

January 11, 2012
Agenda
5:00 p.m. Public Hearing Meeting
Valencia County Commission Chambers
444 Luna Avenue
Los Lunas, NM 87031

Board of County Commissioners
Donald E Holliday, Chair District V
Georgia Otero-Kirkham, Vice-Chair District II
Mary Andersen District I
Lawrence R. Romero District III
Ron Gentry District IV

- 1) Call Meeting to Order
- 2) Pledge of Allegiance
- 3) Approval of Agenda

SWEARING IN OF PARTICIPANTS

PUBLIC HEARING ITEM(S):

- 4) Consideration to hear an appeal of a decision made by Planning and Zoning Commission to approve a Conditional Use for a solar facility in a Mineral Resource Zone. T6N, R2&3E, Section 1&6; NMPM, Lands of Orona Investments; Tract 1; Zoned M-R; Filed in Book 341, Page 8242, of the office of the Valencia County Clerk: **Eric Zamora / Jacobo Martinez**

PUBLIC COMMENT:

Please sign up on the sheet located just outside the Commission Chambers. The Board will allow each member of the public wishing to address the Board a full and complete opportunity to address the Commission.

NEXT COMMISSION MEETING:

- ♦ January 25, 2012- Business Meeting @ 9:30 A.M.
Valencia County Commission Board Room 444 Luna Ave. LL, NM

ADJOURN:

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Valencia County Manager's Office at the Valencia County Courthouse, Los Lunas, New Mexico, (505) 866-2014 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Valencia County Manager's Office at the old Valencia County Courthouse if a summary or other type of accessible format is needed.

Please Silence All Electronic Devices – Thank You!

VALENCIA COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARING MEETING

JANUARY 11, 2012

PRESENT	
Donald E. Holliday, Chairman	
Georgia Otero-Kirkham, Vice-Chair	
Lawrence R. Romero, Member	
Ron Gentry, Member	
Mary J. Andersen, Member	
Eric Zamora, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Sally Perea, County Clerk	
Press and Public	

1) The meeting was called to order by Chairman Holliday at 5:05 P.M.

2) Chairman Holliday led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Andersen moved for approval of the agenda. Seconded by Commissioner Romero. Motion carried unanimously.

SWEARING OF PARTICIPANTS

County Clerk Sally Perea administered the oath to those individuals of the audience wishing to give testimony.

PUBLIC HEARING ITEM(S)

4) Consideration to hear an appeal of a decision made by Planning and Zoning Commission to approve a Conditional Use for a Solar Facility in a Mineral Resource Zone. T6N, R2 & 3E, Section 1 & 6; NMPM, Lands of Orona Investments; Tract 1, Zoned M-R, Filed in Book 341, Page 8242 of the Office of the Valencia County Clerk – Eric Zamora / Jacobo Martinez.

Valencia County Planner Jacobo Martinez stated the request is to consider an appeal by a decision made by the Planning and Zoning Commission to approve a Conditional Use for a solar facility in a Mineral Resource Zone. In August of 2011, Amonix and representatives of Amonix met with the Planning and Zoning Department in order to discuss a potential solar farm within an existing mineral resource (M-R) zoning district. Included in the discussion was trying to find the proper zone for the proposed use. The Valencia County Zoning Ordinance does not define solar in use and sale. However, the mineral resources zone does allow for the “extraction and development of oil, natural gas and geothermal resources” as a conditional use, as well as utility as a conditional use. The Planning and Zoning Department did some research concerning the extraction and development of oil, natural gas and geothermal resources and found the structures to be bulky and large in scale. After completing the research the Planning and Zoning Department determined that the proposed project could be defined as a similar use in scale in size to that of the language found in the mineral resource zoning district. On November 17, 2011 the P & Z Board heard the conditional use for the development of a solar farm within the M-R zone. After hearing testimony the P & Z Commission voted to approve their request for a Conditional Use to allow for the installation and operation of the Photovoltaic Solar Power facility. There was a condition of approval with the condition being that the setback of any solar panel infrastructure shall be at least 185 ft. from the property defined as T6N R2E Section 1 of the New Mexico Principal Meridian, Lands of Ernest and Mary Sanchez, Map 78, zoned M-R also know as 27 El Cerro Mission Rd., Los Lunas, New Mexico.

