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February 28, 2011

**E-Filing**

Ms. Cynthia T. Brown  
Chief Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, CL 20423-0001

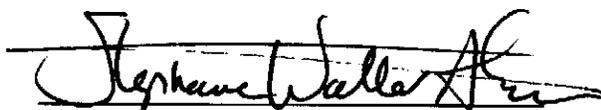
**Re: Finance Docket No. 35380, San Luis & Rio Grande Railroad Petition for a  
Declaratory Order**

Dear Ms. Brown,

On behalf of the Board of County Commissioners of Conejos County, Colorado, I  
am e-filing its Resolution Number C-2010-47 in the above captions proceeding.

Please contact me if you have any questions.

Sincerely,

  
Stéphane Walter Atencio

Enclosure

**CONEJOS COUNTY**  
RESOLUTION NUMBER C-2010- 47

**CONCERNING THE APPLICATION FOR SPECIAL USE PERMIT FILED BY  
ENERGY SOLUTIONS FOR A "TRUCK TO RAIL TRANSLOADING FACILITY"**

**WHEREAS**, Energy Solutions, LLC, (hereinafter "Applicant") represented by Colin Austin and Bret Rogers, submitted an application for a Special Use Permit pursuant to and in compliance with the Conejos County Land Use Code (hereinafter "CCLUC"), Article 3, Section 3.210; and,

**WHEREAS**, the owner of the subject property, the San Luis and Rio Grande Railroad, Inc., submitted its consent to the filing of the subject application by Applicant in compliance with the CCLUC, and also authorized Applicant's use of the subject property (hereinafter "the Property") for the purposes stated in the subject application; and,

**WHEREAS**, the Property is comprised of approximately 19.317 acres, the legal description of which is contained in the Application, and is located within an Industrial Zone District; and,

**WHEREAS**, Applicant proposes to use the Property for a "Truck to Rail Trans-loading Facility" for the purpose of trans-loading pre-packaged DOT Class 7 & Class 9 low level radioactive and hazardous waste which contains PCBs; and,

**WHEREAS**, pursuant to the CCLUC the proposed use of the Property is properly characterized as a "Solid Waste Transfer Facility" and such proposed use in an Industrial Zone District requires a Special Use Permit pursuant to Article 4 and Article 5 of the CCLUC; and,

**WHEREAS**, pursuant to Article 3, Section 3.210, and Article 5, Section 5.410, of the CCLUC, a public hearing was held before the Conejos County Planning Commission on September 29, 2010, upon proper notice to adjoining land owners and publication in a legal newspaper and posting of notice on the Property, and,

**WHEREAS**, the Planning Commission made a recommendation for denial of the application to the Board of County Commissioners by a majority vote of four (4) in favor and two (2) opposed; and,

**WHEREAS**, pursuant to Article 3, Section 3.230, and Article 5, Section 5.410, of the CCLUC, a public hearing was held before the Board of County Commissioner on November 4, 2010, upon proper notice to adjoining land owners and publication in a legal newspaper and posting of notice on the property, at which hearing interested persons were given an opportunity to be heard; and,

**WHEREAS**, at the conclusion of the public comment portion of the public hearing conducted on November 4, 2010, the Board of County Commissioners, with the consent of Applicant, continued the public hearing to December 6, 2010, for the purpose of conducting deliberations; and,

WHEREAS, on December 6, 2010, the Board of County Commissioners deliberated and entered a decision regarding the application, which decision was to denied the application, by a motion made by Commissioner Joe Mestas, seconded by Commissioner John Sandoval, and passed by a vote of 3 for and 0 against; and,

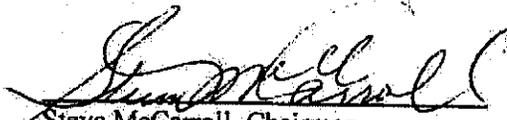
WHEREAS, the Board of County Commissioners hereby reiterates its grounds for denial of the subject application, as follows:

