

[Commissioner Montoya joined the proceedings by telephone.]

XIII. D. Growth Management Department

1. **LCDRC CASE # MP 06-5212 Santa Fe Canyon Ranch Rosanna Vasquez, Agent for Santa Fe Canyon Ranch, LLC (David Schutz, Jim Borrego). Applicant is Requesting Master Plan Approval for a Residential Subdivision Consisting of 162 Lots with 174 Residential Units on 1,316 Acres to Be Developed in the Three Phases, and a Request for Several Culs-de-Sac to Exceed 500 Feet in Length. The Property Is Located Off Entrada La Cienega Along Interstate 25 in the La Cienega/La Cieneguilla Traditional Historic Community within Sections 1, 2, 10, 12, 13, Township 15 North, Range 7 East and Sections 5, 6, 7, 8, Township 15 North, Range 8 East (Commission District 3) Joe Catanach, Case Manager (VOTE ONLY)**

CHAIRMAN CAMPOS: Mr. Abeyta, who's going to lead for the County?

MR. ABEYTA: Mr. Chair, the Land Use staff will take the lead. The case manager is Joe Catanach.

CHAIRMAN CAMPOS: This is a continuation of the last hearing. Is that correct?

MR. ABEYTA: Mr. Chair, yes. But it's my understanding the public hearing has been closed and therefore unless you have questions for staff there was going to be a vote taken.

CHAIRMAN CAMPOS: Okay. Mr. Catanach.

JOE CATANACH (Technical Director): Mr. Chair, I was just going to state that it was tabled. There was discussion from Steve Ross about an issue that occurred that day regarding public comment that Tina Boradiansky had requested, and so I think there was some consideration to table this and allow Tina Boradiansky to review the minutes of the September BCC meeting.

CHAIRMAN CAMPOS: Okay. So that's the status presently?

MR. CATANACH: Yes, sir.

CHAIRMAN CAMPOS: So is Ms. Boradiansky present? Please come forward. Please state your name and address for the record.

TINA BORADIANSKY: Mr. Chair, Commissioners, Tina Boradiansky.

CHAIRMAN CAMPOS: Your address? Hold on a second. Are we going to have Commissioner Montoya on the telephone?

COMMISSIONER MONTOYA: Hello, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya, how are you?

COMMISSIONER MONTOYA: Good. How are you doing?

CHAIRMAN CAMPOS: And where are you?

COMMISSIONER MONTOYA: In Rome.

CHAIRMAN CAMPOS: Good. In Rome. Good for you. Can you hear us?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Okay. Ms. Boradiansky is now going to speak on the Santa Fe Canyon Ranch. Are you at that place, Commissioner Montoya? You're there?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Okay. Ms. Boradiansky.

MS. BORADIANSKY: Mr. Chair, I have copies that might make this a little bit simpler. *[Exhibit 3]* May I approach?

CHAIRMAN CAMPOS: Sure. Ms. Boradiansky, it looks like you have a lengthy statement.

MS. BORADIANSKY: It is not lengthy, your honor. I'll be quick.

CHAIRMAN CAMPOS: Your honor?

MS. BORADIANSKY: Sorry. Old reflexes. Mr. Chair, Commissioners, I believe it's in everyone's interest in this matter, Santa Fe Canyon Ranch, that the procedure be in full compliance with state and federal law. And as you're aware, I have some concerns and I have filed in federal court to preserve those concerns. I'll be very quick, but I believe there's three legal and one public policy reason why the master plan currently before this Commission either must be denied as incomplete, or tabled until it's properly submitted. Otherwise it will not withstand a judicial review.

CHAIRMAN CAMPOS: Let me ask you a question. You were not here at the last meeting?

MS. BORADIANSKY: Excuse me.

CHAIRMAN CAMPOS: You were not present at the last meeting?

MS. BORADIANSKY: I informed the federal judge that I would not be available in the evening.

CHAIRMAN CAMPOS: Did you inform us?

MS. BORADIANSKY: Your counsel was present at the *[inaudible]* Hearing.

CHAIRMAN CAMPOS: Okay. Did you have an opportunity to review the minutes that were presented to you and preserved for you?

MS. BORADIANSKY: I received a transcript but no exhibits were attached and I consider the transcript to be incomplete.

CHAIRMAN CAMPOS: Okay.

MS. BORADIANSKY: Not because of exhibits but because witnesses were not offered for any of the expert reports and conclusions.

Mr. Chair, the critical distinction I'm making is that this is an adjudication, an administrative adjudication. The Commissioners own rules of evidence and order entitle me as one of the property owners immediately adjacent to cross-examine the applicant and their witnesses. This is a fundamental due process right and I have protected my right to exercise that. I filed a request for ADA accommodation on August 8th asking for daytime

participation. The County has failed to engage in any substantive process of negotiation to either identify the parameters of medical ability or to discuss options of how to proceed. Instead it was scheduled for the agenda without any progress that week.

And basically the process has been trying to force me into simply accepting an offer of accommodation that was factually incorrect. I was told that the hearing would constitute two hours total including cross examine, which we all know to be inaccurate since the review stage was four hours without any cross-examine.

The right to cross-examine inherently includes certain rights. It includes, first of all, knowledge of who the witnesses are going to be so I can prepare. Second, it includes the presence of those witnesses or they cannot be cross-examined. If the witnesses at the adjudication are not there to defend their substantive reports and conclusions, it's impossible for this Commission to give that any evidentiary value.

CHAIRMAN CAMPOS: Would you repeat that?

MS. BORADIANSKY: If the applicant has chosen to not present an offer of witnesses, the authors of all of their substantive reports that are part of this master plan and make them available for cross examine, those reports have no evidentiary value in an adjudication, because I have a right to cross-examine. The witnesses are not being offered. So the transcript is completely incomplete in the sense that the substantive portions of the master plan are being submitted without an opportunity to test the methodology, the assumptions, the bias, the qualifications.

