

1 TRANSCRIPT OF SELECTED PORTIONS
2 SAN LUIS OBISPO COUNTY PLANNING COMMISSION HEARING
3 WOODLANDS PROJECT
4 September 26, 2002
5

6 SKIP IN PROCEEDINGS

7 Tingle: Item 8, hearings to consider proposals by PH Property Development, for
8 Land Division and Development Projects under the provisions of the
9 adopted Woodlands Specific Plan, County File Nos. D990194D and 195D,
10 and Tract 2341, Jay Johnson, staff.

11 Roos: I ... before Jay gets into his presentation, I have three requests to speak. I
12 somehow suspect there may be more, so ask that you fill out one of these
13 speaker slips so we can get your name right, and I'll ... other than the
14 Applicant, I'll take them in the order that I have received them, so if
15 somebody is interested in following somebody else, try to arrange how you
16 submit them to the clerk, and they'll bring them over here. Jay?

17 Johnson: Good morning Mr. Chairman, members of the Commission, all three of
18 you.

19 Orton: Jay, could you speak a little closer to the mike, please? Thank you.

20 Johnson: Yes, sir, Mr. Orton, thank you. Thank you, Mr. Chairman, members of the
21 Commission. This is a project that's been long in coming, in fact when the
22 Specific Plan was approved, you guys weren't here. Nonetheless, we're in
23 a big process, and what I'm going to do, hopefully I can be fairly brief this
24 morning, is explain where we are in the overall process, and where we're
25 headed with that, and there is a request for continuance today, that you'll
26 have to decide on from the Nipomo Community Services District. At a
27 minimum staff would suggest that we hear the staff report and take the
28 testimony of the people that are here. Picture the whole process being a

1 funnel, and eventually something trickles out into the funnel, we're part
2 way down the funnel. The Board adopted the Specific Plan and certified
3 the final EIR in 1998. A supplemental EIR was done, an amendment to
4 Title 26, the growth management ordinance, was done at the beginning of
5 this year. Your Commission was probably involved somewhat in that
6 decision. So what I'd like to do is run through my slides, outline how this
7 project fits in. There aren't any real slides of the site. If you have had an
8 opportunity to drive by, it's 900 acres, pretty much, of eucalyptus, and
9 we've seen this, so I don't I have a bunch of pictures of this project site.
10 This stage would be to consider the development plan and tentative map
11 application, they go hand in hand together. The development plan is
12 required with the subdivision through the Specific Plan. This will outlay
13 conditions for subsequent development plans for the four major phases of
14 the project, to fall in line with, and I'll show the phases of that on the screen
15 here in a few moments. You'll also notice today there is an item 8B, and
16 perhaps when that comes up, Council could help explain why that follows
17 8A. It's a new law under the Subdivision Map Act and Water Code that
18 requires projects of 500 or more to address the sufficiency of the water
19 supply, but that will be the next hearing, and...and not part of this hearing.

20 Roos: Before you ... there was a concern this morning that we should be doing
21 the availability of water first, and then consider the development plan next.
22 Could you speak to why you put them in the order that you did?

23 Johnson: I will defer that to Mr. Orton.

24 Orton: We think the Code...Government Code section that governs this requires
25 the tentative map to be approved first, and then thereafter the issue of
26 whether there's a sufficient water supply would be addressed. Government
27 Code Section 66473.7(b) requires that the advisory agency authorized to
28 approve or conditionally approve maps, include as a condition of a tentative

1 map that a subdivision with the requirement that there's a sufficient water
2 supply, shall be available, so we think staff has properly sequenced the
3 hearings, and recommend that you proceed.

4 Roos: What if it's the opinion of the Commission that there's not water available,
5 then what happens to the previously-approved development plan and tract
6 map?

7 Orton: I think what you need to do is focus on the application that's before you
8 right now, which is the development plan and the map. The next hearing
9 will deal with the suffic... whether a sufficient water supply is available. I
10 think that's the proper sequence that you do. If you find there's not
11 sufficient evidence that there's adequate water available, well that would
12 deal with your next ... after your next hearing. But let's have staff make a
13 report, and go through the steps of first of all addressing the development
14 plan and the map, and then the second issue.

15 Roos: Thank you.

16 Johnson: Thank you. On the screen is the vicinity map showing where the
17 Woodlands is located off of Highway 1...Highway 1, pardon me, on the
18 Nipomo Mesa. When we look at the Mesa, there's obviously Nipomo is
19 the urban area, and then there's a scattering of villages. Woodlands is one
20 of those villages. We have Black Lake Village, you're familiar with that.
21 You've seen projects in Palo Mesa. You may not be familiar with the
22 actual name of it being Palo Mesa, but this is where Cypress Ridge would
23 be located. Callender Garrett is an old residential suburban village, and
24 then on the south side of Highway 1, within the coastal zone is the
25 industrial parts of the Mesa that you may be familiar with. We'll take those
26 out and leave Woodlands and Nipomo up for a few moments here, showing
27 the relationship between the two. In terms of circulation, Highway 1 runs
28 to the south to Guadalupe and Santa Maria, and then to the north to the Five

1 Cities area. Here's the location of Highway 101 as it passes through
2 Nipomo. The major roads that will provide access to...to the Woodlands
3 project would be Willow Road. This also shows the conceptual alignment
4 of it to Highway 101, and then through to Thompson Road. From Willow
5 Road two major streets would come from the site, Albert Lane ... Albert
6 Way to the left, and Via Concha to the right on this map. The major east-
7 west connector from the site to Nipomo is Mesa Road. This would go all
8 the way through to Tefft Street. It currently goes through, it's improved to
9 various states of improvement and unimprovement, ranging from full-
10 paved County road to sand. The other road that would be a secondary east-
11 west connection would be Eucalyptus Road. Eucalyptus Road is paved
12 from Nipomo to the site boundary, so it would be a matter of paving
13 Eucalyptus Road on site. This shows the conceptual land use map that was
14 approved with the Woodlands Specific Plan, again, highlighting the major
15 streets that flow through it. The street on the left would be an extension of
16 Albert Way down to Eucalyptus, Via Concha running through north and
17 south to the village center, and then out to Highway 1 and then Mesa Road
18 from the village center running to Nipomo. When compared to the current
19 development plan the...in many regards they're identical, the maps. Some
20 of the things that have changed, there was a great elimination of cul de sacs,
21 more through streets, better overall circulation plan. Some of the larger lots
22 and some of the larger categories have probably gotten a little smaller, but
23 all in all, the two ... the current project is very similar to what was
24 approved at the Specific Plan. In terms of phases, this would be Phase 1A,
25 and you'll be seeing a development plan on that to follow, perhaps in a few
26 weeks here. This includes 447 residential units, the...providing the
27 infrastructure to the business park in the village center, and one of the golf
28 courses and then the extension of Mesa Road to the...to the edge of the

1 project. Phase 2A would be in this location, and it would include the last
2 portion of the village center and a few homes on the south side of Mesa
3 Road, but mostly north of Mesa Road. Sorry – that was not Phase 2A, that
4 was 1B. I can't believe that after eight years I still get it confused. This
5 would be 2A. The development through the EIR was broken into two
6 stages, stage 1 and stage 2, stage 1 being Phases 1A and 1B, stage two
7 being 1B, which is shown here, and originally orange, and then 2B in this
8 location. And I'll leave the overall development plan up there for the
9 remainder of my discussion. There are a lot of people here that have great
10 interest in water. There's some folks here that have some interest in traffic,
11 and the proper mitigation of those. We'll leave a lot of that discussion for
12 those folks. The ... as I mentioned earlier, we...the Board has certified the
13 final EIR for this project. There was a supplemental EIR done for Title 26,
14 and we prepared an addendum that explained the differences in the project
15 for this tentative map and the development plans that follow. What I would
16 like to speak to is the general premise of this project. It's all along meant to
17 be a mixed-use project. It's meant to have houses, it's meant to have a
18 business park, it's meant to have commercial aspects to it, recreational
19 aspects. It's very important to the...to the County, very important to the
20 folks on the Mesa, that this be achieved. In achieving a good mixed-use
21 project, there's conditions of approval on here that speak to how to get the
22 infrastructure built, how to get this ready to where when a business wants to
23 locate here, it's going to be fairly easy for them to achieve that. There may
24 be some fine points that staff and Applicant still disagree, and I'm going to
25 go over my recommended changes to the conditions in a few moments, and
26 the Applicant will have some of their own. The other aspect that I've
27 mentioned in the staff report that helps create a...a solid mixed-use project
28 is a range of affordable housing, a range of housing, which includes

1 affordable housing. This is ... a matter that's obvious to all of us now that
2 is showing up regularly in the paper, today would be noteworthy also. You
3 may ... there's going to be a point of disagreement there. The staff report
4 explains that the Specific Plan identifies the Applicant willing to provide
5 3% for affordable housing. In today's world that ... when compared to
6 other things such as the City of San Luis Obispo, that adequately may cover
7 the low income folks, but doesn't speak, necessarily, to the moderate
8 income folks, so we're asking for your Commission to approve this with
9 also 5% for moderate income folks for the affordable housing. I think all in
10 all that the project will achieve ... or has the ability to achieve a solid
11 mixed use, but it's important that we work with the Applicant and the
12 community to draw businesses to this project, if it's going to work, and get
13 a good mix of housing, if it's going to work. You can see from the staff
14 report we have various trails, a park up ... that the community will be able
15 to use, various pocket parks within the development that will be able to be
16 used. This will not be a gated community, it's meant to be another village
17 on the Mesa to...to fit in with the rest of the Nipomo Mesa. With that, I'd
18 like to run over ... run over, yeah...run through my proposed corrections to
19 this, and I've given you a hand-out, and identifies the page where this
20 correction would show up, and we'll start with on page 8A13. On...on
21 number 12, this is under "permit for subsequent development." It
22 should...we should strike the word "for each phase" and add the word
23 "final map" after that to where "all public improvements for each final map
24 shall be completed prior to occupancy of any new structure". If we say
25 "per phase", if they record a final map, then they would have to do all the
26 improvements for the whole phase, maybe only recording 50 lots, they may
27 be recording 100, so we thought it was appropriate to tie it to each final
28 map. On page 8A-14 on No. 17, Applicant's counsel has requested, staff

1 has no problem with, that we record the open space lots concurrently with
2 the final map, and not prior to that. On page 8A-14 under “water” on No.
3 23, again, insert the word “first final map” on...on that measure. On page
4 8A-16, “roads and access”, this is where the Applicant is providing their
5 fair share of improvement of the South County roads, which includes the
6 Willow Road extension and interchange. On 34b we would add “prior to
7 recordation of each final map” so with Phase 1B, that would be the second
8 Phase of this...this large Phase of this project, we would collect the money
9 with each final map. In the later Phases, stage 2, we’re looking to collect
10 that money right up front with each Phase, so essentially what this means is
11 as the project develops further, and we get closer to the need to actually see
12 Willow Road extended and built, the Applicant will be contributing more of
13 their money more up front. On page 8A-17 under “transit”, simply strike
14 the word “tree removal plan”. We don’t need to see that on the tree
15 removal plan if we see it on the public road improvements and the grading
16 and landscape plans, that will be fine. That’s where the Applicant will
17 designing and where future transit stops will go. At this time we don’t have
18 transit to that area, but we’d like to at least prepare for...for that day. There
19 will be a Park-And-Ride lot on site. Continuing on, on to page 8A-20, this
20 is under “visual impacts”, on the second to last line, add the word
21 “significant” after ... instead of “any changes” that should read “any
22 significant changes to the...to the footprint”. Then right below that on Item
23 50, on page 8A-20, we’d like to add the words...words after “consider” it
24 should say “if necessary” to add additional screening around the buffer
25 area. That’s something that will be easily worked out with staff and the
26 Applicant when it comes time to prepare those plans. On page ... I’d like
27 to back up, if we could, I apologize, to page 8A-16, and I missed that on my
28 hand-out here, on No. 35, I had drafted language that was meant to

1 implement that mitigation measure for how things are heading with the
2 extension of Willow Road. Willow Road is something that's in our South
3 County circulation study. We know one day it's going to occur, but it's
4 more appropriate that we return to the exact language from the mitigation
5 measure found in the Specific Plan and, if need be, I'd be happy to put that
6 exact language up on the screen for everyone to see, but at this time, what
7 I'd like the Commission to understand is that we're going to go back to the
8 exact language from the Specific Plan in that mitigation measure. Under
9 "biological resources" on page 8A-23, Item 59, the ... again, in the
10 Appendix C of the Specific Plan, the "pellet stove", I don't know where
11 that came from, did not appear in the mitigation measure. It should be
12 "EPA approved fireplaces". So, we can return to that language. On page
13 8A-28, Item 74, the very last bullet, and again that should ... what we
14 would like to take out of there is for the Applicant to identify the water
15 amount to ... we wouldn't know what the water amount would be, and it's
16 more practical just to know that we're going to keep the dust ... the soil
17 watered down. To know the exact water amount isn't real material. On the
18 same page, on No. 75, "installation of high pressure injectors with the
19 heavy equipment" is old technology that the Air Pollution Control District
20 used to require. They no longer recommend that, so we can strike that
21 particular item. On page 8A-30, Item 82, we'd like to say "upon submittal
22 of discretionary permits for commercial uses." Certainly for a residential
23 use that wouldn't be appropriate to...to require designated convenience for
24 having your lunch. I think when you build a house, you have a kitchen or
25 ... On page 8-31, we're recommending on Item 90, on the third line,
26 instead of "prior to issuance of tract map improvements", we would ... we
27 were comfortable with that being "with improvement plans". And I'd like
28 to add with tree removal plans, this is ... knowing that when we're

