildfire risk that contradicted their previous wildfire estimates (see PCR Public Hearing Presentation, December 10, 2024, page 7, posted on P&Z public website). Let us recall PCR’s previous testimony: *“In the unlikely event of a battery fire, the spread of fire off-site will also be unlikely due to the Project area’s minimal wildfire risk”*. The new PCR wildfire graphic clearly shows that the wildfire risk at the site location is *not* minimal (1/6), as claimed by PCR previously, but rather varies between low (3/6) to moderate (4/6), confirming Parsons testimony. As a result, the overall argument for BESS fire and wildfire safety made by PCR has now been vitiated by PCR’s own revised testimony!

P&Z uncritically accepted PCR previous evidence at face value and failed to consider the implications of PCR’s latest wildfire analysis and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xi) Public Safety Threat: Inadequate Safety Safeguards Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated

January 3, 2025, we concur in their assessment that: (a) PCR has proposed inadequate safeguards to protect the Public from BESS fires and other mishaps; and (b) the PCR proposal for BESS safety does not meet industry “best practices”. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xii) Public Safety Threat: Poor First Responder Access Evidence Unaddressed by PCR and P&Z.** Based on the statements made by the Sandoval County Fire Department Official, in attendance at the December 10, 2024, hearing, the County Fire Department (FD) has informed the applicant that the FD will not be responsible for any fire response or fire-fighting within the 1833-acre industrial power plant. Furthermore, Applicant PCR has not responded to the Fire Department on what measures it will take to address an uncontrolled vegetation fire or toxic lithium battery fire within the perimeter of the massive power plant. Additionally, the FD and the Applicant have not answered the public inquiries concerning the number of fire equipment rated roads necessary to gain access to extinguish both the surrounding wildfire threat and any uncontrolled facility fires that involve highly toxic lithium battery where the number of batteries are in excess of 1,140,000.

There exists no fire equipment rated roads into the Diamond Tail Ranch that can support fighting a fire at the 1,833-acre solar power plant. The rural unimproved road that is proposed for an access route, and conceivably could be upgraded to a fire equipment rating, is not within Sandoval County jurisdiction and/or control. Clearly, interjurisdictional cooperation has not occurred in the submission of this application or its review. Consequently, to build a fire equipment rated road in Santa Fe County would require a minimum of a Santa Fe County review and approval, in advance, to substantiate access to the power plant from a National Scenic Highway as an appropriate use of the scenic highway. In addition, as the proposed access road for firefighting is in Santa Fe County, no evidence exists PCR has secured the necessary agreements to have Santa Fe County provide as primary or secondary fire protection and response services to Diamond Tail Solar. Furthermore, the two rural roads within Sandoval County, which conceivably could be improved to accommodate a fire equipment rating, are not fully under the control of Sandoval County as they are held in part or whole as private roads or a road that cross the protected conservation easement owned by the City of Albuquerque and is designated the Golden Open Space. Neither the P&Z staff report nor PCR have addressed this gap in evidence to support the rezoning application. Should PCR’s insurance carrier or Sandoval or Santa Fe Counties FD’s require two access roads, both with a fire equipment rating, there exist no such roads to accommodate the requirement. In accordance with New Mexico State industrial building standards, the applicant has not consulted the New Mexico State Fire Marshal, Code Enforcement Officer to determine if the proposed 1,833-acre rural wild land location is suitable for the construction of one the largest battery storage facilities supported by solar panels in New Mexico. The State Fire Marshal may find that this power plant location unbuildable.

These omissions in the hearing demonstrate the PCR application failed to receive a full and complete review in the Planning and Zoning staff report, as these critical items were unanswered

by the FD or PCR or addressed sufficiently in the report. P&Z failed to address these detrimental threats to the public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and the Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiii) Public Safety Threat: NM-14 Construction Traffic Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR substantially under-estimated the increase in traffic along NM-14 during construction of Diamond Tail Solar. Traffic density—and thus safety and impact to public infrastructure—is an important factor affecting public safety and general welfare. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiv) Public Safety Threat: Traffic Safety Evidence along Puertocito Road Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR misrepresented the traffic safety problem along Puertocito Road likely to result from construction of Diamond Tail Solar. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xv) Environmental Degradation: Visual Impact Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral testimony by Karen Yank, TTRA, and by Dennis Kellogg, EMPAC, and on evidence presented in oral and written testimony by Jon and Julie Wannlund, at the December 10, 2024, hearing, and in the TTRA follow up appeal to the County Board dated January 8, 2025, and in the Wannlund follow up appeal dated January 8, 2025, we concur in their assessment that PCR misrepresented the visual impact of Diamond Tail Solar on surrounding land and communities. P&Z uncritically accepted PCR evidence at face value and thus failed to question or even consider PCR’s demonstrably incorrect claim that Diamond Tail Solar was “visually similar to PNM’s electrical grid infrastructure currently existing on Diamond Tail Ranch”. As a result, P&Z failed, abysmally, to meet the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(5). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xvi) Environmental Degradation: Sandoval County "Unightly Use of Land" Standard Unaddressed by PCR and P&Z.** Based on the evidence presented in oral testimony by Karen Yank, TTRA, and by Dennis Kellogg, EMPAC, at the December 10, 2024, hearing, and in the TTRA follow up appeal to the County Board dated January 8, 2025, and in the Wannlund follow up appeal dated January 8, 2025, we concur in their assessment that both PCR and P&Z failed to address the "Unightly Land Use" standard set forth in NM Stat § 3-21-5, A(8) (2018), particularly with respect to the negative scenic impact on NM-14, the Turquoise Trail, a designated National Scenic Byway. P&Z uncritically accepted PCR evidence at face value and thus failed to question or even consider PCR's demonstrably incorrect claim that Diamond Tail Solar would preserve the integrity and character of the surrounding land and scenic vistas. As a result, P&Z failed, abysmally, to meet the standards set forth in NM Stat § 3-21-5, A(8) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(5). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xvii) Environmental Degradation: Water Usage Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR significantly underestimated water usage for both construction and operation of Diamond Tail Solar. Because undisputable data show annual declines in East Mountains water source, this under-estimation poses a detrimental threat to public welfare. P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(3). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xviii) Environmental Degradation: Puertocito Concerns regarding Well Water Contamination and Access Unaddressed by PCR and P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by "The Puertocito-Golden-Ranchers" to the County Board, dated January 8, 2025, we concur in their assessment that PCR construction and operation of Diamond Tail Solar could negatively impact the ability of Puertocito residents to obtain clean, affordable, and sustainable water, due to potential contamination of their water wells during construction and due to running their wells dry as a result of PCR operations once the solar power plant is built. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xix) Environmental Degradation: Thermal Pollution Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons

at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that thermal pollution created by operation of the proposed Diamond Tail power plant poses a detrimental threat to public safety, health, and general welfare. Both Applicant PCR and P&Z failed to address this detrimental threat to public safety, health and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xx) Environmental Degradation: Nighttime Light Pollution Evidence Unaddressed by PCR and P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address the issue of light pollution being created by Diamond Tail Solar during nighttime construction or during nighttime operations.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The economic, noise, **glare**, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(4) requirement, Applicant PCR only addressed glare and glint emanating off the solar panels during the daytime.

In a report dated October 8, 2024, P&Z Staff, under “**FINDINGS OF FACT**”, stated, in part, that:

“5. The request for Special Use (SU) district for zoning for the proposed development is consistent with the policies in the Sandoval County Comprehensive Plan as shown in this report (p. 2).”

and

“6. The request for Special Use (SU) Zone Map Amendment satisfied the criteria for review for a Zone Map Amendment as establish in Section 19, Amendments, Subsection F, Guidelines (1-7). Subsection F.”

Based on these Findings of Fact, P&Z Staff recommended approval of ZNCH-24-005.

As a matter of fact, the proposed Diamond Tail Solar location has one of the most pristine and scenic nighttime viewsheds in all of New Mexico. Currently, there are no major facilities of any sort anywhere near the proposed site. Therefore, significant nighttime light pollution by an industrial facility, such as Diamond Tail Solar, would fail to preserve the integrity of the area within the meaning of Section 10(2) and would constitute “glare” within the meaning of Section 19(4).

During the December 10, 2024, hearing, the Benson family presented oral testimony in which they specifically raised the issue of nighttime light pollution. They raised two concerns. First, that nighttime construction of Diamond Tail Solar would cause light pollution. Second, and far more concerning, that the operation of security motion sensors at night, triggered by PCR operations and/or animal movement, would lead to frequent but random nighttime light pollution all year around.

Significantly, no one at the December 10 Hearing commented on or responded to the Benson family concerns about nighttime light pollution, including P&Z Commissioners, P&Z Director, and PCR witnesses. This was particularly troubling because the SWCA report, “Visual Resources Technical Memo”, prepared for PCR, specifically highlighted the issue of nighttime light pollution. Under **Recommended Mitigation Measures**, the report stated:

"ALTHOUGH NOT SPECIFICALLY IDENTIFIED IN THIS STUDY due to viewing distance, light pollution from the project could create negative visual effects, particularly from residential viewers with long-duration views. Project lighting, such as within the proposed substation and BESS facility, should be of minimum intensity as required for safety and security, and site lighting should be fully shielded and equipped with motion sensors to the extent feasible."

**We therefore conclude that either (a) all parties agreed with Benson family concerns regarding potential nighttime light pollution caused by Diamond Tail Solar operations, or (b) P&Z Commissioners failed to consider their legitimate concerns, which as shown above were actually confirmed by SWCA. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated**



**Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(4). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxi) Environmental Degradation: PCR Decommissioning Plan Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in presentations to the public, PCR repeatedly claimed that:

“Solar power plant site will be restored to the condition as it was 30 years ago”.

PCR also posted on the P&Z public website a document entitled “Decommissioning Plan, Diamond Tail Solar + BESS Project, Sandoval County, NM”, dated September 2024.

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony that contradicted PCR’s claim the Diamond Tail Solar site will be restored to the condition as it was 30 years ago (see Attachment #5). Working from PCR’s Decommissioning Plan, he highlighted the following points:

- “The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use.” (emphasis added.)
- “Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions.” (emphasis added.)

- “After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition.*” (emphasis added.)
- “In addition, the site *may be revegetated* ... .” (emphasis added.)
- “All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.* (emphasis added.)

Based on these PCR points, he concluded that PCR had no plans to restore the site to its original condition as a pinyon-juniper woodland; rather, the site would be turned into farmland or re-developed for other purposes.

This means that the former Diamond Tail Solar would never be put back into its original condition and thus the site would *not* preserve the integrity and character of the area in the which the Special Use was located, contrary to Section 10(2).

Significantly, no one at the December 10 Hearing commented on or disputed Poindexter’s analysis, including P&Z Commissioners, P&Z Director, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with Poindexter’s analysis that PCR misrepresented its plan to restore the Diamond Tail Solar site to its original condition, or (b) P&Z Commissioners failed to consider Poindexter’s analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(2). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxii) Environmental Degradation: PCR Decommissioning Plan Evidence Conflicts with P&Z Staff Land Use Recommendation and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in the P&Z Staff report on ZNCH-24-005, dated October 8, 2024, under **CONDITIONS OF APPROVAL**, it was stated:

“2. Any substantial change in the uses of the subject site shall require the approval of the Board of County Commissioners upon recommendation of the Planning and Zoning Commission. In no case will any residential development of any kind be allowed within the Special Use (SU) district approved for the subject site.”

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony on PCR’s Decommissioning Plan for Diamond Tail Solar (see Attachment #5). Working from that PCR document, he highlighted this key point:

“All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.*” (emphasis added.)

This point shows that PCR may plan to re-develop the former Diamond Tail Solar site for “beneficial uses” other than farming or agriculture or “original pristine condition”, *based on consultation with landowners*. Significantly, PCR makes no mention of **CONDITIONS OF APPROVAL #2**. PCR only refers to consultations with landowners. PCR says nothing about consultations with P&Z or the County Board, as required under Condition of Approval #2.

So, what we have here is the possibility that PCR is “hiding in plain sight” an option to derogate from its conditional approval granted by P&Z.

Astonishingly, no one at the December 10 Hearing commented on or disputed Poindexter’s key point, including P&Z Commissioners and P&Z Director.

P&Z should have focused on Poindexter’s key point and queried PCR about its long-range plans for Diamond Tail Solar and how those plans comported with P&Z Condition of Approval #2. That did not happen.

**We therefore conclude that either (a) all parties agreed with Poindexter’s analysis that PCR may be planning to derogate from P&Z Condition of Approval #2, or (b) P&Z Commissioners failed to consider Poindexter’s analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated their own Conditions of Approval. If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter**

**when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxiii) Economic Discrimination: Reduction of Property Values Issue Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that Diamond Tail Solar would negatively impact economically the residents in the East Mountains, particularly with respect to a decline in property values due to a reduction in scenic viewshed and the creation of an additional burden on residents seeking to obtain fire insurance due to the additional fire and wildfire risks posed by the battery energy storage system (BESS). In this regard, at the December 10, 2024, hearing, Joel Darnold presented oral testimony that SPCE-HOA was denied property damage insurance coverage for HOA owned common areas due to high risk of wildfires in our area. Diamond Tail Solar will only increase this fire risk and potentially eliminate the possibility of residents to obtain fire insurance. Both Applicant PCR and P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(4). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxiv) Economic Discrimination: Sandoval County Income Distribution Evidence by PCR Discriminates against East Mountains Communities and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the **utility and value of the property** in the Special use District and in adjacent zone districts;” (bold emphasis added.)

In response to the Section 10(2) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the utility and value of properties in the site area, any including any economic benefits accruing to local residents and businesses.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The **economic**, noise, glare, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(4) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the economic viability of local adjoining properties, any including any economic benefits accruing to such local residents and businesses.

During the December 10, 2024, hearing, a representative from the Sandoval County Economic Development Department provided oral (but not written) testimony on how Diamond Tail Solar would provide numerous economic benefits to County residents and businesses. At that same hearing, PCR representative provided oral and written testimony also touting the economic benefits of the solar power plant to County residents and businesses (see PCR Public Hearing Presentation, December 10, 2024, posted on P&Z public website). Among other things, PCR claimed that Diamond Tail Solar would provide:

- “>\$30 million in property taxes”; and
- “\$11.8 million over 30 years to local school districts”.

However, neither PCR nor the County Economic Development representative provided any additional details about how such economic benefits of Diamond Tail Solar would be distributed to residents within the County.

As a matter of fact, almost all of the economic benefits provided by Diamond Tail Solar will be distributed to County residents *outside of the East Mountains*. The reason for this is simple: the County provides very little in the way of public support or infrastructure to East Mountains residents. For example, the County does not support any schools in the East Mountains. Therefore, not one penny of the \$11.8 million windfall from Diamond Tail Solar for schools will be spent on East Mountains residents. Similarly, the County does not support a police station in East Mountains or a recreation center or a full-time, professional fire station. All of these amenities are provided by other counties, specifically, Bernalillo County and Santa Fe County.

**As a result, the situation with respect to the economic benefits of Diamond Tail Solar is fundamentally unfair and discriminatory: East Mountains residents will be asked to shoulder both the economic burdens and the public safety burdens associated with this large-scale industrial facility, while “West County” residents will reap all of the economic benefits without having to assume any of the risks.**

P&Z erred in accepting the economic arguments in favor of Diamond Tail Solar at face value, without considering how these benefits would be applied to and affect East Mountains residents, particularly in relation to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(4). Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxv) Procedural Discrimination: P&Z Evaluated PCR Solar Project Using Different— and Less Stringent—Standards as Compared to other Sandoval County Solar Projects.**

Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that P&Z procedurally discriminated in favor of PCR’s Diamond Tail Solar Project as compared to how P&Z evaluated other similar solar power plant projects in 2023 and in a manner that failed to comport with Sandoval County Comprehensive Plan, Section I, Policy B, Strategy 3. Therefore, P&Z erred in recommending approval of ZNCH-24-005, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxvi) Premature Timing: PCR Interconnection Power Agreement with PNM Years Away.**

Based on statements made by PCR CEO, Mariano Brandi, PCR submitted an application to PNM for interconnection to the Diamond Tail PNM Substation in the 2022. Further statements made by Brandi at a December 3, 2024, public meeting confirmed that the PNM interconnection application process was reviewing the applications submitted in 2014 and 2015, consistent with the PNM Interconnection Manual.

During the December 10, 2024, hearing, opposition testimony from Dennis Kellogg and others stated that the PCR interconnection application with PNM, then pending with the power company, would not be reviewed or considered for advancement to the “power agreement stage” and subsequent study phase for between 7 to 8 years.

According the PNM application process, interconnection applications are the very beginning of the path toward securing an interconnection power agreement with the utility. Consequently, the concerns raised by the community and organizations at the hearing could easily have been fully addressed as more than adequate time was available to assure full and complete public input. This obvious step was not taken by the P&Z, and if taken would not have harmed PCR’s request for a rezoning of rural land to a Special Use District to encompass an 1,833-acre industrial power plant.

Therefore, P&Z erred by making on premature decision on re-zoning. Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxvii) Premature Location: Technical Reasons for Choosing Diamond Tail Location Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“6. The overall health and safety of the community;”

PCR in its public presentations repeatedly stated that the Diamond Tail Solar location was selected for two technical reasons. First, since the site is located between Albuquerque and Santa Fe, it is ideally located to provide power to both communities. Second, when asked whether PCR had examined other potential solar sites that had less environmental impact on the local communities, PCR affirmed that they had and that the Diamond Tail site was on the only site that met their technical specifications.

As to the first point, PCR’s technical contention is wrong as a matter of physics and electrical engineering. What is important for a power plant is how far away it is from a substation that it allows it to tie into a high-voltage transmission grid. Once a power plant ties into the transmission grid, it is irrelevant how far away it is from its consumers. So, PCR’s contention that they needed a site close to Albuquerque and Santa Fe is technically absurd.

What PCR really needed was a site that was no more than 15 miles away from suitable substation, which is exactly what they got with the Diamond Tail substation and the Diamond Tail Ranch site. However, that choice had nothing to do with its technical proximity to metropolitan sites.

As to PCR’s second point, of course, we have no idea whether PCR examined other solar potential sites, and, if so, how many and where. However, what we can say with confidence is that we have easily been able to identify other potentially useful solar sites.

For example, two operational solar farms were previously sited and approved by Sandoval County. These sites are the Encino Solar Energy Center and the Sandoval Solar Energy Center located at 5401 Encino Road NW 87144 and 1501 Encino Drive NW 87124 respectively. In relation to the proposed PCR location, these sites are situated in more favorable areas of Sandoval County, away from public development, and more correctly address the health, safety, and welfare of Sandoval County citizens. The benefits of co-locating the PCR facility within this existing “solar corridor” provide numerous advantages. The opportunity for more favorable construction terrain exists. A network of roads and infrastructure more effectively addresses the danger for potential wildfire, as it is not located close to mountainous and forested land. Given the abundance of existing roads, this location provides more than adequate access to the potential site in the event a fire suppression action is required. Locating the PCR facility in this “solar

corridor” has the potential to access existing and planned transmission capacity. The first ever PNM “20-Year Transmission Planning Outlook”, dated November 12, 2024, identifies the construction of a major transmission line through this corridor. Transmission efficiencies may be realized by siting the PCR facility in proximity to both of Sandoval County’s existing solar assets and the newly operational Atrisco Solar and Battery Farm (located near Double Eagle Airport) in Bernalillo.

Therefore, PCR’s claim that the Diamond Tail was, technically, the only suitable site in Sandoval County, much less New Mexico, is demonstrably false.

Our best guess is that PCR chose Diamond Tail because they were able to cut a good financial deal with Diamond Tail Ranch (and because it had a suitable pre-existing substation).

P&Z erred in accepting PCR’s technical siting arguments in favor of Diamond Tail Solar at face value, without considering whether PCR could have located other potential solar sites within Sandoval County that were less offensive to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(6). Thus, P&Z recommendation of approval is appealable under Section 22A.

**6. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, we hereby request a Public Hearing by the County Board to consider the instant appeal.

**7. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, we hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**8. Request Equal Standing between Appellant EMPAC and Applicant PCR during requested Public Hearing:** During requested hearing, if approved, Appellant EMPAC requests standing equal to Applicant PCR when addressing the County Board, to wit to include: that Appellant EMPAC be afforded the same time to present its position as afforded to Applicant PCR, that EMPAC be permitted to call its own witnesses, that EMPAC be permitted to cross examine Applicant PCR’s witnesses, and that EMPAC be afforded access to same audio-visual equipment and options as afforded to Applicant PCR. In a matter as technically complex and environmentally important as ZNCH-24-005, it imperative that proceedings be conducted in a fair and transparent manner in which all sides are given equal opportunity to state their positions, thereby ensuring that the County Board shall be in a position to make an informed decision on the matter of ZNCH-24-005 on behalf of all County residents, particularly those individuals who will be most directly impacted by Applicant PCR’s Diamond Tail Solar Project.



**ATTACHMENT #2: TTRA Memorandum Requesting Postponement of December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005**

MEMORANDUM

TO: Chair Dennis R. Trujillo, Sandoval County Planning and Zoning Commission

FROM: Turquoise Trail Regional Alliance (TTRA) &  
East Mountain Protection Action Coalition (EMPAC)

DATE: November 26, 2024

SUBJECT: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

By this memorandum, we hereby formally request postponement, until on or about January 14, 2025, of the Sandoval County Planning and Zoning Commission (“Commission”) Hearing, scheduled for December 10, 2024, on the matter of ZNCH-24-005, Request by PCR Investments (“PCR”), agent for Diamond Tail Ltd, for a Zone Map Amendment from Rural Residential/Agricultural District (RRA) to Special Use District (SU).

Our reasons for formally requesting hearing postponement are set forth below:

1. Holidays: As the Commission and PCR are well aware, the December 10 Hearing is scheduled well into the Holiday period. During this busy and stressful time, it is burdensome for members of the public to prepare for and participate in a public hearing on a matter as important and complex as ZNCH-25-005. A one-month postponement, to get through the Holiday period, would maximize public participation, which is surely in the interests of all parties.
2. Belated PCR document dump: PCR only recently, on or about November 22, 2024, provided to the public its background and supporting written materials relating to ZNCH-24-005 via the Commission website. This documentation includes 22 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length!). It takes time for members of the public to process this amount of material. Since written public testimony to the Commission for the December 10 hearing must be submitted no later than December 6 (72 hours in advance), this means that the public has only been given two weeks to process the PCR documentation. This compressed timeline is unduly burdensome to the public, especially as it occurs over the Thanksgiving Holiday. Finally, we note that PCR failed to provide this documentation prior to the Commission’s initial ZNCH-24-005 hearing on October 8, 2024, and again failed to do so in advance of the follow-up hearing, originally scheduled for November 12, 2024.
3. Ongoing PCR public outreach meetings: PCR is still conducting public outreach meetings, pursuant to Commission request at the initial ZNCH-24-005 public hearing on October 8, 2024. Three of those outreach meetings are scheduled to occur on December 4 and 5 (and there may be other that we don’t know about). This means that the public will have only 1-2 days to process

the information provided by PCR and prepare written testimony in response. This compressed timeline is, once again, unduly burdensome to the public.

4. Follow-up hearing postponement: The follow-up hearing on ZNCH-24-005 was originally scheduled for November 12, 2024. We understand that PCR requested a postponement of one month to have more time to prepare, a postponement which the Commission accommodated and granted. We ask for a similar accommodation and for the same reason, more time to prepare, for the reasons outlined in Points 1-3 above.

5. No compelling reason to expedite: We know of no compelling reason why the December hearing cannot be postponed one month until January 14, 2025. A one-month postponement will in no way derogate from the substantive or procedural issues relating to ZNCH-24-005.

If the Commission has any questions regarding our request for postponement, we urge you to contact us:

Karen Yank, President TTRA  
hamonyank@cybermesa.com  
505-269-9959

Dennis Kellogg, EMPAC Board  
info@theempac.org  
916-715-7066

**ATTACHMENT #3: Response by Staff Director, P&Z Commission to TTRA  
Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission  
on the matter of ZNCH-24-005**

**From:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 1:58:49 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>  
**Cc:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>, Michael Eshleman  
<[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hi Karen,

Thank you for your email. Subject project (item ZNCH-24-005) will remain on the agenda for the December 10, 2024 Planning and Zoning Commission hearing date.

Sincerely,

<image001.png>

**Daniel J. Beaman**  
*Director of Planning and Zoning*  
Sandoval County | New Mexico | US  
[https://www.sandovalcountynm.gov/  
dbeaman@sandovalcountynm.gov](https://www.sandovalcountynm.gov/dbeaman@sandovalcountynm.gov)  
**1500 Idalia Road, Building D**  
**Bernalillo, NM 87004**  
Office: (505) 867-7628  
Direct: (505) 867-7617

**ATTACHMENT #4: Response by Wayne Johnson, Sandoval County Manager, to TTRA and EMPAC Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

Begin forwarded message:

**From:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 3:47:43 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Good afternoon Ms. Yank,

At this point, we have an identified applicant and a general group of opponents. While we received a memo from two organizations requesting a deferral, it's hard for us to determine the overall representation of the opponents. There may be those who have made plans to be at the December 10<sup>th</sup> meeting to voice their opposition and would be opposed to a deferral at this late date. Given this situation, and the applicant's request not to defer the matter, we made the decision to proceed with the December 10<sup>th</sup> hearing. At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral. Chair Trujillo has not been in contact with you because as you know, the county discourages any kind of ex parte communication. Doing so could jeopardize the member's ability to vote.

Best,



**Wayne A. Johnson**  
County Manager  
o. 505.867.7551  
c. 505.934.2152  
[www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

**From:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>  
**Sent:** Monday, December 2, 2024 3:35 PM  
**To:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>; Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>; Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>; Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** Re: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hello Wayne and Daniel,

Please give us your reason for denying our request for postponement of the Dec. 10th zoning meeting promptly. Our groups and their lawyers would like to know more detail.

Also, Wayne, I was told by your office that the Chair of the Planning and Zoning Commission is the only person to decide whether to approve a request for postponement. Why then hasn't Chair Dennis Trujillo responded to me instead staff?

Thank you,  
Karen Yank  
Dennis Kellogg

**ATTACHMENT #5: Brent Poindexter Testimony submitted for the Record as part of the December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005:**

Our land in the East Mountains is renowned for its natural beauty so much so that NM-14 was designated a National Scenic Byway and why the Golden Open Space was created. Moreover, it is why tourists from all over our nation and the world flock to the Turquoise Trail and Sandia Crest in order to cherish the view of the East Mountains along the Trail toward Santa Fe.

However, the pine-juniper woodlands and high desert of the East Mountains, while beautiful, are also extremely fragile ecosystems, and once disturbed, it will take decades to regenerate.

The plan for Diamond Tail Solar is to bulldoze, clear, and compact approximately 3 square miles of land. Once configured for Diamond Tail Solar, that part of our ecosystem will be literally wiped out. The resulting brownfields will be a dark blot on the landscape, in full view of the Turquoise Trail and Sandia Crest for the life of the solar power plant. The visual impact cannot be overstated.

But the situation is worse than that. PCR claims that, after the power plant has outlived its usefulness, the *“Solar power plant site will be restored to the condition as it was 30 years ago”*.

However, PCR’s Decommissioning Plan tells another story. Here are some highlights from the Plan:

- “The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use.” (emphasis added.)
- “Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions.” (emphasis added.)
- “After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition*.” (emphasis added.)
- “In addition, the site *may be revegetated ...*” (emphasis added.)
- “All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.* (emphasis added.)

**Focusing on the last bullet above, we conclude that there is, in fact, no plan to restore the land to its original condition, even if that were possible.** Instead, what we seem to have here is a corporate maneuver being run through a Special Use loophole:

- Diamond Tail Ranch leases land to PCR, making money;
- PCR uses their solar power plant initiative to change zoning from “Agricultural” to “Special Use” then builds and runs the solar power plant, making more money;
- After the solar power plant is phased out, Diamond Tail Ranch and PCR re-develop the land for “other beneficial uses”, such as building another huge industrial facility (like a Facebook server farm or an Amazon AI center), making lots more money.

**ATTACHMENT #6: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275



# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:  TEMPORARY USE PERMIT  VARIANCE  
 CONDITIONAL USE  SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION

APPLICANT: Theresa Marie Haycock TELEPHONE: (239) 292-5443  
 ADDRESS: 3 Punta Linda, Sandia Park NM 87047  
 AGENT: Dennis Kellogg TELEPHONE: (916) 715-7066  
 ADDRESS: 13 La Aguapa, Sandia Park NM 87047  
 E-mail Address: kelfamdennis@gmail.com

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13 RANGE 6 East & 6 East SECTION T12-1, 2, 3-T13-34, 35, 36  
 MRGCD Tract No. (If applicable) MRGCD Map No. (If applicable)  
 Subdivision Lot No. See Attachment.  
 Block No. Total Acres: 1.833 Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, I, Theresa Marie Haycock, an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change), ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error"; and (b) a decision not supported by evidence in the matter" (See Attachment #1 for details)

SIGNATURE: Theresa Marie Haycock DATE: 1-8-2025

**INSTRUCTIONS:** Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>[Signature]</u>	Date: <u>1-8-25</u>
File Number: <u>202500010</u>	Receipt Number: <u>321024</u> Fee: <u>100.00</u>
Type and Date of Appealed Action: <u>Appeal to Change of Zoning (24-005)</u>	



**ATTACHMENT #1: Haycock Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

1. **Subject Appeal:** In the matter of ZNCH-24-005, I, Marie Haycock, an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("County Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error" and/or (b) a "decision not supported by evidence in the matter".

2. **Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC ("PCR") to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch ("Diamond Tail Solar"), in a remote location in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005, including: Sandoval County personnel representing the Fire Department and Economic Development Department; the manager of Diamond Tail Ranch; a solar power activist representing "Green 22", a group with an unknown number of members; a member of the local electrician's union, who hoped that his union membership would get work building Diamond Tail Solar; an individual who hoped his company would get the contract to build Diamond Tail Solar; and over 29 other individuals citizens, the vast majority of whom did not live in the East Mountains and many of whom either lived outside of Sandoval County (e.g., Las Cruces, NM and Buckeye, AZ) and/or provided letters in support in P&Z Public Comments that were clearly based on a form letter template.

Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (X-Milliron Ranch); long-standing local preservation and environmental groups, such as the East Mountains Protection Action Coalition ("EMPAC"), with approximately 800 members, and the Turquoise Trail Regional Alliance ("TTRA"), which consists of 20 alliance groups, altogether totaling thousands of members; the San Pedro Creek Estates Homeowners' Association ("SPCE"), with 379 members; and over 20 other individuals, including myself and District 3 Santa Fe County Commissioner Camilla Bustamante, who testified in her personal capacity.

**While I oppose Diamond Tail Solar, I also support renewable energy and, in particular, solar power, especially as means to mitigate Global Climate Change.**

**I oppose Diamond Tail Solar for three specific reasons:**

- **First, the proposed power plant is demonstrably unsafe**, because the battery energy storage system is generically prone to fire caused by Lithium-ion storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other catastrophic events, such as criminal misadventure and terrorist attack, and fails to meet industry “best practices” for safety and security for a location such as the one proposed in the East Mountains.
- **Second, the location of the proposed power plant is demonstrably inappropriate**, because the site is too remote, with first responders too far away to effectively intervene in the event of fire or other mishap; the site is subject to recurring natural wildfires; and the size and scale of this proposed power plant would obviously detract from the scenic beauty of New Mexico, being in full view of Sandia Crest Overlook, being in close proximity to and in full view of the Albuquerque Golden Open Space; being in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico; and being situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art.
- **Third, there are other locations in Sandoval County, and in New Mexico, that are far more appropriate for an industrial facility of this type and scale**, such as so-called “brownfields” sites, in which the land has already been disturbed, is not subject to wildfire, and already has appropriate industrial-type infrastructure, including nearby first responders, access to water for firefighting, pre-existing road networks, reliable telecommunications networks, etc., and other locations which already have been developed to accommodate large-scale solar power plants. One such location, in western Sandoval County, is the “Solar Corridor” along Encino Road/Drive NW.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped bare to make way for equipment;
- over 500,000 solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking systems for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 1.4 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 battery cells;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

**4. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was made in "error" and/or was a “decision not supported by evidence in the matter”, per Section 22A, for many good reasons, but in particular for the two important reasons below:

(1) During the December 10, 2024, hearing, I presented oral and pictorial evidence, using a demonstration board, that graphically highlighted the fire risks posed by Lithium-ion batteries in Battery Energy Storage Systems (BESS), and, specifically, those contained in Tesla “Megapacks”, the type of storage system that is be used by PCR at Diamond Tail Solar. My point was that PCR—and their fire expert Todd LeBerge—have consistently misrepresented the fire threat, by downplaying the number and severity of BESS fires caused Telsa Megapacks. In my opinion, Tesla Megapacks are a very real threat to public safety.

I (and the other public witnesses) was allowed only three (3) minutes per person to provide testimony, a wholly inadequate amount of time for rebuttal.

To keep things simple, I used bullet points, which I repeat below to offer some relevant facts and suggestions:

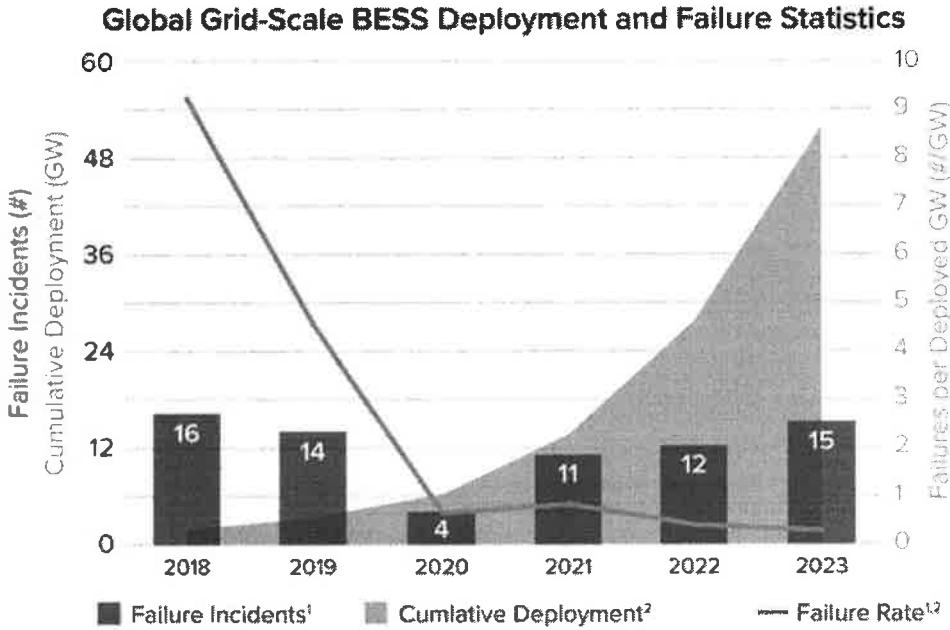
- The PCR facility is too close to Sandia Mountains (1.7 miles).
- A Lithium-ion battery fire is possible.
- This BESS installation could result in fire too close to the forest.
- The site will not be monitored by on-site personnel.
- A fire could be unreported for hours.
- The closest manned full-time, professional fire station is Tijeras (30 miles from BESS).
- First responders would have to use a single dirt lane, Puertocito Road, to access the burning BESS.
- Sandoval Commissioners need a guarantee from PCR there will never be a battery fire.
- If there is no guarantee, then PCR must provide \$4 Billion bond to indemnify homeowners whose homes are destroyed by any BESS fire.
- PCR has NO EXPERIENCE in USA with solar arrays.
- The Sandoval County Land Use Plan says in SECTION 10. SU - SPECIAL USE DISTRICT. The INTENT is: “To assure that the Special Use District will not become detrimental to the public health, safety, or general welfare of the County.”
- What is more detrimental to the County and residents that a possible fire in the Sandia Mountains?
- Sandoval Commissioners risk nation-wide negative publicity in the event of a BESS fire at the PCR facility.
- 🚒 Conclusion: Right Project, Wrong Place.

I was shocked when the P&Z Commissioners did not respond to, or comment on, any of my evidence. Instead, I was immediately cut off from further testimony the second I exceeded my 3-minute limit.

So, I would like to take this opportunity to highlight two ways in which PCR downplays the Tesla Megapack fire issue.

First, the PCR fire expert said that Tesla Megapack Fire on September 9, 2022, at Moss Landing, CA, didn't cause measurable air pollution outside BESS. Factually, that's a true statement. **But here's what he *didn't* say: The Tesla Megapack fire caused a 12-hour Shelter-in-Place order for the entire Moss Landing community and caused a 12-hour closure of Highway 1, an “All-American Highway”.**

Second, PCR likes to show a chart of BESS Safety Incidents (see next page). PCR uses the chart to claim that the BESS Failure Rate has been reduced by 97%, between 2018 and 2023. OK, that's true, if you measure BESS failure rates, *per Deployed GW*. But no normal human being measures risk in terms of something per deployed gigawatts! What we want to know is how many of these things have blown up in any given year. Take another look at the chart. **Hiding in plain sight is this key fact: The number of BESS Failures, per year, has increased by almost 400% (4 to 15) from 2020 to 2023!**



Sources: (1) EPRI Failure Incident Database, (2) Wood Mackenzie. Data as of 12/31/23.

(2) On December 23, 2024, the Hearing Officer for the Sustainable Land Development Code (“SLDC”), Santa Fe County, DENIED the application by solar power company, AES Clean Energy Development, to build a PV solar power plant near Ranch Viejo, approximately 25 miles north of PCR’s proposed Diamond Tail Solar. The AES proposal was denied for exactly the same reasons why I object to Diamond Tail Solar, namely, the AES solar power plant poses a fire risk to public safety and is located in the wrong location. The Hearing Officer said :

“The evidence indicates the Project would be detrimental to the health, safety, and general welfare of the area; the Project would create a potential hazard for fire, panic, or other danger; and the Project is inconsistent with the purposes of the property’s zoning classification and inconsistent with spirit and intent of SLDC and SGMP.”

This finding is particular important because the AES facility poses a much smaller fire risk than PCR’s Diamond Tail Solar, because:

- AES Viejo has only 570,00 Lithium-ion batteries; PCR Diamond Tail Solar will have twice as many, over 11,400,000;
- AES Viejo is not in an area prone to wildfire; PCR Diamond Tail Solar is;
- AES Viejo is near first responders; PCR Diamond Tail Solar is not;
- AES Viejo has access to plenty of water to fight a fire; PCR Diamond Tail does not.

**Surely, if Santa Fe County can figure out dangerous BESS Tesla Megapacks are, then so can Sandoval County!**

**5. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, I hereby request a Public Hearing by the County Board to consider the instant appeal.

**6. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, I hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**ATTACHMENT #2: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275



# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:       TEMPORARY USE PERMIT       VARIANCE  
 CONDITIONAL USE       SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION

APPLICANT: Jon + Julie Wannlund      TELEPHONE: 443-545-4038  
ADDRESS: 13 La Cantera, Sandia Park, NM 87047  
AGENT: Bill Parsons      TELEPHONE: 240-620-3170  
ADDRESS: 23 La Cantera, Sandia Park, NM 87047  
E-mail Address: juwannlund@yahoo.com

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13      RANGE 6 East & 6 East      SECTION T12:1,2,3-T13:34,35, 36  
MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
Subdivision \_\_\_\_\_ Lot No. See Attachment.  
Block No. \_\_\_\_\_ Total Acres: 1,833      Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, [I/we], [state your name or name of organization], an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change), ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error"; and (b) a decision not supported by evidence in the matter". (See Attachment #1 for details).

