

**FINAL COPY**  
**Torrance County Board of Commissioners**  
**Regular Commission Meeting**  
**January 8, 2020**  
**9:00 AM**

Commissioners Present:

**RYAN SCHWEBACH – CHAIR**  
**JAVIER SANCHEZ – MEMBER**  
**KEVIN MCCALL – MEMBER**

Others Present:

**WAYNE JOHNSON – COUNTY MANAGER**  
**JOHN BUTRICK – COUNTY ATTORNEY**  
**LINDA JARAMILLO – COUNTY CLERK**  
**GENELL MORRIS – ADMINISTRATIVE ASSISTANT**  
**LORI ARCHULETA – EXECUTIVE ASSISTANT**

**1. Call Meeting to order**

**Chairman Schwebach:** Calls January 8, 2020 Regular Commission Meeting to order at 9:03 AM

**2. Pledge lead by:** Chairman Ryan Schwebach  
**Invocation lead by** Nick Sedillo

**3. Changes to the Agenda:** No Change

**4. Election of Chair and Vice Chair**

**A. COMMISSION:** Election of Chair and Vice Chair for Calendar Year 2020

**Commissioner McCall:** Motions to open the floor for nominations

**Chairman Schwebach:** Seconds the motion.

**Commissioner McCall:** Moves to keep Commissioner Schwebach as chair.

**Chairman Schwebach:** Seconds the motion.

**Commissioner Schwebach:** Moves to keep Commissioner Sanchez as Vice Chair.

**Chairman McCall:** Seconds the motion.

**Commissioner Schwebach:** Any further nominations?

None

**Commissioner McCall:** Motions to close nominations for Chair and Vice- Chair.  
**Chairman Schwebach:** Seconds the motion.

**Commissioner Schwebach:** Moves to accept Commissioner Schwebach as Chair and Commissioner Sanchez as Vice Chair.

**Chairman McCall:** Seconds the motion.

**All in favor: MOTION CARRIED**

**5. Open Meeting Act Resolution**

**A.** Establishing the provision of the New Mexico Open Meeting Act, NMSA 1978 10-15-1 and Repealing Resolution 2019-1

**Wayne Johnson – County Manager:** You have in front of you an updated Resolution, not a lot of changes, it closely aligns with the Open Meetings Act. This is a statutorily required resolution. The original resolution had some technical and grammatical problems and things that need to be removed. In last year's resolution there were time frames that were not being followed by the County, we had a 10 day rule for notification for Special meetings, and we were never able to meet that. We met the Open Meeting act requirements but never our own resolution, this changes it to 72 hour requirement. We usually have at least 5 days. We also took out some of the things governed by your Commission rules which were included in our previous Open Meeting Act Resolution. This resolution is similar to the one used in Bernalillo County.

**Chairman Schwebach:** Motion to approve the provision of the New Mexico Open Meeting Act, NMSA 1978 10-15-1 and Repealing.

**Commissioner McCall:** Seconds the motion.

**All in favor: MOTION CARRIED**

**6. PROCLAMATION - None**

**7. CERTIFICATES AND AWARDS**

**A. OPERATIONS MANAGER:** Presentation of the 2019 Safety Performance Award Winner.

Nick Sedillo presented award to Kathy Reyes nominated by her peers for her outstanding concern for safety, attending all required trainings and not having any safety issues for 7,562 days injury free. Congratulations to Kathy Reyes from the Torrance County Sheriff's office for winning the 2019 Torrance County Safety

Award. Kathy started with us in 1999. In addition to receiving the safety award Kathy also received a jacket from the Safety Committee.

**8. BOARD AND COMMITTEE APPOINTMENTS - None**

**9. PUBLIC COMMENT and COMMUNICATIONS**

**Linda Jaramillo – County Clerk:** I have some election updates. We have gotten reimbursed from the Secretary of State in the amount of \$27,048 for the Local Election. We have new voting machines, they are faster and include accessible voting. The Governor will issue the Primary Proclamation on January 27<sup>th</sup>. Anyone seeking office need to change parties before this date if they are wanting to change their party. Candidate filing date will be March 10, 2020 9am to 5pm in the Clerk's office. The voting convenient centers were a good training for precinct workers. A lot of people didn't show up for the McIntosh Mobile voting, I may leave it out and give Mountainair more time.