1 removing trees, that the roads in the area are kept clear for fire truck access.
2 On to page 8A-33, No. 98. At the end of that, add “consistent with state
3 law”. There may be some issues where state law dictates if and when and
4 how sludge is dealt with, and we’re not attempting to preempt state law.
5 On page 8-34, Item 101, this is the dedication of the public park, and this
6 is...this is an item that’s part of Phase 1B, so it’s appropriate to say with the
7 first final map of 1B, that that park get dedicated to the public. Then on to
8 the tract conditions. This is Exhibit D. And we turn to page 8A-36. A
9 little bit of clarification on Item 2e, sub-item 2, this is about the timing of
10 the improvement of Mesa Road from the project site to Nipomo. There’s
11 language in the Specific Plan about that occurring at...with the 70... within
12 75% of the occupancy of the homes. Well, that’s difficult for the Public
13 Works Department to administer. They don’t keep track of the occupancy,
14 but we can keep track of an exact number, so we’ve converted that into the
15 number of homes. So it would be prior to recordation of the final map
16 within Phase 1A that includes the 335th residential lot, then this...this gets
17 done ... Or if they move on, and we haven’t gotten there with Phase 1A,
18 and they move into Phase 1B, then that’s also time to...to improve Mesa
19 Road. On page 41 ... 8A-41, under Item 22, Parks was asking for the cost
20 of engineering to be part of the bond, and it’s appropriate ... we ... the
21 engineering gets done prior to bonding for work, so strike the words
22 “engineering and” off of that. And then, lastly, on page 42, under the
23 CC&Rs, the ... Item 27i refers to the pellet stoves again, and according to
24 the mitigation measure, that should read “EPA approved fire places”. That
25 concludes my remarks. Staff is recommending approval of the
26 development plan based on the findings in Exhibit A, and conditions in
27 Exhibit B, as amended, and approval of the ten ... vesting tentative tract
28 2341, based on the findings in Exhibit D and the conditions ... I’m sorry,

1 the findings in Exhibit C, and the conditions in Exhibit D. There is one
2 point that I need to raise, and I apologize to the Applicant, I haven't been
3 able to talk to them about this, but under the Subdivision Map Act, we have
4 to identify the number of phases ... final maps that will be recorded. So, if
5 the Applicant would indulge staff and the Commission, and identify a
6 number of phases, it can be many phases that... and perhaps they would
7 like to confer with staff first, that would be fine. But that needs to be
8 resolved before this item is approved, the number of phases, so if, for
9 example, if they felt there was a range that they might be falling under, say,
10 ten to fifteen final maps, staff's comfortable with that being fifteen.
11 There's no magic in it being ten. That also needs to be resolved, so ... I'm
12 here for questions.

13 Roos: Okay, starting out, first I'll disclose I had a visit to the site with one of the
14 agents, Ms. Allison Donatello. Since it's a locked gate I couldn't tour it
15 myself, so she was kind enough to drive me around and open the gates.
16 Could you discuss this water condition, I can't find the number of it, I know
17 you've put a ... for lack of a better term, "find a poison pill in here"
18 constraining water ... you put a condition in, I think the tract map, or the
19 development plan, that said "the next hearing must, in fact, determine if
20 there is water before this map proceeds".

21 Johnson: Certainly. If you turn to page 8A-43, that would appear as condition 32,
22 and it is worded "verification of a sufficient water supply under
23 Government Code Section 66473.7 is required prior to final map approval".
24 I'd also add, and this is true with any subdivision your Commission
25 considers, is that the ability ... water being there for the project. If it's
26 determined to be a sufficient water supply under this Government Code or,
27 as we've done with the Environmental Impact Report, and if you look ...
28 when we look at the stock conditions, the water supply has to be there, and

1 it has to be built, in the pipes ready to go before houses show up. That's
2 regardless if this change in...in state law happened or not. Counsel and
3 staff have reviewed this, and we feel it's appropriate to have this particular
4 state law issue addressed second, and after this. But always with a
5 subdivision, your Commission is always in a position where all of the
6 resources necessary to supply that...that project have to be identified and
7 addressed through the environmental document, in this case, the
8 Environmental Impact Report. Certainly, staff's not going to recommend
9 approval of a subdivision if there were no water, or if it couldn't be hooked
10 up, or if there wasn't the ability to...to do that. That's regardless of this
11 particular state law, so I think we're in a good position to do that action
12 second.

13 Orton: Jay, I would like to add that actually there...there's two sets of conditions
14 relating to water, the one that Jay just discussed, and then there's our
15 normal set of conditions of water that are in the stock conditions on page
16 8A-44, like No. 2, so there's a requirement that before a final map records,
17 that water facilities be installed and water actually exist to the lot. So
18 because of the requirements of the new state law, we've added the
19 condition No. 32, which requires verification of a sufficient water supply
20 under the new state law section, but we also have the additional
21 requirements that they have to show it ... water actually exists before any
22 map records. I just wanted to make clear there were two sets, and it's only
23 ... the next public hearing deals only with condition 32, and not with the
24 later condition, which is a requirement prior to approval of the final map.

25 Roos: Thanks for pointing that out. Another thing, Dick, could you review the
26 addendum to the EIR, and I'll go ... The way you described it, there has
27 been an EIR, there has been a supplemental EIR, and those have been
28 certified by the Board of Supervisors on a previous date, but now we have

1 some new environmental information that's in this addendum. Could you
2 kind of like summarize what's there? ... staff report.

3 Johnson: I'd be happy to, in fact, that should have been my recommended action first
4 is to certify that addendum in accordance with the applicable sections of
5 CEQA. In essence, what the addendum does is explain minor changes to
6 the project that doesn't require the County to go back and do a
7 supplemental EIR, to do a brand new EIR. There's been changes to the
8 project. That document explains the changes, and identifies how that fits
9 into ... how that's allowed in state law, that you can do an addendum to
10 those previous documents, and that's what we're recommending. It
11 identifies also ... there's a great deal of performance standard mitigation
12 measures in the Woodlands Specific Plan. Those are items that require the
13 Applicant to do something, to perform something before you turn earth,
14 before you take trees out. We have to be careful that those mitigation
15 measures don't lose their effect. We can defer the details of those
16 mitigation measures. A traditional way, the thing that you look at almost
17 every time you're here, is a landscape plan. It's my best analogy. This
18 Commission rarely looks at the details of a landscape plan. Staff does later.
19 In this case, this is a big project that has several performance standards that
20 are required on the project. We've seen preliminary evidence that these
21 items can and will be achieved, and they can and will be achieved before
22 the maps record. They can and will be achieved before earth being turned.
23 What ... wherever it's appropriate, so it's the ... the addendum is a
24 document that is more explanatory in nature, rather than going back and
25 revisiting the impacts and doing a new analysis on all the impacts. In fact,
26 the conclusion is there isn't any significant new information that wasn't
27 known or could not have been known at the time that the EIR was done, or
28 the supplement was also done. So that's how...how I see it. We do have

1 Mr. McKenzie here with the Environmental Division that is far more
2 knowledgeable in that...in that process, and I would to actually recognize
3 John, with all the hard work he put into that document and all the previous
4 work in helping prepare that document. Another person I would also like to
5 recognize, I know it's not the Grammys, or anything, but Renika Brooks in
6 our Development Review Section put a lot of effort into generating these
7 staff reports.

8 Roos: John, did you want to add a few words on the EIR addendum?

9 McKenzie: John McKenzie. I'm just here to answer questions. I don't have anything
10 specific to add at this time, but I...if you have any questions, I'd be more
11 than happy to answer them.

12 Orton: That concludes the staff presentation. Questions for staff?

13 Roos: I'd like to ask Richard to discuss, and it's a condition throughout here, but
14 maybe we could put a map up showing the circulation routes to the project,
15 and can you describe what and when, roughly, these improvements, if any,
16 will be made to these roads. 'Cause I was out there, and there's a lot of
17 sand there.

18 Marshall: Richard Marshall, Department of Public Works. I'm going to use as my
19 guide, at least to start, the conditions on the tract map, which begin on 8A-
20 36. The access and street improvements begin with Condition No. 2, and
21 the first item is that the streets which are interior to the project are
22 constructed to the standards that were defined by the Specific Plan.

23 Voice: Those will be paved roads?

24 Marshall: That's correct. And they're awful darn close to basic County standards, but
25 they've been customized, the developer wanted to enhance them. In most
26 regards the little bit they differ from our basic standards makes them nicer
27 and better, a little fancier. Secondly, Highway 1, along the project frontage
28 will be widened, for example to provide a left turn pocket at the main

1 entrance on Highway 1. Then as with other subdivisions, the developer
2 will have to improve their portion of the platted roadways which form their
3 perimeter. And on most of the sides of this project there are exiting platted
4 roadways, not all of them, but on most sides. And in a couple of places
5 they have proposed, and we are recommending in favor of, a proposal to do
6 what we call a functional equivalent, and so a road will connect two corners
7 along one of the sides, will actually divert and go entirely interior to the
8 project, forming the circulation link, but not necessarily maintaining a
9 perfectly straight line along the edge. And in a couple places where that
10 doesn't work with the rest of the layout of the project, there will be just a
11 standard road improvement along the project frontage, as with any other
12 subdivision. And then, 2E is really the heart of the matter, with the first ...
13 with the beginning of Phase 1A, ... Jay, could you put up the drawing that
14 shows the four phases, 1A through 2B? Yeah, 1A is the part in pink, well
15 ... but it doesn't show the roads that well. Would you back up and I'll stop
16 you. That one's good. Actually, that's fine. So 1A is the upper left corner,
17 and the collect...the connections to the surrounding circulation system will
18 be Albert Way, which is centered on the upper edge of the map, and Via
19 Concha, which is the upper right hand corner. And then Via Concha will
20 come through and connect to Highway 1 at about the center on the left side.

21 Roos: And that's an example of something where we're going to essentially
22 abandon the existing sand track, and put something internal?

23 Marshall: Right, and you can kind of see that. You don't happen to have your pointer
24 handy, do you? That's a good example of where we're using the functional
25 equivalent. Via Concha is a platted road that extends this way up to
26 Willow Road up there, and it reaches to this point, and when we get to here,
27 the developer's proposing to divert it into the site, and we've evaluated how
28 that works with the rest of the properties around, and that is a satisfactory

1 functional equivalent. So there will be a paved road from Willow
2 following existing alignment of Via Concha to here, and then it'll jog over
3 in...into the site. And then from there, it continues through the site and out
4 to Highway 1 at this point, the main entrance, where turn movement
5 improvements will be constructed. Albert Way isn't quite as elaborate.
6 Basically, it only comes to here from Willow Road as an existing platted
7 road, and they're simply extending it into the site and connecting it with
8 this circulation loop. Now, as we progress from 1A, which is this area plus
9 the business park, into 1B which is this area, the next thing that'll happen is
10 the connection of Mesa Road back to Nipomo, which is over there
11 somewhere. And Mesa Road is an existing road, some of which is paved,
12 and some of which is not, and they will construct it to full County paved
13 road standards, the full length, and they will bring it from there into the site,
14 terminating here at the village center loop. Next, as we move from ... oh, I
15 should...I'm skipping a step. So there's a ... this road here is called
16 Camino Caballo, and the Applicant is satisfying the requirement for the
17 frontage improvement with a functional equivalent here, and then this road
18 here is Viva Way, and again we have a functional equivalent.

19 Roos: And will you abandon those roads, and they revert to the adjacent property
20 owners?

21 Marshall: If those owners initiate an abandonment request, I think it would be ... it
22 would go smoothly through the process. I don't think we'll initiate them at
23 the County level, because if it's not a problem for anybody, it isn't
24 necessarily worth the time and expense, but if they want it, and have need
25 of it, well we can make it happen, no problem. As we move into Phase 2A,
26 that's this area, the Mesa Road already extends to Nipomo. The next thing
27 that happens is Eucalyptus Road is here, and again extends ... I'll try not to
28 zap anybody in the audience ... Nipomo over there. Eucalyptus Road is

1 already a paved road to this point, and they'll simply have to extend it into
2 the site and up here to Via Concha, which has already been constructed by
3 that point. And in this case Viva Way along the frontage, and it was
4 identified as part of the project analysis, that Viva Way should be extended
5 here to make the circulation around the perimeter a complete product.
6 There aren't any platted roads that exist along this portion of the perimeter,
7 so there aren't any requirements for "frontage improvements" in that
8 portion. And by the time we've got to 2B, which is here, all of the
9 circulation connections to the existing network are in place.

10 Mehlschau: Richard, I have a question. People leaving this project and wanting to go to
11 the freeway and go south, will...will use probably Eucalyptus or Mesa ...

12 Marshall: Mesa, yeah.

13 Mehlschau: That'll throw traffic on to Tefft Street, where we already have a problem.
14 Will improvements be made on Tefft to take care of that problem before
15 this project, if it is built, would be throwing more traffic on that area?

16 Marshall: The...the analysis that was done with the EIR anticipated that, and also the
17 future extension of Willow Road, which really is the remedy for Tefft
18 Street, is that once we take a significant portion of the Mesa up this way,
19 give its own direct connection to Highway 101, then things get better on
20 Tefft Street. Certainly other things will also help Tefft Street. None of
21 them become an impact of this project all by itself, but it has to go build
22 some ... but what it does have to do is pay its portion of the South County
23 road improvement fee, which its collecting and programming
24 improvements to the freeway interchange and additional, for example,
25 down at Southland Street, there will be an additional connection onto the
26 highway, which will take some traffic away from Tefft. And the circulation
27 study and the road improvement fee is the way which those things which
28 are ... this is contributing to a portion of the need for, are...are addressed.

1 Mehlschau: But, in your mind, though, that will be solved before this adds more traffic
2 to it?

3 Marshall: No.

4 Mehlschau: It won't?

5 Marshall: No, but it ... as close as we can make it, so it will. We're moving as fast as
6 we can to get out there and construct the things which those funds we're
7 already collecting from other developments, but I'm almost certain that it
8 won't be perfectly timed so that they're all in place before the first houses
9 go in. The EIR anticipated that, and determined that the first phase can go
10 in before ... in fact, I should say the first stage, which is 1A and 1B, before
11 we reach a critical point at which Willow Road must be in place.