SIGNATURE: William J. P.      DATE: 1/8/25

**INSTRUCTIONS:** Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>[Signature]</u>	Date: <u>1-8-25</u>
File Number: <u>2025000001</u>	Receipt Number: <u>321003</u> Fee: <u>100.00</u>
Type and Date of Appealed Action: <u>P&amp;Z Recommendation to approve ZNCH-24-005</u>	



**ATTACHMENT #1: Wannlund Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

**1. Subject Appeal:** In the matter of ZNCH-24-005, we, Jon and Julie Wannlund of Sandia Park, NM, an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("County Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error" and (b) a "decision not supported by evidence in the matter".

**2. Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC ("PCR") to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch ("Diamond Tail Solar"), in a remote location in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005. Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (X-Milliron Ranch); long-standing local preservation and environmental groups, such as EMPAC, with approximately 800 members, and the Turquoise Trail Regional Alliance ("TTRA"), which consists of 20 alliance groups, altogether totaling thousands of members; the San Pedro Creek Estates Homeowners Association ("SPCE"), with 379 members; and over 20 other individuals, including us and District 3 Santa Fe County Commissioner Camilla Bustamante, who testified in her personal capacity.

**Significantly, while we oppose Diamond Tail Solar, we also support renewable energy and, in particular, solar power, especially as a means to mitigate Global Climate Change.**

**We oppose Diamond Tail Solar for three specific reasons:**

- **First, the proposed power plant is demonstrably unsafe**, because the battery energy storage system is generically prone to fire caused by Lithium-ion storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other catastrophic events, such as criminal misadventure and terrorist attack, and fails to meet industry “best practices” for safety and security for a location such as the one proposed in the East Mountains.
- **Second, the location of the proposed power plant is demonstrably inappropriate**, because the site is too remote, with first responders too far away to effectively intervene in the event of fire or other mishap; the site is subject to recurring natural wildfires; and the size and scale of this proposed power plant would obviously detract from the scenic beauty of New Mexico, being in full view of Sandia Crest Overlook, being in close proximity to and in full view of the Albuquerque Golden Open Space; being in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico; and being situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art.
- **Third, there are other locations in Sandoval County, and in New Mexico, that are far more appropriate for an industrial facility of this type and scale**, such as so-called “brownfields”, in which the land has already been disturbed, is not subject to wildfire, and already has appropriate industrial-type infrastructure, including nearby first responders, access to water for firefighting, pre-existing road networks, reliable telecommunications networks, etc., and other locations which already have been developed to accommodate large-scale solar power plants. One such location, in Sandoval County, is the “Solar Corridor” along Encino Road/Drive NW.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped clean to make way for equipment;
- over 500,000 plastic solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking arrays for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 1.4 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 such batteries;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

**4. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was made in "error" and/or was a "decision not supported by evidence in the matter", per Section 22A, for the many substantive reasons, including the following:

**(1) Procedural Discrimination: P&Z Evaluated PCR Solar Project Using Different— and Less Stringent—Standards as Compared to other Sandoval County Solar Projects.**

P&Z did not evaluate similar past applications in the same manner that the application for ZNCH-24-005 was evaluated. Three comparable applications were submitted in 2023 for Special Use District Zone Amendment Changes for industrial solar facilities (ZNCH-2023-002, ZNCH 2023-003 and ZNCH-2023-004). These applications underwent very different assessments by the P&Z than what was conducted for ZNCH-24-005, specifically:

- For all three of the 2023 applications, the Staff Report shows that the “applicable” Policy and Strategy was the same as for ZNCH-24-005: Section 1, Policy B, Strategy 3. Policy B says this: “Sandoval County shall retain a prevailing rural residential character while promoting an orderly development of business and industry in appropriate locations.”
  - In ZNCH-24-005, Policy B is written in the Staff Report as shown below (i.e., non-italic font, without bolding, and without parenthetical comment):

“Sandoval County shall retain a prevailing rural residential character while promoting an orderly development of business and industry in appropriate locations.”
  - In all three of the 2023 applications, Policy B is written in the Staff Report as shown below (i.e., in italic font, with bolding, and with parenthetical comment):

*“Sandoval County shall retain a prevailing rural residential character while promoting an orderly development of business and industry in appropriate locations.”* (emphasis added)
- The Staff Report for all three applications filed in 2023 lists a Finding of Fact (#4) stating that “The request for Special Use (SU) district zoning for the proposed facility is consistent with policies in the Sandoval County Comprehensive Plan regarding the identification of appropriate locations for public utility uses, and minimal impacts on surrounding residential and agricultural uses, and natural resources (Section 1: Land Use and Natural, Historic, and Cultural Resources, Policy B, Strategy 3).
- These differences appear to indicate that P&Z Staff selectively chose to de-emphasize the requirement to determine appropriateness of the site and were eventually unable to make a required Finding of Fact for the appropriateness of the current application.

**P&Z erred in recommending that Board of County Commissioners approve this Application since the assessment of the application was conducted under review standards**

**that were not compliant with the Sandoval County Zoning Ordinance and were not consistent across highly comparable applications.**

**(2) Environmental Degradation: Visual Impact Evidence Misrepresented by PCR and Unaddressed by P&Z.** PCR substantially misrepresented the Visual Impact of the Diamond Tail Solar project on NM-14 (Turquoise Trail Scenic Byway) and surrounding residential and recreation areas. There are four major concerns regarding this misrepresentation.

First, Sandoval County Zoning Ordinance, Section 19. Amendments, Item F states that “The County Board shall not approve a Zone Map Amendment unless satisfactory provision has been made concerning the following, where applicable...”. Item #4 in the following list is “The economic, noise, glare, or odor effects of the conditional amendment on adjoining properties.” The Staff Report contains a response from PCR stating that “Solar panels are designed specifically not to reflect light, thus reducing the potential for glint and glare.” However, the Visual Resources Technical Memorandum (by SWCA, dated December 5, 2024) describes the panels as “dark glassy faces” that would be visually apparent and create moderate contrast with other features in the landscape.

Second, SWCA identified residential properties on La Cantera as a KOP (Key Observation Point, #4). Their assessment of KOP4 is that “the project components would attract attention and introduce elements/patterns that would be visually apparent and create moderate contrast compared with other features in the landscape, especially considering KOP4 represents residential views of long duration.” However, this location was omitted from consideration of impact and mitigations because it was just outside of an arbitrary 5-mile-wide-buffer from the solar facility. Also not considered is the scenic and historic view from atop the Sandia Peak where over 200,000 tram riders annually look down on “the other side of the mountain.” Two visual impact analyses conducted by Argonne National Laboratories for the BLM established that the potential effects of solar development should include lands visible from and within 25 mi of the solar energy zone. One of those studies identified visually sensitive areas (VSAs) as locations for which some type of visual sensitivity has been identified, either because the location is an area of high scenic value or because it is a location from which people view the surrounding landscape and attach some level of importance or sensitivity to what is seen from the location.

Third, also absent from consideration, is the fact that the Turquoise Trail Scenic Byway is a designation awarded by the Federal Department of Transportation and incorporates a specific definition for the word “scenic”: “Scenic Quality is the heightened visual experience derived from the view of natural and manmade elements of the visual environment of the scenic byway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape -- landform, water, vegetation, and manmade development -- contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.” It is evident that 1,800 acres of dark, glassy panels certainly are not in harmony with this historic scenic environment.

Fourth, PCR claims that the requirement in Sandoval County Zoning Ordinance, Section 10. Special Use District (A) (2) is met, because Diamond Tail Solar will be visually similar to the existing PNM electrical grid on Diamond Tail Ranch. This claim is demonstrably false and was uncritically accepted by P&Z (see Point (4) below for supporting details).

**P&Z erred in voting to recommend that Board of County Commissioners approve this Application, since the Board of County Commissioners is not permitted to grant this zone amendment without assuring that "...satisfactory provisions have been made to assure that the Special Use District will not conflict with the Sandoval County Comprehensive Plan..." (Sandoval County Comprehensive Zoning Ordinance, Section 10. Special Use District).**

**(3) Environmental Degradation: Sandoval County "Unightly Use of Land" Standard Unaddressed by PCR and P&Z.** New Mexico Statute 3-21-5 Municipalities | Zoning Regulations | Zoning; conformance to comprehensive plan, Part A states, in part, that:

"The regulations and restrictions of the county or municipal zoning authority are to be in accordance with a comprehensive plan and be designed to:

(8) control and abate the unsightly use of buildings or land."

The Sandoval County Comprehensive Plan has several Policies and Strategies that are designed to address that requirement, including, *inter alia*:

Section 1 Policy B: "Sandoval County shall retain a prevailing rural residential character while promoting an orderly development of business and industry in appropriate locations." Applicable Strategies under that Policy include:

"(1) Sandoval County shall maintain a development review process for any new land development or significant changes to existing land uses within the County.

"(2) Efforts shall be made to protect the traditional, locally important land use patterns existing within the County.

"(3) Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and adequate infrastructure.

"(5) Appropriate sites for industrial and commercial facilities shall be identified and efforts made to encourage new businesses to locate at these sites."

The Sandoval County Comprehensive Plan requirement to identify "appropriate locations" for industrial and commercial facilities can reasonably be expected to meet the State Statute requirement to "control and abate the unsightly use of land." P&Z Staff Report for ZNCH-24-005 cites Section 1 Policy B as being applicable to this Zoning Amendment Application, thereby requiring that the site must be evaluated for its appropriateness. P&Z Staff Report correctly

states that “The Sandoval County Planning & Zoning Commission must consider the appropriateness of the requested Zone Map Amendment for this property.”

However, P&Z Staff Report for ZNCH-24-005 contains no assessment, or discussion, of the appropriateness of this site. In addition, there is no Finding of Fact that the proposed location for the industrial facility is, in fact, an appropriate location. Furthermore, P&Z appears to have no criteria or procedures for identifying appropriate sites for industrial and commercial facilities.

**P&Z erred in voting to recommend that the Board of County Commissioners approve this Application, since the Board of County Commissioners is not permitted to grant this zone amendment without assuring that “...satisfactory provisions have been made to assure that the Special Use District will not conflict with the Sandoval County Comprehensive Plan...” (Sandoval County Comprehensive Zoning Ordinance, Section 10. Special Use District).**

**(4) Economic Discrimination: Reduction of Property Values Issue Unaddressed by PCR and P&Z.** New Mexico Statute 3-21-5 Municipalities | Zoning Regulations | Zoning; conformance to comprehensive plan states, in part:

B. The zoning authority in adopting regulations and restrictions shall give reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and to conserving the value of buildings and land and encouraging the most appropriate use of land throughout its jurisdiction.

The Sandoval County Comprehensive Plan has multiple Policies and Strategies that are designed to address that State Statute requirement, including, *inter alia*:

Section 1 Policy A: “Sandoval County shall be developed in ways which take into account diverse, distinctive geographic areas within the County, the needs and desires of the people living in each geographic area, traditional land uses, and development trends, especially those resulting from the growth of the Albuquerque metropolitan area and growth of municipalities within the County.”

Section 1 Policy B: “Sandoval County shall retain a prevailing rural residential character while promoting an orderly development of business and industry in appropriate locations.” Applicable Strategies under that Policy include:

“(2) Efforts shall be made to protect the traditional, locally important land use patterns existing within the County.

“(3) Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and adequate infrastructure.

“(5) Appropriate sites for industrial and commercial facilities shall be identified and efforts made to encourage new businesses to locate at these sites.”

The Sandoval County Comprehensive Zoning Ordinance Section 10. Special Use District states that the Board of County Commissioners is not permitted to grant this zone amendment without assuring that "...satisfactory provisions have been made to assure that the Special Use District will not conflict with the Sandoval County Comprehensive Plan...".

In fact, ZNCH-24-005 conflicts with the Sandoval County Comprehensive Plan for three reasons:

- i. traditional land uses (e.g., remote, rural, undeveloped) are not being protected;
- ii. impact on surrounding land uses was misrepresented (e.g., scenic long-distance and long-duration viewing of the facility was discounted in the SWCA Visual Technical Memorandum); and
- iii. appropriate sites were not identified so that new business could be encouraged to locate at these sites.

The Sandoval County Comprehensive Zoning Ordinance Section 10. Special Use District states that the Board of County Commissioners is not permitted to grant this zone amendment without assuring that "...satisfactory provisions have been made:

2. To preserve the integrity and character of the area in which the Special Use District will be located, and the utility and value of property in the Special Use District and in adjacent zone districts..."

Applicant PCR makes—and the P&Z Staff Report accepts, without validation—the following statement to indicate that the Diamond Tail Solar Project complies with this requirement:

"The applicant will lease enough land to have a reasonably sized setback (buffer) around the Solar Project, which will not interfere with existing property uses and is visually similar to PNM's electrical grid infrastructure currently existing on Diamond Tail Ranch."

This statement is factually incorrect for two reasons:

- i. The existing adjacent zone districts are rural residential and consist of elevated residences with long-distance views. Property values in this area are negatively impacted when the views are marred by a large industrial facility that is "visually apparent and creates modest contrast with other features in the landscape." In addition, adjacent impacted properties include the top of Sandia Peak and the Turquoise Trail Scenic Byway both of which have scenic and historic views of this area. This 1,800-acre industrial solar facility will interfere with those adjacent zone districts and property uses.
- ii. The PNM electrical grid infrastructure and the proposed solar facility are not visually similar:



- PNM Substation is 45 acres, 7 miles away from the Turquoise Trail, and 700 feet lower in elevation than the proposed facility, hidden by distance, elevation and topography; and
- Industrial solar facility is 1,800 acres, 2.5 miles from the Turquoise Trail, 700 feet higher than the PNM facility, on an exposed alluvial plain immediately to the west of the Turquoise Trail Scenic Byway.

Furthermore, there are 77 homes and lots currently listed for sale within the eastern edge of the Diamond Tail Subdivision, and within the San Pedro Creek Overlook, San Pedro Creek Estates and higher areas with La Madera. All 77 of those listings highlight the views from the property, with many of them referring to them as “breathtaking.” If this proposed industrial facility is introduced into these traditionally rural and open vistas, property values will likely be diminished as this asset becomes severely diminished. Neither PCR nor P&Z considered the negative economic impact that Diamond Tail Solar would have on the property values of East Mountains communities.

Finally, fire insurance for homes and businesses is a major economic burden for East Mountains communities. Because of the risk of wildfire and the remoteness of homes and businesses from first responders, many residents are having their long-standing fire insurance policies cancelled by insurance companies. This problem will likely be exacerbated by construction of Diamond Tail Solar, as it itself poses an additional fire risk and wildfire risk. Neither PCR nor P&Z considered the negative economic impact that Diamond Tail Solar would have on obtaining fire insurance for home and business owners in the East Mountains communities.

**The P&Z erred in voting to recommend that the Board of County Commissioners approve this Application, since the Board of County Commissioners is not permitted to grant this zone amendment without assuring that satisfactory provisions have been made to preserve the integrity and character of the area in which the Special Use District will be located, and to preserve the utility and value of property in the Special Use District and in adjacent zone districts...” (Sandoval County Comprehensive Zoning Ordinance, Section 10. Special Use District).**

**5. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, we hereby request a Public Hearing by the County Board to consider the instant appeal.

**6. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, we hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

Submitted January 8, 2025

**ATTACHMENT #2: Wannlund Memorandum submitted for the Record as part of the December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005:**

Date: December 10, 2024

To: Sandoval County Planning and Zoning Commission

From: Julie and Jon Wannlund, 13 La Cantera, Sandia Park, NM 87047

Re: Planning and Zoning Commission Meeting 12/10/2024, ZNCH-24-005 Request for Zone Map Amendment

Dear Commissioners:

We've conducted a review of some of the ordinances and documents that govern the submission and approval of the Planning and Zoning Application, as referenced above, and would like to raise some concerns for your review and consideration. I've specifically looked at:

- SC Comprehensive Plan, dated February 2024
- SC Zoning Ordinances, June 2020 Amended
- Application for Zone Amendment, dated August 8, 2024
- Special Use District Permit Application Written Report, dated October 2024 ("Written Report")
- Report from the Planning and Zoning Department Staff dated December 10, 2024 ("Staff Report")

Sandoval County Comprehensive Plan

An important requirement in the Special Use District and Zoning Amendment sections of the Zoning Ordinances is that SUD designation, zone amendments, uses, etc. is that these changes do not conflict with the Comprehensive Plan.

Section 1, Policy A:

- The Comprehensive Plan designates 6 geographic areas in the state with differing physical characteristics and development needs, and says that development must take into account the needs and desires of the people living in each geographic area, as well as traditional land uses. (Section 1, Policy A).
- The Comprehensive Plan also says that the county intends to develop land use plans that reflect the unique characteristics of specific areas within the region, and are consistent with the overall plan (Section 1, Policy A, Item 4).

**The Staff report contains no reference to or consideration of compliance with Policy A.**

Section 1, Policy B:

- The County declares that the overall plan is to retain a prevailing rural residential characteristic, with business and industry development in appropriate locations. Under Policy B, there are several strategies which include the following (numbers are from the Policy):
  2. Efforts shall be made to protect the traditional, locally important land use patterns existing within the County.
  3. Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas..." and
  5. Appropriate sites for industrial and commercial facilities shall be identified and efforts made to encourage new businesses to locate at these sites.

The Staff Report only lists one of these strategies (#3) as applicable to this project and claims that this applies because the facility "will be located on remote undeveloped privately-owned lands..."

The facts are that this site won't be "remote" to:

- Riders of the Sandia Peak Tramway
- Hikers in the Sandia Mountains
- Visitors traveling the Turquoise Trail National Scenic Byway
- Imagine driving from Santa Fe to Albuquerque on the Turquoise Trail National Scenic Byway, coming down through Stagecoach Canyon south of Madrid first thing you see in the sweeping view before you ISN'T the Sandia Mountains, it's 1,800 acres of black solar panels! Instead of passengers saying "Oh, WOW!" they will say "What is THAT?"

In addition, the project itself actually violates several of the other Strategies (e.g., 2 and 5 above). It also violates the main premise of Policy B which is to retain a rural residential characteristic and promote development of business and industry in appropriate locations.

Someone might argue that it's only necessary to identify one Strategy underneath a Policy but we would argue that it doesn't make sense that a project would actually

violate the other Strategies because then your Strategies aren't each designed to support your Policy.

#### Written Report and Staff Report

Both reports provide inadequate evidence that some requirements in the SC Zoning Ordinance have been met. Among those requirements are:

- Satisfactory provision re preservation of integrity, character, property value in adjacent zone districts (Section 10 A 4)
- Satisfactory provision re compatibility of the amendment with actual or permissive zoning use of adjacent properties (Section 19 F 5)
  - The adjacent zone districts and the adjacent properties are the remaining many square miles that surround the target industrial area, that remain zoned Rural Residential/Agricultural land.

For evidence of meeting the SUD requirement and Amendment requirement, the Applicant claims and the Staff accepts, that the proposed industrial solar project is visually similar to a nearby PNM electrical substation. Actually, that PNM facility is not visually similar, or similar in any other way, to the proposed industrial solar facility:

- PNM Substation is 45 acres, 7 miles away from the Turquoise Trail, and 700 feet lower in elevation than the proposed facility, hidden by distance, elevation and topography
- Industrial solar facility is 1,800 acres, 2.5 miles from the Turquoise Trail, 700 feet higher than the PNM facility, on an exposed alluvial plain immediately to the west of the TT

#### Factual Error in the Written Report:

- Several sections refer to the DT parcels currently being zoned as RUR-F. This is not a Sandoval County zoning designation; however, it is a zoning designation in Santa Fe County. There are no parcels being considered by the SandCo PZC that are located in Santa Fe County.

Finally, the Applicant declares, and Staff agrees, that provisions are made to assure that the zoning amendment won't conflict with the Comprehensive Plan. As evidence for this requirement, the Applicant simply makes a statement that "the project will provide electrical service to achieve the County's growth goals."

The problem is that the requirement is not to supply a statement of “benefit,” is to supply “satisfactory provision” the proposed amendment will not conflict with the Comprehensive Plan. In fact, there are multiple aspects where the Special Use District zoning amendment will cause conflict with the Comprehensive Plan, including:

- Lack of consideration for needs and desires of people living in the region
- Lack of protection for the traditional, locally important land use patterns
- Building an industrial facility in an inappropriate site
- Lack of protection for significant historic sites (destruction of the viewshed along the Turquoise Trail National Scenic Byway, a New Mexico State asset)

Several themes arise out of this review, showing that the requirements in the Comprehensive Plan and the Zoning Ordinances have not completely been met:

- Approval of this zoning amendment does not comply with the Comprehensive Plan Policies and Strategies to maintain a rural residential character of the land and to protect traditional, locally important land use patterns
- The Plan requires identifying and placing industrial facilities in appropriate locations – this has not been done.
- Staff report affirms that the development decision was based being comparable to another nearby PNM facility, and in a remote location but:
  - We described earlier how dissimilar the PNM facility and industrial solar facility in every way are and how this location is not remote given its physical prominence on the landscape, AND
  - There are a number of disapproving comments from adjacent and nearby landowners, representing almost 400 individual property owners, all zoned as RRA. These comments show that the assumptions made by the Applicant and Staff about how this change will affect their properties are incorrect.

In closing, we comment on the Turquoise Trail National Scenic Byway:

- Comprehensive Plan Section 3 says that the county shall protect significant historic sites.
- The TT received its federal designation from the DOT in 2000, based on meeting the single Intrinsic Quality titled “Scenic” which the DOT defines as this:

Submitted January 8, 2025

- “Scenic Quality is the heightened visual experience derived from the view of natural and manmade elements of the visual environment of the scenic byway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape -- landform, water, vegetation, and manmade development -- contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.”
- 1,800 acres of solid black solar panels clearly do not represent manmade development that is in harmony with the land and that contributes to the quality of the visual environment.

We urge you to deny this zone amendment application based on these facts:

- It is not consistent with, or is in conflict with the Comprehensive Plan
- Many requirements in the Sandoval County Zoning Ordinance have not been satisfied

Respectfully submitted,

[Original signed 12/10/2024]

Jon C. Wannlund

[Original signed 12/10/2024]

Julie A. Wannlund

Submitted January 8, 2025

**ATTACHMENT #3: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275



# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:  TEMPORARY USE PERMIT  VARIANCE  
 CONDITIONAL USE  SPECIAL EVENT PERMIT  
 ADMINSTRATIVE/INTERPRETATION ACTION

APPLICANT: Stefani Lord TELEPHONE: (505) 220-1913  
 ADDRESS: 2 Erickson Road, Sandia Park, NM 87047  
 AGENT: Dennis Kellogg TELEPHONE: (916) 715-7066  
 ADDRESS: 13 La Aguapa, Sandia Park, NM 87047  
 E-mail Address: kelfamdennis@gmail.com

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13 RANGE 6 East & 6 East SECTION T12-1,2,3-T13-34,35,36  
 MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
 Subdivision \_\_\_\_\_ Lot No. See Attachment #2.  
 Block No. \_\_\_\_\_ Total Acres: 1,833 Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, I, Stefani Lord, an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change), ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error"; and (b) a decision not supported by evidence in the matter" (See Attachment #1 for details)

SIGNATURE: [Signature] DATE: 01/08/2025

INSTRUCTIONS: Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>[Signature]</u>	Date: <u>1-8-25</u>
File Number: <u>2025000012</u>	Receipt Number: <u>321001</u> Fee: <u>100.00</u>
Type and Date of Appealed Action: <u>P&amp;Z Recommendation to BCC to approve ZNCH-24-005</u>	



**ATTACHMENT #1: S. Lord Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

1. **Subject Appeal:** In the matter of ZNCH-24-005, I, Stefani Lord, an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("County Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error" and (b) a "decision not supported by evidence in the matter".

2. **Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC ("PCR") to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch ("Diamond Tail Solar"), in a remote location in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005, including: Sandoval County personnel representing the Fire Department and Economic Development Department; the manager of Diamond Tail Ranch; a solar power activist representing "Green 22", a group with an unknown number of members; a member of the local electrician's union, who hoped that his union membership would get work building Diamond Tail Solar; an individual who hoped his company would get the contract to build Diamond Tail Solar; and over 29 other individuals citizens, the vast majority of whom did not live in the East Mountains and many of whom either lived outside of Sandoval County (e.g., Las Cruces, NM and Buckeye, AZ) and/or provided letters in support in P&Z Public Comments that were clearly based on a form letter template.

Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (X-Milliron Ranch); long-standing local preservation and environmental groups, such as the East Mountains Protection Action Coalition ("EMPAC"), with approximately 800 members, and the Turquoise Trail Regional Alliance ("TTRA"), which consists of 20 alliance groups, altogether totaling thousands of members; the San Pedro Creek Estates Homeowners Association ("SPCE"), with 379 members; and over 20 other individuals, including District 3 Santa Fe County Commissioner Camilla Bustamante, who testified in her personal capacity.

**Significantly, while I oppose Diamond Tail Solar, I also support renewable energy and, in particular, solar power, especially as means to mitigate Global Climate Change.**

**I oppose Diamond Tail Solar for three specific reasons:**

**First, the proposed power plant is demonstrably unsafe,** because the battery energy storage system is generically prone to fire caused by Lithium-ion storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other catastrophic events, such as criminal misadventure and terrorist attack, and fails to meet industry “best practices” for safety and security for a location such as the one proposed in the East Mountains.

**Second, the location of the proposed power plant is demonstrably inappropriate,** because the site is too remote, with first responders too far away to effectively intervene in the event of fire or other mishap; the site is subject to recurring natural wildfires; and the size and scale of this proposed power plant would obviously detract from the scenic beauty of New Mexico, being in full view of Sandia Crest Overlook, being in close proximity to and in full view of the Albuquerque Golden Open Space; being in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico; and being situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art.

**Third, there are other locations in Sandoval County, and in New Mexico, that are far more appropriate for an industrial facility of this type and scale,** such as so-called “brownfields”, in which the land has already been disturbed, is not subject to wildfire, and already has appropriate industrial-type infrastructure, including nearby first responders, access to water for firefighting, pre-existing road networks, reliable telecommunications networks, etc., and other locations which already have been developed to accommodate large-scale solar power plants. One such location, in Sandoval County, is the “Solar Corridor” along Encino Road/Drive NW.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aries and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped clean to make way for equipment;
- over 500,000 plastic solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking arrays for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 11 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 such batteries;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

**4. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was made in "error" and/or was a "decision not supported by evidence in the matter", per Section 22A, for many substantive reasons, including the following:

(i) **Public Input: General Comment on Treatment of Opposition Testimony and Failure of P&Z to Exercise Due Diligence.** Throughout the December 10, 2024, hearing, the record clearly demonstrates that P&Z Commissioners had little or no interest in considering Public testimony in opposition to ZNCH-24-005. In spite of compelling testimony provided by numerous concerned citizens that exposed errors, flaws, and misrepresentations committed by Applicant PCR (see Points ii-xxiii, below for more details), not one P&Z Commissioner, at any time, addressed, commented on, followed up on or questioned opposition testimony (with the exception of Chair Trujillo, who posed a procedural question to P&Z Director Beaman). Public opposition testimony was ignored by P&Z. The attitude of P&Z Commissioners was summed up by Acting Chair Commissioner Marquena, who stated:

*"Okay so we have a unanimous decision. I just want to make this statement that here we have decided to pass it on to the County Commission and I'm hoping between now and then all this information that I have and all these questions I still have in my mind are going to be answered and you know before we get a vote at the County Commission level and that's all we're doing you guys so you know stay stay stay active you know let your voices be heard please but I felt that we had to move this along you know we've been working on this for a while with these folks and I feel that this is a good way to move it on and pass it on to the County Commission. Thank you."*

By failing to address any of the substantive issues raised by the Public in opposition to ZNCH-24-005, P&Z failed to exercise its due diligence, as required under the Sandoval County Comprehensive Plan and Sandoval County Comprehensive Zoning Ordinance, to engage in fact-finding and analysis in order to assist the County Board in making an informed final decision on the matter of ZNCH-24-005. Put simply, P&Z did not do its job. In particular, based on the opposition testimony presented, P&Z failed to provide the County Board with an informed set of "CONDITIONS OF APPROVAL" based on the evidence. For the reasons stated above, P&Z erred when it decided to recommend to County Board approval of ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(ii) **Public Input: PCR Documents were Permitted to be Posted Late by P&Z in Error.** At least two key documents, PCR "Visual Resources Technical Memo" and the Sandoval County Fire Chief memo to PCR, were posted to the public P&Z website less than 72 hours before the scheduled December 10 hearing. These late postings violated SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", which mandates, in Section 1, that "All documents and other tangible materials, excluding materials used only for demonstrative purposes at the hearing to facilitate witness testimony, should be submitted to the Planning &

Zoning Department at least seventy-to (72) hours prior to the hearing or meeting of meeting of the Board of County Commissioners”. P&Z was in error to accept such late submissions from PCR (or to post late such submissions from PCR). Furthermore, this P&Z error was substantive, as the PCR “Visual Resources Technical Memo”, in particular, is a highly significant document which purports to detail the visual impact of Diamond Tail Solar upon surrounding communities. Unfortunately, due to its late posting, members of the public did not have adequate time to review the PCR Technical Memo. It was only after the December 10 hearing that members of the public realized the PCR Technical Memo was both incomplete and misrepresentative (see Point 4(iii) below). Rather than accept such late PCR postings, P&Z should have required PCR to post in a timely manner or should re-scheduled the December 10 hearing to allow for adequate time to post all relevant materials by all concerned parties. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iii) Environmental Degradation: Visual Impact Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral testimony by Karen Yank, TTRA, and by Dennis Kellogg, EMPAC, and on evidence presented in oral and written testimony by Julie Wannlund, at the December 10, 2024, hearing, and in the TTRA follow up appeal to the County Board dated January 8, 2025, and in the Wannlund follow up appeal dated January 8, 2025, I concur in their assessment that PCR misrepresented the visual impact of Diamond Tail Solar on surrounding land and communities. P&Z uncritically accepted PCR evidence at face value and thus failed to question or even consider PCR’s demonstrably incorrect claim that Diamond Tail Solar was “visually similar to PNM’s electrical grid infrastructure currently existing on Diamond Tail Ranch”. As a result, P&Z failed, abysmally, to meet the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(5). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(iv) Environmental Degradation: Sandoval County "Unsightly Use of Land" Standard Unaddressed by PCR and P&Z.** Based on the evidence presented in oral testimony by Karen Yank, TTRA, and by Dennis Kellogg, EMPAC, at the December 10, 2024, hearing, and in the TTRA follow up appeal to the County Board dated January 8, 2025, and in the Wannlund follow up appeal dated January 8, 2025, I concur in their assessment that both PCR and P&Z failed to address the “Unsightly Land Use” standard set forth in NM Stat § 3-21-5, A(8) (2018), particularly with respect to the negative scenic impact on NM-14, the Turquoise Trail, a designated National Scenic Byway. P&Z uncritically accepted PCR evidence at face value and thus failed to question or even consider PCR’s demonstrably incorrect claim that Diamond Tail Solar would preserve the integrity and character of the surrounding land and scenic vistas. As a result, P&Z failed, abysmally, to meet the standards set forth in NM Stat § 3-21-5, A(8) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(5). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**5. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, I hereby request a Public Hearing by the County Board to consider the instant appeal.

**6. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, I hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**ATTACHMENT #2: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275



# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:  TEMPORARY USE PERMIT  VARIANCE  
 CONDITIONAL USE  SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION

APPLICANT: "The Puertocito-Golden-Ranchers" (see Attachment #1) TELEPHONE: (505) 452-7390  
 ADDRESS: 4731 Puertocito Road, Sandia Park, NM 87047  
 AGENT: William T. Parsons TELEPHONE: (240) 620-3170  
 ADDRESS: 23 La Cantera, Sandia Park, NM 87047  
 E-mail Address: parsonsfamily@starpower.net

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13 RANGE 6 East & 6 East SECTION T12:1,2,3-T13:34,35,36  
 MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
 Subdivision \_\_\_\_\_ Lot No. See Attachment #3.  
 Block No. \_\_\_\_\_ Total Acres: 1,833 Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, we, "The Puertocito-Golden-Ranchers", an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change), ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error"; and/or (b) a "decision not supported by evidence in the matter". (See Attachment #1 for details).

SIGNATURE: William T. Parsons DATE: 01/08/2025

**INSTRUCTIONS:** Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>S. Hatcher</u>	Date: <u>1/8/25</u>
File Number: <u>2025000013</u>	Receipt Number: <u>515285</u> Fee: <u>1/8/25</u>
Type and Date of Appealed Action: <u>P&amp;Z Commission's Recommendation for B&amp;C's approval of ZNCH-24-05</u>	



**ATTACHMENT #1: “The Puertocito-Golden-Ranchers” Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

**1. Subject Appeal:** In the matter of ZNCH-24-005, we, “The Puertocito-Golden-Ranchers” (PGR), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners (“County Board”) and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission (“P&Z”) on December 10, 2024, was: (a) made in “error” and/or (b) a “decision not supported by evidence in the matter”.

**2. Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC (“PCR”) to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM.

To be clear, while we oppose Diamond Tail Solar, we also support renewable energy and, in particular, solar power, especially as means to mitigate Global Climate Change.

**PGR opposes Diamond Tail Solar for two specific reasons:**

- **First, the proposed PCR power plant will create a dangerous traffic and public safety threat for our community, if Puertocito Road is needed for construction.**
- **Second, Diamond Tail Solar will pose a threat to our ability to access clean, affordable water, as construction could contaminate our well water, and yearly operation and maintenance of the power plant could run our wells dry.**

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped clean to make way for equipment;
- over 500,000 plastic solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking arrays for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 1.4 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 such batteries;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

**4. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission (“P&Z”) on December 10, 2024, was made in “error” and/or was a “decision not supported by evidence in the matter”, per Sandoval County Comprehensive Zoning Ordinance, Section 22A, Appeals, for several substantive reasons, including the following:

**(A) Public Input: General Comment on Treatment of Opposition Testimony and Failure of P&Z to Exercise Due Diligence.** Throughout the December 10, 2024, hearing, the record clearly demonstrates that P&Z Commissioners had little or no interest in considering Public testimony in opposition to ZNCH-24-005. In spite of our heart-felt testimony regarding the risks posed to our community by PCR construction and operation of Diamond Tail Solar, not one P&Z Commissioner, at any time, addressed, commented on, followed up on or questioned opposition testimony. Public opposition testimony, including our own, was ignored by P&Z. The attitude of P&Z Commissioners was summed up by Acting Chair Commissioner Marquena, who stated:

*"Okay so we have a unanimous decision. I just want to make this statement that here we have decided to pass it on to the County Commission and I'm hoping between now and then all this information that I have and all these questions I still have in my*

*mind are going to be answered and you know before we get a vote at the County Commission level and that's all we're doing you guys so you know stay stay stay active you know let your voices be heard please but I felt that we had to move this along you know we've been working on this for a while with these folks and I feel that this is a good way to move it on and pass it on to the County Commission. Thank you."*

By failing to address any of the substantive issues raised by the Public in opposition to ZNCH-24-005, including our concerns, P&Z failed to exercise diligence and engage in fact-finding and analysis in order to assist the County Board in making an informed final decision on the matter of ZNCH-24-005. In our view, P&Z didn't do its job. For this reason, P&Z erred when it decided to recommend to County Board approval of ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(B) Public Safety: PCR Construction Traffic along Puertocito Road.** We are very concerned about the possibility that PCR will use Puertocito Road to access the proposed Diamond Tail Solar site.

We remember well what it was like when PNM used Puertocito Road to construct overhead power lines (OHLs) across Diamond Tail Ranch. It was unsafe and it was awful. Large construction trucks drove at high speeds, at all hours of the day, and failed to follow any of the rules of the road. Several times, members of our community were run off the road. In addition, the heavy construction tore up the road, our only access to NM-14 and the rest of the world; blocked access to Puertocito Road; and created terrible dust pollution, making our lives miserable.

PCR construction traffic will be far worse than PNM, due to the large scale of the proposed power plant and battery energy storage system (BESS) facility. We went to Mr. Brandi, PCR representative, and asked for assurances in writing that Puertocito Road would not be used for construction. He stated that Puertocito Road would only be used for operation and maintenance (O&M) once Diamond Tail Solar was built. He further stated that, during construction, all PCR traffic would access Diamond Tail across Ranch de Chavez. However, he did not put those promises in writing.

Now we find out that PCR has filed construction plans for Puertocito Road that would allow better access for heavy trucks. Heavy trucks are not needed for maintenance, but they are needed for construction.

What really bothers us is that P&Z seems to be incapable of "connecting the dots". At the December 10, 2024, hearing, we learned that Mr. Steve Chavez, owner of Rancho de Chavez, signed a letter opposing ZNCH-24-005. It seems obvious to us that Mr. Chavez plans to block PCR access to Diamond Tail via Rancho de Chavez. This means all Diamond Tail Solar construction traffic will have to use Puertocito Road.

The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: Land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance (CZO), Section 10, states, in part, that:

The Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“3. To assure the Special Use District will not be detrimental to the public health, safety, or general welfare of the County.”

Finally, Section 19, Amendments, of Sandoval County CZO mandates that the County Board shall not grant a Zone Map Amendment unless satisfactory provision has been made concerning:

*1. Accessibility to property and existing or proposed structures thereon, with particular reference to automobile and pedestrian safety, traffic control, and emergency access in case of fire, flood or catastrophe;*

Per our testimony at the December 10, 2024, hearing, PCR use of Puertocito Road for Diamond Tail Solar construction would constitute a clear traffic safety danger to our community and therefore does not meet the County Code regulations cited above.

Significantly, no one at the December 10 Hearing questioned or disputed our concerns regarding PCR use of Puertocito Road, including P&Z Commissioners, P&Z Director, Sandoval County Deputy Fire Chief, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with our traffic safety concerns regarding PCR use of Puertocito Road, or (b) P&Z Commissioners failed to consider our concerns. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

(C) **Environmental Degradation: Well Water.** All of our water comes from wells located on our properties. We are concerned that PCR Diamond Tail Solar will cause two problems: (1) construction will contaminate our well water; or (2) operation and maintenance will run our wells dry.

On the first concern, the construction of a huge industrial facility such as Diamond Tail Solar will entail the use of many dangerous chemicals in large quantities. The aquifer under our properties is heavily fractured and porous, and therefore particularly susceptible to contamination via spillage. We have seen no evidence that PCR intends to take special precautions to prevent ground water contamination.

On the second concern, oral and written testimony by Bill and Lorna Parsons, during the December 10, 2024, hearing, indicated that PCR has substantially under-estimated the amount of water it will need for yearly O&M. We understand that PCR intends to drill one or more wells at Diamond Tail in order to access water. As everyone knows, we are running out of water in the East Mountains. Our concern is that PCR water use will run our wells dry, forcing us to purchase water, which we—unlike PCR—cannot afford to do.

The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance, Section 10, states, in part, that:

The Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“3. To assure the Special Use District will not be detrimental to the public health, safety, or general welfare of the County.”

Finally, Section 19, Amendments, of Sandoval County CZO mandates that the County Board shall not grant a Zone Map Amendment unless satisfactory provision has been made concerning:

*3. Water ad liquid waste facilities, with reference to soil limitations, locations, and public health;*

During the December 10, 2024, hearing, we testified to our concerns about the potential negative impact of PCR Diamond Tail Solar on our access to water and wells. However, no one at the

December 10 Hearing questioned or disputed our concerns, including P&Z Commissioners, P&Z Director, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with our concerns about the possible negative PCR Diamond Tail Solar construction and O&M on our wells and access to affordable safe water, or (b) P&Z Commissioners failed to consider our concerns. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(3). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**5. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, we hereby request a Public Hearing by the County Board to consider the instant appeal.