**Danielle Johnston – County representatives for Solid Waste Authority Board:**

Recognized Pauline Ness for her years of serving the young people of our community. Ms. Johnston thanks the Commission for appointing her to this board. Effective January 1, 2020 new bill stubs will be required at the collection station. These stubs will expire on a yearly basis. The new stubs were sent on December 13, 2019. Stubs can be provided at our main office during normal business hours. Presenting stubs at the collection station attendant is required unless a decal is present. To obtain a decal, customers must be current and up to date on their payments. Verification and placement of the decal will be determined by an attendant or office staff member. Customers must renew their vacant exemption and low income applications and provide documents listed at the website annually. The staff is currently working on liens. If property owners want to clear up a lien, please come to the office to make arrangements to pay off any amount.

**Commissioner McCall:** Thanks Danielle Johnston for her work and open communication.

**Brenda Rich-9004 Hwy 55, Estancia:** I have been in touch with the state. We have a problem in our Planning & Zoning, in December a court hearing in the Magistrate office concerning some violations was held, during that hearing a complainant had a voicemail that was left by a Planning and Zoning Agent, stating "I am going to have to play hardball with you". The gentleman addressed the court saying he didn't know what that meant. The meaning of hard ball is to act rough and ruthless especially in politics and business. During this hearing pictures were presented that are proof that this agent was entering property without due process and without a search warrant and without permission from the owners. This

violates our own ordinance, section 19 of the P&Z of the administration sub section D, states this provision does not grant the right of entry without due process of law if necessary. Conner vs. Santa Ana 9<sup>th</sup> district 897 F 2d 1487, 1990 states when permission is not obtained by the property owner a warrant must be obtained to enter those premises.

In the July meeting there were questions concerning the Andy Miller project. A regular Commission Meeting was held the following day and the discrepancies were brought up before the Commission. This was coming from the Planning and Zoning minutes. A previous policy that Torrance County has always followed, if there was an absent representative an alternate was placed. Because that has been previous, in the state law requires that our implications of this be consistent, I would ask that anything that was voted on in that meeting be turned over but also the fact that under the Right to Farm Act, which is a federal and state law, you cannot move into a division where there are subdivisions and set up a farm. The county left themselves vulnerable for a nuisance suite, when they violated their own ordinance, which protects the area of a subdivision, when the plat is vacated. It cannot do unjust duress on anyone that was already a part of that subdivision. Everyone that was part of that subdivision was here and made it clear that they did not want this to happen. The rights of the citizens of McIntosh were not addressed. In the December meeting the county violated the Open Meeting Act, when there is no address in policy of teleconferences, the state addresses teleconferences, stating in Sec 10-15-1 subsection c, a member may participate by means of a conference telephone call when it is difficult or impossible for the member to attend in person. Providing each member participating can be identified when speaking with each other at the same time any members of the public attending can hear and address. On the December 5<sup>th</sup> Planning Zoning Meeting a teleconference was done for a member who was not available. That gentleman was in a hospital, we do not know what medications he was under and we violated an ordinance that we don't have. I ask that all votes from that December 5<sup>th</sup> meeting be over turned. If you ask questions you expect to get truthful answers in line with the ordinance. On my personal case one of the miss information that I received from Planning & Zoning, costs my child to buy a \$300,000 house.

**Art Ducharme – Alternate Board Member for Planning & Zoning Board:** I have some issues with Planning & Zoning. At the December P&Z Board meeting Chairman Graham directed me to sit with the public and would not allow me to comment on the November minutes, to which I contributed, and on any other agenda items as an alternate board member. He affectively removed my status as one of the 6 board members designated in the P&Z policy, limiting district 2's representation on the board. According to the policy only the County Commission has that power. The County Attorney Mr. Butrick made a vague reference to

Roberts Rules of Order. To support Mr. Graham's ruling and said I was now just a member of the public. This behavior continued at the January 6<sup>th</sup> meeting, where Mr. Butrick reassumed affective direction of the 3 person board in attendance providing no representation from Torrance County district 2. Recently I consulted with attorneys at the New Mexico office of the Attorney General concerning these and related events. They confirm that Roberts Rules of Order has no legal status or standing, it is simply a guideline on how to run a meeting. They verified that the P&Z policy has the legal status with the approval of the Torrance County Commission. The Chairman Mr. Graham exceeded his power as the board chairman and Mr. Butrick gave Mr. Graham wrong legal advice. As a result, open meeting violations continue under this chairmanship with Mr. Butrick's advise. Participation my telephone happened on the 5<sup>th</sup>, it's not allowed by the P&Z Policy. The number 1 board member's duties is to attend all Planning & Zoning meetings and work sessions. No provisions made for participating by phone. The Attorney General's Office confirmed there must be a law or rule of the public body authorizing its member's to participate by conference telephone or similar communication equipment. Mr. Frost was allowed to participate in the December meeting by telephone from a health care facility, an open meeting act violation. He did not seem to be fully cognizant of the P&Z agenda items under consideration.