The P & Z Board found that the proposed project meets the definition as in similar use in size and scale and is compatible with the surrounding gravel pit, will not have negative impact to noise, odor, traffic or air and water quality. The potential tax on the site will be a benefit to the county and the use is consistent with the goals of the Valencia County Comprehensive Plan. Also the proposed solar project is the highest and best use for the land.

An appeal was made on November 21, 2011 by citizens withstanding. The appeal outlined issues that they felt the P & Z Board failed to address which includes: the courtesy maps sent out by the P & Z Office were inconsistent with the site plan of the proposed project, negative impact on the water table, negative impact to the quality of life for humans and

livestock because the increase of ponding areas will increase the mosquito population, the negative impact on the natural vegetation specifically natural cottonwood trees and habitat related to the Grey Horned Owl that resides in the cottonwoods.

In regards to the issue of notification, thirty-nine notices were mailed out by registered mail to those living near the proposed project. *"According to NMSA3-21-6B no zoning regulations, restrictions or boundary shall become effective, amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the public hearing shall be published, at least fifteen days prior to the date of the hearing. Whenever change in zoning is proposed for an area of one block or less, notice to the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county treasurer, of lots of land within the area proposed to be changed by a zoning regulation and within one hundred feet of the area proposed to be changed by zoning regulation."*

Included in the public notice a courtesy map of the general area showing where the site would be located was attached but the P & Z Department misplaced the indicator showing the subject property and since then did send out notices for the appeal with the corrected courtesy map in order to provide those impacted by the proposed plan a chance to speak and because of this issue, recommends that the appeal be heard *de novo*, the appeal should be re- heard by the public.

Amonix has proposed a 9 megawatt solar facility that would connect to the Manzano substation. There will be approximately 135 stand alone units on 77 acres. The units track the sun throughout the day so will move from a vertical position to a horizontal position and back to a vertical position. Each unit stands 50 ft. in height during the times that it stands vertical and will be 25 ft. in height while it is horizontal. There are two phases to the development. The first is the construction phase which will last 3-7 months and will entail large equipment and noise. The second phase will be maintenance of the site. The maintenance of the site will be minimal as they may need to clean the panels approximately four times a year and they may have on site security. The panels are 50 ft. in height and 75ft in width and mounted on a cement block

The Appellants gave a brief presentation. Those appellants were Valencia County residents Robert Porter who spoke on traditions, Ernest Sanchez spoke on life changing events, approval by the Zoning Commission on Conditional Use Permit for the Avalon Corporation and the Comprehensive Land Use Plan, Diane Porter referred to zoning, ordinances, notification and requested this project as planned be canceled forever and removed from further discussion, Robert McComb spoke on planning and project assessment, Mr. William Bachman presented a short video of a solar facility, Bebe Kelly spoke on the impact of the proposed Solar Power Plant on adjacent property values and Arlin Sanchez summarized the presentation and submitted to the commission a petition with 193 signatures to relocate the solar facility from the currently planned residential location.

Joshua Welty, Avalon Senior Manager of Project Development gave a brief overview of the company, the history, the technology and spoke on projects the company has completed over the course of the past year. Mr. Welty also addressed the specific project in question and the concerns that were raised in the appeal which have been addressed. Mr. Welty said they read through the appeal letter and took those issues to heart. They commissioned additional studies and reports such as home values, the impact to the great horned owl and the habitat, conformance to the CUP (Conditional Use Permit) process, the Solar Facility as an appropriate use and Mineral Resources Zoning alternative use, Amonix maintenance and washing and Amonix System glare and reflectivity.

