Erosion Control Ad Hoc Committee Report

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A Wind Erosion Control Ad-Hoc Committee was established by the City Council in December 2010 and met for a 90-day period from January to March 2011. The committee was tasked with reviewing existing and proposed control ordinances and making recommendations to the City Council regarding revisions to the control ordinances. The committee was comprised of representatives of the development community, builders, city and state government, academic and members of the general public. Three sub-committees were formed to focus on specific areas of planning/permitting, enforcement, and mitigation/compliance. The findings of the committee will be presented to the City Council at their May 23, 2011, Work Session.

Report

of the

Erosion Control Ad Hoc Committee

for the

City of Las Cruces

May 18, 2011

ACKNOWLEDGEMENTS

Members of the ad hoc committee included

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Fernando Cadena
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Jim Covey
John Curry
Brian Denmark, CLC
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John Hadley
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Arlon Parish
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Brian Soleman
Gill Sorg, Councillor
Sharon Thomas
Erin Ward
Bruno Zaldo

We greatly appreciated the assistance of Ms. Bonnie Ennis, CLC as the Recording Secretary for the committee.

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1 Introduction

This is a summary of the Ad-hoc committee for the City of Las Cruces' dust control ordinance. The committee's charge was to provide comments and recommendations on the dust control ordinance to be presented to the city council. Committee members were composed of representatives from the development community, builders, city government, state government, and members of the public. A chairman, Dave DuBois, was voted in by the members to help lead and facilitate the meetings. The chairman circulated an invitation to a list of 45 people with about 21 on average attend the weekly meetings. The Ad-hoc committee chaired by DuBois began on January 21, 2011 and concluded on March 30, 2010. About half-way though the process, three sub-committees were established to help organize thoughts and focus on specific areas. The three areas included planning/permitting, enforcement, and mitigation/compliance. Each sub-committee was led by a chairman who was charged with facilitating the group and summarizing the group's output and to present the findings to the main ad-hoc committee.

2 Common Topics

Some common topics have been mentioned more than once over the course of meetings. These included areas if education and communication, access to information, enforcement and compliance, and programmatic needs.

2.1 Education and Communication

The following four items sum up the comments from the committee regarding education

- Outreach to all individuals that own property within the city limits
- Inform owners the obligations for dust control
- Responsibilities are not clear during the various stages of development
- Education includes definitions of terms in the ordinance

An important issue that was brought up several times centered around educating property owners on the dust control requirements and what party is responsible. The importance of dust control also seems to get lost after property transfers from one owner to another. One idea mentioned was to draft a pamphlet that will be given to owners through mail or using a public service announcement through various media as a reminder to the ordinance and maintain existing dust controls.

2.2 Access to Information

- Information on the current dust control plans difficult to obtain
- Need for electronic database management system for better access to dust control plan
- Need for documenting changes to original plan and what is the current control

There was a significant desire for the City to look into an electronic tracking system as a way to more easily indicate the status of permits and allow contractor, developers, and the public access to the

information. That would give an individual access to parcel level information on what dust control measures are in place and who the owner is.

2.3 Enforcement and Compliance

- Perception from the public that the City is not enforcing the ordinance
- There is a great need for more enforcement resources
- Need for a more proactive enforcement program
- Maintenance of dust controls is a big concern

2.4 Programmatic Needs

- Dust control plans still need to be flexible to allow for adaptations in controls over time
- Investigate how administration and enforcement of this program can be more consolidated
- How do we efficiently involve Community Development, Codes Enforcement, and Public works

2.5 Significant Issues not resolved

- Clusters of small lots fall through cracks in ordinance: many small lots (< ½ acre) in a subdivision with individual owners
- Costs of compliance was mentioned many times but we have not done an analysis of costs of different choices
- A discussion was started regarding incentives for compliance but no conclusions were made. Information sent by committee member Erin Ward is provided in Appendix A.

The remaining sections are summaries of the three sub-committees as they were drafted by the chairs.

3 Permitting and Planning Sub-committee Summary

Chair: Waynette Bridges

Members: Fernando Cadena, Michael Baca, John Moscato, Bill Allen, Bruno Zaldo, Arlon Parish

In order to expedite preparing the plan and review process, the plan will be prepared, submitted, and reviewed on line until the process is complete, approved and the permit is issued. Findings of noncompliance will be part of the ongoing documentation, as well as corrections.