**Chairman Schwebach:** calls time

**Wayne Johnson – County Manager:** Mr. Butrick and I have reviewed the operation of the Planning & Zoning Board, we feel we are in compliance with the Open Meetings Act and our policies. The Commission Rules, reference Robert Rules of Order, also apply to the Planning & Zoning Board and every board under the County Commission. If there is not a specific rule that applies we defer to Roberts Rules of Order and that is in the past policy of the County Commission. I'm a stickler about Open Meetings and about function and following state law. Those two things are going on in Planning & Zoning, to the best of my ability to determine. Allowing a member to participate by phone is specifically contemplated under the act and under your own policy. We are addressing those issues and thank Mr. DuCharme for bringing them to our attention.

**John Butrick – County Attorney:** Because Mr. DuCharme attacked my competency. I feel I have the right to respond. The Open Meetings Act and the Planning & Zoning policy are being followed and being adhered to. Mr. DuCharme claims are inaccurate.

**Nathan Dial – Mayor of Estancia:** Currently there is Legislation trying to be proposed, that would make it illegal for Municipalities and Counties to enter into contract with a private prison, it would have to go to the state. If that moves forward the Town of Estancia will die. Please contact your legislator.

**10. APPROVAL OF MINUTES**

**A. COMMISSION:** Motion to approve the December 18, 2019 Torrance County Board of County Commission Minutes

**Commissioner McCall:** Motions to approve December 18, 2019 Torrance County Board of County Commission Minutes

**Chairman Schwebach:** Seconds the motion.

**All in favor: MOTION CARRIED**

**11. APPROVAL OF CONSENT AGENDA**

**A. FINANCE:** Approval of Payables

**Commissioner McCall:** Approval of Payables

**Chairman Schwebach:** Seconds the motion.

**All in favor: MOTION CARRIED**

**12. ADOPTION OF ORDINANCE/AMENDMENT TO COUNTY CODE**

**13. ADOPTION OF RESOLUTION**

**A. COMMISSION:** A Resolution supporting the repeal of the State Tax on Social Security Benefit Resolution 2020-02. (Schwebach)

**Wayne Johnson – County Manager:** We are one of the few states that taxes Social Security on an income basis. There are a lot of arguments including double taxation. We have a lot of seniors in Torrance County that are on fixed incomes. Removing an additional amount of money on a state tax will not serve them or our communities well. This is a Legislative agenda item that asks us to transmit this resolution along with asking the County to lobby against, should it pass. House bill 310 would repeal that tax.

**Chairman Schwebach:** Motion to approve supporting the repeal of the State Tax on Social Security Benefit Resolution 2020-02.

**Commissioner McCall:** Seconds the motion.

**All in favor: MOTION CARRIED**

**B. COMMISSION:** A Resolution opposing the inclusion of HB72 calling for banning private prisons Resolution 2020-03.

**Wayne Johnson – County Manager:** HB72 has been profiled with the legislature, this would restrict our ability to enter into a public/private partnership with a private prison. This will ban all private prisons in New Mexico. Torrance County is responsible for housing anyone that is detained in Torrance County, we would not be able to build a facility anywhere near the scale or quality we have with the CoreCivic facility. This benefits us from a budgetary, job and GRT stand point with in Estancia. This resolution calls on the Governor not to place it on the call this year.

**Commissioner Sanchez:** Motion to approve Resolution opposing the inclusion of HB72 calling for banning private prisons Resolution 2020-03.

**Chairman Schwebach:** Seconds the motion.

**All in favor: MOTION CARRIED**

**C. FINANCE:** Motion to approve Fleet/Procurement card policy, Resolution 2020-04.

**Jeremy Oliver – Finance Director:** This policy states how we use our Fleet and future procurement cards. What has to be done and reconcile and pay these bill, having receipts and implications of department or personal fail to do as outlined in the policy. This falls under state procurement and have to follow those laws.

