

**TRANSCRIPT OF THE  
SANTA FE COUNTY  
SLDC HEARING OFFICER MEETING**

**Santa Fe, New Mexico**

**July 9, 2020**

I. This meeting of the Santa Fe County Sustainable Land Development Code Hearing officer meeting was called to order by Santa Fe County Hearing Officer Richard Virtue on the above-cited date at approximately 3:00 p.m.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, this meeting was conducted on a platform for video and audio meetings.

[For clarity purposes, repetitive identification and confirmations of those on the phone have been eliminated and/or condensed in this transcript.]

**II. Approval of Agenda**

HEARING OFFICER VIRTUE: Good afternoon, everyone. This is the monthly meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer. My name is Richard Virtue. I'm the Hearing Officer. We have three cases scheduled for hearing today. Are there any changes to the cases scheduled?

VICKI LUCERO (Building & Development Services Manager): Hearing Officer Virtue, there are no changes.

HEARING OFFICER VIRTUE: Thank you. We're going to be following the same rules for each of the cases. Since we have a new virtual process here that we're going to be using I'm going to go through a summary of that process at the beginning. We think we're set up. We may run into some glitches and if we do we'd appreciate your patience while we work them out, but with a little luck we should be good to go with this.

In terms of the process, the order of presentation for each case will be first, the staff, second, the applicant, and then third, members of the public will be allowed to testify either for or against or just make a general statement with respect to the project. I may ask questions as we go through the process also.

In terms of questioning of witnesses, if a member of the public has a question of the applicant or another member I'm going to ask that question before that particular witness is excused, because once the witness is completed it will be muted and it will be

SFC CLERK RECORDED 08/19/2020

difficult to get them back on. For efficiency purposes I'm going to ask any questions and identify yourself and ask to be recognized before a particular witness is excused.

We have quite a few members of the public that want to speak today. I'm going to limit the presentations of each witness to two minutes, and I would ask the witnesses to please be focused and succinct in presenting your testimony. I do not intend to allow redundant, irrelevant or harassing testimony, so that if someone who has preceded you in terms of testifying and has said the same thing you want to say, please just acknowledge that you agree with them or just let their statement stand.

In addition, your testimony needs to be related to the Land Development Code standards that apply to the case, and I'm not going to allow any kind of personal attacks on persons who are part of the process.

Tessa Jo Mascarenas with the County has prepared a list of members of the public who are interested in testifying either for or against today. At the public input stage of each case I will call upon Ms. Mascarenas and she will call on individuals on her list one at a time. Once you've been called please identify yourself by name and address. The reporter will then swear you in and you will be allowed to give your testimony for up to two minutes. At the end of that process we will unmute all the participants and ask if there are any members of the public who have not testified and give folks a chance to do so after we've gone through the first round of testimony.

With that, let's turn to the first case.

*[Exhibit 1: Screen shot of the WebEx chat line – included as exhibit by County staff]*

### III. Public Hearings

- A. **Mark and Jack Ellvinger Variances. Jack and Mark Ellvinger, Applicants, Patrick Collingwood, Agent, Requests Variance of Chapter 7, Section 7.3.3 Table 7-A, to Allow a Structure to be within The 25-Foot Setback, a Variance of Chapter 7 Section 7.17.9.2.6, to Allow the Finish Floor Elevation to Exceed 5 Feet from Natural Grade, a Variance of Chapter 7, Section 7.17.9.2.7 (Significant Tree Removal), a Variance of Chapter 7, Section 7.17.9.2.3 (30 Percent Slope Disturbance for a Residence), a Variance of Chapter 7, Section 7.17.9.3.2 to Allow a Residence to Exceed 18 Feet in Height, and a Variance of Chapter 7, Section 7.17.9.2.2, (Ridgetop Setback). The Property is within the Residential Fringe Zoning District and Located at 53 Camino Pacifico, within Section 30, Township 16 North, Range 10 East, (Commission District 4). SDA-2**

JOHN LOVATO (Case Manager): Thank you, Hearing Officer Virtue. The lot was created in 1966 as Lot #2, Unit No. 2 within the Sunlit Hills of Santa Fe Subdivision.

The site is accessed through Camino Pacifico which is a County-maintained road. The access is located on a ridgetop elevation on Camino Pacifico Road where the property has a legal access point. In order to access buildable area on a lower elevation of the property, the access driveway would be a north facing slope, disturb 30 percent slope,

a considerable amount of significant trees, and would have a driveway slope of 15 percent and greater. Therefore, the applicant decided to locate the house closer to Camino Pacifico to avoid scarring the hillside with a driveway and is requesting the proposed variances.

The applicant requests to construct a 1,634 square foot house on the shoulder of a ridge. The house will be 24 feet in height. This is illustrated on the elevations of the plan set as Exhibit 2. The maximum height limit for structures on ridgetops, ridgelines, or shoulders is 14 feet for a flat roof or 18 feet for a pitched roof. The applicants are proposing a pitched roof, and the applicants intend on exceeding these height requirements on the north elevation. In addition, the proposed house will be constructed closer to the southwest property boundary to avoid as much 30 percent slope as possible and allow the house to be closer to the property boundary not meeting the 25-foot required setback. Allowing the house to reduce the required setback also lessens the amount of significant trees to be disturbed and reduces the amount of cut or fill to the proposed site.

The applicants request authorization to construct a residence on the shoulder of a ridgetop, disturb 387 square feet of 30 percent slope for the residence, and 55 square feet of 30 percent slope disturbance for a septic system, and allow a for a 7-foot setback instead the 25-foot side setback requirement, allow the house a height of 24'-6" on the downhill portion of the hillside to allow the home to be on one level. The residence's finish floor will be 8'-11" above natural grade to maintain a single level floor and remove two significant trees within the building footprint. Constructing the house on piers causes the residence to exceed height requirements and increases finished floor elevations from natural grade but also lessens the amount of 30 percent slope disturbance.

The agent states, "If we were to be pushed further down the slope, not only would a larger area be disturbed, but this area would remain visible from the local road, being Sunlit Drive. With the house pushed down the hill from the ridgecrest, a longer driveway would be needed, and more grading surrounding the driveway and house would be created. Therefore, the disturbed area would be greater, and the visibility of the development would increase from this location. In addition, 100 percent of the building would sit on 30 percent+ slopes, there would be no space for a septic system, more significant trees would be removed, and the building would attain a greater height."

The agent further states, "The applicant requires a house on one level, for ageing in place and looking after already elderly parents. Having this flexibility will be essential to her longevity, allowing her to avoid moving to an assisted living community and protecting her from potential viruses which spread in shared living facilities, such as Covid-19."

The applicants have addressed the variance criteria and staff has responded to their requests and their criteria.

Recommendation: The application is not in strict compliance with the SLDC, but this application meets the criteria necessary for granting a variance. Due to the topography of the land, the applicant is unable to build a home on the lot without variances. The site offers limited buildable area due to the topography and the lack of access to buildable area. The applicants have met the variance criteria where due to extraordinary and exceptional situations or conditions of the property, the strict

application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. In order to construct any residence on this property, a variance request is necessary. This causes peculiar and exceptional practical difficulties or exceptional and undue hardship on the applicant/owner. Based on this proposal minimizing the amount of cuts and fills and disturbance of terrain and minimizing the visibility of the residence, the spirit of the SLDC is met. Therefore, staff recommends approval of the variances requested, subject to the following conditions.

Hearing Officer Virtue, may I enter those conditions into the record?

HEARING OFFICER VIRTUE: Yes, you may.

[The conditions are as follows:]

1. The Applicant shall provide a plan showing the limits of disturbance and provide a construction fence along the limited area.
2. The Applicant shall submit a stabilization plan for all disturbed areas that includes re-seeding of native vegetation.
3. The Applicant shall submit a drainage plan for approval.
4. The Applicant shall submit a Geo-technical analysis for soil stability
5. The Applicant shall comply with Santa Fe County Fire Prevention requirements.

MR. LOVATO: Thank you, and I stand for any questions.

HEARING OFFICER VIRTUE: Okay. I have no questions at this time.

The next item will be the applicant's testimony and I'd ask for the main presenter for the applicant to state your name and address and then we'll swear you in.

PATRICK COLLINGWOOD: Hi. My name is Patrick Collingwood. I'm representing the applicants of this case. The address of this case is 53 Camino Pacifico. How long do I have to present?

HEARING OFFICER VIRTUE: I'm going to give you ten minutes for applicant's case in chief.

MR. COLLINGWOOD: Okay. Perfect. Thank you. Thank you everyone for joining this meeting and expressing concern for the neighborhood. We understand this is a sensitive issues, neighbors building a house is never easy and we want to offer assurances that we're building safely and responsibly and we want the character of the neighborhood to remain as it is.

So I'm going to back up.

[Duly sworn, Patrick Collingwood testified as follows:]

MR. COLLINGWOOD: Okay, shall I begin?

HEARING OFFICER VIRTUE: Please proceed.

MR. COLLINGWOOD: Okay. I'll proceed. Sarah bought the lot from Mark and Jack Ellvinger. It is a non-conforming lot so what that means is that it was created 15 years before the SLDC came into effect. The SLDC came into effect in 1981 and it was created in 1966. This lot has no obvious building location on it which makes it extremely hard for us to find a place to put the house on and hard for the neighbors likewise, so let me explain our options quickly.

So firstly, we can look at – if any of you have the exhibits open, we can look at Exhibit 33, which is a site plan. I don't know if you can see it. So essentially, you have a long rectangle, and there is the white area here. The white indicates the flat land and that

would be a good place to build a house and place a septic. However, you would have to build a 650-foot long driveway to access it. There's no access from this end of the property. There is a small corner right here of white, which again, is a flatter area, and that's right next to the road. So essentially we have these two extreme options and to us the only viable option is to build next to the road because we do not want to build a 650-foot driveway with a bunch of cut and fill to access this area.

You'll be removing – and it could cause erosion problems and in addition, Sarah, the applicant will be waking up early and will need to get to work. She's a school teacher and she won't be able to drive up a north facing driveway that's 650 feet long.

So the second building location which is next to the road I admit is not perfect. It is very close to the road and it does require a bunch of variances, which by the way the other location would as well. The other location would require eight variances, mostly to do with the driveway. So that is where we stand. We're proposing a small house, 1,634 square feet. It will be fully solar. The leach field and the septic system will be right next to the house. The pond or the cistern will be right next to the house, so that's to catch the stormwater and it will have very minimal cuts and fills because the design of it is such that it is built on a framed deck, so you could take a look at Exhibit A-42. You can see the [inaudible] is on the small columns and the walls, so this allows the natural grade to flow under the house, and I did check with Jaome Blay, the Fire Marshal, if this was okay and he said it was so long as we use a fire-proof material under that.

So we're minimizing cuts and fills. We will build safely. We will provide a stabilization plan, which the County is asking for, so the disturbed areas don't erode. We will do construction fencing. We will provide a drainage and grading plan to collect the stormwater safely. We will comply with fire prevention, both in the design and during construction, and lastly, we will hire a licensed New Mexico structural engineer and a licensed New Mexico geotechnical engineer for this project because the topography is very challenging and we do not want to build anything that's unsafe.

So let me go through the variances really quickly. I know I have about four minutes left. So we're asking for two variances, which has to do with the ridgeline setback. So that's variance 1 of variance 7. Now, this is an unusual case where the road is actually on the ridgeline, and since the only viable building area is right up next to the road it essentially means that we are building within the ridgeline. In terms of visibility, well, you can only see it from two roads and both roads are local roads; they are not arterial roads or major arterial roads. They are local roads, meaning they're very remote. They are not traveled on very often at all. They're only traveled on by the people who live there. And in addition, if you look at the view from Sunlit Drive West, which is A-37, this house doesn't break the horizon. So I've done a yellow dot right there, and it's actually below the horizon line from Sunlit Drive West.

So my next point is about the significant tree removal. This is variance 2. Trees are the character of this site. It's a wooded hillside with peaceful 50-. 100-year old piñon, juniper trees, and we are only proposing to remove two significant trees, which I think is very reasonable. I am sure all the other houses in the area removed many more trees than that, and as for building at the bottom of the site, on the flatter area, and building the 650-foot driveway, well, that would mean removing dozens of these significant trees. So by limiting our tree removal, we are controlling erosion. We're also being selective as to

what we're removing, so we're keeping this cluster of 60-year-old piñon trees right next to the road, meaning they create a screen between the road and the house. Not a full screen – a partial screen, but still it screens about 50 percent of the house.

So my third point is the building height. There are two variance requests for building height, so that's variance 3 and variance 6. So we were requesting 26-foot height and we did bring it down; we worked with the staff. So if we look at the building sections again, the heights – this height is really a function of the land just dropping down so steeply. So that's the road up there and that's a car right there. Now if you're standing on the road, the highest point of the building in relation to the road surface is only 8' 10". When you go down into the property, into Sarah's private property and you stand in the canyon and look up, yes, it's a very tall building, but from the public road it's not tall.

So the other reason we're requesting this height is because we're doing quite significant roof overhangs, and this is to protect the disturbed land from construction, from eroding, and then the other reason is that the roof is a V shape, It's an inverted pitch, and now this a special design to catch all the stormwater runoff in one location in the center, meaning if there's a big storm, and say a gutter fails, you won't have water falling off the roof and hitting the land. So essentially it's like a fail-safe drainage for the roof. All the water collects at one point and it goes into a roof drain, and it goes straight to a cistern or a pond. But what that means is that the roof is tipping up against the slope.

So as John Lovato mentioned, the applicant is requiring a house on one level and this is very important for her. She might talk about it later, but she has elderly parents who want to visit and they can't deal with stairs. To please herself, she doesn't want steps. She doesn't want a mechanically operated chairlift or elevator, which is understandable. If there's a power outage you still want to go in and out of your house. So my last point is that the rest of the house – on page A-39, I actually called out all the building heights at all the corners and you can see the one right by the front door is only 5'9" from the grade, so it's being cut in. At the carport it's 5'11" and 4'6", and elsewhere it's 17'9", 15'6" and 20' 3".

So I guess what I'm trying to explain is that we really did our best to drop the house as low as possible into the ground and cut into the ground while still allowing it to be accessed with an ADA ramp, and we can't drop it any further, and we can't step it down either, so that's sort of where we stand.

My last point is about the site setbacks. So I know this is a sensitive issue. So again, the position of the house is a result of this extreme topography. As you go towards the east it gets even steeper, if you look at my grading map. It just gets darker as you go east. So this is a very hard thing to work with. What we are proposing is just to do the carport at that side setback. The carport will be very low and it will be a very minimal structure. We did do a design which is right here, actually. So A-36 if you want to look at it. We did a design for a house which actually avoided both the 30 percent slope, this black area, and the side setback, and what you have is you have these two very small volumes that add up to being 1,000 square foot and it's just – it's sort of unfeasible with the house. It's a totally impractical design, but we did want to explore that at least and show that.

And this is back to our site plan, so as you go towards the east it just gets darker and darker. We can't move that way; we can't move this way. So we're jammed into this

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corner. So we are asking to be seven feet from the property line, and it is a 25-foot setback so I know this is a big ask. We are willing to work with the County and maybe reduce this so that is something we could talk about. Thank you for listening. I will turn back to Richard Virtue.

HEARING OFFICER VIRTUE: I'd like to ask if the applicant is present and if so, if she would like to testify at this time.

SARAH STARK: Yes, I'm here.

HEARING OFFICER VIRTUE: Give your name and address and then we'll swear you in.

MS. STARK: Okay. I'm Sarah Stark, 545 Canyon Road, Apartment 7, Santa Fe, New Mexico.

[Duly sworn, Sarah Stark testified as follows:]

MS. STARK: I haven't prepared a formal repeat of what Patrick just did but I think I just wanted to speak to two points, and the first one was just this question of where we are locating the house. This is a lovely piece of land with beautiful rock formations and old piñon trees, lichen covering the rock. And it is very apparent when you're on the land that this is a place that you would rather not disturb. So despite the fact that it's possibly not ideal to have a house so close to the road and so close to the neighboring property line, even into that side setback, the greater good of not disturbing so much of this piece of land which has sat undisturbed for forever really speaks to me. And so it's important to me.

And so I think that the work that Patrick has done to try to locate the house and figure out a way to make this work, it makes me feel really comfortable about where we're going to build. I am concerned about a long driveway. I am concerned about ice on a north-facing driveway but more than that I'm concerned about disturbing all those trees and all those rocks, and all that habitat. So I really wouldn't feel great about that.

The issue about having a one-level house, I think I am not elderly today. I am on my way, and I do have elderly parents who come to visit and I would, for a house this size, which is a smallish house, it makes a lot of sense to have it on one level. It seems – and it presents a lot of practical problems for me as I get older to have a multi-level house.

So those are the main points. I am very excited about being part of this neighborhood and I am sensitive to the neighbors concerns, and I am very hopeful that whatever the construction we do will be of limited inconvenience to all of them. Is there anything else I need to address?

HEARING OFFICER VIRTUE: You get to address what ever you would like, as long as it's about the project. If you said everything you want to say –

MS. STARK: I think that's it. I'll respect everyone's time. Thank you.

HEARING OFFICER VIRTUE: Okay. Thank you very much, Ms. Stark. With that I'm going to ask Tessa Jo to start calling the witnesses on her list.

TESSA JO MASCARENAS (County Manager's Office): Absolutely. It looks like our first speaker is Chantal Peace.

[Speaking first, Paul Pease was placed under oath.]

PAUL PEASE: Paul Pease at 54 Camino Pacifico. The proposed building is too close to the road and will significantly change the character of the neighborhood so

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far as no houses in the neighborhood are so close to the road. Due to the closeness of the road the value of the property across from 53 Camino Pacifico will likely decrease as the northern and southern views will be blocked. We have no objection for the building to be at a lower level as already planned. We were told if the cost of building further below would be a wash because the building site at the road would require special and expensive septic system and the other site would only require a downhill driveway.

Further, to grant permission to the requested variances could set a precedent in the county which could mean that similar requests in the future could be automatically approved. And I'd like to add one more comment. Rather than move the house down to the lowest, a suggestion I have is to move the house 50 feet from the shoulder, essentially 25 feet further than [inaudible] Moving the house 25 feet from the road would be much better. End of my comments.

MS. MASCARENAS: Thank you.

MR. PEASE: You haven't heard from Chantal yet.

MS. MASCARENAS: Correct. Is she with you?

CHANTAL. PEASE: Yes. Can I also make my comment?

[Duly sworn, Chantal Pease testified as follows:]

MS. PEASE: [inaudible] as my husband suggested, the ability to move the building further, maybe 20 feet back from the road. And the reason I am saying so is because – okay, to consider that. The advantages of moving the 20 feet back from the road is [inaudible] if you look at the design Mr. Collingwood has shown on the epdf. Because it would look – I'm sorry I don't have the video camera to show it to you, but there is around their proposed site, if we look at the color of the land, which means the light gray – and I don't know if maybe Mr. Collingwood can show that epdf. It is a light gray meaning that the slope is less than the 30 degrees that is a problem right now.

And so the way I look at the plan of the house, if they were to move further back, there will be more level area and the advantageous would be addressing the following variances: significant tree removal, that is a problem, would not involve the cutting of the two red and yellow trees that he has in another design, but potentially cutting some others further back from the road. Also, to address the finish floor elevation, potentially there will be less five feet elevation above ground over – less need for greater than five feet elevation above the ground.

In regards to the 25 property [sic] setback, the big reason variance request abutting the neighboring property for driveway and carports and several feet within the road right-of-way would not be necessary. It appears somewhat important, and I don't know if the applicant realized is that – [Time expired] One more point, okay? Is that the road is going to be paved this summer and obviously, they're going to have to widen the road, and when we were at a meeting with the County, they talked about having to use the shoulder, the road crew – [Time expired.]

HEARING OFFICER VIRTUE: Ms. Peace, are you still on?

MS. PEASE: Yes. I'm on.

HEARING OFFICER VIRTUE: Shall we go to the next witness?

MS. MASCARENAS: Those are the only two witnesses that had previously signed up for this particular case.

HEARING OFFICER VIRTUE: Okay. Then let's ask if anyone has come on since you compiled your list, who would now like to testify.

[There were no other people wishing to testify.]

HEARING OFFICER VIRTUE: Okay, we have no further persons wishing to testify in this case so hearing no requests for additional testimony I'm going to declare this hearing to be closed and I will review this and make a written recommendation within 15 working days.

3. B. **Case # 20-5030 Jack Gerlach (Amitie Revocable Trust) Variances. Amitie Revocable Trust (Jack Gerlach), Applicant, Joseph Karnes, Agent, Requests a Variance of Chapter 7, Section 7.17.10.4.1 (Disturbance of 25 Percent Slope) to Allow a Driveway to Access Buildable Area and Disturb 4,100 Square Feet of 25 Percent Slope Disturbance, a Variance of Chapter 7, Section 7.17.9.2.1, to Allow a Residence to be Constructed on a Ridgetop, a Variance of Chapter 7, Section 7.17.10.6 (Ridgetop/Ridgeline Setbacks) to Allow for the Main Residence to be Constructed on the Ridgetop with No Setback, a Variance of Chapter 7, Section 7.17.9.2.7 (Significant Trees) to Allow Removal of 55 Significant Trees to Accommodate The Driveway, a Variance of Chapter 7, Section 7.17.10.7.8 (Height to Retaining Walls) to Allow for Retaining Walls to be 10 Feet in Height and Exceed the Maximum Allowable Height, and a Variance of Chapter 7, Section 7.17.10.3.1 (Disturbance Area Limitation of 12,000 Square Feet) to Allow for a Total Disturbed Area of 29,321 Square Feet. The Site is within the Residential Fringe Zoning District. The Site is Located at 40 Cloudstone Drive, within Township 16 North, Range 10 East, Section 6. SDA-2**

MR. LOVATO: Thank you, Hearing Officer Virtue. The property is 17.77 acres and designated as an out tract in the Indian Hills Subdivision as indicated in plat book 369, pages 30 through 31 and recorded in the records of the Santa Fe County Clerk and recorded on August 19, 1997.

On February 13, 1990, the BCC granted approval to allow a 31.6-acre parcel to be subdivided into 11 lots, which is Indian Hills Subdivision. At that time, the applicant retained a 17.77-acre parcel. This parcel was labeled as an out tract and is the subject of the current application. This subdivision was created prior to the Terrain Management Regulations which came into effect in 1996. Therefore, the lots created have difficult terrain which presents challenges for access and development sites.

The property is accessed through Cloudstone Drive which is a private road. The access is at a midway elevation on Cloudstone Drive where the property has legal access. Cloudstone Drive climbs to the top of the ridge, near the applicant's buildable area on the ridgetop. However, the applicant has no legal access at that point. Lack of access has been confirmed with surrounding property plats.

The Applicant requests authorization to disturb 4,100 square feet of 25% slope for the access driveway, disturb and remove 55 significant trees located on 30% slope, allow

a disturbed limitation area of 29,321 square feet to construct an 8,914 square foot residence, a 2,578 square foot guesthouse and a 2,273 square foot barn, allow the residence to be on a ridgetop with no setback, and allow the retaining walls to be 10 feet in height. Therefore, the Applicant is requesting variances.

In developing as proposed, the applicant will create a scar with a driveway and construct a residence on the ridgetop with no setback. Further, the Applicant will create a driveway down the other side of the hill and construct a barn and guest house where there is buildable area. The roadway and proposed residence on the ridgetop will be seen from Old Santa Fe Trail, St. Michaels drive, and I-25.