The plan should contain the following, standardized format:

1. Responsible individual and contact information
2. Site diagram of entire project, including
    - Boundaries
    - Acreage to be disturbed
    - Public roadways
    - Exits to roadways
    - Identify actual and potential dust generating activities and control measures for each
    - Include provisions for after hours, weekends, and holidays
    - Contingency control measures
    - Specifications for products used and maintenance required for each control measure
    - Include Track-out control measures
    - When ownership of property changes, plan revisions for new owner will be submitted. Ownership will be restricted to ½ acre lots or ½ acre adjacent lots.

(MAJOR CONCERN) If the City reviewer is not in compliance with the 10-day review directive, then the Department Manager and Assistant City Manager will be advised. The goal of having this in place would be to create internal performance measures which the city can use to judge the effectiveness of its operations and employees.

To expedite, preserve and maintain transparency, and to streamline and standardize the process of permitting, compliance and enforcement by using written standard operating procedures thereby outlining each department's role and responsibility. Plans would be submitted via an appropriate computer program located on the city's internet site. There may be a considerable setup cost, the outcome will more than compensate. Savings in cost of paper cost of travel, for both the applicants and city employees. Saved, too, is the space for filing and time lost searching for the documents.

(2)a. Insert the two attached matrices in the ordinance to help clarify the responsible individual, and the steps required. See Figures 3-1 and 3-2.

(2)c the project engineer should offer one or two sources or methods of control measures, considering the cost as well as effectiveness.

(2) Regarding weed eradication, emphasis should be made on cutting rather than removal by pulling, hoeing, or plowing. Limit efforts at revegetation to those areas outside the lots themselves. Those areas would include ponds and open spaces. Historically, lots are built on in a relatively short time, and that activity actually stabilizes the soil to an extent greater than what existed in the land's "natural" state.

The draft ordinance drafted by Mr. Kyle has a section on track out control which should be included in final Section.

The city should provide an outreach and education program for the regulated community, private citizens, and city staff