**Wayne Johnson – County Manager:** I agree with the policy. Cash and credit cards have to be carefully monitored, it is important our departments are able to do simple tasks such as purchase gas. Every day we have deputies on the road covering over 3000 square mile, this facilitates their ability to do their jobs.

**Chairman Schwebach:** Motion to approve Fleet/Procurement card policy, Resolution 2020-04.

**Commissioner McCall:** Seconds the motion.

**All in favor: MOTION CARRIED**

**D. ASSESSOR:** Motion to approve Protest Board member and alternates, resolution 2020-05.

**Jessie Lucero – Country Assessor:** Every two years we have to recertify our protest board members. We are updating our resolutions and policies. The current active board members are John Blatnick, Sheree Wallin, 2 alternates are Danielle Johnston and Patsy Gustin. State statute 73-82-5 states one of the two board

**Crystal Coffman – Pattern Energy:** PowerPoint presentation is available in packet. We are working on the wind farm in “the Corona area”. This is the tri-County installment of well over 3 gigs. Two fundamental things to remember is there are 2 major transmission lines initiatives, one is the Western Spirit transmission line and the other is Sun Zia transmission line. Pattern Energy has windfarm opportunity that will support both transmission lines. I am specifically talking about the project that will support Western Spirit, phase I. This means from a timing perspective the 1<sup>st</sup> batch of windfarms to be built in the near terms. With another set of windfarms being built in phase II on Sun Zia. Today we are discussing phase I. We are on the bottom third of this project, finalizing permits and requirements with the counties, siting and the IRB discussion. We need to move forward with these projects and make sure we are all transparent on where we are in the process and where we need to be in the next year.

We would like to start windfarm construction in Q3 2020 and targeting end of construction for this phase I in 2021. We need to negotiate and be on top of our IRB documents Q2 2020. This is what will dictate the timelines that we will move forward with that we will talk about with council. Torrance County will make up 83% of the acres of the phase I project. In IRB discussions, I think about windfarms in Megawatts. A turbine can be a 2 or 3 megawatt machine. Current best guess for phase I is 700 megawatts across all 3 Counties, Guadalupe, Lincoln and Torrance. The Torrance portion of the 700 megawatts is approx. 86% = 600 megawatts. Phase II will be larger than phase I, easily double in size. Phase II will have a footprint in Torrance just not as large.

You adopted the inducement at \$1.82 billion last year, that is phase I & II. Phase I we will look to move forward \$1.4 billion. This is the size of the IRB documentation. This will access 3 separate projects we call Duran Mesa, Red Cloud and Tecolote. The reason it is divided is so we can sell to different entities. The split between the Vaughn and Corona are roughly 42% and 58%, this number will move, turbines shift around, these are to give you an idea and why they are in percentages. As we do cultural work and work with the land owners and geotechnical research this footprint within your county will shift and move. This is the same information being given to Guadalupe and Lincoln, feel free to call and make sure we are on the same page. My goal it that all 3 counties understand where they stand with Pattern and we are all working with consistent information.

When we start getting into the IRB and PILT process, what drives a PILT number is size of project. The timing is key. Understanding how windfarm economics have evolved over time also plays into our negotiations. Delivery point, where is the



power going, this dictates how much you are getting paid for it. The biggest one is the PTC (Production Tax Credit). Renewable energy as an industry, wind, is becoming more main stream and with that we are ramping down our production tax credits. We were getting a set number of dollars per megawatt hours produced in tax credit for our projects, this ends in 2020. Language from a market report states projects that went into service before 2020, are getting 100% of that credit, projects that go into service in 2021 will get 80% of that credit. This is a key component. If things come on line in 2022, 60%. Functionally we are needing to meet our deadlines. The last thing, off take rates, what are we getting paid for our power? This varies. With this off take, it will go from 3 to 6 buyers with different pricing and their needs. The commonality is we have to pay transmission. Because of some of the market positives lowering costs, more penetration, and our PPA prices are coming down. The more we understand the data the smoother some of these discussions can go. Our next step is how do we get this IRB going and in the process it needs to be able to hit our timelines.