12 Mehlschau: So, again to follow up, that sort of says that before this project is done,
13 Willow Road has to be ... has to exist?

14 Marshall: In fact, before this project is a little over half way, not...not even just done,
15 but it can ... 'cause the first two fourths are bigger than one quarter of the
16 project, so the first half is bigger than a half. [laughter]

17 Mehlschau: Okay, so what you're saying, this project has been conditioned to get the
18 Willow Road interchange going....

19 Marshall: To get to stage 2 it is dependent upon the connection of the Willow Road
20 interchange to the highway, but a certain amount of development can occur
21 before that, and that's what the certified EIR recommends.

22 Mehlschau: Well, extending Willow Road to the freeway will help some on Tefft, I
23 mean, it'll ...

24 Marshall: It's not the only remedy ...

25 Mehlschau: No, I know ...

26 Marshall: It's one of the package of things that works together, yes.

27 Mehlschau: Are you satisfied with the monies that are coming from this project for road
28 improvement, are coming quick enough, or ...

1 Marshall: Yes.

2 Mehlschau: You are? Okay.

3 Marshall: Well, let me point out ... is that, Jay, is that in the development plan
4 conditions, or the tract map, about the payment of fees?

5 Johnson: The payment of fees would appear in the development plan.

6 Marshall: Okay. That's a very good point. Commissioner Mehlschau, if you'd look
7 at page 8A16, on the development plan, Condition 34, we're actually
8 recommending that for the later phases, that the payment of the fees be
9 advanced earlier than the standard timing, which is with building permits.
10 So eight...Condition 34 on the development plan is what implements that.

11 Mehlschau: Okay, thank you.

12 Roos: More questions for staff? Then is the Applicant here, and I don't have any
13 speaker slips for the Applicant, that I know you're going to have more than
14 one person perhaps presenting, so if you could give us one so we can keep
15 track of who's who here?

16 Janneck: Yes, my name is John Janneck. I represent PH Property Development
17 Company, and I've been associated with this project for fifteen long years.
18 And I love the project, I'm enthusiastic about it, we couldn't have done it
19 without the help of Jay and John and several boards, starting back in 1986.
20 So what you see here, all this, is a combination of a lot of public input, a lot
21 of work, a lot of planning, and most important, it's 1,320 residential units
22 which we all know are badly needed in San Luis Obispo County. My
23 job...I am ... what I'd like to request is be able to speak last. I will be ...
24 people of the Applicant's team that will speak after me, will be Vic
25 Montgomery, our planner, who will be talking about some conditions to the
26 map. Ken Bornholdt will also be speaking on conditions to the map, as
27 well as some legal issues, and when we get to water, we ... which is the
28 next section, I guess, they way Jay's divided up B, we will have Marie

1 Cooper, who is our water representative, our water lawyer, along with Tim
2 Cleath, if you need any questions from him, who has done our water studies
3 for us. So my job really is to tell you that ... to introduce these people, and
4 then...and explain that is an excellent, excellent project that really did start
5 in 1987, was part of the 1994 South County update, has gone through ...
6 there was an EIR done in 1994, an additional one done for us in 1998; you
7 heard Jay gave you all the details of everything we've been through, but the
8 most important thing I want to stress, is that the public has been involved in
9 every step of this...of this process. And I think this is what has led to a
10 good project. Now, we're going to have some disagreement with some of
11 the conditions, and ... but we think there's good reasons for some of the
12 conditions, and Jay ... and we have talked about it. And also, we're going
13 to have ... we have some issues with the NCS D's position, as well. So,
14 with that, I'd like to introduce Vic Montgomery, and to start his
15 presentation, and then request the right to speak last, at the public hearing.
16 Thank you very much.

17 Roos: You and your team will be allowed to comment on what the public ...
18 issues the public has raised.

19 Janneck: Thank you very much, sir.

20 Roos: And er ... I lost it. Oh well, wasn't important. Mr. Montgomery?

21 Montgomery: Mr. Chairman, members of the Commission, thank you for allowing me to
22 make a presentation this morning. My name is Victor Montgomery, my
23 address is 3765 South Higuera Street, San Luis Obispo, 93401. Also here
24 this morning from RRM Design Group is Allison Donatello, who was one
25 of the designers on the project. We are representing the Applicant, PH
26 Property Development, Inc., and I can't add much to Jay's description of
27 the project. This was envisioned in the South County update in the mid-
28 '90s, as a live, work, play community, and we've done our very best to see

1 that that vision was fulfilled in this project. And certainly for our County,
2 the Woodlands project represents an unparalleled opportunity to bring
3 housing into our County, as John said, housing that's much needed. I'd
4 also like to thank Jay Johnson and John McKenzie. We've worked with
5 them eight, ten years on this thing to try and get it to this point, and bring it
6 forward to you with a recommendation for approval. I am going to take a
7 bit of time in my presentation. For a project like this with some 120 plus
8 conditions recommended, we do have some comments on several of them,
9 and so I'll be going through those conditions, explaining our position,
10 recommending some wording changes, and that sort of thing.

11 Roos: Excuse me ... do you perhaps have those on paper, so you may say
12 something, and we might miss it, so that we could in the end compare your
13 language, and not miss any of things that you asked ...

14 Montgomery: I do.

15 Roos: Great.

16 Montgomery: So with that, I'm going to ... I have several handouts for you that address
17 some of the conditions where we have issues with them, and I'm going to
18 start by giving your secretary ... This was a letter that we sent to Jay
19 Johnson dated September 24th, delineating some of our comments on the
20 conditions. And so we can refer to that in writing, and Jay has a copy of
21 this as well, although there have been some conditions that were changed as
22 late as this morning, so I still have additional comments. I'm going to start
23 first with development plan condition No. 7, so on page 8A-12. And this is
24 a discussion of the language. In many of these conditions, the language is
25 very important to us because it is linked to how this project will get built,
26 and the sequencing of construction. In Condition 7, we would like that
27 condition to read "mass tree cutting", and we need to differentiate between
28 cutting of the trees and removal of the trees. There will be an operation go

1 on, on the site where a contractor will be brought in to cut down trees in the
2 areas where they're going to taken down, to potentially chip the logs from
3 the trees, to grind the stumps from the trees, and to create mulch. All of
4 that operation happens on the site. Tree removal, on the other hand, is
5 when those...when those materials get moved off the site, and are delivered
6 some place else, if that happens, if we are unable to use all of the material
7 on site. So I'm going to differentiate a couple of times in these other
8 conditions between removal and cutting. And why do I make the
9 distinction? When the trees are removed we are anticipating truck traffic,
10 and if truck traffic is going to leave the site, then traffic improvements get
11 triggered, and we want to make sure that if we're just on site, cutting and
12 chipping and things like that, we're not off site building roads that we
13 aren't going to use. So, first, No. 7, we would request that it say "tree
14 cutting". My next comment is on Condition No. 10, and we would ask that
15 at the end of that condition, the words "as economically feasible" be added
16 to the condition. This condition is talking about the early installation of
17 things, and it mentions provision of amenities, landscaping and initial
18 buildings. We want to be sure that it is understood that we will build
19 commercial buildings as we have users for them, that we are not going to
20 be building speculative buildings on the site, and then hoping that we can
21 find tenants for them. So we're asking that "as economically feasible" be
22 added. Excuse me. On Condition No. 11, we are requesting that that be
23 changed to read that there would be a "maximum of 3,000 square feet" and
24 a "maximum parking of five automobiles". This is an arrangement we have
25 discussed with the Sheriff's Department, based on their interest, potential
26 interest, on having a substation in the Woodlands village. Condition No.
27 15. As I mentioned in conjunction with Condition No. 7, this issue of tree
28 removal versus cutting, we would request that Condition 15 be relabeled

1 “prior to start of tree cutting”. Condition No. 23. This has to do with our
2 water conservation program. I hope you...that as Commissioners you have
3 had a chance to read a lot of the documentation for this project. We have
4 many, many water conservation measures required and, in fact, we’ve
5 produced a whole book called “The Master Water Conservation Plans” and
6 the “Master Conservation Plans” period that include recycling, etc. The
7 long and the short of it is the staff has suggested that the bar for water
8 savings other than recycling the water on the golf course and all those sorts
9 of things, there was discussion that we should be in a toilet retrofit
10 program. Staff has suggested that the bar be set at 165 acre feet, based on
11 an analysis they did using the NCS D’s numbers for water savings. We
12 believe that the water savings programs that are well-documented have a
13 long history in the City of San Luis Obispo and the City of Morro Bay, are
14 much better numbers, and much more accurate numbers reflecting what
15 will really happen, especially in a project of this type, size and design, and
16 so we are requesting that the bar be set at something like 100 acre feet, as
17 opposed to 165 acre feet. My next comment is on Condition No. 32. This
18 one is just for consistency, it now says “prior to logging operations.” That
19 should say “tree removal”. And Condition 32 is when we would be
20 improving the Highway 1/Via Concha intersection, accommodating tree
21 removal trucking. My next comment has to do with Conditions No. 34 and
22 35, and as Jay mentioned, this was a condition that was changed from our
23 understanding just this morning. These two conditions have to do with
24 traffic improvements and payment of fees, an item which you just discussed
25 a minute ago. And Condition No. 35 indicates that the Willow Road infill
26 extension is required for the occupancy of Stage 2. And I have another
27 handout I’d like to give you. If you review the EIR closely, and you look at
28 page 18, it basically says that the impacts on area-wide roads in Nipomo is

1 anticipated to be the same, roughly, with or without the interchange. And if
2 you look at the handout that I just gave you, the bottom of the page, you'll
3 notice it says "Woodlands Specific Plan, CEQA findings." These were the
4 actual findings from the hearing when the Board of Supervisors adopted the
5 Specific Plan and certified the EIR, and made the findings. And I've
6 highlighted Mitigation A, and if you look above, it's talking about Willow
7 Road and Highway 101, and it says "all development will be subject to the
8 existing South County circulation fee, which will provide for this extension
9 and interchange". We believe that the payment of the fees for the project is
10 the key here. That the money be available, not that occupancy of Phase 2,
11 Stage 2 of this project, be linked to the presence of that interchange.
12 Neither the County nor we can make that interchange happen. It will be a
13 Cal Trans project, and it has to go through the Cal Trans process. And so,
14 it's imposing a condition on us which we cannot fulfill.

15 END TAPE 1, SIDE A

16 START TAPE 1, SIDE B

17 ... as the County's fee program requires, but we cannot agree to go out and
18 build an intersection...an interchange in the Cal Trans right-of-way. It
19 simply can't happen for us. And so we are requesting that Condition 35 be
20 deleted, and if Condition 35 is deleted, that Condition 34 remain. By the
21 way, parenthetically, the Woodlands, as a part of its vesting tentative map
22 application, and in many public hearings, has agreed that the fee program
23 for the South County area will affect us, and will continue to affect us, at
24 the rates as they are adjusted through the life of the project. So our fees are
25 not static, and I would note that shortly after the completion of the Specific
26 Plan, the County doubled the fees for the area covering the Woodlands,
27 from what they were prior to the Specific Plan. My next comment is on
28 page ... is on 8A-17, No. 39. We are requesting that that language say

1 “tree cutting” as opposed to “tree removal”. My next comment is on
2 Condition No. 56, which is on page 8A-21. We are also requesting that that
3 condition use the words “prior to issuance of any tree cutting permit”, and
4 that’s when we would get a biologist involved. Condition No. 57, we are
5 also requesting say “tree cutting”. Condition No. 62, it’s on page 8A-24.
6 This has to do with the specific area of the existing site. There’s about a
7 nine-acre area that has coastal scrub habitat on it. And the way the
8 condition is currently worded, if there are silvery legless lizards found on
9 the site, we would be required to have a substitute habitat area completed
10 and ready to take the lizards, before we could disturb that coastal scrub
11 area. We are requesting that that be modified to say that if the lizard is
12 found, we must preserve the delineated habitat of the lizard within the nine
13 acre area, not just automatically approve the entire nine acres if the lizard
14 only requires one for its range of habitat. And a biologist can delineate that
15 range of habitat, so it gives us some flexibility in dealing with the scrub
16 area. Condition No. 69. This has to do with ... it’s on page 8A-25. It has
17 to do with accessibility to the houses and the park areas, and we are
18 requesting that it say “the park areas” in the first paragraph be “as
19 applicable”. It says provisions for a portion of the single homes to be
20 adaptable. We’re suggesting that a portion is probably not a very good
21 definition for how much, and suggesting that 1% of the homes be built such
22 that they could be adaptable for handicap access to them. And on Item C,
23 as just a housekeeping matter, as a part of sequencing, that it say “per
24 phase” at the end of 69C, and this has to do with the sequencing of maps
25 and access to the park. My next comment is on Condition No. 81. This is
26 on page 8A-30, and it has to do with providing showers and lockers for
27 employees. And you can see the level of detail that these conditions have
28 gone into. We are suggesting that a better standard than 25 employees

1 would be 50. Condition No. 85, this is a project condition, which, if you
2 follow the thread to its origin, goes all the way back into the original
3 Specific Plan. And these are comments that were ... received from CDF in
4 1998, as a part of the Specific Plan and EIR process, in fact, the comments
5 pre-date that. And it says we're going to provide automatic fire
6 extinguishers in residential buildings. And the sections that it's referring to
7 are Title 19 of the County's Building Codes and construction ordinances.
8 And Title 19 does not require residential fire sprinklers for buildings in this
9 County. They require the threshold as set for commercial buildings over
10 5,000 square feet. And if you follow the trail of letters from CDF, the
11 original discussion of fire sprinklers happened in the context of the Nipomo
12 station not being manned 24 hours a day. And our understanding with CDF
13 at the time that letter was written was that if the station became manned 24
14 hours a day, that residential sprinklers in this project would not be a
15 condition of it, so we're requesting that we not be required to install
16 residential fire sprinklers as described in Condition No. 85, and that we be
17 treated like the other projects. Black Lake doesn't have them, Cypress
18 Ridge doesn't have them. We are in a competitive marketplace, where
19 we've got to compete with those projects, and they don't have these
20 requirements as far as I'm aware. My next comment is on No. 93. We
21 would request that the language there say "prior to tree cutting". And that
22 has to do with having a fire hazard plan approved by CDF, which we're
23 fine with, before we start cutting. My next comment is on Condition No.
24 95. This has to do with when we're going to have a recycling plan
25 approved by the Integrated Waste Management Authority, and we're
26 requesting that say "prior to occupancy", rather than "prior to building
27 permits," because that's when we have to start recycling, is when we've got
28 people there. Excuse me.