The applicant's agent states, "from a planning perspective, it would be far preferable to gain access to the property from upper Cloudstone Drive to the east, which is at about the same elevation as the buildable areas and could be accessed via a substantially shorter driveway. However, Upper Cloudstone is separated from the property by two intervening properties. Mr. Gerlach has attempted to acquire an access easement across either property without success."

The applicant's agent states, "the flattest portion of the property is on top of the ridge, to the southwest of the existing residence on the adjacent property, which is on the top of the same ridge to the northeast. Mr. Gerlach proposes to construct the single-story main house in this location within the ridgetop. SLDC Section 7.17.9.2 prohibits structure constructed on a ridgetop, ridgeline or shoulder unless there is no other buildable area on the property. SLDC section 7.17.10.6 provides that structures may be located within 100 feet from a ridge if it can be demonstrated to the Administrator that structures built within the default minimum setback would be non-visible or less visible from public rights-of-way than structures built outside the default minimum setback."

The applicant's agent further states, "Mr. Gerlach carried out a visual analysis and determined that by lowering the finished floor elevation by 5 feet from the existing grade, the structure would be effectively obscured from the two public viewpoints identified by County staff, particularly compared to the existing house on the adjacent property to the east. The proposed house would have no material impact on the existing viewshed.

Also, Mr. Gerlach proposed to replace all trees removed for the driveway and house at a 2:1 ratio and to plant trees along the north side of the house to further minimize potential visibility of the house from the two public viewpoints and to screen the house from the neighboring house to the east. All replacement trees are proposed to be irrigated by recycled water from the on-site cistern system. Mr. Gerlach requests approval of a variance to the ridgetop construction prohibition to allow for the main house to be built in this location.

Approval of the driveway-related variances is necessary to allow for development of the property in a manner consistent with the SLDC. The property would otherwise be unbuildable for the residential use that is of right pursuant to the County General Plan and zoning designation."

Staff Response: Staff has reviewed the plans and has determined that the lot will require variances and has buildable area that is not located on the ridgetop. The lower southwestern portion of the property where the barn and guesthouse are proposed contains a building envelope that will allow a residence. That's Exhibit 2. However, in order to access this area, a driveway will need to climb the hillside, crest the hill and

continue down the other side of the hill. Constructing a driveway to get to this area, will disturb significant trees, involve significant 25% slopes, and will require the construction of 10-foot retaining walls. Further, the applicant proposes to construct a residence on the ridgetop without any required setbacks. Staff recommends the applicant build closer to Cloudstone Drive on the northwestern corner of the property which will require variances for 30% slope disturbance for the structures and 25% slope disturbances for the driveway but also will disturb less area as the driveway would not be as long and would not be as much of a visual impact on surrounding areas.

Staff has reviewed the variance criteria and has responded to that criteria.

Recommendation: Hearing Officer Virtue, there are three recommendations.

One: In order to build on the ridgetop location, the following variances are required:

1. A variance of Chapter 7, Section 7.17.10.4.1 to allow a driveway to access buildable area and disturb 4,100 square feet of 25% slope disturbance.
2. A variance of Chapter 7, Section 7.17.9.2.1, to allow a residence to be constructed on a ridgetop, a variance of Chapter 7, Section 7.17.10.6 to allow for the main residence to be constructed on the ridgetop with no setback.
3. A variance of Chapter 7, Section 7.17.9.2.7 to allow removal of 55 significant trees to accommodate the driveway.
4. A variance of Chapter 7, Section 7.17.10.7.8 to allow for retaining walls to be 10' in height and exceed the maximum allowable height.
5. A variance of Chapter 7, Section 7.17.10.3.1 to allow for a total disturbed area of 29,321 square feet.

Staff recommends denial of the variances to build on this location. The SLDC specifically states the construction on a ridgetop is not allowed unless there is no other place to build, and there is other buildable area on the property. Building on the ridgetop would create a visual impact from I-25, St. Michael's Drive and Old Santa Fe Trail and surrounding areas, as the home and the driveway would both be visible.

If the Hearing Officer recommends approval to build on this location, staff recommends the following conditions be imposed. Hearing Officer Virtue, may I enter those into the record?

HEARING OFFICER VIRTUE: Yes, you may.

[The conditions are as follows:]

1. This shall be the only buildable area on the site.
2. Other than the access to this site, no other areas shall be disturbed.
3. The Applicant shall comply with Chapter 7.17.9.3. 1 Height of Structures on Steep Slope Areas.\
4. The Applicant shall comply with Chapter 7.17. 10 Development at or above 7400 Feet.
5. No development shall be allowed on the ridgetop of the property.
6. The Applicant shall comply with Fire Prevention requirements.
7. Proposed structures shall be reduced in size. The guesthouse and/or accessory structure may need to be eliminated in order for the development to fit within the site.

8. Site disturbance for construction of the building(s) shall be limited to 12,000 sq. ft.
9. The Applicant shall comply with Chapter 7.17.10.7 Screening Requirements of the SLDC

MR. LOVATO: In order to build on the buildable area on the southwestern portion of the property the following variances are required:

1. A variance of Chapter 7, Section 7.17.10.4.1 to allow a driveway to access buildable area and disturb 4,100 square feet of 25% slope disturbance.
2. A variance of Chapter 7, Section 7.17.9.2.7 to allow removal of 55 significant trees to accommodate the driveway.
3. A variance of Chapter 7, Section 7.17.10.7.8 to allow for retaining walls to be 10' in height and exceed the maximum allowable height.
4. A variance of Chapter 7, Section 7.17.10.3.1 to allow for a total disturbed area of 29,321 square feet

Staff recommends denial of the variances to build on this location, as it would require a long driveway with a large amount of 25% slopes disturbance and removal of significant trees as well as retaining walls that exceed the height limitation. The driveway would scar up the mountain and be visible from I-25, St. Michael's Drive and Old Santa Fe Trail and surrounding areas.

If the Hearing Officer recommends approval to build on this location, staff recommends the following conditions be imposed. Hearing Officer Virtue, may I enter those into the record?

HEARING OFFICER VIRTUE: Yes, you may.

[The conditions are as follows:]

1. This shall be the only buildable area on the site.
2. Other than the access to this site, no other areas shall be disturbed.
3. The Applicant shall comply with Chapter 7.17.9.3. 1 Height of Structures on Steep Slope Areas.
4. The Applicant shall comply with Chapter 7.17. 10 Development at or above 7400 Feet.
5. No development shall be allowed on the ridgetop of the property.
6. The Applicant shall comply with Fire Prevention requirements.
7. Proposed structures shall be reduced in size. The guesthouse and/or accessory structure may need to be eliminated in order for the development to fit within the site.
8. Site disturbance for construction of the building(s) shall be limited to 12,000 sq. ft.
9. The Applicant shall comply with Chapter 7.17.10.7 Screening Requirements of the SLDC.

And lastly, in order to build on the area closest to Cloudstone Drive, the following variance would be required:

- 1 A variance of Chapter 7, Section 7.17.10.4.1 (Disturbance of 25% Slope) to allow a driveway to access buildable area and disturb 4,100 square feet of 25% slope disturbance.
- 2 A variance of Chapter 7, Section 7.17.9.2.7 (Significant Trees) to allow removal of significant trees to accommodate the driveway.
- 3 A variance of Chapter 7, Section 7.17.10.3.1 (Disturbance Area Limitation of 12,000 Square Feet) to allow for a total disturbed area of 29,321 square feet.

MR. LOVATO: Staff would support the variances requested to build at this location, as it would result in a shorter driveway with less disturbance of steep slopes and removal of significant trees and it would reduce the need for large retaining walls. Staff recommends approval to build at this location subject to the following conditions. Hearing Officer Virtue, may I enter those conditions into the record?

HEARING OFFICER VIRTUE: You may.

[The conditions are as follows:]

1. The Applicant shall comply with Chapter 7.17.9.3. 1 Height of Structures on Steep Slope Areas.
2. The Applicant shall comply with Chapter 7.17. 10, development at or above 7400 Feet.
3. No development shall be allowed on the ridgetop of the property.
4. The Applicant shall comply with Fire Prevention requirements.
5. Proposed structures shall be reduced in size. The guesthouse and/or accessory structure may need to be eliminated in order for the development to fit within the recommended site.
6. Site disturbance for construction of the building(s) shall be limited to 12,000 sq. ft.
7. The Applicant shall comply with Chapter 7.17.10.7 Screening Requirements of the SLDC.

MR. LOVATO: Thank you. I stand for any questions.

HEARING OFFICER VIRTUE: I have no questions at this time so we can move on to the applicant's testimony, and I would ask the applicant himself or herself speak first.

JOSEPH KARNES: Thank you Hearing Officer Virtue. This is Joseph Karnes with Sommer, Karnes and Associates, 125 Lincoln Street, Suite 221. I'm here on behalf of the applicant, Jack Gerlach. I'm going to go through a brief power point presentation, Then project architect Mark Hogan will present a visual analysis, and Mr. Gerlach would like to say a few words and finish the presentation. Also, project engineer Morey Walker is also on the call and I'm going to ask him a couple of questions in the middle of my power point presentation and then we'll stand for any questions you may have.

HEARING OFFICER VIRTUE: I intended to limit the presentations to ten minutes. It sounds like you've got a list of folks. How much time do you think you'll need?

MR. KARNES: I would say not more than 15 minutes. I'll move through as quickly as I'm able.

HEARING OFFICER VIRTUE: Thank you very much. We'll stick with 15 minutes.

MR. KARNES: Thank you. Initially, I need to make one correction for the record. In his staff report Mr. Lovato was talking about the requested variance to disturb slopes of greater than 25 percent for the driveway. He used the disturbed area a figure of 4,100 square feet, and I put in writing – it didn't make it into the staff report – but the actual figure is about 29,000 square feet for the driveway. So I just wanted to make that correction. It should be in your packet in my letter that I submitted to Mr. Lovato. With that I'm going to go ahead and get my power point presentation on. Early I was able to share content. I'm not sure if Ms. Mascarenas could make me the host. [Mr. Karnes power point was limited to the first slide; all attempts to proceed further failed.]

As staff pointed out, the lots in the Indian Hills Subdivision have difficult terrain. It presents challenges to both access and buildable areas. With respect to the 17.7-acre lot that is the subject of this application, County staff and Mr. Lovato have recognized that approval of variances will be necessary for the lot to be used for residential use, which the County ordinance recognizes as a permitted use that may be carried out as a matter of right subject to compliance with applicable, non-discretionary development standards.

Mr. Gerlach proposed to construct a home and accessory structures for his family within the buildable area of this lot as defined and as required by the SLDC. As you can see, Cloudstone Drive is at the upper left of this photo that was provided by the County's GIS Department. The area in red is 30 percent slope, and the yellow and other colored areas are less than 30 percent slope, and you can see the outline of the 17.7-acre lot between as you can see Cloudstone Drive.

Hearing Officer Virtue, so as you know, there is a steep ridge that runs in between Cloudstone Drive and the portions of the site that are buildable as defined by the County code. The proposed driveway up the hillside requires approval of variances and is necessary to access the buildable area of the lot as defined by the SLDC. Given the staff report's recommendation that the house be located on the northwest corner of the lot within an area that is entirely over 30 percent slope, I need to start by addressing that recommendation.

Initially, it's not the County's job or responsibility to design a project. That is for the applicant to do and in this case the question before you and the Planning Commission ultimately is not where the house should be located but whether the application meets the variance criteria as set forth in the SLDC, and my written material submitted with the application demonstrate compliance with the variance criteria. Staff's recommendation for the house site is contrary to the subdivision plat approved by the BCC in 1997, the express language of the County Code, as well as sound planning principles.

As Mr. Lovato pointed out, the BCC approved the original subdivision in 1990 and approved modifications to the subdivision in 1997 after the BCC adopted its Land Use Code in 1996 that contained terrain management requirements. The fundamental basis for the County subdivision requirements is that each lot include a buildable areas that meets the terrain management performance criteria as they existed in 1996. In this

case, as Mr. Lovato pointed out, the site contains ample buildable area on top of the hill and no buildable area whatsoever on the side of the hill closest to Cloudstone Drive. In addition to exceeding staff's scope in reviewing the variance applications, staff's recommended site is exactly the opposite of the express prohibitions set for on the approved subdivision plat as well as the County code.

Condition 7 imposed by the BCC on the 1997 approved subdivision plat states: no building construction is permitted on slopes greater than 30 percent grade. The application complies with this condition, while staff's recommendation facially violates the condition, and critically, there is no variance procedure available for violated the condition of subdivision plat approval and staff does not address that condition of the plat approval. Likewise, condition 12 that's printed on the subdivision plat states that "Terrain management regulations, Article 7, Section 3.2 of the County Land Development Code, shall be complied with at the time of building permit application on each lot." That condition is also not subject to a variance decision and the applicant has not applied for such a variance.

In making this *ultra vires* recommendation staff ignores the express conditions of the plat and is willing to throw the terrain management regulations and plat conditions out the window in favor of a building site that would require some 40 feet worth of retaining walls that would take up at least half of the permitted 12,000 square feet of disturbed area, as well as all the trees within that disturbed area. This is a forested hillside and all of those trees would have to be removed.

Given the steep slope, a house on that side of that escarpment would have substantially greater impacts than would the proposed driveway. And at this point I'd like project engineer Morey Walker to just address the magnitude of the impacts of a building pad on the side of that escarpment versus a narrow driveway crossing that escarpment, as many driveways do in this area of hillside development in Monte de las Piedras Rosas, which is above the Indian Hills Subdivision in the surrounding development. So Mr. Walker, if we could switch to him for just a minute and he could address the magnitude of disturbance I'd appreciate it.

[Duly sworn, Morey Walker testified as follows:]

MOREY WALKER: I'm Morey Walker with Walker Engineering, 905 Camino Sierra Vista here in Santa Fe. Just as a quick comment on all that, [inaudible] this house on 30 percent slopes, the fallacy here is it's greater than 30 percent slopes. The actually slope that's being recommended to build the house on is actually 40 to 45 percent slopes, which means that if you build a house like 100 feet wide we're talking almost 40 feet of change in elevation from one side of the house to the other. That would require walls – unbelievably tall walls.

I saw a variance of ten-foot walls, we're talking about walls 30 to 50 feet high to build a house where it's located. Every time we have to cross 30 percent slope it's only because of roadways. I've never built a house on it. We usually build a road on there because roads, driveways, minimize the amount of disturbance on steep slopes. The driveway itself will only be 14 feet wide and we had it just winding up that roadway. I don't have it in front of you. You don't see it in front of you. We designed that roadway so it just winds up that driveway, up that steep slope, just to minimize the amount of trees and minimize the amount of walls.

To build a house, I don't know how you could do it. It would be almost unfeasible to try to build a house on 40 percent slopes. I just don't see it. Thanks.

MR. KARNES: Thank you, Mr. Walker. With respect to the driveway, the requested variances are necessary and required to achieve access to the buildable area as defined in the County code. Mr. Walker, as he described, designed the driveway to minimize land disturbance and tree removal, and it's obvious that a 14-foot wide driveway crossing slopes substantially in excess of 30 percent slope would disturb much less land than would a 100-foot wide building pad, would require substantially less grading and retaining wall construction.

Further – I wish I could show you the photo – but this proposed driveway is in character and has less switchbacks than existing driveways in the vicinity. I have an air photo that shows two driveways existing off of Cloudstone Drive. One that has four switchbacks and another has five switchbacks. The proposed driveway that Mr. Walker designed has been reviewed by the Fire Marshal's Office. Fire Marshal Jaome Blay has reviewed and is comfortable with the turnouts and the design of the driveway, and this driveway will actually be better and safer than existing driveways in the area that were constructed many years ago, and again, have substantially more elevation gain and switchbacks than the proposed driveway.

In sum, separate and apart from your recommendation with respect to the proposed buildings and the associated variances, we request that you recognize the driveway as being necessary to access the buildable area of the property as defined by code, and that you recommend approval of the driveway related variances.

I'm just going to finish up by talking about the buildings. With respect to the proposed buildings, Mr. Gerlach designed the main house, guesthouse and proposed barn to meet the needs of his extended family. I'll make two points relating to that request, the request to exceed the maximum disturbance limitation. First, the County zoned the property Residential – Fringe with a five-acre minimum lot size. That density permits three lots and a lot of 36,000 square feet of disturbed area as of right under your code, which is substantially more than is proposed by this application.

Second, the property is located in an area that was substantially developed many years ago. I have a chart that I was planning to show you that shows that there are properties in the vicinity with relatively large homes and accessory structures on much smaller lots. This 17.7-acre lot is, and the proposed intensity of development is less than half in terms of intensity of development compared to the property next door at 60 Cloudstone, and even less compared to other identified properties in the chart that I have. I'll submit my power point to Mr. Lovato when we get done, and I'm sorry that we were not able to show it to you, but I took the figures from the County Assessor's records.

So my point is that this is a large house on a very large lot compared to very large lots compared to lots in the vicinity. There's no other lots that I could find of anything close to 17 acres. The proposed structures are not located on steep slopes and will be compatible with the existing development pattern give the size of the lot and the intensity of development. I was hoping that Mr. Hogan could walk through his visual analysis and show you how Mr. Gerlach and Mr. Hogan have sunken the single-story house into the ground in order to minimize the impacts on existing distant views from Old Santa Fe

Trail and from I-25 and St. Michael's. At this point I'd like to turn it over to Mark and I'll finish up if Mark can make a few comments.

But in sum, Hearing Officer Virtue, we request that you recommend rejection of staff's attempt to redesign the project in a manner that is directly contrary to the subdivision plat, the County code, the spirit of the code, and sound planning principles. We ask that you recommend approval of the variances necessary for the driveway, and we ask that you recommend approval of the variances to the disturbed area limitation and ridgetop standards. And Mr. Gerlach is going to speak for a minute on his openness to work with staff on the location of the house. But my point is that the driveway up the hill is absolutely essentially to comply with the County code requirements. With that I'll hand off to Mr. Hogan and I thank you for your time and your patience.

HEARING OFFICER VIRTUE: Thank you, Mr. Karnes. If we could get some succinct statements from Mr. Gerlach and Mr. Hogan I'd appreciate it.

[Duly sworn, Nark Hogan testified as follows:]

MARK HOGAN: Well, without the pictures that will help me be brief I wanted to recount that the value of the visual preference in the visual analysis was proven in the work on this site because we erected story poles at all the corners of the house as required, and we had them a couple feet, maybe four feet higher than they needed to be and painted the tops of them red so that we could be sure we could locate them easily. And then we put the original design of the house, we taped that off in bright green tape and then did a visual analysis of it, which from the only location's visibility, which we did review with staff, nail those down and then the visual preference study that we performed was taken from those locations. And we amended the siting of the house until it became out of sight. It used the tree line and the low saddle of that ridge to accomplish that.

So without further ado, there's really nothing to see, literally, because the current design pushes the parapets of the house down below the tree line. And I'm sorry I can't show you that in the slides.

HEARING OFFICER VIRTUE: Thank you, Mr. Hogan.

[Duly sworn, Jack Gerlach testified as follows:]

JACK GERLACH: I'm Jack Gerlach. I'm the applicant. Address is 28460 Via Acero Street in Malibu, California. First of all, thank you for joining us all. My name is Jack Gerlach. This is my wife Heather. We are applying for this variance and I just wanted to touch on a few points about the project. I've had the pleasure of introducing this project to the neighborhood. We've had two neighborhood meetings. Some of them were friendly; others were more confrontational. I just wanted to clarify something that I read in the letters that were submitted as a concern.

People are accusing me of designing a spa. I just wanted to clarify that this is not a spa. This is a single-family home for family use for my family and no intention of creating a spa on a parcel that's designed residential. Nor do I have a spa business nor am I involved in a spa business. The design of the house, particularly as it is for multi-generational use. We plan to occupy it as a family, including mother, grandparents. The idea is also to have a one-level house without stairs to accommodate that need. Then we felt, okay, how can we make that happen without going to two stories and really

flattening it out so it's not visible, so it's not sticking out like a sore thumb, and that's kind of how that footprint sort of grew and originated.

The house is for family use. The guesthouse, obviously, it's a guesthouse, and the barn that is proposed would be an art studio for art storage and art making. There's two small gatehouses that are proposed, both of which actually are not security buildings but they will be disguised as gatehouses to house the machinery necessary for the property, like water pumps, electrical panels, and the idea is to disguise that and make sure it's so soundproof that no sound can be heard if a pump turns on and off.

The house, or the project will be off public water. We have a water meter set up for that and the water will be pumped up the hill to accommodate the water needs of the house. In addition, because of the roof size we are obviously required to put in a cistern, which will be an underground water tank that will collect all the water through rain or snow melting water and use even some of the graywater from the house. We're going to have a very complex plumbing system in there, and the water will be used to re-irrigate the areas that were served.

My commitment is to replant trees at a two to one ratio. For every one tree that we need to remove I will plant two trees in replacement, responsibly sources and watered through this cistern water so there will be no impact on water usage as it may be perceived. I know that there was a concern too about additional disturbed area. Anything that is outside the footprint of the house and may be disturbed because a septic system is installed or an underground water tank or a utility line, that area will be replanted with natural plants that are part of the environment and it will be put back into its original form and setting.

I understand that there is a concern, obviously, due to the disruption of this project but like Joseph Karnes pointed out earlier, in relationship to the size of the parcel, we're talking 17.7 acres, and to the permitted disturbed area, if it was split into three different parcels we are still under that area. Other homes in the area that were built previously did not meet that standard. Some of them even seem to have a larger disturbed area and we're trying to make sure that any area that can be replanted or was disturbed will be recovered with natural plants that are growing in the vicinity.

The other thing that's really important to point out, this is a view lot. It's a large property. It is an expensive property and in order to purchase this property, to take on this project, it also needs to have a value that can be created in order to justify this cost. So a house with views in a view lot area is sort of a requirement in order to make this lot worth what it was and what it represents.

It's also important to point out I shared this at some of the neighborhood meetings. I've collected a few different materials on this property – rocks, stones, even some rusted metals, and the idea is to use these materials on the exterior of the house to truly blend it into the environment in such a way that it will have the least visible impact and feel as if it is organically part of the environment and that is something I am very passionate about. I even plan to use some of these color patterns inside the house to really connect to the surrounding area.

I'm going to wrap it up. The other important thing is that we are going to have non-flammable materials on the outside of the project. Nothing that is flammable. I have personal experience. Two years ago actually, about two years ago, the Woolsey fire here

in Malibu, I personally fought the fire and was involved and saw many houses burn down. Concerning that we are going to go far and beyond any fire standard. Obviously, the house will have sprinklers inside but it will also have sprinklers on the outside and exterior. There will be no flammable materials on the exterior and there will be a draft hydrant for the Fire Department to connect to and use the water from cistern and underground water tanks to mitigate any concerns that may happen or any danger that may happen due to fire.

To finish off my presentation, I would like to say at the end that this is our family home. We plan to have a family there together and to care for our family there. And you know that there is opposition in the neighborhood and I respect that. I just want to say that I look forward to and I've always said that, to having a neighborhood friendly and caring and respectful relationship in the future and even though some people may be opposed to the project, I still hope to stand up to that and I look forward to a harmonious future together. Thank you. Back to you, Mr. Virtue.

HEARING OFFICER VIRTUE: Okay. Thank you, Mr. Gerlach. If there are no other speakers on behalf of the applicant I'll close this portion of the hearing and go to public testimony. Tessa Jo, would you like to start on your list?

MS. MASCARENAS: What I am going to do is I'll share the timer for each speaker, which is going to be at two minutes. Our first speaker is Lesley Conway. [Due to poor audio quality Ms. Conway's remarks are presented in synopsis form.]