**Chairman Schwebach:** Are the other counties on the same timeframe as far as your presentation?

**Crystal Coffman – Pattern Energy:** Torrance is on the same tract as Guadalupe phase I, but feel they will go a little slower because they only meet once a month. The process will probably finish with Lincoln, Torrance then Guadalupe. This all depends on any issues that may come up during the process. We want to be done by end of April early May.

**Michael Godee – Tajiue:** I have been to meetings that Pattern Energy was addressing transmission lines and the location. I don't know if you still plan on putting a transmission line in Mountainair. You have to run transmission lines to buyers. If you look at Pattern Energy from an impact point of view and runs through a different school district, why doesn't that school district get some amount of money? The impact is not only in the location of the generators and transmission line.

**Wayne Johnson – County Manager:** The transmission lines are not subject to the IRB and the IRB is governed under state statute. The schools are part of the IRB statute not a part of the transmission line, that is usually a separate matter entirely.

**Crystal Coffman – Pattern Energy:** That is correct. We are working on how to get benefits to the school districts from the transmission line. The transmission line has been routed outside the Mountainair area. Please go to the website for further information on the transmission line.

**Chairman Schwebach:** Thanks Pattern Energy for the presentation, it gives us a good idea of what needs to be done and look forward to working together.

**16. EXECUTIVE SESSION:**

**Chairman Schwebach:** Motion to go into Executive Session

**Commissioner McCall:** Seconds the motion.

**Roll Call Vote:** All in favor - **MOTION CARRIED**

Executive Session began at 11:30 AM

**A. MANAGER:** PILT Negotiations for the Pattern Energy/Duran Mesa, LLC Wind Energy Project. Closed pursuant to NMSA 1978, 10-15-1(H)(8).

**B. MANAGER:** Mutual/Automatic Aid and Dispatch Agreements., Closed pursuant to NMSA 1978, 10-15-1 (H)(7).

**C. MANAGER:** Torrance County Fairgrounds lease and purchase. Closed pursuant to NMSA 1978, 10-15-1 (H)(8)

**RECONVENE FROM EXECUTIVE SESSION:**

Reconvened at 12:09 PM

**Chairman Schwebach:** Motion to return from Executive Session

**Commissioner McCall:** Seconds the motion.

**Roll Call Vote:** All in favor - **MOTION CARRIED**

**Chairman Schwebach:** The Executive session held on January 8, 2020 as part of the Torrance County Commissions regularly scheduled meeting. Only those items described on the published notice and agenda for the executive session held on Wednesday, January 8, 2020 as part of the Torrance County Commissions regularly scheduled administrative meeting beginning at 9am were discussed in executive session. Need a motion for approval of this statement and it will become a part of the minutes of this meeting.

**Chairman Schwebach:** So moved

**Commissioner McCall:** Seconds the motion.

**All in favor:** **MOTION CARRIED**

**17. Announcement of the next Board of County Commissioners Meeting:**

The Commission meeting held on Wednesday, January 22, 2020 at 9:00 AM in the Torrance County Administration Building Estancia, NM will be canceled due to the opening of the New Mexico Legislative Session.

**Chairman Schwebach:** So moved

**Commissioner Sanchez:** Seconds the motion.

**All in favor: MOTION CARRIED**

**18. Signing of Official Documents**

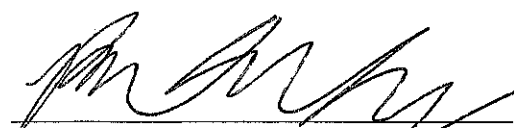
*\*Adjourn*

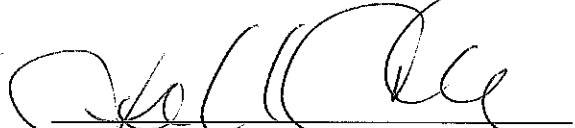
**Chairman Schwebach:** Motions to adjourn Commission Meeting

**Commissioner Sanchez:** Seconds the motion.

**All in favor: MOTION CARRIED**

Meeting adjourned at 12:11 PM

  
\_\_\_\_\_  
Ryan Schwebach – Chairman

  
\_\_\_\_\_  
Genell Morris – Admin Assistant

2-12-20  
\_\_\_\_\_  
Date

The Video of this meeting can be viewed in its entirety on the Torrance County NM website. Audio discs of this meeting can be purchased in the Torrance County Clerk's Office and the audio of this meeting will be aired on our local radio station KXNM.