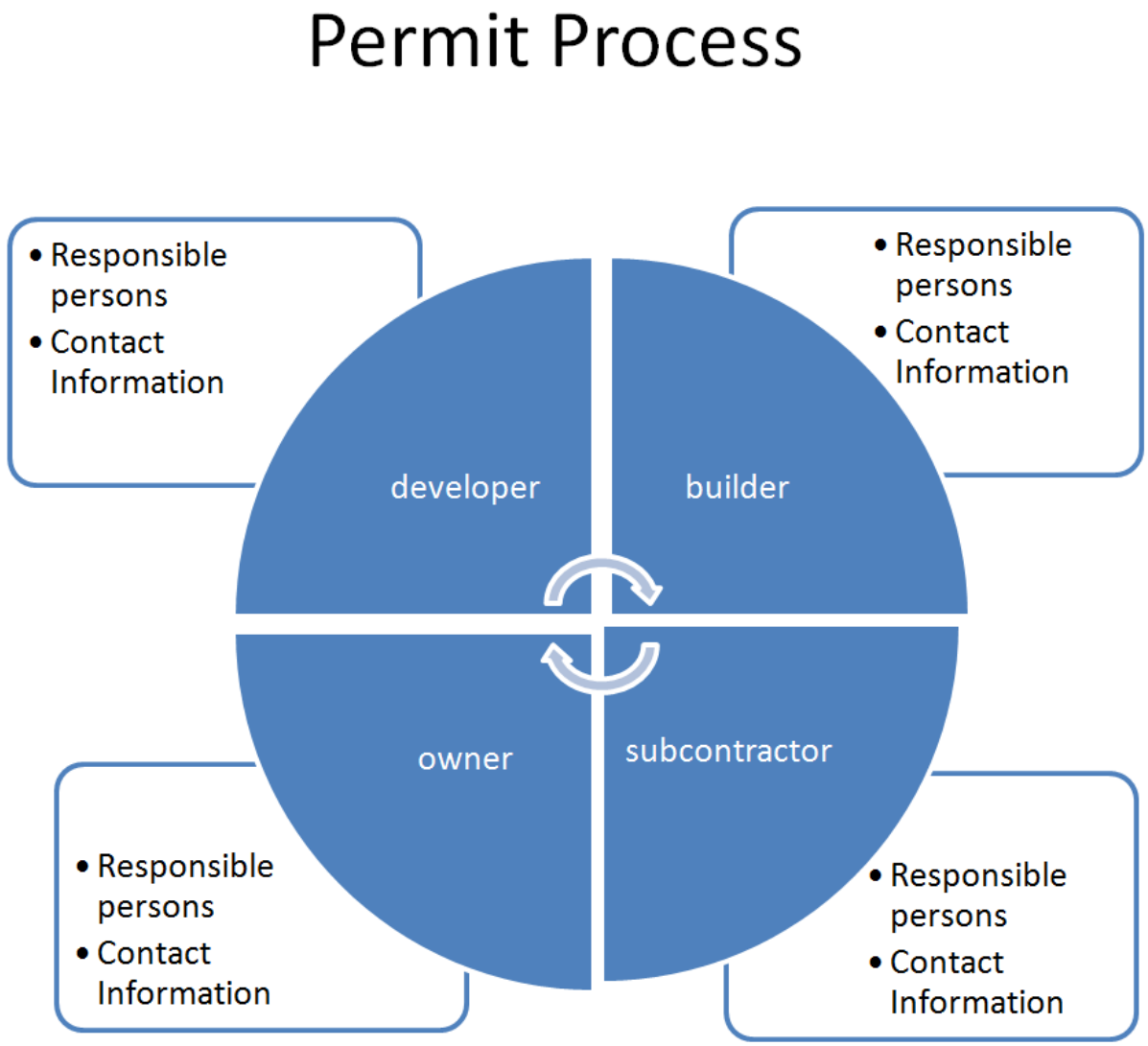

Figure 3-1. Permitting process diagram

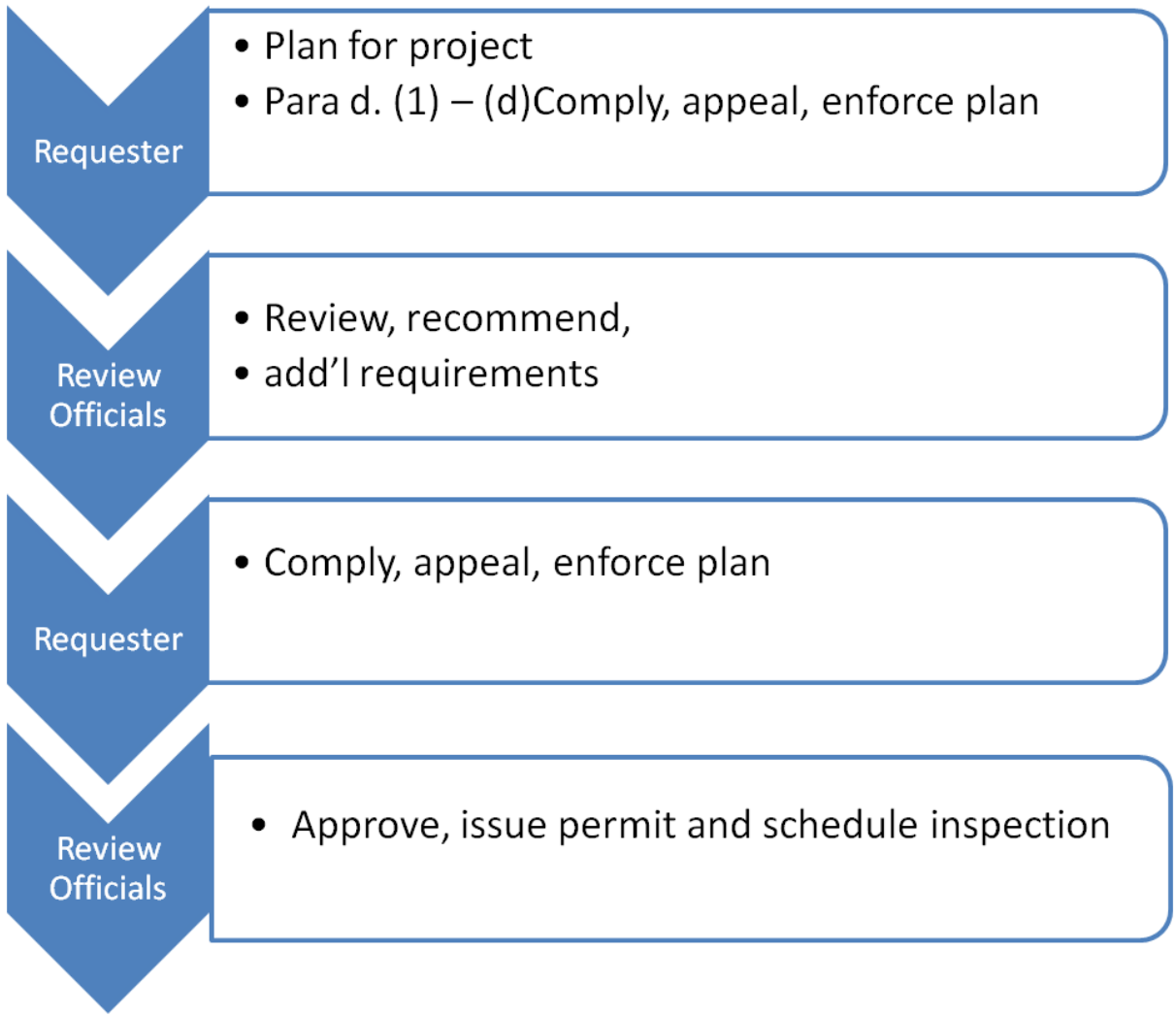

Figure 3-2. Permitting process flow diagram

4 Enforcement Sub-committee Summary

Chair: Brian Soleman

Members: Daniel Sambrano, John Hadley, Javier Ontiveros

1.) Enforcement for dust control should be handled by Public Works and inspected by a Registered Professional Engineer. Dust control plans are readily available during the construction of large projects through Public Works. These plans are reviewed in great depth by this department and should be enforced within the department. Post construction or vacant developed land, Public Works should continue to be involved in the site inspection process.

2.) Section (1) under DC32:45 needs to be more specific for notification. The enforcement officer/inspector should send notification of a possible compliance issue and allow 7 days for the owner to respond. Any changes needed to the dust control plan shall be agreed upon at the site by the officer/inspector and given 7 days to implement any changes if existing measures prove to be insufficient or ineffective. These changes/amendments do not need a review process but need to be discussed and agreed upon by the enforcement officer. This document should be treated as a "living document" and changes made as necessary.

5 Mitigation and Compliance Sub-committee Summary

Chair:Dale Schueller

Members: Daniel Sambrano, Paul Dulin, Michael Baca, Sharon Thomas, Eddie Binns, Ben Holstein, Gill Sorg

Most of the group seemed to be in agreement that we all want our city to be attractive, even (or, maybe, especially in some cases) new areas that are still under construction. The discussion mostly revolved around the problems associated with that goal. There needs to be a consensus which parties, individuals and entities will have to buy into the goal of reducing dirt movement during a wind event and how much money will be thrown at this problem by the major players, i.e. CLC. The definition of a wind event (i.e. wind speed at location) needs to be addressed, it only takes a micro burst to ruin the best of intentions.

5.1 Dust Control Plans

The problem here is that too many departments are involved. Public Works gets the Dust Control Plans initially, but Community Development is in charge of mitigation/compliance, with Codes thrown in to enforce. Codes has no formal training (city planning has engineers on staff) in the nuances of getting dirt control to actually work and also determining who might actually be at fault besides nature.

5.2 ATVs and Graffiti

A major problem is ATVs. Developers put up fences, but ATVers ignore them. Codes wants developers to put up signs so that they can enforce no trespassing, but developers resist because they don't want prospective buyers to see No Trespassing signs, or worse, No Trespassing signs that have been tagged with graffiti. Enforcement of those who damage properties is a major concern where thousands of dollars in compliance materials and labor have been invested.