1 Last, Condition No. 100. This has to do with affordable housing. If you
2 look on page 9 of the Specific Plan, we believe that the agreement that we
3 made with the County that was adopted by the Board of Supervisors is
4 very, very clear on page 9. It says “3%, up to 40 houses”. There’s
5 absolutely no ambiguity there. Or we can pay fees in lieu. And we don’t
6 believe it’s right for that condition to be changed at this point in time, after
7 the Specific Plan’s been adopted. On the tract map conditions, they start on
8 8A-35, I have just a few more comments. I will not be up here much
9 longer. Let’s see, tract map conditions 8A-36 ... I’m sorry. I have a
10 comment on No. 2b. This has to do with the Highway 1 widening at the
11 area where we might be taking materials off site. We’re requesting that at
12 the end of that sentence, add “prior to tree removal”, since that’s when the
13 truck traffic would be initiated. On Item 2d, this has to do with the
14 extension of Dawn Road, and we’ve had many discussions with Richard
15 Marshall about this. And we are requesting that at the end of that
16 condition, the words “or functional equivalent” be added. We believe that
17 the roads through the project provide a functional equivalent access to
18 Highway 1, and that improving Dawn Road will prove to be a road to
19 nowhere, because of the existing conditions out there on the site. My next
20 comment is on 2e...2e2. And the way Jay has recommended changing that
21 condition, his recommendation this morning is acceptable to us. That’s at
22 the 335th permit. 2e3, we’re requesting that at the end of this condition, the
23 words “or functional equivalent” be added. We believe that the interior
24 circulation provides for adequate way to get from Mesa Road to Eucalyptus
25 Road through the project without the off-site improvement. My next
26 comment is on Condition No. 22, which is on page 8A-41. The condition
27 as written requests that we pay for as a part of our bonds, costs of
28 engineering. We believe that should be deleted. Next, Condition No. 26 on

1 page 8A-41. This has to do with the requirement for residential fire
2 sprinklers. Our comments remain the same, that they are not required in
3 other projects, and are not required by County standard. And my last
4 comment is on No. 27i. And I think Jay got that one this morning, and that
5 has to do with changing “pellet stoves” to “EPA approved appliances”. I
6 would like to thank you for your patience as I went through those
7 conditions. They are important to us that they be correct. I am available to
8 answer questions, if you would like. Otherwise my presentation is
9 complete.

10 Roos: You have presented us with quite a few changes here, and I think I’ll
11 discuss a moment with the other Commission members how we’d like to
12 handle this. I’ll propose that at the conclusion of the public hearing, that
13 we can go through them one by one, and staff and you can have an
14 exchange as to we should or should not do this, and then we may need to
15 call in another expert such as CDF to get their opinion, and then we’ll go
16 through them one by one. That make sense? Some I presume you could
17 agree to over the noon hour, you have gone through and determined so we
18 can deal only with the substantive ones. Make sense?

19 Johnson: Yeah, staff would be ... would like to be able to comment later. That ... a
20 lot of these we have comments now, but let’s all do it at the end, because
21 several of them will need internal discussion with other staff or the CDF,
22 Public Works, etc., so I think...I think what you outline’s very appropriate.

23 Roos: And as the public comes up, if they have heard anything, if they wanted to
24 weigh in on pros and cons ... we will have closed the public hearing by the
25 time we consider them one by one, but we will have the Applicant be
26 presenting your case versus staff or ...

27 Montgomery: I think that kind of a dialogue would be very appropriate, so that we can
28 make these conditions actually workable, and see if we can make an

1 arrangement between us and the staff where we can actually implement
2 them well. Thank you.

3 Roos: Next, Mr. Bornholdt?

4 Cooper: It'll be me. My name is Marie Cooper, I'm with the Bing & McCutchen
5 law firm and I'm the water lawyer for the project. I'd like to address some
6 procedural issues, where you've raised questions today, and then talk about
7 procedures common sense might dictate. This new law that came out
8 regarding water supply verification adds a level of procedures to processing
9 subdivision maps. What it says is, you have to slap a condition on every
10 tentative map for more than 500 units, that says "obtain a water supply
11 verification before final map". So we're asking you to do that here today.
12 It then contemplates that in most circumstances you'll shoot a request over
13 to the a public water agency, they'll come back with their verification, and
14 then when the final map comes up before the Board, they'll simply check
15 off "yes, verification received" and the final map will be approved. Here,
16 we've got a mutual water company serving the project instead of a public
17 water agency, so the law says in that instance, the County provides the
18 verification itself. So that's why we have two agenda items here. One is
19 that in the map you'll impose the condition of approval, and the second,
20 instead of shooting it out to a public water agency, you verify the water
21 supply. Now what common sense dictates is, as Mr. Johnson said, you're
22 never going to approve a map unless you're certain there's a water supply
23 for the subdivision. So common sense dictates that we address the
24 substance of the water supply issue in the context of the map. So I'm
25 hoping that we can do that, and then that the agenda Item 8 be the water
26 supply verification, could be a short, perfunctory hearing, of course, open
27 to discretion. Now on the water supply verification, I understand this is the
28 first one this County is doing, and all throughout the State of California a

1 lot of cities and counties are facing their first ones. We're doing several of
2 those. But the issues are nothing new. The issues are the same issues
3 you've been dealing with under CEQA for years before you approve any
4 project. Is there going to be enough water here? Is taking water from this
5 project going to mess up water for other projects, now or in the future? The
6 water supply work for this project has already been done. There have been
7 extensive analyses over the years. It was studied most...in most detail for
8 the 1998 EIR for the Specific Plan. Then when the Growth Management
9 Ordinance was amended in 2000, it was studied again in the supplemental
10 EIR. That supplemental EIR surveyed information that had come out
11 between 1998 and 2000, 2002. It looked at two main reports. One of them
12 was a report from Mr. Scalmenini, who is very well-respected in this area,
13 supplementing the EIR. Explains that all that did was explain there's no
14 overdraft now, and set a base line for measuring future impacts. The
15 supplemental EIR also addressed a report from the Department of Water
16 Resources, DWR. It explained that DWR report says there's enough water
17 in this basin to serve projected land uses through 2020, but after that, didn't
18 say when, you're going to run into problems if you don't impose some
19 water conservation measures, some recycling measures, some educated,
20 good, basin management techniques. The studies are all there, they comply
21 with the law. The only question before you today is whether anything has
22 changed since the Growth Management Ordinance was amended in 2002, it
23 was earlier this year. And what we have is we've got ... yesterday, what
24 came out, was a revised executive summary from that 2000 DWR report. It
25 states the same conclusions. It states "supplies appear adequate to meet
26 water demands through water year 2020", but indicates that there might be
27 problems if you don't take precautions now to avoid problems some time
28 after 2020. It says it's conjecture to say when sea water might intrude, it

1 says that the...the part of the basin that the Woodlands is in, the part of the
2 Mesa that Woodlands is, is in equilibrium, but be careful so you don't run
3 into problems some unstated time after 2020. Well, this project includes
4 just the type of conservation measures that the DWR report recommends.
5 It includes recycled water, it includes extensive conservation devices, as
6 Mr. Montgomery explained, the project has a book on educating people
7 about water conservation devices. So this project fits to a T the DWR
8 report. That was again released, slightly revised, yesterday. The only other
9 thing that's new is that we've had a couple of letters from water suppliers,
10 from the NCS D and from Cal Cities. And you need to understand that
11 there is a lawsuit pending, we are on opposite sides of the lawsuit, there are
12 only two sides in that lawsuit, there's overlyers, there's appropriators,
13 they're the appropriators, we're the overlyers. Most of this is posturing for
14 the lawsuit. Of course, we have opposite positions. But the fact that we
15 have opposite positions doesn't make all the substantial evidence that is in
16 front of you about water supply disappear. The fact that somebody's filed a
17 lawsuit, and said "I don't agree with that", doesn't mean that it disappears
18 and you somehow lack substantial evidence. Of course you have
19 substantial evidence of water supply. And the other point I'd like to make
20 about these letters is that, apart from all the technicalities, apart from all the
21 legal issues, look at the common sense approach. Actions speak louder
22 than words. These agencies are not acting as if, according to NCS D,
23 there's a 21,000 acre foot deficit on the Mesa. They're not shutting
24 everything down. They're still issuing will serve waters. They just
25 dropped a well near the Woodlands in '98. They're still ... they're
26 allowing annexations to happen. They're not acting as if there's any water
27 problems on the Mesa. And, lastly, I'd like go through the documents that
28 I've given to you. We had severe technical difficulties yesterday. I'm not

1 sure what reached you yesterday, and what didn't. So I've provided a
2 complete copy of documents today, and they are my letter responding to the
3 NCSD and the Cal Cities letters. They are the copy of the DWR executive
4 summary, the one that's slightly revised, and they are two letters from Mr.
5 Cleath responding to both the opponents' letters and the water supply
6 letters, and Mr. Cleath is here, and he will available to respond to any
7 technical issues that you have.

8 Roos: I'll help you out, we got them just a few moments ago, or this morning, we
9 obviously haven't them, so if you think there's substantial evidence that we
10 should have, you or Mr. Cleath should so state.

11 Cooper: I think all the substantial evidence that you need to support a water supply
12 verification was presented in order to certify the supplemental EIR. The
13 documents in front of you essentially explain that nothing has changed
14 since then.

15 Roos: Any questions? Mr. Cleath?

16 Cleath: Tim Cleath, Cleath & Associates, San Luis Obispo.

17 Roos: and it's ... before you get going, I'm going to ask you a question, and you
18 may want to bring it into your remarks. On page 104 of the EIR, there was
19 a chart ... perhaps this one?

20 Cleath: Yes.

21 Roos: I'm sure you're familiar with it, you probably drew ... your name is on it.
22 And I hope you could just perhaps put that up and discuss that in your ...
23 you know, that 1,241 and the consumptive use and the return flow, and that
24 sort of thing?

25 Cleath: I don't have a copy with me here. I guess I'll ...

26 Roos: Anyway, at the appropriate time, if you could discuss that.

27 Cleath: Oh, okay. Well, we don't necessarily have to put it up ... well, I guess we
28 can, just to show what ... what the project entails. This diagram is just to

1 show where the water is going to serve different aspects of the project.
2 And there's two different aspects of water. One is, how much you pump,
3 and the other is how much is lost from the basin just from consumptive uses
4 by domestic or irrigation purposes ... activities. And, as you can see,
5 there's well production, and then there's waste water recycled use for
6 irrigation purposes and then, actually, there's also a beneficial effect of
7 taking the eucalyptus trees out of the area. The eucalyptus trees have a very
8 dense mat there...they pretty much cover the area, and preclude recharge
9 from a clearing on a particular project. A portion of the water that you
10 irrigate with does go down into the ... back into the sub-surface and into
11 the ground water. And so, that's kind of an overview of what this diagram
12 tells you. And, of course, this was evaluated as part of the EIR and SEIR.
13 So, that item ... if that kind of explains ...

14 Roos: If ... kind of run over those numbers and explain it.

15 Cleath: Okay. Right now the project has four or five wells which they could use to
16 provide water to the development. Only a couple of them are currently ...
17 we evaluated a couple of different options of how that ... they would occur,
18 but the water from those wells would produce 1,241 acre feet per year. 848
19 would go to the left, down to the domestic use, and of that 848 we estimate
20 380 is going to be consumed through irrigation and personal use. The
21 remainder goes to the waste water treatment plant. The waste water
22 treatment plant treats that water and in concert with the ... a portion of the
23 well production, is used for golf course irrigation. That...those two
24 combined become 791 acre feet, that's used for golf course irrigation.
25 We're assuming that the irrigation will consume 722 acre feet per year of
26 the 791. The remainder would go down into the ground, just because you
27 can't control everything, no matter how you try and control it. There'll be
28 some loss. Okay, so we have also over on the domestic side down on the

1 far left, is that a portion of the irrigation of the landscaping also has some
2 deep percolation losses as well. So, then we say “Okay, well if we take out
3 all of the eucalyptus and allow recharge to occur”, we estimate that we’ll
4 have 272 acre feet of recharge, which doesn’t occur at this point in time.
5 And so in consideration of the return flow, and the improvements in
6 removing the eucalyptus trees, we have a consumptive use for the project of
7 830 acre feet per year.

8 Roos: So that’s 830 that’s lost ... that’s ...

9 Cleath: That’s...

10 Roos: ...transpired.

11 Cleath: You pump out, and you don’t see it in the basin again. Yes.

12 Roos: And how much does it rain on the site?

13 Cleath: It’s about 14 inches of rain ...

14 Roos: So that’s 1,000 acre feet, or so.

15 Cleath: Yeah. But, of course, with rain, a lot of it evaporates out, and so if you’re
16 trying to say, “well how much can percolate?” We try to make that kind of
17 an estimate, and we said “well, essentially, if you have, say, native grasses
18 out there, rather than the eucalyptus at this point in time, you could get 272
19 acre feet percolating on site. And so it’s only a portion of the rainfall that
20 does occur. Much of it evaporates off. Of course, there’s no run-off off the
21 site. Virtually no run-off. So what rainfall falls on there either evaporates,
22 is transpired to other plants, or goes down into the ground.