Lesley Conway was placed under oath and asked why the yellow public notice board listed Amitie Revocable Trust was the owner, while present at the meeting as applicant was Jack Gerlach.

HEARING OFFICER VIRTUE: I would ask Mr. Karnes or Mr. Gerlach to explain the relationship between the applicant – the applicant is the Amitie Revocable Trust. Mr. Gerlach's name appears in parenthesis. I'm assuming he's trustee or has some relationship with the trust. I would ask him to explain it, or Mr. Karnes.

MR. KARNES: So the property owner is the Amitie Revocable Trust. Mr. Gerlach is under contract to purchase the property. As with many applications in the county, the property owner authorized Mr. Gerlach to submit the application. I'll let Mr. Lovato or County staff address how they characterize the various parties but I think they accurately represented on the sign that the property and hence the applicant is the trust. Mr. Gerlach is the one bringing the application forward in conformance with written permission from the trustee of the trust. I hope that answers your question.

HEARING OFFICER VIRTUE: Okay. Thank you for that. Ms. Conway, is that adequate for you? Did you hear Mr. Karnes' explanation?

Ms. Conway explained that her home has become unsalable and lacking value. Due to the project construction taking years with destructive vibration. Florentino Engineering and another engineering firm have done geotechnical studies showing the structural impacts to her property will be moderate to severe. Additionally, there will be danger to her well, propane tank, and gas lines and well as those of her neighbors, and to the aquifer. Damage to property values would be huge. Fragile piñon trees on her property will also be damaged. The compound is huge. She is 76 years old and her house was built in the 1970s. Due to the size of the project, questions arose as to whether it was

a spa, rehab center or a hotel. This project will significantly and negatively impact her life.

HEARING OFFICER VIRTUE: Thank you, Ms. Conway, for your testimony. Can we go to the next witness?

MS. MASCARENAS: The next witness is Dr. Robert Russell.

[Due to poor audio quality Dr. Russell's sworn testimony is presented in synopsis form.]

Dr. Russell stated that the visual impact of the 250-foot long building will be felt over a wide area. The disturbed area will be 79,600 square feet, which is six times the SLDC limit. The geotechnical engineer estimates the terrain damage at 115,600 square feet, which is unacceptable. The driveway will eliminate not 55 significant trees according to Mr. Karnes. By their count 222 significant trees will be eliminated. [Time expired]

HEARING OFFICER VIRTUE: Thank you, Dr. Russell. We're going to call the next witness now.

MS. MASCARENAS: The next witness on the list is Jon Ahlstrom.

[Due to poor audio quality Mr. Ahlstrom's sworn testimony is presented in synopsis form.]

Mr. Ahlstrom stated that in addition to visual concerns, the barn, cistern and septic tank are located on a huge granite outcropping in a no-build zone. The septic tank would drain into an arroyo. He has lived in the area for ten years and has enjoyed the pristine mountainside. [Time expired]

MS. MASCARENAS: The next speaker on our list is Lee MacLeod.

[Duly sworn, Lee MacLeod testified as follows:]

LEE MACLEOD: Lee MacLeod, 26 North Cloudstone, Santa Fe, New Mexico, 87505. Considering the limitations on time I'll try to make this as brief as possible and I understand I'll probably get cut off, which is not a problem. I would like to say that I think the amount of disturbed square footage for this project is absurd. I think the numbers that Robert was trying to get across, and I think it was very difficult to hear him should be taken into consideration. The numbers that we've been hearing were produced by the applicant and the numbers that Leslie's engineer produced were considerably larger with the respect to the amount of square footage that's going to be disturbed.

I also want to talk about the amount of land that is going to be moved out to create this project. The construction plans delivered to the County show, under the heading Earthworks, a design cut of 14,099 cubic yards, a fill of 4,237 cubic yards and the removal of 9,862 cubic yards. In a letter dated 6/9/2020 responding to the questions from Leslie Conway who lives adjacent to the project, who we heard from, Joseph Karnes wrote that no rock will be leaving the property. Does that mean there will be no rock in the material that goes out? Does that mean that all 9,862 cubic yards will be nothing but existing vegetation and debris? It seems unlikely for a number of reasons. First, in a geotechnical investigation prepared for Jack Gerlach by Florentino Engineering, the engineering firm found a granite fractured bedrock [Time expired]

MS. MASCARENAS: The next speaker is Cecile Farris.

[Duly sworn, Cecile Victoria Farris testified as follows:]

CECILE VICTORIA FARRIS: Cecile Victoria Farris, 94 Cloudstone Drive, Santa Fe, New Mexico, 87505. I live at 94 Cloudstone Drive and this project will really affect not only my private property but the entire ridgeline, I feel. I feel it's going to interfere with thousands of trees that are old and I don't know how long it will take to actually grow them back. I feel that it's going to destroy lots of animals as well. There's so many animals that live in this neighborhood that are wild. The driveway also that they plan on developing doesn't seem up to code. It seems like a violation also of my own property line, and it's a very dangerous area for them to try to build a driveway. I don't know how they could possibly make that a safe way to have a driveway. I'm against the thoughtless and invasive architecture and I will be grateful that you're hearing me right now. I just love this neighborhood. I've lived in Santa Fe for a very long time and the water is one of the biggest concerns for me. Thank you for hearing me.

MS. MASCARENAS: Thank you. That was our last speaker that signed up on this particular case.

HEARING OFFICER VIRTUE: Okay. Shall we see if there's anybody else that wants to testify? Can you unmute, Tessa Jo?

MS. MASCARENAS: I'm unmuting everyone.

HEARING OFFICER VIRTUE: Is there anyone else that would like to testify on this case, members of the public?

[Duly sworn, Patrick Simms testified as follows:]

PATRICK SIMMS: Patrick Simms, 138 Cloudstone Drive. May I use my time to give it back to Lee MacLeod who was about to make quite an important point when he was cut off?

HEARING OFFICER VIRTUE: This is the Hearing Officer. You may do that.

MR. SIMMS: Then I pass it over to Lee MacLeod. He was about to discuss how many truckloads of material that would have to come down Cloudstone Drive according to the applicant's projections of removal. Can you take it, Lee?

MR. MACLEOD: Yes. I think I'm going to try to do a little bit better, quicker job, let's say. So what I was going to say is the engineer, working for Mr. Gerlach, has figured out that there is granite two to three feet underneath. Mr. Gerlach is proposing to go down five feet into the ridge in order to minimize the impact. That's at least two to three feet of granite across the entire length of that house which is a total of 16,000 square feet under roof with five feet of preparation requiring around it. That granite has to go somewhere and it cannot necessarily be reused as fill.

If we assume that in a best case scenario, only one-third of the 9,862 cubic yards is exported, which I think is fairly generous, with the trucks being limited to five tons it would require 325 trips out or 650 round trips just to dispose of the stone, to say nothing of the other material. This will certainly have a major impact on our road and this neighborhood. I would urge the County to deny the variance based on the fact that this proposed project is in direct opposition to the aims of the County's desire to facilitate sustainable development in this area and to minimize the disturbance required by construction up here. Thank you.

HEARING OFFICER VIRTUE: Thank you, Mr. MacLeod. Is there anyone else who's on the call who would like to testify? Okay, this public hearing is

closed, and I will get a recommended decision within 15 working days of today and we will proceed to the final case on the agenda today.

3. C. **Case # 20-5040 Casitas de la Tierra Conceptual Plan, New PDD, Map Amendment, and Variances. Santa Fe West Investments, LLC, applicant, Through Its Agent, JenkinsGavin, Requests a Conceptual Plan to Create a Planned Development District under Sections 4.9.9 And 8.10.2.2 of the Sustainable Land Development Code (SLDC) and Requests a Zoning Map Amendment in Accordance with Section 1.15 to Rezone a 44.57-Acre Parcel from Residential Estate to Planned Development District to Allow a 64-Unit Detached Residential Condominium Project. The applicant is Also Requesting Variances from SLDC, Sections 7.11.3.1 (Connectivity) and 7.11.11.2 (Access To Multi-Family Developments) to Allow a Secondary Access onto Arroyo Calabasas to be Gated and Used for Emergency Access Only. The Site is Zoned Residential Estate (RES-E). The Property (Parcel ID # 980001322) is Located at 233 Camino La Tierra, East of Las Campanas and West of the Intersection of Arroyo Calabasas Road and Camino La Tierra, within Sections 7 & 8, T17N, R9E, SDA-2 (Commission District 2)**  
[Exhibit 2: Casitas del la Tierra power point; Exhibit 3: Graeser & McQueen letter to Hearing Officer dated 7/9/2020]

JOSE LARRAÑAGA (Case Manager): Thank you, Hearing Officer Virtue. The applicant is requesting approval of a Conceptual Plan to create a Planned Development District under Sections 4.9.9 and 8.10.2.2 of the Sustainable Land Development Code, and requests a Zoning Map Amendment in accordance with Chapter 1.15 to rezone a 44.57-acre parcel from Residential Estate to Planned Development District to allow a 64-unit detached residential condominium project. The applicant is also requesting variances from SLDC, Sections 7.11.3.1, Connectivity, and 7.11.11.3, Access to Multi-Family Developments, to allow a secondary access onto Arroyo Calabasas to be gated and used for emergency access only.

The 44.57-acre site is currently zoned as Residential Estate. The density within RES-E zoning allows for one dwelling per 2.5 acres, which would allow a total of 17 lots.

The applicant states, “We are requesting to rezone Tract E comprising 44.57 acres from RES-E to Planned Development District to permit the development of a 64-unit detached, single-story residential condominium project, age-targeted to active seniors. The project aims to provide low-maintenance housing options for active seniors, including existing area residents who wish to downsize, yet remain in their community. The proposed homes are modest in size, averaging approximately 2,400 square feet, inclusive of garages. In addition, the clustered design protects 33.11 acres of open space and common area or 74.28 percent of the property. This proposal is for a 100 percent residential community and, therefore, per SLDC Table 8-19: Dimensional Standards – Planned Development, we will provide one TDR in lieu of nonresidential development. Furthermore, five additional TDR’s will be acquired to achieve 64 dwelling units.”

As this application makes its way through the process, an amendment of the Future Land Use Map of the SGMP will be required through a resolution. In addition, an Ordinance amending Ordinance # 2015-12, Zoning Map Ordinance will be required to be approved by the Board of County Commissioners. These two items will be heard alongside this case by the appropriate bodies. That would be the Planning Commission and the Board of County Commissioners.

The request for a proposed map amendment and rezoning will allow the rezoning of 44.57-acres to create a new Planned Development District and a Zoning Map Amendment to amend the SLDC Zoning Map to change the zoning designation of Tract E from Residential Estate to a Planned Development District.

The applicant has addressed Section 1.15.6.2, text amendments for zoning map amendments, review criteria, and the staff has responded to the applicant's response. The applicant has address Section 4.9.9.1, Conceptual Plan Review criteria, and staff has responded to the applicant's response. The applicant has addressed Section 8.10.2, Planned Development District, Conceptual Plan Review criteria and staff has responded to the applicant's response. The applicant has addressed the variance review criteria per Section 4.9.7.4 for a variance of Section 7.11.3.1, Connectivity, and Section 7.11.11.3.2, access to multi-family developments and staff has responded to the applicant's statements.

The applicant submitted an environmental impact report and adequate public facilities and services assessment, a water service availability report, a traffic impact assessment, and a fiscal impact assessment. Staff has determined that the studies, reports and assessments prepared for this development meet the intent outlined in Chapter 6 of the SLDC.

The applicant addressed the applicable design standards outlined in Chapter 7 of the SLDC. The applicant addressed access, fire protection, landscaping and buffering, lighting, road design standards, water supply, wastewater and water conservation, open space, protection of historic and archaeological resources, terrain management, flood prevention and flood control. Staff has determined that the above-mentioned design standards as addressed by the applicant meet the criteria set forth in Chapter 7 of the SLDC.

Rezoning and map amendment: Building and Development Services staff has reviewed the request for a proposed zoning map amendment and rezoning to allow the rezoning of 44.57 acres for compliance with pertinent Sustainable Land Development Code and Sustainable Growth Management Plan requirements and has found the facts presented do not support the request. The submittal does not meet the SGMP goals to support the development of affordable housing and does not integrate affordable housing in the development. The submittal is not consistent with the SGMP future land use map. The submittal does not meet the SGMP goal to provide adequate workforce housing.

The request to allow 1.4 dwellings per acre is not compatible with the densities in the surrounding areas. The submittal did not address all pertinent criteria, and policy outlined in the SGMP.

Conceptual plan: Building and Development Services staff has reviewed the request to create a new Planned Development District on 44.57 acres for compliance with pertinent SLDC requirements and has found that the facts presented do not support the

request. The proposed project is not consistent with the principles of the SGMP. The proposed PD District is not consistent with the Future Land Use Map and will require an amendment to the SGMP Future Land Use Map. The proposed zoning is not consistent with the overall densities in the surrounding areas. If the request to rezone the subject property to a PDD is approved, it would allow for a 64-unit detached residential condominium project on 44.57-acres with the transfer of development rights.

Variances: Building and Development Services staff has reviewed the request for a variance of Section 7.11.3.1, Connectivity, and Section 7.11.11.3.2, Access to Multi-Family Developments, for compliance with pertinent SLDC requirements and has found that the facts presented do not support the request: The development shall provide reasonable means of ingress and egress to surrounding property. Major subdivisions with 31 or more development units, shall provide access to existing County roads, and shall provide a minimum of two access points to the referenced roadway. The conditions of the site do not hinder the development from installing two full access points. Gates at these access points are not necessary. A development of this magnitude is required by the SLDC to maintain two access points as per the SLDC requirements. These access points shall not be gated. Staff maintains that the language in Section 8.10.2.4.4, which states, "private roads and gates may be approved as part of the application but are not required" conflicts with other sections of the Code which prohibit gates for this type of development. Roads within subdivisions shall not be gated unless the road is a dead-end road serving no more than lots. The existing zoning on the property allows for 17 homes. This would not require a second access point. Two non-gated entry access points will be beneficial in avoiding traffic congestion and assuring easy access for emergency vehicles.

The review comments from State Agencies and County staff have established findings that technically this application is in compliance with State requirements and design standards set forth in the SLDC, with the exception of gated access points and secondary access. The reviewing agencies did not comment on the appropriateness of the rezoning with the exception of the Planning Department.

Recommendation: Staff recommends denial of the request for a Conceptual Plan to rezone the subject property and create a Planned Development District for the following reasons:

- The proposed zoning is not consistent with the overall densities in the surrounding areas;
- The site is currently zoned correctly and this property is suitable for the zoned use;
- The SGMP does not substantially support rezoning unless there has been a change or mistake and in this instance there has been neither.

If the rezoning request is denied there is no need for a Zoning Map Amendment. Therefore, Staff recommends denial of the Zoning Map Amendment.

If the rezoning request is denied, the proposed density of 64 dwelling units on 44.57 acres would not be allowed, therefore Staff recommends denial of the proposed development. The variance requests would then be a moot point.

If the Hearing Officer recommends approval of the rezoning to a Planned Development District, approval of a Zoning Map Amendment, and approval of the

proposed development, Staff recommends denial of the requested variances to allow a secondary access onto Arroyo Calabasas to be gated and used for emergency access only.

If the Hearing Officer recommends approval of the rezoning and the proposed development with or without the variances requested, Staff recommends the following conditions be imposed. Hearing Officer Virtue, may I enter these nine conditions into the record?

HEARING OFFICER VIRTUE: Yes, you may.

[The conditions are as follows:]

1. Access from Camino La Tierra shall not be gated.
2. The water allocation resolution shall be approved by the BCC prior to Preliminary Plat approval.
3. Water Delivery Agreement and Wastewater Collection Agreement shall be approved by the BCC prior to Final Plat approval.
4. Common Open Space shall be identified on the Final Plat with a note stating that no future development will be allowed in this area.
5. Homes shall not exceed 2,500 sq. ft. inclusive of garages. This shall be noted on the Final Plat.
6. Homes shall be limited to a single story.
7. If building setbacks from the floodplain are less than 75 feet, engineered bank stabilization is required.
8. Archaeological site must be placed in a non-disturbance easement.
9. Archaeological site must be fenced during construction. Fence must be removed upon project completion.

MR. LARRAÑAGA: This report and the exhibits listed below are submitted as part of the hearing record. Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission may be holding a public hearing on this matter on September 17, 2020.

Also, Hearing Officer Virtue, there have been other letters that have come in after the deadline for the packet material. That is on the website on BoardDocs, approximately 20 letters opposing this project, an additional 20 letters. And Hearing Officer Virtue, I stand for any questions.

HEARING OFFICER VIRTUE: Okay. Thank you very much. I don't have any questions at this time, so let's go to the applicant's testimony. Could we have the applicant's representative identify his or herself.

JENNIFER JENKINS. Yes, I'm here, Mr. Virtue. I'm Jennifer Jenkins, here on behalf of the applicant, with JenkinsGavin.

Duly sworn, Jennifer Jenkins testified as follows:

MS. JENKINS: Ms. Mascarenas, may I share my screen?

MS. MASCARENAS: Yes, absolutely.

HEARING OFFICER VIRTUE: Ms. Jenkins, I was asking if you have a targeted time limit on your presentation?

MS. JENKINS: I think we can probably get through this. It's only myself and one other team member who are going to present during kind of the formal part of

the presentation. So I think we'll be able to get through it probably in about 25 minutes. We'll shoot for 20, but I think we can get through in about 25 minutes or so.

HEARING OFFICER VIRTUE: Okay. We'll keep track and inform you when we hit the 20 minutes and we'll go from there.

MS. JENKINS: Great. Thank you, sir, very much. So I will get started. Okay. So again, I am Jennifer Jenkins with JenkinsGavin, here on behalf of Santa Fe West Investments in request for rezone conceptual plan and variance approval for the Casitas de la Tierra project. As a summary of our requests that are before you this afternoon, again, rezoning, zoning map amendment, a conceptual plan for an age-targeted senior community comprising 64 single story casitas and then a couple of variances from SLDC roadway standards.

With me today – not in the room, but with me, participating in the meeting is the rest of the project team. I have Oralynn Guerrerortiz with Design Enginuity who is the civil engineering consultant on the project. I have Eric Wrage and Melanie Bishop with Bohannan Huston, who are the traffic engineers. Claudia Horn with Design Office, who is the landscape architect. I have Jerusha Rawlings and Heather Harbeter with Ecosphere, who prepared the environmental impact report, and then Rachelle Howell with Southwest Planning and Marketing who prepared the fiscal impact analysis and also Chris Graeser with Graeser and McQueen, and Kyle Harwood, with Egolf, Ferlic, Martinez and Harwood also as legal counsel.

So we're going to go through the presentation and then Mr. Graeser will have some follow-up comments, and then at the completion of that we'd be happy to stand for any questions.

So this is an aerial of the subject property. It is a little over 44 acres, located here. It is directly accessible from Camino La Tierra and what you have across the street is the commercial center that houses the Arroyo Vino Restaurant as well as a couple of offices. This is the Santa Fe County fire station here. This is Arroyo Calabasas that intersects with Camino La Tierra and wraps around and serves the Arroyo Calabasas neighborhood to the south of the project. And the properties to the west and to the north and also to the east, most of which are part of the Las Campanas master plan.

So this is the current zoning map. This area of the county is in Sustainable Development Area 2. Here is the subject property here. Again, as mentioned, there is an existing commercial center across the street and also the vacant property directly to the east, both of those parcels are zoned commercial-neighborhood. We have Residential Estate which is the subject property as well as some properties in the Arroyo Calabasas neighborhood to the south, and you can see a little more Residential Estate here moving off to the east.

The purple is a Planned Development District that is based upon the Las Campanas master plan. The particular 40-acre parcel that is adjacent to the property to the west per the Las Campanas master plan is actually zoned for one dwelling per acre.

So this is a map of the Las Campanas area and I thought this would be useful just to sort of get a sense of the relationship of the subject property, which is here, to the entire Las Campanas master plan. This area here to the west of the subject property is part of the Las Campanas master plan but it is currently undeveloped and the Arroyo Calabasas neighborhood is actually kind of tucked behind the legend here.

So this is the conceptual site plan for the property. So what's going on with the property as far as the terrain – again, we have frontage on Camino La Tierra but the Arroyo Calabasas goes underneath, there's culverts underneath Camino La Tierra and then Arroyo Calabasas kind of traverses across the north, and through the west boundary of the subject property. The property – the terrain is quite gentle and the only sort of any steep terrain is along this small little interior drainage area that leads to the Arroyo Calabasas. There is really great tree cover and grasses and the natural vegetation is really quite lovely. We have assessed that there are some invasive species, especially along the arroyo and in this sort of meadow area that we do want to address at the time of development.

So the vision for the project is to create a very low-maintenance residential community for seniors, and really looking at the La Tierra and Las Campanas neighborhoods for residents who might be interested in down-sizing as they mature and are finding they really don't desire to maintain a large property, 2.5 acres, five acres, and a large 5,000 square foot house that would go along with that, in the interests of downsizing. However, they do want to stay in their neighborhood. This is where their friends are, their community. They could be members of the Las Campanas Club and they would like to maintain that.

So based upon our research we have found there is a lot of desire in the community for this particular type of housing option. We are proposing relatively modest sized homes that would probably range anywhere from 2,200 square feet to 2,600 square feet and all single story. We've set a maximum height limitation of 16 feet so we will not be creating any view impacts. And we're proposing a condominium style project here. And that was very intentional with respect to creating a very low-maintenance environment and low-maintenance community.

So each home of course will have its own private outdoor space, but beyond that, all of the ground, all of the roads and everything, will be maintained by the condominium owners association. So for example, if one of these was a second home for a resident they could leave for half a year, lock their doors and when they come back everything is going to be maintained in their absence. So again, it really creates a low-maintenance environment that is very desirable for seniors, especially as they are downsizing.

We are proposing the requisite 75-foot setback here along the arroyo and also per the code requirements, we have a 50-foot setback here along the west. We have a 100-foot setback here along the south, essentially along the Arroyo Calabasas roadway, and then we have another 50-foot setback along the property to the east.

There are some existing footpaths on the property that primarily the existing footpaths are here along the arroyo, as well as along the southern boundary. A few of those footpaths will need to be relocated, but we are looking to preserve as many of them in their current location as possible, and we also want to improve them and extend them. So what we created is basically kind of a looped trail system that would go here and it would follow along the riparian corridor, then it would snake through this 100-foot setback here and then connect to what would be essentially happening here in the future to the east, and then we also have a connection to an existing kind of footpath that goes off to the west here and then extending the trail along an interior roadway.

This creates a really nice loop in order to enjoy the outdoors. And it's very important to note that we will be dedicating public trail easements on the trail network because the neighboring communities, they do walk on this property quite a bit and so it is our desire to preserve that public access to the trail system.

As part of this, the Santa Fe County code requires the dedication of open space, so the minimum open space requirement is 30 percent or a little over 13 acres. We're actually dedicating over 33 acres of open space. So 17 of that is dedicated open space and then over 15 of that is dedicated as common area. And both the open space and the common area will be maintained by the condominium owners association. And so basically 74 percent of this property is going to be left undisturbed.

So we have roadway construction. We have home construction. And then we are working diligently to preserve vegetation, existing stands of trees, as I mentioned, address some non-native species that we're looking to remove, and really acknowledge the natural environment here as much as possible.

There's also an archaeological site here that we will be preserving in a formal archaeological easement and this will be protected during construction and then once construction is complete we have been advised by SHPO that they do not want this fenced because it just tends to bring too much attention to it, so we obviously are going to comply with that. And so that is, like I said, sort of an overview of the project itself.