**6. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, we hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**7. Request Equal Standing between Appellant PGR and Applicant PCR during requested Public Hearing:** During requested hearing, if approved, we, Appellant PGR, request standing equal to Applicant PCR when addressing the County Board, to wit to include: that Appellant PGR be afforded the same time to present its position as afforded to Applicant PCR, that PGR be permitted to call its own witnesses, that PGR be permitted to cross examine Applicant PCR's witnesses, and that PGR be afforded access to same audio-visual equipment and options as afforded to Applicant PCR. In a matter as technically complex and environmentally important as ZNCH-24-005, it imperative that proceedings be conducted in a fair and transparent manner in which all sides are given equal opportunity to state their positions, thereby ensuring that the County Board shall be in a position to make an informed decision on the matter of ZNCH-24-005 on behalf of all County residents, particularly those individuals who will be most directly impacted by Diamond Tail Solar.

**ATTACHMENT #2: “The Puertocito-Golden-Ranchers” (“PGR”) Contact Information:**

1. Sonya and Mark Benson, 4731 Puertocito Road, Sandia Park, NM 87047, 505-452-7390.
2. Zorah Peters, 4601 Puertocito Road, Sandia Park, NM 87047, 714-614-3158.
3. Karen Yank and Rodney Hamon, 9 Luz Del Cielo, Golden, NM 87047, 505-269-9959.
4. John Vigil, Jr., 44 Vigil Drive, Sandia Park, NM 87047, 505-250-8508
5. John Vigil III, 44 Vigil Drive, Sandia Park, NM 87047, 505-281-8626
6. Grant and Tracy Williams, X-Milliron Ranch, 1511 Hwy 14 N, Golden, NM 87047, 505-280-1319.

**ATTACHMENT #3: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275





# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:  TEMPORARY USE PERMIT  VARIANCE  
 CONDITIONAL USE  SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION

APPLICANT: Turquoise Trail Regional Alliance (TTRA) TELEPHONE: (505) 269-9959  
 ADDRESS: 9 Luz Del Cielo, Golden, NM 87047  
 AGENT: William T. Parsons TELEPHONE: (240) 620-3170  
 ADDRESS: 23 La Cantera, Sandia Park, NM 87047  
 E-mail Address: parsonsfamily@starpower.net

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13 RANGE 6 East & 6 East SECTION T12:1,2,3-T13:34,35,36  
 MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
 Subdivision \_\_\_\_\_ Lot No. See Attachment.  
 Block No. \_\_\_\_\_ Total Acres: 1.833 Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, we, the Turquoise Trail Regional Alliance ("TTRA"), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change), ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error"; and (b) a "decision not supported by evidence in the matter". (See Attachment #1 for details).

SIGNATURE: *William T. Parsons* DATE: 01/08/2025

**INSTRUCTIONS:** Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>S. Hahn</u>	Date: <u>1/8/25</u>
File Number: <u>2025000014</u>	Receipt Number: <u>55205</u> Fee: <u>100.00</u>
Type and Date of Appealed Action: <u>P&amp;Z Commission Recommendation for BCC to approve</u>	

ZNCH-24-005 REV Dec 2019

**ATTACHMENT #1: TTRA Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

**1. Subject Appeal:** In the matter of ZNCH-24-005, we, the Turquoise Trail Regional Alliance (“TTRA”), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners (“County Board”) and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission (“P&Z”) on December 10, 2024, was: (a) made in “error” and/or (b) a “decision not supported by evidence in the matter”.

**2. Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC (“PCR”) to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005, including: Sandoval County personnel representing the Fire Department and Economic Development Department; the manager of Diamond Tail Ranch; a solar power activist representing “Green 22”, a group with an unknown number of members; a member of the local electrician’s union, who hoped that his union membership would get work building Diamond Tail Solar; an individual who hoped his company would get the contract to build Diamond Tail Solar; and over 29 other individuals citizens, the vast majority of whom did not live in the East Mountains and many of whom either lived outside of Sandoval County (e.g., Las Cruces, NM and Buckeye, AZ) and/or provided letters in support in P&Z Public Comments that were clearly based on a form letter template.

Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (X-Milliron Ranch); long-standing local preservation and environmental groups, such as TTRA, which consists of 20 alliance groups, altogether totaling thousands of members, and the East Mountains Protection Action Coalition (“EMPAC”); the San Pedro Creek Estates Homeowners’ Association (“SPCE”), with 379 members; and over 20 other individuals, including District 3 Santa Fe County Commissioner Camilla Bustamante, who testified in her personal capacity.

**Significantly, while we oppose Diamond Tail Solar, we also support renewable energy and, in particular, solar power, especially as means to mitigate Global Climate Change.**

**TTRA opposes Diamond Tail Solar for three specific reasons:**

- **First, the proposed power plant is demonstrably unsafe**, because the battery energy storage system is generically prone to fire caused by Lithium-ion storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other catastrophic events, such as criminal misadventure and terrorist attack, and fails to meet industry “best practices” for safety and security for a location such as the one proposed in the East Mountains.
- **Second, the location of the proposed power plant is demonstrably inappropriate**, because the site is too remote, with first responders too far away to effectively intervene in the event of fire or other mishap; the site is subject to recurring natural wildfires; and the size and scale of this proposed power plant would obviously detract from the scenic beauty of New Mexico, being in full view of Sandia Crest Overlook, being in close proximity to and in full view of the Albuquerque Golden Open Space; being in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico; and being situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art.
- **Third, there are other locations in Sandoval County, and in New Mexico, that are far more appropriate for an industrial facility of this type and scale**, such as so-called “brownfields” sites, in which the land has already been disturbed, is not subject to wildfire, and already has appropriate industrial-type infrastructure, including nearby first responders, access to water for firefighting, pre-existing road networks, reliable telecommunications networks, etc., and other locations which already have been developed to accommodate large-scale solar power plants. One such location, in western Sandoval County, is the “Solar Corridor” along Encino Road/Drive NW. TTRA has been actively working to provide Applicant PCR with an alternative for their proposed solar power plant, just as in the past TTRA worked with Campbell Farms to offer an appropriate alternative for their proposed residential development so that it did not detrimentally affect the scenic value of the NM-14, the Turquoise Trail National Scenic Byway.

**SPECIAL NOTE:** On December 23, 2024, the Hearing Officer for the Sustainable Land Development Code (“SLDC”), Santa Fe County, issued an order recommending that the Santa Fe County Planning & Zoning Commission **DENY** the application for a Conditional Use Permit by solar power company, AES Clean Energy Development, to build a PV solar power plant near Ranch Viejo, approximately 25 miles north of PCR’s proposed Diamond Tail Solar. Significantly, the AES proposal was denied for exactly the same reasons why we are objecting to Diamond Tail Solar, namely, the AES solar power plant poses a catastrophic risk to public safety due to fire danger and is located in an inappropriate location. Specifically, the Hearing Officer concluded:

“The evidence indicates the Project would be detrimental to the health, safety, and general welfare of the area; the Project would create a potential hazard for fire, panic, or other danger; and the Project is inconsistent with the purposes of the property’s zoning classification and inconsistent with spirit and intent of SLDC and SGMP.”

This finding is particularly important because the AES facility (i.e., BESS) would have been one-half the size of Diamond Tail Solar and would have been located in an area that is less prone to wildfire and more accessible to first responders.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped bare to make way for equipment;
- over 500,000 solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking systems for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 1.4 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 battery cells;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

**4. Chronology:** Below we provide a brief chronology of events to help better understand the flow of events surrounding the PCR's Diamond Tail Solar Project from the Public's perspective:

#### 2022

- January 19, 2022: PCR files as a New Mexico Foreign Limited Liability Company, PCR privately commences site studies for a large solar facility;

#### 2023

- PCR submits initial Specific Use Permit (SUP) application;

#### 2024

- PCR site studies conclude with a private lease agreement with Diamond Tail Ranch in East Mountains;
- 8/15/24: PCR holds public meeting at Zocalo Plaza, in western Sandoval County, which is unpublicized in East Mountains;
- 9/10/24: PCR and Diamond Tail Ranch submit ZNCH-24-005, a request to Sandoval County P&Z for Zone Map Amendment (zoning change) to build Diamond Tail Solar;
- 9/13/24: PCR application to New Mexico Department of Transportation for special turnout on NM Route 14, a National Scenic Byway, for Diamond Tail Solar;
- 10/8/24: P&Z holds public hearing to approve ZNCH-24-005; numerous citizens object; P&Z defers further consideration to November 12 public hearing, because P&Z agrees that public was given insufficient time and notice to comment on ZNCH-24-005;
- 10/29/24: Sandoval County Fire Chief communicates to PCR that they have no objection from a public safety approach to the project, despite public objections to Diamond Tail Solar based on fire and wildfire safety issues;
- November: PCR privately contacts P&Z, requests deferral of public hearing on ZNCH-24-005, scheduled for November, until December 10; P&Z grants PCR private request without public knowledge or input;
- 12/2/2024: EMPAC/TTRA/SPCE-HOA publicly and formally jointly request P&Z defer December hearing on ZNCH-24-005 until January 2025, due to insufficient time to analyze late-arriving PCR documents; P&Z denies deferral requests without explanation;
- 12/2/24 & 12/3/24: PCR presents invitation-only outreach meetings to East Mountain residents at Vista Grande Community Center;
- 12/24: Several nearby large landowners and ranchers submit letters stating they oppose ZNCH-24-005, including the one whose land will be used for Diamond Tail Solar construction access;
- 12/5/24: SWCA, an environmental and management consulting firm, on PCR's behalf, submits visual simulations of Diamond Tail Solar, but fails to include any from long-range points of view, such as Sandia Crest Tramway & Ski area;
- 12/9/24: Sandoval County Fire Department sends memo to PCR outlining fire safety requirements, which arrives too late for public consideration for December 10 hearing;
- 12/10/24: P&Z holds second public hearing on ZNCH-24-005, during which many members of the public object to PCR Diamond Tail Solar proposal, providing detailed oral and written opposition testimony; P&Z, without responding to any of the opposition testimony, votes 4 to 0 to recommend the approval of ZNCH-24-005 to Sandoval County Board of Commissioners.

**5. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was made in "error" and/or was a "decision not supported by evidence in the matter", per Section 22A, for the following substantive reasons:

**(i) Public Input: General Comment on Treatment of Opposition Testimony and Failure of P&Z to Exercise Due Diligence.** Throughout the December 10, 2024, hearing, the record clearly demonstrates that P&Z Commissioners had little or no interest in considering Public testimony in opposition to ZNCH-24-005. In spite of compelling testimony provided by numerous concerned citizens that exposed errors, flaws, and misrepresentations committed by Applicant PCR (see Points ii-xxiii, below for more details), not one P&Z Commissioner, at any time, addressed, commented on, followed up on or questioned opposition testimony (with the exception of Chair Trujillo, who posed a procedural question to P&Z Director Beaman). Public opposition testimony was ignored by P&Z. The attitude of P&Z Commissioners was summed up by Acting Chair Commissioner Marquena, who stated:

*"Okay so we have a unanimous decision. I just want to make this statement that here we have decided to pass it on to the County Commission and I'm hoping between now and then all this information that I have and all these questions I still have in my mind are going to be answered and you know before we get a vote at the County Commission level and that's all we're doing you guys so you know stay stay stay active you know let your voices be heard please but I felt that we had to move this along you know we've been working on this for a while with these folks and I feel that this is a good way to move it on and pass it on to the County Commission. Thank you."*

By failing to address any of the substantive issues raised by the Public in opposition to ZNCH-24-005, P&Z failed to exercise its due diligence, as required under the Sandoval County Comprehensive Plan and Sandoval County Comprehensive Zoning Ordinance, to engage in fact-finding and analysis in order to assist the County Board in making an informed final decision on the matter of ZNCH-24-005. Put simply, P&Z did not do its job. In particular, based on the opposition testimony presented, P&Z failed to provide the County Board with an informed set of "CONDITIONS OF APPROVAL" based on the evidence. For the reasons stated above, P&Z erred when it decided to recommend to County Board approval of ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ii) Public Input: PCR Documents were Permitted to be Posted Late by P&Z in Error.** At least two key documents, PCR "Visual Resources Technical Memo" and the Sandoval County Fire Chief memo to PCR, were posted to the public P&Z website less than 72 hours before the scheduled December 10 hearing. These late postings violated SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", which mandates, in Section 1, that "All documents and other tangible materials, excluding materials used only for demonstrative purposes at the hearing to facilitate witness testimony, should be submitted to the Planning &

Zoning Department at least seventy-to (72) hours prior to the hearing or meeting of meeting of the Board of County Commissioners”. P&Z was in error to accept such late submissions from PCR (or to post late such submissions from PCR). Furthermore, this P&Z error was substantive, as the PCR “Visual Resources Technical Memo”, in particular, is a highly significant document which purports to detail the visual impact of Diamond Tail Solar upon surrounding communities. Unfortunately, due to its late posting, P&Z and members of the public did not have adequate time to review the PCR Technical Memo. It was only after the December 10 hearing that members of the public realized the PCR Technical Memo was both incomplete and misrepresentative (see Point 5(xv) below). Rather than accept such late PCR postings, P&Z should have required PCR to post in a timely manner or should re-scheduled the December 10 hearing to allow for adequate time to post all relevant materials by all concerned parties (see Point 5(iii) below). As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iii) Public Input: EMPAC/TTRA/SPCE Hearing Postponement Request Denied by**

**P&Z in Error.** In the runup to the December 10 hearing, PCR belatedly, beginning on or about November 22, 2024, began providing to the Public its background and supporting written materials relating to ZNCH-24-005 via the P&Z website, in spite of the fact that many of PCR’s documents were dated in the 2022-2023-early 2024 timeframes. This documentation included 27 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length). Also, PCR belatedly held “private invitation” meetings, for certain selected members of the Public, as late as December 3 and 4, only a few days before the scheduled December 10 hearing. In response, EMPAC, TTRA and SPCE formally requested that P&Z Chair Trujillo postpone the December 10 hearing until January 14, 2025 (see Attachment #2). The EMPAC/TTRA/SPCE postponement requests were unilaterally denied by P&Z Director, Daniel Beaman, without explanation (see Attachment #3). In a follow-up communication between Karen Yank, TTRA President, and Wayne Johnson, Sandoval County Manager, Johnson stated that: the postponement request was denied because Applicant PCR objected to the postponement; that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement; and that postponement matter was not brought to the attention of Chair Trujillo prior to the hearing because doing so would constitute an “*ex parte* communication” (see Attachment #4). The decision by P&Z Director and County Manager to deny postponement was in error, for the following five reasons: (a) the postponement request to Chair Trujillo was not an *ex parte* communication and County Manager’s description of such was a mistake; it was precisely the opposite, being a communication on a procedural matter, in manner specified by County Manager Staff, that was made publicly, as it was sent to all relevant County personal, posted on the P&Z public website, and shared with Applicant PCR; (b) as the postponement request was not an *ex parte* communication, the postponement decision should have been made by Chair Trujillo, rather than unilaterally by P&Z Director (and County Manager); (c) contrary to County Manager’s assertion that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement during the hearing, on December 10 just prior to the hearing, P&Z Director denied EMPAC/TTRA/SPCE request to raise the postponement issue before the P&Z Commission, with the result that the P&Z Commissioners were never informed, before or during the hearing, of the EMPAC/TTRA/SPCE requests to postpone; (d) P&Z and County Manager deferral to PCR on



the matter of hearing postponements evidences clearcut bias of P&Z for the Applicant and against the Public; and (e), perhaps most importantly, by denying postponement, members of the Public, including Appellant EMPAC, had inadequate time to prepare and submit documents in response to Applicant PCR's documents and materials, thereby depriving P&Z of the ability to make a fair and informed decision regarding a matter as complex and important as ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iv) Public Input: PCR Hearing Postponement Request Approved by P&Z in Error.** At the October 8, 2024, hearing on ZNCH-24-005, P&Z decided to schedule a follow-up hearing on ZNCH-24-005 for November 12, 2024. However, prior to November 12, 2024, P&Z postponed consideration of ZNCH-24-005 until December 10, 2024. This postponement was done without explanation, without Public input or comment, and without the reason for the postponement being publicly posted on the P&Z website (unlike in the case of the EMPAC/TTRA/SPCE postponement request, which was publicly posted, see point 5(iii) above). Only later did EMPAC learn, from PCR upon direct inquiry by EMPAC, that P&Z postponed the November 12 hearing at the private request of Applicant PCR.

The P&Z decision to postpone consideration of ZNCH-24-005, at the private request of PCR and without any Public input, was in fact exactly the kind of private *ex parte* communication that County Manager stated was inappropriate (see Attachment #4 for supporting details). P&Z erred when it granted PCR its private postponement request, and compounded their error by subsequently denying EMPAC/TTRA/SPCE their public postponement request. By doing so, P&Z failed to meet the "fair and impartial" standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", which states, *inter alia*, "WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible". As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(v) Public Input: PCR Witnesses Permitted to Exceed Time Limit during December Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 6., stipulates that P&Z applicants shall be limited to a total of 10 minutes of direct testimony and an additional total of 5 minutes of rebuttal testimony. At the December 10, 2024, hearing, P&Z permitted Applicant PCR to call several witnesses, many of whom exceeded the 3 minutes allotted to Public witnesses and all whom together exceeded the 10 minutes total time allocated to PCR as an applicant. To make matters worse, P&Z Acting Chair Commissioner Marquena refused to grant additional time to any Public witness speaking against ZNCH-24-005, repeatedly admonishing witnesses who exceeded their 3-minute speaking time. While P&Z Chair has the authority to grant additional time to any witness, he only did so for witnesses testifying on behalf of Applicant PCR. P&Z erred when it always granted additional time to Applicant PCR witnesses, but refused to grant additional time to any Public witness speaking in opposition to ZNCH-24-005. By doing so, P&Z failed to meet the "fair and impartial" standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A

RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(vi) **Public Input: Double Testimony Permitted for PCR Witness during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 2 b)., stipulates, in part, that “No individual will be permitted to speak more than one (1) time”. At the December 10, 2024, hearing, P&Z permitted a witness to speak on behalf of Applicant PCR and then to speak a second time during Public comments in which said witness spoke again in favor of ZNCH-24-005. Many members of the Public at the Hearing objected to this action, but Acting Chair P&Z allowed the PCR witness to speak twice in spite of Public objections. P&Z erred by allowing a PCR witness to speak twice. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(vii) **Public Input: Public Opposition Evidence Misrepresented during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Toward the end of the December 10, 2024, hearing, a P&Z Commissioner, speaking remotely, queried P&Z Director whether it was true that 75% of members of the Public who provided written testimony on the matter of ZNCH-24-005 were, in fact, supportive of ZNCH-24-005. P&Z Director answered in the affirmative. As explained in Paragraph 2 above, the P&Z Director’s answer is demonstrably false. P&Z erred by stating, for the record, that substantially more members of the Public supported ZNCH-24-005 than opposed it. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(viii) **Public Input: Overall Pattern of Preferential Treatment for PCR by P&Z and thus in Error.** As demonstrated by Points 5(i-vii) above, P&Z evinced a clear pattern of preferential treatment for Applicant PCR—and bias against members of the Public opposing ZNCH-24-005—throughout consideration of ZNCH-24-005. P&Z erred in doing so, as P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best

interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ix) Public Safety Threat: Tesla Megapack Fire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated January 3, 2025, we concur in their assessment that PCR misrepresented the Tesla Megapack fire threat posed by the Diamond Tail Solar BESS. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under the NM Stat NM Stat § 3-21-5 (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(x) Public Safety Threat: Wildfire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR misrepresented the wildfire threat in the Diamond Tail Solar area and that, in fact, a real wildfire threat exists in the proposed BESS deployment location.

Furthermore, at the December 10, 2024, hearing, PCR produced—quietly and without fanfare—a new graphic on wildfire risk that contradicted their previous wildfire estimates (see PCR Public Hearing Presentation, December 10, 2024, page 7, posted on P&Z public website). Let us recall PCR’s previous testimony: *“In the unlikely event of a battery fire, the spread of fire off-site will also be unlikely due to the Project area’s minimal wildfire risk”*. The new PCR wildfire graphic clearly shows that the wildfire risk at the site location is *not* minimal (1/6), as claimed by PCR previously, but rather varies between low (3/6) to moderate (4/6), confirming Parsons testimony. As a result, the overall argument for BESS fire and wildfire safety made by PCR has now been vitiated by PCR’s own revised testimony!

P&Z uncritically accepted PCR previous evidence at face value and failed to consider the implications of PCR’s latest wildfire analysis and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xi) Public Safety Threat: Inadequate Safety Safeguards Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated

January 3, 2025, we concur in their assessment that: (a) PCR has proposed inadequate safeguards to protect the Public from BESS fires and other mishaps; and (b) the PCR proposal for BESS safety does not meet industry “best practices”. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xii) Public Safety Threat: Poor First Responder Access Evidence Unaddressed by PCR and P&Z.** Based on the statements made by the Sandoval County Fire Department Official, in attendance at the December 10, 2024, hearing, the County Fire Department (FD) has informed the applicant that the FD will not be responsible for any fire response or fire-fighting within the 1833-acre industrial power plant. Furthermore, Applicant PCR has not responded to the Fire Department on what measures it will take to address an uncontrolled vegetation fire or toxic lithium battery fire within the perimeter of the massive power plant. Additionally, the FD and the Applicant have not answered the public inquiries concerning the number of fire equipment rated roads necessary to gain access to extinguish both the surrounding wildfire threat and any uncontrolled facility fires that involve highly toxic lithium battery where the number of batteries are in excess of 1,140,000.

There exists no fire equipment rated roads into the Diamond Tail Ranch that can support fighting a fire at the 1,833-acre solar power plant. The rural unimproved road that is proposed for an access route, and conceivably could be upgraded to a fire equipment rating, is not within Sandoval County jurisdiction and/or control. Clearly, interjurisdictional cooperation has not occurred in the submission of this application or its review. Consequently, to build a fire equipment rated road in Santa Fe County would require a minimum of a Santa Fe County review and approval, in advance, to substantiate access to the power plant from a National Scenic Highway as an appropriate use of the scenic highway. In addition, as the proposed access road for firefighting is in Santa Fe County, no evidence exists PCR has secured the necessary agreements to have Santa Fe County provide as primary or secondary fire protection and response services to Diamond Tail Solar. Furthermore, the two rural roads within Sandoval County, which conceivably could be improved to accommodate a fire equipment rating, are not fully under the control of Sandoval County as they are held in part or whole as private roads or a road that cross the protected conservation easement owned by the City of Albuquerque and is designated the Golden Open Space. Neither the P&Z staff report nor PCR have addressed this gap in evidence to support the rezoning application. Should PCR’s insurance carrier or Sandoval or Santa Fe Counties FD’s require two access roads, both with a fire equipment rating, there exist no such roads to accommodate the requirement. In accordance with New Mexico State industrial building standards, the applicant has not consulted the New Mexico State Fire Marshal, Code Enforcement Officer to determine if the proposed 1,833-acre rural wild land location is suitable for the construction of one the largest battery storage facilities supported by solar panels in New Mexico. The State Fire Marshal may find that this power plant location unbuildable.

These omissions in the hearing demonstrate the PCR application failed to receive a full and complete review in the Planning and Zoning staff report, as these critical items were unanswered

by the FD or PCR or addressed sufficiently in the report. P&Z failed to address these detrimental threats to the public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and the Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiii) Public Safety Threat: NM-14 Construction Traffic Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR substantially under-estimated the increase in traffic along NM-14 during construction of Diamond Tail Solar. Traffic density—and thus safety and impact to public infrastructure—is an important factor affecting public safety and general welfare. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiv) Public Safety Threat: Traffic Safety Evidence along Puertocito Road Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR misrepresented the traffic safety problem along Puertocito Road likely to result from construction of Diamond Tail Solar. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xv) Environmental Degradation: Visual Impact Evidence Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR stated: “The applicant will lease enough land to have a reasonably sized setback (buffer) around **the Solar project**, which will not interfere with existing property uses and **is visually similar to PNM’s electrical grid infrastructure currently existing on Diamond Tail Ranch**”. (bold emphasis added.)

Moreover, Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“5. The general compatibility of the proposed amendment with actual or prospective permissive zoning use of adjacent properties:”

In response to the Section 19(5) requirement, Applicant PCR stated: “**The project’s infrastructure will be visually similar to PNM’s existing infrastructure on Diamond Tail Ranch**”. (bold emphasis added.)

In a report dated October 8, 2024, P&Z Staff, under “**FINDINGS OF FACT**”, stated, in part, that:

“5. The request for Special Use (SU) district for zoning for the proposed development is consistent with the policies in the Sandoval County Comprehensive Plan as shown in this report (p. 2).”

and

“6. The request for Special Use (SU) Zone Map Amendment satisfied the criteria for review for a Zone Map Amendment as establish in Section 19, Amendments, Subsection F, Guidelines (1-7). Subsection F.”

Based on these Findings of Fact, P&Z Staff recommended approval of ZNCH-24-005, which P&Z Commissioners duly approved said recommendation on December 10, 2024.

**In fact, PNM’s existing infrastructure on Diamond Tail Ranch is in no way visually similar to the proposed Diamond Tail Solar power plant.** No two entities could be more disparate in terms of size and visual impact. On the one hand, the exiting PNM electrical infrastructure consists of three overhead power lines (OHL) and the Diamond Tail Substation, which is a 13-acre facility consisting of one small building and a low-level grid of transformers. On the other hand, proposed Diamond Tail Solar is a large-scale industrial facility, which will sprawl across

miles of terrain, occupy over 1,800 acres (2.86 square miles) of land, consist of over 500,000 solar panels and almost 6,000 tracking arrays, and prominently feature a 2-acre battery energy storage system facility, with its own electrical substation.

The P&Z decision to recommend approval of ZNCH-24-005 was: (a) demonstrably not supported by visual evidence in the matter; and (b) failed, abysmally, to meet the stringent standards set forth in Section 10(2) and Section 19(5) of the Sandoval County Comprehensive Zoning Ordinance. Accordingly, P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals..

**(xvi) Environmental Degradation: Sandoval County "Unightly Use of Land" Standard Unaddressed by PCR and P&Z.** New Mexico Statutes, Chapter 3 – Municipalities, Article 21 - Zoning Regulations, Section 3-21-5 - Zoning; conformance to comprehensive plan (NM Stat § 3-21-5 (2018)), which is controlling in Sandoval County, states, in part:

A. The regulations and restrictions of the county or municipal authority are to be in accordance with a comprehensive plan and be designed to:

**(8) control and abate the unsightly use buildings and land.** (bold emphasis added.)

**In fact, Diamond Tail Solar, if built, would massively exacerbate the unsightly use of buildings and land in the East Mountains.** The location and setting of this large-scale industrial facility are demonstrably inappropriate. The size and scale of this proposed power plant—with its three-square miles of “dark, glassy” PV arrays and 2-acre BESS and electrical substation, all of which are proposed to be situated in otherwise pristine high desert—would obviously and significantly detract from the scenic beauty of New Mexico, being:

- in full view of Sandia Crest Overlook;
- in close proximity to and in full view of the Albuquerque Golden Open Space;
- situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art; and
- in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico.

**The unsightly scenic impact by Diamond Tail Solar on NM-14, the Turquoise Trail, is particularly disturbing and contrary to both NM Stat § 3-21-5 (2018) and U.S. Department of Transportation (DOT) regulations. NM-14, as a designated National Scenic Byway, is supposed to be scenic.** The U.S. DOT defines “scenic” as:

“Scenic Quality is the heightened visual experience derived from the view of natural and manmade elements of the visual environment of the scenic byway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape—landform, water,

vegetation, and manmade development—contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.”

PCR’s proposed Diamond Tail Solar derogates from every single aspect of DOT’s definition of scenic. If Diamond Tail Solar were built, DOT would be well within its rights to terminate NM-14’s designation as a National Scenic Byway—and that would be a first in American history.

During P&Z hearings on October 8, and December 10, 2024, many members of the Public, including TTRA and EMPAC representatives, clearly and repeatedly pointed out—and vigorously protested—how Diamond Tail Solar would negatively impact the scenic nature of the East Mountains, in general, and M-14, the Turquoise Trail, in particular.

Significantly, neither PCR nor P&Z considered the visual impact in relation to NM Stat § 3-21-5 (2018) or any County code regulation. Furthermore, no one at the December 10 Hearing commented on or responded to Public protestations regarding the negative visual impact of Diamond Tail Solar, including P&Z Commissioners, P&Z Director, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with those witnesses who condemned the visual impact of Diamond Tail Solar, or (b) P&Z Commissioners failed to consider their countervailing point of view. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they recommended a Zone Change that they knew—or should have known—violated NM Stat § 3-21-5 (2018). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xvii) Environmental Degradation: Water Usage Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR significantly underestimated water usage for both construction and operation of Diamond Tail Solar. Because undisputable data show annual declines in East Mountains water source, this under-estimation poses a detrimental threat to public welfare. P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(3). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xviii) Environmental Degradation: Puertocito Concerns regarding Well Water Contamination and Access Unaddressed by PCR and P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR construction and operation of Diamond Tail Solar could negatively impact the ability of Puertocito residents to obtain clean, affordable, and sustainable



water, due to potential contamination of their water wells during construction and due to running their wells dry as a result of PCR operations once the solar power plant is built. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xix) Environmental Degradation: Thermal Pollution Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that thermal pollution created by operation of the proposed Diamond Tail power plant poses a detrimental threat to public safety, health, and general welfare. Both Applicant PCR and P&Z failed to address this detrimental threat to public safety, health and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xx) Environmental Degradation: Nighttime Light Pollution Evidence Unaddressed by PCR and P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address the issue of light pollution being created by Diamond Tail Solar during nighttime construction or during nighttime operations.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The economic, noise, **glare**, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(4) requirement, Applicant PCR only addressed glare and glint emanating off the solar panels during the daytime.

In a report dated October 8, 2024, P&Z Staff, under “**FINDINGS OF FACT**”, stated, in part, that:

“5. The request for Special Use (SU) district for zoning for the proposed development is consistent with the policies in the Sandoval County Comprehensive Plan as shown in this report (p. 2).”

and

“6. The request for Special Use (SU) Zone Map Amendment satisfied the criteria for review for a Zone Map Amendment as establish in Section 19, Amendments, Subsection F, Guidelines (1-7). Subsection F.”

Based on these Findings of Fact, P&Z Staff recommended approval of ZNCH-24-005.

As a matter of fact, the proposed Diamond Tail Solar location has one of the most pristine and scenic nighttime viewsheds in all of New Mexico. Currently, there are no major facilities of any sort anywhere near the proposed site. Therefore, significant nighttime light pollution by an industrial facility, such as Diamond Tail Solar, would fail to preserve the integrity of the area within the meaning of Section 10(2) and would constitute “glare” within the meaning of Section 19(4).

During the December 10, 2024, hearing, the Benson family presented oral testimony in which they specifically raised the issue of nighttime light pollution. They raised two concerns. First, that nighttime construction of Diamond Tail Solar would cause light pollution. Second, and far more concerning, that the operation of security motion sensors at night, triggered by PCR operations and/or animal movement, would lead to frequent but random nighttime light pollution all year around.

Significantly, no one at the December 10 Hearing commented on or responded to the Benson family concerns about nighttime light pollution, including P&Z Commissioners, P&Z Director, and PCR witnesses. This was particularly troubling because the SWCA report, “Visual Resources Technical Memo”, prepared for PCR, specifically highlighted the issue of nighttime light pollution. Under **Recommended Mitigation Measures**, the report stated:

"ALTHOUGH NOT SPECIFICALLY IDENTIFIED IN THIS STUDY due to viewing distance, light pollution from the project could create negative visual effects, particularly from residential viewers with long-duration views. Project lighting, such as within the proposed substation and BESS facility, should be of minimum intensity as required for safety and security, and site lighting should be fully shielded and equipped with motion sensors to the extent feasible."

**We therefore conclude that either (a) all parties agreed with Benson family concerns regarding potential nighttime light pollution caused by Diamond Tail Solar operations, or (b) P&Z Commissioners failed to consider their legitimate concerns, which as shown above were actually confirmed by SWCA. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(4). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxi) Environmental Degradation: PCR Decommissioning Plan Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in presentations to the public, PCR repeatedly claimed that:

“Solar power plant site will be restored to the condition as it was 30 years ago”.

PCR also posted on the P&Z public website a document entitled “Decommissioning Plan, Diamond Tail Solar + BESS Project, Sandoval County, NM”, dated September 2024.

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony that contradicted PCR’s claim the Diamond Tail Solar site will be restored to the condition as it was 30 years ago (see Attachment #5). Working from PCR’s Decommissioning Plan, he highlighted the following points:

- “The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use.” (emphasis added.)
- “Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions.” (emphasis added.)
- “After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition*.” (emphasis added.)
- “In addition, the site *may be revegetated* ... .” (emphasis added.)
- “All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.* (emphasis added.)

Based on these PCR points, he concluded that PCR had no plans to restore the site to its original condition as a pinyon-juniper woodland; rather, the site would be turned into farmland or re-developed for other purposes.

This means that the former Diamond Tail Solar would never be put back into its original condition and thus the site would *not* preserve the integrity and character of the area in the which the Special Use was located, contrary to Section 10(2).

Significantly, no one at the December 10 Hearing commented on or disputed Poindexter’s analysis, including P&Z Commissioners, P&Z Director, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with Poindexter’s analysis that PCR misrepresented its plan to restore the Diamond Tail Solar site to its original condition, or (b) P&Z Commissioners failed to consider Poindexter’s analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(2). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxii) Environmental Degradation: PCR Decommissioning Plan Evidence Conflicts with P&Z Staff Land Use Recommendation and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in the P&Z Staff report on ZNCH-24-005, dated October 8, 2024, under **CONDITIONS OF APPROVAL**, it was stated:

“2. Any substantial change in the uses of the subject site shall require the approval of the Board of County Commissioners upon recommendation of the Planning and Zoning Commission. In no case will any residential development of any kind be allowed within the Special Use (SU) district approved for the subject site.”

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony on PCR’s Decommissioning Plan for Diamond Tail Solar (see Attachment #5). Working from that PCR document, he highlighted this key point:

“All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.*” (emphasis added.)

This point shows that PCR may plan to re-develop the former Diamond Tail Solar site for “beneficial uses” other than farming or agriculture or “original pristine condition”, *based on consultation with landowners*. Significantly, PCR makes no mention of **CONDITIONS OF APPROVAL #2**. PCR only refers to consultations with landowners. PCR says nothing about consultations with P&Z or the County Board, as required under Condition of Approval #2.

So, what we have here is the possibility that PCR is “hiding in plain sight” an option to derogate from its conditional approval granted by P&Z.

Astonishingly, no one at the December 10 Hearing commented on or disputed Poindexter’s key point, including P&Z Commissioners and P&Z Director.

P&Z should have focused on Poindexter’s key point and queried PCR about its long-range plans for Diamond Tail Solar and how those plans comported with P&Z Condition of Approval #2. That did not happen.

**We therefore conclude that either (a) all parties agreed with Poindexter’s analysis that PCR may be planning to derogate from P&Z Condition of Approval #2, or (b) P&Z Commissioners failed to consider Poindexter’s analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated their own Conditions of Approval. If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxiii) Economic Discrimination: Reduction of Property Values Issue Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that Diamond Tail Solar would negatively impact economically the residents in the East Mountains, particularly with respect to a decline in property values due to a reduction in scenic viewshed and the creation of an additional burden on residents seeking to obtain fire insurance due to the additional fire and wildfire risks posed by the battery energy storage system (BESS). In this regard, at the December 10, 2024, hearing, Joel Darnold presented oral testimony that SPCE-HOA was denied property damage insurance coverage for HOA owned common areas due to high risk of wildfires in our area. Diamond Tail Solar will only increase this fire risk and potentially eliminate the possibility of residents to obtain fire insurance. Both Applicant PCR and P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(4). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxiv) Economic Discrimination: Sandoval County Income Distribution Evidence by PCR Discriminates against East Mountains Communities and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the **utility and value of the property** in the Special use District and in adjacent zone districts;” (bold emphasis added.)

In response to the Section 10(2) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the utility and value of properties in the site area, any including any economic benefits accruing to local residents and businesses.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The **economic**, noise, glare, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(4) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the economic viability of local adjoining properties, any including any economic benefits accruing to such local residents and businesses.

During the December 10, 2024, hearing, a representative from the Sandoval County Economic Development Department provided oral (but not written) testimony on how Diamond Tail Solar would provide numerous economic benefits to County residents and businesses. At that same hearing, PCR representative provided oral and written testimony also touting the economic benefits of the solar power plant to County residents and businesses (see PCR Public Hearing Presentation, December 10, 2024, posted on P&Z public website). Among other things, PCR claimed that Diamond Tail Solar would provide:

- “>\$30 million in property taxes”; and
- “\$11.8 million over 30 years to local school districts”.

However, neither PCR nor the County Economic Development representative provided any additional details about how such economic benefits of Diamond Tail Solar would be distributed to residents within the County.

As a matter of fact, almost all of the economic benefits provided by Diamond Tail Solar will be distributed to County residents *outside of the East Mountains*. The reason for this is simple: the County provides very little in the way of public support or infrastructure to East Mountains residents. For example, the County does not support any schools in the East Mountains. Therefore, not one penny of the \$11.8 million windfall from Diamond Tail Solar for schools will be spent on East Mountains residents. Similarly, the County does not support a police station in

East Mountains or a recreation center or a full-time, professional fire station. All of these amenities are provided by other counties, specifically, Bernalillo County and Santa Fe County.

**As a result, the situation with respect to the economic benefits of Diamond Tail Solar is fundamentally unfair and discriminatory: East Mountains residents will be asked to shoulder both the economic burdens and the public safety burdens associated with this large-scale industrial facility, while “West County” residents will reap all of the economic benefits without having to assume any of the risks.**

P&Z erred in accepting the economic arguments in favor of Diamond Tail Solar at face value, without considering how these benefits would be applied to and affect East Mountains residents, particularly in relation to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(4). Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxv) Procedural Discrimination: P&Z Evaluated PCR Solar Project Using Different— and Less Stringent—Standards as Compared to other Sandoval County Solar Projects.**

Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that P&Z procedurally discriminated in favor of PCR’s Diamond Tail Solar Project as compared to how P&Z evaluated other similar solar power plant projects in 2023 and in a manner that failed to comport with Sandoval County Comprehensive Plan, Section I, Policy B, Strategy 3. Therefore, P&Z erred in recommending approval of ZNCH-24-005, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxvi) Premature Timing: PCR Interconnection Power Agreement with PNM Years Away.**

Based on statements made by PCR CEO, Mariano Brandi, PCR submitted an application to PNM for interconnection to the Diamond Tail PNM Substation in the 2022. Further statements made by Brandi at a December 3, 2024, public meeting confirmed that the PNM interconnection application process was reviewing the applications submitted in 2014 and 2015, consistent with the PNM Interconnection Manual.

During the December 10, 2024, hearing, opposition testimony from Dennis Kellogg and others stated that the PCR interconnection application with PNM, then pending with the power company, would not be reviewed or considered for advancement to the “power agreement stage” and subsequent study phase for between 7 to 8 years.

According to the PNM application process, interconnection applications are the very beginning of the path toward securing an interconnection power agreement with the utility. Consequently, the concerns raised by the community and organizations at the hearing could easily have been fully addressed as more than adequate time was available to assure full and complete public input. This obvious step was not taken by the P&Z, and if taken would not have harmed PCR’s request for a rezoning of rural land to a Special Use District to encompass an 1,833-acre industrial power plant.



