

**COUNTY OF LINCOLN
RESOLUTION NO. 2021-24**

**A CONCRETE BATCH PLANT, IF CONSTRUCTED AND OPERATED ALONG
NM HIGHWAY 220, COULD POSE A NUISANCE TO SURROUNDING PROPERTY
OWNERS**

WHEREAS, under NMSA 1978, Section 30-8-1, a nuisance consists of creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either: (A) injurious to public health, safety, morals or welfare; or, (B) interferes with the exercise and enjoyment of public rights, including the right to use public property; and

WHEREAS, NMSA 1978, Section 3-18-17 permits a county to adopt an ordinance defining a nuisance; and

WHEREAS, Roper Construction Inc. (“Roper”) is proposing to construct and operate a concrete batch plant (“CBP”) on NM 220 near the intersection of NM 220 and NM 48; and

WHEREAS, the Application for an Air Quality Permit submitted by Roper to the New Mexico Environment Department (“NMED”) reveals that Roper’s proposed CBP will be a source of Hazardous Air Pollutants (“HAP”); and

WHEREAS, Roper claims that its CBP will be a “minor” source, i.e., less than 10 tpy of any single HAP, only by virtue of Roper’s proposed intent to implement certain controls designed to reduce HAP emissions; and

WHEREAS, the Board has been informed that the fugitive dust emissions from the handling sources at Roper’s CBP must be controlled by adding water sprays to the exit of the aggregate/sand feed hopper to obtain control efficiencies and, without adequate water to implement these controls, the proposed CBP would be a “major” source of HAP because it would emit more than 10 tpy of one or more hazardous air pollutants; and

WHEREAS, the Board has been informed that the Application for an Air Quality Permit submitted by Roper to the NMED does not identify a suitable source of water to obtain control efficiencies; and

WHEREAS, NM 220 and NM 48, including at the intersection of those two highways, are designated a “Scenic Byway” under federal laws and regulations and, together, are known as the “Billy the Kid Scenic Byway”; and

WHEREAS, the White Mountains are critical habitat for at least five (5) listed threatened or endangered species: Red-breasted Nuthatches, Townsend’s Solitaire, Clark’s Nutcrackers, Northern Three-toed Woodpeckers, and Golden Crowned Kinglets; and

WHEREAS, the Lincoln National Forest is home to at least four (4) listed endangered species: the Mexican Spotted Owl, New Mexico Meadow Jumping Mouse; Checkerspot Butterfly, and Sacramento Mountain Salamander; and

WHEREAS, the application Roper submitted to the NMED for the CBP does not address the potential impact to the critical habitat for the species found in the White Mountain Wilderness Area and Lincoln National Forest identified as endangered or threatened; and

WHEREAS, the Fort Stanton Snowy River Cave National Conservation Area, located approximately five (5) miles from Roper's proposed CBP, was established in 2009 to protect, conserve, and enhance the unique and nationally important Snowy River Cave system, which is the second longest cave in New Mexico, the 14th largest cave in the United States, the 62nd longest cave in the world, and the largest cave managed by the Bureau of Land Management; and

WHEREAS, the application Roper submitted to the NMED for the CBP does not address the potential impact to the ecosystem of the Fort Stanton Snowy River Cave National Conservation Area, including the various hiking and equestrian trails and campgrounds within the Conservation Area; and

WHEREAS, the application Roper submitted to the NMED for the CBP does not disclose the presence of the Mount View Christian Camp, a church school located approximately 0.2 miles from the proposed CBP site, at which students attend year-around; and

WHEREAS, the application Roper submitted to the NMED for the CBP does not address the potential for runoff contamination from the plant to nearby surface waters, including the Rio Bonito and Little Creek; and

WHEREAS, the area surrounding the proposed site of Roper's CBP is virtually exclusively residential and is comprised of several organized neighborhood and neighborhood associations; and

WHEREAS, the residential neighborhoods surrounding the proposed site of Roper's CBP are scenic, quiet, and peaceful, and enjoy unimpeded views of the well-recognized beauty of the mountains located in the White Mountain Wilderness Area, including Sierra Blanca Peak, southern New Mexico's highest peak; and

WHEREAS, the Board finds that a CBP at the proposed location may impair the quiet enjoyment of the citizens of Lincoln County living in this area by creating a deleterious effect on the visual and other aesthetic amenities that are prevalent in the area and which formed a substantial reason for the residents to purchase lots and live in the area; and

WHEREAS, the Board finds that emissions of HAP from the CBP proposed by Roper, the construction of a CBP in this scenic residential area, the lack of consideration of potential impact to the threatened and endangered species found in the White Mountain Wilderness Area and Lincoln National Forest, the lack of consideration of the potential impact to the Fort Stanton Snowy River Cave ecosystem, the lack of consideration of the potential contamination of the nearby

surface waters, accompanied by the excessive traffic from large trucks, including cement mixer trucks and water tanker trucks, on the Billy the Kid Scenic Byway, and the potential impact to the Mountain View Christian Camp, may be injurious to public health, safety, welfare, and quality of life of the residents of Lincoln County and may interfere with the exercise and enjoyment of public rights and, accordingly, may be considered a nuisance to surrounding property owners; and

WHEREAS, the Board further finds that the existence of such a potential nuisance would likely result in visual and environmental blight, and unhealthy, unsafe and devaluing conditions; and

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Lincoln, New Mexico that the proposed CBP, if constructed along NM Highway 220 could be considered a nuisance to surrounding property owners.

PASSED, APPROVED AND ADOPTED this 19th day of October, 2021.

**BOARD OF COUNTY COMMISSIONERS
LINCOLN COUNTY, NEW MEXICO**

Thomas F. Stewart, Chair

Dr. Lynn Willard, Vice-Chair

Elaine Allen, Member

Jon Crunk, Member

Todd Proctor, Member

ATTEST:

Whitney Whittaker, Clerk