As permitted in the Planned Development District standards, we are proposing a gated access at our main entrance, Tierra del Prado to Camino La Tierra, and the subject of the variance is this access here to Arroyo Calabasas. And we don't see any compelling traffic circulation reason to create an open connection to Arroyo Calabasas. Arroyo Calabasas heads straight out and connects to Camino La Tierra here, and we have our own connection to Camino La Tierra, so this internal connection doesn't really serve a traffic circulation purpose, and we have no desire to put any of the vehicles from this project on to Arroyo Calabasas. So out of a desire to protect that we have requested that this access serve strictly as a secondary, emergency access only. So the two variances before you would permit us to do that and so all of our vehicles will be utilizing and going straight out to Camino La Tierra.

So first I'm going to address the rezone request. It states in the SLDC that a rezone shall not be granted by the Board of County Commissioners unless one of three things has occurred, or is occurring, can be demonstrated. Either that the conditions around the property have changed, which warrants a change in zoning; that there was a mistake or error in the zoning map; or that the proposed rezone or zoning map amendment is consistent with the Sustainable Growth Management Plan.

So this is an either/or situation. A very important distinction. So we are not asserting that there has been a mistake in the zoning map, nor are we required to demonstrate that. We are not asserting there has been a change in the conditions surrounding the property, and we are not required to demonstrate that either. What we are asserting and what we have demonstrated is that this request is consistent with the SGMP. This list is long, so I'm not going to go through it verbatim. I believe you have all of this information in our application as well as in the staff report, but there are key elements to highlight.

The SGMP very clearly states in the principles, goals and strategies, that to minimize unsustainable residential development patterns, which are defined as large-lot, low density residential development. It also encourages a diversity of housing options to be considered. So that is really what this project is about. This project is about providing an additional housing option for this community as well as the wider Santa Fe community but particularly for residents in the surrounding area, again, who would like to remain in their neighborhood, sort of this concept of aging in place. Like if you want to downsize, why should you have to leave your neighborhood and your friends and community facilities that you are taking advantage of in order to have a more sustainable residential environment as you age. So that's what this project is about providing.

And also number 5 is really key. The SGMP says we should be transitioning between land use types, intensities and densities. Also conserving environmental assets, like 33 acres of open space, using standards to preserve open space and to limit impervious areas.

So we talk about transitioning between land use types. As shown on the previous zoning map we are bordered by commercial zoning, directly east and directly north. And the property directly west is actually zoned for one dwelling per acre. The requested density of 1.4 dwellings per acre actually serves as a very natural transition from commercial zoning to one dwelling per acre zoning.

Also as mentioned in the staff report, we are proposing a transfer of development rights, which is consistent with the goals of the Sustainable Growth Management Plan in order to support the preservation of sensitive lands in the outlying areas of the county.

Also the SGMP states that it should be supporting clustering provisions. Encourage alternative compact development patterns such as clustered development.

And there's a lot of language here about preserving archaeological sites and preserving native vegetation, dealing with invasive species, and protecting waterways. All of these elements are incorporated into our terrain management plans, our landscape plans address, and our environmental impact report.

And then number 12, creating standards for sensitive siting design and the screening of new development to minimize visual and physical impacts to the land. One thing I neglected to mention earlier is this project is what we would call a terrain-based model. And what that means is there is no mass grading of this site. When this project goes under construction the first thing that's going to happen is the utilities and the roadway network are going to be constructed. No other portion of the property is going to be touched except for what is absolutely necessary in order to construct the private internal roadway and the utilities themselves. And so the houses are going to be sited individually in their locations and to be tucked within the terrain and sited sensitively relative to the surrounding area and relative to one another.

So there's been some concern expressed by adjacent neighbors who have had some different experiences with some higher density development in Las Campanas around mass grading, and that is not what this project is about.

And again, it's about housing choices and it says existing communities should contain a variety of dwelling types and densities, and that is exactly what this project accomplishes.

So there's also elements in the SLDC that talk about public policy with respect to rezoning requests, and it says map amendments shall be granted primarily to promote compact development, mixed uses, sustainable design and higher densities. We are, I venture to say, a poster child for a zoning map amendment in that regard.

Some of the public policy elements talk about provision for a greater amount of affordable housing, and you probably noticed in the staff report there is a lot of mention about this, which seems a little disingenuous since per the code, affordable housing doesn't actually apply to this project. Affordable housing applies to subdivisions of over five lots. We are a multi-family project. So it's not even applicable, so I find it odd that staff has dedicated so much time and attention to the affordable housing question when it's not even applicable.

Talk about economic development, obviously, we did a fiscal impact analysis that addressed the positive economic impacts of the project relative to gross receipts and property tax revenue, employment in the real estate and construction industries, etc. And another piece of this is this as a housing option also encourages people to remain in Santa Fe County. There could be residents who if they can't find a housing option that works for them they may decide to leave Santa Fe County. And keep them here, keep their incomes here and keep them spending money in this community.

So it talks about advancement number C, public facilities services, no deficiencies in public facilities services have been identified, and staff has concurred with that.

Then D talks about infill and compact mixed-use development. The great thing about this project, even though internally we are proposing 100 percent residential, we're already in a mixed-use environment. There is a commercial center across the street. There is an approved commercial project directly next door. So providing a moderately higher density of residential next to these commercial uses is actually incredibly supportive of a mixed-use environment.

MS. MASCARENAS: Ms. Jenkins, just a reminder that your 20 minutes is up.

MS. JENKINS: Oh, well then I undershot it. So I will move along as quickly as I can. My apologies. I did not actually time myself on this so I'm venturing a guess.

So moving through this again, 33 acres of open space and on F., developing at higher densities is a model of sustainability, making efficient use of public infrastructure and providing significant open space preservation. Nowhere will you see 2.5-acre lots being held up as a model for environmental sustainability.

And so again, as we talked about transitioning between land use types, as mentioned, we have existing commercial across the street, we have the Placita de la Tierra commercial project that is approved for over 4300 square feet of office and retail use directly to the east. Then here is the Casitas project in the middle. We're proposing 1.4 dwellings per acre, and then per the Las Campanas master plan, the property directly west is zoned for one dwelling per acre.

So this is the approved development plan for Placita de la Tierra. This drawing is oriented differently, so this is Camino La Tierra, and the Casitas project sits directly here. There were some questions raised about whether or not the Placita de la Tierra development plan has expired; it actually has not. So this letter from Santa Fe County

identifies back in 2010 that the final development plan has not expired, and then additionally, the SLDC states that properties that have received final development plan approval but have not recorded the plan may complete the recordation process under the terms of the final approval. So this development plan is approved and not subject to expiration.

And then again, referencing the Las Campanas master plan, here is the subject property and the property next door. This is difficult to read so I have enlarged that text for you which says one-acre lots on the 40 acres. And then in Las Campanas itself they have a variety of housing types. They do what they call their cluster housing, and the density for their cluster housing is actually three to eight dwellings per acre. And so what we're proposing at 1.4 dwellings per acre for a cluster type product is significantly lower than what is permissible via the Las Campanas master plan.

And then again, going through the conceptual plan. I've already revisited this. We don't need to go through the conceptual plan approval criteria because that is in the staff report as well as in our application. And then again, I think I've already spoken to the variance requests and why we feel the variance requests are important to permit the access to Arroyo Calabasas to be gated for emergencies only. We'd like to point out that in the staff report they state that the secondary access may be beneficial to the Arroyo Calabasas neighborhood as an egress in the event that the intersection of Arroyo Calabasas and Camino La Tierra is impassible. Obviously, if such a situation occurred, the emergency responders at the Fire Department could easily open the gates to allow traffic to move through the Casitas project as necessary. And staff also points out that a 17-lot subdivision permissible under the current zoning, a second access wouldn't be required. So they don't seem too concerned about evacuation under that scenario.

The traffic study findings, there has been some concern expressed by neighbors and community members regarding traffic. Luckily, Santa Fe County requires a traffic study, so we have empirical data that address what will the traffic impacts be. And kind of the bottom line is, you can see the levels of service here on the existing intersection at Camino La Tierra and Wildflower are levels of service A and B. Once the project is constructed the levels of service at the Camino La Tierra and Wildflower intersection as well as at our entrance also are levels of service A and B. So it's clear that there are not going to be any negative impacts to levels of service.

A question was raised that what if there are buyers in the community that aren't seniors, that are maybe still working and traveling during those peak rush hours? Well, we had that assessed as a traditional single-family detached housing community as opposed to a senior community. The levels of service are still A and B. And we were also required to do a horizon year analysis to 2044. Levels of service in the horizon year are still levels of service A and B. So again, this is just math, and so I think the traffic study itself has demonstrated that there is not going to be a negative impact on traffic flow.

Environmental protection measures, I've already touched on open space, no mass grading, preservation of trails and protection of the archaeological site. There's also not going to be any lighting except for lighting on the homes themselves. There will be no site lighting, no street lights of any kind, in order to protect the night skies.

I also mentioned, I already talked about the plan for the condominium and the maintenance of all of the open space and common areas in order to create a low-

maintenance environment. And then this is just architecturally sort of the concept for the homes themselves. And we're really modeling our design standards after Las Campanas, because we think they have done a – and we were asked to consider that, and we think it's a great idea. They've done an excellent job in developing their architectural design standards and we really are looking to use those design standards as a model.

And with respect to the staff recommended conditions of approval, they are requesting that the access not be gated; we do oppose that, because gates are expressly permitted in a PD district, and they're only prohibited in subdivisions of five or more lots. And then we also are opposed to condition number 5, where they want to put a cap on the home sizes. There is no basis in the code to do that. We've been very clear and transparent about our intent with respect to the sizes of these homes but we have not designed them yet. So to create that kind of restriction at a conceptual plan stage, it's unwarranted, and again, not supported by the code. But we are in agreement with the remaining conditions of approval.

And so I do have one more supplemental item to share, and I will be as quick as I can. Again, my apologies, I did not time myself earlier. So with respect to the staff recommendations – it was a voluminous staff report and I only received it on Monday so it takes a few days to really digest everything. And again, on staff's recommendations with respect to the rezoning, again, they're touching on that we don't meet affordable housing goals, yet affordable housing is not even applicable to this project, so that does not appear to be a proper or appropriate basis for recommending denial. Would they make the same assertion for a commercial project because they weren't providing affordable housing when affordable housing isn't applicable to a commercial project. And with respect to their assertion that we need to amend the future land use map in the SGMP, first there's no provision in the SLDC that mandates that, but even if there was a provision that mandates that, the applicant is not even permitted by the code to request that. So something I'm not even allowed to initiate and using that as a basis for denial, because the future land use categories and the zoning categories match; they are the same. So essentially any rezone is going to require an amendment to the map. So if staff is asserting that this is a normal part of the process, then a normal part of the process is not a basis to recommend denial of a project.

And then they get into the compatibility of the zoning and I'm actually going to let Mr. Graeser speak to that more, but again, the property is bordered by commercial zoning to the east and the north. PDD zoning of one dwelling per acre to the west. And this is an infill transition among these land uses and the surrounding residential estate zoning. And again, the SGMP states that neighborhoods should contain a variety of dwelling types and densities while minimizing large-lot residential development.

And then staff says, without giving much detail that we did not address all the pertinent criteria and policy outlined in the SGMP. I have received no details about exactly what they're looking for or what they think is missing. There has been an over four-month review process on this application and they never contacted me and asked for additional information in this regard.

Similar, on the recommendation for denial of the conceptual plan, again, talking about the consistency with the densities and the SGMP and the public policy clearly supporting compact development and higher densities, and again, it says the site is

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currently zoned correctly. We are not asserting a mistake was made, nor are we required to demonstrate that. And according to the Sustainable Growth Management Plan provisions we have cited, which are numerous, the property is actually not suitable for its current zoned use.

And again, it says the SGMP does not substantially support rezoning unless there's been a change or mistake. They provide no citation for this. I scoured the SGMP. I could not find any statement in that regard and again, as we said, this is an either/or situation. We're not asserting that and we are not required to demonstrate. And what we have demonstrated is our consistency with the SGMP.

With respect to agency reviews, the staff report – Jose also said in his report that this application is in compliance with state requirements and the design standards set forth in the SLDC, and the only staff review that recommends denial is from County Planning.

So on April 21<sup>st</sup> I received this memo from the Planning Division and the memo states in the highlighted areas that the application for a PDD for Casitas de la Tierra generally meets the purpose and findings section for the establishment of a PDD as outlined in those sections. The application has shown that the criteria for establishment of a PDD has been met. The application is in general conformance with the SGMP goals and policies. Planning staff recommendation: Staff recommends approval of the rezoning and zoning map amendment for Casitas de la Tierra. Staff also recommends approval of the conceptual plan with the following conditions.

Subsequently, on June 30<sup>th</sup>, I received this memo from staff, also with the exact same date as the previous memo, dated April 21<sup>st</sup>, and yet this memo is different. This memo recommends denial of the rezoning and denial of the conceptual plan. So what changed? What is the new basis for denial in the revised memo? The revised memo references the fact that the future land use map would have to be amended. As I've mentioned, the SLDC does not require it, but even if it did need to happen, staff has already said that's going to be done as the process moves forward via resolution. So something that staff is going to take charge of handling is an inappropriate basis to recommend denial.

Again, affordable housing, it's not applicable, so it's not an appropriate basis for denial either. And it talks about mixed-use objectives. As I've mentioned, we're already in a mixed-use environment. So the code permits us to provide one TDR in lieu of the five percent commercial requirement in a PDD. The code allows that. So if we are complying with the code provision it is inappropriate to use that as the basis to deny the project. So I am going to ask that Mr. Graeser actually be made the presenter now. He has a few comments, and again, I thank you for your patience. Again, I should have timed myself so I was a little more accurate in my assessment of timing. But I'm going to stop sharing. If you could make Mr. Graeser the presenter, that way we'll be able to wrap up.

CHRIS GRAESER: Thank you, Jennifer. Thank you, Mr. Hearing Officer. I did draft up my comments. I will submit a copy after the hearing. So I won't dwell on them to any significant extent. I do want to call your attention to a couple particular points, the first being, as Jennifer mentioned, the use of the term "compatible" both by County staff and by counsel for the opponents. And they use compatible in the sense of the same as. You have to be the same densities as surrounding properties, that it is

manifestly not how that term is defined in the code itself. The SLDC defines compatible and defines it as it does not mean the same as. The fact that development is not within the same zoning district, or as a different area and use characteristics does not make it incompatible, rather it is an inquiry for you to exercise your independent judgment on in light of the evidence in front of you.

The second is the term “sustainable”, and this appears throughout many of those 620 letters that I’m sure you read, and I guess everybody has their own definition of sustainable. However, the SGMP has its own definition of sustainable, specifically stating that large, low-density development is not sustainable, and it is the more compact, higher density development that is sustainable, and that was a major intent of the Sustainable Growth Management Plan that was the reason for allowing rezonings under the plan for allowing the use of TDRs, etc.

The second thing Ms. Jenkins touched on as well, what staff and opponents are looking at as a requirement to provide affordable housing and mixed use, and those requirements are not found in the code, and there are two fundamental flaws with that approach. The first is that the code specifically has specific provisions for affordable housing and for multi-use development and we fully comply with those code provisions. The second is this idea that you need to not only address every aspect, every goal, every policy within the Sustainable Growth Management Plan, that you really need to achieve those or further those policies, and that’s absolutely not the case under either the code or the plan or under applicable law.

I do cite *Sequoia Hills Homeowners v. the City of Oakland*, which is the case that gets cited repeatedly in this context of consistency and the court there disagreed that not only do you have to achieve all those goals or policies that you even have to address them. And that is in line with the Sustainable Development Code’s dictate that your job, not that I deign to tell you your job, but that the requirement of the code is that no single factor is controlling. The purpose is to weigh all the various competing factors and make a decision based on that. In the Sequoia case there were 14 different factors and the applicant met 11 of them, I believe, and maybe didn’t meet three of them, and that’s probably about the same ratio that we have in this project here.

HEARING OFFICER VIRTUE: Mr. Graeser, if these points are in whatever you’ve prepared, the memo you’ve prepared, I’d just hit the highlights. I will read your legal memo. We’ve got a lot of members of the public here. We’re going into the evening. They want to have the opportunity to speak and I want to make sure they have an adequate opportunity. And if you’ve prepared these points in a memo I will guarantee you that I will read them carefully and analyze them in making my decision.

MR. GRAESER: Mr. Virtue, I appreciate that guarantee and I will do the reset of finishing up now and I will submit the memo. Thank you for your time.

HEARING OFFICER VIRTUE: I will make sure your points get considered. So we are now at 6:00 in the evening. Tessa Jo, how many people do we have signed up to testify? Members of the public?

MS. MASCARENAS: We currently have 40.

HEARING OFFICER VIRTUE: Right. So we’re going to be here for a while. Let’s take a ten-minute break and we’ll come back at 6:10 and start with the public testimony.

[The hearing recessed from 6:00 to 6:14.]

MS. MASCARENAS: I'm going to show a list of people who have been signed up to speak thus far. If your name is not on the list if you would please let me know so that we can make sure and get you signed up.

[Several people voiced their desire to be added to the list of speakers.]

HEARING OFFICER VIRTUE: Tessa Jo, have you got everybody on that has requested to be on? To be added?

MS. MASCARENAS: Yes.

HEARING OFFICER VIRTUE: Okay, well, let's then proceed in the order that has the testimony list. And I would just ask folks to please be succinct and not repeat something that's already been said, and see if we can go through this in a very efficient manner. Thank you.

MS. MASCARENAS: Okay. The first person who has signed up is Brian Weiss.

[All those wishing to speak were placed under oath. The Hearing Officer asked that the speakers provide name, address and confirm that they are under oath. ]

BRIAN WEISS: I'm a UNM graduate with a master's degree in archaeology, so I have a particular interest in the archaeology of this site. In 1996 this site was subject to a surface archaeological survey. The conclusion of Stephen Post, the well known archaeologist who's done much of the work in this area said, "The future residential portion contains LA 115085 which should be considered significant. No further development of the future residential portion of Plazuelas de la Tierra, which was the designation at that point, should occur until the data recovery plan has been implemented." There then follows a ten-page data recovery implementation plan, none of which was every put into action. Further on, Mr. Post said, "The artifacts primarily remain from the Late Archaic or early Basket-Maker II occupation. LA 15085 is a multi-component site with evidence of occupation and use from 800 BC to AD 1945. That is a 2,700-year record of human occupation. It is recommended that LA 15085 be considered a significant site under Santa Fe County Land Development Code, Article 6, Section 3. A data recovery plan is included with this report."

I want to emphasize to the Hearing Officer that a surface survey consists of several people walking across a site in a transect and recording what is visible on the surface of the site. In the presentation, a circle has been drawn designating that as the archaeological site. This would be roughly comparable to walking up to an old growth redwood, drawing a circle around the base of the redwood and saying this is all there is. You do not know what lies below because nobody has looked. The next reasonable step in the sequence here would be to use current technology which would include ground penetrating radar to survey the intended site and from then to do trenching so that you really know vertically what is on this site. You have already on the basis of surface remains, you know that there's 2,700 years of human resources here.

You've received numerous letters from individuals because they had a voice. You received a letter from the Las Campanas board because it had a voice. You've received letters in opposition from the registered organizations because they had a voice. I signed up today to speak because the archaeological remains have no voice, but they are there, or they could be there, and until there's a full determination I think that this petition should be denied.

HEARING OFFICER VIRTUE: Thank you, Mr. Weiss. Could you give us your address for the record and confirm you were sworn?

MR. WEISS: Yes, I did earlier. It's 6 Via Pampa, and I confirm that I was previously sworn.

HEARING OFFICER VIRTUE: Thank you. I didn't hear it.

MS. MASCARENAS: Okay. Our next speaker will be Mona Shoup.

MONA SHOUP: Hi. I was sworn in earlier with everyone. I live at 7 Tecolote Circle, Santa Fe, 87506, and I am a representative of Northwest Representatives United Registered Organization with Santa Fe County. And we are a small group of concerned residents who live in the northwest quadrant. We are grateful for the 2016 Sustainable Land Development Code and the protections it provides Santa Fe County residents and the county's natural resources. As RO representatives, we view our jobs to be the guardians of the Santa Fe County Sustainable Growth Management Plan and the Sustainable Land Development Code, and to ensure these are upheld as Santa Fe County officials and its residents have envisioned.

As such, I wish to stress that the proposed project, Casitas de la Tierra, if approved for rezoning, could weaken the development codes. The applicant's agent may try to cast the Casitas de la Tierra project as a NIMBY project, that nearby residents must accept, or the applicant's agent may cast this project as too small for the SLDC to fully address. Or the applicant's agent may say that the SLDC cannot possibly address all situations and all concerns that may arise in Santa Fe County. However, none of the above is true. This is no neighborhood fight. This is a fight to protect the integrity of the Sustainable Land Development Code for future generations and the future of Santa Fe County.

The full repercussions of attacking the Sustainable Land Development Code are much larger than this one rezoning project. Should this parcel be rezoned from residential - [Time expired.] I have just two more paragraphs.

HEARING OFFICER VIRTUE: Please go ahead and finish your point.

MS. SHOUP: Okay. Thank you very much. Should this parcel be rezoned from Residential Estate to Planned Development District, this rezoning variance could weaken the entire 2016 Sustainable Land Development Code by setting a legal precedent for weaker zoning and could potentially open Santa Fe County to urban sprawl, loss of natural resources and more. Since the Sustainable Land Development Code and map were enacted in 2016 the County hasn't approved any changes in zoning. I'll repeat this. According to the County Attorney's Office, since the Sustainable Land Development Code and zoning map were enacted in 2016 the County has not approved any changes in zoning. Please do not let this be the first. Thank you for my time today. That is all.

MS. MASCARENAS: Our next speaker is John Salazar.

JOHN SALAZAR: This is John Salazar. Mr. Hearing Officer, my name is John Salazar with the Rodey Law Firm and we represent the Lee Family – Courtney Lee, Roberta Lee, Willis Lee and Shawn Lee, all of whom are property owners immediately adjacent to the parcel at issue. We do support the staff recommendation of denial of the application and I do want to compliment the staff on the terrific job of organizing the massive amount of documentation submitted in connection with this matter.

I do want to refer you, Mr. Hearing Officer, to our letter stating our position which commences on page 155 of the record and I would like to speak to a couple of points in that letter, but I think I can summarize the problem here, the reason there is so much objection to this particular application, and that is because in sum the applicant is really trying to cram a square peg into a round hole. This is simply the wrong location absolutely for this particular project, and despite the applicant’s desire to meet some sort of market niche to sell its product, this is not the correct location to do so.

The applicant does indicate that in terms of trying to get a zone change they’re relying only on that portion of the application procedure that pertains to an amendment being consistent with the SGMP, and we have pointed out in our letter that their application is not consistent with the SGMP, and because there are so many points I won’t mention those specifically. There’s a list of them. There’s a litany – [Time expired]

I believe some folks who are signed up are willing to give me some of their time. Is that correct?

HEARING OFFICER VIRTUE: This is the Hearing Officer. Are there any people who have signed up that want to allocate time to Mr. Salazar?

[The following people yielded their allotted time to Mr. Salazar: Courtney Lee, Shawn Lee, Roberta Lee, Willis Lee. Nancy Hammack, a previous call-in person, was stated to cede her time as well.]

HEARING OFFICER VIRTUE: Okay. That gives Mr. Salazar an additional ten minutes.