As an adjudication, that's completely improper. And if this goes forward to a decision making based on reports where no authors are being offered by the applicant, I believe that judicial review will find that it's arbitrary and capricious. I did ask for a witness list and I was told by the County Attorney that there was no need to provide me with a witness list.

The BCC I understand was trying to figure out how to accommodate my request, but I believe there's a very serious confusion going on between rule-making and adjudication. The Commission does both functions. Rule-making is coming up with regulations, policies, proposals. Written comment would be appropriate if you were publishing something for comment, like *Federal Register*. Written comment is completely appropriate. It is completely inappropriate to my formal request for cross exam. Cross-exam is a call and response process. It has absolutely nothing to do and is not interchangeable with written comment on a transcript. It is my right to test the facts, the bias, the methodology – everything involved that constitutes hundreds of pages in this master plan.

So the offer of the County was trying to resolve this on short notice and the offer was to comment on a transcript. I would just like to point out that legally we're talking about apples and oranges here. In July I informed the County Attorney that I wanted to cross-examine. He told me it's a public right. It's not because I'm an attorney that I'm allowed to cross exam. Every single person here is entitled to cross exam in a public hearing. But the way that the procedure is playing out, that's getting confused with the rule-making function. So I'd like to back up and see if we can get back on track and begin a sensible conversation about how to make this legally compliant.

acre stacked right adjacent to a low-density community. Because this applicant's refusing to legally limit their number of houses basically lower La Cienega probably has -- I don't know, 40 to 50 houses. We're looking at 600 houses adjacent to us, which is a small city. So our community plan -- I believe Supreme Court Justice Ginzberg said it very well. She said you look to the intent and the purpose of the law. Our plan holds the weight of ordinance and it's entitled to statutory construction. So any tortured definition taking that out of context will be subject to judicial review.

Third, we have another legal problem in the case at this time. It's also premature to vote on this submission without allowing the completion of the La Cienega Development Review Committee vote of July 2nd which was not finalized. It was not finalized due to the fact that yet again another lengthy evening four-hour hearing was going on and Santa Fe County Attorney David Stephens apparently left the meeting before the vote was finalized. That left the committee without the legal guidance how to finalize the vote properly. As a result, the vote was 2-3 against approval of this master plan, but it was never procedurally perfected by a subsequent motion to deny.

The committee chairman erroneously believed that the 2-3 vote established the recommendation to deny. It's my understanding that five different people, both committee members and the president of the La Cienega Valley Association has contacted the County to try to ask for assistance to remedy this mistake. Once it became obvious that the absence of the County Attorney at the time of the vote resulted in this limbo various communications were received by different county members. Those include Carl Dickens, Camille Bustamante, Eugene Bostwick and Chairperson Ivan Trujillo, all asking the County for guidance how to complete the vote that was not properly perfected because David Stephens left early.

It's my understanding the County failed to respond to any of those requests and weeks have gone by and this record now fails to show that the review process resulted in a recommendation to you that it be denied. As a resident that's an adjacent property owner whose property will be devastated by this development, my interests will be totally adversely affected if that denial is not in place and I will assert legally the fact that the County created a problem, failed to clean it up, and we ask that we back up and be allowed to complete that vote so your record is accurate.

I believe you received a letter from Mr. Trujillo clarifying that he believed he had gotten it to a proper denial. Procedurally, it was imperfect. That's obvious. Over and over there have been requests to fix it and no response. This is a critical process and many, many people put a lot of time into that review process and it's absolutely unacceptable that it be no recommendation. Because that was not what happened. It was simply not a perfected vote because Mr. Stephens left early. So again, I'd say that it's premature to vote at this time. Either it has to be tabled or denied. If it's approved without that denial, which the community is entitled to, again, we're going to have to clean it up in a lengthy legal procedure which I don't think is anybody's interest. I think it's in everyone's interest that this be done in compliance with state and federal law, and that you have a solid basis before you to vote.

I have filed a federal lawsuit as you're aware to protect my rights to accommodation to cross exam at a reasonable hour. At no time has anyone from the County approached me to factually sort out what are the options? I believe there's plenty of options. I also believe that if this goes forward it will not withstand judicial review because the substantive reports that constitute the master plan have not been subject to adjudication scrutiny. It is my right under the rules of order to ask those questions, to find out did the traffic analysis person – what was their methodology? What are their qualifications? What is their bias, possibly? That's inherent in the right to cross exam.

The applicant chose to not bring forward any of those people for public scrutiny, and I believe as a matter of law in an adjudicatory process it means there is essentially no evidentiary value to all of the reports that constitute the master plan and a judge would very likely consider any approval arbitrary and capricious, because there's no factual basis that's been tested. So that's the first reason I believe it must be denied or tabled. Therefore, it is an incomplete submission. It was their choice to not bring forward those people and there is no opportunity to exercise the cross exam.

Second, there is a legal violation – violation is not the right word. Secondly, this application is flawed in the sense that it is taking the position that the La Cienega – what they're calling code, the La Cienega Ordinance, which is our community plan, that it's in compliance with this master plan. And I believe it is the opinion of the staff that it's in compliance. As an attorney I'd like to say that I believe that is in error and I'd like to explain why.

Recently Supreme Court Justice Ruth Ginsberg was speaking in Santa Fe. Apparently she's here for the summer because of the opera. And she reiterated how important it is when you're interpreting a law to look to the intent of that law, not just the language. She said over and over, things are not perfectly written. They're not perfectly articulated. You determine legislative intent; you determine the intent of the authors. And then you reconcile that with the provisions of that law. The La Cienega Community Plan was written by residents; it was not written by attorneys. It was a good-faith effort to achieve a certain type of continuance for a rural lifestyle in a historical community that is agricultural.

Everyone's aware of that. The Commission approved the community plan and it has the weight of ordinance. As such, it's entitled to statutory construction principles. And the La Cienega Community Plan clearly states it is the intention of that plan to preserve and protect a rural, low-density lifestyle. The applicant is taking out of context the provision regarding density transfers and claiming that they're complying with that plan because the language out of context appears to justify density transfers. That cannot be reconciled legally with the intent of the community plan. It's directly opposite. And I believe J.J. Gonzales testified two weeks ago that it's quite clear that the density transfers the authors put in intended to protect the ability to farm by consolidating housing areas on certain parts of the property so as to not impair agricultural function.