23 Roos: So, 500 acre feet or so got to come from somewhere else? Other rainfall?

24 Cleath: From other areas, yes, ...

25 Roos: ... or the river ...

26 Cleath: Right, now, and of course, one of the questions has been, “well, where does
27 it come from?” Well, not all of the loss...all the areas are totally built-out.
28 So you do have percolation in other areas ... pardon me, throughout the

1 Mesa, it percolates quite a bit. And then also you have sub-surface inflow
2 from areas as water levels are changed by pumpage, where you have some
3 lower levels, you do induce area water levels to ... water flow in from areas
4 where the water levels are higher. And so sub-surface inflow is an
5 important factor in recharge to the...to the ground water Mesa, which are
6 the ... ground water basin ... the Mesa...under the Mesa.

7 Roos: I know that was discussed in the EIR and the addendum, could you
8 summarize where that water does come from?

9 Cleath: A portion comes from the Santa Maria Valley at this point in time.
10 Recently water levels have been lower in the Mesa area than over in the
11 Santa Maria Valley. You also have the Santa Maria River, where as
12 Twitchell's released and as natural flow occurs, it percolates into the
13 ground, and recharges the Oso Flaco area, and also you have the Oso Flaco
14 Creek that flows through there, that's actually ... actually even flowing
15 right now. You have State Water Project water being brought into the City
16 of Santa Maria that's percolating into the ground water into the Santa Maria
17 Valley. And anyway, those things, in fact, have resulted in additional water
18 in those areas, so when you have more water in another area, and you're
19 using water in another area, the ground water basin just acts hydraulically
20 to adjust to those things, and so significant flow will come from the Santa
21 Maria Valley portion of the ground water basin. They're totally connected.
22 One of the wells is right on the edge of the Mesa. There's no known faults
23 or barriers to flow, the aquifers are extensive, and ground water can flow in
24 from the Santa Maria Valley over into the Woodlands project area.

25 Roos: And that's been proved by studies that have gone and looked at different
26 flow heights?

27 Cleath: We've modeled the ... we've done cross-sections through the area to try
28 and identify where the aquifers are. We've performed ground water flow

1 analyses to determine which directions they flow, without the project, with
2 the project, yes. That is pretty well established, I don't know of anybody
3 who doesn't think that that occurs.

4 Roos: Could you describe the agreement you're making with adjacent
5 landowners' wells that if your wells affect theirs, ...

6 Cleath: There are...there are two ... well, the main mitigation measure that's been
7 established for this project are...is to us ... is to fix problems in other wells
8 nearby, that have been caused by pumpage at the...at the wells on the
9 Woodlands project. So, if somebody says "Hey, my well went dry" they
10 say "Well, okay, we've got to drill you a deeper well". Because the
11 aquifers do extend at depth, and so the water would be available if they had
12 a deeper well. So at this point in time, we are monitoring several wells,
13 even before any production occurs, to see how water levels are fluctuating.
14 On a monthly basis we're doing that ... PH Properties has asked Cleath &
15 Associates to do that, so we're monitoring several wells around the
16 perimeter, as well as the wells on the property at this time, and so this will
17 be used to say "Okay, well, yeah, the water levels ... " We ... as part of the
18 studies we have said, "Yeah, we can expect that there will be a few feet of
19 draw-down exterior to the property, as we ... in the areas where residential
20 wells are, where there could be some minor effects, and you know, just to
21 say "Okay, let's make sure that these people are...are satisfied that their
22 water supply is not in jeopardy", we say...we said as part of the project,
23 that there must be measures to assist and to correct those...those problems,
24 which are probably mainly due to either the age of the well, or the depth of
25 the water level, and the depth of the well, and to address those things. So
26 that...that has been addressed.

27 Roos: Now, you're not going to fix every well in the Mesa that ever ...

28 Cleath: No, there's a ... there's a ... I don't think it's about a half a mile perimeter

1 along the north and east side, that ... that are...where the wells are that
2 could be prone to any effect due to the project.

3 Roos: And these people have been identified, and they know this?

4 Cleath: We have surveyed the wells out in that area, yes. I mean, if somebody new
5 comes in, and they drill a 150 foot well, since the water levels are so deep,
6 well this is contingent on the existing wells that...that could be impacted by
7 it, right.

8 Roos: Any other questions? Okay, thank you.

9 Cleath: You bet.

10 Roos: Anyone else ... get to the team?

11 Bornholdt: Mr. Chairman, members of the Commission, my name is Ken Bornholdt.
12 I'm with the law firm...law firm of Bornholdt, Peron & Pratt here in San
13 Luis Obispo, 1303 Higuera Street. I'm appearing today on behalf of the
14 Applicant, and I really am going to probably easily finish before your noon
15 recess. So, there's several matters that I wanted to cover, and they have to
16 do with the comment letter filed by the attorney for the NCSO, regarding
17 one mitigation measure. And then I wanted to discuss the affordable
18 housing condition change that you've heard about, and then I wanted to talk
19 about requesting certain changes to the findings for the map and the
20 development plan, which I have discussed with staff. And then I wanted to
21 put into the record as a matter of housekeeping documents that the staff has
22 relied upon in their staff report and their recommendations of approval, to
23 make sure that the record here today is complete. And then a very short
24 conclusion. So that's...that's the overview. The first thing I'd like to
25 address is the letter you received from Mr. Seitz, the attorney for the
26 Nipomo Community Services District, regarding the wording of mitigation
27 measure 4.1-6d. I have prepared a letter which provides some of the details
28 for what I'm going to say briefly. And what I'm going to say briefly is the

1 letter from the counsel for the District is trying to argue that they have a
2 well next to the Woodlands property, and they think that well is one of the
3 wells that should be considered as part of the monitoring part of the well
4 survey. And they argue that, “well gee, the wording’s changed to ... now it
5 looks like it might not be”. The fact of the matter is, nothing’s changed.
6 And what this letter does is go back through the history, going all the way
7 back to the 1998 EIR, and the adoption of the Specific Plan, and the EIR
8 that was done. The District participated fully in those hearings. The Board,
9 as you know, approved the project, certified the EIR. That EIR is final, and
10 beyond challenge at this point. We next come to the 2002 SEIR, the
11 Growth Management Ordinance amendment that was earlier this year. The
12 District again participated fully, both with respect to the 2002 SEIR and the
13 1998 EIR. The District did not agree with either the Applicant’s experts, or
14 the County’s experts. The County had their own team of experts.
15 Nevertheless the Board did not accept their view of the water supply, and
16 they certified the SEIR in 2002, and that SEIR was done specifically with a
17 focus on water. That was its focus, water supply. And what they said in 19
18 ... excuse me, in 2002, a few months ago, was, there’s adequate water
19 supply. The basin’s not in overdraft. We reaffirm what you affirmed in
20 1998. Nothing has changed. This is the same project that was approved in
21 1998. The project has not changed. So what we did is we updated the
22 water supply analysis that was done in 1998 a few months ago. The
23 District appeared, they argued that – “no, there’s a problem”, and that’s
24 what Marie was alluding to earlier in terms of ... that’s what the Santa
25 Maria water litigation is all about. This is not the forum, this is not the
26 place to adjudicate the Santa Maria water basin. That’s being taken care of
27 elsewhere. The Santa Maria water litigation was addressed in both the EIR
28 and the SEIR, and all that we can say about that litigation is that no one

1 knows how it's going to come out. Nobody knows. We can't just stop here
2 and wait, you have to go on. And that's why this approval process has been
3 continuing and continuing and continuing. The point is, each applicant that
4 comes along, like the Woodlands, has to prove its water supply, which we
5 did in 98, which we did again in 2002. The mitigation measure that was
6 adopted in the original EIR, and that was at page 126, and it's quoted in this
7 letter. It makes it clear that not all of the wells around the Woodlands were
8 those wells that were intended to be covered by that mitigation measure.
9 What they were really intending to cover were those people who had drilled
10 wells, and these were homeowners, overlying users, who were concerned
11 that Woodlands was going to suck out their wells, because they were
12 maybe at a shallower depth than the Woodland wells. And so this
13 mitigation measure, as is evident from this EIR, was really intended to
14 cover those people. And those are the people that are covered and
15 described in the mitigation measure that was approved by the Board in the
16 EIR in 1998, that was approved by the Board in the Specific Plan that's
17 before you today, and that is in the staff report that is before you today.
18 This is all consistent, going back to 1998. There isn't any tweaking, there
19 isn't anything major going on here. This is what was intended, go back into
20 the original document, go back into the original record in 1998, and I think
21 you...it'll be borne out. So that's all I have to say about that mitigation
22 measure. In our view, it's not any different, it's the same, and it's clearly
23 what was intended when the project was approved by the Board back in
24 1998. I'd like to turn now to the condition to the map, which is Condition
25 No. 100, dealing with affordable housing. And there is a disagreement
26 between us and staff. As Jay mentioned, they would like to add a higher
27 affordable housing requirement than is in the Specific Plan. And I've
28 prepared a letter on this. And what I'm giving you is a copy of a letter

1 dated September 25th, 2002, addressed to Mr. Orton from County Council,
2 where I was explaining to him why we believed the condition as proposed
3 in the staff report cannot be imposed by this Commission. And I just
4 simply want to quickly go through why we believe that's so, based upon the
5 documents before you. If you look at that attachments, we can just flip
6 through them and you'll see what I'm doing.

7 Roos: As we look at the documents, I have a copy of a letter " ... enclosed please
8 find our request for additional findings" and the other one is " ... in our
9 discussion with Jay Johnson we agreed to disagree on the affordable
10 housing requirements".

11 Bornholdt: Yeah, look at the one on affordable housing requirements, put the findings
12 one aside for the moment, I'll come to that in a minute.

13 Roos: I don't think we have enough finding ones here.

14 Bornholdt: Oh, you don't.

15 Roos: I have one ... do you? Do you have the findings one? I don't think County
16 Council has the findings ones either.

17 Bornholdt: Well, it was sent to him a couple of days ago.

18 Roos: ... got that one.

19 Bornholdt: Do we have enough now?

20 Roos: No, not of this one. It is addressed to Mr. Orton, so he probably already has
21 it.

22 Bornholdt: Well, the one that I'm focusing on now, Mr....Mr. Chairman, is the one that
23 deals specifically with ... it says "affordable housing requirement".

24 Roos: Right, and we all have that one, and I'm just trying to get ready for the next
25 thing.

26 Bornholdt: Thank you, I appreciate that. I'm sorry for the confusion. What I was
27 going to suggest is skip over the letter, and just go to the exhibits. And the
28 first exhibit is a copy of the proposed condition that Mr. Johnson went over

1 with you earlier, and that's...that's the proposed condition which says
2 "affordable housing units at a ratio of 3% for low income, and 5% for
3 moderate," and then it cites to Land Use Ordinance Section. And if you
4 turn the page, what I've given you is a page from the Specific Plan. And
5 this is page 9. And if you look at the bottom and the bracketed paragraph,
6 you'll see that it provides very specifically that the Woodlands will offer up
7 to 3% of the total number of housing units to affordable housing, or a
8 maximum of 40 units. This contribution may be met by offering to
9 dedicate two sites, pay in lieu fees, etc. Okay, you can see the two are
10 different. The question is, do they have to follow the one that's in the
11 Specific Plan, and we think you do. And if you turn the page, you'll see
12 next what I've given you is copies of pages from the South County Inland
13 Area Plan. Pages 419 and 420 describe that the Woodlands village is
14 within the South County Area Plan. The next pages I've provided you is
15 called "Planning Area Standards". And the top paragraph on page 7-1,
16 which is bracketed, basically says in the third sentence, "standards are
17 mandatory requirements for development intended to respond to particular
18 concerns in an individual community". And then in the next paragraph it
19 says "these standards apply to the planning and development of new land
20 uses. They must be satisfied before a land permit can be approved, and for
21 newly constructed projects. These land use standards apply in addition to
22 the provisions of the Land Use Ordinance." And the next sentence is the
23 key sentence. "Where these standards conflict with the LUO, these
24 standards control, except in cases where additional density is going through
25 the TDC program, which is in effect here." So the exception doesn't apply.
26 So this says, if there's a standard in this area plan that's in conflict with the
27 LUO, the area plan rules. The next page is from the area plan, and it's
28 pages 7-95 to 7-96. That is where it says: (i) Woodlands Village Area

1 Standards. So now we look to these standards. These standards say, “The
2 1998 Woodlands Specific Plan is incorporated into this area plan.” That
3 means, everything in the Specific Plan is a standard for the Woodlands. It
4 says “All development within Woodlands must be in conformity with the
5 Plan. In the event of any conflict between the land use element and the
6 Specific Plan, the Specific Plan shall control. Any deviation of
7 development from the Specific Plan” and that includes that affordable
8 housing provision, “ is to occur only after appropriate amendment to the
9 Specific Plan.” At this point, there is no proposal for an amendment to the
10 Specific Plan, so we have to go with the Specific Plan the way it’s written.
11 The way it’s written is it’s very specific on its affordable housing
12 requirements. So, in the absence of a amendment, that’s what I think your
13 Commission has to follow, is the Specific Plan, because this says, “ ... the
14 Specific Plan rules over any conflict with the land use ordinance.” The
15 next thing I’d like to cover is what I’ll call technical matters, and I...I don’t
16 believe there’s any disagreement with staff, but they can certainly tell you.
17 The first one is the letter dated September 25th, 2002, to Mr. Orton, which is
18 headed “Proposed Findings for Tract 2341”. Do you have that letter. No?