5.3 Phases of Construction

There was some discussion of what kind of mitigation is appropriate and when. In early stages of construction, when the dirt is being pushed around, watering might be appropriate. Later on, when lots are sitting idle, fences or straw bales might be appropriate. Maybe even a rock walls in strategic places. If the land sits idle for some time, some kind of plant cover might be needed. These issues are not in the ordinance, although Robert Kyle said he was thinking about developing information along these lines.

5.4 Education

We agreed on the need for education. The water erosion ordinance included meetings and education materials. The wind erosion ordinance will need the same. We looked at some sample education materials from Tucson. Education includes ALL individuals that own property within city limits and what their "obligations" will be in the future.

5.5 Separation of Control Plan and Control Measures.

Some of us argued that we like the proposed ordinance better because it separates directions about the Control Plan and the Control Measures. That, and the addition of a list of terms are the major differences between the two ordinances. The developers who were at the meeting agreed to meet with Robert Kyle and go through the proposed ordinance to point out anything in that version that they did not agree with.

Appendix A: Incentives

The following memorandum was provided by Erin Ward regarding an idea for an incentive.

MEMORANDUM

TO: Dave DuBois, chairman

FROM: Erin Ward, appointed member

SUBJECT: Incentives that Promote Code and Ordinance Enforcement – Thereby Reducing the Cost of Enforcement and Use of Staff

I examined a number of incentive programs around the U.S. that are known to promote private sector compliance of community codes and ordinances. Economic incentives (monetary and non-monetary) have been found especially useful in communities that are concerned about the cost of enforcement.

At your request, I included the "gold star" builder incentive program, explaining the program in greater detail, because I think it is suitable for Las Cruces and for its building industry. I should mention here that some communities have adopted more than one type of incentive program, combining, say, a monetary and a non-monetary incentive to promote self-compliance.

I examined two general types of incentive programs:

Monetary Incentives

1) Reduction in the dollar cost of development or building fees, permits and/or licenses for developer and builders who have a track record of complying with the community code or ordinance. This is typically an "awarded" status earned by the business over time.

   These incentives usually take the form of a percentage reduction (2 to 25%) in the direct cost of a public fee. Some communities, those promoting development, provide for a reduced fee if more than one lot is proposed and platted at the same time within a commercial or residential neighborhood. I understand the city of Las Cruces isn't seeking a reduction in these fees as the fees support staff and other expenses.

2) Municipal or county tax credit or tax relief for developers and/or builders who demonstrate a clean record and a history of compliance. This incentive is shown to be especially effective in certain communities where local taxes are high.

   This incentive would not necessarily apply to our situation. The city of Las Cruces has no annual income or business taxing authority. This incentive might be useful at the county level in New Mexico.

Non-Monetary Incentives

1) Guarantee of speedy permit (usually in the number of days) for approvals or shortened review and/or reduced enforcement for developers and builders with a clean record and history of compliance. This incentive equates time with value and is useful in jurisdictions where obtaining a permit or paying a development fee is burdensome and time-consuming. It is used successfully chiefly in larger jurisdictions.

   In some communities, this incentive is awarded only to the top developers and builders based on history and compliance records- say, the top 20% of the industry. The incentive is shown to be especially effective with developers and builders, on par with monetary incentives.

2) Public posting of "gold star" program a certificate or an award demonstrated in the form of a paste-on sticker or government stamp provided to developers and builders who have remained in compliance with dust and erosion codes and ordinances for a period of time. Interestingly, the period of time—say, 24 months of continuous compliance—required to be awarded this status provides an incentive for both the developer and government agency as the business can be removed if a violation is found. It also keeps the builders and codes enforcement staff on top of their game. The incentive works only if the list of "gold star," certificate or "stickered" builders are advertised to the public. The public posting of the awarded businesses can be accomplished through posting on a public website (and, say, on the Chamber of Commerce site), a sticker or logo on a builder's commercial signs or announced by the government jurisdiction in a public ceremony. It can also be used by the real estate and building industries for advertisement and promotion.

   This option might work the best for the city of Las Cruces because it doesn't cut into income from permits and fees and keeps everyone's eye on this especially sensitive issue. As an outgrowth, it also promotes quality building. As for the cost of implementation, the program could be implemented and managed by student interns.