It was definitely the intent, and it completely defeats the spirit of the plan, to claim that these density transfers allow high-density, urban housing that does down to a third of an

So what you have right now is you have reports that no one has been offered as witnesses for exam. You have a community plan that has the weight of ordinance that is inconsistent with the staff recommendation that's in compliance. And then you have this imperfected vote.

The fourth issue is one of more public policy. This is a massive development proposal which is unusual and should not be treated as some of the smaller projects. There's endangered species on this property. There has been no analysis of what to do about that, how to protect them. The master plan says, well, federal Fish and Wildlife have not written back to us. Well, that's not enough in a property that is one of the last strongholds in New Mexico of wildlife. There's a federally protected wetlands. There's no mention in the master plan what that means. It has been inspected by the Army Corps of Engineers and clarified to be within federal protection. I don't see anything in the master plan acknowledging what the endangered species are entitled to, what the impact will be of noise, light, traffic. All of this will be devastating.

I do believe it's within the authority of this Commission to require a full study of noise and light. We live in an area in the lower valley where you can hear a radio half a mile away. If you put 600 houses a few feet away it's going to destroy our property values. It will destroy our quality of life. It will destroy the lower valley as we know it. And even though the Code may not currently require that I believe it's within the authority of this Commission to recognize that 600 houses next to 40 houses in an agricultural valley presents a problem, a serious problem. The current siting of this places it 30 yards from my fence line. I'd like to hear about the public health issues of flies and manure from the rural neighbors, like myself. We all have a right to have livestock.

How will the Public Health Department consider flies and manure 30 yards from high-density urban housing that's on my property. I have a legal right to have livestock. Nobody's contesting that. They have not even considered the impact on their property value not having a buffer zone. So the siting is disastrous. They've stacked it right behind the community for maximum damage. And it's possible, frankly, that there may be a little retaliatory element to this. I was the person who early on went to State Engineer because I had worked there. Read the file, found a mistake, and their consumptive water rights were reduced from 20 to 14. They have now placed most of -- a great deal of the high-density urban housing 30 yards from my fence line. I don't know if it's retaliatory, but they have 1300 acres and the noise and light of this high-density housing will destroy the lower valley.

And I'm asking you to order an analysis of that. It's within your authority to recognize that 600 houses is an unusual impact. And in terms of protecting the community we'd like someone with expertise to look at the noise impact, to work with them to try to figure out how to site this project further south, which would minimize. If they moved this same proposal for Phase I to the southern portion of their property they would solve and minimize light, traffic and noise. If they used the overpass that they're lucky enough to own for traffic, they will remove the community opposition to the traffic problem. They have all kinds of opportunities and they are not using them. They have basically gone through the motions of

acting like they're listening to us and then made contrary decisions.

So I'm asking you today to either table or deny this, because going forward on something this incomplete, and this flawed, will only result in a very long review process. The problems are obvious, and I think it's in everyone's interest to back up and do it right. And I'd like to work with you to do that. I think we can do it right. I think it's pretty clear what state and federal law require in terms of supporting a master plan, in terms of being able to cross exam, get the facts on the table, and we're entitled to that, because this will destroy our community.

There's one additional issue, which I believe J.J. Gonzales is the most qualified to speak to. The State Engineer has reached a tentative settlement regarding the return-flow credits, which also has a number of years built into data collecting and I would ask also that you allow him to explain to you what that process was and the impact so you can consider that.

CHAIRMAN CAMPOS: Mr. Gonzales, very briefly.

MS. BORADIANSKY: Mr. Chair, finally, to just clean up my own procedural issues with the Commission, I would like to back up and get back to substance and figure out a sensible option for participation. I've been willing to do that since August. I'm available to do that, and it's just too important not to.

CHAIRMAN CAMPOS: Thank you very much. Mr. Gonzales.

J. J. GONZALES: Thank you, Mr. Chair, fellow Commissioners. My name is J.J. Gonzales, 54 Entrada La Cienega. And as you know, there was an application pending before the State Engineer and that hearing took place September 23rd, 24th, and 25th. I just have the highlights of what was discussed.

Number one, there was a proposed settlement agreement reached by the protesting parties and the applicant, Santa Fe Canyon Ranch. There was conditions of approval submitted by the State Engineer for a partial approval of their permit. The hearing itself was left open pending a return-flow credit plan. And some of the conditions were that the pumping would be limited to 14.55 acre-feet. Once they start using water for domestic use they cannot use water for their agricultural use, so their water drops to 14.55 acre-feet. Any other pumping, like what they wanted was 32 acre-feet, that is contingent on the return-flow credit plan. And that was delayed for approximately three years.

They have conditions to meet. First of all is they have to be able to demonstrate that they can use two acre-feet of water per year in their treatment plant. That is - and have to demonstrate that amount of water for a period of one year. So they have to have a certain number of houses to use that amount of water. And then they can submit their application for a return-flow credit plan. So the minimum time for that is three years from the date the document was signed on last Thursday. The protest will be started when they reach that amount, when they do an application for return-flow credit, then all parties are allowed to comment on that. There will be a published application and then published flier file protest and then the State Engineer will have a hearing on the return-flow credit plan.

The other important thing is that east of Alamo Creek, which is the water source that

they describe towards the center of the ranch, they cannot drill any more wells east of Alamo Creek. They have one proposed well which will be limited to .5 acre-feet. So that's one-half acre-foot east of Alamo Canyon, and that was a well that the State Engineer felt that would impair the springs in La Cienega. So they're limited to one well and no other wells east of Alamo Creek.

The other thing is even with – if their return-flow credit plan is not approved that means that the Phase II and Phase III can be considered. The original application for 14.55 acre-feet doesn't allow for any water for reserve, like fire protection. They don't have water for outdoor landscaping that presently exists on the property. And I believe those are the major points in this agreement that was signed last week. Thank you very much.