19 Roos: I do.

20 Voice: Here it is.

21 Roos: I have one. I presume Mr. Orton has one.

22 Bornholdt: Okay, I’m handing that out right now. There we go. What I talked to Mr.
23 Orton about was requesting that some changes in addition be made
24 technical changes, and additions be made to the recommended findings for
25 the tract. And the recommended findings you’ll find on page 8A-35 of the
26 staff report. And what I’m recommending ... or what we would request
27 you do, is add all of these additional findings to the findings that are
28 already in the staff report at this page. They have to do with requirements

1 under the Subdivision Map Act, and I have talked to staff about it, and I
2 don't believe there's any opposition to those. The second thing are some
3 wording changes that I've asked for, again, to conform to what I think are
4 the provisions of the Government Code, as well as the South County Area
5 Plan. And I don't believe staff has any opposition to those, and we would
6 request that all of these changes made in this ... suggested be made in this
7 letter be made to the findings. The next letter is, again, another letter to Mr.
8 Orton, and this is for the findings for the development plan. And this is a
9 letter to Mr. Orton dated September 25th, and there's really only two
10 changes recommended. One is the same change on the CEQA finding, I
11 don't believe staff has any opposition to, and the second one is a change in
12 the wording dealing with affordable housing. Instead of saying "low and
13 moderate income housing" it should say "affordable housing contribution"
14 again based on the language in the Specific Plan that I've attached, which
15 we just went over. The last thing I'd like to do, Mr. Chairman, with your
16 indulgence, is just take a few minutes to put some documents into the
17 record. I just need to read the titles and hand them to the clerk. Just take
18 me a minute.

19 Roos: And while you're doing that, I propose that we'll handle these conditions
20 such as we did those that Mr. Janneck gave us. After lunch ... after the
21 public hearing, we can go through them one by one. Presumably you've
22 seen these before, and have an opinion ready.

23 Johnson: That would be appropriate. That's a good place.

24 Bornholdt: And as I said, these are documents that are in the public record, that were
25 relied upon in the staff report. The first is the final Environmental Impact
26 Report for the South County Area Plan, Inland Portion, dated May 1991.
27 The second one is the Environmental Impact Report, Revised Addendum,
28 for the South County Area Plan Update, dated July 1993. The third one is

1 the Environmental Impact Report, Second Revised Addendum, for the
2 South County Area Plan Update, dated February 1994. Next one is a copy
3 of the Woodlands Specific Plan. Mr. Chairman, I have a question.
4 According to the staff report, the Commission was already given a copy of
5 the 1998 EIR? Is that correct?

6 Roos: That's correct.

7 Bornholdt: Were you also given a copy of the appendices to the 1998 EIR?

8 Roos: No.

9 Bornholdt: It's a separate volume. Okay, we will put the appendices to the 1998
10 Woodlands Specific Plan, final Environmental Impact Report, September
11 1998, into the record.

12 Roos: Diane, do you have a copy of the EIR that was given to the Commission?

13 Johnson: Mr. Chairman, if I might also ... that to ... the appendices were available,
14 on record with us, should you have need to contact us to look over any
15 particular aspect of those appendices.

16 Bornholdt: I'd like to also put in the record a copy of County Ordinance 2847, adopted
17 by the Board of Supervisors on September 15, 1998, which approved the
18 Woodlands Specific Plan, and adopted the CEQA findings in support of the
19 EIR. I understand that the Commission was given a copy of the
20 supplemental Environmental Report from December of 2001? Is that
21 correct.

22 Roos: That's correct.

23 Bornholdt: Okay. And the clerk has that? The next document is a copy of Ordinance
24 ... County Ordinance No. 2957, an ordinance amending Title 26 of the
25 County Code, the Growth Management Ordinance establishing the
26 allowable growth rate for the Woodlands Specific Plan area. It was adopted
27 January 8, 2002.

28 Roos: Your stack is getting bigger.

1 Bornholdt: And then, finally, two documents that underline the...the addendum. One
2 is an air quality study that was done by URS Corporation, dated August
3 12th, 2002, and a PM10 emission inventory update, and the other one ...

4 Roos: So far, they've all been familiar to us, except that last one. Perhaps Mr.
5 McKenzie would comment on that after lunch, what that document
6 entailed.

7 Bornholdt: And then a noise analysis for the Woodlands prepared by URS, dated
8 December 12th, 2000, relating the noise barriers that are mentioned in one
9 of the modifications.

10 Roos: Must be something else we need.

11 Bornholdt: Sorry, the last item is a bulletin from the Department of Water Resources,
12 Bulletin 118-80, dated January 1980. Thank you for your indulgence, Mr.
13 Chairman. That concludes my presentation.

14 Roos: And again, I believe we're familiar with that one, so after lunch, somebody
15 could summarize what that says. That last piece of paper you put up there.
16 You already said last.

17 Bornholdt: One minute. There seems to be a little dispute here. Could I ask that
18 perhaps we put one more document in after lunch, if it turns out we have
19 one more?

20 Roos: Why, sure.

21 Bornholdt: Thank you very much, Mr. Chairman.

22 Roos: Having mentioned lunch, I believe now it's the appropriate time. The
23 Commission will adjourn for lunch, and return at 1:30. Thank you.

24 BREAK IN TAPE

25 Roos: Well, it's after 1:30, so I'll call this mission...this meeting of the San Luis
26 Obispo County Planning Commission back to order. Mr. Bornholdt was
27 giving us one last document.

28 Bornholdt: Thank you, Mr. Chairman, Ken Bornholdt again on behalf of the Applicant.

1 There is one last document, Mr. Chairman, I'd like to put in the record. It's
2 entitled "Revised Final Draft, Subject to Revision, Water Resources of the
3 Arroyo Grande – Nipomo Mesa Area" dated January 2000. It's a
4 publication of the Department of Water Resources. This is the infamous
5 DWR report. There is one last item, Mr. Chairman. NCSO did ask for a
6 continuance, and I'm at the pleasure of the Chairman, if you want me to
7 make my arguments against why you should continue, I can do that now, or
8 if you want to do that later, I can do it later.

9 Roos: You've got the floor.

10 Bornholdt: Thank you. In...in terms of their request for a continuance, we are opposed
11 to that. I think I've been through it already, and basically it...the reason is,
12 all of the issues relating to water, and all of the issues relating to the
13 project, were fully and completely discussed in 1998, in the ...

14 END OF TAPE 1, SIDE B

15 START TAPE 2, SIDE A

16 ... come in with, the Specific Plan itself was quite detailed, and that's why
17 the EIR is so detailed. The ... when the GMO amendment came up in 2002
18 in January, the Board was concerned about water, and making sure that
19 there was adequate water. And that was looked at extensively again. The
20 NCSO, of course, participated in all of these processes. Those decisions by
21 the Board are now final. The EIR is final. The SEIR is final. The NCSO
22 never challenged those documents. They could have, but they didn't.
23 Those are final. Those documents are set. Really, if you're going to come
24 in and ask for a continuance now, they have to show you some reason why
25 they need it, other than "we simply need more time". This is a District
26 that is quite evident by the submittals they made in a relatively short time,
27 but a time that you give to all members of the public, several letters from
28 several law firms, water specialists, a water lawyer. The District has a full-

1 time staff, they're well aware of all the water issues, they get involved in
2 them, that's their business. I don't think they've offered you one single
3 shred of evidence that you could point to, as to say "Well, gee, this is
4 something new, we...we really should look at, and therefore we need more
5 time." We would suggest that you go forward with the hearing and if at the
6 end of the hearing, you feel that more time is required, or staff feels that
7 there's more time required for something, then certainly you have the
8 discretion to continue the hearing then. We don't think there is anything
9 new, we don't think there is any reason to continue from what we've seen.
10 In balancing the equities, I would only say, my client has been in the
11 process for fifteen years. This is not something they take lightly, they have
12 a lot of people here, a lot of people have put a lot of time and effort into this
13 proposal before you here today. Staff has put a lot of effort into it, and I
14 think we'd all like to...to see you try and reach a decision today, and we
15 certainly urge you to do that, and not grant the continuance without some
16 adequate showing. Thank you.

17 Roos: Thank you. Mr. Janneck, anyone else from your team make a presentation?

18 Janneck: No, not at this time, Mr. Chairman.

19 Roos: Okay, then I'll open up the hearing to the general public. I have several
20 request to speak forms. I did have one gentleman who submitted late, but
21 he has a conflict of time, so I'll call him first. Mr. Herb Kandell?

22 Kandell: Thank you for putting me at the front of the list. I appreciate it. Pick up
23 my daughter at school. I'd also just like to make a pitch that you might
24 have some flexibility ... public comment. This is such a complex issue,
25 and it's going to be hard for some members to make the comments in the
26 three minute squeeze. I urge you not to adopt the amendments to the
27 conditions that were proposed by the Applicant. The Applicant has
28 repeatedly referenced the long-documented history of this project. Please

1 remember that this includes many staff conditions that have had public
2 review also. Specifically, do not lower the bar on water conservation
3 measures. We may disagree on specific interpretations of the water studies
4 and usage, but vigilance on conservation measures must not be
5 compromised. Do not compromise the staff recommendation on the timing
6 and completion of the Willow Road extension, or any of the other road
7 improvements. Our community simply cannot wait for these measures to
8 come about as soon as possible. Do not modify the 4.4-1a condition for
9 completion of the requirements for the coastal sage scrub habitat. This is
10 not just about finding or rescuing one rare lizard, it's about protecting the
11 only botanically rare habitat on the Woodlands site. On this issue, I must
12 make a correction, on page 35 of the project description, it reads, "the
13 Applicant is currently in negotiations with the Land Conservancy regarding
14 a fee contribution toward construction of coastal sage habitat." I'm a board
15 member of the Land Conservancy, and what I can tell you is,
16 representatives of ... myself and representatives, visited the site, and we
17 rendered an opinion to the...to the County on the technical feasibility of
18 purchasing and restoring like habitat off-site. We wrote a letter to the
19 County clarifying this point, that should the County approve this condition,
20 we recommended that it was ... it was feasible, and at that point, we may
21 be involved but we're not in negotiation directly with the Applicant, and
22 this is an important distinction that we would like to have corrected.
23 Further, regarding the legless lizard, it's commonly accepted that there are
24 two methods. One is to avoid the area, and the second would be to remove
25 the lizard, if found. I would discourage the avoiding strategy, which would
26 be what was proposed by the Applicant, because it may be found during
27 construction phase, it may be found by a bulldozer. And then, at that point,
28 what you're doing is you're creating a very arbitrary fragmented habitat on

1 site, which I think would be very inconvenient also for the Applicant, with
2 their plans for the area. I want to lend my support to the comments that
3 you'll hear later from the Pathways, and Ride Nipomo Trails Group, they
4 reflect many hours of work and detailed review by many citizens in
5 Nipomo, and if any changes are made to staff's recommendation, I would
6 say that they should be strengthened, and not weakened. There's been
7 insufficient time for public review of the staff report. I've even spoke to a
8 staff member who's had it for two days, and I think its, you know, I don't
9 know how many pages, so let alone the significant changes that have been
10 proposed by the Applicant. So I would recommend that continuance is...is
11 a viable option for the public to review the staff report, and for these
12 conditions that the Applicant has also asked for. Thank you.

13 Roos: Thank you. I don't intend to hold people to the three minute rule, although
14 after five minutes, and I'm keeping track, I might ask you to kind of start to
15 summarize, but ... I know there's a lot of things to cover, and we'll remind
16 that we're going to hear the water issue. There'll be a separate public
17 hearing for that, I mean, feel free to say what you like about water now, but
18 we will discuss water as another public hearing after this one. Moving on,
19 Mr. Michael Wynn?

20 Wynn: My name is Mike Wynn, I'm from Nipomo, and a director in the NCSD.
21 The Woodlands is a very fine project. I like nearly everything I know
22 about it, RMS...RRM's done a great job in designing it. We look forward
23 to 1,320 homes, a golf course, preservation of critical habitat, trails, school
24 park site, industrial park, hotel, all the features of a small city. And it has
25 been delayed far too long, and in truth I would say that at least some of the
26 protests that have been made earlier on in the last 15 years I've thought
27 were not very substantive, or were designed just to slow the process down.
28 But I am here today to ask for a continuance on this project for a single

1 issue, and that is the issue of water. And I want to give you five reasons,
2 briefly, and I'll be well within my five minute limit, thank you. First,
3 although legal counsel has told you that two seats out of five can still pass
4 this, because it's legal to have two out of three do so, I wonder if it's wise,
5 if you really want to make this major a decision with two of your members
6 absent. Secondly, there is new data about this in the DWR report, and it is
7 available, I urge you to look at it. One of the key changes was that they
8 have said that there is less deep percolation than what was originally
9 factored, which means that Mr. Cleath's numbers on deep percolation may
10 turn out to be well less than 272 acre feet per year. Third, there is new law.
11 SB 221 requires, it's on the very first page of the...of the bill, the act, that it
12 must be certified by, and not just certified by an agency, as was said earlier,
13 but the actual quotation is "it must be certified by a public water agency".
14 This does not allow for self-certification. NCSD is not prepared to do that
15 at this time, and I don't think that there is firm data to support that kind of
16 certification today. I don't know if your board wants to do that. Fourth,
17 there have been many delays, but in all fairness, it has to be said that a
18 number of the delays are due to the developer himself. Initially, the
19 community was told that he would bring state water in, so we weren't to
20 worry about the impact on the basin. That changed. Initially, we were told
21 there was going to be a school site, but then that was changed, and now it's
22 conflated with a park site. Initially, we were told there would be 11 acres
23 for critical habitat. That went down to 9 acres, and now today, I heard you
24 told in one of the last minute revisions that if the lizard only needed one
25 acre, that's all you'd have to really save. Those sort of changes that are
26 denied public review are not taken well in the community. It's a kind of
27 bait and switch that we find hard time dealing with. Fourth, there were 37
28 changes that I counted today, 11 of which had even no comment to you,

1 and we certainly have...had not had any time to look at those changes, and
2 to evaluate what effect they really have. For example, the term is used “as
3 applicable” or “as economically feasible”. In each of those cases, you need
4 to look at the whole thing and say, “what does this actually mean? How
5 will this affect the change in the process?” I don’t know if you’ve had time
6 to think about those changes. We that have been here today certainly have
7 not had time to look at those changes, and the public doesn’t even know
8 that the changes have been submitted at the last minute. And last, there
9 were appendices to the 1998 EIR that were in existence that were not given
10 to you. Staff tells you that they’re available, and you could have had them
11 if you’d known they were there and asked for them. But, in reality, you
12 have not looked at them yet, you haven’t had a chance to evaluate that, and
13 I would urge you not to vote until you’ve had time to do that. Thank you.