Therefore, P&Z erred by making on premature decision on re-zoning. Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxvii) Premature Location: Technical Reasons for Choosing Diamond Tail Location Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“6. The overall health and safety of the community;”

PCR in its public presentations repeatedly stated that the Diamond Tail Solar location was selected for two technical reasons. First, since the site is located between Albuquerque and Santa Fe, it is ideally located to provide power to both communities. Second, when asked whether PCR had examined other potential solar sites that had less environmental impact on the local communities, PCR affirmed that they had and that the Diamond Tail site was on the only site that met their technical specifications.

As to the first point, PCR’s technical contention is wrong as a matter of physics and electrical engineering. What is important for a power plant is how far away it is from a substation that it allows it to tie into a high-voltage transmission grid. Once a power plant ties into the transmission grid, it is irrelevant how far away it is from its consumers. So, PCR’s contention that they needed a site close to Albuquerque and Santa Fe is technically absurd.

What PCR really needed was a site that was no more than 15 miles away from suitable substation, which is exactly what they got with the Diamond Tail substation and the Diamond Tail Ranch site. However, that choice had nothing to do with its technical proximity to metropolitan sites.

As to PCR's second point, of course, we have no idea whether PCR examined other solar potential sites, and, if so, how many and where. However, what we can say with confidence is that we have easily been able to identify other potentially useful solar sites.

For example, two operational solar farms were previously sited and approved by Sandoval County. These sites are the Encino Solar Energy Center and the Sandoval Solar Energy Center located at 5401 Encino Road NW 87144 and 1501 Encino Drive NW 87124 respectively. In relation to the proposed PCR location, these sites are situated in more favorable areas of Sandoval County, away from public development, and more correctly address the health, safety, and welfare of Sandoval County citizens. The benefits of co-locating the PCR facility within this existing "solar corridor" provide numerous advantages. The opportunity for more favorable construction terrain exists. A network of roads and infrastructure more effectively addresses the danger for potential wildfire, as it is not located close to mountainous and forested land. Given the abundance of existing roads, this location provides more than adequate access to the potential site in the event a fire suppression action is required. Locating the PCR facility in this "solar corridor" has the potential to access existing and planned transmission capacity. The first ever PNM "20-Year Transmission Planning Outlook", dated November 12, 2024, identifies the construction of a major transmission line through this corridor. Transmission efficiencies may be realized by siting the PCR facility in proximity to both of Sandoval County's existing solar assets and the newly operational Atrisco Solar and Battery Farm (located near Double Eagle Airport) in Bernalillo.

Therefore, PCR's claim that the Diamond Tail was, technically, the only suitable site in Sandoval County, much less New Mexico, is demonstrably false.

Our best guess is that PCR chose Diamond Tail because they were able to cut a good financial deal with Diamond Tail Ranch (and because it had a suitable pre-existing substation).

P&Z erred in accepting PCR's technical siting arguments in favor of Diamond Tail Solar at face value, without considering whether PCR could have located other potential solar sites within Sandoval County that were less offensive to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(6). Thus, P&Z recommendation of approval is appealable under Section 22A.

**6. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, we hereby request a Public Hearing by the County Board to consider the instant appeal.

**7. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, we hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**8. Request Equal Standing between Appellant TTRA and Applicant PCR during requested Public Hearing:** During requested hearing, if approved, Appellant TTRA requests standing equal to Applicant PCR when addressing the County Board, to wit to include: that

Appellant TTRA be afforded the same time to present its position as afforded to Applicant PCR, that TTRA be permitted to call its own witnesses, that EMPAC be permitted to cross examine Applicant PCR's witnesses, and that TTRA be afforded access to same audio-visual equipment and options as afforded to Applicant PCR. In a matter as technically complex and environmentally important as ZNCH-24-005, it imperative that proceedings be conducted in a fair and transparent manner in which all sides are given equal opportunity to state their positions, thereby ensuring that the County Board shall be in a position to make an informed decision on the matter of ZNCH-24-005 on behalf of all County residents, particularly those individuals who will be most directly impacted by Applicant PCR's Diamond Tail Solar Project.

**ATTACHMENT #2: TTRA Memorandum Requesting Postponement of December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005**

MEMORANDUM

TO: Chair Dennis R. Trujillo, Sandoval County Planning and Zoning Commission

FROM: Turquoise Trail Regional Alliance (TTRA) &  
East Mountain Protection Action Coalition (EMPAC)

DATE: November 26, 2024

SUBJECT: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

By this memorandum, we hereby formally request postponement, until on or about January 14, 2025, of the Sandoval County Planning and Zoning Commission (“Commission”) Hearing, scheduled for December 10, 2024, on the matter of ZNCH-24-005, Request by PCR Investments (“PCR”), agent for Diamond Tail Ltd, for a Zone Map Amendment from Rural Residential/Agricultural District (RRA) to Special Use District (SU).

Our reasons for formally requesting hearing postponement are set forth below:

1. Holidays: As the Commission and PCR are well aware, the December 10 Hearing is scheduled well into the Holiday period. During this busy and stressful time, it is burdensome for members of the public to prepare for and participate in a public hearing on a matter as important and complex as ZNCH-25-005. A one-month postponement, to get through the Holiday period, would maximize public participation, which is surely in the interests of all parties.
2. Belated PCR document dump: PCR only recently, on or about November 22, 2024, provided to the public its background and supporting written materials relating to ZNCH-24-005 via the Commission website. This documentation includes 22 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length!). It takes time for members of the public to process this amount of material. Since written public testimony to the Commission for the December 10 hearing must be submitted no later than December 6 (72 hours in advance), this means that the public has only been given two weeks to process the PCR documentation. This compressed timeline is unduly burdensome to the public, especially as it occurs over the Thanksgiving Holiday. Finally, we note that PCR failed to provide this documentation prior to the Commission’s initial ZNCH-24-005 hearing on October 8, 2024, and again failed to do so in advance of the follow-up hearing, originally scheduled for November 12, 2024.
3. Ongoing PCR public outreach meetings: PCR is still conducting public outreach meetings, pursuant to Commission request at the initial ZNCH-24-005 public hearing on October 8, 2024. Three of those outreach meetings are scheduled to occur on December 4 and 5 (and there may be other that we don’t know about). This means that the public will have only 1-2 days to process

the information provided by PCR and prepare written testimony in response. This compressed timeline is, once again, unduly burdensome to the public.

4. Follow-up hearing postponement: The follow-up hearing on ZNCH-24-005 was originally scheduled for November 12, 2024. We understand that PCR requested a postponement of one month to have more time to prepare, a postponement which the Commission accommodated and granted. We ask for a similar accommodation and for the same reason, more time to prepare, for the reasons outlined in Points 1-3 above.

5. No compelling reason to expedite: We know of no compelling reason why the December hearing cannot be postponed one month until January 14, 2025. A one-month postponement will in no way derogate from the substantive or procedural issues relating to ZNCH-24-005.

If the Commission has any questions regarding our request for postponement, we urge you to contact us:

Karen Yank, President TTRA  
hamonyank@cybermesa.com  
505-269-9959

Dennis Kellogg, EMPAC Board  
info@theempac.org  
916-715-7066

**ATTACHMENT #3: Response by Staff Director, P&Z Commission to TTRA  
Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission  
on the matter of ZNCH-24-005**

**From:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>

**Date:** December 2, 2024 at 1:58:49 PM MST

**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>

**Cc:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>, Michael Eshleman  
<[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>

**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hi Karen,

Thank you for your email. Subject project (item ZNCH-24-005) will remain on the agenda for the December 10, 2024 Planning and Zoning Commission hearing date.

Sincerely,

<image001.png>

**Daniel J. Beaman**

*Director of Planning and Zoning*

Sandoval County | New Mexico | US

<https://www.sandovalcountynm.gov/>

[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)

**1500 Idalia Road, Building D**

**Bernalillo, NM 87004**

Office: (505) 867-7628

Direct: (505) 867-7617

**ATTACHMENT #4: Response by Wayne Johnson, Sandoval County Manager, to TTRA and EMPAC Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

Begin forwarded message:

**From:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 3:47:43 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Good afternoon Ms. Yank,

At this point, we have an identified applicant and a general group of opponents. While we received a memo from two organizations requesting a deferral, it's hard for us to determine the overall representation of the opponents. There may be those who have made plans to be at the December 10<sup>th</sup> meeting to voice their opposition and would be opposed to a deferral at this late date. Given this situation, and the applicant's request not to defer the matter, we made the decision to proceed with the December 10<sup>th</sup> hearing. At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral. Chair Trujillo has not been in contact with you because as you know, the county discourages any kind of ex parte communication. Doing so could jeopardize the member's ability to vote.

Best,



**Wayne A. Johnson**  
County Manager  
o. 505.867.7551  
c. 505.934.2152  
[www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

**From:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>  
**Sent:** Monday, December 2, 2024 3:35 PM  
**To:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>; Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>; Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>; Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** Re: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hello Wayne and Daniel,

Please give us your reason for denying our request for postponement of the Dec. 10th zoning meeting promptly. Our groups and their lawyers would like to know more detail.

Also, Wayne, I was told by your office that the Chair of the Planning and Zoning Commission is the only person to decide whether to approve a request for postponement. Why then hasn't Chair Dennis Trujillo responded to me instead staff?

Thank you,  
Karen Yank  
Dennis Kellogg



**ATTACHMENT #5: Brent Poindexter Testimony submitted for the Record as part of the December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005:**

Our land in the East Mountains is renowned for its natural beauty so much so that NM-14 was designated a National Scenic Byway and why the Golden Open Space was created. Moreover, it is why tourists from all over our nation and the world flock to the Turquoise Trail and Sandia Crest in order to cherish the view of the East Mountains along the Trail toward Santa Fe.

However, the pine-juniper woodlands and high desert of the East Mountains, while beautiful, are also extremely fragile ecosystems, and once disturbed, it will take decades to regenerate.

The plan for Diamond Tail Solar is to bulldoze, clear, and compact approximately 3 square miles of land. Once configured for Diamond Tail Solar, that part of our ecosystem will be literally wiped out. The resulting brownfields will be a dark blot on the landscape, in full view of the Turquoise Trail and Sandia Crest for the life of the solar power plant. The visual impact cannot be overstated.

But the situation is worse than that. PCR claims that, after the power plant has outlived its usefulness, the *“Solar power plant site will be restored to the condition as it was 30 years ago”*.

However, PCR’s Decommissioning Plan tells another story. Here are some highlights from the Plan:

- “The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use.” (emphasis added.)
- “Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions.” (emphasis added.)
- “After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition*.” (emphasis added.)
- “In addition, the site *may be revegetated* ... .” (emphasis added.)
- “All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners*. (emphasis added.)

**Focusing on the last bullet above, we conclude that there is, in fact, no plan to restore the land to its original condition, even if that were possible.** Instead, what we seem to have here is a corporate maneuver being run through a Special Use loophole:

- Diamond Tail Ranch leases land to PCR, making money;
- PCR uses their solar power plant initiative to change zoning from “Agricultural” to “Special Use” then builds and runs the solar power plant, making more money;
- After the solar power plant is phased out, Diamond Tail Ranch and PCR re-develop the land for “other beneficial uses”, such as building another huge industrial facility (like a Facebook server farm or an Amazon AI center), making lots more money.

**ATTACHMENT #6: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275



## **ATTACHMENT #1: SPCE Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

**1. Subject Appeal:** In the matter of ZNCH-24-005, we, the San Pedro Creek Estates Homeowners' Association, Inc. ("SPCE"), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("County Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error" and (b) a "decision not supported by evidence in the matter".

**2. Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC ("PCR") to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch ("Diamond Tail Solar"), in a remote location in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005, including: Sandoval County personnel representing the Fire Department and Economic Development Department; the manager of Diamond Tail Ranch; a solar power activist representing "Green 22", a group with an unknown number of members; a member of the local electrician's union, who hoped that his union membership would get work building Diamond Tail Solar; an individual who hoped his company would get the contract to build Diamond Tail Solar; and over 29 other individuals citizens, the vast majority of whom did not live in the East Mountains and many of whom either lived outside of Sandoval County (e.g., Las Cruces, NM and Buckeye, AZ) and/or provided letters in support in P&Z Public Comments that were clearly based on a form letter template.

Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (X-Milliron Ranch); long-standing local preservation and environmental groups, such as the East Mountains Protection Action Coalition ("EMPAC"), with approximately 800 members, and the Turquoise Trail Regional Alliance ("TTRA"), which consists of 20 alliance groups, altogether totaling thousands of members; the San Pedro Creek Estates Homeowners Association ("SPCE"), with 379 members; and over 20 other individuals, including District 3 Santa Fe County Commissioner Camilla Bustamante, who testified in her personal capacity.

**Significantly, while we oppose PCR’s proposed Diamond Tail Solar, we support renewable energy and, in particular, solar power.**

**SPCE opposes Diamond Tail Solar for three specific reasons:**

- **First, the proposed power plant is demonstrably unsafe**, because the battery energy storage system is generically prone to fire caused by Lithium-ion storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other catastrophic events, such as criminal misadventure and terrorist attack, and fails to meet industry “best practices” for safety and security for a high wildfire risk location such as the one proposed in the East Mountains.
- **Second, the location of the proposed power plant is demonstrably inappropriate**, because first responders are too far away to effectively intervene in the event of fire or other mishap; the site is subject to wildfires; and the size and scale of this proposed power plant would obviously detract from the scenic beauty of New Mexico, being in full view of Sandia Crest Overlook, being in close proximity to and in full view of the Albuquerque Golden Open Space; being in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico; and being situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art.
- **Third, there are other locations in Sandoval County, and in New Mexico, that are far more appropriate for an industrial facility of this type and scale**, such as so-called “brownfields”, in which the land has already been disturbed, is not subject to wildfire, and already has appropriate industrial-type infrastructure, including existing power distribution and substations, nearby first responders, access to water for firefighting, pre-existing road networks, reliable telecommunications networks, etc., and other locations which already have been developed to accommodate large-scale solar power plants. One such location, in Sandoval County, is the “Solar Corridor” along Encino Road/Drive NW, another is approximately 6.5 miles North-West of Clines Corners NM.

**SPECIAL NOTE:** On December 23, 2024, the Hearing Officer for the Sustainable Land Development Code (“SLDC”), Santa Fe County, issued an order recommending that the Santa Fe County Planning & Zoning Commission **DENY** the application for a Conditional Use Permit by solar power company, AES Clean Energy Development, to build a PV solar power plant near Ranch Viejo, approximately 25 miles north of PCR’s proposed Diamond Tail Solar. Significantly, the AES proposal was denied for exactly the same reasons why we are objecting to Diamond Tail Solar, namely, the AES solar power plant poses a catastrophic risk to public safety due to fire danger and is located in an inappropriate location. Specifically, the Hearing Officer concluded:

“The evidence indicates the Project would be detrimental to the health, safety, and general welfare of the area; the Project would create a potential hazard for fire, panic, or

other danger; and the Project is inconsistent with the purposes of the property's zoning classification and inconsistent with spirit and intent of SLDC and SGMP.”

This finding is particularly important because the AES facility (i.e., BESS) would have been one-half the size of Diamond Tail Solar and would have been located in an area that is at lower risk of wildfire and more accessible to first responders.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped bare to make way for equipment;
- over 500,000 solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking systems for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 11 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 such battery cells;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;

- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

#### **4. Chronology:**

2022

January 19, 2022: PCR Investments SP4 LLC files as a New Mexico Foreign Limited Liability Company

PCR commences site studies for a large solar facility

PCR produces a basic design for a solar facility that is 10% complete

2023

Initial Special Use District (SUD) Zone Map Amendment application submitted

2024

PCR site studies concluded with a lease from Diamond Tail Ranch in East Mountain.

8/15/24: PCR holds public meeting at Zocalo Plaza in western Sandoval County, which is unpublicized in East Mountains.

9/10/24 P&Z holds public hearing on the request from PCR and Diamond Tail Ranch for a Zone Map amendment allow construction of a solar facility in East Mountain. P&Z votes unanimously to DEFER ZNCH-24-005.

9/13/24: PCR application made to New Mexico Department of Transportation for special turnout on NM Route 14, a National Scenic Byway, for Diamond Tail Solar.

10/8/24 P&Z holds second public hearing on ZNCH-24-005; numerous citizens object; P&Z defers further consideration to November 12 public hearing, because P&Z agrees that public was given insufficient time and notice to comment on ZNCH-24-005.

10/29/24: Sandoval County Fire Chief communicates to PCR that they have no objection from a public safety approach to this proposed Project.

10/29/24 & 10/30/24: PCR presents Sandoval public outreach to citizens of East Mountain at Vista Grande Community Center, per requirement of P&Z. November: PCR privately contacts P&Z, requests deferral of public hearing on ZNCH-24-005, scheduled for November, until December 10; P&Z grants PCR private request without public knowledge or input.

12/2/2024: SPCE, EMPAC and TTRA publicly and formally jointly request P&Z defer December hearing on ZNCH-24-005 until January 2025, due to insufficient time to analyze late-arriving PCR documents; P&Z denies deferral requests without explanation.

12/24: Several nearby large landowners and ranchers submit letters stating they do not support the East Mountain location for this large industrial facility, including the one whose land is being used for the construction access road.

12/2/24 & 12/3/24: PCR presents invitation-only outreach meetings to East Mountain residents at Vista Grande Community Center;

12/5/24: SWCA, an environmental and management consulting firm, on PCR's behalf, submits visual simulations of Diamond Tail Solar, but fails to include any from long-range points of view, such as Sandia Crest Tramway & Ski area and a single image from a San Pedro Creek Estates street that is not representative of the panoramic views from SPCE's residential lots, or long-duration views that SWCA describes in their report.

12/9/24: Sandoval County Fire Department sends memo to PCR outlining fire safety requirements, which arrives too late for public consideration for the December 10 hearing.  
12/10/24: Sandoval County P&Z Commission holds third public hearing on ZNCH-24-005, during which many members of the public object to PCR Diamond Tail Solar proposal, providing detailed oral and written opposition testimony; P&Z, without responding to any of the opposition testimony, votes 4 to 0 to recommend the approval of ZNCH-24-005 to Sandoval County Board of Commissioners.

**5. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was made in "error" and was a "decision not supported by evidence in the matter", per Section 22A, for the following substantive reasons:

**(i) Public Input: General Comment on Treatment of Opposition Testimony and Failure of P&Z to Exercise Due Diligence.** Throughout the December 10, 2024, hearing, the record clearly demonstrates that P&Z Commissioners had little or no interest in considering Public testimony in opposition to ZNCH-24-005. In spite of compelling testimony provided by numerous concerned citizens that exposed errors, flaws, and misrepresentations committed by Applicant PCR (see Points ii-xxiii, below for more details), not one P&Z Commissioner, at any time, addressed, commented on, followed up on or questioned opposition testimony (with the exception of Chair Trujillo, who posed a procedural question to P&Z Director Beaman). Public opposition testimony was ignored by P&Z. The attitude of P&Z Commissioners was summed up by Acting Chair Commissioner Marquena, who stated:

*"Okay so we have a unanimous decision. I just want to make this statement that here we have decided to pass it on to the County Commission and I'm hoping between now and then all this information that I have and all these questions I still have in my mind are going to be answered and you know before we get a vote at the County Commission level and that's all we're doing you guys so you know stay stay stay active you know let your voices be heard please but I felt that we had to move this along you know we've been working on this for a while with these folks and I feel that this is a good way to move it on and pass it on to the County Commission. Thank you."*

By failing to address any of the substantive issues raised by the Public in opposition to ZNCH-24-005, P&Z failed to exercise its due diligence, as required under the Sandoval County Comprehensive Plan and Sandoval County Comprehensive Zoning Ordinance, to engage in fact-finding and analysis in order to assist the County Board in making an informed final decision on the matter of ZNCH-24-005. Put simply, P&Z did not do its job. In particular, based on the opposition testimony presented, P&Z failed to provide the County Board with an informed set of "CONDITIONS OF APPROVAL" based on the evidence. For the reasons stated above, P&Z erred when it decided to recommend to County Board approval of ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.



**(ii) Public Input: PCR Documents were Permitted to be Posted Late by P&Z in Error.**

At least two key documents, PCR “Visual Resources Technical Memo” and the Sandoval County Fire Chief memo to PCR, were posted to the public P&Z website less than 72 hours before the scheduled December 10 hearing. These late postings violated SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which mandates, in Section 1, that “All documents and other tangible materials, excluding materials used only for demonstrative purposes at the hearing to facilitate witness testimony, should be submitted to the Planning & Zoning Department at least seventy-two (72) hours prior to the hearing or meeting of meeting of the Board of County Commissioners”. P&Z was in error to accept such late submissions from PCR (or to post late such submissions from PCR). Furthermore, this P&Z error was substantive, as the PCR “Visual Resources Technical Memo”, in particular, is a highly significant document which purports to detail the visual impact of Diamond Tail Solar upon surrounding communities. Unfortunately, due to its late posting, P&Z and members of the public did not have adequate time to review the PCR Technical Memo. It was only after the December 10 hearing that members of the public realized the PCR Technical Memo was both incomplete and misrepresentative (see Point 5(xv) below). Rather than accept such late PCR postings, P&Z should have required PCR to post in a timely manner or should have re-scheduled the December 10 hearing to allow for adequate time to post all relevant materials by all concerned parties (see Point 5(iii) below). As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iii) Public Input: EMPAC/TTRA/SPCE Hearing Postponement Request Denied by P&Z in Error.**

In the runup to the December 10 hearing, PCR belatedly, beginning on or about November 22, 2024, began providing to the Public its background and supporting written materials relating to ZNCH-24-005 via the P&Z website, in spite of the fact that many of PCR’s documents were dated in the 2022-2023-early 2024 timeframes. This documentation included 27 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length). Also, PCR belatedly held “private invitation” meetings, for certain selected members of the Public, as late as December 3 and 4, only a few days before the scheduled December 10 hearing. In response, EMPAC, TTRA and SPCE formally requested that P&Z Chair Trujillo postpone the December 10 hearing until January 14, 2025 (see Attachment #2). The EMPAC/TTRA/SPCE postponement requests were unilaterally denied by P&Z Director, Daniel Beaman, without explanation (see Attachment #3). In a follow-up communication between Karen Yank, TTRA President, and Wayne Johnson, Sandoval County Manager, Johnson stated that: the postponement request was denied because Applicant PCR objected to the postponement; that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement; and that postponement matter was not brought to the attention of Chair Trujillo prior to the hearing because doing so would constitute an “*ex parte* communication” (see Attachment #4). The decision by P&Z Director to deny postponement was in error, for the following five reasons: (a) the postponement request to Chair Trujillo was not an *ex parte* communication and County Manager’s description of such was a mistake; it was precisely the opposite, being a communication on a procedural matter, in manner specified by County Manager Staff, that was made publicly, as it was sent to all relevant County personnel, posted on

the P&Z public website, and shared with Applicant PCR; (b) as the postponement request was not an *ex parte* communication, the postponement decision should have been made by Chair Trujillo, rather than unilaterally by P&Z Director (and County Manager); (c) contrary to County Manager's assertion that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement during the hearing, on December 10 just prior to the hearing, P&Z Director denied EMPAC/TTRA/SPCE request to raise the postponement issue before the P&Z Commission, with the result that the P&Z Commissioners were never informed, before or during the hearing, of the EMPAC/TTRA/SPCE requests to postpone; (d) P&Z and County Manager deferral to PCR on the matter of hearing postponements evidences clearcut bias of P&Z for the Applicant and against the Public; and (e), perhaps most importantly, by denying postponement, members of the Public, including Appellant SPCE, had inadequate time to prepare and submit documents in response to Applicant PCR's documents and materials, thereby depriving P&Z of the ability to make a fair and informed decision regarding a matter as complex and important as ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(iv) **Public Input: PCR Hearing Postponement Request Approved by P&Z in Error.** At the October 8, 2024, hearing on ZNCH-24-005, P&Z unanimously voted to defer ZNCH-24-005 to the next available scheduled Planning & Zoning (i.e., November 12, 2024). However, prior to November 12, 2024, P&Z postponed consideration of ZNCH-24-005 until December 10, 2024. This postponement was done without explanation, without Public input or comment, and without the reason for the postponement being publicly posted on the P&Z website (unlike in the case of the EMPAC/TTRA/SPCE postponement request, which was publicly posted, see point 5(iii) above). Only later did SPCE learn, from PCR upon direct inquiry by EMPAC, that P&Z postponed the November 12 hearing at the private request of Applicant PCR.

The P&Z decision to postpone consideration of ZNCH-24-005, at the private request of PCR and without any Public input, was in fact exactly the kind of private *ex parte* communication that County Manager stated was inappropriate (see Attachment #4 for supporting details). P&Z erred when it granted PCR its private postponement request, and compounded their error by subsequently denying EMPAC/TTRA/SPCE their public postponement request. By doing so, P&Z failed to meet the "fair and impartial" standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", which states, *inter alia*, "WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible". As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(v) **Public Input: PCR Witnesses Permitted to Exceed Time Limit during December Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 6., stipulates that P&Z applicants shall be limited to a total of 10 minutes of direct testimony and an additional total of 5 minutes of rebuttal testimony. At the December 10, 2024, hearing, P&Z permitted Applicant PCR to call several witnesses, many of whom exceeded the 3 minutes allotted to

Public witnesses and all whom together exceeded the 10 minutes total time allocated to PCR as an applicant. To make matters worse, P&Z Acting Chair Commissioner Marquena refused to grant additional time to any Public witness speaking against ZNCH-24-005, repeatedly admonishing witnesses who exceeded their 3-minute speaking time. While P&Z Chair has the authority to grant additional time to any witness, he only did so for witnesses testifying on behalf of Applicant PCR. P&Z erred when it always granted additional time to Applicant PCR witnesses, but refused to grant additional time to any Public witness speaking in opposition to ZNCH-24-005. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(vi) **Public Input: Double Testimony Permitted for PCR Witness during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 2 b)., stipulates, in part, that “No individual will be permitted to speak more than one (1) time”. At the December 10, 2024, hearing, P&Z permitted a witness to speak on behalf of Applicant PCR and then to speak a second time during Public comments in which said witness spoke again in favor of ZNCH-24-005. Many members of the Public at the Hearing objected to this action, but Acting Chair P&Z allowed the PCR witness to speak twice in spite of Public objections. P&Z erred by allowing a PCR witnesses to speak twice. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(vii) **Public Input: Public Opposition Evidence Misrepresented during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Toward the end of the December 10, 2024, hearing, a P&Z Commissioner, speaking remotely, queried P&Z Director whether it was true that 75% of members of the Public who provided written testimony on the matter of ZNCH-24-005 were, in fact, supportive of ZNCH-24-005. P&Z Director answered in the affirmative. As explained in Section 2 above, the P&Z Director’s answer is demonstrably false. P&Z erred by stating, for the record, that substantially more members of the Public supported ZNCH-24-005 than opposed it. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(viii) Public Input: Overall Pattern of Preferential Treatment for PCR by P&Z and thus in Error.** As demonstrated by Points 5(i-vii) above, P&Z evinced a clear pattern of preferential treatment for Applicant PCR—and bias against members of the Public opposing ZNCH-24-005—throughout consideration of ZNCH-24-005. P&Z erred in doing so, as P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ix) Public Safety Threat: Tesla Megapack Fire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated January 3, 2025, we concur in their assessment that PCR misrepresented the Tesla Megapack fire threat posed by the Diamond Tail Solar BESS. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under the NM Stat NM Stat § 3-21-5 (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10A(3) and Section 19F(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(x) Public Safety Threat: Wildfire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR misrepresented the wildfire threat in the Diamond Tail Solar area and that, in fact, a real wildfire threat exists in the proposed BESS deployment location. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10A(3) and Section 19F(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

Furthermore, at the December 10, 2024, hearing, PCR produced—quietly and without fanfare—a new graphic on wildfire risk that contradicted their previous wildfire estimates (see PCR Public Hearing Presentation, December 10, 2024, page 7, posted on P&Z public website). Let us recall PCR’s previous testimony: “*In the unlikely event of a battery fire, the spread of fire off-site will also be unlikely due to the Project area’s minimal wildfire risk*”. The new PCR wildfire graphic clearly shows that the wildfire risk at the site location is *not* minimal (1/6), as claimed by PCR previously, but rather varies between low (3/6) to moderate (4/6), confirming Parsons testimony.

As a result, the overall argument for BESS fire and wildfire safety made by PCR has now been vitiated by PCR's own revised testimony!

P&Z uncritically accepted PCR previous evidence at face value and failed to consider the implications of PCR's latest wildfire analysis and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xi) Public Safety Threat: Inadequate Safety Safeguards Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated January 3, 2025, we concur in their assessment that: (a) PCR has proposed inadequate safeguards to protect the Public from BESS fires and other mishaps; and (b) the PCR proposal for BESS safety does not meet industry "best practices". P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xii) Public Safety Threat: Poor First Responder Access Evidence Unaddressed by PCR and P&Z.** Based on the statements made by the Sandoval County Fire Department Official, in attendance at the December 10, 2024, hearing, the County Fire Department (FD) has informed the applicant that the FD will not be responsible for any fire response or fire-fighting within the 1833-acre industrial power plant. Furthermore, Applicant PCR has not responded to the Fire Department on what measures it will take to address an uncontrolled vegetation fire or toxic lithium battery fire within the perimeter of the massive power plant. Additionally, the FD and the Applicant have not answered the public inquiries concerning the number of fire equipment rated roads necessary to gain access to extinguish both the surrounding wildfire threat and any uncontrolled facility fires that involve highly toxic lithium battery where the number of batteries are in excess of 1,140,000.

There exists no fire equipment rated roads into the Diamond Tail Ranch that can support fighting a fire at the 1,833-acre solar power plant. The rural unimproved road that is proposed for an access route, and conceivably could be upgraded to a fire equipment rating, is not within Sandoval County jurisdiction and/or control. Clearly, interjurisdictional cooperation has not occurred in the submission of this application or its review. Consequently, to build a fire equipment rated road in Santa Fe County would require a minimum of a Santa Fe County review and approval, in advance, to substantiate access to the power plant from a National Scenic Highway as an appropriate use of the scenic highway. In addition, as the proposed access road for firefighting is in Santa Fe County, no evidence exists PCR has secured the necessary agreements to have Santa Fe County provide as primary or secondary fire protection and

response services to Diamond Tail Solar. Furthermore, the two rural roads within Sandoval County, which conceivably could be improved to accommodate a fire equipment rating, are not fully under the control of Sandoval County as they are held in part or whole as private roads or a road that cross the protected conservation easement owned by the City of Albuquerque and is designated the Golden Open Space. Neither the P&Z staff report nor PCR have addressed this gap in evidence to support the rezoning application. Should PCR's insurance carrier or Sandoval or Santa Fe County's FD's require two access roads, both with a fire equipment rating, there exist no such roads to accommodate the requirement. In accordance with New Mexico State industrial building standards, the applicant has not consulted the New Mexico State Fire Marshal, Code Enforcement Officer to determine if the proposed 1,833-acre rural wild land location is suitable for the construction of one the largest battery storage facilities supported by solar panels in New Mexico. The State Fire Marshal may find this power plant location unbuildable.

These omissions in the hearing demonstrate the PCR application failed to receive a full and complete review in the Planning and Zoning staff report, as these critical items were unanswered by the FD or PCR or addressed sufficiently in the report. P&Z failed to address these detrimental threats to the public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and the Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiii) Public Safety Threat: NM-14 Construction Traffic Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR substantially under-estimated the increase in traffic along NM-14 during construction of Diamond Tail Solar. Traffic density—and thus safety and impact to public infrastructure—is an important factor affecting public safety and general welfare. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiv) Public Safety Threat: Traffic Safety Evidence along Puertocito Road Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR misrepresented the traffic safety problem along Puertocito Road likely to result from construction of Diamond Tail Solar. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by

making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xv) Environmental Degradation: Visual Impact Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral testimony by Karen Yank, TTRA, and by Dennis Kellogg, EMPAC, and on evidence presented in oral and written testimony by Jon and Julie Wannlund, at the December 10, 2024, hearing, and in the TTRA follow up appeal to the County Board dated January 8, 2025, and in the Wannlund follow up appeal dated January 8, 2025, we concur in their assessment that PCR misrepresented the visual impact of Diamond Tail Solar on surrounding land and communities. P&Z uncritically accepted PCR evidence at face value and thus failed to question or even consider PCR's demonstrably incorrect claim that Diamond Tail Solar was "visually similar to PNM's electrical grid infrastructure currently existing on Diamond Tail Ranch". As a result, P&Z failed, abysmally, to meet the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(2) and Section 19(F)(5). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xvi) Environmental Degradation: Sandoval County "Unsightly Use of Land" Standard Unaddressed by PCR and P&Z.** Based on the evidence presented in oral testimony by Karen Yank, TTRA, and by Dennis Kellogg, EMPAC, at the December 10, 2024, hearing, and in the TTRA follow up appeal to the County Board dated January 8, 2025, and in the Wannlund follow up appeal dated January 8, 2025, we concur in their assessment that both PCR and P&Z failed to address the "Unsightly Land Use" standard set forth in NM Stat § 3-21-5, A(8) (2018), particularly with respect to the negative scenic impact on NM-14, the Turquoise Trail, a designated National Scenic Byway. P&Z uncritically accepted PCR evidence at face value and thus failed to question or even consider PCR's demonstrably incorrect claim that Diamond Tail Solar would preserve the integrity and character of the surrounding land and scenic vistas. As a result, P&Z failed, abysmally, to meet the standards set forth in NM Stat § 3-21-5, A(8) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(2) and Section 19(F)(5). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xvii) Environmental Degradation: Water Usage Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR significantly underestimated water usage for both construction and operation of Diamond Tail Solar. Because undisputable data show annual declines in East Mountain water sources, this under-estimation poses a detrimental threat to public welfare. P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(3). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.



**(xviii) Environmental Degradation: Puertocito Concerns regarding Well Water**

**Contamination and Access Unaddressed by PCR and P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR construction and operation of Diamond Tail Solar could negatively impact the ability of Puertocito residents to obtain clean, affordable, and sustainable water, due to potential contamination of their water wells during construction and due to running their wells dry as a result of PCR operations once the solar power plant is built. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xix) Environmental Degradation: Thermal Pollution Evidence Unaddressed by PCR and P&Z.**

Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that thermal pollution created by operation of the proposed Diamond Tail power plant poses a detrimental threat to public safety, health, and general welfare. Both Applicant PCR and P&Z failed to address this detrimental threat to public safety, health and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xx) Environmental Degradation: Nighttime Light Pollution Evidence Unaddressed by PCR and P&Z.**

The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”



In response to the Section 10(A)(2) requirement, Applicant PCR failed to address the issue of light pollution being created by Diamond Tail Solar during nighttime construction or during nighttime operations.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The economic, noise, **glare**, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(F)(4) requirement, Applicant PCR only addressed glare and glint emanating off the solar panels during the daytime.

In a report dated October 8, 2024, P&Z Staff, under “**FINDINGS OF FACT**”, stated, in part, that:

“5. The request for Special Use (SU) district for zoning for the proposed development is consistent with the policies in the Sandoval County Comprehensive Plan as shown in this report (p. 2).”

and

“6. The request for Special Use (SU) Zone Map Amendment satisfied the criteria for review for a Zone Map Amendment as establish in Section 19, Amendments, Subsection F, Guidelines (1-7). Subsection F.”

Based on these Findings of Fact, P&Z Staff recommended approval of ZNCH-24-005.

As a matter of fact, the proposed Diamond Tail Solar location has one of the most pristine and scenic nighttime viewsheds in all of New Mexico. Currently, there are no major facilities of any sort anywhere near the proposed site. Therefore, significant nighttime light pollution by an industrial facility, such as Diamond Tail Solar, would fail to preserve the integrity of the area within the meaning of Section 10(A)(2) and would constitute “glare” within the meaning of Section 19(F)(4).

During the December 10, 2024, hearing, the Benson family presented oral testimony in which they specifically raised the issue of nighttime light pollution. They raised two concerns. First, that nighttime construction of Diamond Tail Solar would cause light pollution. Second, and far more concerning, that the operation of security motion sensors at night, triggered by PCR operations and/or animal movement, would lead to frequent but random nighttime light pollution all year around.

Significantly, no one at the December 10 Hearing commented on or responded to the Benson family concerns about nighttime light pollution, including P&Z Commissioners, P&Z Director,

and PCR witnesses. This was particularly troubling because the SWCA report, “Visual Resources Technical Memo”, prepared for PCR, specifically highlighted the issue of nighttime light pollution. Under **Recommended Mitigation Measures**, the report stated:

"ALTHOUGH NOT SPECIFICALLY IDENTIFIED IN THIS STUDY due to viewing distance, light pollution from the project could create negative visual effects, particularly from residential viewers with long-duration views. Project lighting, such as within the proposed substation and BESS facility, should be of minimum intensity as required for safety and security, and site lighting should be fully shielded and equipped with motion sensors to the extent feasible."

**We therefore conclude that either (a) all parties agreed with Benson family concerns regarding potential nighttime light pollution caused by Diamond Tail Solar operations, or (b) P&Z Commissioners failed to consider their legitimate concerns, which as shown above were actually confirmed by SWCA. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(2) and Section 19(F)(4). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxi) Environmental Degradation: PCR Decommissioning Plan Evidence Conflicts with P&Z Staff Land Use Recommendation and Unaddressed by P&Z.**

The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(A)(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in presentations to the public, PCR repeatedly claimed that:

“Solar power plant site will be restored to the condition as it was 30 years ago”.

PCR also posted on the P&Z public website a document entitled “Decommissioning Plan, Diamond Tail Solar + BESS Project, Sandoval County, NM”, dated September 2024.

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony that contradicted PCR’s claim the Diamond Tail Solar site will be restored to the condition as it was 30 years ago (see Attachment #5). Working from PCR’s Decommissioning Plan, he highlighted the following points:

- “The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use.” (emphasis added.)
- “Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions.” (emphasis added.)
- “After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition*.” (emphasis added.)
- “In addition, the site *may be revegetated* ... .” (emphasis added.)
- “All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.* (emphasis added.)

Based on these PCR points, he concluded that PCR had no plans to restore the site to its original condition as a pinyon-juniper woodland; rather, the site would be turned into farmland or re-developed for other purposes.

This means that the former Diamond Tail Solar would never be put back into its original condition and thus the site would *not* preserve the integrity and character of the area in the which the Special Use was located, contrary to Section 10(A)(2).

Significantly, no one at the December 10 Hearing commented on or disputed Poindexter’s analysis, including P&Z Commissioners, P&Z Director, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with Poindexter’s analysis that PCR misrepresented its plan to restore the Diamond Tail Solar site to its original condition, or (b) P&Z Commissioners failed to consider Poindexter’s analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(2). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxii) Economic Discrimination: Reduction of Property Values Issue Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that Diamond Tail Solar would negatively impact economically the residents in the East Mountains, particularly with respect to a decline in property values due to a reduction in scenic viewshed. In this regard, at the December 10, 2024 hearing, Joel Darnold presented oral testimony that SPCE-HOA was denied property damage insurance coverage for HOA-owned common areas due to the high risk of wildfire in our area. Diamond Tail Solar will only increase this fire risk and potentially eliminate the ability of residents to obtain fire insurance. Both Applicant PCR and P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(3) and Section 19(F)(4). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxiii) Economic Discrimination: Sandoval County Income Distribution Evidence by PCR Discriminates against East Mountains Communities and Unaddressed by P&Z.**

The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the **utility and value of the property** in the Special use District and in adjacent zone districts;” (bold emphasis added.)

In response to the Section 10(A)(2) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the utility and value of properties in the site area, any including any economic benefits accruing to local residents and businesses.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The **economic**, noise, glare, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(F)(4) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the economic viability of local adjoining properties, any including any economic benefits accruing to such local residents and businesses.