MR. SALAZAR: Thank you. As I was saying, the applicant has indicated that they are taking the position that their zoning map amendment is consistent with the Sustainable Growth Management Plan, and we take issue with that. We say it’s not consistent with the SGMP, but nevertheless, even if it were, that does not eliminate the protections that current property owners have with regard to this proposed change. The development will have a substantial adverse impact on neighboring land, and the approval criteria for a zone map amendment mandates that when determining whether to grant an application, the nature and degree of any adverse impacts upon neighboring lands must be considered. It still has to be considered.

Consistency with the SGMP does not eliminate the protections that people in place have and there will be adverse impacts, and you’ve got plenty of letters that describe the nature of the impact, including increased traffic volume on single-lane roads surrounding the development, increased numbers of large vehicles for delivery of goods and other services, disruptions to the character and aesthetics of the area, which is a low-density, residentially zoned area and developed as such.

And also there's consideration about the detrimental impact on reliance on existing zoning. People are entitled to rely on it. That's one of the benefits of zoning is that people can rely on it. It gives them some assurance of what will be developed in their area and their entitled to that protection.

Also, the proposed rezone is substantially inconsistent with the uses and the zoning in place in the area. The approval criteria for a zone map amendment mandates – it's a mandate that properties shall not be rezoned in a way that is substantially inconsistent with the uses of the surrounding area. And this project would definitely be substantially inconsistent with the uses of the surrounding area. There's no question that the uses in place are low-density residential. So the application would fail for that reason as well.

And then also there's the consideration, a separate consideration, that the RE zoning of the property presently is appropriate, the property for which the zone change is requested. The SLDC additionally requires, when considering a zone change, requires consideration of the suitability of the tract, parcel or lot for its use as presently zoned. This 44-acre parcel is perfectly capable of being developed into potentially 17 separate homesites. So there is no reason to rezone it because it's not presently suitable for the uses that it's entitled to under present zoning.

And in that regard, it's clear the only reason a rezone is being requested is because there's some hope that there's a market for the product that they want to develop on this land and not because it's appropriate for the neighborhood. The final report of the facilitator indicates when she asked the applicant, why are you seeking a higher density than what is currently allowed, the response was it was based upon the market we're trying to serve. That's in the final report, page 3. This is simply an attempt to market a product. It's not an attempt to be sensitive to the uses in place or the people in place. It totally disregards what's in place.

And not only that, and then they ask for PD zoning and this site is absolutely not appropriate for PD zoning. First of all, the density is excessive. The base PD zone is one dwelling unit per acre. The development is contrary to the objectives of the Sustainable Growth Management Plan, because it calls for rational development patterns and land use compatibility. A density of 3 ½ times the existing density is not compatible. And if you just consider the common area and the exclusive areas, the density ends up being about seven times what exists in the area presently.

And here's a basic problem with this application. They're in the wrong SDA area. They want to go high-density development and the SGMP identifies SDA-1 as the primary growth area. That where they need to [inaudible] with this project. SDA-1 identifies as the county's primary growth area. This property is SDA-2 and SDA-2, a secondary growth area, they're not expected to develop at urban densities until public or private facilities, primarily water, sewer and improved roads, are installed and that's not intended to occur until after year 20 of the SGMP planning term. They're in the wrong SDA. They totally missed their location and tried to put a project in the wrong area.

And the PD zoning in and of itself is the wrong zone for this site. PD zoning is intended for a mixed-use development, vibrant developments that have commercial, residential, other uses to create a sense of excitement. They've taken the PD zone and turned it on its head trying to use it to establish a high-density, solely residential project.

That is an inappropriate use of the PD zone, which calls for combinations of structures and uses. They've tried to get out of it by using TDRs to get rid of the mixed-use portion that's required.

And also, they've absolutely failed to satisfy the public water and wastewater service requirement for a PD zone. The code provides that new PD districts shall, at a minimum, include public water and wastewater services provided by County utility or public water and wastewater systems. They have failed to do that as the wastewater. They're trying to get wastewater from a private system and that is absolutely prohibited by the code.

They also did not – they're even flouting the procedure called for in the PD zone. They've not submitted a preliminary subdivision plat required by the code, and if they want to claim they're a condominium, which they're not, even that condominium section says that a condominium must comply with requirements of the subdivision requirements, certainly a preliminary plat. They've not done that.

And affordable housing, why are they trying to skirt affordable housing? First they tried to get out of being a subdivision, which they clearly are. If you look at the layout of this site, it's 64 separately platted lots they claim are condos, and under the definitions of the code, possession qualifies as a separate parcel for purposes of the code. They are a subdivision. There's no question about that. But why do they call themselves a condo? Because if they are condos they apparently don't have to comply with the affordable housing requirements of the code.

And then they go on to say, well, we're really not a condo we're a multi-family project or multi-unit project. there are 64 separate units. They can't change that by calling themselves something else, and it appears to be a blatant attempt to escape the affordable housing provisions of the Santa Fe Development Code, which is pretty deplorable, that they're going to that length to recognize their responsibility to the County of Santa Fe, especially when they cloak themselves in how they're promoting all the public purposes of the Sustainable Growth Management Plan, and then they hide from the basic human requirements from the County of Santa Fe to provide affordable housing for the people of Santa Fe. These units are expected to cost \$900,000 per unit. That is not meeting the affordable housing needs of the County of Santa Fe. This project was designed for out of state buyers who want to live in Santa Fe. It's flouting the provisions and the goals of Santa Fe County and they should be ashamed of themselves.

This is – and they're certainly – to ask for a variance is just ridiculous. They're asking for a variance because they say they may impact the Arroyo Calabasas road if they don't dig the access to Arroyo Calabasas, but the problem is the test for a variance is not how they might affect other property, but whether their property has an extraordinary and exceptional situation which would then require a variance. The property has no exceptional or extraordinary situation. It can be developed as zoned. There's no problem. If it could not be developed as zoned, then they could say there's an extraordinary condition which might justify a variance. They're unable to meet the very first leg of the test for getting a variance.

And then there's another problem. They're trying to get access on to a private road. Arroyo Calabasas Road is private. It's privately owned, privately maintained. They've made no arrangements with the owners of the road to use the road. And not only

that, there's a strip of land between their property and the road – that strip of land belongs to other people. They've made no arrangements to get access to the roadbed. They're not entitled to access that road unless they're asking the County to condemn the right-of-way so they can have access to that road.

This application is just totally lacking. They do their 55+ community tease and say really we're trying to provide housing for senior citizens, but they won't commit to it, so they're trying to use it to gain support, but then they say but we're going to sell to whoever will buy.

And then their December 2019 fiscal impact analysis is fatally flawed. The analysis indicates that this project, if developed as planned, with units costing \$900,000 each, will lose over \$290 million. That's in the study. That's the conclusion of the study. They can't build this project according to its own study. And then relying on their own missed numbers, they say there's all kind of benefits to the county if this project is built based on numbers that are totally false. So they've been misleading in many ways. It is quite unfortunate [Time expired.] I'm just about to finish. May I go ahead and conclude, Mr. Hearing Officer.

HEARING OFFICER VIRTUE: Yes, you may.

MR. SALAZAR: Thank you. Also, they're traffic impact analysis is flawed. They submitted a traffic impact analysis dated April 16, 2020, and it is expressly predicated on the development being a 64-unit senior detached housing development. We now know that's not the case. But the traffic impact analysis submitted was based on a faulty premise and therefore is fatally flawed.

The Las Campanas Water Corporation sanitary sewer letter does not suffice. It only indicated they'll commit to provide sewer service for 17 units. And plus, it's not a public system, so it doesn't suffice to meet the test.

The open space/common area tease – they're trying to use floodplain as the bulk of their open space. It is not clear that they can use floodplain for a Planned Development zone change request. The bottom line is this, Mr. Hearing Officer. This project adds no value to the neighborhood. The best they can do is say if you let us build this high density development we'll buffer one vacant piece of ground from another. That's about the best thing they could do and that's ridiculous on its face. Those other projects may be developed low density; we don't know. So there's value added. Why in the world would anybody want to consider a zone change for this piece of property when it adds nothing to the common good, it provides no added value, and on its face is disingenuous, incomplete and misleading.

So with that I conclude my comments, Mr. Hearing Officer. Thank you for the time.

HEARING OFFICER VIRTUE: Okay. Thank you for those comments. Let's go to the next witness.

MS. MASCARENAS: It is Grayson Kirtland.

GRAYSON KIRTLAND: I'm Grayson Kirtland. I live at 3136 Vista Sandia, Santa Fe, 87506. I'm also the president of the Mariposa Homeowners Association. Our board of directors, on behalf of Mariposa, opposes this project to its rezoning. Our neighborhood has 75 homeowners and is a neighborhood near the proposed development. The board, on behalf of the homeowners association is opposed

to the proposed development based on its rezoning from Residential Estate at one unit per 2.5 acres to a Planned Development District higher density project. This rezoning, if approved, could lead to many similar developments, permanently altering the semi-rural character of the La Tierra area and severely taxing already scarce water resources.

I might add as an individual that this project is wholly contrary to the established Sustainable Land Development Code of 2016. No way does this project deserve a variance from that code. Thank you very much for this time to speak.

MS. MASCARENAS: Thank you. Our next speaker is Linda Durham.

[Speaker's name announced three times before moving on.]

MS. MASCARENAS: Our next speaker is Francois-Marie Patorni.

FRANCOIS-MARIE PATORNI: Just to clarify Linda Durham wished to give her time to Mr. Salazar. I am Francois-Marie Patorni, 28 Arroyo Calabazas in Santa Fe and I co-own this property with Linda Durham and we are among the most impacted owners as we are adjacent to the development and possibly even encroached by the development. I would like to just support again what Ms. Shoup said earlier, that the Land Development Code is the guardian angel of the County's environment and quality of life, so we should respect it and not try to go around by some means.

I would like to thank the County staff for their remarkable report, which is balanced, fair, and very well researched, and I want to use my last minute or so to just raise a big red flag. I understand that the County officers have to add a paragraph at the end of their statements in case, if rezoning is approved then they suggest conditions. I think having a zoning approved with conditions is a window for abuse. We all know that conditions later on can be waived, can be modified for all kind of reasons. So again, I would stress the red flag is we don't want conditions. We don't want an approval with conditions. We just don't want approval at all. Thank you very much.

HEARING OFFICER VIRTUE: Sir, could you acknowledge that you've been sworn in, your testimony was given after being sworn.

MR. PATORNI: Yes, I do acknowledge.

HEARING OFFICER VIRTUE: Okay. Thank you. I'd like to ask the witnesses going forward to please state that after you identify your name and address, please state that you've been sworn in. Thank you.

MS. MASCARENAS: Our next witness is Ginger Casey.

GINGER CASEY: Hearing Officer Virtue, I am Ginger Casey, 10 Blazing Star Circle Santa Fe. I considered myself sworn in. I'm a career journalist. I've worked for three major networks and PBS and I'm also a resident of Las Campanas. I hope you've taken note of the fact that every HOA and neighborhood group from 599 west along Camino La Tierra corridor has come out against this proposal. All of them, representing more than 2,000 property owners. 650 letters – this is an incredible outpouring of opposition. These residents are against this rezoning for the same reasons the staff of the County itself has recommended the application be denied. And may I add that the report put together by Jose Larrañaga and his team is deeply researched, highly detailed, and to be commended. I agree with them. The application should be denied for all the reasons they mention.

However, I would also like to address what I see is the developer's lack of integrity throughout this process. Just moments ago you heard Jennifer Jenkins call this a

senior housing project. In the application it's called an age-restricted senior housing project or a 55+ community. These are actual HUD housing designations. These terms come with specific federal restrictions and guidelines on age and income. But this proposed project is not age-restricted, nor is it senior housing. Anyone can buy a unit. The developer and his agents know this but they went ahead and they commissioned studies that are based specifically on the occupants of these condos being elderly.

On the first page of the traffic study it says they're trying to develop a 64-unit senior detached adult housing development, and they had that study use a specific Institute of Transportation Engineers' code for senior housing. ITE Code 251, and it's on page 7 of the traffic study. In last year's public meeting, once the developer's agents admitted there would be no restrictions on who could buy a unit they agreed to do a traffic study. [Time expired.] I have one or two more remarks please. I'm just trying to say, there's page after page of misleading information designed to frame the project as something it is not. They're senior-washing it to create a smokescreen. The traffic assessment, environmental impact study and fiscal impact report – they're using bogus demographics and this is serious. It's not empirical data. The studies are designed to deliberately deceive you. They're fraudulent and they tell us all we need to know about the integrity and character of this developer and his agents. For this alone the application should be denied.

So as the staff recommended, I urge you to also recommend that this application be denied. This kind of development and this kind of developer have no place in our beautiful area. Thank you.

MS. MASCARENAS: Thank you. Mr. Hearing Officer, we did receive a question via the chat as to whether John Salazar could have more time since Linda Durham was on the list and yielded her time to that.

HEARING OFFICER VIRTUE: Since she's not here I can't confirm to whom she's yielded her time, so we'll proceed for now. If she gets on and wants to yield her time that will be acceptable.

MS. MASCARENAS: Okay. Great. Our next person is Lisa Keller.

[Lisa Keller yielded her time to her husband.]

CARL KELLER: My name is Carl Keller. I live at 12 Vuelta de Tomas. I'm sworn in. I'd like to associate myself with the remarks of the earlier witnesses. I think they were very relevant. I've lived here for 33 years. I'm within 1,000 yards of the property under discussion. I'd like to support all those neighbors of that property who must be very upset about this. I moved here long ago because I liked how remote it was. I liked how quiet it was. I like the lack of light pollution. I liked the no traffic. I liked everything about this area, and I don't think that those of us who live out here need a senior place to move to. I am 79 years old. My neighbor up here in Las Campanas is in his 90s. He doesn't need a place to move to unless they have very good medical facilities.

So I think the proposition that this is an ideal senior refuge for the local residents is absolutely absurd. And finally, I don't believe that the zoning laws, which are to protect the people who've already bought here should be changed so arbitrarily. I think it's contrary to the purpose of zoning. I've always been relaxed, confident that this area would remain the way it is and I think that a lot of people around here are very upset that that's going to be changed. So with that I'd like to conclude my remarks.

MS. MASCARENAS: Thank you, Mr. Keller. Our next person is Ken Kirk.  
[Speaker's name announced three times. Mr. Kirk's letter read into the record. -See below.]

MS. MASCARENAS: We'll move on to Norman George. Please go ahead.

NORMAN GEORGE: My name is Norman George. I have been sworn previously. I live at 4 Lilac Circle, which is in the Salvatierra neighborhood which is diagonally across from the proposed project, diagonally across Camino La Tierra from the proposed project. I'm here to speak in opposition to the application for the rezoning and in favor of the Sustainable Growth Management Plan and the Sustainable Land Development Code. These two documents represent many hours of work by many hundreds of people, both county residents and County staff, and they define – and I am quoting from the SGMP here, “growth management strategy that will direct the relationship between Santa Fe County, its residents, and the environment.” The SGMP and the SLDC are therefore not to be changed lightly, however, both documents make provisions to be changed where necessary and where justified.”

To support his application this developed has picked and chosen words in both of those documents taken unusually and completely out of context, and therefore fails to address the specific enumerated conditions which would permit the requested change in zoning. And the County has reminded them of this on several occasions. Let me be clear. I have no desire to object to an owner doing what he wants to do or he or she wants to do with his or her property, provided it is in compliance with statutes, codes and laws. However, that's the point. This developer wants to bypass the codes to make changes which are specifically disallowed. This requested zoning change is not permitted by either the intent, the spirit or the letter of the SGMP and the SLDC and thus should be rejected. Thank you.

MS. MASCARENAS: Thank you. Mr. Hearing Officer, I received a message that Ms. Jenkins has Ken Kirk's.

HEARING OFFICER VIRTUE: Okay. We can do that. If someone wants to read it into the record and we just introduce it and we'll make it an exhibit.

MS. JENKINS: I would prefer to read it into the record, if that's all right, Mr. Virtue.

HEARING OFFICER VIRTUE: Okay. You may do so.

MS. JENKINS: Thank you. This letter is from Mr. Ken Kirk. He contacted me earlier and said he had a conflict and was unable to attend today's hearing so he asked that I read this letter he sent – actually emailed to Mr. Jose Larrañaga. This is I believe the staff report.

Dear Jose; This is to indicate my support for the proposed Casitas de la Tierra project which is currently undergoing review by your office in the County. My wife and I retired to Santa Fe in 2015 although we have owned our home here in Las Campanas since 2009. I believe that the requested rezone to a Planned Development District and associated residential density is an appropriate transition between the commercial neighborhood zoning in the east and the one dwelling per acre designation to the west, which is in accordance with the Las Campanas master plan.

Furthermore, the project is being served by the County water system and the Las Campanas water cooperative for sewer service.

Mr. Kirk is the former president of the Las Campanas Co-op.

The project is within the service area of the Co-op and overall the project would support the efficient use of public and quasi-public infrastructure through moderately higher density. There is a letter from the Co-op to the developer acknowledging the responsibilities of the Co-op in this regard. I also believe the age-targeted community is a valuable housing option to the Las Campanas and La Tierra communities. Indeed I have heard from several of my friends in Las Campanas who are getting older and live in big homes that the opportunity to downsize and still stay in the neighborhood would be most appealing. And while some folks have stated concerns about traffic, the traffic study submitted to the County clearly demonstrates that the road network will continue to operate at excellent levels of service. I drive into Santa Fe about once a day and there is just simply no way that this proposed project is going to negatively impact traffic.

I'm also impressed that the developer's proposal to set aside 33.11 acres of open space/common area on the site. This comprises over 74 percent of the site which includes the dedication of public trail easements and other amenities for the future owners. [Time expired.] Okay. That pretty much got me to the end, so thank you very much. Appreciate it.

HEARING OFFICER VIRTUE: I just want to note for the record that what was just read in was not sworn testimony and so we'll let it into the record but I will give it the weight that I deem appropriate given the fact that it wasn't sworn testimony.

MS. MASCARENAS: Our next speaker is Peter Kelton.

PETER KELTON: Thank you. My name is Peter Kelton. I'm an attorney at the Rodey Law Firm. Like John Salazar, we represent the Lee family. I had a couple of points I wanted to discuss and I also want to say that I have been sworn in and my address is 201 Third Street, Albuquerque. Perhaps what's most concerning about this development is that [inaudible] The developer is presenting what appears to be an ordinary subdivision plan as a condominium in an attempt to avoid the requirement that subdivisions of five units or more adhere to the affordable housing requirements of the SLDC.

Essentially, any future developers will be able to use this plan and completely remove themselves from any sort of requirements that may exist to comply with affordable housing. If this development is approved and if this zoning amendment is allowed on the basis that this is a condominium, essentially, the County may as well completely remove all the affordable housing requirements that are part of the SLDC.

Additionally, despite characterizing this as a condominium, there's really no benefits associated with this being a condominium rather than a neighborhood association. A neighborhood association could very easily maintain the trails and other networks that the developer is trying to maintain here. And in addition to this, despite characterizing the neighborhood of this development as a senior housing area, there is really no benefit that would be unique to a senior housing development. [Time expired] I thank you for your time.

MS. MASCARENAS: Thank you. Our next speaker is Jeff McElroy.

JEFF MCELROY: My name is Jeff Foster McElroy. I live 88 Chisolm Trail. My house is in the La Tierra Nueva Subdivision, about three miles west of the project. I acknowledge that I have previously been sworn. I'm here to speak in opposition to the application. Mr. Virtue, I have recently retired as a chief judge of the district court in Taos and I bought a home here about a year ago.

In my years as a district court judge I've heard several appeals of these sorts of hearings. Section 4.9.7 on variances provides that variances should be granted only in extraordinary and exceptional situations. Section 4.9.7.4 provides that a variance can be granted only if the request is not contrary to the public interest or there are extraordinary or exceptional situations on the property necessitating a variance, or the spirit of the SLDC is observed.

This Hearing Officer's decision will be upheld in court if it is found not to be arbitrary or capricious. Key to that finding will be whether the ruling can be supported by the record and whether the zoning authority's rules and regulations were followed. Based on what I have seen so far of the record and what I know about the regulations, should the Hearing Officer grant the application it stands a big risk of being overturned. I urge the Hearing Officer to deny the application at the conclusion of this hearing and save the district court the trouble. Spot zoning, as this would surely be, is not favored by law.

I wish to go on record as opposed to the variance requested by the applicants. I concur in the staff's recommendations contained in their report. I thought it was an exceptionally good analysis of the application. I also concur in what most of the speakers have already said so I do not wish to repeat those comments but will emphasize the impact that this variance will have on the roadway adjacent to this project, Camino de la Tierra. The road is a unique feature of our neighborhood and it was designed to accommodate a load that was anticipated by the zoning in the SLDC. The safety of those who walk and bike in the neighborhood along this road will be jeopardized if this variance is granted. Thank you for the opportunity to speak.

MS. MASCARENAS: Thank you. Our next speaker is Ann Archer.

[Speaker's name announced three times.]

MS. MASCARENAS: Our next speaker will be Chip Munday.

CHIP MUNDAY: Hearing Officer Virtue, my name is Chip Munday. I represent the Las Campanas Master Association as its general manager. My address is 366 Las Campanas Drive, Santa Fe, and I confirm that I have been sworn. To clear up any potential confusion, the Las Campanas Water and Sewer Co-op is a separate entity and not affiliated with the Las Campanas Master Association. Las Campanas surrounds this parcel to the east, west and north. It is the position of the board of directors of the Las Campanas Master Association to maintain the current RES-E zoning for reasons, some of which have been mentioned earlier and I don't feel compelled to be redundant.

We're also concerned that if the zoning change is allowed the developer would have significant advantage if an attempt is made to develop a different project later that would be allowed under PDD and considerably different than the project under consideration. That's all I need to say at this time. Thank you.

MS. MASCARENAS: Thank you. The next person on our list is Wayne Carson.

WAYNE CARSON: My name is Wayne Carson, 75 Sunflower Drive, Santa Fe, and I acknowledge that I have been sworn. I sent two letters of opposition in and I wish to call attention to the developer's documents submitted in support which are at best insufficient and also can be viewed as disinformative. The traffic report referred to by the developer's agent is a partial example. "The trip distribution was developed upon the assumption the bulk of the traffic during the peak hours would head west." That assumption has absolutely no facts to support it except it aligns with the conclusions the developer wishes to convey. The report further states that the figures were based upon the fact that "a small amount of traffic was also assigned to the west." Note: There is in these assumptions and assignments nothing to support them, either by fact or reference. The term "just math" which was given by the developer's agent in the presentation statement, it's not just math. Assumptions and assignments as figures are not math. All of the reports contain flawed data, data unsupported as to source, and even when so supported lack proven applicability to the area. [inaudible] documents without substance, long on assumptions, short of validation and applicability to the area, they do not carry the burden the developer is required to obtain like it is seeking, and the pernicious request should be denied.

MS. MASCARENAS: Thank you. That was exactly two minutes.

MR. CARSON: Well, my editing paid off.

MS. MASCARENAS: Our next speaker is James O'Bannon.

JAMES O'BANNON: My name is James O'Bannon. My wife and I reside at 38 Sunflower Drive in Las Campanas, in Estates II, which is adjacent to the subject property. I want to reiterate that I support the statements made by the counsel to the Lee family. I have been sworn in and I testify to that. This is a 64-lot residential development disguised as a condo development. There is no way that this property is consistent with the neighborhood. This is not a senior development, and when the speaker for the proponent noted that there are properties in Las Campanas that are on smaller lots, when my wife and I bought this property at 38 Sunflower Drive three years ago, we looked at those lots and they are all adjacent to the golf course, which is miles from where we are today.