Erosion Control Ad Hoc Committee for the City of Las Cruces

Presented by
Committee Chairman
Dave DuBois

May 23, 2011

This is the situation

- The dust problem is both regional and local
- We're addressing our local part in the ordinance

April 3, 2011, maximum winds around 40 mph

After the dust settles

And over time

The Committee

- Charge: to provide comments and recommendations on dust control for the City Council
- Committee members from
  - Development Community
  - Builders
  - City Government
  - State Government
  - Public

Committee

- Chairman voted in by members
  - Dave DuBois, NMSU
- Met from January 21, 2011 to March 30, 2011
- Three sub-committees to help focus on
  - Planning/Permitting
  - Enforcement
  - Mitigation/Compliance
- Each sub-committee lead by a chairman
  - Help facilitate and summarize group's output

Education and Communication

- Outreach to all property owners within city limits
- Inform owners the obligations for dust control
- Responsibilities are not clear during various stages of land development
- Education to include defining terms in the ordinance
- Investigate use of PSAs/pamphlets to promote information
  - Could be part of the title company paperwork

Improve Access to Information

- Information on the current dust control plans are difficult to obtain
- Need for an electronic database management system for better access
- Need for documenting changes to original plan and current dust control

Enforcement and Compliance

- Perception from citizens that the City is not enforcing the ordinance
  - The primary problem has been in the resolution of the dust control – not enough was done to satisfy complaint
- Great need for more enforcement resources
- Need for a more proactive enforcement program
- Maintenance of dust control measures a big concern
  - For example wind fences have not been maintained

Programmatic Needs

- Dust control plans still need to be flexible to allow for adaptations in control over time
  - Change control measure if the current one doesn't work
- Investigate how administration and enforcement of this program can be more consolidated
- How do we efficiently involve
  - Community Development
  - Codes Enforcement
  - Public works (during initial construction phase)

Significant issues not resolved

- Clusters of small lots fall through the cracks in the ordinance
  - Many small lots < ¼ acre in a subdivision with individual owners
- Costs of compliance were mentioned many times but we have not done an analysis of costs of different choices
- Incentives for compliance
  - A “gold star” reward for compliance was mentioned but needs to be discussed in more detail

Planning/Permitting Sub-Committee

- Suggested a review of the dust control permitting process
- Plan should contain details on ownership, site diagram, include dust generating areas, controls and contingency measures, etc.
- Concerned about the City not in compliance with 10-day review directive
- Suggest written standard operating procedures for permitting process within City

Planning/Permitting Sub-Committee

- Suggestion on weed eradication
  - Emphasis on cutting rather than removal by pulling, plowing, hoeing
- Include trackout controls in ordinance
- Encourage the City to undertake an outreach and education program to include
  - Regulated community
  - Private citizens
  - City staff

Enforcement Sub-Committee

- Investigate the role of Public Works in the process
  - Inspector should be a registered professional engineer
- Allow for flexibility in dust control measures
  - Allow owner 7 days to respond to compliance issue
  - Changes to be done within 7 days
  - Changes reviewed by enforcement officer but no formal review process
  - Include all changes in a database

Mitigation/Compliance Sub-Committee

- Streamline dust control plan process
  - Concern about formal training in codes officers
- Concern about disturbance from ATVs and graffiti
  - Signs detract from buyers, especially with graffiti
  - Signs not enough to prevent ATVers from disturbing area
- Recommend controls based on phase of development

Mitigation/Compliance Sub-Committee

- Discussed the requirements of rock walls
  - Currently rock walls are not required
  - Expensive and attracts vandalism in some areas
  - However it is an effective option for dust control
- Need for education regarding wind erosion controls and following the ordinance
  - Include all individuals owning property within City
  - Define terms in the ordinance
  - Address owner's obligations now and in future
- Liked the division of control plans and control measures in Kyle's draft ordinance

Concluding Remarks

- The current economic climate has made it difficult for all of us
- Drought and high winds this year has exasperated the problem
- The ad hoc committee successfully came up with a list of many recommendations but more thought is necessary to tackle the problem
- Details are in the Erosion Control Ad Hoc Committee report
  - Including minutes, handouts, and submitted contributions from members

Thank you

Dave DuBois, Ph.D.
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