During the December 10, 2024, hearing, a representative from the Sandoval County Economic Development Department provided oral (but not written) testimony on how Diamond Tail Solar would provide numerous economic benefits to County residents and businesses. At that same hearing, PCR representative provided oral and written testimony also touting the economic benefits of the solar power plant to County residents and businesses (see PCR Public Hearing Presentation, December 10, 2024, posted on P&Z public website). Among other things, PCR claimed that Diamond Tail Solar would provide:

- “>\$30 million in property taxes”; and
- “\$11.8 million over 30 years to local school districts”.

However, neither PCR nor the County Economic Development representative provided any additional details about how such economic benefits of Diamond Tail Solar would be distributed to residents within the County.

As a matter of fact, almost all of the economic benefits provided by Diamond Tail Solar will be distributed to County residents *outside of the East Mountains*. The County does not support any schools in the East Mountains. Therefore, not one penny of the \$11.8 million windfall from Diamond Tail Solar for schools will be spent on East Mountains residents. Similarly, the County does not support a police station in East Mountains or a recreation center or a full-time fire station. All of these amenities are provided by other counties, specifically, Bernalillo County and Santa Fe County.

**As a result, the situation with respect to the economic benefits of Diamond Tail Solar is fundamentally unfair and discriminatory: East Mountains residents will be asked to shoulder both the economic burdens and the public safety burdens associated with this large-scale industrial facility, while “West County” residents will reap all of the economic benefits without having to assume any of the risks.**

P&Z erred in accepting the economic arguments in favor of Diamond Tail Solar at face value, without considering how these benefits would be applied to and affect East Mountains residents, particularly in relation to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(2) and Section 19(F)(4). Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxiv) Procedural Discrimination: P&Z Evaluated PCR Solar Project Using Different— and Less Stringent—Standards as Compared to other Sandoval County Solar Projects.**

Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8,

2025, we concur in their assessment that P&Z procedurally discriminated in favor of PCR's Diamond Tail Solar Project as compared to how P&Z evaluated other similar solar power plant projects in 2023 and in a manner that failed to comport with Sandoval County Comprehensive Plan, Section I, Policy B, Strategy 3. Therefore, P&Z erred in recommending approval of ZNCH-24-005, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxv) Premature Timing: Timing and Likelihood of Obtaining PNM Power Agreement Misrepresented by PCR and Unaddressed by P&Z.**

Based on statements made by PCR CEO, Mariano Brandi, PCR submitted an application to PNM for interconnection to the Diamond Tail PNM Substation in the 2022. Further statements made by Brandi at a December 3, 2024, public meeting confirmed that the PNM interconnection application process was reviewing the applications submitted in 2014 and 2015, consistent with the PNM Interconnection Manual.

During the December 10, 2024, hearing, opposition testimony from Dennis Kellogg that the PCR interconnection application with PNM, then pending with the power company, would not be reviewed or considered for advancement to the "power agreement stage" and subsequent study phase for between 7 to 8 years.

According to the PNM application process, interconnection applications are the very beginning of the path toward securing an interconnection power agreement with the utility. Consequently, the concerns raised by the community and organizations at the hearing could easily have been fully addressed as more than adequate time was available to assure full and complete public input. This obvious step was not taken by the P&Z.

Therefore, P&Z erred by making a premature decision on re-zoning. Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxvi) Premature Location: Technical Reasons for Choosing Diamond Tail Location Misrepresented by PCR and Unaddressed by P&Z.**

The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“6. The overall health and safety of the community;”

PCR in its public presentations repeatedly stated that the Diamond Tail Solar location was selected for two technical reasons. First, since the site is located between Albuquerque and Santa Fe, it is ideally located to provide power to both communities. Second, when asked whether PCR had examined other potential solar sites that had less environmental impact on the local communities, PCR affirmed that they had, and that the Diamond Tail site was on the only site that met their technical specifications.

As to the first point, PCR’s technical contention is wrong as a matter of physics and electrical engineering. What is important for a power plant is how far away it is from a substation that allows it to tie into a high-voltage transmission grid. Once a power plant ties into the transmission grid, it is irrelevant how far away it is from its consumers. So, PCR’s contention that they needed a site close to Albuquerque and Santa Fe is technically absurd.

What PCR actually requires technically, is a a site that is no more than 15 miles away from suitable substation. The Diamond Tail substation provides this requirement for the proposed location. However, that choice had nothing to do with its technical proximity to metropolitan sites.

As to PCR’s second point, of course, we have no idea whether PCR examined other solar potential sites, and, if so, how many and where. However, what we can say with confidence is that we have easily been able to identify other technically feasible alternate locations.

For example, two operational solar farms were previously sited and approved by Sandoval County. These sites are the Encino Solar Energy Center and the Sandoval Solar Energy Center located at 5401 Encino Road NW 87144 and 1501 Encino Drive NW 87124 respectively. In relation to the proposed PCR location, these sites are situated in more favorable areas of Sandoval County, with lower wildfire risk, away from public development, and more correctly address the health, safety, and welfare of Sandoval County citizens. The benefits of co-locating the PCR facility within this existing “solar corridor” provide numerous advantages. The opportunity for more favorable construction terrain exists. A network of roads and infrastructure more effectively addresses the danger for potential wildfire, as it is not located close to mountainous and forested land. Given the abundance of existing roads, this location provides more than adequate access to the potential site in the event a fire suppression action is required. Locating the PCR facility in this “solar corridor” has the potential to access existing and planned transmission capacity. The first ever PNM “20-Year Transmission Planning Outlook”, dated November 12, 2024, identifies the construction of a major transmission line through this

corridor. Transmission efficiencies may be realized by siting the PCR facility in proximity to both of Sandoval County's existing solar assets and the newly operational Atrisco Solar and Battery Farm (located near Double Eagle Airport) in Bernalillo.

Therefore, PCR's claim that the Diamond Tail was, technically, the only suitable site in Sandoval County, much less New Mexico, is demonstrably false.

P&Z erred in accepting PCR's technical siting arguments in favor of Diamond Tail Solar at face value, without considering whether PCR could have located other potential solar sites within Sandoval County that were less offensive to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(A)(2) and Section 19(F)(6). Thus, P&Z recommendation of approval is appealable under Section 22A.

**6. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, we hereby request a Public Hearing by the County Board to consider the instant appeal.

**7. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, we hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**8. Request Equal Standing between Appellant SPCE and Applicant PCR during requested Public Hearing:** During requested hearing, if approved, Appellant SPCE requests standing equal to Applicant PCR when addressing the County Board, to wit to include: that Appellant SPCE be afforded the same time to present its position as afforded to Applicant PCR, that SPCE be permitted to call its own witnesses, that SPCE be permitted to cross examine Applicant PCR's witnesses, and that SPCE be afforded access to same audio-visual equipment and options as afforded to Applicant PCR. In a matter as technically complex and environmentally important as ZNCH-24-005, it imperative that proceedings be conducted in a fair and transparent manner in which all sides are given equal opportunity to state their positions, thereby ensuring that the County Board shall be in a position to make an informed decision on the matter of ZNCH-24-005 on behalf of all County residents, particularly those individuals who will be most directly impacted by Applicant PCR's Diamond Tail Solar Project.



**ATTACHMENT #2: SPCE Memorandum Requesting Postponement of December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005**



**San Pedro Creek Estates Homeowners' Association c/o HOAMCO  
P. O. Box 67590  
Albuquerque, NM 87193-7590**

November 26, 2024

Chair Dennis R. Trujillo, Sandoval County Planning and Zoning Commission  
1500 Idalia Road, Building D,  
Bernalillo, NM 87004

Dear Mr. Trujillo,

San Pedro Creek Estates (SPCE) Homeowner's Association (HOA) hereby formally requests postponement, until on or later than January 14, 2025, of the Sandoval County Planning and Zoning Commission ("Commission") Hearing, scheduled for December 10, 2024, on the matter of ZNCH-24-005, Request by PCR Investments ("PCR"), agent for Diamond Tail Ltd, for a Zone Map Amendment from Rural Residential/Agricultural District (RRA) to Special Use District (SU).

Our reasons for formally requesting hearing postponement are set forth below:

**1. Holidays:** As the Commission and PCR are well aware, the December 10 hearing is scheduled well into the Holiday period. During this busy and stressful time, it is burdensome for members of the public to prepare for and participate in a public hearing on a matter as important and complex as ZNCH-25-005. A one-month postponement, to get through the Holiday period, would maximize public participation, which is surely in the interests of all parties.

**2. Belated PCR document dump:** PCR only recently, on or about November 22, 2024, provided to the public its background and supporting written materials relating to ZNCH-24-005 via the Commission website. This documentation includes 22 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length!). It takes time for members of the public to process this amount of material. Since written public testimony to the Commission for the December 10 hearing must be submitted no later than December 6 (72 hours in advance), this means that the public has only been given two weeks to process the PCR documentation. This compressed timeline is unduly burdensome to the public, especially as it occurs over the Thanksgiving Holiday. Finally, we note that PCR failed to provide this documentation prior to the

Commission's initial ZNCH-24-005 hearing on October 8, 2024, and again failed to do so in advance of the follow-up hearing, originally scheduled for November 12, 2024.

**3. Ongoing PCR public outreach meetings:** PCR is still conducting public outreach meetings, pursuant to Commission request at the initial ZNCH-24-005 public hearing on October 8, 2024. Three of those outreach meetings are scheduled to occur on December 4 and 5 (and there may be others that we don't know about). This means that the public will have only 1-2 days to process the information provided by PCR and prepare written testimony in response. This compressed timeline is, once again, unduly burdensome to the public.

**4. Follow-up hearing postponement:** The follow-up hearing on ZNCH-24-005 was originally scheduled for November 12, 2024. We understand that PCR requested a postponement of one month to have more time to prepare, a postponement which the Commission accommodated and granted. We ask for a similar accommodation and for the same reason, more time to prepare, for the reasons outlined in Points 1-3 above.

**5. No compelling reason to expedite:** We know of no compelling reason why the December hearing cannot be postponed one month until January 14, 2025. A one-month postponement will in no way derogate from the substantive or procedural issues relating to ZNCH-24-005.

If the Commission has any questions regarding our request for postponement, you may contact us by email at [board@hoa.sanpedrocreek.org](mailto:board@hoa.sanpedrocreek.org) or call me directly at 505-350-8276.

Sincerely,

A handwritten signature in black ink, appearing to be "James", written in a cursive style.

**ATTACHMENT #3: Response by Staff Director, P&Z Commission to SPCE  
Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission  
on the matter of ZNCH-24-005**

**From:** Daniel Beaman

**Sent:** Monday, December 02, 2024 2:08 PM

**To:** jrdarno@gmail.com

**Cc:** Katherine Bruch <kbruch@sandovalcountynm.gov>; Wayne Johnson <wjohnson@sandovalcountynm.gov>; Michael Eshleman <Meshleman@sandovalcountynm.gov>; Doraida Arias <darias@sandovalcountynm.gov>; 'Board' <board@hoa.sanpedrocreek.org>; 'Ana C. Moreira' <AMoreira@hoamco.com>

**Subject:** RE: SPCE requests Delay of Dec 10 hearing on PCR Solar Farm application

Dear Joel Darnold,

Thank you for your email. Subject project (item ZNCH-24-005) will remain on the agenda for the December 10, 2024 Planning and Zoning Commission hearing date.

Sincerely,



**Daniel J. Beaman**

*Director of Planning and Zoning*

Sandoval County | New Mexico | US

<https://www.sandovalcountynm.gov/>

[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)

**1500 Idalia Road, Building D**

**Bernalillo, NM 87004**

Office: (505) 867-7628

Direct: (505) 867-7617

**ATTACHMENT #4: Response by Wayne Johnson, Sandoval County Manager, to TTRA and EMPAC Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

Begin forwarded message:

**From:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 3:47:43 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Good afternoon Ms. Yank,

At this point, we have an identified applicant and a general group of opponents. While we received a memo from two organizations requesting a deferral, it's hard for us to determine the overall representation of the opponents. There may be those who have made plans to be at the December 10<sup>th</sup> meeting to voice their opposition and would be opposed to a deferral at this late date. Given this situation, and the applicant's request not to defer the matter, we made the decision to proceed with the December 10<sup>th</sup> hearing. At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral. Chair Trujillo has not been in contact with you because as you know, the county discourages any kind of ex parte communication. Doing so could jeopardize the member's ability to vote.

Best,



**Wayne A. Johnson**  
County Manager  
o. 505.867.7551  
c. 505.934.2152  
[www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

**From:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>  
**Sent:** Monday, December 2, 2024 3:35 PM  
**To:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>; Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>; Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>; Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** Re: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hello Wayne and Daniel,

Please give us your reason for denying our request for postponement of the Dec. 10th zoning meeting promptly. Our groups and their lawyers would like to know more detail.

Also, Wayne, I was told by your office that the Chair of the Planning and Zoning Commission is the only person to decide whether to approve a request for postponement. Why then hasn't Chair Dennis Trujillo responded to me instead staff?

Thank you,  
Karen Yank  
Dennis Kellogg

**ATTACHMENT #5: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275



of the beauty and quality of our environment, conserve our natural resources and work to abate rather than cause public nuisances including economic issues, noise, glare, or odor effects.

**Sec. 15(1). - Health and Sanitation.**

**A. Findings and Purpose.**

1. It is the purpose of this Section to promote the health, safety and welfare of the citizens of the county by protecting property from blighting and deteriorating conditions by establishing minimum standards governing the maintenance, appearance and conditions of all residential and non-residential premises.
2. **It is the purpose of this Section to enhance the beauty and quality of the environment; promote the conservation of natural resources; prevent the spread of disease and the creation of nuisances; and to provide for the abatement of public nuisances including: “economic, noise, glare, or odor effects”.**

F.

**Zone Map Amendment Guidelines.** The County Board shall not approve a Zone Map Amendment unless satisfactory provision has been made concerning the following, where applicable:

1.

Accessibility to property and existing or proposed structures thereon, with particular reference to automobile and pedestrian safety, traffic control, **and emergency access in case of fire, flood or catastrophe;**

**Contrary to these and other Planning and Zoning policies, procedures and statutory requirements the Planning and Zoning Commission has both erred and has abused their discretion in approving this zoning change.**

**They have also not provided an evacuation plan, have not utilized proper licensed fire professionals, and have loosely approved this as if it were no more than a solar “farm” rather than a Lithium ion Battery Energy Center and the decision was not supported by evidence of Fire Safety or Air Safety in the matter.**

**The Placitas Area Plan and Wildlife Corridor has been ignored.**

<https://www.sandovalcountynm.gov/wp-content/uploads/2017/06/papfinal.pdf>

**The proximity and SAFETY RISK of Lithium thermal runaways of communities (La Madera, Puerticito SPCE, PAAKO, and others has been ignored.**

**The proximity to the Sandia Forest and Wilderness Area and WILDLIFE Safety has been ignored including endangered species.**

**SEE WHOA PUBLIC COMMENT by Patience O’Dowd Exhibit 1**

**SEE Liliana Gonzales-Pittman Affidavit Exhibit 2**



## EXHIBIT I

### **NEW MEXICO'S FIRST LITHIUM-ION-BATTERY ENERGY STORAGE CENTER IS NOT A SIMPLE SOLAR "FARM"**

12/10/2024 POD

**IT IS A LACK OF TRANSPARENCY AND SAFETY NIGHTMARE  
NEXT TO A FOREST COMMUNITY**

**URGENT Note:** There are no regulations addressing the **thermal runaways, evacuations required due to toxic and corrosive gasses causing pulmonary edema, seizures, coma** also **affecting, kidneys, and heart functions.**

"The Public Regulation Commission reviews and approves renewable energy procurement plans and reports of Investor Owned Utilities ("IOU's") and Rural Electric Cooperatives ("Coops") pursuant to the Renewable Energy Act ("REA"), §§ 62-16-1 et seq. NMSA 1978 and Title 17.9. 572 NMAC ("Rule 572)".

**==> BUT THERE IS NOTHING AT ALL IN THE STATUTORY CODE OR ADMINISTRATIVE CODE DEALING WITH THESE ENERGY STORAGE CENTERS THERMAL RUNAWAYS which burn for days and Sandoval County P&Z does not even have a Fire Professional on staff as of a couple weeks ago as required per their staffing chart.**

**SAN FRANCISCO IS LOOKING AT REQUIRING THESE TO BE AWAY FROM COMMUNITIES ETC. LIKE THE Otay and Escondido Fire in 2024. California's Bill SB38 details 3 incidents/fires in 2023.**

**[https://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/sb\\_38\\_analysis.pdf](https://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/sb_38_analysis.pdf)**

**Fires are costly and these energy centers impact property values as well as health and environment. They need to be far from communities and forests.**

**WHY IS THIS INFORMATION IN THIS POST NOW BLOCKED?**

Q Search for Electrician

On Tuesday, December 10, 2024, the Sandoval County Planning and Zoning Commission will hold a Public Hearing at 4:30 P.M. in the 3rd Floor Commission Chambers at the Sandoval County Administration Bldg, 1500 Idalia Road Building D, Bernalillo, New Mexico, 87004.



**Diamond Tail Ranch a Move**  
Location  
May 11, 2016

I think we have some of the best undisturbed bar's drops around. Of course I'm partial, but have the photos to prove it.

Most relevant

**Melany Luna Sarate**  
Yes you do!

**Walter Hernandez**

Chats



Search

Search for House Cleaning

LIKE    reply    share

Joyce Apodaca · Tijeras, NM · 21h

My big question is why doesn't the county director answers email or phone calls. What is he hiding.

Agree    Reply    Share    (+1) 4

Patience O'Dowd · Mustang Mesa · Now

Joyce GOOD QUESTION 1) the connecting HIGHWAY - I25 to Rt 40 a 20 year plan a stted in this document.  
<https://whoanm.org/LoopRd/docs/DOT%20Corridor%20Study.pdf> They hve legal ways of hiding their plans fom inspection of public records requests, it used to be called "Property Aquisition".

Like    Reply    Share

Patience O'Dowd · Mustang Mesa · Now

2) This is not a SOLAR FARM. This is a LITHIUM ION BATTERIES a first for NM

Chats

Search for Lawn Service

Patience O'Dowd · Mustang Mesa · Now

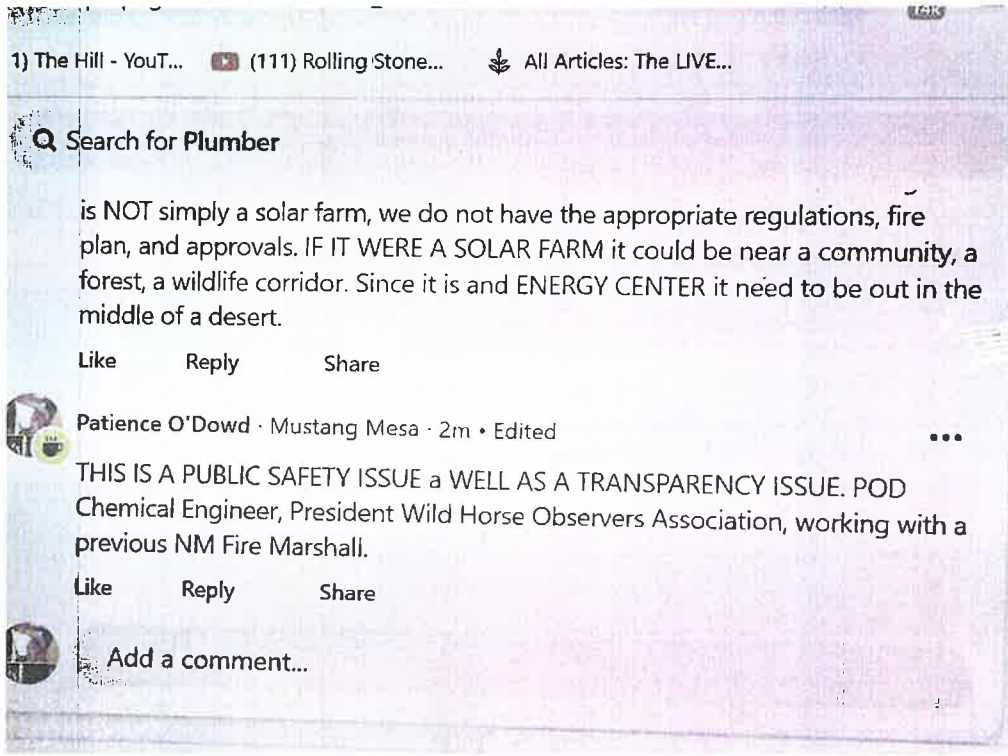
2) This is not a SOLAR FARM. This is an ENERGY STORAGE CENTER utilizing LITHIUM ION BATTERIES a first for NM and which have no appropriate statutes for FIRE SAFETY. These ION BATTERIES ARE HIGHLY FLAMMABLE (THERMAL RUNAWAY) , EMIT TOXIC CORROSIVE FUMES, BURN FOR DAYS AND WEEKS, REQUIRING EVACUATION.

Like    Reply    Share

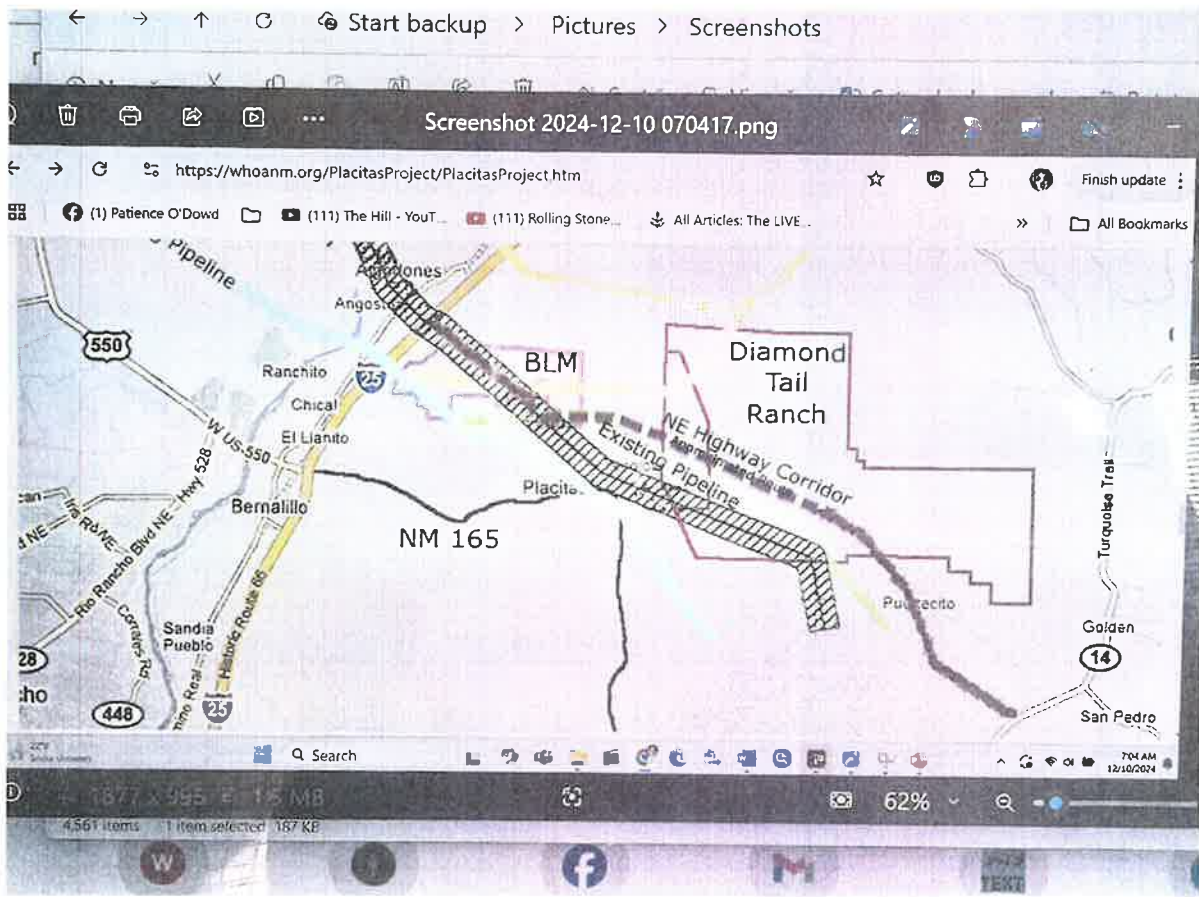
Patience O'Dowd · Mustang Mesa · Now · Edited

3) The media I won't name is quoting the out of country vendor/contractor that NM has 300 Solar Farms and that these are STANDARD. This is misleading. This is NOT simply a solar farm, we do not have the appropriate regulations, fire plan, and approvals. IF IT WERE A SOLAR FARM it could be near a community, a forest, a wildlife corridor. Since it is and ENERGY CENTER it need to be out in the middle of a desert.

Like    Reply    Share    Chats



**WHY ARE MANY REALTORS ON THE EAST SIDE OF SANDIA ADVERTISING THEIR PROPERTIES WITH PLACITAS AS THE NEAREST GRADE SCHOOL? See 20 YEAR PLAN HERE WHICH WAS PUBLISHED IN 2001: <https://whoanm.org/LoopRd/docs/DOT%20Corridor%20Study.pdf> Highway through Diamond Tail's (FLAMABLE ENERGY STORAGE CENTER) to RT 14 then to I40. Approximately 20,000 TRIP/DAY.**





SENATE COMMITTEE ON ENERGY, UTILITIES AND  
COMMUNICATIONS

Senator Steven Bradford, Chair  
2023 - 2024 Regular

Bill No. SB 338 Hearing Date: 4/10/2024  
Author: Linn  
Version: 3/22/2024 Amended  
Emergency: No Fiscal: Yes  
Consultants: Nisha Bhatnagar

**SUBJECT:** Batteries energy storage facilities; emergency response; and construction

**DIGEST:** This bill requires each battery energy storage facility in the state to create an emergency response plan and an evacuation plan that address the safety of the battery energy storage facility.

**ANALYSIS:**

Existing law:

1. Requires the State Energy Resources Conservation and Development Commission to act as the California Energy Commission (CEC) to undertake various actions in the area of meeting the state's clean energy and pollution reduction objectives, including implementing the Long-Duration Energy Storage Program to provide financial incentives for providing storage capacity energy storage systems to the electrical grid for purposes of providing critical capacity and grid services (Public Resources Code 29640 et seq).
2. Establishes and vests the California Public Utilities Commission (CPUC) with regulatory authority over public utilities, including electrical corporations (California Constitution, Article XII).
3. Requires the CPUC to determine appropriate targets of investments in clean energy utility to procure viable and cost-effective energy storage systems to be achieved by December 31, 2015, and December 31, 2020. Requires the governing board of each local utility or local electric utility to initiate a process to determine appropriate targets of investments for the utility to procure viable and cost-effective energy storage systems to be achieved by December 31, 2016, and December 31, 2020 (Public Resources Code 22336).

- 6) Authorizes the CPUC, after a hearing, to require every public utility to consistently maintain and operate its lines, plant, system equipment, structures, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. (Public Utilities Code, § 708.)
- 7) Requires the CPUC, as part of the Public Utilities Act, to implement and enforce standards for the maintenance and operation of facilities for the generation, transmission of electricity owned by an electrical corporation created outside this state to ensure their reliable operation. (Public Utilities Code, § 709.)
- 8) Authorizes the California Occupational Safety and Health Board, or Cal/OSHA, if set up, the Department of Industrial Relations (DIR) to establish, amend, or repeal at least two members of the board of seven. A board of seven occupational safety and health standards and codes. Requires Cal/OSHA to adopt standards that are as effective as the federal standard, as specified. Establishes that Cal/OSHA is the only agency with the authority to adopt occupational safety and health standards. (Labor Code, § 142.5.)
- 9) Requires every employer to furnish employment and a place of employment that is safe and healthful for the employees, including requiring an injury prevention plan. (Labor Code, § 6401.5.)

The bill requires each utility to erect a secure facility in the state to have an emergency response plan and an evacuation plan that covers the area of the facility and its entire facility.

### Background

For many years, California has been increasingly relying on new and emerging energy storage technologies to support growing energy needs and help to meet California's ambitious greenhouse gas (GHG) reduction goals. Energy storage technology offers opportunities for businesses increasing reliance on intermittent renewable energy sources (solar and wind energy) sites due to the ability to store energy during times of overproduction, as well as during times of low production or when production from renewable resources is more limited or unavailable. In particular, numerous storage units are being developed in the state to store energy. These units are being developed in order to be able to store energy to support the state's energy and greenhouse gas reduction goals. In 2019, there would be investments (MW) of

...the state's lithium-ion battery systems operating and preparing in the state's wholesale power markets, which has grown to over 1,000 MW. The CPUC and other state officials estimate that energy storage included projects to reach almost 2,000 MW by 2022 with lithium-ion batteries as the main type of storage.

**Safety records at lithium-ion battery facilities.** There have been three distinct and (as of 2022) isolated incidents of lithium-ion battery energy storage facilities located at the Moss Landing cluster location in Monterey County, each involving one of the two lithium-ion battery energy storage systems:

- On September 4, 2021, there was a safety incident at the Moss Landing Phase 1 (100 MW) lithium-ion battery energy system owned by NextEra Energy that resulted in immediate shutdown of the facility. According to NextEra's operations manager, the incident involved smoke from a failed battery unit in a building that made the building to prevent a fire suppression system from being able to spray water on batteries in its rooms and cause an explosion.
- The same day, there was a separate building explosion at a second incident, February 14, 2022, at its Phase 2 (200 MW) building. According to the incident investigation report, it appears that there was a gas leak because that was what was leaked and that some battery-related equipment, including a motor in the building. NextEra subsequently decided to pause certain activities while they assess the Phase II incident and meet with state regulators. Both NextEra-owned facilities have since been brought back online.
- On September 29, 2022, a separate incident occurred at a third lithium-ion battery energy storage facility (167 MW) at Moss Landing, but owned by Bechtel Energy & Services (BES). The battery for this storage facility had an electrical fire, which occurred in the nearby community, including a residential neighborhood nearby. According to news reports, the fire and the incident led to a number of emergency responders, including fire and police, to arrive at the facility. The fire was "put out."

**SB 18's** proposed additional provisions enhance on lithium-ion battery storage systems and recent safety incidents in the state's (largely lithium-ion) battery energy storage systems. SB 18's (Hirose) Chapter 25, Statutes of 2022 expanded the CPUC's jurisdiction over OSHA OSHA operational and maintenance standards, standards of care, and other OSHA OSHA to include lithium-ion battery energy storage facilities, not just electric generation facilities, including systems owned by utilities. The CPUC's Safety and Enforcement Division (S&E) will implement OSHA OSHA by



conducting inspection activities. The foundational electric transmission system facilities are managed by California Edison (CE) and previously this was the only utility to be subject to the requirements of the California Emergency Response Act. In a 2016 incident stemming from Electric Safety and Reliability Branch (ESRB) within NRE's jurisdiction, combined with the source codes of misoperations (mostly over-energized conditions, record reviews, field inspection, and identification) in 2016, SCE 188 expanded the ESRB's authority to additional in-service transmission facilities in order to help ensure safety and reliability, reduction of down time, safety incidents and related uncontrolled flows of energy, especially in the high-voltage zone. As part of the other successful facilities are required to comply with requirements and standards, including those related to ensuring protection of life and limb.

Since 2016, SCE 188 following the September fire incident, local residents and other community stakeholders expressed concerns about the safety and reliability risks of weather-related events to these facilities and the potential for non-energized safety-related incidents. SCE 188 is a bill that addresses the safety and reliability risks in the wake of the September incident, and related to the safety and reliability risks of weather-related events. This bill addresses the safety and reliability risks of weather-related events and related misoperations in terms of the requirements for subsequent "weather-related safety codes" including 1)2200, emergency response code 121-5000, code 121-5000, and code 121-5000, which includes emergency response codes and related requirements and plans, including the safety and other emergency response. As such, emergency response facilities, emergency storage facilities are subject to the California ESRB requirements, though there are not specific requirements for these facilities as there may be with some high-risk facilities, such as emergency. Nonetheless, the author would like to have the statute explicitly require other emergency storage facilities to have emergency response and evacuation plans.

*Author's proposed amendment: The author and committee may wish to add provisions or clarify that the requirements proposed by this bill are in addition to existing labor laws and related regulations regarding worker safety, including requirements related to emergency plans and emergency procedures that apply to the projects of the facilities. Additional amendments will note the requirement in the Public Utilities Code 4791.1 which provides for an emergency and evacuation response administered by the CPUC.*

#### Prior Related Legislation

SCE 188 (1/26/2016) (SB 188) (2016) expanded the ESRB's authority over emergency response-related facilities.

SB 18 (Laird) Chapter 499, effective 2010, requires that PLS facilities use appropriate targets for lead testing and to procure energy storage systems.

**FISCAL EFFECT:** Appropriation: No; Encumbrance: Yes; Local: No; **SUPPORT.**

None reported.

**OPPOSITION:**

None reported.

**ARGUMENTS IN SUPPORT:** According to the author:

The California electricity system has experienced increasing stress on our state's electrical grid. We were able to avoid blackouts in part due to our investments in clean energy and clean energy storage. Investments in clean energy storage are essential to reaching our climate goals, but we must have a way to ensure that these facilities have safety systems applied to ensure the safety of workers and our existing communities.

-- END --

## PUBLIC MEETING ANNOUNCEMENT NM Highway 14 to Interstate 25 Corridor Study

The New Mexico State Highway and Transportation Department (NMSHTD) has completed an initial corridor study for a potential roadway connecting I-25 and NM 14 north of the Santa Fe National Forest. Public meetings will be held to present the findings and recommendations of this study and to provide the public with an opportunity to comment on the NMSHTD's recommendations.

Based on a review of 20-year growth projections and an initial evaluation of potential route alternatives, the NMSHTD has concluded that the existing highway system is adequate to meet the mobility needs of the Placitas area and other East Mountain communities. Therefore, the NMSHTD recommends that the corridor study for a potential new state highway linking I-25 and NM 14 not be advanced at this time. However, the needs assessment has found that growth beyond the 20-year projections may require improvements to NM 168 and NM 14 and/or the construction of a new highway link between I-25 and NM 14. Because a proposed land-use change between the Bureau of Land Management (BLM) and San Felipe Pueblo could preclude the ability to implement such a roadway in the future, the NMSHTD will request the BLM that a potential alignment for a potential future roadway be provided as part of their proposed public land exchanges.



The basis for the above findings and recommendations will be presented at two public meetings. The dates, times and locations of these meetings are as follows:

- |  |  |
|--|--|
| <b>Date:</b> Tuesday, May 8, 2001  | <b>Date:</b> Wednesday, May 9, 2001  |
| <b>Time:</b> 7:00 pm to 7:30 pm - Presentation<br>7:30 pm to 8:00 pm - Public Comments | <b>Time:</b> 7:00 pm to 7:30 pm - Presentation<br>7:30 pm to 8:00 pm - Public Comments |
| <b>Place:</b> Placitas Elementary School<br>105 Calabazas, Placitas, NM                | <b>Place:</b> San Antonio Elementary School<br>17555 North New Mexico Highway 14       |

Additional information about the upcoming public information meetings on the initial corridor study can be obtained from Michael Ponce, P.E., NMSHTD Project Manager, P.O. Box 1199, Santa Fe, NM 87504 (505) 877-5177 or David Pennington, Parsons Brinckerhoff, 10811 Ucoma Rd., N.E., Albuquerque, NM 87109 (505) 881-5357. Comments on the findings and recommendations of the initial corridor study should be sent to Parsons Brinckerhoff, Attention: Northeast Corridor Study, no later than May 27, 2001. Persons who do not wish to receive correspondence immediately before the meeting should direct their requests to Jessica Michel at Parsons Brinckerhoff at 881-5357 at least two days in advance of the meeting dates.

91630003

**Patience O'Dowd (Chem Eng.) and  
Wild Horse Observers Association  
A non-profit corporation since 2004  
Whoanm.org  
PO Box 932  
Placitas, NM 87043  
505-610-7644**

EXHIBIT 2

AFFIDAVIT

I Patience O'Dowd of Sandoval County, NM stayed after the Dec 10<sup>th</sup> 2024 Planning and Zoning meeting regarding the Lithium-Ion Battery Energy Cener meeting to hand in my public comment as I was not allowed to speak given the sign-up sheet was taken down at approximately 4:30 before 5PM or end of buisness.

I recorded almost 100% of the meeting regarding the Diamond Tail zone change as well as the time change voted for sign up after this.

The reason I stayed was to ask Mr. **Todd LEBERGE** technical questions regarding which statutes he was relying on and Safety statutes lacking regarding an Lithium Ion Battery Energy Center. I will provide this/these tapes on line also and to the hearing in this case. During this conversation, he did not say he was an engineer, instead he stated he had some engineering in his background. He also stated he was working with the Santa Fe Fire Department.

The Planning and Zoning commission has ignored the will of the people as shown by the Placitas Wildlife Corridor Mural at the entrance to Placitas near I25 and have ignored the many polls of Placitans which are recorded on the WHOA website whoanm.org.

The Planning and Zoning commission has ignored the will of the people in the Placitas Area Plan with respect to the clear disapproval of a highway connecting Rt 14 and I25.

1/9/2024

A handwritten signature in black ink, appearing to read "Patience O'Dowd". The signature is written in a cursive style with a large initial "P" and "O".

### EXHIBIT 3

#### AFFIDAVIT

I Liliana Gonzales-Pittman of Sandoval County NM do swear under penalty of perjury the following statements are true to the best of my knowledge.

I am trained and experienced Fire Science professional though recently retired (2016). Where there are quotes in this affidavit, I will provide the recordings of these statements all of which I have and will post online.

To: Sandoval County Public Regulations Committee

From: Liliana Gonzales-Pittman East Mountain Resident ie; La Madera Community and One of the descendants of the oldest Land Grants in the State of New Mexico of the Canon Del Agua San Pedro Land Grant

Date: January 8, 2025

Subject: My response and appeal

Sirs and Ma'ams,

My research has been extensive for you, and I have many recordings of my conversations and witnesses to my conversations I refer to in this letter.

I first met Mr. Mariano Brandi at the meeting October 8, 2024 held in your administration building in the town of Bernalillo, I gave him the respect of listening to him and your board on this evening and ultimately did comment when provided the opportunity all of this is recorded which you all have access too. End result was to literally find out that the majority of the people representing Sandoval County and calling themselves planning and zoning committee did not even know WHERE the location was of the project or WHAT the meeting was about. Therefore, it was granted a stay. During this meeting Mr. Mariano Brandi contractor for PCR Energy spoke and was asked questions by your board and it was unanimous that Sandoval County needed more time just to understand exactly where and what this meeting was about or the project it was referencing. This in itself was unacceptable to me as a Sandoval County tax payer and one of the many that is susceptible to its impacts of:

- 1.) This change from Agricultural zoning to Industrial zoning impacts the people and communities and ENVIRONMENT by causing air, water, and soil pollution through emissions of harmful and hazardous pollutants like greenhouse gases, chemicals, and particulate matter, leading to issues like climate change, acid rain, degradation of ecosystems, and harmful to HUMAN HEALTH.
- 2.) Water pollution, Soil Contamination, Climate Change, Biodiversity loss, Resource Depletion,
- 3.) This 'Lithium Ion Battery Energy Center' is one of the world's top ten most hazardous material toxic materials polluting industries
- 4.) ALL of these people attending your meetings have stated as much only to go on DEAF EARS and only to be MARGINALIZED in the process.