So I am opposed to this development. I am not a NIMBY. I completely support and understand that the current development permitted by this development are 17 properties. I would allow that. I have no complaint about that, but I will tell you 64 properties on this property is completely inconsistent with this neighborhood. Thank you very much. I will yield the rest of my time. Thank you.

MS. MASCARENAS: Thank you. Our next speaker is William Feiereisen.

WILLIAM FEIEREISEN: Thank you, Mr. Hearing Officer. My name is William Feiereisen. I live at 3217 Calle Celeste in the Mariposa development and I acknowledge that I am sworn in. I strongly oppose this rezoning request. The character of this entire area was set decades ago with the current zoning of Residential Estate. Hundreds of homeowners have bought into this area over the years because of this. It is not fair to the community to allow a developer to change the character of this area when so many people have already invested hundreds of millions of dollars over the decades specifically to build the community that we now have.

Thank you for allowing me to address my views, and I yield back the rest of my time.

MS. MASCARENAS: Thank you. The next speaker is Kristina Nethaway.

KRISTINA NETHAWAY: This is Kristina Nethaway. I live at 49 Arroyo Calabasas Road, right next door to this proposal. I have been sworn in. I have a little visual for you. This is the neighborhood. [Staff displayed the map.] So this shows the proposed PDD in blue, and superimposed on the County's parcel property map, the existing houses and the proposed casitas are marked in red. The disparity in density is obvious. Is this a good use of all of our land here? No. But it is what it is. It is what it is for a long time. It is what it is when people bought these houses. So, no, it's not really sustainable, but it is.

This section of the Land Development Code and I don't have that right now but it reads like this. It's called Adverse Impacts on Neighboring Lands. The board shall consider the nature and degree of any adverse impacts on neighboring lands. Tracts, parcels or lots shall not be rezoned in a way that is substantially inconsistent with the uses of the surrounding area.

The applicant would say that this is a buffer zone or transition zone, but the area just to the west of this property is one PDD, one unit per acre and the commercial area – you know it's not clear that that will ever be developed. In the meantime, this is just plunked in the middle of something that's totally different. If you allowed this I think you've broken your code. I'm so sorry. If you allow this, the code will be attacked from every which way. There's no hope here. Thank you.

MS. MASCARENAS: Thank you. Our next speaker is Bill Eklund.

BILL EKLUND: My name is Bill Eklund and I have been sworn. I live at 48 Paseo de la Tierra in the La Tierra neighborhood. Members of our HOA have voted overwhelmingly to oppose this proposal. I also oppose this request. I support the conclusions of the Planning staff and I commend the previous speakers for all the good research that has been done. I will limit myself to the narrow issue of traffic on Camino La Tierra, or CLT, which has not received enough attention. The request for a traffic analysis does not capture the big picture at all. CLT has become a main arterial serving several thousand people spread across several thousand acres. For existing residents there is effectively no alternative to using CLT every day.

CLT is already over-burdened. It is a two-lane road with not a single stop light and only one stop sign along its length of several miles. It has no sidewalk whatsoever, no bike path, or even an adequate shoulder. Existing shoulders are generally less than a foot wide and are unsafe for cyclists to rely upon. Pedestrians are virtually unheard of. CLT is also poorly laid out to function as an arterial. Intersections are alternately too far apart or too close together. It wasn't planned for a more dense environment. Consequently the road has become a serious danger to bicyclists, and I've seen several very serious potential accidents.

Many cyclists come from Santa Fe or elsewhere because they are attracted by the apparent country ambience of the road, but they encounter something very different. The narrow shoulders, coupled with increasingly fast and heavy traffic make it no longer safe for cyclists. Impatient drivers speed dangerously past them, often with less than a foot of

clearance. CLT was not designed for a more dense population in this area and is not something that should be relied upon for this development.

Granting this proposal will also set a terrible precedent in this state for granting variances from existing decisions. The existing layout [Time expired] and the existing zoning that was set forth are perfectly adequate and appropriate. I thank you for your time.

MS. MASCARENAS: Thank you. Our next speaker is Gregory Nava.

GREGORY NAVA: Hello. I'm Gregory Nava. I have been sworn in. I live at 29 Estrada Maya and I have been sworn in, and I am here today to ask our representatives to stand up for the people of Santa Fe and Santa Fe County who are overwhelmingly opposed to this rezoning proposal and to stand against these out of state developers whose sole motivation for this request is profit. I'm asking our representatives to uphold the original zoning of one home per 2.5 acres of this property, which was done to respect the quality of life, the ecology of this area, the wildlife, the roads, which cannot handle hundreds of new cars, and also law enforcement. Sheriffs are very minimal out here and so the logistics are very difficult. Nothing has been done to the infrastructure of this area to support 64 new homes when formerly only 17 at most would be allowed.

This proposal is dangerous. It is unwise. It is unsafe, and make no mistake, it will destroy the character of this neighborhood. The majority of people who live and work here are hardworking people who saved all their lives to buy a home and when we bought our homes here we did so with the knowledge that this area would stay as it was. Now suddenly all this could change and I feel if this happens it is a betrayal of all the hardworking people who live here.

The high priced lawyers for these out of state developers are putting forth many arguments for why rezoning requests should be granted. They talk about this somehow helping the seniors. I'm a senior. I know many seniors. All the HOAs around here, the majority of the residents are seniors. We are against it. Seniors do not want this. But let's be frank. This proposal is not here to help seniors but rather it is designed to maximize their profits. They can make plenty of money developing the property as it is now zoned, but they want more. Do we need development? Yes. But we don't need development that flies in the face of our land use plans and that will destroy neighborhoods. And as has been pointed out before, if it is granted, what's next? There's a precedent. What neighborhoods will be next? I am here today to fight for my neighborhood, for my neighbors, for my city, for my county, for our beautiful land. [Time expired] I've got one sentence. To implore our representatives to stand with the people and against out of state developers who do not care for our people or our land, who just want to make their money and move on. Thank you very much.

MS. MASCARENAS: Thank you, sir. Our next speaker is Barbara Martinez Jinter.

BARBARA MARTINEZ JINTER: Hello. I'm Barbara Martinez Jinter. I live at 29 Estrada Maya and I have been sworn in. I'm a member of La Tierra HOA and a Las Campanas Club member for 14 years, and I'd like to address a statement that the applicant made in the presentation to justify the rezoning of the 44 acres to a 64-condominium site, and that is to provide senior housing for seniors who currently live in La Tierra and Las Campanas who would like to downsize and stay in the neighborhood.

And I'd like to say under oath that I know hundreds of seniors. I'm both, as I say, a member of the La Tierra HOA and a club member of Las Campanas and I do not know one single senior that would like to move from their homes and would like to move into this proposed site.

They're very much opposed against it, and in fact if it was built, many are considering moving rather than this proposed site would make people stay. So I would like to say very strongly under oath that I know not one single senior that would be in support of this, would support moving into that site, and in fact would want them to leave the neighborhood. So therefore I'm opposed to this application for rezoning. Thank you.

MS. MASCARENAS: Thank you. Next is Cynthia Scullin.

CYNTHIA SCULLIN: I'm Cindy Scullin, 144 Arroyo Calabasas. I've been sworn and I stand in strong opposition and I'd like to yield my time to John Salazar.

MS. MASCARENAS: Okay. Mr. Hearing Officer, I'm not sure if those who would – as we continue to yield time and those who would like to yield their time to John Salazar, if you'd just like to combine it at the end of the meeting and I can keep track of it.

HEARING OFFICER VIRTUE: Let's do that. So we've got one five-minute yield to Mr. Salazar and then we'll just keep track of any additional yields and we'll have any time yielded will be used at the end.

MS. MASCARENAS: It's a two-minute yield, correct, sir?

HEARING OFFICER VIRTUE: That's correct.

MS. MASCARENAS: I will keep note of that. Our next speaker is Jonathan Keeton.

JONATHAN KEETON: Hi. My name is Jonathan Keeton. I've been sworn. I live at 20 Vista Calabasas. I'm the manager of the Arroyo Calabasas Road Committee, which is responsible for maintaining Arroyo Calabasas. I want to be clear that Arroyo Calabasas – let me reiterate, is a private road on private land that is maintained by the residents of this neighborhood who in no way give permission for this road to be used by this proposed development for any purpose. I'm in agreement with the statement by the staff and with the position paper written by the Rodey Law Firm. Thank you.

MS. MASCARENAS: Thank you. Our next speaker is Lisa Butler.

[Speaker's name announced three times.]

MS. MASCARENAS: Okay, our next speaker is Carl Butler.

[Speaker's name announced three times.]

MS. MASCARENAS: Okay. Next is Matt Kim Miller.

MATT KIM MILLER: Hello. My name is Matt Kim Miller. I am a lawyer at Holland & Hart Law Firm. I was previously sworn in. My address is 110 North Guadalupe, 87501. We represent Larry and Jan Baum at 21 Rising Moon. It's approximately a quarter mile away from the proposed development. My partner, Little West, submitted written comments at page 272 of the record. We stand with Mr. Salazar's and Mr. Kelton's analysis of that. We support staff's recommendation. Significant impacts on the views, on the property values, on the traffic that will be experienced by all the neighbors, and these are the neighbors you're hearing from. These

effects will be concrete and will be material on these neighbors and the people you're hearing from. That is why these neighbors will have standing and will challenge this.

They're challenging it now. [inaudible] just aside from reiterating all of Mr. Salazar's points, saying we're challenging it because it doesn't fit with the plan. It doesn't fit with the SGMP. This is an attempt at using the PD and other tools that aren't in the SGMP in order to create a new subdivision of density. It's an insular subdivision. It does not achieve any of the mixed use, long-term goals that are in the SGMP and it most definitely is not consistent with the surrounding area. Consistency includes things like form, bulk, scale, how it fits in with the rest of the neighborhood. It does not. It doesn't fit in with the long-term vision of this plan.

If this were to be approved it would need an entire replanning of the vision for this area, and for that simple reason it can't be approved at this time. Thank you for your consideration of these and all the other comments people have made.

MS. MASCARENAS: Thank you. Our next speaker is Tom Siligh.

[Speaker's name announced three times.]

MS. MASCARENAS: Okay. Moving on, is Catherine Beck on the line?

CATHERINE BECK: This is Catherine Beck. Hi. I am the president of the Vallecitos de la Tierra Homeowners Association. I don't want to be redundant. We concur with John Salazar's comments and many of the other neighbors in opposition to this development. I and our board represent 21 home and landowners. Our association unequivocally opposes this development due to the density, traffic flow, noise, light and water usage. This development is not in keeping with our covenants and restrictions which only allow one home between two and three acres with no detached structures.

The primary reasons our homeowners live here in this area is due to these requirements. We are a neighborhood just a quarter of a mile west of this proposed development and border Las Campanas near the fire station. We unequivocally oppose this development and ask the commission to deny application. Thank you so much.

MS. MASCARENAS: Was the speaker sworn?

MS. BECK: Yes. I reside at 23 Vallecito Road and I have been sworn in.

Thank you.

MS. MASCARENAS: Thank you. Our next speaker is James Hale.

[Speaker's name announced three times.]

MS. MASCARENAS: Okay, our next person is Ann Hale. Is Ann Hale on

the line?

[Speaker's name announced three times.]

MS. MASCARENAS: All right. We'll move on. Lee Ann Dunn.

[Speaker's name announced three times.]

MS. MASCARENAS: Okay. What about Linda Duritz? Linda Duritz, are you on the call?

[Speaker's name announced three times.]

MS. MASCARENAS: Okay. Ronald Lushing.

RONALD LUSHING: Hello. This is Ron Lushing. I live at 168 Headquarters Trail, La Tierra Nueva, and I've been a homeowner since 1990. I confirm that I've been sworn in. I would just like to speak in opposition to the proposed project and in support of the staff, and I would certainly echo the comments of Mr. Salazar and I

would yield my time to David Paulsen, who I believe is probably the next speaker after myself, and a fellow neighbor.

MS. MASCARENAS: Okay. I will make a note of that, and he's actually a few speakers down, so I will note that and give him your time at that point.

MR. LUSHING: Thank you.

MS. MASCARENAS: The next one is Penina Meiseles. Is Ms. Penina Meiseles on the line?

[Speaker's name announced three times.]

MS. MASCARENAS: Okay, next is Nancy Burns.

[Speaker's name announced three times.]

MS. MASCARENAS: All right. Next one is Lewis Baxter.

LEWIS BAXTER: It's Lewis Baxter. I live at 38 Chisolm Trail, and yes, I've been sworn in. Officer Virtue, ladies and gentlemen, the case has been made against this very, very strongly, which I support, and most of my points have been well made. I'm just going to make a few. One, when I checked with the Secretary of State's Office here I found that this Texas LLC, Santa Fe West Investments is not registered as doing business in New Mexico. Therefore I wonder if this is even an appropriate hearing.

Second, Jeff McElroy brought up spot zoning. I just want to read the definition from the CEJS 101 A, 44 1979. [inaudible] spot zoning is an attempt to wrench a lot from [inaudible] and give it a new rating that disturbs the tenor of the neighborhood, and which affects only the use of a particular piece of property or small group of adjoining properties, and is not related to the general plan for the community as a whole, but is primarily for the private interest of the owner of the property so zoned.

My attorney, Peter Schoenfeld, has given me numbers, case law and citations. I sent this all in a brief to Mr. Larrañaga. I will also send it to the chair. The final point I simply want to make is about this road, I don't know if you can see this. It's in my report. But this is typical of all of the shoulders on this road. There are no real shoulders. It's just the native gravel, sand, and with a ditch running the whole way. We've had many examples of people, not elderly, running off the highway into trees and one of these days we're going to get a flip. I will yield my time to Mr. Paulsen, any that I have remaining. Thank you very much.

MS. MASCARENAS: You actually hit the two minutes just exactly. Good job. Our next speaker is Juan Fernandez.

JUAN FERNANDEZ: Yes. My name is Juan Fernandez and I live at 34 West Wildflower Drive with my wife, Odalys. May I have some of her time in case I run a few seconds later?

HEARING OFFICER VIRTUE: Was Mr. Fernandez' wife signed up to speak?

MR. FERNANDEZ: She was going to speak at the end.

MS. MASCARENAS: I haven't spoken to her. I haven't heard from her.

HEARING OFFICER VIRTUE: If she's present she can yield two minutes to you, sir.

MR. FERNANDEZ: I have been sworn. We live six houses away from the intersection of Wildflower with Camino La Tierra. This is on top of a hill. You may be following a steep climb of nine percent or five degrees to reach the development as you

SFC CLERK RECORDED 08/19/2020

probably know, as well as my home, along the most direct routes that must be traversed going northbound from 599 on Camino La Tierra. I'm just going to focus on the project's flaw that most directly affects us which is the increase in vehicular traffic on La Tierra and its impact principally on that intersection with Wildflower. This development will create a significant congestion problem at the Wildflower intersection. The developers did submit a traffic study for their development concept, which I saw on the Casitas 1 through 9 exhibits.

Surprisingly to me in retrospect, Santa Fe Public Works has stated in a memo in the same exhibit that they can support the project with a few provisos, none of them involving that intersection. Despite what Ms. Jenkins said today, the traffic study in that exhibit says that the intersection would go from a level of service B to C, which they declared to be acceptable. Public Works then bases its concurrence on a [inaudible] minimum standard from the New Mexico Transportation Manual for an unsignalized intersection, which unfortunately seems like they're not paying attention because that doesn't apply. This is a signalized intersection with a four-way stop which makes it slower for the same LOS value.

So I think their concurrence is baseless and should be discarded, so I had to dig deeper to see what does this mean. The present LOS B means that even at peak traffic, that intersection can be traversed in at most 15 seconds, which is great, because it leads to no congestion. In contrast an LOS of C means 55 seconds. That may not seem like much until you experience the 55 seconds and its consequences on this particular road. You'd be waiting there with four cars in front of you, on a steep hill, on a road that has a nine percent grade, where six percent is the maximum allowed for US highways without a variance. There's no shoulder in that particular place. Instead there's a steep cliff on either side. So if someone makes a mistake or we have inclement weather and rolls back and there's a fender bender at that point, the level of service will quickly drop to F.

I think it is not fair to increase the density before the roads are improved to support it. This does not feel fair to me and this is not a flat road in Santa Fe downtown. It's not fair that we all bought a home looking for quiet and avoid congestion only to have that congestion foisted on us. In my case, I'm the closest to the street corner, I imagine what it would do with the intersection at the 599 frontage intersection which has no turn lane. So I think that expecting that fixing the road to accommodate all the traffic that we're going to see, which is consistent with my experience, believing that the government is going to make that a priority, especially after all these expenditures we had with COVID-19. I think I would be dead before we can see the improvements that are going to be necessary to support this increased density. Therefore, I strongly urge you to reject the proposed zoning change and please don't ruin our neighborhood. Thank you very much.

MS. MASCARENAS: Perfect four minutes. Thank you. Next up is David Paulsen who was also yielded two minutes so for a total of four.

DAVID PAULSEN: Hello. First let me thank Mr. Lushing and Dr. Baxter for yielding me a bit of their time. I'll try not to make sure of too much of it. My wife and I live in La Tierra Nueva, the community about two miles from the area which [inaudible] radicalize. We're both seniors, and yes, I've been sworn in, and no we don't want to be moving to that kind of place that they're trying to build. I could not agree

more with Mr. Salazar, with Mr. Feiereisen, with Lisa and Carl Keller, with Mr. Nava and with so many others who are opposed to the unconscionable development under consideration.

These developers who are trying to change the current, reasonable, intelligent requirements of the property so near to our own homes are doing so purely for their own financial benefit with no concern whatever for the needs of those of us who already own homes in the area. Should this project be developed those of us who live here will be forced, as Mr. Eklund so well described, to contend with infinitely more traffic, much of it conducted by older, less able drivers over long, narrow, winding roads, with soft, gravelly side gutters, the pictures of which you've seen earlier, into which cars are repeatedly rolled, especially but not only due to the snows and the sleets of winter.

Among the plethora of problems what such construction would mean to us, accidents, mechanical fees, insurance rates, will all go up. Our water supply will of course be diminished by its need to serve so many additional people. Anyone who says no doesn't read the papers. I join the crowd of those of us who urge you to deny this application. Thank you.

MS. MASCARENAS: Thank you. It looks like we've reached the bottom of our list, and we have three additional people who have yielded their time to Mr. John Salazar.

MR. SALAZAR: Thank you very much. Just a few points. One of the things I found very interesting earlier when the applicant's agent was speaking was she indicated that they were being very sensitive to the folks that would live in the 64-unit development and wanted to make sure that they could live there, maintenance free and without having to worry about upkeeping the grounds, and therefore that reason they had to go to a condominium form of ownership, which is totally ridiculous. They can do that with a regular subdivision and homeowners association. People do it all the time. It's just a matter of what responsibility you want to have on the homeowners association and what the dues are going to be.

So the form of entity has nothing to do with a low-maintenance living. This is a subdivision and they can take care of low maintenance. They just need to have a homeowners association. It's actually much easier than this convoluted approach and trying to create a condominium to get out of the affordable housing requirement, and then escape that. It's just totally bogus. So that's one point I'd make.

The other is the TDRs, the transfer of development rights. It was indicated – they're going to get TDRs so they don't have to do mixed use, which is called for in the Planned Development District, and they want to use TDRs to get increased density, because they don't want to be limited to one dwelling unit per acre. You know what the problem is? they've got a huge problem. The problem is to get a TDR you have to be in a recognized receiving area, a receiving site. And those sites, they're zoned in a certain way. They must be an existing mixed-use site, an existing Planned Development site, an existing industrial-general, an existing industrial-light, existing commercial-general, designated receiving area, or a district rezoned to a higher density.

This site is not zoned for any of those uses. They're not entitled to use development rights to say they're now seeking a 64-unit development. They're not entitled to propose a development that doesn't have mixed use if they want a PD, because

they're not entitled to receive the TDRs until they get the zone. So they're trying to bootstrap something they would be entitled to if they were a PD zone. They're not there. So they're not entitled to it, so this whole thing is bogus. This idea about – the most they could do is 44 with mixed use at the present time. So that's a couple of points.

The other thing I'd like to mention is that there was a supplemental request for an additional variance, and this is under the assumption they get their project approved for 64 units, and the assumption they do, they're asking for a variance in advance, so if they get the project, they don't have to build the two points of access to a public road, which is now called for and they've acknowledged they need to do if they get their 64 units. They have to get two points of access to a public road. So what are they saying? Well, give us a variance now so that if we do get approved we won't have to access two points, we'll just do what we originally planned, going onto the Arroyo Calabasas Road, which is private, which they're not entitled to do, and why are they saying they want to do it? They want to do it because to get two points of access to a public road they might have to build a bridge.

So to avoid the cost of a bridge that their project is requiring, they want a variance in advance to they don't have to build a bridge that they're own development is requiring. And then they say – and besides that, if we have to build a bridge it's unnecessary infrastructure cost and we should save costs, therefore give us a variance, so we don't have to build a bridge, so we don't have to create unnecessary infrastructure. Well, the reason they would have to do it is because of what they're requesting – 64 units. If they want 64 units they have to live with the consequences of that just like anybody else.

So this project, this application has so many problems, it's just totally, fatally flawed. Any one of these reasons would be enough to kill it, but you put in the cumulative effect of all these things – this is a disaster in the making. There is no reason for this project going forward. If this were a legal case it would be dismissed as a matter of law, because it's not justified by the facts or the law. It would just be summarily dismissed. It's amazing that they're carrying it forward at this point, given the fatal flaws on so many points.

And so with that, Mr. Hearing Officer, we would just ask you to please recommend denial of this application in its entirety. With that I conclude my comments. Thank you for the time.

MS. MASCARENAS: Thank you. Mr. Hearing Officer, that is all who have signed up. What I'll do one last time is open those who have called in case there's anybody else who would like to comment.

ROBERT LARSEN: I would like to. My name is Robert Larsen. I live at 7 Paintbrush Circle. You can see me here. My friends call me Doctor Bob. I live at 7 Paintbrush Circle with my wife Kimberly, and I swear that I am telling the truth.

As a licensed physician what I'm about to say, I have no particular expertise in medicine commenting on this, but I am a resident of this area. I'm familiar with it as it's within walking distance of my home. I concur with the comments made my neighbor Francois, by Judge McElroy, by Chip Munday and others. They have commented on a number of issues. I have no expertise when it comes to the issue of archaeological sites but I think that is a ruse.

Furthermore, the traffic issue is clearly a concern here for everybody in the area. What I will comment on that I think is disingenuous is that my wife and I have been following this for some weeks now, if not months, and we have been interested in what the applicant wanted to produce here. And we were told that it was as it's been described here. When we looked at the actual what I call plot plan, it was for retail space. But tonight we're shown something that actually you can see where the structures are on this 44 acres, 11 of which are supposed to be built on, leaving 33 acres as open space. I swear to god, you'd be hard pressed to call that open space. I don't know what they're talking about. That does not appear to me to be open space. That seems, I would say again, a ruse, disingenuous and not really in keeping with this area. This is a concentration of homes. There are going to be areas there that will be obstructed for people to transfer across them and I am against it because that is not in keeping with this entire area. Thank you very much for your time. I just want to say, please, Mr. Virtue, reject this application as it stands.

MS. MASCARENAS: Thank you. I'll once again unmute the phone lines. Is there anybody who is calling in by telephone who has not already spoken who would like to?

SUZY ESKRIDGE: I'd like to speak, and I'm not on the telephone. My name is Suzie Eskridge.

MS. MASCARENAS: if you could just hold on a moment. I just want to be able to find out if there's anybody who's calling in who wants to speak. Okay. I will mute the callers on the phone. Ms. Eskridge, please proceed.