CHAIRMAN CAMPOS: Thank you, Mr. Gonzales. Ms. Vazquez, as attorney for the applicant, you're up. And what issues do you intend to address?

ROSANNA VAZQUEZ: Mr. Chair, Commissioners, I want to address a couple of the comments made by Ms. Boradiansky, and clarify a couple of issues on the stipulated order that's been submitted to the Office of the State Engineer.

CHAIRMAN CAMPOS: It's 11:30 so let's be brief.

MS. VAZQUEZ: Commissioner Campos, I would ask on the stipulated order that you – that our hydrologist specifically discuss the details that Mr. Gonzales has raised. We do have copies of the stipulated order, however, they are not signed by the judge yet, but it was the order that was agreed to by all the parties. And I would ask you to give him five minutes to get that into the record.

CHAIRMAN CAMPOS: I'd like to address the legal issues. You don't want to address any of the procedural issues?

MS. VAZQUEZ: No, your honor. Those are the issues raised by Ms. Boradiansky.

CHAIRMAN CAMPOS: Does the Commission wish to hear the testimony for the hydrologist for the applicant?

COMMISSIONER ANAYA: Mr. Chair, a question. Are you going to allow any other people to speak?

CHAIRMAN CAMPOS: I don't think so.

COMMISSIONER ANAYA: Okay. I'd like to hear it.

CHAIRMAN CAMPOS: Okay, is there any objection to having the hydrologist for the applicant speak? He can – he'll be able to address the Commission for a couple minutes.

MS. VAZQUEZ: Thank you, your honor. With respect to a couple of issues, Ms. Boradiansky raised the right to cross-examination. She's right that the rules of order allow that possibility, but she's wrong in a fundamental issue in that she didn't have the right to cross-examine the authors of all of the different reports that were submitted. Mr. Chair, the reports were submitted back in 2006. The TIA was submitted, which is one of the issues of concern, in December of 2007, there were final updates. There was a TIA December of 2006, April of 2007, and the final was done in December of 2007. It has been sitting as public

record for everyone's review since that time in Land Use. The geohydrology report is the same. It was last updated in April of 2007, the report, and it was a two-page update. The entire report was submitted to the County in December of 2006. Same with the environmental, same with the archeological report.

At that point, every person here has the right to submit a letter to Steve or to Land Use saying we have questions with regards to these reports, and judiciously, the staff has always provided those to the applicant for us to review, make comments, answer questions if need be. The other point I do want to make is this is not the first public hearing that we have had on this case. We have had numerous community meetings with questions raised specifically on the TIA, specifically on the geohydro. In fact we made available the geohydrology report on-line and at the La Cienega Community Center for everyone's review, and we sent specifically to Ms. Boradiansky because she asked for it, the geohydrology report.

This case has been going on since 2006, Commissioners. There has been an incredible amount of participation and communication amongst the parties. The statement that there wasn't a time to review and a right to cross-examine is not true, your honor, because she could have at that point raised an issue and said, I want Craig Watts here. I want Craig Watts because I've got specific questions with regards to the TIA. That was not done. We do not – we had no intention of having to bring Craig Watts, of having to bring any of our specialists because we had a recommendation for approval. We had worked out all of the issues with County staff. Every question that was raised with regard to the TIA, we updated pursuant to the County staff's request.

Any questions on the geohydro we updated pursuant to County staff. And every single update was in the record for review. Had there been a question by anybody they could have raised it and we would have made people available as we've done the last three years.

With regards to her issue about the application is flawed. Ms. Boradiansky is correct; there was a La Cienega plan and it was put together by the citizens of that – of La Cienega. If you'll note, the ordinance, which is 2002-9 and the plan, which was adopted via Resolution 2001-117 says exactly the same thing. The language with regards to density transfer that Mr. Gonzales quoted is specifically in the ordinance word by word, and it goes far beyond protecting, using density transfers solely for the protection of agricultural lands. If that had been the intent, Commissioners, then it should have been limited. There should have been limiting language in that ordinance saying density transfers are only for the protection of agricultural lands but it does not say that. The plan specifically says exactly as the ordinance reads, and that is to protect community assets, including but not limited wetlands, open spaces, springs, water courses, riparian areas, agricultural lands, acequias, traditional community centers, archeological sites, historic and cultural sites, and multi-generational family housing compounds. It was not limited to agricultural.

What we've done here is we have clustered the area to keep it away from the sensitive areas such as the Alamo Creek, from the canyon area. As you see, the larger lots are on the end and that's all volcanic land on the eastern side – on the southern side there. The plan is the ordinance and the ordinance is being abided to by this development.

Her third point, that the La Cienega Development Review Committee vote was not final. Mr. Chair, Commissioners, I would submit to you that the La Cienega Development Review Committee is a recommending body only. They have the right or the ability to send up a case without a recommendation, and if you'll recall, there have been several cases that have come up from CDRC or some of the local planning commissions that come up with no recommendation. They can either submit with no recommendation, they can submit with a denial or they can submit a case to you with an affirmative, an approval. This case was voted on for approval and the motion for approval did not go through 2-3. She is correct. And the case came up. Whether it's a denial, whether it's a no-recommendation, it doesn't matter because they are solely a recommending body. And I would like to point out that we had at that point a condition, a recommendation from County staff of approval before the LCDRC.

The public policy arguments, Commissioners, the issue of endangered species is an important issue. We were required as is required under the plan, under the ordinance to do an environmental study. We did. That environmental study did -- is going to require us to protect the mountain plover and the willow flycatcher, and to protect the wetlands. And the plans for having to protect that are required to be reviewed by state agencies and will be submitted at preliminary. We're not disregarding this issue. But master plan is conceptual. Master plan is a submittal for review. We cannot go past preliminary unless we meet all of the requirements by state and federal officials with regards to the wetland. In fact, there's a condition of approval on this case that we need to comply with the requirements of both those agencies. So those areas will be protected, Commissioners and it is something that you will be able to look at at preliminary when we come forward to see whether we've met the standards that the federal and the state government would like us to meet on that.