The end result of this meeting on October 8,2024 it was decided that more time was needed for your planning and zoning board to 'understand' the proposed project at hand. ALL of this and more was relayed to Sandoval County Planning and Zoning commissioners and was still IGNORED

Fast forward to Mr. Mariano Brandi and his PCR Energy Corporation meeting at Vista Grande Community Center on October 24 off La Madera Road: At this meeting I was very specific with my questions and input.

At this meeting I asked Mr. Brandi from PCR if he had an approved fire plan for his project and he said "Yes" his exact words "The Fire plan was ALREADY approved by the Sandoval County Fire Department" at this meeting the Representative of Santa Fe county district 22 Stefani Lord pointed out that FIRE CHIEF Joe Gober from the Sandoval

County Fire Department was in fact sitting in the audience and he could attest to the fact that the Fire Plan for this Contractor was approved. Joe Gober said "Yes it has been approved". This made no sense to me because with my extensive Fire Professional background I know that a Volunteer Fire Chief cannot simply approve a contractor's Fire Plan for his project in the state of New Mexico. I also asked at this meeting if there was a representative from the State OR a New Mexico Homeland Security representative at the meeting and the response was "No".

After this meeting I stayed afterward and spoke with Mr. Mariano Brandi and his liaison face to face and told him I was recording him they both agreed to the recording. I proceeded to ask him very specific questions about his fire plan, evacuation plan, safety plan and the specific codes referencing the constructing of his 'Lithium Ion battery storage facility' Mr. Brandi appeared uncomfortable, unknowledgeable and constraint in answering my questions. He then provided me with his phone number to which I called him and did speak with him at length. In my appeal I will provide dates and times and verbatim of verbiage about this communication with Mr. Mariano Brandi.

\*\*Others and I have questioned at ALL the public meetings held for this 'Lithium Ion battery storage facility' project WHY this OUT of Country Contractor who spoke broken English and who did not have credentials was being considered as the contractor for this 1800 acre 'Lithium Ion Battery Storage Center' and why there was not a translator to translate what exactly he was saying when he spoke. ALL of this has gone on DEAF EARS of the Sandoval County Planning and zoning its commissioners and its own regulations. We as the people of the community have a right to know and understand the languages/words spoken by them to US. This in itself creates a serious lack of communication problem and is a MARGINALIZING discriminant.

On October 30<sup>th</sup> and October 31<sup>st</sup> I called Sandoval County Fire Department. I asked for their CODE ENFORCEMENT division or person. Administration person Angela was and has been the only person I have spoken to there all others have failed to call me back after providing my contact information to 'Angela' on these dates and on my recording at 04:11 Angela says "No we do not have a Code Enforcement in this office." "The person who reviews fire plans is Deputy Chief Kissan" She also said "Plans Reviewer is at Sandoval County Planning and Zoning office, we do not have a Fire Protection Engineer or certified plans reviewer in the fire department, you would have to call Sandoval County planning and zoning". "You will have to talk to Deputy Chief Kassain only code person to talk to about codes"

On October 30,2024 I contacted Mr. Beaman (Sandoval County Planning and Zoning) via phone. I asked Mr. Beaman if he had an FPE (Fire Protection Engineer) working out of the Sandoval county Planning and zoning office he said no. Mr. Beaman told me that when Fire plans are to be approved through planning and zoning they are sent to Eric Masterson at the Sandoval Couty Fire Department and from there he does not know what the process for fire plans is. (Recording minutes 10:12)

On November 1, 2024 I spoke with Sandoval County planning and zoning assistant director Doraida at 24:24 on this date recording when asked if she was at the planning and zoning meeting for the 'Lithium Ion Battery Storage Facility' and she said "yes I was there". She said that Mr. Beaman would be the person to talk to with my questions and she was familiar with the project" (She was also cc'd on the email Mr. Beaman sent me October 31, 2024 at 11:06 a.m.) and informed of my wanting to speak with him. On this day and on this same phone call I told her Mr. Beaman was now calling me on the other phone line.

On phone call recording on November 1, 2024 after speaking with Assistant Director Doraida at 04:21 I told Mr. Beaman from planning and zoning I had spoken with Sandoval County Fire Department (Angela Admin) and was told to call planning and zoning because THEY (PNZ) approve the Fire plans Mr. Beaman said "I cannot speak for the Fire Department or how they approve their plans" (time 9:00 and at 10:12 in recorded conversation) Mr. Beaman also says "Commercial projects are circulated internally for plans review. WE DO NOT HAVE AN FPE (FIRE PROTECTION ENGINEER) approving plans out of our Planning and Zoning office". "As for the Fire Chief, I don't know how he's organized in his plans review" (11:00 on recording) When I asked Mr. Beaman "Who approved your fire plan and Emergency plan for this project?" Mr. Beaman responded "The Fire plan and Emergency plan were approved and project was reviewed and approved by Eric Masterson, these are preliminary designs and we're LIMITED ON RESOURCES to go through with this type of planning".

I called the Sandoval County Fire Department and to this day almost three months later no one has returned my calls from October 2024 to January 2025 I spoke with Admin Angela at Sandoval County Fire Department again and she told me that neither the Chief nor the Fire Inspector who approved fire plans and conducts plans reviews had phones or

phone numbers and that ALL calls had to go through her first she also told me that she delivered my messages October 30, 2024 Recording #5 04:11 and October 31, 2024 #6 04:52

On November 1, 2024 recordings 2 at 13:45 and Recording #3 13:45 I contacted Mr. Mariano Brandi via phone call and email on (November 1, 2024 @3:33 p.m and he cc'd Cynthia Mara Schuchner (Who AFTERWARD singled me out and looked and viewed me on my LinkedIn Profile) . After speaking with Mr. Brandi, it was evident that he had no knowledge of the Fire Codes I was referring to and was asking him about. He had no knowledge that he needed his project to be CLASSIFIED, nor did he know what the CLASSIFICATION was or that he needed an actual Fire Protection Engineer in the state of New Mexico to approve his Fire Plan, Classify and Certify it. When I asked him which codes he was referencing in his fire plan he told me that he had taken notes from my phone call and that he would get back with me, but he was not familiar with the fire codes. He never did call or email me back about the fire code questions I had for him. I emailed him again yesterday January 7, 2025 and have had no response. On November 1, 2024, Conversation with PCR Contractor Mariano Brandi via phone recording at 13:45 my question What codes are you referencing building your 'Lithium Ion Battery Storage Facility'? Mr. Brandi "Let me do more research" 03:45 "Let me check my engineers team" 02:45- 03:13 on recording. At 03:47 Mr. Brandi admits "I Do not have an FPE (Fire Protection Engineer)" neither did Sandoval County Fire Department OR Sandoval County PNZ so HOW can a fire plan of this magnitude be APPROVED WITHOUT CLASSIFYING it first much less LIED about and said by the contractor that the "Fire Plan has been APPROVED by the Sandoval County Fire Department" in his own words in front of all attendees.

At 04:20 thru 04:55 He also says he would need to "Do RESEARCH from OTHER PROJECTS to see what are the standards we need to comply with" ONLY PROVING This Contractor PCR Energy is not in compliance with New Mexico state standards, regulations or statutes relating to his 'Lithium Ion Battery Storage Facility' on November 1, 2024 AFTER Sandoval County Planning and Zoning approved a Zone change which these conversations are only proving Sandoval County Planning and Zoning, Sandoval County Fire department, the STATE of New Mexico has not VETTED this contractor, company, OR Classified this project in compliance with our OWN CID Building construction, Fire Planning, Emergency Planning protocols procedures or GUIDELINES yet it was PREMATURELY CHANGED from AGRICULTURE TO INDUSTRIAL specifically for this unlawful project.

On December 12, 2024 Recording number 9 at 10:21 CID (Construction Industries Division) was contacted by me only to be told Mr. Todd LeBerge and PCR Energy were NOT LICENSED CONTRACTORS IN THE STATE OF NEW MEXICO

On December 12 2024, Recording number 8 at 00:57 and on January 8 on recordings numbers 4 (12:37) and Recording 5 (10:19) **PSI says they DO NOT HAVE A LICENSE for PCR ENERGY CONTRACTOR or Todd LEBERGE (FPE) Fire Protection Engineer in their licensing system**

On January 8, 2024 recording with Dwayne Jackson New Mexico State Code Enforcement to see if Todd LeBerge alias Fire Protection Engineer or Mr. Mariano B are Certified or licensed in the State of New Mexico as per CID, PSI OR RLD and the answer is "No, I cannot find any licenses for the Fire Protection Engineer LeBerge or the Contractor for PCR Energy" Recordings and texts Recording numbers on January 8, 2024 Numbers 5 at 04:34 and number 7 at 14:12 In text from Dwayne Jackson on January 8, 2024 he says " License number 29658 expired 12/21/2024 but his list does not show the registration so may be current. Out of Campbell CA (for Mr. Le Berge) but could not find anything on the NICET side either for Le Berge (all texts from Mr. Jackson are available for review)

On Recording on January 8, 2024, at 05:35 with Aaron Garcia New Mexico State Fire Marshal office reiterating to him that this contractor and so called FPE is not National Institute of Certified Engineering Technologies (NICET) certified and not regulated by the State of New Mexico.

[https://santafenm.gov/document\\_center/document/13446](https://santafenm.gov/document_center/document/13446)

When reviewing fire code plans with a NICET certification, the primary focus should be on ensuring the proposed fire protection systems comply with the relevant building codes (like NFPA standards), including proper design, layout, equipment selection, and installation details, while verifying the reviewer possesses the necessary NICET level of expertise to accurately assess the plans.

Mr. Garcia also says "Yeah you nailed it at ( 02:17.73 recording) On the State Fire Marshals side we don't regulate any of the general contractors so like you said with dealing with CID, New Mexico RLD, the local Fire Departments that's where their contacts are gonna be, those all become local municipalities" (03:27:48) "It falls back on the local municipalities to make those final determinations, we don't regulate the CID and general contractors through the Fire

Marshals office". He said he was going to talk with Eric Masterson, I told him that I tried contacting Eric Masterson to no avail. I expressed to him my concerns of lack of Fire Fighting resources, an out of the country contractor, ALL the RED FLAGS involved with this project and ESPECIALLY the FACT that the Mr. Mariano Brandi, PCR Energy, Todd LeBerge who he Mr. Brandi ultimately apparently hired (AFTER my phone call with him) and Sandoval Planning and Zoning Officials, and is now introducing him at his MEETING on December 10, 2024.

In this Sandoval County Planning and Zoning meeting which was lawfully RECORDED Your representative Mr. James D. Maduena SAYS and I Quote "THEY THINK THAT WE'RE GONNA CONDUCT THIS MEETING, AND AND READ ALL THIS INFORMATION, WELL ITS NOT GONNA HAPPEN, SO ITS NOT OUR FAULT, ITS NOT OUR FAULT, AND (WITH ARMS FLAILING) WE HAVE SCHEDULES, PROCEDURES, AND WE HAVE TO FOLLOW THEM" Well SIRS and MA'AMS this is a perfect example of our COUNTY AGAIN making EXCUSES for

- 1.) Fraud waste and abuse of government funds
- 2.) Lack of transparency
- 3.) Marginalization of our East Mountain Communities
- 4.) Lack of Professionalism
- 5.) Unlawfulness
- 6.) NOT FOLLOWING the laws, regulations, guidelines, procedures, policies, protocols,
- 7.) NOT UPHOLDING Your MISSION STATEMENT to

PROTECT our LIVELIHOODS and our RIGHTS to PEACEFUL ENJOYMENT of our PROPERTIES, by NOT ALLOWING INDUSTRIAL ZONING IN OUR EAST MOUNTAIN COMMUNITIES and doing EVERYTHING UNDER THE LAW TO STOP THIS 'LITHIUM ION BATTERY STORAGE FACILITY' to be built without Properly vetting the company, employees, ensure that CID, PSI, and ALL OTHER AGENCIES of the COUNTY and the STATE are constructing to our OWN LAWS and REGULATIONS.

TO ADD:

The contractor Mr. Mariano Brandi was also asked in recorded phone conversations about the MAINTENANCE AND TESTING of his facility to ENSURE the components in order to maintain were going to be readily accessible and available for this 'POWER GRID' that is solely for our State Government Offices in Santa Fe and our MILITARY AIR FORCE COMPOUND in Albuquerque Kirtland AFB to be EXACT only to be told that "he did not know, and it depends on which contractor and/or COUNTRY, China? Asia? Russia? Wherever the components compatible to this facility are made we would be at their mercy to be able to ensure this 'POWER GRID' could even AFTER COMPLETION and our MONEY used and wasted to build would even be feasible and could potentially be compromising our whole STATE!!! Again, Where's homeland security in this process and are they giving their blessings?! Does the Governor or New Mexico know this could compromise our states government administration?!

There are SO many RED FLAGS with this 'LITHIUM ION BATTERY STORAGE FACILITY' Contract, Contractor, Employees, Sandoval County Representatives, County Fire Department responsible for future safety and security measures who are not LEGALLY AUTHORIZED and are ILLEGALLY AUTHORIZING Individuals to basically do what they want and NOT FOLLOW regulations that just this bit of information submitted today should effectively put a complete HALT on this whole project and send it on its merry way to be built ELSEWHERE

The discrimination, marginalizing and open blatant lack of professionalism to include unlawfulness is my experience with this whole zone stance and changing from agriculture to industrial for this lithium ion battery energy storage compound or facility. People in my community do not have the time or resources that this Sandoval County planning and zoning committee requires to uncover the unethical, underlying and underhandedness involved in the voting process that approved this toxic, poisonous, hazardous materials monstrosity in the midst of our East Mountains. With the lack of transparency my questions, phone calls, emails, and promised information was untenable. With that it is not only incomprehensible that it should be approved but also inevitable that the means does not justify the ends.

\*I have shared these recordings with Patience O'Dowd and I know she has heard these recordings.



Liliana Angles-Pita 01/09/2024

Four horizontal lines for text entry.

Liliana Angles-Pita 01/09/2024

*[Handwritten Signature]*  
Liliana Angles-Pita

SIGNATURE: \_\_\_\_\_ DATE: 1/9/2025 \_\_\_\_\_

INSTRUCTIONS: Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

i-foioi=FicE-USE-O-NLY-----]

Application Received By:	Date
File Number:	Receipt Number: Fee:

1 -- + - - : - - : 1 :-

REV Dec 2019



# SANDOVAL COUNTY PLANNING & ZONING

## APPEAL OF ZONING APPLICATION

APPEAL OF:       TEMPORARY USE PERMIT       VARIANCE  
 CONDITIONAL USE       SPECIAL EVENT PERMIT  
 ADMINISTRATIVE/INTERPRETATION ACTION

APPLICANT: Steve Chavez      TELEPHONE: (505) 504-4226  
ADDRESS: 2138 NM State Hwy 14, Cerrillos NM 87010  
AGENT: Dennis Kellogg      TELEPHONE: (916) 715-7066  
ADDRESS: 13 La Aguapa, Sandia Park NM 87047  
E-mail Address: kellfamdennis@gmail.com

### EXISTING LEGAL DESCRIPTION OF PROPERTY:

TOWNSHIP 12 & 13      RANGE 6 East & 6 East      SECTION T12:1,2,3-T13:34,35, 39  
MRGCD Tract No. (If applicable) \_\_\_\_\_ MRGCD Map No. (If applicable) \_\_\_\_\_  
Subdivision \_\_\_\_\_ Lot No. See Attachment #2.  
Block No. \_\_\_\_\_ Total Acres: 1,833      Number of Lots (existing) 7

### REASON FOR THE APPEAL (Use additional sheets if necessary):

1. Subject Appeal: In the matter of ZNCH-24-005, I, Steve Chavez, an aggrieved appellant, invoke the right of appeal pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners ("Board") and claim that the recommendation to approve the Zone Map Amendment (Zone Change), ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was: (a) made in "error"; and (b) a decision not supported by evidence in the matter". My reasoning is explained by the attached EMPAC and TTRA documents, which I approved. (See Attachments #1 for details).

SIGNATURE: [Signature]      DATE: 1/9/25

INSTRUCTIONS: Submit the completed application to the Planning and Zoning Division office located at 1500 Idalia Rd, Bldg D, Bernalillo, NM. Each application must get accompanied by plats, sketches, checklists, fees, and other information as requested by the County Planning and Zoning Division.

<b>FOR OFFICE USE ONLY:</b>	
Application Received By: <u>[Signature]</u>	Date: <u>1-9-25</u>
File Number: <u>2025000018</u>	Receipt Number: <u>515288</u> Fee: <u>100.00</u>
Type and Date of Appealed Action: <u>P&amp;Z Commission's Recommendation to approve</u>	

REV Dec 2019  
ZNCH-24-005

**ATTACHMENT #1: EMPAC Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

**1. Subject Appeal:** In the matter of ZNCH-24-005, we, the East Mountains Protection Action Coalition (“EMPAC”), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners (“County Board”) and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission (“P&Z”) on December 10, 2024, was: (a) made in “error” and/or (b) a “decision not supported by evidence in the matter”.

**2. Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC (“PCR”) to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005, including: Sandoval County personnel representing the Fire Department and Economic Development Department; the manager of Diamond Tail Ranch; a solar power activist representing “Green 22”, a group with an unknown number of members; a member of the local electrician’s union, who hoped that his union membership would get work building Diamond Tail Solar; an individual who hoped his company would get the contract to build Diamond Tail Solar; and over 29 other individuals citizens, the vast majority of whom did not live in the East Mountains and many of whom either lived outside of Sandoval County (e.g., Las Cruces, NM and Buckeye, AZ) and/or provided letters in support in P&Z Public Comments that were clearly based on a form letter template.

Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (X-Milliron Ranch); long-standing local preservation and environmental groups, such as EMPAC, with approximately 800 members, and the Turquoise Trail Regional Alliance (“TTRA”), which consists of 20 alliance groups, altogether totaling thousands of members; the San Pedro Creek Estates Homeowners’ Association (“SPCE”), with 379 members; and over 20 other individuals, including District 3 Santa Fe County Commissioner Camilla Bustamante, who testified in her personal capacity.

**Significantly, while we oppose Diamond Tail Solar, we also support renewable energy and, in particular, solar power, especially as means to mitigate Global Climate Change.**

**EMPAC opposes Diamond Tail Solar for three specific reasons:**

- **First, the proposed power plant is demonstrably unsafe**, because the battery energy storage system is generically prone to fire caused by Lithium-ion storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other catastrophic events, such as criminal misadventure and terrorist attack, and fails to meet industry “best practices” for safety and security for a location such as the one proposed in the East Mountains.
- **Second, the location of the proposed power plant is demonstrably inappropriate**, because the site is too remote, with first responders too far away to effectively intervene in the event of fire or other mishap; the site is subject to recurring natural wildfires; and the size and scale of this proposed power plant would obviously detract from the scenic beauty of New Mexico, being in full view of Sandia Crest Overlook, being in close proximity to and in full view of the Albuquerque Golden Open Space; being in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico; and being situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art.
- **Third, there are other locations in Sandoval County, and in New Mexico, that are far more appropriate for an industrial facility of this type and scale**, such as so-called “brownfields” sites, in which the land has already been disturbed, is not subject to wildfire, and already has appropriate industrial-type infrastructure, including nearby first responders, access to water for firefighting, pre-existing road networks, reliable telecommunications networks, etc., and other locations which already have been developed to accommodate large-scale solar power plants. One such location, in western Sandoval County, is the “Solar Corridor” along Encino Road/Drive NW.

**SPECIAL NOTE:** On December 23, 2024, the Hearing Officer for the Sustainable Land Development Code (“SLDC”), Santa Fe County, issued an order recommending that the Santa Fe County Planning & Zoning Commission **DENY** the application for a Conditional Use Permit by solar power company, AES Clean Energy Development, to build a PV solar power plant near Ranch Viejo, approximately 25 miles north of PCR’s proposed Diamond Tail Solar. Significantly, the AES proposal was denied for exactly the same reasons why we are objecting to Diamond Tail Solar, namely, the AES solar power plant poses a catastrophic risk to public safety due to fire danger and is located in an inappropriate location. Specifically, the Hearing Officer concluded:

“The evidence indicates the Project would be detrimental to the health, safety, and general welfare of the area; the Project would create a potential hazard for fire, panic, or other danger; and the Project is inconsistent with the purposes of the property’s zoning classification and inconsistent with spirit and intent of SLDC and SGMP.”

This finding is particularly important because the AES facility (i.e., BESS) would have been one-half the size of Diamond Tail Solar and would have been located in an area that is less prone to wildfire and more accessible to first responders.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped bare to make way for equipment;
- over 500,000 solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking systems for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;

- contain a total of well over 1.4 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 battery cells;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

4. **Chronology:** Below we provide a brief chronology of events to help better understand the flow of events surrounding the PCR’s Diamond Tail Solar Project from the Public’s perspective:

**2022**

- January 19, 2022: PCR files as a New Mexico Foreign Limited Liability Company, PCR privately commences site studies for a large solar facility;

**2023**

- PCR submits initial Specific Use Permit (SUP) application;

**2024**

- PCR site studies conclude with a private lease agreement with Diamond Tail Ranch in East Mountains;
- 8/15/24: PCR holds public meeting at Zocalo Plaza, in western Sandoval County, which is unpublicized in East Mountains;
- 9/10/24: PCR and Diamond Tail Ranch submit ZNCH-24-005, a request to Sandoval County P&Z for Zone Map Amendment (zoning change) to build Diamond Tail Solar;
- 9/13/24: PCR application to New Mexico Department of Transportation for special turnout on NM Route 14, a National Scenic Byway, for Diamond Tail Solar;
- 10/8/24: P&Z holds public hearing to approve ZNCH-24-005; numerous citizens object; P&Z defers further consideration to November 12 public hearing, because P&Z agrees that public was given insufficient time and notice to comment on ZNCH-24-005;
- 10/29/24: Sandoval County Fire Chief communicates to PCR that they have no objection from a public safety approach to the project, despite public objections to Diamond Tail Solar based on fire and wildfire safety issues;
- November: PCR privately contacts P&Z, requests deferral of public hearing on ZNCH-24-005, scheduled for November, until December 10; P&Z grants PCR private request without public knowledge or input;
- 12/2/2024: EMPAC/TTRA/SPCE-HOA publicly and formally jointly request P&Z defer December hearing on ZNCH-24-005 until January 2025, due to insufficient time to analyze late-arriving PCR documents; P&Z denies deferral requests without explanation;
- 12/2/24 & 12/3/24: PCR presents invitation-only outreach meetings to East Mountain residents at Vista Grande Community Center;
- 12/24: Several nearby large landowners and ranchers submit letters stating they oppose ZNCH-24-005, including the one whose land will be used for Diamond Tail Solar construction access;

- 12/5/24: SWCA, an environmental and management consulting firm, on PCR's behalf, submits visual simulations of Diamond Tail Solar, but fails to include any from long-range points of view, such as Sandia Crest Tramway & Ski area;
- 12/9/24: Sandoval County Fire Department sends memo to PCR outlining fire safety requirements, which arrives too late for public consideration for December 10 hearing;
- 12/10/24: P&Z holds second public hearing on ZNCH-24-005, during which many members of the public object to PCR Diamond Tail Solar proposal, providing detailed oral and written opposition testimony; P&Z, without responding to any of the opposition testimony, votes 4 to 0 to recommend the approval of ZNCH-24-005 to Sandoval County Board of Commissioners.

**5. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was made in "error" and/or was a "decision not supported by evidence in the matter", per Section 22A, for the following substantive reasons:

**(i) Public Input: General Comment on Treatment of Opposition Testimony and Failure of P&Z to Exercise Due Diligence.** Throughout the December 10, 2024, hearing, the record clearly demonstrates that P&Z Commissioners had little or no interest in considering Public testimony in opposition to ZNCH-24-005. In spite of compelling testimony provided by numerous concerned citizens that exposed errors, flaws, and misrepresentations committed by Applicant PCR (see Points ii-xxiii, below for more details), not one P&Z Commissioner, at any time, addressed, commented on, followed up on or questioned opposition testimony (with the exception of Chair Trujillo, who posed a procedural question to P&Z Director Beaman). Public opposition testimony was ignored by P&Z. The attitude of P&Z Commissioners was summed up by Acting Chair Commissioner Marquena, who stated:

*"Okay so we have a unanimous decision. I just want to make this statement that here we have decided to pass it on to the County Commission and I'm hoping between now and then all this information that I have and all these questions I still have in my mind are going to be answered and you know before we get a vote at the County Commission level and that's all we're doing you guys so you know stay stay stay active you know let your voices be heard please but I felt that we had to move this along you know we've been working on this for a while with these folks and I feel that this is a good way to move it on and pass it on to the County Commission. Thank you."*

By failing to address any of the substantive issues raised by the Public in opposition to ZNCH-24-005, P&Z failed to exercise its due diligence, as required under the Sandoval County Comprehensive Plan and Sandoval County Comprehensive Zoning Ordinance, to engage in fact-finding and analysis in order to assist the County Board in making an informed final decision on the matter of ZNCH-24-005. Put simply, P&Z did not do its job. In particular, based on the opposition testimony presented, P&Z failed to provide the County Board with an informed set of

**“CONDITIONS OF APPROVAL”** based on the evidence. For the reasons stated above, P&Z erred when it decided to recommend to County Board approval of ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ii) Public Input: PCR Documents were Permitted to be Posted Late by P&Z in Error.**

At least two key documents, PCR “Visual Resources Technical Memo” and the Sandoval County Fire Chief memo to PCR, were posted to the public P&Z website less than 72 hours before the scheduled December 10 hearing. These late postings violated SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which mandates, in Section 1, that “All documents and other tangible materials, excluding materials used only for demonstrative purposes at the hearing to facilitate witness testimony, should be submitted to the Planning & Zoning Department at least seventy-to (72) hours prior to the hearing or meeting of meeting of the Board of County Commissioners”. P&Z was in error to accept such late submissions from PCR (or to post late such submissions from PCR). Furthermore, this P&Z error was substantive, as the PCR “Visual Resources Technical Memo”, in particular, is a highly significant document which purports to detail the visual impact of Diamond Tail Solar upon surrounding communities. Unfortunately, due to its late posting, P&Z and members of the public did not have adequate time to review the PCR Technical Memo. It was only after the December 10 hearing that members of the public realized the PCR Technical Memo was both incomplete and misrepresentative (see Point 5(xv) below). Rather than accept such late PCR postings, P&Z should have required PCR to post in a timely manner or should re-scheduled the December 10 hearing to allow for adequate time to post all relevant materials by all concerned parties (see Point 5(iii) below). As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iii) Public Input: EMPAC/TTRA/SPCE Hearing Postponement Request Denied by**

**P&Z in Error.** In the runup to the December 10 hearing, PCR belatedly, beginning on or about November 22, 2024, began providing to the Public its background and supporting written materials relating to ZNCH-24-005 via the P&Z website, in spite of the fact that many of PCR’s documents were dated in the 2022-2023-early 2024 timeframes. This documentation included 27 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length). Also, PCR belatedly held “private invitation” meetings, for certain selected members of the Public, as late as December 3 and 4, only a few days before the scheduled December 10 hearing. In response, EMPAC, TTRA and SPCE formally requested that P&Z Chair Trujillo postpone the December 10 hearing until January 14, 2025 (see Attachment #2). The EMPAC/TTRA/SPCE postponement requests were unilaterally denied by P&Z Director, Daniel Beaman, without explanation (see Attachment #3). In a follow-up communication between Karen Yank, TTRA President, and Wayne Johnson, Sandoval County Manager, Johnson stated that: the postponement request was denied because Applicant PCR objected to the postponement; that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement; and that postponement matter was not brought to the attention of Chair Trujillo



prior to the hearing because doing so would constitute an “*ex parte* communication” (see Attachment #4). The decision by P&Z Director and County Manager to deny postponement was in error, for the following five reasons: (a) the postponement request to Chair Trujillo was not an *ex parte* communication and County Manager’s description of such was a mistake; it was precisely the opposite, being a communication on a procedural matter, in manner specified by County Manager Staff, that was made publicly, as it was sent to all relevant County personal, posted on the P&Z public website, and shared with Applicant PCR; (b) as the postponement request was not an *ex parte* communication, the postponement decision should have been made by Chair Trujillo, rather than unilaterally by P&Z Director (and County Manager); (c) contrary to County Manager’s assertion that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement during the hearing, on December 10 just prior to the hearing, P&Z Director denied EMPAC/TTRA/SPCE request to raise the postponement issue before the P&Z Commission, with the result that the P&Z Commissioners were never informed, before or during the hearing, of the EMPAC/TTRA/SPCE requests to postpone; (d) P&Z and County Manager deferral to PCR on the matter of hearing postponements evidences clearcut bias of P&Z for the Applicant and against the Public; and (e), perhaps most importantly, by denying postponement, members of the Public, including Appellant EMPAC, had inadequate time to prepare and submit documents in response to Applicant PCR’s documents and materials, thereby depriving P&Z of the ability to make a fair and informed decision regarding a matter as complex and important as ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iv) Public Input: PCR Hearing Postponement Request Approved by P&Z in Error.** At the October 8, 2024, hearing on ZNCH-24-005, P&Z decided to schedule a follow-up hearing on ZNCH-24-005 for November 12, 2024. However, prior to November 12, 2024, P&Z postponed consideration of ZNCH-24-005 until December 10, 2024. This postponement was done without explanation, without Public input or comment, and without the reason for the postponement being publicly posted on the P&Z website (unlike in the case of the EMPAC/TTRA/SPCE postponement request, which was publicly posted, see point 5(iii) above). Only later did EMPAC learn, from PCR upon direct inquiry by EMPAC, that P&Z postponed the November 12 hearing at the private request of Applicant PCR.

The P&Z decision to postpone consideration of ZNCH-24-005, at the private request of PCR and without any Public input, was in fact exactly the kind of private *ex parte* communication that County Manager stated was inappropriate (see Attachment #4 for supporting details). P&Z erred when it granted PCR its private postponement request, and compounded their error by subsequently denying EMPAC/TTRA/SPCE their public postponement request. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a

manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(v) **Public Input: PCR Witnesses Permitted to Exceed Time Limit during December Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 6., stipulates that P&Z applicants shall be limited to a total of 10 minutes of direct testimony and an additional total of 5 minutes of rebuttal testimony. At the December 10, 2024, hearing, P&Z permitted Applicant PCR to call several witnesses, many of whom exceeded the 3 minutes allotted to Public witnesses and all whom together exceeded the 10 minutes total time allocated to PCR as an applicant. To make matters worse, P&Z Acting Chair Commissioner Marquena refused to grant additional time to any Public witness speaking against ZNCH-24-005, repeatedly admonishing witnesses who exceeded their 3-minute speaking time. While P&Z Chair has the authority to grant additional time to any witness, he only did so for witnesses testifying on behalf of Applicant PCR. P&Z erred when it always granted additional time to Applicant PCR witnesses, but refused to grant additional time to any Public witness speaking in opposition to ZNCH-24-005. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(vi) **Public Input: Double Testimony Permitted for PCR Witness during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 2 b)., stipulates, in part, that “No individual will be permitted to speak more than one (1) time”. At the December 10, 2024, hearing, P&Z permitted a witness to speak on behalf of Applicant PCR and then to speak a second time during Public comments in which said witness spoke again in favor of ZNCH-24-005. Many members of the Public at the Hearing objected to this action, but Acting Chair P&Z allowed the PCR witness to speak twice in spite of Public objections. P&Z erred by allowing a PCR witness to speak twice. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(vii) **Public Input: Public Opposition Evidence Misrepresented during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Toward the

end of the December 10, 2024, hearing, a P&Z Commissioner, speaking remotely, queried P&Z Director whether it was true that 75% of members of the Public who provided written testimony on the matter of ZNCH-24-005 were, in fact, supportive of ZNCH-24-005. P&Z Director answered in the affirmative. As explained in Paragraph 2 above, the P&Z Director’s answer is demonstrably false. P&Z erred by stating, for the record, that substantially more members of the Public supported ZNCH-24-005 than opposed it. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(viii) Public Input: Overall Pattern of Preferential Treatment for PCR by P&Z and thus in Error.** As demonstrated by Points 5(i-vii) above, P&Z evinced a clear pattern of preferential treatment for Applicant PCR—and bias against members of the Public opposing ZNCH-24-005—throughout consideration of ZNCH-24-005. P&Z erred in doing so, as P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ix) Public Safety Threat: Tesla Megapack Fire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated January 3, 2025, we concur in their assessment that PCR misrepresented the Tesla Megapack fire threat posed by the Diamond Tail Solar BESS. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under the NM Stat NM Stat § 3-21-5 (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(x) Public Safety Threat: Wildfire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR misrepresented the wildfire threat

in the Diamond Tail Solar area and that, in fact, a real wildfire threat exists in the proposed BESS deployment location.

Furthermore, at the December 10, 2024, hearing, PCR produced—quietly and without fanfare—a new graphic on wildfire risk that contradicted their previous wildfire estimates (see PCR Public Hearing Presentation, December 10, 2024, page 7, posted on P&Z public website). Let us recall PCR’s previous testimony: *“In the unlikely event of a battery fire, the spread of fire off-site will also be unlikely due to the Project area’s minimal wildfire risk”*. The new PCR wildfire graphic clearly shows that the wildfire risk at the site location is *not* minimal (1/6), as claimed by PCR previously, but rather varies between low (3/6) to moderate (4/6), confirming Parsons testimony. As a result, the overall argument for BESS fire and wildfire safety made by PCR has now been vitiated by PCR’s own revised testimony!

P&Z uncritically accepted PCR previous evidence at face value and failed to consider the implications of PCR’s latest wildfire analysis and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xi) Public Safety Threat: Inadequate Safety Safeguards Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated January 3, 2025, we concur in their assessment that: (a) PCR has proposed inadequate safeguards to protect the Public from BESS fires and other mishaps; and (b) the PCR proposal for BESS safety does not meet industry “best practices”. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xii) Public Safety Threat: Poor First Responder Access Evidence Unaddressed by PCR and P&Z.** Based on the statements made by the Sandoval County Fire Department Official, in attendance at the December 10, 2024, hearing, the County Fire Department (FD) has informed the applicant that the FD will not be responsible for any fire response or fire-fighting within the 1833-acre industrial power plant. Furthermore, Applicant PCR has not responded to the Fire Department on what measures it will take to address an uncontrolled vegetation fire or toxic lithium battery fire within the perimeter of the massive power plant. Additionally, the FD and the Applicant have not answered the public inquiries concerning the number of fire equipment rated roads necessary to gain access to extinguish both the surrounding wildfire threat and any

uncontrolled facility fires that involve highly toxic lithium battery where the number of batteries are in excess of 1,140,000.

There exists no fire equipment rated roads into the Diamond Tail Ranch that can support fighting a fire at the 1,833-acre solar power plant. The rural unimproved road that is proposed for an access route, and conceivably could be upgraded to a fire equipment rating, is not within Sandoval County jurisdiction and/or control. Clearly, interjurisdictional cooperation has not occurred in the submission of this application or its review. Consequently, to build a fire equipment rated road in Santa Fe County would require a minimum of a Santa Fe County review and approval, in advance, to substantiate access to the power plant from a National Scenic Highway as an appropriate use of the scenic highway. In addition, as the proposed access road for firefighting is in Santa Fe County, no evidence exists PCR has secured the necessary agreements to have Santa Fe County provide as primary or secondary fire protection and response services to Diamond Tail Solar. Furthermore, the two rural roads within Sandoval County, which conceivably could be improved to accommodate a fire equipment rating, are not fully under the control of Sandoval County as they are held in part or whole as private roads or a road that cross the protected conservation easement owned by the City of Albuquerque and is designated the Golden Open Space. Neither the P&Z staff report nor PCR have addressed this gap in evidence to support the rezoning application. Should PCR's insurance carrier or Sandoval or Santa Fe Counties FD's require two access roads, both with a fire equipment rating, there exist no such roads to accommodate the requirement. In accordance with New Mexico State industrial building standards, the applicant has not consulted the New Mexico State Fire Marshal, Code Enforcement Officer to determine if the proposed 1,833-acre rural wild land location is suitable for the construction of one the largest battery storage facilities supported by solar panels in New Mexico. The State Fire Marshal may find that this power plant location unbuildable.

These omissions in the hearing demonstrate the PCR application failed to receive a full and complete review in the Planning and Zoning staff report, as these critical items were unanswered by the FD or PCR or addressed sufficiently in the report. P&Z failed to address these detrimental threats to the public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and the Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiii) Public Safety Threat: NM-14 Construction Traffic Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR substantially under-estimated the increase in traffic along NM-14 during construction of Diamond Tail Solar. Traffic density—and thus safety and impact to public infrastructure—is an important factor affecting public safety and general welfare. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section

I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiv) Public Safety Threat: Traffic Safety Evidence along Puertocito Road**

**Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR misrepresented the traffic safety problem along Puertocito Road likely to result from construction of Diamond Tail Solar. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xv) Environmental Degradation: Visual Impact Evidence Misrepresented by PCR and Unaddressed by P&Z.**

Based on the evidence presented in oral testimony by Karen Yank, TTRA, and by Dennis Kellogg, EMPAC, and on evidence presented in oral and written testimony by Jon and Julie Wannlund, at the December 10, 2024, hearing, and in the TTRA follow up appeal to the County Board dated January 8, 2025, and in the Wannlund follow up appeal dated January 8, 2025, we concur in their assessment that PCR misrepresented the visual impact of Diamond Tail Solar on surrounding land and communities. P&Z uncritically accepted PCR evidence at face value and thus failed to question or even consider PCR’s demonstrably incorrect claim that Diamond Tail Solar was “visually similar to PNM’s electrical grid infrastructure currently existing on Diamond Tail Ranch”. As a result, P&Z failed, abysmally, to meet the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(5). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xvi) Environmental Degradation: Sandoval County "Unsightly Use of Land" Standard Unaddressed by PCR and P&Z.**

Based on the evidence presented in oral testimony by Karen Yank, TTRA, and by Dennis Kellogg, EMPAC, at the December 10, 2024, hearing, and in the TTRA follow up appeal to the County Board dated January 8, 2025, and in the Wannlund follow up appeal dated January 8, 2025, we concur in their assessment that both PCR and P&Z failed to address the “Unsightly Land Use” standard set forth in NM Stat § 3-21-5, A(8) (2018), particularly with respect to the negative scenic impact on NM-14, the Turquoise Trail, a designated National Scenic Byway. P&Z uncritically accepted PCR evidence at face value and thus failed to question or even consider PCR’s demonstrably incorrect claim that Diamond Tail Solar would preserve the integrity and character of the surrounding land and scenic vistas. As a result, P&Z failed, abysmally, to meet the standards set forth in NM Stat § 3-21-5, A(8) (2018),

Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(5). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xvii) Environmental Degradation: Water Usage Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR significantly underestimated water usage for both construction and operation of Diamond Tail Solar. Because undisputable data show annual declines in East Mountains water source, this under-estimation poses a detrimental threat to public welfare. P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(3). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xviii) Environmental Degradation: Puertocito Concerns regarding Well Water Contamination and Access Unaddressed by PCR and P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR construction and operation of Diamond Tail Solar could negatively impact the ability of Puertocito residents to obtain clean, affordable, and sustainable water, due to potential contamination of their water wells during construction and due to running their wells dry as a result of PCR operations once the solar power plant is built. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xix) Environmental Degradation: Thermal Pollution Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that thermal pollution created by operation of the proposed Diamond Tail power plant poses a detrimental threat to public safety, health, and general welfare. Both Applicant PCR and P&Z failed to address this detrimental threat to public safety, health and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

(xx) **Environmental Degradation: Nighttime Light Pollution Evidence Unaddressed by PCR and P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address the issue of light pollution being created by Diamond Tail Solar during nighttime construction or during nighttime operations.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The economic, noise, **glare**, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(4) requirement, Applicant PCR only addressed glare and glint emanating off the solar panels during the daytime.