MS. ESKRIDGE: Okay. My name is Suzie Eskridge and I live at 95 Estates Drive across the way from this project, and I've been sworn before. And I just wanted to point something out, that the developer through the representative, the Jenkins, is stating – they've been putting all their comments and everything on Las Campanas and I find this very insulting to the rest of the subdivisions and the homeowners associations that surround this project. There are over ten homeowner associations that are affected by this and yet Ms. Jenkins refuses to refer to any of them, and that's insulting.

Furthermore, she talks about Las Campanas having clusters and this and that and the other thing, where she fails to mention that Las Campanas existed even before the SLDC new codes. So everything was grandfathered in and legally done and all that sort of thing. So you can't compare this thing and hang your hat on what Las Campanas has, because that's all been grandfathered in. So that's all I have to say and I yield whatever's left of my time to Mr. Salazar. Thank you.

MS. MASCARENAS: Mr. Salazar, if you would like to speak, you have about eight seconds.

MR. SALAZAR: I will yield the eight seconds.

MS. MASCARENAS: Thank you, sir. Is there anybody else who has not yet spoken who would like to speak on this issue?

DAVID PLATTS: Yes.

MS. MASCARENAS: Please state your name for the record.

MR. PLATTS: I'm David Platts. I live at 11 Sky Show. I've been sworn. I'm the vice president of the Los Suenos Homeowners Association and I just wanted to

say that there is nobody in our homeowners association who supports this development. I myself would love to see it turned down as I appreciate the wide open spaces. Thank you.

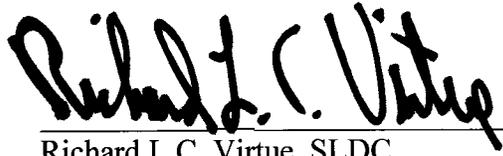
MS. MASCARENAS: Thank you. Is there anybody else who would like to speak? Anybody else who would like to speak? All right. Back to you, Mr. Hearing Officer.

HEARING OFFICER VIRTUE: Okay. Thank you very much, everybody for attending the hearing and testifying. Your testimony is very much appreciated. I will issue a written recommended decision within 15 working days of today. The hearing is officially closed.

**4. Adjournment**

Hearing Officer Virtue adjourned the hearing at 8:10 p.m.

Approved by:



Richard L.C. Virtue, SLDC  
Hearing Officer Santa Fe County



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

SLDC HEARING OFFICER M  
PAGES: 92

I Hereby Certify That This Instrument Was Filed for  
Record On The 19TH Day Of August, 2020 at 02:55:35 PM  
And Was Duly Recorded as Instrument # 1925387  
Of The Records Of Santa Fe County

Deputy  Witness My Hand And Seal Of Office  
Geraldine Salazar  
County Clerk, Santa Fe, NM

SEC CLERK RECORDED 08/19/2020

Chat

July 9, 2020 2:59 PM from Shawn Lee to everyone: ha ha got it. Tommy can you hear me??

July 9, 2020 3:00 PM from Shawn Lee to everyone: Mute your phones to stop the echoe and unmute to speak!

July 9, 2020 3:13 PM from Tessa Jo Mascarenas to everyone: Good Afternoon Everyone-Thank you for joining the meeting. Please mute your microphone. If you wish to comment, submit your name and agenda item(s). At the proper time, the hearing officer or myself will call on you when the item is considered.

July 9, 2020 3:29 PM from Linda D to everyone: Hello, I am unable to get audio. I have called Nathan M. No audio! Very disappointing! Nathan returned my call and was as helpful as could be. However, as one of the most affected property owners, I strongly wanted to be seen and heard when I spoke and I want to see and hear others! Thank you.

July 9, 2020 3:32 PM from Vicki Lucero to everyone: If you are unable to listen on the computer you can call in at 1-408-418-9388 and use Meeting number (access code): 146 752 3643.

July 9, 2020 3:35 PM from Linda D to everyone: Thank you, Vicki. That is unsatisfactory for me. I am one of the most impacted by this attempt to change the code and I wanted to see AND hear AND speak. Actually, I think this is an unsatisfactory format.

July 9, 2020 3:36 PM from Lisa and Carl Keller to everyone: ask her to turn off her radio in home possibly

July 9, 2020 3:44 PM from drphil to everyone: when will the discussion of the 44 acres be discussed?

July 9, 2020 3:44 PM from Janey Phillips to everyone: next

July 9, 2020 3:45 PM from Carol Gerard to everyone: Please ask all particioants to turn off all other devices.

July 9, 2020 3:47 PM from Carol Gerard to everyone: The echos are caused by other devices, please ask people to turn them off.

July 9, 2020 3:47 PM from Tessa Jo Mascarenas to everyone: Good Afternoon Everyone-Thank you for joining the meeting. Please mute your microphone. If you wish to comment, submit your name and agenda item(s). At the proper time, the hearing officer or myself will call on you when the item is considered.

July 9, 2020 3:47 PM from drphil to everyone: Can't make this out.

July 9, 2020 3:49 PM from Phoenix Simms to everyone: Please all mute when not speaking

July 9, 2020 5:46 PM from Kris Michaelis to everyone: what is in the archeaological site?

July 9, 2020 5:57 PM from James O'Bannon to everyone: why is the proponent given unlimited time when others are cut off by the staff?

July 9, 2020 5:58 PM from Shawn Lee to everyone: Opponents of this project must be given equal time to speak

July 9, 2020 5:59 PM from Annemarie Marek to everyone: Probably because there are only two presenters on behalf of the developer and many more neighbors who wish to speak.

SFC CLERK RECORDED 08/19/2020

Chat

July 9, 2020 6:00 PM from James O'Bannon to everyone: having 45 consecutive minutes is different than 40 minute / 2 minute segments.

July 9, 2020 6:01 PM from Kris Michaelis to everyone: I do encourage speakers to be brief, to the point and note when you are concurring with others rather than going into lengthy dialogue.

July 9, 2020 6:03 PM from Chris Mann to everyone: well, the public, unlike those proposing the project, apparently have no choice but to be brief

July 9, 2020 6:06 PM from Carol Gerard to everyone: Please be sure to turn off any other devices! That is why we hear those echos.

July 9, 2020 6:19 PM from jonathan keeton to everyone: Vicki is muted

July 9, 2020 6:25 PM from James O'Bannon to everyone: we cannot hear Monda

July 9, 2020 6:25 PM from James O'Bannon to everyone: mona

July 9, 2020 6:25 PM from James O'Bannon to everyone: Can she start over?

July 9, 2020 7:08 PM from Francois-Marie Patorni to everyone: This intervention is inappropriate.

July 9, 2020 7:09 PM from Francois-Marie Patorni to everyone: We should all pitchin, was this man sworn in?

July 9, 2020 7:09 PM from Ginger Casey to everyone: why is this letter being read into the record when the others aren't?

July 9, 2020 7:10 PM from Annemarie Marek to everyone: Also hearsay when referencing Kirk's other neighbors who favor this rezoning. Should be so noted.

July 9, 2020 7:11 PM from jonathan keeton to everyone: Can you please mute the other callers so we can hear him?

July 9, 2020 7:50 PM from Ginger Casey to everyone: Can someone please ask Jennifer Jenkins directly if this project is age restricted to seniors, as they claim in their application?

July 9, 2020 8:10 PM from Mona Shoup to everyone: Thank you Mr. Virtue

July 9, 2020 8:10 PM from elisabeth oberteuffer to everyone: Thank you, county staff!

SFC CLERK RECORDED 08/19/2020

# Casitas de La Tierra

## Rezone, Conceptual Plan, and Variance Applications

Hearing Officer Meeting

July 9, 2020

3:00 pm

tabbles®  
EXHIBIT  
2

## Summary of Requests

- Rezone the 44.5-acre subject parcel to Planned Development District and associated Zoning Map Amendment.
- Conceptual Plan for an age-targeted senior community comprising 64 detached, single story casitas.
- Variances from SLDC roadway standards to permit a gated emergency access to Arroyo Calabasas.

## Project Team

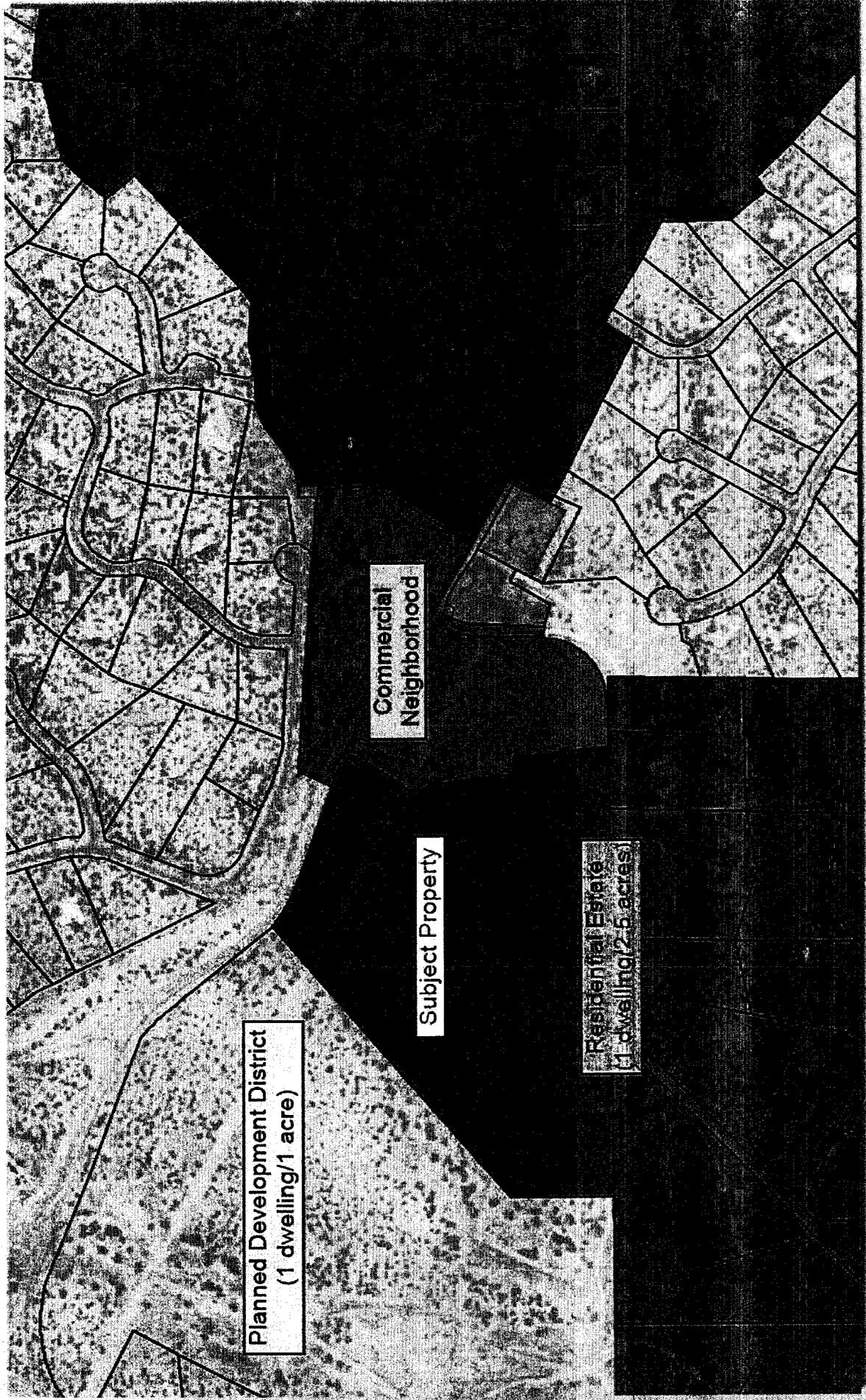
- JenkinsGavin, Inc., Jennifer Jenkins & Colleen Gavin, AIA – Planning/Project Management
- Design Enginuity, Orallynn Guerrerortiz, P.E. – Civil Engineering
- Bohannan Huston, Inc., Eric Wrage, P.E. – Traffic Engineering
- Design Office, Claudia Horn, PLA – Landscape Architecture
- Ecosphere, Jerusha Rawlings, PhD – Environmental Impact Report
- Southwest Planning & Marketing, Rachele Howell – Fiscal Impact Analysis
- Graeser & McQueen Attorneys at Law – Legal
- Egolf + Ferlic + Martinez + Harwood – Legal

# Property Aerial



SFC CLERK RECORDED 08/19/2020

# SLDC Zoning Map





# Conceptual Site Plan



SFC CLERK RECORDED 08/19/2020

# Casitas de La Tierra

## Rezone Request

## Consistency with the Sustainable Growth Management Plan

§1.15.2.3. *No amendment to the SLDC text or zoning map...shall be granted unless the Board makes a finding that there has been a substantial change in the conditions of the area surrounding the owner's property or an error or mistake in the SLDC text or zoning map; or the amendment is consistent with the SGMP and any applicable area, district or community plans for the property.*

This rezone request is consistent with principles, goals, policies, and strategies outlined in the SGMP:

- 1. Minimize unsustainable residential development patterns, which are defined as large lot, low-density residential development.**
2. Protect archaeological, historic and cultural resources.
3. Conserve and protect our water sources by reducing reliance on groundwater consumption.
- 4. A diversity of housing options should be considered.** While rural, large lot development is a popular lifestyle option, the public and private costs of such development can be excessive and may not position the County or its residents to attain sustainability. The growth management strategy will direct growth to appropriate and designated primary and secondary Sustainable Development Areas (SDAs) as defined in Section 2.2.5.
5. Factors must include transitioning between land use types, intensities, and densities using buffers and floor area ratios; conserving environmental assets using standards to preserve open space and to limit impervious surfaces.
- 6. Transfer of development rights...support the goals of the SGMP.**
- 7. Support clustering provisions for development or conservation subdivisions. Encourage alternative compact development patterns such as cluster development and density bonus provisions.**

## Consistency with the SGMP, continued...

8. Protect and preserve the County's archaeological, historic, cultural, community and scenic resources.
9. Require use of native vegetation, southwestern plants and drought tolerant natural landscaping materials in the landscaping of public and private development, including roadway and right-of-way landscaping.
10. The spread of noxious and invasive species should be prevented and native species should be protected and restored.
11. Support and encourage rehabilitation of creeks and waterways with native vegetation, implementing erosion control and eradicating invasive species.
12. Create standards for sensitive siting, design and screening of new development to **minimize visual and physical impacts to the land** where other more appropriate building sites exist.
13. **Permanently protected open space.** The protection and preservation of open space is essential to addressing the impacts of development.
14. **Create an Interconnected Trails System.** New trails should be connected to other new and existing trails in the County, creating opportunities for pedestrians, cyclists and equestrians to circulate among residential, commercial, and recreational spaces.
15. **Housing Choices.** Neighborhoods within either new developments or existing communities should contain a **variety of dwelling types and densities** to accommodate a diversity of people and demographics.

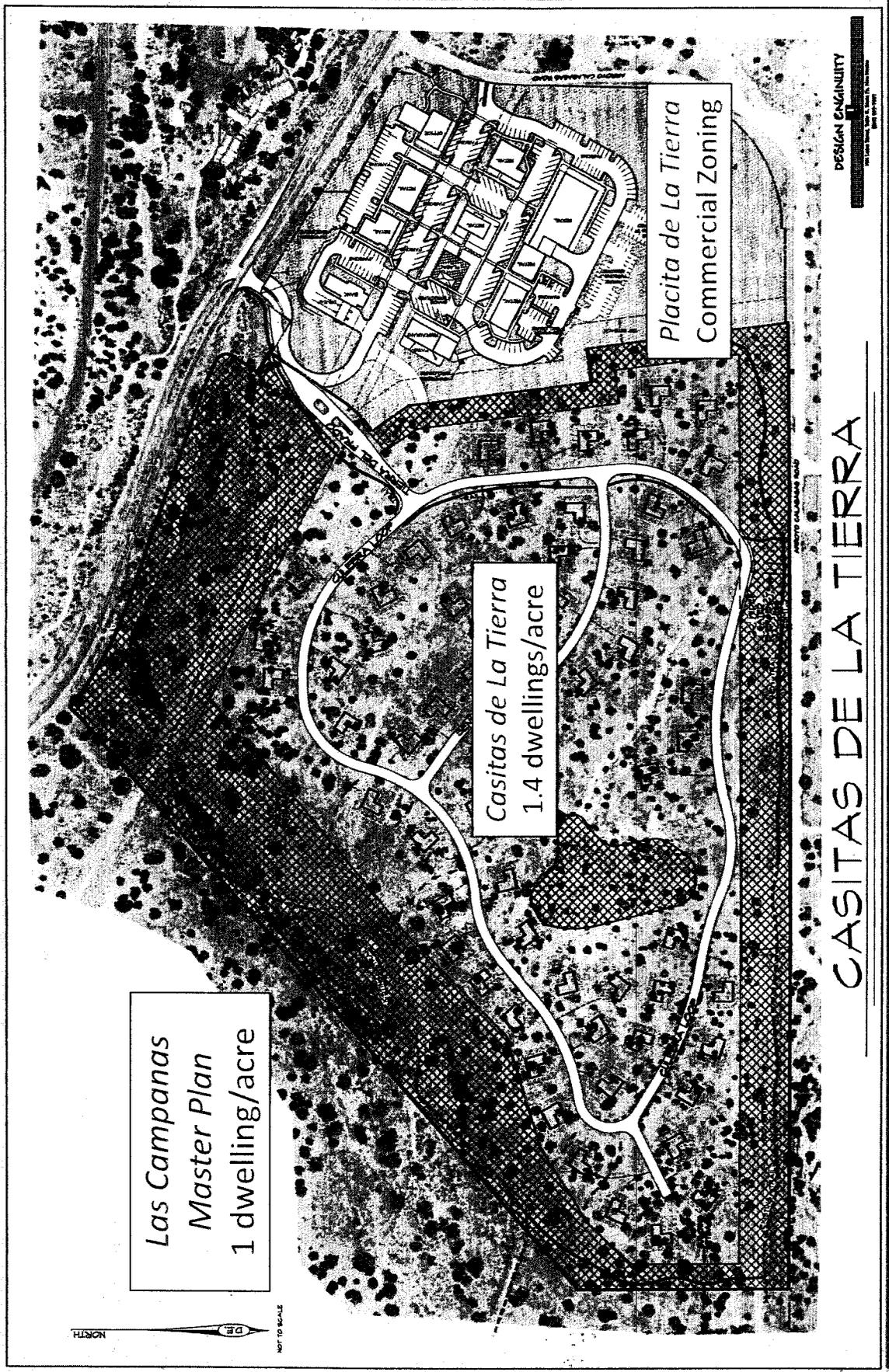
## Public Policy

§1.15.6.2.1. SLDC text or map amendments shall be granted primarily to promote compact development, economic, commercial and residential mixed uses, traditional neighborhood and transit oriented development, sustainable design and higher densities. Important public policies in favor of the SLDC text or map amendment shall be considered, including but not limited to:

- a. *the provision of a greater amount of affordable housing: Per §13.2.1., affordable housing requirements apply only to subdivisions, not multi-family projects developed on a single parcel.*
- b. *economic, non-residential and renewable energy development: Positive economic impacts of the project include gross receipts and property tax revenue and employment in the real estate/construction industries.*
- c. *advancement of public facilities and services and elimination of deficiencies through use of voluntary development agreements: No deficiencies in public facilities/services have been identified.*
- d. *traditional neighborhood, transit oriented, infill, opportunity center and compact mixed-use development: This infill site is adjacent to a planned 43,389 sf commercial center, promoting a compact, mixed-use environment.*
- e. *substantial preservation of open space: The project plan preserves 33.11 acres of open space/common area.*
- f. *sustainable energy efficient construction and neighborhood design: Developing at higher densities is a model of sustainability, making efficient use of public infrastructure and providing for significant open space preservation.*
- g. *consistency with the SGMP, area, district or community plan goals, policies and strategies applicable to the property. Addressed above.*

**SGMP §2.2.4.5 Land Use Compatibility**

*"...transitioning between land use types, intensities, and densities..."*



**CASITAS DE LA TIERRA**



# Has the Placita de La Tierra Development Plan expired?

Per this letter from Santa Fe County, projects approved by the EZA prior to establishment of the "Presumptive City Limits" (Ordinance No. 2009-01) are not subject to expiration.

*Furthermore, the Transitional Provisions of the SDC, §1.11.6.1, states that, "Properties that have received final development plan or plat approval but have not recorded the plan or plat may complete the recordation process under the terms of the final approval"*

Joseph B. Melton,  
Commissioner, District 1  
Vernon Vigil,  
Commissioner, District 2  
Michael D. Aron,  
Commissioner, District 3



John Hulse,  
Commissioner, District 4  
Liz Schultz,  
Commissioner, District 5  
Bobby Mayes,  
Commissioner, District 6

May 24, 2010

Properties within Santa Fe County  
Formerly within the Extraterritorial Zoning District

RE: Final Development Plans approved under the Extraterritorial Zoning Ordinance now under jurisdiction of the Santa Fe County Land Development Code

Dear Property Owners:

In response to inquiries regarding the expiration of Final Development Plans on projects approved under the Extraterritorial Zoning Ordinance, the information contained herein will serve to clarify owner/developer questions regarding project entitlement.

The Extraterritorial Zoning Ordinance, under Section 3.A.D.1.a states, "If any work described in a final development plan is not begun within eighteen (18) months from the date of the approval of the final development plan by the EZA and EZA, then the approval shall expire."

As you may be aware, the City and County of Santa Fe have recently adopted an ordinance (Santa Fe Extraterritorial Land Use Authority Ordinance No. 2009-01, effective date of October 4, 2009) which establishes subdivisions, platting, planning, and zoning regulations within an area known as the "Presumptive City Limits." All property within the "Presumptive City Limits" will be governed by the City of Santa Fe and all property formerly in the Extraterritorial Zoning District but not within the "Presumptive City Limits" will be governed by Santa Fe County under the Santa Fe County Land Development Code. (NOTE: The Extraterritorial Zoning Ordinance and Subdivision Regulations will no longer be in effect.)

The Santa Fe Land Development Code does not address the expiration of Final Development Plans, therefore, as of October 4, 2009, previously approved Final Development Plans for projects within Santa Fe County will not expire.

Please note, however, that the County is in the process of re-writing our current Land Development Code which is estimated to be adopted in the Spring of 2010. Under the new code there may be different regulations regarding expirations of Final Development Plans which could affect your project.

If you have any questions regarding this matter please contact my office at 966-6225.