Commissioners, with regards to the decision, the stipulated order by the State Engineer, as I stated to you, we have a stipulated order. There is an agreement in place with all of the parties that were protestants that stayed in the case. It is not signed at this point but it is very specific with regards to what was decided. And I'm going to allow Jay, who was in the negotiations with regards to the stipulated order to give you the fundamentals of that order, and I stand for questions if you have any.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner.

COMMISSIONER ANAYA: She mentioned 30 feet. Is that true? Or is it 150 feet that I thought I was told? The setback.

MS. VAZQUEZ: Mr. Chair, she mentioned 30 yards and we've presented as evidence and we submitted as part of the record and I can give this back to you -- we have minimum distances from the lot line to the lot line of 120 feet up to 159 feet from the property line. That is from these property lines here to the property line here where the property would meet. And then what we did, and we did this for the community as well and we actually did a site visit so people could walk it. We put together housing envelopes, and you'll see those little pink dots in there? We specifically created housing envelopes in order to push the housing site farther from the property line and increase that setback. We also did

it in order to show how much private open space there would be.

If you look at the housing envelopes, you increase the setback to the property line. And we're not talking to the house, because we're just talking straight to the property line, you increase the density – the setback from 170 feet at the minimal to 315 feet.

COMMISSIONER ANAYA: Thank you, Mr. Chair.

MS. VAZQUEZ: And if I just may clarify the record, there are not 600 homes; there are only 174 homes on this master plan.

CHAIRMAN CAMPOS: But the potential is 600 homes?

MS. VAZQUEZ: No, Commissioner. That number comes from an earlier master plan, and it was an earlier design. We did discuss with the community a development of 605 units. We have reduced that and that's why we've been working on this for three years. The 600 units was opposed to by the community.

CHAIRMAN CAMPOS: What's the number now?

MS. VAZQUEZ: 174.

CHAIRMAN CAMPOS: Total.

MS. VAZQUEZ: Yes.

CHAIRMAN CAMPOS: For the whole development, all phases, including those beyond this one.

MS. VAZQUEZ: 174 units is what's included in phases I through III for this master plan, yes.

CHAIRMAN CAMPOS: And I through III are all the phases you have.

MS. VAZQUEZ: At this time, yes.

CHAIRMAN CAMPOS: Okay. At this time. Okay. Sir. Please state your name and your address?

JAY LAZARUS: Jay Lazarus, Glorieta Geoscience, Inc. 1723 Second Street, Santa Fe, New Mexico. If this is a continuation, I was already sworn in. I would just like to address a few of the issues brought up by Mr. Gonzales. I'm not here to argue; I'm here to clarify.

CHAIRMAN CAMPOS: Very briefly. Just give us the concepts of what the agreement's about.

MR. LAZARUS: Yes, sir. First of all, we have an approved geohydrology report from Santa Fe County for Phase I of 14.55 acre-feet. In terms of the subsequent phases beyond the 14.55 acre-feet, this is subject to State Engineer approval of the return-flow credit plan. We have agreed with four remaining protestants with the Acequia de la Cienega, the Guicu Ditch, La Bajada Community Ditch, Inc. and Eugene and Holly Bostwick. We've agreed with all four protestants that any of the data that we collect for the return-flow plan to be submitted to the State Engineer will be submitted to and shared with all four of these settlement protestants.

We've additionally agreed that we will collect a minimum of 2 ½ years worth of data prior to applying for return-flow credit and that we will not apply for a return-flow credit any sooner than three years, basically, from today. Additionally, to clarify what Mr. Gonzales

stated earlier, we've also agreed that we will not be submitting and data or collecting any data for submission to support the return-flow credit until at least two acre-feet per year are run through the sewage treatment plant, to be able to give us some real, live, real world data on what's coming through and discharging from the plant. And just to clarify what Mr. Gonzales said, when it comes time to apply for the return-flow credit plan, we are not required by the State Engineer to republish this as a legal notice, but the four settlement protestants do have the right to ask for, request a public hearing with the State Engineer Office on the return-flow credit plan, once they've analyzed all the data that we've provided to them also. And I'll answer any questions.

CHAIRMAN CAMPOS: Okay.

MR. LAZARUS: One additional thing is that three of the four protestants waived their right to claiming any impairment due to the 14.55 or 32.33 with return-flow credit, if we agree with the State Engineer and settlement protestants that the return-flow credit data is accurate. The last protestant did not use the word "waive" but they agreed to set aside any issue related to impairment.

CHAIRMAN CAMPOS: Okay. Is that it?

MR. LAZARUS: Yes, sir.

XIII. C. Matters from the County Attorney

5. Executive Session

1. Pending and Threatening Litigation

CHAIRMAN CAMPOS: Okay. Thank you very much. At this point I'm going to ask that we go into executive session where we talk about pending and threatened litigation, and I'll ask for a motion.

COMMISSIONER SULLIVAN: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER VIGIL: Second.

The motion passed to go into closed executive session passed by unanimous [5-0] roll call vote with Commissioners Anaya, Montoya, Sullivan, Vigil and Campos all voting in the affirmative.

CHAIRMAN CAMPOS: We're in executive session. Mr. Ross, how much time do you think we'll need? It's 15 till 12:00, and we have a major 2:00 hearing.

MR. ROSS: Just half an hour, tops.

CHAIRMAN CAMPOS: Okay, so we'll plan to be back here about 12:15. Thank you very much.

[The Commission met in closed session from 11:45 to 12:10.]

CHAIRMAN CAMPOS: Okay, we're back in session. Is there a motion to come out of executive session where we only discussed pending and threatened litigation.

COMMISSIONER VIGIL: So moved.

CHAIRMAN CAMPOS: Is that your motion? Is there a second?

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [5-0] voice vote.