PUBLIC COMMENT(S):

Additional Valencia County residents who expressed their concerns and spoke in opposition of the appeal were Antonio Mark Carrillo, Tiffany Gutierrez, Rosemary Zamora, Annette Kahler, Andrew Fuller, Russell Schmidt, Dan Nugent, Mike Milam, Jessie Service, Eugene Jaramillo, Hector Pinero and Veronica McComb.

Gary Bernier Realtor working for Amonix said they looked six to seven weeks for property and not only did they search Valencia County but Socorro and Bernalillo Counties. Based on the scope that PNM required, there are very few properties that are commercially zoned and very few properties that have the infrastructure. That's why this property was chosen. They contacted other people regarding the properties for sale, they looked at the zoning on these properties and zoning really becomes an issue. Before they put in the application on this, they had the pre-hearing to make sure they could move forward.

Minutes of January 11, 2012 Public Hearing Meeting

There is a lot of land out there until you start looking for what you need and it's a needle in a haystack. There are a lot of tribal lands, a lot of property was not zoned commercially, and there were a lot of restrictions with the zoning departments. Also the infrastructure and size was not there.

Those individuals speaking in favor of the appeal were Valencia County residents Richard Orona, Ralph Montes, and Evelyn Orona.

Members of the audience making comments were Valencia County residents James Crawford and Bob Gostischa.

Eric Johnson of Maron and Associates hired Amonix Bohannon Huston to do biological survey of the property in response to the grey horned owl concern stated biologists were sent out to look at the property. Mr. Johnson said this would fall under the Migratory Bird Treaty Act which is a federal law and protects all birds except for imported birds. They did find a few birds but did not see the great horned. They did recommend some mitigation measures to insure there's no impact on bird populations. Amonix has agreed they will conduct bird surveys to verify if there's a nesting going on they will take the appropriate steps that there's no harm to those birds.

Mr. Welty stated the visual and aesthetic concerns are obviously something that is paramount in the minds of many of the neighbors here. Improvement and something he would like the commission to consider if there are concerns from key observation points that they are willing to work with the commission in terms of conditions as setbacks from key points on the topography to insure that they are doing the right thing. The alternative study keeps all the units down below the upper grades so that the units wouldn't be visible whatsoever from Cypress Gardens or as you come down El Cerro Mission Blvd. This does require more costs in terms of mass grading that slope that they were trying to avoid but nevertheless just articulates that they can confine the project within setbacks if the commission seeks to approve the project with such conditions.

There will be \$11,000,000.00 in tax benefits over the life of the project which will be a profound impact to the community. They are ready to execute the project and it does not rely on any federal stimulus money to do so. Looking for another site is not possible as the land search process was challenging and lengthy. They walked over fifty properties in the area looking for a suitable site. This was the most suitable site for their project and when you bid into PNM's process you have to commit to a specific point of interconnection and a specific site that you need to demonstrate site control for, so that window of opportunity has passed. If this opportunity at this specific site is not approved, there's not an alternative site option.

Commissioner Gentry said he would think that there are at least four sites that are available in zoned property in the county right now that have substations or power plants on the property within a hundred feet anywhere from ninety to five hundred acres available adjacent to it and three of those four are not in a residential area. The power lines there are major transmission lines and are all tied into the grid and are maximum size they would need.

Mr. Welty said just because there's a substation and a line doesn't mean there's capacity on the system at that particular point and respectfully they did do an exhausted land search and looked for a site that had conducive land use proximity to viable interconnection and this was the most economically viable site. They made a commercial decision to pursue this site for the application and he would ask the commission to consider their application for this site. There is no alternative site they are pursuing at this time. In addition to availability there's pricing, some people are firm believers that because they have a big piece of dirt next to a substation, that land is priceless. The margins in solar power are razor thin. It doesn't lend itself to buying whatever is on the market and again they did exhaust their study for the best solar resource and opportunity for a solar utility facility as possible. They feel this is the most responsible site, it's conducive to the land use regulations in terms of what they are proposing and they feel strongly that it will be a big success for the community and paves the way for the community of Los Lunas and Valencia County to be leaders in the solar power industry.