Sincerely,

Jack Kolkmeier  
Santa Fe County Land Use Administrator

CC: Stephen Ross, County Attorney  
Shelley Cobau, Building and Development Services Manager  
Wayne Dalton, Building and Development Services Supervisor  
Vicki Lacro, Development Review Team Leader  
Jose Larrauga, Commercial Development Case Manager



# Casitas de La Tierra

## Conceptual Plan

# Conceptual Site Plan



# Conceptual Plan Approval Criteria

## SLDC §4.9.9.6. General Criteria

1. *conformance to the Sustainable Growth Management Plan: Addressed above.*
2. *viability of the proposed phases of the project to function as completed developments in the case that subsequent phases of the project are not approved or completed. The project will not be phased.*
3. *conformance to applicable law and County ordinances in effect at the time of consideration, including required improvements and community facilities and design and/or construction standards. The Conceptual Plan and the associated design features and infrastructure improvements comply with all applicable provisions of the SLDC, except for the proposed gated, emergency-only access to Arroyo Calabasas, for which a variance has been requested.*

# Conceptual Plan Approval Criteria continued...

## SLDC §8.10.2.4. Criteria for creation of a Planned Development District

1. *insofar as practicable, the landscape shall be preserved in its natural state by minimizing tree and soil removal:* The Project's design follows a terrain-based model of development which focuses on preserving the landscape in its natural state and honoring the existing terrain to the greatest extent possible. Disturbance will be limited to roadway construction, utility installation, and the grading necessary for constructing the homes themselves. There will be no mass grading and existing vegetation will be protected during all construction activities. Roadway and home siting have been done to respect existing stands of trees and minimize tree removal.
2. *proposed buildings shall be sited harmoniously to the terrain and to other buildings in the vicinity that have a visual relationship to the proposed buildings:* As shown on the Conceptual Plan, the proposed single-story casitas are situated organically throughout the site, creating a harmonious relationship with the terrain and with one other. In order to preserve views, the maximum permissible height of the homes will be 16 feet.
3. *with respect to vehicular and pedestrian circulation and parking, special attention shall be given to the location and number of access points to public roads, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and the arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed structures and neighboring properties:* The Project will be accessed from Camino La Tierra via Tierra del Prado, a 26-foot asphalt roadway within a 50-foot private access and utility easement. This is the only access to a public road and gates are proposed. A secondary, gated emergency-only access is proposed at Arroyo Calabasas, a variance for which is part of this request. The internal roads off of Tierra del Prado will be paved with a 20-foot drivable surface. Since the internal roads will be part of the condominium common area, no roadway easement or right-of-way are required. Off-street parking will be provided at each residence in double-car garages and in each driveway, which will not detract from the design of proposed structures or neighboring properties. Pedestrian access will be separated from vehicular access and will be provided via off-road trails that will loop through the site.
4. *private roads and gates may be approved as part of the application but are not required:* As stated above, vehicular gates are proposed at the Camino La Tierra entry. In addition, the emergency access at Arroyo Calabasas will be gated and only accessible by emergency vehicles.

# Casitas de La Tierra

## Variance Requests

## Variance Requests

Variances are requested from §7.11.3.1, Connectivity, and §7.11.11.3, Access to...Multi-Family Development, in order to permit the access to Arroyo Calabasas to be gated and utilized for emergency purposes only.

We wish to prevent any unnecessary traffic impacts to Arroyo Calabasas and there is no compelling traffic circulation reason to maintain an open connection.

Staff states that, "*The secondary access may be beneficial to the Arroyo Calabasas neighborhood as an egress in the event that the intersection of Arroyo Calabasas and Camino La Tierra is impassable.*" If such a situation occurred, emergency response could open the gates and permit residents to evacuate through the Casitas community. Furthermore, Staff states that a 17-lot subdivision developed under the current zoning would not require a second access point. Interestingly, Staff does not seem concerned about evacuation issues under this scenario.

# Traffic Study Findings

**Table 1 – LOS Definitions**

Level of Service	Definition	Signalized (sec/veh)	Unsignalized (approach)
A	Most vehicles do not stop.	<10	<10
B	Some vehicles stop.	>10 and <20	>10 and <15
C	Significant numbers of vehicles stop.	>20 and <35	>15 and <25
D	Many vehicles stop.	>35 and <55	>25 and <35
E	Limit of acceptable delay.	>55 and <80	>35 and <50
F	Unacceptable delay.	>80	>50

**Table 2 – 2019 Existing Unsignalized Intersection Results**

Intersection/Movement	2019 AM Peak			2019 PM Peak			
	Delay	v/c	Queue* (ft)	Delay	v/c	Queue* (ft)	LOS
Camino La Tierra & Wildflower	10.5	0.07	25	10.2	0.06	25	B
NB Approach	8.3	0.36	50	8.2	0.37	50	A
EB Approach	10.2	0.05	25	10.2	0.06	25	B
WB Left	8.4	0.44	75	8.4	0.41	50	A
WBB Thru/Right	11.4	0.02	25	10.9	0.02	0	B
SB Approach	8.8			8.4			A

\* – HCM 95<sup>th</sup> percentile queue rounded to next 25-foot increment

**Table 3 – Trip-Generations**

Land-Use	Size	Daily	AM-Enters	AM-Exit	PM-Enters	PM-Exit
Senior Adult Housing Detached ITE Code 251 <sup>aa</sup>	64-DU's <sup>aa</sup>	380 <sup>aa</sup>	8 <sup>aa</sup>	22 <sup>aa</sup>	34 <sup>aa</sup>	13 <sup>aa</sup>

**Table 5 – 2024 Build Unsignalized Intersection Results**

Intersection/Movement	2024 Build AM Peak			2024 Build PM Peak			
	Delay	v/c	Queue* (ft)	Delay	v/c	Queue* (ft)	LOS
Camino La Tierra & Wildflower	12.2	0.08	25	12.4	0.08	25	B
NB Approach	8.7	0.49	75	8.7	0.47	75	A
EB Approach	12.2	0.06	25	11.8	0.06	25	B
WB Left	8.6	0.52	100	8.6	0.56	100	A
WBB Thru/Right	13.2	0.03	25	13.9	0.02	25	B
SB Approach	9.2			8.9			A
Camino La Tierra & Site Entrance	0.5	0.04	25	0.6	0.03	25	A
NB Approach	10.6	0.01	0	11.1	0.03	25	B
WB Left	8			8.2			A

\* – HCM 95<sup>th</sup> percentile queue rounded to next 25-foot increment

# What if the project is not age-targeted to seniors?

**Table 3 -- Trip Generation**

Land Use	Size	Trip Generation				
		Daily	AM Enter	AM Exit	PM Enter	PM Exit
Single Family Housing Detached ITE Code 210	64 DU's	690	13	38	43	24

**Table 5 -- 2024 Build Unsignalized Intersection Results**

Intersection/Movement	2024 Build AM Peak				2024 Build PM Peak			
	Delay	v/c	Queue* (ft)	LOS	Delay	v/c	Queue* (ft)	LOS
Camino La Tierra & Wildflower	12.5			B	12.7			B
	8.8	0.08	25	A	8.7	0.08	25	A
	12.6	0.51	100	B	12	0.48	75	B
	8.6	0.06	25	A	8.6	0.06	25	A
	13.4	0.53	100	B	14.3	0.57	100	B
	9.3	0.03	25	A	8.9	0.02	25	A
Camino La Tierra & Site Entrance	0.8			A	0.9			A
	10.8	0.06	25	B	11.3	0.05	25	B
	8	0.01	0	A	8.2	0.04	25	A

\* - HCM 95<sup>th</sup> percentile queue rounded to next 25-foot increment

## Environmental Protection Measures

- Preservation of 33.11 acres of open space/common area comprising 74% of the site.
- In order to protect the night skies, no site lighting is proposed. Exterior residential lighting will be downlit and fully shielded in accordance with Santa Fe County requirements.
- Homes will be limited to single story with a maximum height of 16 feet.
- A terrain-based model of development - NO mass grading.
- Enhancement of arroyos/riparian corridors through erosion control, removal of invasive plant species, etc.
- Preservation and extension of existing trails and dedication for public use.
- Protection of the archaeological site.

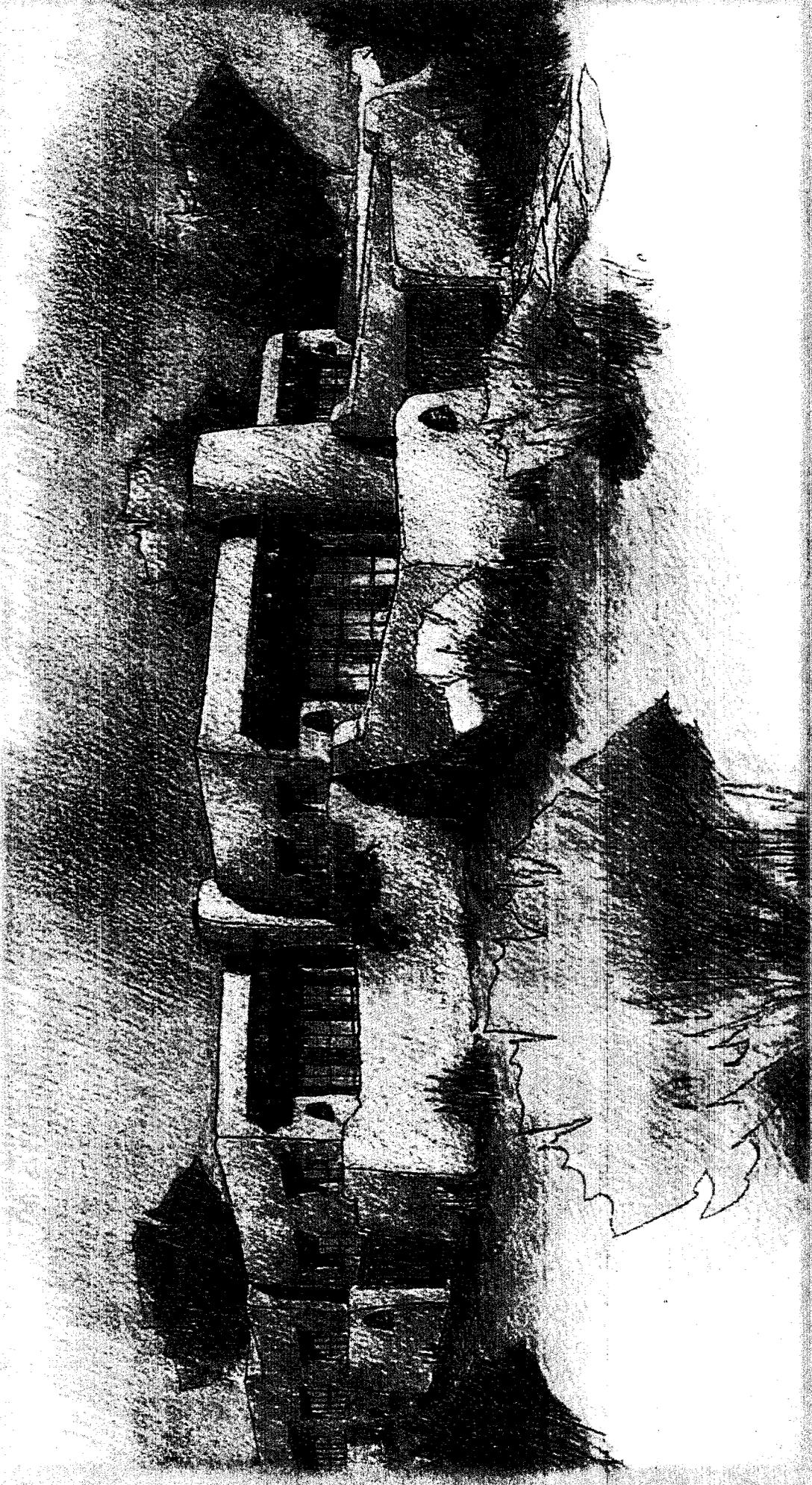
## Condominium Plan

The Project will be developed as a residential condominium. The condominium plat will identify and address the following elements:

- A 5,000 square foot "unit area" for each proposed dwelling, which will accommodate home construction and private outdoor space.
- Dedication of 17.22 acres of open space.
- Establishment of 15.89 acres of passive recreational common area.
- Dedication of public trail and utility easements.

A condominium owners' association will be established that will be responsible for maintaining the roadways, landscaping, open space, trails, drainage improvements, wastewater system, and signage. In addition, the declaration will establish rules, regulations, use restrictions, and design guidelines for the community, which will be enforced by the association.

# Architectural Concept



## Staff Recommended Conditions of Approval

1. Access from Camino La Tierra shall not be gated. **Oppose. Gates are expressly permitted in the PD District (§8.10.2.4.4.) and are only prohibited in subdivisions of five or more lots.**
2. The water allocation resolution shall be approved by the BCC prior to Preliminary Plat approval. **Agreed.**
3. Water Delivery Agreement and Wastewater Collection Agreement shall be approved by the BCC prior to Final Plat approval. **Agreed.**
4. Common Open Space shall be identified on the Final Plat with a note stating that no future development will be allowed in this area. **Agreed.**
5. Homes shall not exceed 2,500 sq. ft. inclusive of garages. This shall be noted on the Final Plat. **Oppose. There is no basis in the Code to restrict home size. Furthermore, the homes are not yet designed.**
6. Homes shall be limited to a single story. **Agreed.**
7. If building setbacks from the floodplain are less than 75 feet, engineered bank stabilization is required. **Agreed.**
8. Archaeological site must be placed in a non-disturbance easement. **Agreed.**
9. Archaeological site must be fenced during construction. Fence must be removed upon project completion. **Agreed.**

# Casitas de La Tierra

**End of Presentation**



Friday, July 9, 2020

To: Richard Virtue, SLDC Hearing Officer

From: Chris Graeser

Re: Response to staff report and letters from counsel for opponents; Casitas de La Tierra

*Note: This response was not provided before the hearing because counsel for opponents did not copy counsel for applicant on their letters, and counsel for applicant only received them on July 7.*

The purpose of this response is to address legal issues raised in the staff memo and letters from opponents' attorneys that are relevant to review of the application. Much of the opponents' letters consist of speculation, attempts to second guess expert opinions without opposing expert evidence (i.e., traffic engineering), argument or *ad hominem* attacks, and are not addressed here. Quasi-judicial zoning decisions must be based on substantial evidence.

**Definitions: Use, Compatible, Sustainable**

The terms "use," "compatible" and "sustainable" are employed without definition.

The proposed *use* is the same as the surrounding developments, as it will remain detached, single-family residential homes. No non-residential or multi-family building *uses* are being proposed.

Opponents mistakenly interpret "compatible" to mean "the same as" when discussing relative levels of residential density, but without any citation to authority for that proposition. In fact, the code addresses exactly that issue (SLDC Appx. A, Part 2 Definitions), defines "Compatible or Compatibility" as:

Characteristics of different uses, activities, or design that allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include height, scale, mass, and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access, and parking impacts. Other important characteristics that affect compatibility are landscaping, lighting, noise, odor, and architecture. *Compatibility does not mean "the same as;"* rather, compatibility refers to the sensitivity of development proposals in maintaining the character of existing development. *The fact that development is not within the same zoning district, or has different area and use characteristics does not make it incompatible.* (emphasis supplied).

It is essential to note that, of the fourteen separate elements of compatibility, density does not appear at all.

The use of the term “compatible” within the SLDC addressing compatibility of different uses, including at §4.9.6.2 re: conditional uses; §9.10.4.1, §9.13.4.1 re: non-residential uses, and §11.4.4.2.7, §11.5.1.7 re: DCI’s, also makes it clear that it does not mean “the same.”

The opponents repeatedly use the term “sustainable” to mean maintenance of a specific zoning density; in this case, large lot, low density development. However, the SGMP anticipates exactly the opposite:

Unsustainable development patterns negatively impact the environment. Large lot, low-density residential development is often resource intensive, expensive to serve, overly consumptive of land, and often results in excessive vehicle miles traveled. 2.1.1.1 Key Issues

While rural, large lot development is a popular lifestyle option, the public and private costs of such development can be excessive and may not position the County or its residents to attain sustainability. 2.2.4 Future Land Use Objectives

**Affordable Housing: Mixed Use Development and Plan/Zoning Consistency Requirement**

Opponents strategically object to the lack of affordable housing and mixed uses in the proposed development. Given their expressed concerns about young families, property values, traffic, etc. those objections fall flat. That is to say, it is hard to imagine that their objection would be muted if the applicant instead proposed low income housing along with retail and commercial uses.

There are two fundamental flaws in opponents’ approach. First, both of these items are specifically addressed in the zoning code (the SLDC) and specifically do not apply to the proposed development. SLDC Section 13.2.1 (no affordable housing requirement); Table 8-19 (use of TDR’s in lieu of mixed-use development). A zoning authority cannot adopt a code that specifically exempts a particular form of development from various requirements, but then argue generally that the code shouldn’t be followed in a controversial case. If specific code provisions are adopted, they must mean something.

Second, the approach of staff and the opponents seems to require that the application further every single goal, policy and strategy in the SGMP. This is neither possible nor legally required.

The seminal case in zoning and general plan consistency jurisprudence is *Sequoyah Hills Homeowners Assn v. City of Oakland*, 23 Cal.App.4<sup>th</sup> 704, in which “Appellant next contends that the Oak Knoll project conflicts with certain provisions of the OCP [Oakland Consolidated Plan], and should not have been approved.” The court disagreed, first establishing that the applicable law “does not require an exact match between a proposed subdivision and the applicable general plan. Rather, to be consistent, the subdivision map must be compatible with the

SFC CLERK RECORDED 08/19/2020

objectives, policies, general land uses, and programs specified in the applicable plan.” (internal citations and punctuation omitted).

The court then specifically addressed that the rezoning at issue was consistent with 14 plan policies while being at least partially inconsistent with three of them. The Court agreed that “none of the policies on which appellant relies is mandatory, and that a given project need not be in perfect conformity with each and every OCP policy.” The court then, in a widely-quoted statement, held that “Indeed, it is beyond cavil that no project could completely satisfy every policy stated in the OCP, and that state law does not impose such a requirement.”

Staff and the opponents point to a few policy goals that the proposal does not accomplish, more or less ignoring the comprehensive list of goals and policies that it does achieve, as detailed in the application. However, SLDC Section 1.15.6 clearly states that “No single factor is controlling; each must be weighed in relation to the other.” Denying an entire project that meets many SGMP goals and policies because it does not meet all of them is imposing an impossible standard. This is particularly true in light of the staff suggestion that the density is excessive, in contrast to the SGMP’s clear intention to support compact development and higher densities (see, e.g., SLDC 1.15.6.2).

In essence staff treats all of the policy goals as prescriptive requirements, ignoring the balancing language of Section 1.15.6. Certainly the Hearing Officer may – and even should – consider whether, for instance, the project provides “a greater amount of affordable housing,” but that is only one part of a larger analysis. Moreover, the weight to be placed on policy goals in favor of affordable housing and mixed use development has to be determined in the context of 1) specific code provisions that the “directives” cited by staff do not apply to this project and 2) the near-certain opposition to a mixed-use, affordable development if the Applicant were to propose it in this location.

Even conceding that the proposal does not materially advance every single goal or policy of the 279-page SGMP, neither staff nor the opponents are able to point to any that it materially hinders.

### **Reliance on Zoning Classification**

The Baums’ attorney states that they “moved to Santa Fe... and they relied on the area’s zoning when choosing their new home.” That may be the case, although they offered no sworn statement that they in fact made such an investigation. In any event, their reliance on the *Miller* case is misplaced.

*Miller* dealt with a government-initiated downzoning of a privately-owned parcel, and the Court was concerned only with the property owner’s reliance on the zoning of their *own* property.

The correct analysis for a rezoning is the one found in the SLDC, which complies with the *Miller* court's overall instruction that rezoning should not be done without context or standards.

### **There is no Requirement to Amend the SGMP Future Land Use Map**

The staff report seems to indicate that approval requires a resolution amending the SGMP Future Land Use Map (FLUM), as well as the amendment to the zoning map that the Applicant requests. Staff's position seems to be that any rezoning requires a FLUM amendment. The SLDC states that only the board, the planning commission or the administrator may initiate a FLUM amendment. SLDC Section 2.1.9.1. Under that interpretation no landowner could ever apply to rezone their property. In their search for reasons to deny, staff hasn't thought out their end game.

The better approach is that used by the court in *Watson v. Town of Bernalillo*, 111 N.M 374, that a rezoning functions as a plan amendment as well.

At best the SLDC is ambiguous as to the need to amend the FLUM. In that case, the black letter law is that zoning regulations are in derogation of the common law, and therefore any ambiguities are strictly construed in favor of the owner's free use of their land. *Nesbit v. City of Albuquerque*, 91 N.M. 455.

### **Intention of Sustainable Development Area Categories**

Opponents refer to the Subject Property's location in the SDA-2 area as disqualifying for the proposed development. However, they misinterpret the purpose of the development areas. The SDA's are a long-range planning tool for developing infrastructure:

Designated Sustainable Development Areas (SDAs) and the SDA Map which establish future service areas and prioritize planning, budgeting and provision of infrastructure and services. SGMP 2.2.5.1 Growth Management Strategy.

This project already has adequate public facilities and services, rendering it wholly appropriate pursuant to the SLDC's zoning purpose to "Promote and incentivize infill in SDA-1 and SDA-2 areas where adequate public facilities and services presently exist." SLDC 8.1.4. See also, SLDC 8.10.2.1.5: purpose of Planned Development District is to "encourage infill projects"; SGMP Goal 7.7: "Incentivize planned development that provides opportunities for... infill developments."

### **The SLDC Allows (although does not require) Gates, and Arroyo Calabasas is Dedicated for Emergency Use**

Staff states that non-gated access would be "beneficial" and they also make the point that no secondary access would be required for a 17-lot subdivision, and continue to argue in favor of a

4

17-lot subdivision. Therefore, there isn't any imperative to ignore the SLDC's permission to allow gates found in Section 8.10.2.4.4. Gates at Camino La Tierra, and at Arroyo Calabasas (emergency only) are allowed by code and appropriate.

Arroyo Calabasas is dedicated for "limited public use" including emergency services (see attached plat), and therefore may legally be used by the Applicant for secondary emergency access.

**There is no Definition of "Workforce Housing," and the Age-Targeted Development Meets the Plan Desires for a Mix of Housing**

Staff recommends denial, in part, because the project does not provide adequate workforce house (an SGMP goal). However, that term is not defined, and logically applies to any home in which any employed individual lives. There is no evidence that none of the new residents will be employed in any fashion, and what the SGMP actually requests is "a broad mix of housing types to address workforce housing." SGMP Section 8.3. It is exactly this mix of housing types that opponents dislike.

It should be noted that while the project is age targeted from a design and marketing perspective, there is no intention to limit ownership.

**Open Space Does Not Require Public Access, but Will Protect Land that is Currently Unprotected**

Opponents appear to argue that any areas designated open space should allow unfettered public access. There is no such requirement in the SLDC, which recognizes a difference between public parkland and preserved open space.

Anyone can apply their own math. However, the fact is that at present none of the Subject Property is protected or reserved for open space. If the application is approved, over 30 acres will be preserved, and it will include dedicated public trails which do not currently exist.

Rules applicable to current development offer no protection against mass grading, outsized homes with multi-car garages, numerous barns, stables and other outbuildings and tennis courts and other amenities.

Similarly, the archaeological site is not currently protected, and it will be protected with approval of the proposed development.

SFC CLERK RECORDED 08/19/2020

**There is no Requirement to Prove Financial Viability**

The Lees expend substantial ink addressing the financial viability of the project (interestingly, the Baums are opposed to the applicant's efforts to construct "smaller, sellable houses.") Suffice it to say that nowhere does the SLDC second guess an applicant's investment-backed market analysis and, at the worst, the opponents are right and they won't end up getting the new neighbors that they are so anxious about.

**Opposition to Proposal**

County staff and the opponents both reference the number of letters received in opposition to the proposal, and this level of opposition could have been the motivator for staff's unexplained about-face in its position. However, the number of letters received, from an obviously well-organized and well-funded cadre of opponents, has no place in the code analysis. If the proposal meets the requirements of the code, the opponents' beef is with the code itself. Similarly, staff doesn't seem to like certain code provisions, but it is the code that the County Commission passed. If the position is that the SLDC does not comply with the SGMP, opposition to this project is a misplaced effort.

Staff repeatedly advocates for a 17-lot subdivision on the site, which admittedly would be less controversial. However, that is not what the property owner applied for. There are any number of alternative projects that could be built on the site. The property owner applied for a 64-unit condominium, which fully complies with the SLDC, and that is the application up for review.

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