CHAIRMAN CAMPOS: We're out of executive session and we're back at item D. Growth Management Department, Santa Fe Canyon Ranch. Commissioners, is there any action you'd like to take at this point?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, I just wanted to say, over the last three years there hasn't really been anything new that I've heard in terms of the opponents from the very beginning of this case, in terms of I've heard about them, the developers refusing to limit the size of the development, that nothing has changed, that there's still concern about culture, preserving the culture and the water rights, and I think we've worked with the developers over the last three years, and what I have -- the thing that has changed has been the position that was mentioned by the first witness that there were 600 homes. Well, that's not the case at all. In fact that's changed to I believe 162 lots and 174 homes total, which is a significant change in terms of the original proposal and what's being proposed now.

The other thing, Mr. Chair, is that the one thing that at master plan approval, and it is a conceptual approval and water rights aren't necessarily something that has to be done at the conceptual approval stage, so I think that's something that the developers will still have to work on in terms of providing that for the overall project. So Mr. Chair, I would just -- and I guess the other thing that has changed and that is a significant change also is that we have a staff recommendation for approval. That's the first time that we've had that during the time that we've been hearing this case and with that, Mr. Chair, I would move for approval based on staff recommendation on this project, with conditions.

CHAIRMAN CAMPOS: With all conditions?

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Is there a second? There's a motion to approve by Commissioner Montoya, with all conditions, and there's a second by Commissioner Anaya. Discussion?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: I also agree with what Commissioner Montoya said. This -- the developers did follow the community plan that was proposed in La Cienega.

These developers have jumped through all the hoops and I think even more than other developers. They've incorporated affordable housing in this development, open space and trails. They have brought water availability to this subdivision which they didn't have to at this point, as Commissioner Montoya alluded to.

This development is going to have a wastewater disposal system. We have development throughout Santa Fe County, not only in the La Cienega area. We have development happening in the Galisteo area, the Galisteo Basin Preserve. We have development expanding in the Edgewood area, Stanley, Eldorado, Tesuque, it's happening through the Santa Fe County. I sit on the Agricultural and Rural Affairs Committee for the national level, the National Association of Counties, and I'm very concerned about the acequias. I do not want to lose the acequias in our communities. I know that in the Village of Galisteo they had the acequias a long time ago and they lost them and I don't want that to happen to La Cienega.

So I hold that close to my heart and we're going to do everything we can to preserve that. And I would like to see that this development come back and possibly go under County water, and that's one way we can preserve the water, the groundwater in La Cienega. And another thing I'd like to see happen, and we're working on it through the leadership with Roman and that is provide water down County Road 54 to the racetrack, to get those people off of the groundwater and onto County water, and that is going to happen. That's all I had, Mr. Chair.

CHAIRMAN CAMPOS: Any other comments? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chair, I feel the issue here is we still don't have a master plan that's truly a master plan. We have an unknown area there you see in the map in the white, as opposed to the yellow and the green, that has a very general plan of large lots and the applicant has indicated that they may well be back for an amended master plan to provide additional density in that area. I believe the community has talked to the applicant with regards to limiting the number of units and the applicant doesn't want to make that commitment at this time.

So we have kind of a Catch-22 here and I think that if we stay with the plan as it is that there will be a community water system and a community sewer system. We need to have a master plan that relates to that and that does in fact provide some specificity as to what the balance of the development is all about. So at this point in time, unless there's some other mechanism to provide that concept of what is the total development going to be, I'd have to say that I think the master plan is still not complete for final vote.

CHAIRMAN CAMPOS: Is that it?

COMMISSIONER SULLIVAN: That's all.

CHAIRMAN CAMPOS: Just a comment is that the idea of a public water system, an extension of the service area is a bad idea from a planning perspective. Right now, we've spent a lot of time as a County to define growth areas, areas where we want infrastructure. What some Commissioners are suggesting is that we be reactive as we've always been. A developer comes out there, we extend our service area. They run the whole

show as to where growth is going to occur. It's a bad idea here and I hope the residents of La Cienega do not get behind that bandwagon. It's bad for the county. Thank you.

COMMISSIONER VIGIL: Mr. Chair. Thank you. There have been some other conditions of approval that have been mentioned here so I want clarification on the record before any vote is taken. That is to be placed on the County water system, and unlike Commissioner Campos, I do not believe that the aquifers should be tapped into in this area, and this development is close enough to extend their water delivery system to the Las Lagunitas area. Would the applicant be in agreement with placing – let me finish, there's another condition with this – placing this development – and I want it clarified for the record that master plan is only conceptual. But I think this needs to be a part of the conceptual plan. Placing this development on the County water system and transferring those water rights to the County. Do I have a yes or a no on that?

MS. VAZQUEZ: Mr. Chair, Commissioners, Santa Fe Canyon Ranch would be in agreement with a condition that would require us to hook into the County water system, which, just for the record is actually within the property boundaries of the development. And transferring the 14.55 acre-feet of water to the County.

COMMISSIONER VIGIL: Okay. The other issue and you may want to – I'll wait until you speak to your client.

MS. VAZQUEZ: Mr. Chair, Commissioners, I just also want to clarify that there is water that we've already transferred, that Santa Fe Canyon Ranch has transferred into the diversion as well.

COMMISSIONER VIGIL: Okay. Then the next request that I would have, and I appreciate the comments that have been made about the developer working with this but by the same token, here is a community who did not anticipate what was coming forth with this and probably to some extent, based on the arguments that I've heard, there was an intention never to have this area developed. We have nothing that keeps us or prohibits us from doing that, so we have to be Code-compliant with regard to this. But in the master plan development one of the concerns that has been brought forth through previous testimony is the density. I need one question answered because this has not been testified to but it is something that I understand is a new development and that is there has been a proposal, either from one of the public land trusts or something of that nature to purchase Phase III of this development. Can you clarify that?

MS. VAZQUEZ: Mr. Chair, Commissioners, I will. It's not entirely Phase III. We do have a proposal. I can't go into all of the details with regards to that because it is conceptual at this point, but we have a proposal for the purchase of land, most of it around the Santa Fe Canyon area.

COMMISSIONER VIGIL: Okay, so that would be the land that would abut the canyon itself.

MS. VAZQUEZ: It is the pristine area, yes, that they would want to protect, and I believe includes portions of the wetlands.