14 Roos: Don’t make the assumption that we didn’t look at them, because it’s not
15 valid. Mr. ... Mr. John Seitz?

16 Seitz: Mr. Chairman, members of the Commission, staff, members of the
17 audience and members of the viewing audience. My name’s John Seitz,
18 I’m District legal counsel to the Nipomo Community Services District, and
19 through that, I represent the Nipomo Community Services District, I
20 represent its Board of Directors, and the residents of the District, and their
21 combined reliance on the delivery of water from the ground water basin.
22 I’m here to present the District’s objections to the conclusions reached in
23 the staff report that the Applicant has met its burden, approving a 20 year
24 water supply. As I understand it now, though, that is not the issue that is
25 before the Commission, but it’s just the issue on the development plan. So
26 I will address that, I guess, when that one comes up. The first comments
27 that I want to make have to do with the request for a continuance, and I will
28 be echoing some of Director Wynn’s. First of all, from a policy

1 perspective, would you prefer to have the full Commission weigh in on the
2 debate? Secondly, the Nipomo Community Services District, which is
3 clearly an impacted agency, that Board of Directors have not ... has not
4 had time to evaluate and comment on the project. And I raised this very
5 issue in my letter, based on the Brown Act, and the 72-hour noticing
6 requirements, we got the staff report after the meeting that was held
7 Wednesday morning. And, although the Board has seen it, they have not
8 collectively weighed in on that report, or the staff report, or, as Mr. Wynn
9 has pointed out, the 37 revisions, one of which, of course, is the addendum
10 having to do with the water savings of 165 acre feet versus 100 acre feet.
11 Another reason for continuing it. The DWR report was just released
12 yesterday. And, again, I haven't had time to evaluate it. I was in San
13 Diego at a special districts conference. I don't think Mr. Garing, our
14 District Engineer, has weighed in on it, and I don't think Mr. Beebee has
15 had an opportunity ... the District's water engineer. Staff has already ... I
16 think there is a staff recommendation to continue C and D. I see no reason
17 why you can't take the public comment testimony, give staff some time to
18 consider these 37 changes. And one of the more important ones, from an
19 attorney's perspective, is that you've gotten now a whole lot of legal
20 opinions before this Commission. You've gotten just recently the opinion
21 of Mr. Markman. Again, his opinion comes late, because we didn't get the
22 staff report, and we didn't get those four letters, or three or four letters that
23 you find in your...in your agenda packet regard...from the Applicant's
24 attorney. But Mr. Markman has weighed in on his letter. I have weighed in
25 on my letter. We've had responses from the Applicant's attorneys. We
26 firmly believe, as was pointed out, that this is the first time the County has
27 processed a development this size with ... under Water Code Section
28 66473.7. We believe that reliance on the Applicant's attorneys for

1 interpretations, and to the same extent relying on our app...our
2 interpretation for action, you really ought to have Jan Goldsmith, your
3 water law attorney, give you an opinion as to when and how you implement
4 Government Code Section 66473.7. I think you need to get an independent
5 attorney, your attorney, to review this, and make...and make the findings as
6 to when, whether or not they've proven the 20 year sufficient water supply.
7 We believe they haven't. And I will address that later on. Secondly,
8 you've gotten Southern California Water Company's objections to the
9 proposed water resource plan. I don't know if you've received it, but our
10 office has received an independent letter from Black Lake Homeowners'
11 Association, requesting a continuance. Again, they have not had time to
12 review the staff report in depth. You're going to need time to...to resolve
13 the phasing issues that have come up. That seems to be a rather big issue,
14 just to determine on the run. And, lastly, as far as we can tell, and there
15 may be some contradictory evidence to this, the mutual water company that
16 they seem to be relying on to establish overlying rights, has not been
17 formed. The letters that we have seen and the staff report say that they are
18 in the process of being formed, and that their bylaws are in the process of
19 being formed. We think that, you know, you need to see that. If you're
20 going to rely on a mutual water company, and overlying rights, it seems to
21 me that that company needs to be formed now. So that's my ... I think that
22 we should have a request ... that the continuance should be granted. I want
23 to talk about the process itself. As you can tell from our letters that we
24 have written, especially my letters, my letters have to do with the mitigation
25 measure at 4.16...4.1.6d, and you'll find that on page 8A-15 of your staff
26 report. I'm only addressing this in the context of the development plan, not
27 in the context of the next hearing. And just by way of reference, I want to
28 show ... we have a map up here, and I want to show you what the District's

1 interests are. And I don't know how clear you can see this, but the map ...
2 the wells that are circled represent the District wells, and the dots ... and
3 the ones that are circled with a dot in the middle of them, you can see them
4 here ... here ... and up here ... Those represent the Applicant's wells. The
5 ones that are in solid represent the wells of the ... some of the residential
6 users. We believe that our wells need to be studied, just like the residential
7 wells need to be studied. From our well fields, the District pumps
8 approximately 2,500 acre feet per year. Those wells are capable of
9 producing 6,000 acre feet per year. Those wells ... I think Mr. Garing will
10 come up and testify later, that those wells have the potential for being
11 impacted, and that those impacts are well-recognized in the original
12 Environmental Impact Report, and again are recognized more fully in the
13 SEIR. Now, as I understand it, the reason why this project can go forward
14 at this time is because they got an exception to the Growth Management
15 Ordinance. And I've quoted verbatim the SEIR on what their mitigation
16 measures were. And, again, we think that the idea of not ... of delaying
17 and approving the water plan, or the water resource, 20 year supply under
18 66473.7, should come first, is because the mitigation measures directly
19 address that code section. In other words, that code section requires them
20 to evaluate existing uses, and we are an existing use. And the idea of
21 somehow approving the development plan with this mitigation measures, is
22 putting the cart before the horse. If you adopt weak mitigation measures as
23 part of a development plan, you've taken them out of play when it comes to
24 making the evaluation under the Water Code section. And I want to quote
25 what the SEIR had to say. And, by the way, this is the ... the mitigation
26 measure that had to do with granting the Woodlands project an exception to
27 the growth management plan. And you will find this on page 3 of my
28 letter. It says "prior to approval of discretionary development", that's

1 what's going on right here today, "the Applicant shall conduct a complete,"
2 I want to restate that word "complete survey of wells that could be affected
3 by cumulative water level interference". If you take a look at the map that
4 we had up there, you can't help but conclude that our wells are included.
5 "The Applicant shall then implement means to allow continued production
6 of these wells under drought conditions to the satisfaction of the County
7 Engineer. Actual impacts to the surrounding wells shall be verified and
8 monitored at the end of each phase, with the results submitted to the County
9 Engineer. If additional well level impacts are found that were not
10 previously identified, the Applicant and its successors in interest shall
11 implement any additional measures necessary to avoid significant impacts
12 to well operations." We request on behalf of the District and its residents,
13 that this mitigation measure be reinserted for mitigate ... at page 18, sorry,
14 page 8A-15. Now, I don't ... again, we have not had a whole lot of time to
15 perform a complete evaluation of this measure. But I know that staff has
16 been changing mitigation measures, Applicant has been requesting change
17 of mitigation measures, and we request that this SEIR mitigation measure
18 be reinserted into the conditions of approval. If you delay, then you're
19 going to take it off the board when it comes to the adoption of ... or your
20 certification of the water plan. One of the comments that I've heard
21 relating to this is you only have to evaluate actual water, that the wet stuff
22 is actually there for a 20-year water supply. I think that Government Code
23 Section 66473.7 requires two: one that the wet water is actually there, and
24 two, that the Applicant has ... the wet water is there without interference to
25 existing users, and then B, that the Applicant has an entitlement to it.
26 Again, the Applicant itself has testified before you that we don't know what
27 the Court is going to do. It seems to me very difficult for anybody to prove
28 a sufficient water supply and, by the way, I agree with that statement. The

1 other thing that the Applicant has argued is, is that really all you need to do
2 is condition the final map, you know, with ... for some future finding of
3 sufficient water supply. And that's all you really need to do. We don't
4 believe that that's the case. We believe that this is the last discretionary set
5 of hearings. This is the last time the public will actually have true input, as
6 regarding this final map ... sorry, regarding this tentative map. The final
7 map processing is ministerial. I mean, when you really think about it, when
8 you ... if you comply with all the conditions of the tentative map, staff says
9 they've...they've complied, and then actually processing the final map is
10 just actually administrative act. We believe that you need to certify the
11 water supply now, that you just don't merely tack it on as a condition. If
12 that's ... that's clearly not the philosophy of that code section. I think that
13 the certification of...of the water supply has to be fairly debated by a public
14 agency, and then, with public input, for that determination to be made. I
15 don't think making that determination is an administrative act. We also
16 have some questions ... I know that Jay has retaken a look at Condition No.
17 25, and I guess I'd ... want to know is, is are we reinstating this ... now
18 I'm going to the addendum, I'm sorry, I've got to orient you, to the
19 addendum where the Applicant is proposing to come up with a different
20 plan, as opposed to the retrofit plan that was in the original conditions. And
21 that retrofit plan was at a 1 to 1, and I don't know from Jay's comments
22 when he re...modified that condition, whether or not the retrofit program
23 was now going to stay as a condition, and the addendum was now off the
24 board, where there was a proposal to supplement or implement the
25 addendum ... sorry, implement the water savings through a different plan.
26 'Cause our engineer will surely testify up here, that we don't believe that
27 that addendum supports a 165 acre feet per year water savings, as required
28 by the 1 to 1 retrofitting. Again, I will...I do intend to come back to

1 discuss the water plan under 66473... 66473.7, but I really believe, as Mr.
2 Greening had pointed out earlier, that that is really the essential first step. I
3 disagree ... I have a lot of respect for your legal counsel, but I disagree with
4 the idea of somehow adopting a development plan with weak mitigation
5 measures on water, and then turning around and then attempting separately
6 and apart adopt...certifying a water resource plan. This doesn't make much
7 sense to me. With that, I'd be happy to answer any questions.

8 Roos: Thank you very much. Next speaker? Eric Greening? Followed by Arthur
9 Major.

10 Greening: Thank you, Eric Greening, and like Mr. Seitz, I still am uncomfortable with
11 the sequence here, for the reasons he just stated, and also because this being
12 the very first time that the County has approved, or is looking at the
13 possibility of approving, a development under the Costa Bill, the Water
14 Resources Advisory Committee has not yet actually had a chance to be in
15 the loop, and make any advice on how that might best be implemented in
16 this County. Anyway, I have multiple other concerns, and in the interests
17 of time, I think I will focus on concerns that are not likely to be brought up
18 by other speakers. One of them is that just calling something a mitigation
19 in its own right, doesn't mean that it does not itself have impacts. The
20 environmental impact of the Willow Road extension and interchange are
21 enormous, and include the taking of 800 to 1,000 mature oaks, coast live
22 oaks, and the fragmentation of the largest surviving stand of coast live oaks
23 on the Nipomo Mesa. To the extent that this project is responsible for a
24 proportionate share of the need driving the creation of this interchange and
25 extension, it would seem just that it should be responsible for a
26 proportionate share of whatever mitigations are ultimately called for as part
27 of the project, and that is an enormous environmental impact not looked at
28 in the environmental documents. I would like to say that the condition on

1 sludge generated in the project to be composted is on its face forward
2 looking. You'll find this in 98, Condition 98, but there's some unanswered
3 questions. First of all, composting works best if you simply have the
4 organic component isolated from other components, and there's no
5 evidence that the human waste would be isolated from other things that go
6 down drains, either household chemicals in the residential part, or anything
7 else that might go down a drain in the business sections of the community.
8 The other question that's unanswered is whether the product could or
9 would be land-applied on site, and what the implications of that might be.
10 There's obviously a lot of landscaping involved with the site, both
11 establishing the landscaping throughout the community, and landscaping
12 and maintaining golf courses. And it would certainly be interest...of
13 interest to the potentially exposed public to know what would be applied on
14 site. And even beyond that, would anything generated elsewhere be land-
15 applied on this site? At the last task force meeting of the bio solids task
16 force, a representative of the South County Sanitation District was making
17 a case for exempting bio solids intended for landscaping use from the same
18 scrutiny that it would get if used agriculturally. And it makes me wonder
19 whether there are potential areas in the South County where large
20 landscaping projects could be contemplated to use this material. I would
21 suggest, perhaps, a condition banning land application of bio solids within
22 the boundaries of the Woodlands project until an environmental review on
23 some proposed ordinance on bio solids in this County has been completed,
24 and you can make findings yourselves as to whether this is a safe activity to
25 happen in a place where there would be considerable human contact or not.
26 I know your Commission has a great interest in the issue, because you did
27 make three recommendations to the Supervisors a few months back, which
28 are not at this point being followed, but in any event, I imagine you have a

1 continuing interest in the issue, and so I hope you will tie up this part of the
2 project in some way. But the project as a whole, going back, is absolutely
3 enormous, and I think it's in your interest and the community's interest to
4 move very slow, and answer all the questions, including the water
5 questions, before you take an action. I support Mr. Seitz's call for a
6 continuance, both because of there being only three of you, and because of
7 the lack of review of what's now in front of you by many interested parties,
8 particularly the added requests for exemption from conditions of approval
9 and changes to conditions of approval, and the various documents that have
10 not had the chance to be circulated in the community, and in front of the
11 Community Services District. So, please do take testimony, formulate the
12 questions you need answered, but continue the result until you get the
13 answers. Thank you.