Commissioner Holliday asked if the panels could be any smaller.

Mr. Welty said it's a manufacturing operation; they manufacture over 100 mega watts of power at their production facility in Las Vegas. There's just one model and they focus on the highest and best use and the best yield. The bigger the units the more efficient the system is, the better the cost is that they can offer to the utilities for the project. They only manufacture the 50 X75.

Mr. Welty also had the opportunity to meet with the Dean at the University of New Mexico Valencia Campus for the opportunity to work with their team on research and development of internships and to foster solar technology education at their facility at the Valencia Campus is what they are actively exploring. They are very interested and it's in the early stages, but it does rely on the success of this project for them to merit further endeavors in supporting their institutional interests.

Chairman Holliday informed the public that the commission would vote on this at the January 25th Business Meeting which starts at 9:30. (SEE EXHIBIT A)

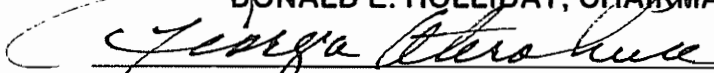
Adjournment


Commissioner Otero-Kirkham moved for adjournment. Seconded by Commissioner Romero. Motion carried unanimously. TIME 8:26 P.M.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the January 11, 2012 Public Hearing Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

VALENCIA COUNTY BOARD OF COMMISSIONERS


DONALD E. HOLLIDAY, CHAIRMAN


GEORGIA OTERO-KIRKHAM, VICE-CHAIR


LAWRENCE R. ROMERO, MEMBER


RON GENTRY, MEMBER


MARY J. ANDERSEN, MEMBER

ATTEST: 
SALLY PEREA, COUNTY CLERK

1-25-2012
DATE



VALENCIA COUNTY
Board of County Commissioners

AGENDA REQUEST FORM

Department Head: Eric Zamora/Jacobo Martinez

Individual Making Request: Robert Porter

Presentation at Meeting on: January 11, 2012

Date Submitted: December 29, 2011

Title of Request: Title: Request to hear an appeal

Request:

Consideration to hear an appeal of a decision made by the Planning and Zoning Commission to approve a Conditional Use for a solar facility in a Mineral Resource Zone.

Legal Description:

T6N, R2&3E, Section 1&6; NMPM, Lands of Orona Investments; Tract 1; Zoned M-R; Filed in Book 341, Page 8242, of the office of the Valencia County Clerk.

Information Background and Rationale

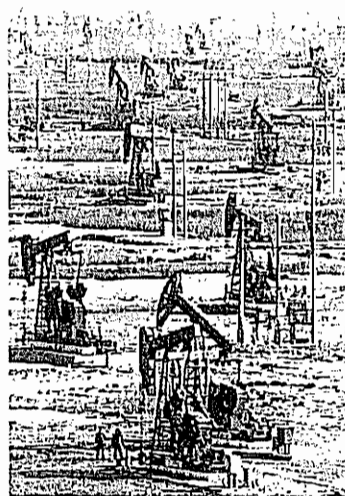
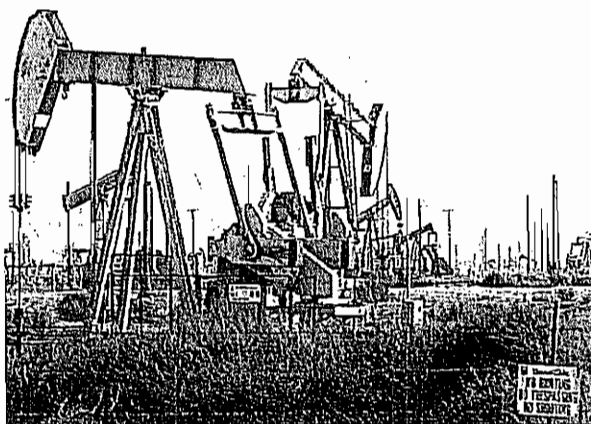
The applicants are in front of the board for an appeal decision made by the Planning and Zoning Commission to approve a Conditional Use for a solar facility in a Mineral Resource Zone.