COMMISSIONER VIGIL: I see Mr. Schutz creating a circle around Phase III.

Can you clarify that for me? Is the proposal just around the canyon or does it include Phase III?

MS. VAZQUEZ: Mr. Chair, Commissioners, it is just – it is this area here. It is not the full – all the acreage within Phase III at all. It's a large chunk of it. Approximately about 400 acres, but it is not the entire Phase III.

COMMISSIONER VIGIL: Okay. The density issue has been a high concern to this community. And I thoroughly understand that and I have to protect their concerns with regard to that. While I can appreciate you've come down from 600 to 174, there has to be a commitment to the density issue on this. 174 units in and of itself is still not agreeable to many of the community members. It still creates an inordinate amount of density in an area that never had it. And so my request to you is a condition of approval of limiting this to 174 units. Would you agree to that?

MS. VAZQUEZ: Mr. Chair, Commissioners, two points with regards to that. First of all, we believe that this master plan is already capped at 174 units. We cannot go beyond 174 units without coming back to you. An amended master plan would require public notice. It would require a submittal and most importantly, a public hearing process, but more important than any of those things it would require us to show that we have water availability. So at this point we believe we are capped at 174 units, Commissioners and we would not be agreeable to making a commitment that would nullify the Santa Fe Canyon Ranch's ability under the Code at this point.

And I want to make one other point. When we submitted this master plan originally it was 605 units. We had an interpretation of the ordinance that was different than the public's. We worked with the public; we went down to 174 units. When we submitted the master plan we put specific language in the development plan, written on the plat and in the plan itself, and it was really a notice issue. And what we put in there was we reserve the right to come back in for an amended master plan.

In retrospect, maybe that caused a lot of unnecessary hardship on everybody, because frankly, every developer has that right to come in. It was put in there as an issue of notice so it wouldn't come as a surprise to anybody if in 15 or 20 years this development came back in for that. I also want to point out, Commissioners, that we have publicly testified to the fact that Phase I and Phase II will take – Phase I will take approximately 15 years for build-out, just Phase I alone. At that point, Commissioner, your growth management plan will be in place, the utility boundaries may be different, the whole area of Santa Fe is going to be different at that point, and we don't know what that issue raises. We believe that we're capped at this point, but we would not agree to waive our rights under the Code.

COMMISSIONER VIGIL: Okay, another condition of approval. We've heard testimony today that the current design is too close to some of the residents in that area. Would the applicant be willing to consider distancing themselves more from those residents that they are currently too close to? In other terms, relooking at the design to address some of the residents' concerns?

MS. VAZQUEZ: Mr. Chair, Commissioners, may I have a moment to speak

to my client on that?

CHAIRMAN CAMPOS: We've got to move on, Commissioner. We've got one hearing at 1:30 and then at 2:00 that's very important.

MS. VAZQUEZ: Mr. Chair, Commissioners, what we did in this design is we created it in a way that's actually required by the La Cienega Ordinance, is that if you're going to cluster, you need to cluster in such a way to respect the natural landscape of the area. So if you'll notice in Phases I and II we have some long cul-de-sacs, and we've got some roads that aren't on a grid pattern specifically to conform with the landscape. And we have already pushed the homes at a distance and created the building setbacks. What Santa Fe Canyon Ranch is, however, willing to do is take a look at trying to move some of them on a case by case basis and that would probably require us to do a movement of the building envelopes a little bit more if we could. But it would be very difficult to meet the Code in terms of creating a subdivision that meets the natural landscape, as well as clustering and move that setback any farther. But we would be willing to look at individual lots. I believe this is the closest lot here, and it's Lot 25. I believe it's the closest lot to the property. And that's the one I believe is 132 feet from the property line.

COMMISSIONER VIGIL: So, am I understanding the applicant to say they would consider a reconfiguration at some level to meet the requests of the community?

MS. VAZQUEZ: We would consider a reconfiguration of certain lots, but not the entire subdivision.

COMMISSIONER VIGIL: And in effect, it may impact the entire subdivision to some extent.

MS. VAZQUEZ: Yes, Commissioner, either through movement of that lot or movement of the building envelope within that lot to create a bigger setback.

COMMISSIONER VIGIL: Okay. Then Mr. Chair, I would just ask Commissioner Montoya and Commissioner Anaya if they would be willing to accept these amendments and agreements by the developer in their motion – that would be that they would extend the water service to serve the development with the County utility water delivery system, that they will transfer water rights, that the applicant will reconfigure submitted master plan to meet the community's request.

MS. VAZQUEZ: May I clarify that last condition, Commissioner? On a lot-by-lot basis and possibly by moving within the lot the building envelope. Was that your understanding?

COMMISSIONER VIGIL: Yes, if that's the limitation of it. But I'm also thinking you may be impacted –

MS. VAZQUEZ: And we may have to, but we'd like to explore those. We would like to have the ability under this condition to explore those options.

COMMISSIONER VIGIL: Okay.

COMMISSIONER MONTOKYA: I would agree to the first two, because I think the applicant sounds agreeable to it, and I think to explore that other option that Commissioner Vigil was suggesting might be something, rather than placing a condition on it

if it's possible to explore that, at least put it in that way so it's not something that's necessarily binding. Because quite frankly, I like the configuration of the development now as opposed to the way it was when it was so spread out and had a bunch of lots all over the place. Now, it's much more with I think what our Native American brothers and sisters were doing when they had the pueblo idea and I think they had it right in terms of the living and that sort of thing. So I think that's -- if it's not going to impact it in a significant way I would probably be okay with at least the exploration of it.

COMMISSIONER VIGIL: Okay. Is Commissioner Anaya in agreement with it?

COMMISSIONER ANAYA: Mr. Chair, Commissioner Vigil, I got the water service transfer and the water service. And then the second one -- what was the second one?

CHAIRMAN CAMPOS: Water rights.

COMMISSIONER VIGIL: Water rights.

CHAIRMAN CAMPOS: Transfer the water rights to the County.

COMMISSIONER ANAYA: Yes, but did you mention anything about units?