1. The application fails to comply with the standards of CCLUC Section 5.500.A.3., Water Quality Protection, because the Applicant failed to present sufficient evidence that the proposed use of the Property will not cause significant degradation of the quality of surface or groundwater resources. The Property is located less than 300 feet from the San Antonio River. The Applicant acknowledged that leaks and spills of material may occur as a result of the proposed use of the Property. Any such leak or spill of the materials proposed to be handled at the Property will result in contamination of surface and groundwater resources. The application fails to provide for a base-line study of the quality of surface or groundwater resources which will be affected in the event of a leak or spill. The Applicant failed to provide adequate assurance of the ability to mitigate the contamination of surface and groundwater resources in the event of a leak or spill. In light of the toxic and hazardous characteristics of the materials which are proposed to be handled at the Property, any such contamination will cause significant degradation of the quality of surface or groundwater resources.
2. The application fails to comply with the standards of CCLUC Section 5.500.A.9., which requires, in pertinent part, that the nature, scale, and intensity of the use be compatible with adjacent land uses and will not result in an adverse impact to adjacent land. The Property is located adjacent to property which is used for residential purposes. The owners of adjacent residential property testified that the proposed use of the property will have a detrimental effect on their property values. The nature of the proposed use of the Property, namely the handling of radioactive and toxic waste, is not compatible with the uses of adjacent lands. The scale of the proposed use of the Property is significant and long-term, and is not consistent with current uses of adjacent property.
3. The application fails to comply with the standards of CCLUC Section 5.500.B.2., Nuisances. Section 2.100 of the CCLUC defines nuisance, in pertinent part, to be conditions, or actions or lack of action that cause conditions, which are detrimental to the health, comfort, safety or welfare of the public, or that cause or tend to cause injury to persons exposed to the conditions or that cause or tend to cause damage to property. As described above, the proposed use of the Property may cause conditions that are detrimental to the health, safety, or welfare of the public. The Applicant acknowledged that leaks and spills of material may occur as a result of the proposed use of the Property. Any such leak or spill of the materials proposed to be handled at the Property will result

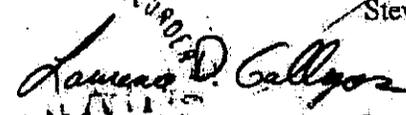
in contamination of lands, which will cause or tend to cause injury to persons exposed to the conditions or that cause or tend to cause damage to property. Additionally, legitimate concerns were expressed by the public regarding the safety of the bridge crossing the San Antonio River and other creeks in the County, especially in light of the weight of the materials and gondolas. There is the potential for the occurrence of an incident which will cause damage to property and injury to persons exposed to the hazardous wastes proposed to be trans-loaded from truck to rail. The Commissioners are also aware of a pending suit alleging that a site specific NEPA study is required by federal law before the proposed activity may occur.

**NOW, THEREFORE, BE IT RESOLVED**, the Special Use Application submitted by Energy Solutions, LLC, be and is hereby DENIED.

THIS RESOLUTION WAS CONSIDERED, DISCUSSED, AND ADOPTED ON THE 6<sup>th</sup> DAY OF DECEMBER, 2010, AT A DULY CONSTITUTED MEETING OF THE BOARD OF COUNTY COMMISSIONERS AT WHICH A MAJORITY OF THE MEMBERS WERE PRESENT, on Motion of Commissioner Joe Mestas, seconded by Commissioner John Santoval, and passed on a vote of Three (3) for and Zero (0) against.

  
Steve McCarroll, Chairman

ATTEST:

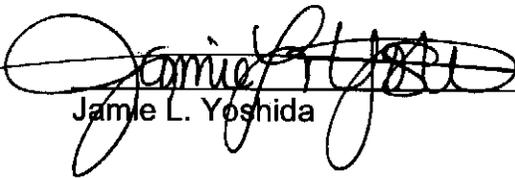
  
Lawrence Gallegos, Clerk & Recorder



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 28<sup>th</sup> day of February, 2011, service of the foregoing **CONEJOS COUNTY RESOLUTION NUMBER C-2010-47** was made via U.S. Postal Service, upon the following:

John D. Heffner John D. Heffner, PLLC 1750 K Street, N.W., Suite 200 Washington D.C. 20006	
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Jamie L. Yoshida