In August of 2011, Anomix and representatives of Amonix met with the Planning and Zoning Department in order to discuss a potential Solar farm within an existing mineral resource (M-R) zoning district. Included in the discussion was trying to find the proper zone for the proposed use. The Valencia County Zoning Ordinance does not define solar in use and scale. However, the Mineral Recourse zone does allow for the "...[e]xtraction and development of oil, natural gas and geothermal resources" as a conditional use. The Planning and Zoning department did some research concerning the extraction and development of oil, natural gas and geothermal resources and found the structures to be bulky and large in scale.

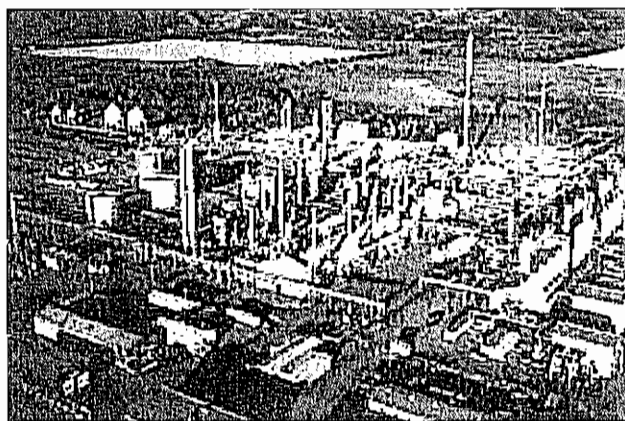
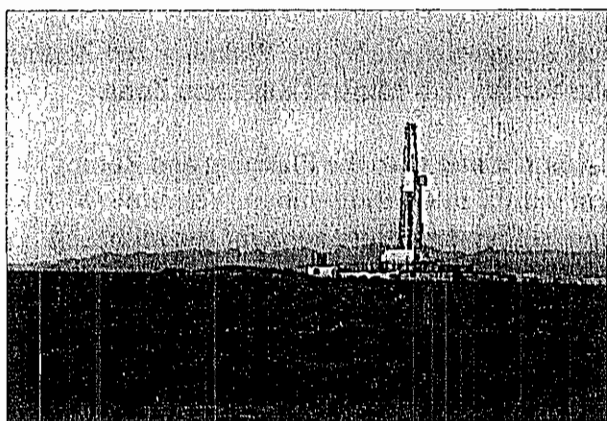
(EXHIBIT A)

BOOK 72

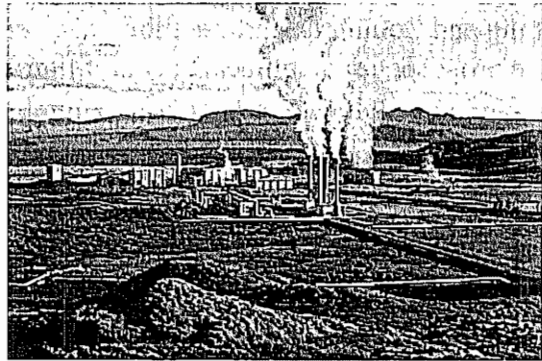
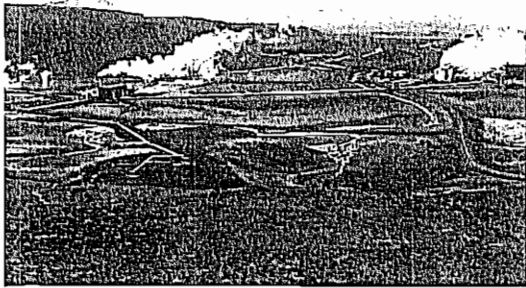
PAGE 743



For oil extraction, the oil well is created by drilling a hole into the earth with an oil rig. A steel pipe (casing) is placed in the hole, to provide structural integrity to the newly drilled wellbore. Holes are then made in the base of the well to enable oil to pass into the bore.

