

February 13, 2025

***Via Email Only***

Chairman Michael Meek & Manager Wayne Johnson  
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Re: Directions to Applicant & Appellants for Appeal Hearing on ZNCH-24-005

Dear: Chairman Michael Meek & Manager Wayne Johnson

Through this letter, please accept applicant PCR Investment's response to Mr. Dennis Kellogg's, of the East Mountain Protection Action Collation ("EMPAC"), February 11 and 12, 2025, emails regarding the Directions to Applicant & Appellants ahead of the February 18, 2025, appeal hearing on ZNCH-24-005. Based on our review of Mr. Kellogg's emails, it appears he is requesting a deferral of the February 18 hearing until some unknown future date. We must oppose this request. While we do not oppose extending time for both the Appellants and Applicant to present their case on February 18, we cannot agree to defer the appeal any longer.

As the Sandoval County Planning and Zoning Commission ("P&Z Commission") is aware, PCR has worked hard to be transparent and address those issues community member might have about our Diamond Tail solar project. For example, to date, PCR has held multiple public meetings to discuss the project (8/15/24, 9/3/24, 10/29/24, 12/3/24, 12/4/24) and twice (9/10/24, 10/8/24) voluntarily agreed to delay P&Z Commission approval of the zone change to allow more time for the public to educate themselves on the project's details. However, at this point, we are concerned that Mr. Kellogg and his group seek only to delay the resolution of this project until it is no longer viable.

Mr. Kellogg raises a number of points in his emails and we will endeavor to address each one in turn. First, Mr. Kellogg argues that asking the appellants to coordinate their argument is unrealistic given the "diverse issues." As the Board of County Commissioners ("Board") knows, the February 18 hearing is an appeal of the P&Z Commission's 4-0 recommendation to approve PCR's application. As such, the Applicant's, the Appellants', and the Board's review are "confined to the record of the proceedings." See Section 22(D) of the Comprehensive Zoning Regulations for Sandoval County. Thus, any argument or presentation on February 18, must reference only what was already reviewed by the P&Z Commission. This substantially limits the scope of what can be discussed and should, realistically amount to a brief summary of prior arguments. Moreover, the Board itself will have had ample time to review the record and will be able to ask targeted questions of the presenters. That said, and again, PCR is not opposed to lengthening the period for argument so long as the hearing still takes place on February 18.

Second, Mr. Kellogg compares these upcoming proceedings to those that recently concluded in Santa Fe County regarding the Rancho Viejo Solar project. This is not a fair comparison for a number of reasons. The most obvious being that those Rancho Viejo proceedings were not an appeal, but instead the final hearing for approval of the requested conditional use permit. Slightly different from Santa Fe County, where the Santa Fe County Planning Commission is the final approving authority, the Sandoval County Board is the final approving authority for a zone change. Thus, this Board necessarily must still consider

the P&Z Commissions recommendation to approve PCR's application and can schedule as much time as it deems necessary at that point. However, what is in front of the Board on February 18 is an appeal—not the final approval, and again, the scope of which is extremely limited.

Third, Mr. Kellogg asserts that each of the ten appeals he references have diverse issues. A fair look at the appeals reveals that many of the issues substantially overlap and in some cases are identical to one another. To illustrate this point, it might also be worth pointing out that 4 of the 10 referenced appeals are signed by the same person—William Parsons. *See* Bill and Loma Parsons' appeal, Jon and Julie Wannlund appeal, The Puertocito-Golden-Rancher appeal, and the Turquoise Trail Alliance appeal. Mr. Kellogg specifically references Representative Steffi Lord's appeal, which raises the same points and uses the same language as the Turquoise Trail Alliance appeal, the San Pedro Creek Estates HOA appeal, Mr. Steve Chavez's appeal, and others. The point being, that even a cursory review of the appeals, reveals that the appellants coordinated closely in their drafting and filing. Thus, to ask the appellants to coordinate again to present the appeal to the Board is not an unreasonable request

Finally, the Board has broad discretion to administer County ordinances and its own procedures. This is set forth in Section 2-22 of the Code of Ordinances, Resolution No. 1-11-23.9B dictating the Board of County Commissioners Rules of Procedure, Resolution No. 1-8-25.12A, the Open Meeting Act Resolution, and by statute. *See generally* NMSA 1978, Section 3-12-3(A)(5) (stating that a municipality shall “determine the rules of its own proceedings”) and Section 4-37-1 (stating “counties are granted the same powers that are granted to municipalities”). This must necessarily be the case as the Board is best suited to determine what procedures are required and make sense given their application to county ordinances. The Board is not infringing on the Appellants' rights or acting contrary to New Mexico law. Instead, the Board is acting within its broad discretion to administer its own regulations. The Board's proposed procedures allow both the Appellants and the Applicant to argue why the P&Z Commission's recommendation should be upheld or thrown out, without permitting PCR to be beat over the head with the same arguments over and over again; unfairly prejudicing the Board and the observing public against PCR.

Ultimately, PCR Investments will support and prepare for whatever version of the hearing the Board decides to move forward with, however, we do not believe delaying the resolution of the appeals at hand, which largely overlap, is in the best interests of efficiency or fairness. Thank you for your time and consideration. Should you have any questions or concerns, we stand ready to address them.

Sincerely,

/s/ Cynthia Schuchner  
EPC Manager  
PCR Investments SP4 LLC