In a report dated October 8, 2024, P&Z Staff, under “**FINDINGS OF FACT**”, stated, in part, that:

“5. The request for Special Use (SU) district for zoning for the proposed development is consistent with the policies in the Sandoval County Comprehensive Plan as shown in this report (p. 2).”

and



“6. The request for Special Use (SU) Zone Map Amendment satisfied the criteria for review for a Zone Map Amendment as establish in Section 19, Amendments, Subsection F, Guidelines (1-7). Subsection F.”

Based on these Findings of Fact, P&Z Staff recommended approval of ZNCH-24-005.

As a matter of fact, the proposed Diamond Tail Solar location has one of the most pristine and scenic nighttime viewsheds in all of New Mexico. Currently, there are no major facilities of any sort anywhere near the proposed site. Therefore, significant nighttime light pollution by an industrial facility, such as Diamond Tail Solar, would fail to preserve the integrity of the area within the meaning of Section 10(2) and would constitute “glare” within the meaning of Section 19(4).

During the December 10, 2024, hearing, the Benson family presented oral testimony in which they specifically raised the issue of nighttime light pollution. They raised two concerns. First, that nighttime construction of Diamond Tail Solar would cause light pollution. Second, and far more concerning, that the operation of security motion sensors at night, triggered by PCR operations and/or animal movement, would lead to frequent but random nighttime light pollution all year around.

Significantly, no one at the December 10 Hearing commented on or responded to the Benson family concerns about nighttime light pollution, including P&Z Commissioners, P&Z Director, and PCR witnesses. This was particularly troubling because the SWCA report, “Visual Resources Technical Memo”, prepared for PCR, specifically highlighted the issue of nighttime light pollution. Under **Recommended Mitigation Measures**, the report stated:

"ALTHOUGH NOT SPECIFICALLY IDENTIFIED IN THIS STUDY due to viewing distance, light pollution from the project could create negative visual effects, particularly from residential viewers with long-duration views. Project lighting, such as within the proposed substation and BESS facility, should be of minimum intensity as required for safety and security, and site lighting should be fully shielded and equipped with motion sensors to the extent feasible."

**We therefore conclude that either (a) all parties agreed with Benson family concerns regarding potential nighttime light pollution caused by Diamond Tail Solar operations, or (b) P&Z Commissioners failed to consider their legitimate concerns, which as shown above were actually confirmed by SWCA. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(4). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either**

case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.

(xxi) **Environmental Degradation: PCR Decommissioning Plan Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in presentations to the public, PCR repeatedly claimed that:

“Solar power plant site will be restored to the condition as it was 30 years ago”.

PCR also posted on the P&Z public website a document entitled “Decommissioning Plan, Diamond Tail Solar + BESS Project, Sandoval County, NM”, dated September 2024.

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony that contradicted PCR’s claim the Diamond Tail Solar site will be restored to the condition as it was 30 years ago (see Attachment #5). Working from PCR’s Decommissioning Plan, he highlighted the following points:

- “The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use.” (emphasis added.)
- “Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions.” (emphasis added.)

- “After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition.*” (emphasis added.)
- “In addition, the site *may be revegetated ...*” (emphasis added.)
- “All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.* (emphasis added.)

Based on these PCR points, he concluded that PCR had no plans to restore the site to its original condition as a pinyon-juniper woodland; rather, the site would be turned into farmland or re-developed for other purposes.

This means that the former Diamond Tail Solar would never be put back into its original condition and thus the site would *not* preserve the integrity and character of the area in the which the Special Use was located, contrary to Section 10(2).

Significantly, no one at the December 10 Hearing commented on or disputed Poindexter’s analysis, including P&Z Commissioners, P&Z Director, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with Poindexter’s analysis that PCR misrepresented its plan to restore the Diamond Tail Solar site to its original condition, or (b) P&Z Commissioners failed to consider Poindexter’s analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(2). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxii) Environmental Degradation: PCR Decommissioning Plan Evidence Conflicts with P&Z Staff Land Use Recommendation and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in the P&Z Staff report on ZNCH-24-005, dated October 8, 2024, under **CONDITIONS OF APPROVAL**, it was stated:

“2. Any substantial change in the uses of the subject site shall require the approval of the Board of County Commissioners upon recommendation of the Planning and Zoning Commission. In no case will any residential development of any kind be allowed within the Special Use (SU) district approved for the subject site.”

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony on PCR’s Decommissioning Plan for Diamond Tail Solar (see Attachment #5). Working from that PCR document, he highlighted this key point:

“All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.*” (emphasis added.)

This point shows that PCR may plan to re-develop the former Diamond Tail Solar site for “beneficial uses” other than farming or agriculture or “original pristine condition”, *based on consultation with landowners*. Significantly, PCR makes no mention of **CONDITIONS OF APPROVAL #2**. PCR only refers to consultations with landowners. PCR says nothing about consultations with P&Z or the County Board, as required under Condition of Approval #2.

So, what we have here is the possibility that PCR is “hiding in plain sight” an option to derogate from its conditional approval granted by P&Z.

Astonishingly, no one at the December 10 Hearing commented on or disputed Poindexter’s key point, including P&Z Commissioners and P&Z Director.

P&Z should have focused on Poindexter’s key point and queried PCR about its long-range plans for Diamond Tail Solar and how those plans comported with P&Z Condition of Approval #2. That did not happen.

**We therefore conclude that either (a) all parties agreed with Poindexter’s analysis that PCR may be planning to derogate from P&Z Condition of Approval #2, or (b) P&Z Commissioners failed to consider Poindexter’s analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated their own Conditions of Approval. If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxiii) Economic Discrimination: Reduction of Property Values Issue Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that Diamond Tail Solar would negatively impact economically the residents in the East Mountains, particularly with respect to a decline in property values due to a reduction in scenic viewshed and the creation of an additional burden on residents seeking to obtain fire insurance due to the additional fire and wildfire risks posed by the battery energy storage system (BESS). In this regard, at the December 10, 2024, hearing, Joel Darnold presented oral testimony that SPCE-HOA was denied property damage insurance coverage for HOA owned common areas due to high risk of wildfires in our area. Diamond Tail Solar will only increase this fire risk and potentially eliminate the possibility of residents to obtain fire insurance. Both Applicant PCR and P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(4). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxiv) Economic Discrimination: Sandoval County Income Distribution Evidence by PCR Discriminates against East Mountains Communities and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the **utility and value of the property** in the Special use District and in adjacent zone districts;” (bold emphasis added.)

In response to the Section 10(2) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the utility and value of properties in the site area, any including any economic benefits accruing to local residents and businesses.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The **economic**, noise, glare, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(4) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the economic viability of local adjoining properties, any including any economic benefits accruing to such local residents and businesses.

During the December 10, 2024, hearing, a representative from the Sandoval County Economic Development Department provided oral (but not written) testimony on how Diamond Tail Solar would provide numerous economic benefits to County residents and businesses. At that same hearing, PCR representative provided oral and written testimony also touting the economic benefits of the solar power plant to County residents and businesses (see PCR Public Hearing Presentation, December 10, 2024, posted on P&Z public website). Among other things, PCR claimed that Diamond Tail Solar would provide:

- “>\$30 million in property taxes”; and
- “\$11.8 million over 30 years to local school districts”.

However, neither PCR nor the County Economic Development representative provided any additional details about how such economic benefits of Diamond Tail Solar would be distributed to residents within the County.

As a matter of fact, almost all of the economic benefits provided by Diamond Tail Solar will be distributed to County residents *outside of the East Mountains*. The reason for this is simple: the County provides very little in the way of public support or infrastructure to East Mountains residents. For example, the County does not support any schools in the East Mountains. Therefore, not one penny of the \$11.8 million windfall from Diamond Tail Solar for schools will

be spent on East Mountains residents. Similarly, the County does not support a police station in East Mountains or a recreation center or a full-time, professional fire station. All of these amenities are provided by other counties, specifically, Bernalillo County and Santa Fe County.

**As a result, the situation with respect to the economic benefits of Diamond Tail Solar is fundamentally unfair and discriminatory: East Mountains residents will be asked to shoulder both the economic burdens and the public safety burdens associated with this large-scale industrial facility, while “West County” residents will reap all of the economic benefits without having to assume any of the risks.**

P&Z erred in accepting the economic arguments in favor of Diamond Tail Solar at face value, without considering how these benefits would be applied to and affect East Mountains residents, particularly in relation to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(4). Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxv) Procedural Discrimination: P&Z Evaluated PCR Solar Project Using Different— and Less Stringent—Standards as Compared to other Sandoval County Solar Projects.**

Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that P&Z procedurally discriminated in favor of PCR’s Diamond Tail Solar Project as compared to how P&Z evaluated other similar solar power plant projects in 2023 and in a manner that failed to comport with Sandoval County Comprehensive Plan, Section I, Policy B, Strategy 3. Therefore, P&Z erred in recommending approval of ZNCH-24-005, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxvi) Premature Timing: PCR Interconnection Power Agreement with PNM Years Away.**

Based on statements made by PCR CEO, Mariano Brandi, PCR submitted an application to PNM for interconnection to the Diamond Tail PNM Substation in the 2022. Further statements made by Brandi at a December 3, 2024, public meeting confirmed that the PNM interconnection application process was reviewing the applications submitted in 2014 and 2015, consistent with the PNM Interconnection Manual.

During the December 10, 2024, hearing, opposition testimony from Dennis Kellogg and others stated that the PCR interconnection application with PNM, then pending with the power company, would not be reviewed or considered for advancement to the “power agreement stage” and subsequent study phase for between 7 to 8 years.

According to the PNM application process, interconnection applications are the very beginning of the path toward securing an interconnection power agreement with the utility. Consequently, the concerns raised by the community and organizations at the hearing could easily have been fully addressed as more than adequate time was available to assure full and complete public input. This obvious step was not taken by the P&Z, and if taken would not have harmed PCR’s request

for a rezoning of rural land to a Special Use District to encompass an 1,833-acre industrial power plant.

Therefore, P&Z erred by making on premature decision on re-zoning. Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxvii) Premature Location: Technical Reasons for Choosing Diamond Tail Location Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“6. The overall health and safety of the community;”

PCR in its public presentations repeatedly stated that the Diamond Tail Solar location was selected for two technical reasons. First, since the site is located between Albuquerque and Santa Fe, it is ideally located to provide power to both communities. Second, when asked whether PCR had examined other potential solar sites that had less environmental impact on the local communities, PCR affirmed that they had and that the Diamond Tail site was on the only site that met their technical specifications.

As to the first point, PCR’s technical contention is wrong as a matter of physics and electrical engineering. What is important for a power plant is how far away it is from a substation that it allows it to tie into a high-voltage transmission grid. Once a power plant ties into the transmission grid, it is irrelevant how far away it is from its consumers. So, PCR’s contention that they needed a site close to Albuquerque and Santa Fe is technically absurd.



What PCR really needed was a site that was no more than 15 miles away from suitable substation, which is exactly what they got with the Diamond Tail substation and the Diamond Tail Ranch site. However, that choice had nothing to do with its technical proximity to metropolitan sites.

As to PCR's second point, of course, we have no idea whether PCR examined other solar potential sites, and, if so, how many and where. However, what we can say with confidence is that we have easily been able to identify other potentially useful solar sites.

For example, two operational solar farms were previously sited and approved by Sandoval County. These sites are the Encino Solar Energy Center and the Sandoval Solar Energy Center located at 5401 Encino Road NW 87144 and 1501 Encino Drive NW 87124 respectively. In relation to the proposed PCR location, these sites are situated in more favorable areas of Sandoval County, away from public development, and more correctly address the health, safety, and welfare of Sandoval County citizens. The benefits of co-locating the PCR facility within this existing "solar corridor" provide numerous advantages. The opportunity for more favorable construction terrain exists. A network of roads and infrastructure more effectively addresses the danger for potential wildfire, as it is not located close to mountainous and forested land. Given the abundance of existing roads, this location provides more than adequate access to the potential site in the event a fire suppression action is required. Locating the PCR facility in this "solar corridor" has the potential to access existing and planned transmission capacity. The first ever PNM "20-Year Transmission Planning Outlook", dated November 12, 2024, identifies the construction of a major transmission line through this corridor. Transmission efficiencies may be realized by siting the PCR facility in proximity to both of Sandoval County's existing solar assets and the newly operational Atrisco Solar and Battery Farm (located near Double Eagle Airport) in Bernalillo.

Therefore, PCR's claim that the Diamond Tail was, technically, the only suitable site in Sandoval County, much less New Mexico, is demonstrably false.

Our best guess is that PCR chose Diamond Tail because they were able to cut a good financial deal with Diamond Tail Ranch (and because it had a suitable pre-existing substation).

P&Z erred in accepting PCR's technical siting arguments in favor of Diamond Tail Solar at face value, without considering whether PCR could have located other potential solar sites within Sandoval County that were less offensive to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(6). Thus, P&Z recommendation of approval is appealable under Section 22A.

**6. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, we hereby request a Public Hearing by the County Board to consider the instant appeal.

**7. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, we hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**8. Request Equal Standing between Appellant EMPAC and Applicant PCR during requested Public Hearing:** During requested hearing, if approved, Appellant EMPAC requests standing equal to Applicant PCR when addressing the County Board, to wit to include: that Appellant EMPAC be afforded the same time to present its position as afforded to Applicant PCR, that EMPAC be permitted to call its own witnesses, that EMPAC be permitted to cross examine Applicant PCR's witnesses, and that EMPAC be afforded access to same audio-visual equipment and options as afforded to Applicant PCR. In a matter as technically complex and environmentally important as ZNCH-24-005, it imperative that proceedings be conducted in a fair and transparent manner in which all sides are given equal opportunity to state their positions, thereby ensuring that the County Board shall be in a position to make an informed decision on the matter of ZNCH-24-005 on behalf of all County residents, particularly those individuals who will be most directly impacted by Applicant PCR's Diamond Tail Solar Project.

**ATTACHMENT #2: TTRA Memorandum Requesting Postponement of December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005**

MEMORANDUM

TO: Chair Dennis R. Trujillo, Sandoval County Planning and Zoning Commission

FROM: Turquoise Trail Regional Alliance (TTRA) &  
East Mountain Protection Action Coalition (EMPAC)

DATE: November 26, 2024

SUBJECT: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

By this memorandum, we hereby formally request postponement, until on or about January 14, 2025, of the Sandoval County Planning and Zoning Commission (“Commission”) Hearing, scheduled for December 10, 2024, on the matter of ZNCH-24-005, Request by PCR Investments (“PCR”), agent for Diamond Tail Ltd, for a Zone Map Amendment from Rural Residential/ Agricultural District (RRA) to Special Use District (SU).

Our reasons for formally requesting hearing postponement are set forth below:

1. Holidays: As the Commission and PCR are well aware, the December 10 Hearing is scheduled well into the Holiday period. During this busy and stressful time, it is burdensome for members of the public to prepare for and participate in a public hearing on a matter as important and complex as ZNCH-25-005. A one-month postponement, to get through the Holiday period, would maximize public participation, which is surely in the interests of all parties.
2. Belated PCR document dump: PCR only recently, on or about November 22, 2024, provided to the public its background and supporting written materials relating to ZNCH-24-005 via the Commission website. This documentation includes 22 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length!). It takes time for members of the public to process this amount of material. Since written public testimony to the Commission for the December 10 hearing must be submitted no later than December 6 (72 hours in advance), this means that the public has only been given two weeks to process the PCR documentation. This compressed timeline is unduly burdensome to the public, especially as it occurs over the Thanksgiving Holiday. Finally, we note that PCR failed to provide this documentation prior to the Commission’s initial ZNCH-24-005 hearing on October 8, 2024, and again failed to do so in advance of the follow-up hearing, originally scheduled for November 12, 2024.

3. Ongoing PCR public outreach meetings: PCR is still conducting public outreach meetings, pursuant to Commission request at the initial ZNCH-24-005 public hearing on October 8, 2024. Three of those outreach meetings are scheduled to occur on December 4 and 5 (and there may be other that we don't know about). This means that the public will have only 1-2 days to process the information provided by PCR and prepare written testimony in response. This compressed timeline is, once again, unduly burdensome to the public.

4. Follow-up hearing postponement: The follow-up hearing on ZNCH-24-005 was originally scheduled for November 12, 2024. We understand that PCR requested a postponement of one month to have more time to prepare, a postponement which the Commission accommodated and granted. We ask for a similar accommodation and for the same reason, more time to prepare, for the reasons outlined in Points 1-3 above.

5. No compelling reason to expedite: We know of no compelling reason why the December hearing cannot be postponed one month until January 14, 2025. A one-month postponement will in no way derogate from the substantive or procedural issues relating to ZNCH-24-005.

If the Commission has any questions regarding our request for postponement, we urge you to contact us:

Karen Yank, President TTRA  
hamonyank@cybermesa.com  
505-269-9959

Dennis Kellogg, EMPAC Board  
info@theempac.org  
916-715-7066

**ATTACHMENT #3: Response by Staff Director, P&Z Commission to TTRA Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

**From:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 1:58:49 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>  
**Cc:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hi Karen,

Thank you for your email. Subject project (item ZNCH-24-005) will remain on the agenda for the December 10, 2024 Planning and Zoning Commission hearing date.

Sincerely,

<image001.png  
>

**Daniel J. Beaman**  
*Director of Planning and Zoning*  
Sandoval County | New Mexico | US  
[https://www.sandovalcountynm.gov/  
dbeaman@sandovalcountynm.gov](https://www.sandovalcountynm.gov/dbeaman@sandovalcountynm.gov)  
**1500 Idalia Road, Building D**  
**Bernalillo, NM 87004**  
Office: (505) 867-7628  
Direct: (505) 867-7617

**ATTACHMENT #4: Response by Wayne Johnson, Sandoval County Manager, to TTRA and EMPAC Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

Begin forwarded message:

**From:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 3:47:43 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Good afternoon Ms. Yank,

At this point, we have an identified applicant and a general group of opponents. While we received a memo from two organizations requesting a deferral, it's hard for us to determine the overall representation of the opponents. There may be those who have made plans to be at the December 10<sup>th</sup> meeting to voice their opposition and would be opposed to a deferral at this late date. Given this situation, and the applicant's request not to defer the matter, we made the decision to proceed with the December 10<sup>th</sup> hearing. At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral. Chair Trujillo has not been in contact with you because as you know, the county discourages any kind of ex parte communication. Doing so could jeopardize the member's ability to vote.

Best,



**Wayne A. Johnson**  
County Manager  
o. 505.867.7551  
c. 505.934.2152  
[www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

**From:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>  
**Sent:** Monday, December 2, 2024 3:35 PM  
**To:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>; Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>; Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>; Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** Re: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hello Wayne and Daniel,

Please give us your reason for denying our request for postponement of the Dec. 10th zoning meeting promptly. Our groups and their lawyers would like to know more detail.

Also, Wayne, I was told by your office that the Chair of the Planning and Zoning Commission is the only person to decide whether to approve a request for postponement. Why then hasn't Chair Dennis Trujillo responded to me instead staff?

Thank you,  
Karen Yank  
Dennis Kellogg

**ATTACHMENT #5: Brent Poindexter Testimony submitted for the Record as part of the December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005:**

Our land in the East Mountains is renowned for its natural beauty so much so that NM-14 was designated a National Scenic Byway and why the Golden Open Space was created. Moreover, it is why tourists from all over our nation and the world flock to the Turquoise Trail and Sandia Crest in order to cherish the view of the East Mountains along the Trail toward Santa Fe.

However, the pine-juniper woodlands and high desert of the East Mountains, while beautiful, are also extremely fragile ecosystems, and once disturbed, it will take decades to regenerate.

The plan for Diamond Tail Solar is to bulldoze, clear, and compact approximately 3 square miles of land. Once configured for Diamond Tail Solar, that part of our ecosystem will be literally wiped out. The resulting brownfields will be a dark blot on the landscape, in full view of the Turquoise Trail and Sandia Crest for the life of the solar power plant. The visual impact cannot be overstated.

But the situation is worse than that. PCR claims that, after the power plant has outlived its usefulness, the *“Solar power plant site will be restored to the condition as it was 30 years ago”*.

However, PCR’s Decommissioning Plan tells another story. Here are some highlights from the Plan:

- “The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use.” (emphasis added.)
- “Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions.” (emphasis added.)
- “After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition*.” (emphasis added.)
- “In addition, the site *may be revegetated* ... .” (emphasis added.)
- “All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners*. (emphasis added.)

**Focusing on the last bullet above, we conclude that there is, in fact, no plan to restore the land to its original condition, even if that were possible.** Instead, what we seem to have here is a corporate maneuver being run through a Special Use loophole:

- Diamond Tail Ranch leases land to PCR, making money;
- PCR uses their solar power plant initiative to change zoning from “Agricultural” to “Special Use” then builds and runs the solar power plant, making more money;



- After the solar power plant is phased out, Diamond Tail Ranch and PCR re-develop the land for “other beneficial uses”, such as building another huge industrial facility (like a Facebook server farm or an Amazon AI center), making lots more money.

**ATTACHMENT #6: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275

## **ATTACHMENT #1: TTRA Appeal to County Board re: P&Z Recommendation to Approve Zone Map Amendment (Zone Change) ZNCH-24-005**

**1. Subject Appeal:** In the matter of ZNCH-24-005, we, the Turquoise Trail Regional Alliance (“TTRA”), an aggrieved appellant, invoke the right of appeal, pursuant to County Comprehensive Zoning Ordinance, Section 22A, Appeals, to the Sandoval County Board of Commissioners (“County Board”) and claim that the recommendation to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission (“P&Z”) on December 10, 2024, was: (a) made in “error” and/or (b) a “decision not supported by evidence in the matter”.

**2. Status and Overview:** At a public hearing on December 10, 2024, P&Z, by a vote 4-0, decided to recommend to the County Board that said Board approve Zone Map Amendment (Zone Change) ZNCH-24-005, which would change the existing zone from Rural Residential Agricultural (RRA) to Special Use (SU), in order to allow Applicant PCR Investments SP4 LLC (“PCR”) to build and operate a large-scale photovoltaic (PV) solar power plant and battery energy storage system (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM.

At that hearing, several groups and individual citizens supported ZNCH-24-005, including: Sandoval County personnel representing the Fire Department and Economic Development Department; the manager of Diamond Tail Ranch; a solar power activist representing “Green 22”, a group with an unknown number of members; a member of the local electrician’s union, who hoped that his union membership would get work building Diamond Tail Solar; an individual who hoped his company would get the contract to build Diamond Tail Solar; and over 29 other individuals citizens, the vast majority of whom did not live in the East Mountains and many of whom either lived outside of Sandoval County (e.g., Las Cruces, NM and Buckeye, AZ) and/or provided letters in support in P&Z Public Comments that were clearly based on a form letter template.

Primary reasons given for supporting ZNCH-24-005 included: generic support for renewable energy and, in particular, solar power, as part of the effort to mitigate Global Climate Change; increased tax revenue for Sandoval County; and more jobs for Sandoval County residents.

However, far more groups and individual citizens opposed ZNCH-24-005, including: almost all adjacent and nearby ranchers, such as Steve Chavez (Rancho de Chavez), Robert Gately (Campbell Farms), the Vigil family, and the Williams family (X-Milliron Ranch); long-standing local preservation and environmental groups, such as TTRA, which consists of 20 alliance groups, altogether totaling thousands of members, and the East Mountains Protection Action Coalition (“EMPAC”); the San Pedro Creek Estates Homeowners’ Association (“SPCE”), with 379 members; and over 20 other individuals, including District 3 Santa Fe County Commissioner Camilla Bustamante, who testified in her personal capacity.

**Significantly, while we oppose Diamond Tail Solar, we also support renewable energy and, in particular, solar power, especially as means to mitigate Global Climate Change.**

**TTRA opposes Diamond Tail Solar for three specific reasons:**

- **First, the proposed power plant is demonstrably unsafe,** because the battery energy storage system is generically prone to fire caused by Lithium-ion storage batteries and the specific PCR design has inadequate security safeguards against battery fires and other catastrophic events, such as criminal misadventure and terrorist attack, and fails to meet industry “best practices” for safety and security for a location such as the one proposed in the East Mountains.
- **Second, the location of the proposed power plant is demonstrably inappropriate,** because the site is too remote, with first responders too far away to effectively intervene in the event of fire or other mishap; the site is subject to recurring natural wildfires; and the size and scale of this proposed power plant would obviously detract from the scenic beauty of New Mexico, being in full view of Sandia Crest Overlook, being in close proximity to and in full view of the Albuquerque Golden Open Space; being in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico; and being situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art.
- **Third, there are other locations in Sandoval County, and in New Mexico, that are far more appropriate for an industrial facility of this type and scale,** such as so-called “brownfields” sites, in which the land has already been disturbed, is not subject to wildfire, and already has appropriate industrial-type infrastructure, including nearby first responders, access to water for firefighting, pre-existing road networks, reliable telecommunications networks, etc., and other locations which already have been developed to accommodate large-scale solar power plants. One such location, in western Sandoval County, is the “Solar Corridor” along Encino Road/Drive NW. TTRA has been actively working to provide Applicant PCR with an alternative for their proposed solar power plant, just as in the past TTRA worked with Campbell Farms to offer an appropriate alternative for their proposed residential development so that it did not detrimentally affect the scenic value of the NM-14, the Turquoise Trail National Scenic Byway.

**SPECIAL NOTE:** On December 23, 2024, the Hearing Officer for the Sustainable Land Development Code (“SLDC”), Santa Fe County, issued an order recommending that the Santa Fe County Planning & Zoning Commission **DENY** the application for a Conditional Use Permit by solar power company, AES Clean Energy Development, to build a PV solar power plant near Ranch Viejo, approximately 25 miles north of PCR’s proposed Diamond Tail Solar. Significantly, the AES proposal was denied for exactly the same reasons why we are objecting to Diamond Tail Solar, namely, the AES solar power plant poses a catastrophic risk to public safety due to fire danger and is located in an inappropriate location. Specifically, the Hearing Officer concluded:

“The evidence indicates the Project would be detrimental to the health, safety, and general welfare of the area; the Project would create a potential hazard for fire, panic, or other danger; and the Project is inconsistent with the purposes of the property’s zoning classification and inconsistent with spirit and intent of SLDC and SGMP.”

This finding is particularly important because the AES facility (i.e., BESS) would have been one-half the size of Diamond Tail Solar and would have been located in an area that is less prone to wildfire and more accessible to first responders.

**3. Background:** PCR proposes to build and operate a 220-megawatt (MW) solar power plant and a 110-MW (4-hour capacity) battery energy storage facility (BESS) on Diamond Tail Ranch (“Diamond Tail Solar”), in a remote location in the East Mountains, Sandoval County, NM. If built, Diamond Tail Solar would be one of the largest solar power facilities in New Mexico.

Three key facts about Applicant PCR: (1) this is a private equity company headquartered in Buenos Aires and controlled by two wealthy Argentinian families; (2) the full name of PCR is PETROQUÍMICA COMODORO RIVADAVIA S.A., and the majority of its holdings consist of petrochemical and concrete companies, making it a major greenhouse gas polluter; and (3) PCR has never built or operated a solar power plant before, yet this company is proposing to build one of the largest such facilities in the state of New Mexico.

Diamond Tail Solar, if built, would be neither a “farm” nor a “park”; rather, it would be a large-scale industrial facility.

For example, the Diamond Tail Solar power plant would consist of:

- over 1,800 acres (2.86 square miles) of land scraped bare to make way for equipment;
- over 500,000 solar panels, weighing more than a total of 43 million pounds and totaling over 15 million square feet of “dark, glassy” surface area;
- 5,574 mechanical tracking systems for the solar panels;
- 70 DC-to-AC inverter units, weighing a total of 2.8 million pounds;
- 20,000 lineal miles of electrical cables and conduits;
- 35,000 cubic yards of road construction materials;
- 55,000 steel pilings;
- 12 miles of perimeter fencing;
- 24 miles of internal access roads; and
- 5.8 miles of a 100-foot-high, 345-kilovolt (kV) overhead generation tie line, extending from Diamond Tail Solar to the Diamond Tail substation.

Moreover, the associated Diamond Tail Battery Energy Storage System (BESS) would:

- consist of 114 Tesla “Megapack” Lithium-ion battery modular units, a type of BESS unit that has a well-documented history of starting on fire and/or exploding;
- contain a total of well over 1.4 million flammable/explosive Lithium-ion batteries, as each Tesla “Megapack” contains approximately 10,000 battery cells;
- occupy an area of 2 acres;
- weigh at least total of 9.6 million pounds;
- enclose a total volume amounting to 105,000 cubic feet; and
- contain enough energy, if released all at once, to equal 384 tons of TNT.

**4. Chronology:** Below we provide a brief chronology of events to help better understand the flow of events surrounding the PCR's Diamond Tail Solar Project from the Public's perspective:

**2022**

- January 19, 2022: PCR files as a New Mexico Foreign Limited Liability Company, PCR privately commences site studies for a large solar facility;

**2023**

- PCR submits initial Specific Use Permit (SUP) application;

**2024**

- PCR site studies conclude with a private lease agreement with Diamond Tail Ranch in East Mountains;
- 8/15/24: PCR holds public meeting at Zocalo Plaza, in western Sandoval County, which is unpublicized in East Mountains;
- 9/10/24: PCR and Diamond Tail Ranch submit ZNCH-24-005, a request to Sandoval County P&Z for Zone Map Amendment (zoning change) to build Diamond Tail Solar;
- 9/13/24: PCR application to New Mexico Department of Transportation for special turnout on NM Route 14, a National Scenic Byway, for Diamond Tail Solar;
- 10/8/24: P&Z holds public hearing to approve ZNCH-24-005; numerous citizens object; P&Z defers further consideration to November 12 public hearing, because P&Z agrees that public was given insufficient time and notice to comment on ZNCH-24-005;
- 10/29/24: Sandoval County Fire Chief communicates to PCR that they have no objection from a public safety approach to the project, despite public objections to Diamond Tail Solar based on fire and wildfire safety issues;
- November: PCR privately contacts P&Z, requests deferral of public hearing on ZNCH-24-005, scheduled for November, until December 10; P&Z grants PCR private request without public knowledge or input;
- 12/2/2024: EMPAC/TTRA/SPCE-HOA publicly and formally jointly request P&Z defer December hearing on ZNCH-24-005 until January 2025, due to insufficient time to analyze late-arriving PCR documents; P&Z denies deferral requests without explanation;
- 12/2/24 & 12/3/24: PCR presents invitation-only outreach meetings to East Mountain residents at Vista Grande Community Center;
- 12/24: Several nearby large landowners and ranchers submit letters stating they oppose ZNCH-24-005, including the one whose land will be used for Diamond Tail Solar construction access;
- 12/5/24: SWCA, an environmental and management consulting firm, on PCR's behalf, submits visual simulations of Diamond Tail Solar, but fails to include any from long-range points of view, such as Sandia Crest Tramway & Ski area;
- 12/9/24: Sandoval County Fire Department sends memo to PCR outlining fire safety requirements, which arrives too late for public consideration for December 10 hearing;
- 12/10/24: P&Z holds second public hearing on ZNCH-24-005, during which many members of the public object to PCR Diamond Tail Solar proposal, providing detailed

oral and written opposition testimony; P&Z, without responding to any of the opposition testimony, votes 4 to 0 to recommend the approval of ZNCH-24-005 to Sandoval County Board of Commissioners.

**5. Details of Aggrievement:** The recommendation to County Board to approve the Zone Map Amendment (Zone Change) ZNCH-24-005, decided by the Sandoval County Planning and Zoning Commission ("P&Z") on December 10, 2024, was made in "error" and/or was a "decision not supported by evidence in the matter", per Section 22A, for the following substantive reasons:

**(i) Public Input: General Comment on Treatment of Opposition Testimony and Failure of P&Z to Exercise Due Diligence.** Throughout the December 10, 2024, hearing, the record clearly demonstrates that P&Z Commissioners had little or no interest in considering Public testimony in opposition to ZNCH-24-005. In spite of compelling testimony provided by numerous concerned citizens that exposed errors, flaws, and misrepresentations committed by Applicant PCR (see Points ii-xxiii, below for more details), not one P&Z Commissioner, at any time, addressed, commented on, followed up on or questioned opposition testimony (with the exception of Chair Trujillo, who posed a procedural question to P&Z Director Beaman). Public opposition testimony was ignored by P&Z. The attitude of P&Z Commissioners was summed up by Acting Chair Commissioner Marquena, who stated:

*"Okay so we have a unanimous decision. I just want to make this statement that here we have decided to pass it on to the County Commission and I'm hoping between now and then all this information that I have and all these questions I still have in my mind are going to be answered and you know before we get a vote at the County Commission level and that's all we're doing you guys so you know stay stay stay active you know let your voices be heard please but I felt that we had to move this along you know we've been working on this for a while with these folks and I feel that this is a good way to move it on and pass it on to the County Commission. Thank you."*

By failing to address any of the substantive issues raised by the Public in opposition to ZNCH-24-005, P&Z failed to exercise its due diligence, as required under the Sandoval County Comprehensive Plan and Sandoval County Comprehensive Zoning Ordinance, to engage in fact-finding and analysis in order to assist the County Board in making an informed final decision on the matter of ZNCH-24-005. Put simply, P&Z did not do its job. In particular, based on the opposition testimony presented, P&Z failed to provide the County Board with an informed set of "CONDITIONS OF APPROVAL" based on the evidence. For the reasons stated above, P&Z erred when it decided to recommend to County Board approval of ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ii) Public Input: PCR Documents were Permitted to be Posted Late by P&Z in Error.** At least two key documents, PCR "Visual Resources Technical Memo" and the Sandoval County Fire Chief memo to PCR, were posted to the public P&Z website less than 72 hours before the



scheduled December 10 hearing. These late postings violated SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", which mandates, in Section 1, that "All documents and other tangible materials, excluding materials used only for demonstrative purposes at the hearing to facilitate witness testimony, should be submitted to the Planning & Zoning Department at least seventy-to (72) hours prior to the hearing or meeting of meeting of the Board of County Commissioners". P&Z was in error to accept such late submissions from PCR (or to post late such submissions from PCR). Furthermore, this P&Z error was substantive, as the PCR "Visual Resources Technical Memo", in particular, is a highly significant document which purports to detail the visual impact of Diamond Tail Solar upon surrounding communities. Unfortunately, due to its late posting, P&Z and members of the public did not have adequate time to review the PCR Technical Memo. It was only after the December 10 hearing that members of the public realized the PCR Technical Memo was both incomplete and misrepresentative (see Point 5(xv) below). Rather than accept such late PCR postings, P&Z should have required PCR to post in a timely manner or should re-scheduled the December 10 hearing to allow for adequate time to post all relevant materials by all concerned parties (see Point 5(iii) below). As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(iii) Public Input: EMPAC/TTRA/SPCE Hearing Postponement Request Denied by P&Z in Error.** In the runup to the December 10 hearing, PCR belatedly, beginning on or about November 22, 2024, began providing to the Public its background and supporting written materials relating to ZNCH-24-005 via the P&Z website, in spite of the fact that many of PCR's documents were dated in the 2022-2023-early 2024 timeframes. This documentation included 27 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length). Also, PCR belatedly held "private invitation" meetings, for certain selected members of the Public, as late as December 3 and 4, only a few days before the scheduled December 10 hearing. In response, EMPAC, TTRA and SPCE formally requested that P&Z Chair Trujillo postpone the December 10 hearing until January 14, 2025 (see Attachment #2). The EMPAC/TTRA/SPCE postponement requests were unilaterally denied by P&Z Director, Daniel Beaman, without explanation (see Attachment #3). In a follow-up communication between Karen Yank, TTRA President, and Wayne Johnson, Sandoval County Manager, Johnson stated that: the postponement request was denied because Applicant PCR objected to the postponement; that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement; and that postponement matter was not brought to the attention of Chair Trujillo prior to the hearing because doing so would constitute an "*ex parte* communication" (see Attachment #4). The decision by P&Z Director and County Manager to deny postponement was in error, for the following five reasons: (a) the postponement request to Chair Trujillo was not an *ex parte* communication and County Manager's description of such was a mistake; it was precisely the opposite, being a communication on a procedural matter, in manner specified by County Manager Staff, that was made publicly, as it was sent to all relevant County personal, posted on the P&Z public website, and shared with Applicant PCR; (b) as the postponement

request was not an *ex parte* communication, the postponement decision should have been made by Chair Trujillo, rather than unilaterally by P&Z Director (and County Manager); (c) contrary to County Manager's assertion that EMPAC/TTRA/SPCE would have a chance to request postponement before the P&Z Commissioners, who would then make a decision on postponement during the hearing, on December 10 just prior to the hearing, P&Z Director denied EMPAC/TTRA/SPCE request to raise the postponement issue before the P&Z Commission, with the result that the P&Z Commissioners were never informed, before or during the hearing, of the EMPAC/TTRA/SPCE requests to postpone; (d) P&Z and County Manager deferral to PCR on the matter of hearing postponements evidences clearcut bias of P&Z for the Applicant and against the Public; and (e), perhaps most importantly, by denying postponement, members of the Public, including Appellant EMPAC, had inadequate time to prepare and submit documents in response to Applicant PCR's documents and materials, thereby depriving P&Z of the ability to make a fair and informed decision regarding a matter as complex and important as ZNCH-24-005. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(iv) **Public Input: PCR Hearing Postponement Request Approved by P&Z in Error.** At the October 8, 2024, hearing on ZNCH-24-005, P&Z decided to schedule a follow-up hearing on ZNCH-24-005 for November 12, 2024. However, prior to November 12, 2024, P&Z postponed consideration of ZNCH-24-005 until December 10, 2024. This postponement was done without explanation, without Public input or comment, and without the reason for the postponement being publicly posted on the P&Z website (unlike in the case of the EMPAC/TTRA/SPCE postponement request, which was publicly posted, see point 5(iii) above). Only later did EMPAC learn, from PCR upon direct inquiry by EMPAC, that P&Z postponed the November 12 hearing at the private request of Applicant PCR.

The P&Z decision to postpone consideration of ZNCH-24-005, at the private request of PCR and without any Public input, was in fact exactly the kind of private *ex parte* communication that County Manager stated was inappropriate (see Attachment #4 for supporting details). P&Z erred when it granted PCR its private postponement request, and compounded their error by subsequently denying EMPAC/TTRA/SPCE their public postponement request. By doing so, P&Z failed to meet the "fair and impartial" standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, "A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS", which states, *inter alia*, "WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible". As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

(v) **Public Input: PCR Witnesses Permitted to Exceed Time Limit during December Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 6., stipulates that P&Z applicants shall be limited to a total of 10 minutes of direct testimony and an additional

total of 5 minutes of rebuttal testimony. At the December 10, 2024, hearing, P&Z permitted Applicant PCR to call several witnesses, many of whom exceeded the 3 minutes allotted to Public witnesses and all whom together exceeded the 10 minutes total time allocated to PCR as an applicant. To make matters worse, P&Z Acting Chair Commissioner Marquena refused to grant additional time to any Public witness speaking against ZNCH-24-005, repeatedly admonishing witnesses who exceeded their 3-minute speaking time. While P&Z Chair has the authority to grant additional time to any witness, he only did so for witnesses testifying on behalf of Applicant PCR. P&Z erred when it always granted additional time to Applicant PCR witnesses, but refused to grant additional time to any Public witness speaking in opposition to ZNCH-24-005. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(vi) Public Input: Double Testimony Permitted for PCR Witness during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Sandoval County Resolution No. 8-25-20.6C, Section I., Part I., paragraph 2 b)., stipulates, in part, that “No individual will be permitted to speak more than one (1) time”. At the December 10, 2024, hearing, P&Z permitted a witness to speak on behalf of Applicant PCR and then to speak a second time during Public comments in which said witness spoke again in favor of ZNCH-24-005. Many members of the Public at the Hearing objected to this action, but Acting Chair P&Z allowed the PCR witness to speak twice in spite of Public objections. P&Z erred by allowing a PCR witness to speak twice. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(vii) Public Input: Public Opposition Evidence Misrepresented during Hearing, giving the appearance of preferential treatment for PCR by P&Z, and thus in Error.** Toward the end of the December 10, 2024, hearing, a P&Z Commissioner, speaking remotely, queried P&Z Director whether it was true that 75% of members of the Public who provided written testimony on the matter of ZNCH-24-005 were, in fact, supportive of ZNCH-24-005. P&Z Director answered in the affirmative. As explained in Paragraph 2 above, the P&Z Director’s answer is demonstrably false. P&Z erred by stating, for the record, that substantially more members of the Public supported ZNCH-24-005 than opposed it. By doing so, P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO.