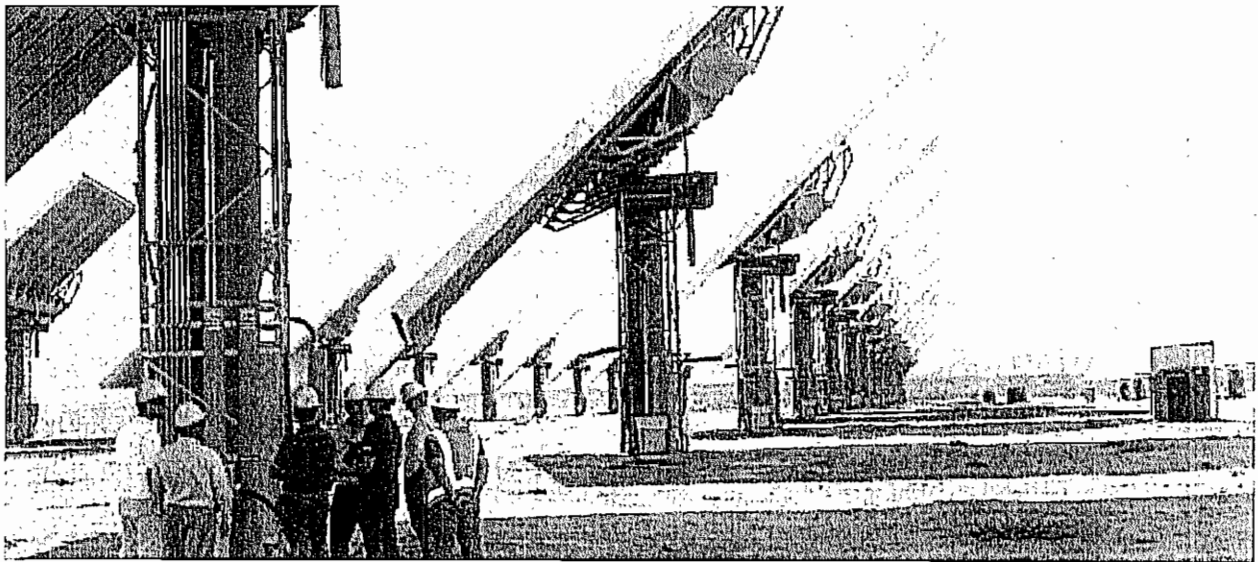


Natural gas is extracted through a drilling process. The photo on the right shows a typical drill size for natural gas extraction. Natural gas also has to be processed. The processing consists of separating all of the various hydrocarbons and fluids from the pure natural gas, to produce what is known as 'pipeline quality' dry natural gas. The photo on the right shows a typical natural gas processing plant. This is allowed as a conditional use within the M-R zone.



Geothermal energy originates from the heat retained within the Earth since the original formation of the planet, from radioactive decay of minerals, and from solar energy absorbed at the surface. In geothermal heating projects the underground is penetrated by trenches or drillholes. Projects may cause problems if the geology of the area is poorly understood as with all underground work.

After completing the research, the Planning and Zoning Department determined that the proposed project could be defined as similar in scale and size of the "...[e]nergy extraction and development of oil, natural gas and geothermal resources." Although, the solar facility poses has less of an impact of noise, odor, traffic, air and water quality, the scale and size of the project are similar. The following photo shows an example of an Amonix solar development.



On November 17, 2011, the Planning and Zoning board heard the Conditional Use for the development of a Solar Farm within in M-R zoning district. After hearing testimony, the Planning and Zoning commission **voted to approve the request for a CONDITIONAL USE** to all allow for the installation and operation of concentrated photovoltaic (CPV) Solar power generation facility. The Conditions of Approval are as follows: 1) The set back of any solar panel infrastructure shall be at least 185 feet from the property defined as: T6N, R2E, Section 1:

NMPM, Lands of Ernest and Mary Sanchez: Map 78; Zoned M-R; Also known as 27 El Cerro Mission Rd, Los Lunas, NM 87031.