COMMISSIONER VIGIL: The 174 density, they have not agreed to that.

COMMISSIONER ANAYA: Okay. So the one thing was the water service -- extending the water and transferring the water.

COMMISSIONER VIGIL: And the third thing, Commissioner Montoya has said he, rather than include it in the conditions of approval would request that the applicants work to reconfigure the lots, or perhaps the master plan to accommodate the proximity of its design to other residents in the community.

COMMISSIONER ANAYA: I believe he used the word explore so I'll go ahead and agree to that.

COMMISSIONER VIGIL: Okay.

MS. VAZQUEZ: But, Mr. Chair, I have a clarification question.

CHAIRMAN CAMPOS: Briefly. We're running out of time.

MS. VAZQUEZ: Okay. With regards to the water rights, in terms of transferring either the 14.55 or the water rights that are used in the diversion, correct? Whatever water rights that we have that are acceptable to the County for the 14.55. Is that correct?

COMMISSIONER VIGIL: Yes.

MS. VAZQUEZ: Okay. And my second clarification is, if we end up working with the community on moving some of the lots, we could submit that with preliminary and not have to come in for an amended master plan? Given that it is a condition of approval to explore that option, and if we come to a resolution, would we be able to come in at preliminary instead of an amended master plan?

COMMISSIONER ANAYA: I don't have a problem with it.

CHAIRMAN CAMPOS: Counselor Ross, could you assist us?

MR. ROSS: Mr. Chair, I just consulted with Land Use staff and they seem to think it's okay.

CHAIRMAN CAMPOS: They seem to say it's okay?

MR. ROSS: They seem to think it's okay to do that.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Hold on. Commissioner Vigil has the floor still.

COMMISSIONER VIGIL: I've gotten my questions answered. I'm prepared to vote.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chair, I've felt that subdivisions of this size are ready candidates for tying into the County water system, but I don't think that it's good decision making or land use planning to open up the floodgates as we're doing here. If we provide the applicant with that benefit of the County water system, which is a major benefit, not having to go through additional water rights hearings and having that water available, we need something in return and we're not getting that here. What we're getting is vague assurances that maybe in 15 years they'll come back for an amended master plan, but maybe in two years they'll come back for an amended master plan.

So I don't think the County needs or should make that big a commitment without some equally substantive commitment from the developer, and that substantive commitment would be that this project limits would be 174 units. Now, they can continue to develop with the well system and go through the process of the protests and the impairment of wells and so forth, and that's fine. I'm not objecting to the master plan based on the water component of it as it currently stands, but rather based on the pure planning component of it that's incomplete. It's an incomplete master plan.

So, if we're going to make that big a commitment, which I would support, to put this entity on public water, we need an equally substantive commitment back from the developer, and that is to limit the size of this development that's more in harmony with the rural nature of the community. So I feel we're giving the developer way too much here. We're opening the floodgates with this type of an approval. I would rather see them proceed with the wells and rely on the State Engineer and their expertise what the level of impairment would be and what the conditions on those wells would be. I think they would be more able to do that, or qualified to do that than we are. Thank you.

COMMISSIONER VIGIL: Mr. Chair, I have to agree to that, and I'd like to just make a recommendation. Perhaps this is something that needs to be discussed between our counsel and their client. It makes more sense to me that we have further clarification on what this development is going to look like. So I'd really like a response from that. That's what I'd really like to vote for.

CHAIRMAN CAMPOS: Yes or no? Will you limit to 174?

MS. VAZQUEZ: Mr. Chair, if I may have a moment with my client.

Mr. Chair, Commissioners, we thank you for the ability to get on the County water system. It is good public policy because the major concern that the neighbors have had is with regards to the mining of the aquifer in that area, but we are not at this point willing to waive our right under the County Code to come in, if need be, for an amended master plan. The

issue of County water is an issue that is a benefit to everybody. Commissioner Sullivan, it is not just a benefit to this development, and in fact these developers have planned for a community water system. We've already gone before the State Engineer. There has been an agreement by all of the protestants as to the impairment.

CHAIRMAN CAMPOS: The answer is no, right? Is that it?

MS. VAZQUEZ: Yes.

CHAIRMAN CAMPOS: Okay. So I have a couple of comments for the community. I think having this community become public water under the County is creating a growth area without telling you that in La Cienega. You've said that they're destroying your community today. Well, let them create a service area and see what happens there. If they don't totally destroy your community as a rural community. That's what's going to happen and it's certainly an easy political decision here. Yes, okay, we give the developer a yes, but we're going to give you the water system, but it doesn't work out that way. It's really going to just create a growth area in a very bad way. Right now we're trying to create growth areas in a rational way, the County staff is, and create a new plan that makes sense where we put water and infrastructure. This negates that. So I'm voting no if those conditions are on.

COMMISSIONER SULLIVAN: Mr. Chair, I would say that if Commissioners Montoya and Anaya and Vigil feel that we should move forward with this that it's far more beneficial to move forward as a pure community water system for those controls, the reasons of those controls that I just mentioned regarding the protests that are allowed when you get into impairment of nearby wells, than it would be to say, yes, let's give them the best of both worlds. Let's give them a Santa Fe County water connection hook-up, and they still retain their right to come back and further densify the development. I think we're way in the wrong direction there. That if you feel you need to approve this, that it's appropriate to approve this, I would approve it as it is, not add the County water system into that, and then when they come back later for preliminary or final, if they want to rediscuss that we can rediscuss it. But I see what's currently being talked about as the worst of both worlds for the community. Thank you.

COMMISSIONER VIGIL: I agree. I withdraw my request for the conditions of approval and it should remain on a community well system.

CHAIRMAN CAMPOS: I agree.

COMMISSIONER SULLIVAN: So, Mr. Chair, can I clarify, the motion is to approve with conditions as presented.

The motion passed by 3-2 voice vote with Commissioners Anaya, Montoya and Vigil voting in favor and Commissioners Campos and Sullivan voting against.

[The Commission recessed from 12:38 -1:40 and Commissioner Montoya was excused from the remainder of the meeting.]