10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(viii) Public Input: Overall Pattern of Preferential Treatment for PCR by P&Z and thus in Error.** As demonstrated by Points 5(i-vii) above, P&Z evinced a clear pattern of preferential treatment for Applicant PCR—and bias against members of the Public opposing ZNCH-24-005—throughout consideration of ZNCH-24-005. P&Z erred in doing so, as P&Z failed to meet the “fair and impartial” standard set forth in SANDOVAL COUNTY, NEW MEXICO RESOLUTION NO. 10-16-03. 11D, “A RESOLUTION RELATING TO THE TIMELY SUBMISSION OF DOCUMENTS AND MATERIALS REGARDING PUBLIC HEARINGS ON PLANNING & ZONING MATTERS”, which states, *inter alia*, “WHEREAS it is in the best interests of all parties to a public hearing that such a proceeding be conducted in a manner that is fair and impartial as possible”. As a result of this P&Z error, P&Z recommendation of approval is appealable under Section 22A.

**(ix) Public Safety Threat: Tesla Megapack Fire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated January 3, 2025, we concur in their assessment that PCR misrepresented the Tesla Megapack fire threat posed by the Diamond Tail Solar BESS. P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under the NM Stat NM Stat § 3-21-5 (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(x) Public Safety Threat: Wildfire Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR misrepresented the wildfire threat in the Diamond Tail Solar area and that, in fact, a real wildfire threat exists in the proposed BESS deployment location.

Furthermore, at the December 10, 2024, hearing, PCR produced—quietly and without fanfare—a new graphic on wildfire risk that contradicted their previous wildfire estimates (see PCR Public Hearing Presentation, December 10, 2024, page 7, posted on P&Z public website). Let us recall PCR’s previous testimony: *“In the unlikely event of a battery fire, the spread of fire off-site will*

*also be unlikely due to the Project area's minimal wildfire risk".* The new PCR wildfire graphic clearly shows that the wildfire risk at the site location is *not* minimal (1/6), as claimed by PCR previously, but rather varies between low (3/6) to moderate (4/6), confirming Parsons testimony. As a result, the overall argument for BESS fire and wildfire safety made by PCR has now been vitiated by PCR's own revised testimony!

P&Z uncritically accepted PCR previous evidence at face value and failed to consider the implications of PCR's latest wildfire analysis and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xi) Public Safety Threat: Inadequate Safety Safeguards Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Marie Haycock, and by Bill and Lorna Parsons, at the December 10, 2024, hearing, and in the Haycock follow up appeal to the County Board dated January 8, 2025, and in the Parsons follow up appeal dated January 3, 2025, we concur in their assessment that: (a) PCR has proposed inadequate safeguards to protect the Public from BESS fires and other mishaps; and (b) the PCR proposal for BESS safety does not meet industry "best practices". P&Z uncritically accepted PCR evidence at face value and thus failed to address this severe detrimental threat to public safety, as required under NM Stat § 3-21-5, A(2) (2018), Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xii) Public Safety Threat: Poor First Responder Access Evidence Unaddressed by PCR and P&Z.** Based on the statements made by the Sandoval County Fire Department Official, in attendance at the December 10, 2024, hearing, the County Fire Department (FD) has informed the applicant that the FD will not be responsible for any fire response or fire-fighting within the 1833-acre industrial power plant. Furthermore, Applicant PCR has not responded to the Fire Department on what measures it will take to address an uncontrolled vegetation fire or toxic lithium battery fire within the perimeter of the massive power plant. Additionally, the FD and the Applicant have not answered the public inquiries concerning the number of fire equipment rated roads necessary to gain access to extinguish both the surrounding wildfire threat and any uncontrolled facility fires that involve highly toxic lithium battery where the number of batteries are in excess of 1,140,000.

There exists no fire equipment rated roads into the Diamond Tail Ranch that can support fighting a fire at the 1,833-acre solar power plant. The rural unimproved road that is proposed for an access route, and conceivably could be upgraded to a fire equipment rating, is not within Sandoval County jurisdiction and/or control. Clearly, interjurisdictional cooperation has not

occurred in the submission of this application or its review. Consequently, to build a fire equipment rated road in Santa Fe County would require a minimum of a Santa Fe County review and approval, in advance, to substantiate access to the power plant from a National Scenic Highway as an appropriate use of the scenic highway. In addition, as the proposed access road for firefighting is in Santa Fe County, no evidence exists PCR has secured the necessary agreements to have Santa Fe County provide as primary or secondary fire protection and response services to Diamond Tail Solar. Furthermore, the two rural roads within Sandoval County, which conceivably could be improved to accommodate a fire equipment rating, are not fully under the control of Sandoval County as they are held in part or whole as private roads or a road that cross the protected conservation easement owned by the City of Albuquerque and is designated the Golden Open Space. Neither the P&Z staff report nor PCR have addressed this gap in evidence to support the rezoning application. Should PCR's insurance carrier or Sandoval or Santa Fe Counties FD's require two access roads, both with a fire equipment rating, there exist no such roads to accommodate the requirement. In accordance with New Mexico State industrial building standards, the applicant has not consulted the New Mexico State Fire Marshal, Code Enforcement Officer to determine if the proposed 1,833-acre rural wild land location is suitable for the construction of one the largest battery storage facilities supported by solar panels in New Mexico. The State Fire Marshal may find that this power plant location unbuildable.

These omissions in the hearing demonstrate the PCR application failed to receive a full and complete review in the Planning and Zoning staff report, as these critical items were unanswered by the FD or PCR or addressed sufficiently in the report. P&Z failed to address these detrimental threats to the public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and the Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiii) Public Safety Threat: NM-14 Construction Traffic Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR substantially under-estimated the increase in traffic along NM-14 during construction of Diamond Tail Solar. Traffic density—and thus safety and impact to public infrastructure—is an important factor affecting public safety and general welfare. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xiv) Public Safety Threat: Traffic Safety Evidence along Puertocito Road Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral

testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR misrepresented the traffic safety problem along Puertocito Road likely to result from construction of Diamond Tail Solar. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xv) Environmental Degradation: Visual Impact Evidence Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Furthermore, Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR stated: “The applicant will lease enough land to have a reasonably sized setback (buffer) around **the Solar project**, which will not interfere with existing property uses and **is visually similar to PNM’s electrical grid infrastructure currently existing on Diamond Tail Ranch**”. (bold emphasis added.)

Moreover, Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“5. The general compatibility of the proposed amendment with actual or prospective permissive zoning use of adjacent properties:”

In response to the Section 19(5) requirement, Applicant PCR stated: **“The project’s infrastructure will be visually similar to PNM’s existing infrastructure on Diamond Tail Ranch”**. (bold emphasis added.)

In a report dated October 8, 2024, P&Z Staff, under **“FINDINGS OF FACT”**, stated, in part, that:

“5. The request for Special Use (SU) district for zoning for the proposed development is consistent with the policies in the Sandoval County Comprehensive Plan as shown in this report (p. 2).”

and

“6. The request for Special Use (SU) Zone Map Amendment satisfied the criteria for review for a Zone Map Amendment as establish in Section 19, Amendments, Subsection F, Guidelines (1-7). Subsection F.”

Based on these Findings of Fact, P&Z Staff recommended approval of ZNCH-24-005, which P&Z Commissioners duly approved said recommendation on December 10, 2024.

**In fact, PNM’s existing infrastructure on Diamond Tail Ranch is in no way visually similar to the proposed Diamond Tail Solar power plant.** No two entities could be more disparate in terms of size and visual impact. On the one hand, the exiting PNM electrical infrastructure consists of three overhead power lines (OHL) and the Diamond Tail Substation, which is a 13-acre facility consisting of one small building and a low-level grid of transformers. On the other hand, proposed Diamond Tail Solar is a large-scale industrial facility, which will sprawl across miles of terrain, occupy over 1,800 acres (2.86 square miles) of land, consist of over 500,000 solar panels and almost 6,000 tracking arrays, and prominently feature a 2-acre battery energy storage system facility, with its own electrical substation.

The P&Z decision to recommend approval of ZNCH-24-005 was: (a) demonstrably not supported by visual evidence in the matter; and (b) failed, abysmally, to meet the stringent standards set forth in Section 10(2) and Section 19(5) of the Sandoval County Comprehensive Zoning Ordinance. Accordingly, P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals..

**(xvi) Environmental Degradation: Sandoval County “Unsightly Use of Land” Standard Unaddressed by PCR and P&Z.** New Mexico Statutes, Chapter 3 – Municipalities, Article 21 - Zoning Regulations, Section 3-21-5 - Zoning; conformance to comprehensive plan (NM Stat § 3-21-5 (2018)), which is controlling in Sandoval County, states, in part:

A. The regulations and restrictions of the county or municipal authority are to be in accordance with a comprehensive plan and be designed to:



**(8) control and abate the unsightly use buildings and land.** (bold emphasis added.)

**In fact, Diamond Tail Solar, if built, would massively exacerbate the unsightly use of buildings and land in the East Mountains.** The location and setting of this large-scale industrial facility are demonstrably inappropriate. The size and scale of this proposed power plant—with its three-square miles of “dark, glassy” PV arrays and 2-acre BESS and electrical substation, all of which are proposed to be situated in otherwise pristine high desert—would obviously and significantly detract from the scenic beauty of New Mexico, being:

- in full view of Sandia Crest Overlook;
- in close proximity to and in full view of the Albuquerque Golden Open Space;
- situated on a location at which several box office and streaming movies have been filmed due to its unobstructed dynamic backdrops and enchanting natural beauty and on a location which has inspired such notable artists as Georgia O’Keeffe to produce numerous works of art; and
- in close proximity to and in full view of the NM-14, the Turquoise Trail, a National Scenic Byway in New Mexico.

**The unsightly scenic impact by Diamond Tail Solar on NM-14, the Turquoise Trail, is particularly disturbing and contrary to both NM Stat § 3-21-5 (2018) and U.S. Department of Transportation (DOT) regulations. NM-14, as a designated National Scenic Byway, is supposed to be scenic.** The U.S. DOT defines “scenic” as:

“Scenic Quality is the heightened visual experience derived from the view of natural and manmade elements of the visual environment of the scenic byway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape—landform, water, vegetation, and manmade development—contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.”

PCR’s proposed Diamond Tail Solar derogates from every single aspect of DOT’s definition of scenic. If Diamond Tail Solar were built, DOT would be well within its rights to terminate NM-14’s designation as a National Scenic Byway—and that would be a first in American history.

During P&Z hearings on October 8, and December 10, 2024, many members of the Public, including TTRA and EMPAC representatives, clearly and repeatedly pointed out—and vigorously protested—how Diamond Tail Solar would negatively impact the scenic nature of the East Mountains, in general, and M-14, the Turquoise Trail, in particular.

Significantly, neither PCR nor P&Z considered the visual impact in relation to NM Stat § 3-21-5 (2018) or any County code regulation. Furthermore, no one at the December 10 Hearing

commented on or responded to Public protestations regarding the negative visual impact of Diamond Tail Solar, including P&Z Commissioners, P&Z Director, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with those witnesses who condemned the visual impact of Diamond Tail Solar, or (b) P&Z Commissioners failed to consider their countervailing point of view. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they recommended a Zone Change that they knew—or should have known—violated NM Stat § 3-21-5 (2018). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xvii) Environmental Degradation: Water Usage Evidence Misrepresented by PCR and Unaddressed by P&Z.** Based on the evidence presented in oral and written testimony by Lorna and Bill Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 3, 2025, we concur in their assessment that PCR significantly underestimated water usage for both construction and operation of Diamond Tail Solar. Because undisputable data show annual declines in East Mountains water source, this under-estimation poses a detrimental threat to public welfare. P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(3). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xviii) Environmental Degradation: Puertocito Concerns regarding Well Water Contamination and Access Unaddressed by PCR and P&Z.** Based on the evidence presented in oral testimony by the Benson Family at the December 10, 2024, hearing, and in the follow up appeal by “The Puertocito-Golden-Ranchers” to the County Board, dated January 8, 2025, we concur in their assessment that PCR construction and operation of Diamond Tail Solar could negatively impact the ability of Puertocito residents to obtain clean, affordable, and sustainable water, due to potential contamination of their water wells during construction and due to running their wells dry as a result of PCR operations once the solar power plant is built. P&Z failed to address this detrimental threat to public safety and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(1). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xix) Environmental Degradation: Thermal Pollution Evidence Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Bill and Lorna Parsons at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated

January 3, 2025, we concur in their assessment that thermal pollution created by operation of the proposed Diamond Tail power plant poses a detrimental threat to public safety, health, and general welfare. Both Applicant PCR and P&Z failed to address this detrimental threat to public safety, health and welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(6). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xx) Environmental Degradation: Nighttime Light Pollution Evidence Unaddressed by PCR and P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address the issue of light pollution being created by Diamond Tail Solar during nighttime construction or during nighttime operations.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The economic, noise, **glare**, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(4) requirement, Applicant PCR only addressed glare and glint emanating off the solar panels during the daytime.

In a report dated October 8, 2024, P&Z Staff, under “**FINDINGS OF FACT**”, stated, in part, that:

“5. The request for Special Use (SU) district for zoning for the proposed development is consistent with the policies in the Sandoval County Comprehensive Plan as shown in this report (p. 2).”

and

“6. The request for Special Use (SU) Zone Map Amendment satisfied the criteria for review for a Zone Map Amendment as establish in Section 19, Amendments, Subsection F, Guidelines (1-7). Subsection F.”

Based on these Findings of Fact, P&Z Staff recommended approval of ZNCH-24-005.

As a matter of fact, the proposed Diamond Tail Solar location has one of the most pristine and scenic nighttime viewsheds in all of New Mexico. Currently, there are no major facilities of any sort anywhere near the proposed site. Therefore, significant nighttime light pollution by an industrial facility, such as Diamond Tail Solar, would fail to preserve the integrity of the area within the meaning of Section 10(2) and would constitute “glare” within the meaning of Section 19(4).

During the December 10, 2024, hearing, the Benson family presented oral testimony in which they specifically raised the issue of nighttime light pollution. They raised two concerns. First, that nighttime construction of Diamond Tail Solar would cause light pollution. Second, and far more concerning, that the operation of security motion sensors at night, triggered by PCR operations and/or animal movement, would lead to frequent but random nighttime light pollution all year around.

Significantly, no one at the December 10 Hearing commented on or responded to the Benson family concerns about nighttime light pollution, including P&Z Commissioners, P&Z Director, and PCR witnesses. This was particularly troubling because the SWCA report, “Visual Resources Technical Memo”, prepared for PCR, specifically highlighted the issue of nighttime light pollution. Under **Recommended Mitigation Measures**, the report stated:

"ALTHOUGH NOT SPECIFICALLY IDENTIFIED IN THIS STUDY due to viewing distance, light pollution from the project could create negative visual effects, particularly from residential viewers with long-duration views. Project lighting, such as within the proposed substation and BESS facility, should be of minimum intensity as required for safety and security, and site lighting should be fully shielded and equipped with motion sensors to the extent feasible."

**We therefore conclude that either (a) all parties agreed with Benson family concerns regarding potential nighttime light pollution caused by Diamond Tail Solar operations, or (b) P&Z Commissioners failed to consider their legitimate concerns, which as shown above were actually confirmed by SWCA. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(4). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxi) Environmental Degradation: PCR Decommissioning Plan Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in presentations to the public, PCR repeatedly claimed that:

“Solar power plant site will be restored to the condition as it was 30 years ago”.

PCR also posted on the P&Z public website a document entitled “Decommissioning Plan, Diamond Tail Solar + BESS Project, Sandoval County, NM”, dated September 2024.

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony that contradicted PCR's claim the Diamond Tail Solar site will be restored to the condition as it was 30 years ago (see Attachment #5). Working from PCR's Decommissioning Plan, he highlighted the following points:

- "The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use." (emphasis added.)
- "Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions." (emphasis added.)
- "After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition*." (emphasis added.)
- "In addition, the site *may be revegetated* ... ." (emphasis added.)
- "All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners*. (emphasis added.)

Based on these PCR points, he concluded that PCR had no plans to restore the site to its original condition as a pinyon-juniper woodland; rather, the site would be turned into farmland or re-developed for other purposes.

This means that the former Diamond Tail Solar would never be put back into its original condition and thus the site would *not* preserve the integrity and character of the area in the which the Special Use was located, contrary to Section 10(2).

Significantly, no one at the December 10 Hearing commented on or disputed Poindexter's analysis, including P&Z Commissioners, P&Z Director, and PCR witnesses.

**We therefore conclude that either (a) all parties agreed with Poindexter's analysis that PCR misrepresented its plan to restore the Diamond Tail Solar site to its original condition, or (b) P&Z Commissioners failed to consider Poindexter's analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated Section I of Sandoval County Comprehensive Plan and that violated Sandoval County Comprehensive Zoning Ordinance, Section 10(2). If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxii) Environmental Degradation: PCR Decommissioning Plan Evidence Conflicts with P&Z Staff Land Use Recommendation and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

In response to the Section 10(2) requirement, Applicant PCR failed to address how they planned to decommission Diamond Tail Solar at the conclusion of the power plant’s useful life.

However, in the P&Z Staff report on ZNCH-24-005, dated October 8, 2024, under **CONDITIONS OF APPROVAL**, it was stated:

“2. Any substantial change in the uses of the subject site shall require the approval of the Board of County Commissioners upon recommendation of the Planning and Zoning Commission. In no case will any residential development of any kind be allowed within the Special Use (SU) district approved for the subject site.”

During the December 10, 2024, hearing, Brent Poindexter presented oral and written testimony on PCR’s Decommissioning Plan for Diamond Tail Solar (see Attachment #5). Working from that PCR document, he highlighted this key point:

“All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners.*” (emphasis added.)

This point shows that PCR may plan to re-develop the former Diamond Tail Solar site for “beneficial uses” other than farming or agriculture or “original pristine condition”, *based on consultation with landowners*. Significantly, PCR makes no mention of **CONDITIONS OF APPROVAL #2**. PCR only refers to consultations with landowners. PCR says nothing about consultations with P&Z or the County Board, as required under Condition of Approval #2.

So, what we have here is the possibility that PCR is “hiding in plain sight” an option to derogate from its conditional approval granted by P&Z.

Astonishingly, no one at the December 10 Hearing commented on or disputed Poindexter’s key point, including P&Z Commissioners and P&Z Director.

P&Z should have focused on Poindexter’s key point and queried PCR about its long-range plans for Diamond Tail Solar and how those plans comported with P&Z Condition of Approval #2. That did not happen.

**We therefore conclude that either (a) all parties agreed with Poindexter’s analysis that PCR may be planning to derogate from P&Z Condition of Approval #2, or (b) P&Z Commissioners failed to consider Poindexter’s analysis. If it is the former case (a), then P&Z erred when recommending approval of ZNCH-24-005, because they knowingly recommended a Zone Change that violated their own Conditions of Approval. If it is the latter case (b), then P&Z Commissioners failed to consider all the evidence on the matter when making their decision to recommend approval of ZNCH-24-005. In either case, such P&Z decision is appealable under County Comprehensive Zoning Ordinance, Section 22A, Appeals.**

**(xxiii) Economic Discrimination: Reduction of Property Values Issue Unaddressed by PCR and P&Z.** Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that Diamond Tail Solar would negatively impact economically the residents in the East Mountains, particularly with respect to a decline in property values due to a reduction in scenic viewshed and the creation of an additional burden on residents seeking to obtain fire insurance due to the additional fire and wildfire risks posed by the battery energy storage system (BESS). In this regard, at the December 10, 2024, hearing, Joel Darnold presented oral testimony that SPCE-HOA was denied property damage insurance coverage for HOA owned common areas due to high risk of wildfires in our area. Diamond Tail Solar will only increase this fire risk and potentially eliminate the possibility of residents to obtain fire insurance. Both Applicant PCR and P&Z failed to address this detrimental threat to public welfare, as required under the Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(3) and Section 19(4). Therefore, P&Z erred in recommending approval of ZNCH-24-005, by making a decision not based on the evidence, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxiv) Economic Discrimination: Sandoval County Income Distribution Evidence by PCR Discriminates against East Mountains Communities and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:



“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the **utility and value of the property** in the Special use District and in adjacent zone districts;” (bold emphasis added.)

In response to the Section 10(2) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the utility and value of properties in the site area, any including any economic benefits accruing to local residents and businesses.

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“4. The **economic**, noise, glare, or odor effects of the conditional amendment on adjoining properties;” (bold emphasis added.)

In response to the Section 19(4) requirement, Applicant PCR failed to address how Diamond Tail Solar would affect the economic viability of local adjoining properties, any including any economic benefits accruing to such local residents and businesses.

During the December 10, 2024, hearing, a representative from the Sandoval County Economic Development Department provided oral (but not written) testimony on how Diamond Tail Solar would provide numerous economic benefits to County residents and businesses. At that same hearing, PCR representative provided oral and written testimony also touting the economic benefits of the solar power plant to County residents and businesses (see PCR Public Hearing Presentation, December 10, 2024, posted on P&Z public website). Among other things, PCR claimed that Diamond Tail Solar would provide:

- “>\$30 million in property taxes”; and
- “\$11.8 million over 30 years to local school districts”.

However, neither PCR nor the County Economic Development representative provided any additional details about how such economic benefits of Diamond Tail Solar would be distributed to residents within the County.

As a matter of fact, almost all of the economic benefits provided by Diamond Tail Solar will be distributed to County residents *outside of the East Mountains*. The reason for this is simple: the County provides very little in the way of public support or infrastructure to East Mountains residents. For example, the County does not support any schools in the East Mountains. Therefore, not one penny of the \$11.8 million windfall from Diamond Tail Solar for schools will be spent on East Mountains residents. Similarly, the County does not support a police station in East Mountains or a recreation center or a full-time, professional fire station. All of these amenities are provided by other counties, specifically, Bernalillo County and Santa Fe County.

**As a result, the situation with respect to the economic benefits of Diamond Tail Solar is fundamentally unfair and discriminatory: East Mountains residents will be asked to shoulder both the economic burdens and the public safety burdens associated with this large-scale industrial facility, while “West County” residents will reap all of the economic benefits without having to assume any of the risks.**

P&Z erred in accepting the economic arguments in favor of Diamond Tail Solar at face value, without considering how these benefits would be applied to and affect East Mountains residents, particularly in relation to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(4). Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxv) Procedural Discrimination: P&Z Evaluated PCR Solar Project Using Different— and Less Stringent—Standards as Compared to other Sandoval County Solar Projects.**

Based on the evidence presented in oral and written testimony by Jon and Julie Wannlund at the December 10, 2024, hearing, and in their follow up appeal to the County Board dated January 8, 2025, we concur in their assessment that P&Z procedurally discriminated in favor of PCR’s Diamond Tail Solar Project as compared to how P&Z evaluated other similar solar power plant projects in 2023 and in a manner that failed to comport with Sandoval County Comprehensive Plan, Section I, Policy B, Strategy 3. Therefore, P&Z erred in recommending approval of ZNCH-24-005, and thus P&Z recommendation of approval is appealable under Section 22A.

**(xxvi) Premature Timing: PCR Interconnection Power Agreement with PNM Years Away.**

Based on statements made by PCR CEO, Mariano Brandi, PCR submitted an application to PNM for interconnection to the Diamond Tail PNM Substation in the 2022. Further statements made by Brandi at a December 3, 2024, public meeting confirmed that the PNM interconnection application process was reviewing the applications submitted in 2014 and 2015, consistent with the PNM Interconnection Manual.

During the December 10, 2024, hearing, opposition testimony from Dennis Kellogg and others stated that the PCR interconnection application with PNM, then pending with the power company, would not be reviewed or considered for advancement to the “power agreement stage” and subsequent study phase for between 7 to 8 years.

According to the PNM application process, interconnection applications are the very beginning of the path toward securing an interconnection power agreement with the utility. Consequently, the concerns raised by the community and organizations at the hearing could easily have been fully addressed as more than adequate time was available to assure full and complete public input. This obvious step was not taken by the P&Z, and if taken would not have harmed PCR’s request for a rezoning of rural land to a Special Use District to encompass an 1,833-acre industrial power plant.

Therefore, P&Z erred by making a premature decision on re-zoning. Thus, P&Z recommendation of approval is appealable under Section 22A.

**(xxvii) Premature Location: Technical Reasons for Choosing Diamond Tail Location Misrepresented by PCR and Unaddressed by P&Z.** The Sandoval County Comprehensive Plan mandates that stringent requirements must be met before a Zone Map Amendment (Zone Change) may be approved, including, *inter alia*:

“Section I: land Use and Natural, Historic, and Cultural Resources:

STRATEGIES: Development decisions shall be based on impact on surrounding land uses, particularly in residential and agricultural areas, air and water quality considerations, effect on public health and safety, and the availability of public services and infrastructure (p. 11)”

Sandoval County Comprehensive Zoning Ordinance, Section 10, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, including:

“2. To preserve the integrity and character of the area in the which the Special Use will be located, and the utility and value of the property in the Special use District and in adjacent zone districts;”

Sandoval County Comprehensive Zoning Ordinance, Section 19, establishes that the Board of County Commissioners “may not grant a Zone Map Amendment for establishment of a Special Use District unless satisfactory provisions have been made”, concerning:

“6. The overall health and safety of the community;”

PCR in its public presentations repeatedly stated that the Diamond Tail Solar location was selected for two technical reasons. First, since the site is located between Albuquerque and Santa Fe, it is ideally located to provide power to both communities. Second, when asked whether PCR had examined other potential solar sites that had less environmental impact on the local communities, PCR affirmed that they had and that the Diamond Tail site was on the only site that met their technical specifications.

As to the first point, PCR's technical contention is wrong as a matter of physics and electrical engineering. What is important for a power plant is how far away it is from a substation that it allows it to tie into a high-voltage transmission grid. Once a power plant ties into the transmission grid, it is irrelevant how far away it is from its consumers. So, PCR's contention that they needed a site close to Albuquerque and Santa Fe is technically absurd.

What PCR really needed was a site that was no more than 15 miles away from suitable substation, which is exactly what they got with the Diamond Tail substation and the Diamond Tail Ranch site. However, that choice had nothing to do with its technical proximity to metropolitan sites.

As to PCR's second point, of course, we have no idea whether PCR examined other solar potential sites, and, if so, how many and where. However, what we can say with confidence is that we have easily been able to identify other potentially useful solar sites.

For example, two operational solar farms were previously sited and approved by Sandoval County. These sites are the Encino Solar Energy Center and the Sandoval Solar Energy Center located at 5401 Encino Road NW 87144 and 1501 Encino Drive NW 87124 respectively. In relation to the proposed PCR location, these sites are situated in more favorable areas of Sandoval County, away from public development, and more correctly address the health, safety, and welfare of Sandoval County citizens. The benefits of co-locating the PCR facility within this existing "solar corridor" provide numerous advantages. The opportunity for more favorable construction terrain exists. A network of roads and infrastructure more effectively addresses the danger for potential wildfire, as it is not located close to mountainous and forested land. Given the abundance of existing roads, this location provides more than adequate access to the potential site in the event a fire suppression action is required. Locating the PCR facility in this "solar corridor" has the potential to access existing and planned transmission capacity. The first ever PNM "20-Year Transmission Planning Outlook", dated November 12, 2024, identifies the construction of a major transmission line through this corridor. Transmission efficiencies may be realized by siting the PCR facility in proximity to both of Sandoval County's existing solar assets and the newly operational Atrisco Solar and Battery Farm (located near Double Eagle Airport) in Bernalillo.

Therefore, PCR's claim that the Diamond Tail was, technically, the only suitable site in Sandoval County, much less New Mexico, is demonstrably false.

Our best guess is that PCR chose Diamond Tail because they were able to cut a good financial deal with Diamond Tail Ranch (and because it had a suitable pre-existing substation).

P&Z erred in accepting PCR's technical siting arguments in favor of Diamond Tail Solar at face value, without considering whether PCR could have located other potential solar sites within Sandoval County that were less offensive to the standards set forth in Sandoval County Comprehensive Plan, Section I, and Sandoval County Comprehensive Zoning Ordinance, Section 10(2) and Section 19(6). Thus, P&Z recommendation of approval is appealable under Section 22A.

**6. Request County Board Public Hearing on instant Appeal:** Pursuant to County Comprehensive Zoning Ordinance, Section 22C, Appeals, we hereby request a Public Hearing by the County Board to consider the instant appeal.

**7. Request Stay of Proceedings on ZNCH-24-005 pending requested Public Hearing:** Pursuant to County Comprehensive Zoning Ordinance, Section 22E, Appeals, we hereby request that the instant appeal shall stay all proceedings in the matter of ZNCH-24-005.

**8. Request Equal Standing between Appellant TTRA and Applicant PCR during requested Public Hearing:** During requested hearing, if approved, Appellant TTRA requests standing equal to Applicant PCR when addressing the County Board, to wit to include: that Appellant TTRA be afforded the same time to present its position as afforded to Applicant PCR, that TTRA be permitted to call its own witnesses, that EMPAC be permitted to cross examine Applicant PCR's witnesses, and that TTRA be afforded access to same audio-visual equipment and options as afforded to Applicant PCR. In a matter as technically complex and environmentally important as ZNCH-24-005, it imperative that proceedings be conducted in a fair and transparent manner in which all sides are given equal opportunity to state their positions, thereby ensuring that the County Board shall be in a position to make an informed decision on the matter of ZNCH-24-005 on behalf of all County residents, particularly those individuals who will be most directly impacted by Applicant PCR's Diamond Tail Solar Project.

**ATTACHMENT #2: TTRA Memorandum Requesting Postponement of December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005**

MEMORANDUM

TO: Chair Dennis R. Trujillo, Sandoval County Planning and Zoning Commission

FROM: Turquoise Trail Regional Alliance (TTRA) &  
East Mountain Protection Action Coalition (EMPAC)

DATE: November 26, 2024

SUBJECT: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

By this memorandum, we hereby formally request postponement, until on or about January 14, 2025, of the Sandoval County Planning and Zoning Commission (“Commission”) Hearing, scheduled for December 10, 2024, on the matter of ZNCH-24-005, Request by PCR Investments (“PCR”), agent for Diamond Tail Ltd, for a Zone Map Amendment from Rural Residential/ Agricultural District (RRA) to Special Use District (SU).

Our reasons for formally requesting hearing postponement are set forth below:

1. Holidays: As the Commission and PCR are well aware, the December 10 Hearing is scheduled well into the Holiday period. During this busy and stressful time, it is burdensome for members of the public to prepare for and participate in a public hearing on a matter as important and complex as ZNCH-25-005. A one-month postponement, to get through the Holiday period, would maximize public participation, which is surely in the interests of all parties.

2. Belated PCR document dump: PCR only recently, on or about November 22, 2024, provided to the public its background and supporting written materials relating to ZNCH-24-005 via the Commission website. This documentation includes 22 separate documents totaling several hundred pages of detailed and complex material (e.g., the Phase I Environmental Site Assessment alone is 223 pages in length!). It takes time for members of the public to process this amount of material. Since written public testimony to the Commission for the December 10 hearing must be submitted no later than December 6 (72 hours in advance), this means that the public has only been given two weeks to process the PCR documentation. This compressed timeline is unduly burdensome to the public, especially as it occurs over the Thanksgiving Holiday. Finally, we note that PCR failed to provide this documentation prior to the Commission’s initial ZNCH-24-005 hearing on October 8, 2024, and again failed to do so in advance of the follow-up hearing, originally scheduled for November 12, 2024.

3. Ongoing PCR public outreach meetings: PCR is still conducting public outreach meetings, pursuant to Commission request at the initial ZNCH-24-005 public hearing on October 8, 2024. Three of those outreach meetings are scheduled to occur on December 4 and 5 (and there may be other that we don't know about). This means that the public will have only 1-2 days to process the information provided by PCR and prepare written testimony in response. This compressed timeline is, once again, unduly burdensome to the public.

4. Follow-up hearing postponement: The follow-up hearing on ZNCH-24-005 was originally scheduled for November 12, 2024. We understand that PCR requested a postponement of one month to have more time to prepare, a postponement which the Commission accommodated and granted. We ask for a similar accommodation and for the same reason, more time to prepare, for the reasons outlined in Points 1-3 above.

5. No compelling reason to expedite: We know of no compelling reason why the December hearing cannot be postponed one month until January 14, 2025. A one-month postponement will in no way derogate from the substantive or procedural issues relating to ZNCH-24-005.

If the Commission has any questions regarding our request for postponement, we urge you to contact us:

Karen Yank, President TTRA  
hamonyank@cybermesa.com  
505-269-9959

Dennis Kellogg, EMPAC Board  
info@theempac.org  
916-715-7066

**ATTACHMENT #3: Response by Staff Director, P&Z Commission to TTRA Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

**From:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>

**Date:** December 2, 2024 at 1:58:49 PM MST

**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>

**Cc:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>

**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hi Karen,

Thank you for your email. Subject project (item ZNCH-24-005) will remain on the agenda for the December 10, 2024 Planning and Zoning Commission hearing date.

Sincerely,

<image001.png  
>

**Daniel J. Beaman**

*Director of Planning and Zoning*

Sandoval County | New Mexico | US

<https://www.sandovalcountynm.gov/>

[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)

**1500 Idalia Road, Building D**

**Bernalillo, NM 87004**

Office: (505) 867-7628

Direct: (505) 867-7617



**ATTACHMENT #4: Response by Wayne Johnson, Sandoval County Manager, to TTRA and EMPAC Memorandum Request to Postpone December 10, 2024, Public hearing P&Z Commission on the matter of ZNCH-24-005**

Begin forwarded message:

**From:** Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Date:** December 2, 2024 at 3:47:43 PM MST  
**To:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>, Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>, Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>, Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** RE: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Good afternoon Ms. Yank,

At this point, we have an identified applicant and a general group of opponents. While we received a memo from two organizations requesting a deferral, it's hard for us to determine the overall representation of the opponents. There may be those who have made plans to be at the December 10<sup>th</sup> meeting to voice their opposition and would be opposed to a deferral at this late date. Given this situation, and the applicant's request not to defer the matter, we made the decision to proceed with the December 10<sup>th</sup> hearing. At that meeting, you will be given the opportunity to request a deferral – which I suspect the applicant will oppose given their recent communication to that effect. The chair and the rest of the board, will then be able to make a determination as to whether or not to grant a deferral. This approach makes that determination public and provides an open and transparent discussion of the reasons for or against a deferral. Chair Trujillo has not been in contact with you because as you know, the county discourages any kind of ex parte communication. Doing so could jeopardize the member's ability to vote.

Best,



**Wayne A. Johnson**  
County Manager  
o. 505.867.7551  
c. 505.934.2152  
[www.sandovalcountynm.gov](http://www.sandovalcountynm.gov)

**From:** Karen Yank <[hamonyank@cybermesa.com](mailto:hamonyank@cybermesa.com)>  
**Sent:** Monday, December 2, 2024 3:35 PM  
**To:** Daniel Beaman <[dbeaman@sandovalcountynm.gov](mailto:dbeaman@sandovalcountynm.gov)>; Wayne Johnson <[wjohnson@sandovalcountynm.gov](mailto:wjohnson@sandovalcountynm.gov)>  
**Cc:** Dennis Kellogg <[kellfamdennis@gmail.com](mailto:kellfamdennis@gmail.com)>; Michael Eshleman <[Meshleman@sandovalcountynm.gov](mailto:Meshleman@sandovalcountynm.gov)>; Doraida Arias <[darias@sandovalcountynm.gov](mailto:darias@sandovalcountynm.gov)>  
**Subject:** Re: Formal Request to Postpone December 10 Hearing on ZNCH-24-005

Hello Wayne and Daniel,

Please give us your reason for denying our request for postponement of the Dec. 10th zoning meeting promptly. Our groups and their lawyers would like to know more detail.

Also, Wayne, I was told by your office that the Chair of the Planning and Zoning Commission is the only person to decide whether to approve a request for postponement. Why then hasn't Chair Dennis Trujillo responded to me instead staff?

Thank you,  
Karen Yank  
Dennis Kellogg

**ATTACHMENT #5: Brent Poindexter Testimony submitted for the Record as part of the December 10, 2024, P&Z Commission Public Hearing on the matter of ZNCH-24-005:**

Our land in the East Mountains is renowned for its natural beauty so much so that NM-14 was designated a National Scenic Byway and why the Golden Open Space was created. Moreover, it is why tourists from all over our nation and the world flock to the Turquoise Trail and Sandia Crest in order to cherish the view of the East Mountains along the Trail toward Santa Fe.

However, the pine-juniper woodlands and high desert of the East Mountains, while beautiful, are also extremely fragile ecosystems, and once disturbed, it will take decades to regenerate.

The plan for Diamond Tail Solar is to bulldoze, clear, and compact approximately 3 square miles of land. Once configured for Diamond Tail Solar, that part of our ecosystem will be literally wiped out. The resulting brownfields will be a dark blot on the landscape, in full view of the Turquoise Trail and Sandia Crest for the life of the solar power plant. The visual impact cannot be overstated.

But the situation is worse than that. PCR claims that, after the power plant has outlived its usefulness, the *“Solar power plant site will be restored to the condition as it was 30 years ago”*.

However, PCR’s Decommissioning Plan tells another story. Here are some highlights from the Plan:

- “The areas of the Project that have been disturbed will be restored, *as near as practicable*, to their pre-construction and allow for similar land use.” (emphasis added.)
- “Portions of the Project site that have been excavated and backfilled will be restored, *as near as practicable*, to pre-construction conditions.” (emphasis added.)
- “After all equipment is removed, any holes or voids ... will be restored to surrounding grade and *tilled to farmable condition*.” (emphasis added.)
- “In addition, the site *may be revegetated* ... .” (emphasis added.)
- “All access roads and other areas compacted by equipment will be de-compacted to a depth of 18 inches from finished grade prior to fine grading and tilling or seeding. *This may include seeding as farmland or re-development of the land for other beneficial uses, based on consultation with landowners*. (emphasis added.)

**Focusing on the last bullet above, we conclude that there is, in fact, no plan to restore the land to its original condition, even if that were possible.** Instead, what we seem to have here is a corporate maneuver being run through a Special Use loophole:

- Diamond Tail Ranch leases land to PCR, making money;
- PCR uses their solar power plant initiative to change zoning from “Agricultural” to “Special Use” then builds and runs the solar power plant, making more money;

- **After the solar power plant is phased out, Diamond Tail Ranch and PCR re-develop the land for “other beneficial uses”, such as building another huge industrial facility (like a Facebook server farm or an Amazon AI center), making lots more money.**

**ATTACHMENT #6: Lot Numbers relating to the matter of ZNCH-24-005:**

1035072263264 1036073062200 1035072241370 1035073265396 1034073400260 1035073330135  
1036073338275