The Planning and Zoning Department found:

- The proposed project meets the definition as a similar use in scale and size to “[e]nergy extraction and development of oil, natural gas and geothermal resources.”
- The proposed use is compatible with the surrounding gravel pit.
- The proposed project will not have negative impact to noise, odors, traffic or air and water quality.
- Potential tax on the site will have a benefit to the County
- The use is consistent with the goals of Valencia County’s Comprehensive Plan:
 - **Regional Infrastructure**
 - **Goal J: Steer urbanizing development to areas where adequate infrastructure, utilities, and public services are available.**
 - Objective J-2: Provide development incentives for new development to incorporate centralized utilities and services, or to locate near established infrastructure. (See Exhibit A for PNM electrical utility infrastructure).
- The proposed solar project is the highest and best use for the land.

An appeal was made on November 21, 2011 by citizens with standing. The appeal outlines issues that they feel the Planning and Zoning board failed to address including:

- Courtesy map sent out by the Planning and Zoning office was inconsistent with site plan of the proposed project.
- There will be a negative impact on the water table as Amonix would use a lot of water in order to clean their PV system
- There will be a negative impact to the quality of life for humans and livestock because the increase of ponding areas will increase the mosquito population
- There will be a negative impact on the natural vegetation, specifically, natural cottonwood trees could be negatively impacted
- There will be a negative impact to habitat, specifically, the Great Horned Owl that resides in the cottonwoods could be negatively impacted

Concerning the issue of notification by the Planning and Zoning office, 39 notices were mailed out by registered mail to those living near the proposed project. According to NMSA 3-21-6(B) “...[n]o zoning regulation, restriction or boundary shall become effective, amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the public hearing shall be published, at least fifteen days prior to the date of the hearing... Whenever a change in zoning is proposed for an area of one block or less, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county treasurer, of lots of land within the area proposed to be changed by a zoning regulation and within one hundred feet of the area proposed to be changed by zoning regulation.”

The planning and zoning department sent notices to those within one hundred feet of the proposed project and to additional land owners outside of the one hundred foot boundary such as the landowners of San Fernando Ave. (See Exhibit B). With the public notice, the Planning and Zoning department sent a courtesy map of general area showing where the site would be located. Unfortunately, the Planning and Zoning department misplaced the indicator showing “subject property” on the courtesy map (See Exhibit C). The courtesy map went with the public notices shows the subject property to the north of the actual subject property. The Planning and Zoning office has sent out notice for the appeal with a corrected courtesy map (See Exhibit D) in order to provide those impacted by the proposed plan a chance to speak. Because of this issue, the Planning and Zoning Department recommends that the Appeal be heard *de novo*:

154.062

(E) *De novo review.*

(1) The Commission or P&Z may, at its option, whether or not upon a motion of a party, hold a *de novo* hearing or admit additional testimony and other evidence with or without holding a *de novo* hearing, if it is satisfied that the testimony or other evidence could not have been presented when the matter appealed from was initially decided upon.

(2) In deciding this admission, the Commission shall consider:

- (a) Prejudice to parties;
- (b) Convenience of locating the evidence at the time of initial hearing;
- (c) Surprise to opposing parties;
- (d) When notice was given to other parties as to the attempt to admit; and
- (e) The competency, relevancy and materiality of the proposed testimony and other evidence.

Amonix has proposed a 9 megawatt solar facility that would connect to the Manzano substation. There will be approximately 135 stand alone units on 77 acres. The units track the sun throughout the day so will move from a vertical position to a horizontal position and back to a vertical position. Each unit stands 50 feet in height during the times that it stands vertical and will be 25 feet in height while it is horizontal. There are two phases to the development. The first is the construction phase that will last 3 to 7 months which will entail large equipment and noise. The second phase will be maintenance of the site. The maintenance of the site will be minimal as they may need to clean the panels approximately 4 times a year and they may have on site security.