14 Roos: Thank you. Arthur Major? Followed by Penny Smith.

15 Major: Hi, I'm Arthur Major, I live at 861 and 867 Via Concha in Nipomo. I
16 represent myself and my wife, we are owners of that property. Jay, I don't
17 know if you can put up the site map for Phase 1A, it'll help me in my
18 description, but ... We have a northeast corner property to the most
19 northern corner of the development. And from a very personal side I need
20 to ... since the development of Via Concha is one of the first phases of this
21 development, that I apprise you of a couple of problems that are on that
22 section of Via Concha that goes from the north end of this development to
23 Willow. And since I'm on that corner there, I am the lowest property on
24 the east side of Via Concha in regards to the flood plain that comes down
25 through there. This road up to this point has not been a County road, it has
26 been privately improved by the landowners around it. In the process of that
27 being done long before I owned the property was the road was built up
28 right across my low section. It essentially has created a dam wall, D-A-M

1 wall [laughter] on the Via Concha side, so during our severe rain storms, I
2 have been literally flooded on my lower section of land. I have had talks
3 with people here within the County, and the Roads Department, in regards
4 to fixing this, which I was given permission to do it privately if I wished,
5 but... or wait until the development of Via Concha occurred. So I am here
6 to put on record that I am insistent on the culvert that should have been
7 placed in this road prior, now be placed prior to the road being improved,
8 especially now that I hear it's going to be a paved road. So that being one
9 issue I...I would like to see the ... what we had requested of the County,
10 now become reality, when this project finally goes on board. Second, is the
11 ... since I represent also the trails ... multi-use trails committee, and the
12 Ride Nipomo group, there is a proposed trails plan that will be coming
13 before you sometime in the future, and it will show this to be a riding trail
14 and multi-use trail, going north from this project up Via Concha to Willow,
15 and whether now would be a good time to also implement the amount of
16 footage that's needed for that type of function to occur up and down the
17 street, at this time, and alert you that this is something will come up later on
18 when that is approved. I have a third issue in that Dawn Road, which takes
19 across the entire northern end of the project, is going to be improved,
20 according to the plan. And at Albert Way, west of Albert Way to the end of
21 the project, on its northwestern corner, there is a nursery on the north side
22 of the street that has decided to take over half the street, and that issue has
23 come before you too, through our trails group. Kay Stoebe, who is the
24 owner of All Seasons Nursery there, has continued to keep his fence line
25 right there in the middle of the road, and has continued to grow vegetation
26 there. But this will be an issue, obviously, that's not my problem, but I do
27 need to make you aware that it's going to be a problem. The ... so, and
28 also there, is a trail that the trails committee has also proposed to go along

1 that particular road. So, at least going on record now, that these things need
2 to be addressed, I think, before these roads get too far down the road into
3 improvement, and so we're not having to readdress these roads at a later
4 time, at more expense. I think these considerations should be made.
5 Thank you.

6 Roos: Penny Smith ... followed by Georgia Kenninger.

7 Smith: I'm Penny Smith, I represent and am the chair person for the Nipomo
8 Pathways Committee. We have exactly two pages of questions that we
9 need to have specifically answered. This is in regards to the tentative ...
10 vesting tentative map and development plans project. Now, this is dated
11 June 20th of this year, but now we come here and we find that we have now
12 more to read with the staff report that you have just received, and so we do
13 need time to go over that. We have found errors in the map of July 24th,
14 2001, as compared to the map of July 20th, '02. This is also things that
15 need to be gone over and specifically the errors removed. We, as the public
16 who have taken time off from our jobs, unpaid, need to look at the staff
17 report and the 37 changes, continuance is needed to be fair, so we can go
18 over these and have these questions answered. I don't know if you want
19 me to go over all these...these questions, but ...

20 Roos: Now's the time.

21 Smith: Okay. Willow Road, at the ... is a very big concern for us because
22 of...Tefft can't handle it, can't handle it now. So we would like to put on
23 record that we would like to see that if Willow Road is not at Phase 2
24 completed, there needs to be a halt, there needs to be an absolute halt, so
25 that was one of our comments. Jay, I had a question for you, that we seem
26 to see the perimeter buffet...buffer seems to be getting smaller and smaller
27 and smaller. And we need to find out what that buffer is, and why it keeps
28 getting smaller. We also want to know about the Dawn Road

1 improvements, in what phases that Dawn Road will be improved. We show
2 on the map that there is a bike...bike Class 3 trail behind the houses on the
3 street, and it's not on the other map that I was telling you about. We also
4 would like to know if there are any ... any of the project's homes are one
5 acre and above. We would like to see that that has horse keeping on it, if
6 that is any acre sizes. When work starts, we would like to have a
7 community representative to review the progress on site dealing with the
8 pathways about every two weeks. We would also like to know what the
9 management group that we can contact to have answers for any problems
10 that we see at that time. We would like to know what the footing on the
11 equestrian trails that are not maintained by the County, what that is going to
12 be. And we have a very large concern about the extra traffic that will be
13 involved during the tree removal. We need to know how that is going to
14 be done when the...the trees are going to be removed. We would also like
15 to know who is going to make the decision on which trees are going to be
16 removed. Is it going to be, as other projects were, the trees are removed
17 and they go ... "oh, whoops, we didn't mean to do that". And we've seen
18 too many "oh, whoops", and Nipomo Pathways, Ride Nipomo and all of us
19 in Nipomo are fed-up with it. We don't want that any more. And we will
20 be there watching, believe me. We have, let's see, ... I think that's the end
21 of my questions. Thank you.

22 Roos: Okay we'll address... or staff will address the questions at the end of the
23 public comment period. Ms. Kenninger? Followed by John Snyder, and
24 that's the last request to speak slip that I have.

25 Kenninger: Good afternoon. My name is Georgia Kenninger, and I live in Nipomo.
26 I'm the president of the Ride Nipomo Equestrian Trails Alliance Group,
27 and we have over 160 active members, who are very interested in this
28 project in Nipomo. We work very closely with...with the Pathways

1 Committee, but there are particular issues here that I wanted to bring up,
2 bring particular attention to. First of all, we would like to thank Mr.
3 Janneck and...and the Woodlands design group, I suppose you'd say, for
4 the opportunity to let us ride on that property for so long, it's been just a
5 wonderful thing. We know it's not forever, but it's been ... it's a beautiful
6 piece of property, and it's been lovely to have the freedom the equestrians
7 have to essentially patrol the property, but to recreate on this property, it's
8 wonderful, so thank you very much for that. Some of the things that we
9 have particular interest in is the idea of staging areas. I do know that Jan
10 DeLio, of the Parks Department, has requested or required at least one
11 staging area, which I believe has been talked about perhaps being in the
12 water treatment plant area, which is fine, that's terrific. However, we'd
13 love to see a second one way on the other side, which I think would
14 in...maybe in Phase 1, in that...in that, or next to that park area at Mesa
15 and Viva. The ... horseback riding is ... equestrian participation in
16 Nipomo is a very big, very important part of the history and heritage and
17 tradition of Nipomo, and as properties close up, as...as roads get very busy
18 with traffic, and as they will get more and more busy with this particular
19 development, the staging areas, for a place to go with your horse, with
20 your trailer, offload the horse, be safe, be out of the traffic, be out of
21 people's front yards, and all, is just extremely important. It's wonderful to
22 have trails, and we fight like crazy, we're just struggling to keep trails and
23 easements and roadways open for horses. But it only makes sense if we
24 have a place to safely park, and not disturb our neighbors in doing that. So
25 please consider that. We also have a concern regarding the 100 foot buffer
26 zone. I do believe about 25, 30 feet or so is supposed to be dedicated to the
27 Parks Department, but I'd really like to see that bigger. The ... just having
28 a straight trail is one thing, but we need a meandering trail, not only just for

1 horses, but for aesthetics, for the beauty of nature, for the walkers, for the
2 dog walkers, for where the bicycle parts are, for the bike riders as well.
3 The meandering trail will need more than just a 25-foot corridor for that,
4 and I guess this would mainly be addressed in... Mr. Johnson, who might
5 be making that decision, I don't know. I also have a concern regarding how
6 much the golf course might actually encroach in...in that buffer area. The
7 ... it shows it on the map that the golf courses go in and out quite a bit of
8 that ... overall 100 foot buffer. We'd like to see no more than just the
9 occasional 10 or 20 foot encroachment, because golf courses and the
10 general public ... you know, hiking along, probably don't mix very well,
11 although golf courses are very pretty. But there could be a safety issue, of
12 course. And of course, we'd love to see as much buffer of trees as possible,
13 for safety and aesthetics, and for the raptors, for the wildlife. We have a
14 concern about road extensions that are actually considered off site. That
15 would be like the extension of Albert Way and Via Concha, that are
16 actually away from the Woodlands, because the Woodlands apparently has
17 to pave these roads, but we really would like to see some kind of an
18 easement on the side for equestrian and pedestrian use because, once again,
19 traffic will be much greater, these are traditional use areas. Mesa Road,
20 also is going to become very, very heavy for traffic, and it would be very
21 important to have some place for especially the pedestrians to be safe and
22 away from the traffic. The last item ... Penny Smith addressed in...in a
23 way. When the original ideas about the Woodlands were being discussed
24 years ago, apparently there was some idea ... their having some equestrian
25 property, or maybe equestrian facility, in there, but we've seen over the
26 years that no, there's not a single ... not a single parcel that we know of
27 that could legally have horses kept on the properties. One of the main
28 missions of the Ride Nipomo Group is to try to keep the rural character of

1 Nipomo, and to keep Nipomo a horse-friendly community. And although
2 the...the Woodlands will have over, what, 1,200 parcels for residences, it
3 would be so great, it would just be so great, if even, you know, six or ten
4 could...could just symbolically be okay to have horses, maybe on a part ...
5 I even found a part on the map that would be the end section in Phase 2B,
6 and the most southern eastern corner. It doesn't back up to the golf course,
7 it only backs up to a horse... equestrian trails area, it backs up to other ...
8 this is sort of at the very end of Eucalyptus Road. It's a very equestrian
9 area, anyway, and it would just so ... just so symbolically neat if...if
10 somehow the Woodlands could include just a few parcels that could,
11 indeed, have some horse keeping, just to symbolize what Nipomo is still all
12 about. Thank you very much.

13 Roos: Thank you. John Snyder, followed by Jim Garing.

14 Snyder: Hello, I am John Snyder, I live at 662 Eucalyptus Road. The cart's a little
15 bit before the horse, and I'd like to get in front of the cart here, so, I'd like
16 to talk about the water system organization and water entitlements. The
17 Applicant has claimed they will form a mutual water company of a type
18 that will be an overlying user. To date, I do not believe they have actually
19 formed that mutual water company. I have been unable to find any water
20 system with more than 500 hook-ups in the State of California that's not an
21 appropriator. So they are essentially claiming to do something that's never
22 been done before, as far as I can tell. A nearby project, Cypress Ridge,
23 went through the planning process as a mutual water company, and were
24 approved based on that in the mid '90s. That project started construction
25 after the initial Woodlands EIR, and as that project was built out, the
26 houses were connected to the water system, and the State Health
27 Department required a permit for that system. In that...in that process, the
28 Health Department apparently required that they be connected to an

1 appropriator, and be ... and essentially become an appropriator. So, I'm
2 very concerned about this claim of being an overlying user. And
3 essentially they had to do that to meet financial require...financial viability
4 requirement of the State Health Department. The Applicant has not shown
5 that they can meet the State Health requirements and still remain an
6 overlying user. And that's particularly important because they can
7 probably meet the requirement when they only have one user, but as they
8 transform from one user into a 1,200, they have different health
9 requirements. At the State Health, there is a 250 limit and a 500 limit, so
10 there's a couple of limits there they have to meet during, you know, the
11 build-out process. The Applicants should be required to form their mutual
12 water company, or at least the paperwork for the water company, so that we
13 can see exactly what they're talking about. They should show that they can
14 actually meet the State Health requirements before certification of the water
15 supply, and I think it's a good idea that that documentation be provided to
16 your water attorney, Janet, or is Jane or Janet Goldsmith, and be checked
17 out before it's approved. And finally, I'd like to be sure to enter into the
18 record a copy of the Department of Water Resources, Southern District,
19 Nipomo Mesa Area Study, the executive portion from 2002, along with a
20 plate, ES1, that was posted on the website yesterday by the Department of
21 Water Resources. Thank you.

22 Roos: Thank you. Anyone else from the public wish to comment? I don't see any
23 further slips here. Oh, Mr. Garing, I'm sorry.

24 Garing: Mr. Chairman, members of the Commission, good afternoon. I'm Jim
25 Garing, I'm the District consulting engineer for the Nipomo Community
26 Services District. I'd like to open ... oh, address, 141 South Elm Street,
27 Arroyo Grande, California. I'd like to open my comments to delve into a
28 little bit the issue of the mitigation measures that have been formulated for

1 this project over its long history. And I suppose at our level there is a little
2 confusion on how the wording may have changed, because of the shortness
3 of review period, but we believe that the staff report that you have prepared
4 for this hearing under Section 3.0A, talks about those mitigation measures
5 and mentions D4 mitigation measures to be part of this project, and that we
6 think that the mitigation measures should be incorporated in their entirety,
7 that particularly 4.1-6d as read into the record by John Seitz, earlier. It's
8 very important because that particular mitigation measures provides for
9 specific protections to the surrounding pumpers to the Woodlands project.
10 And particularly, the Nipomo Community Services District has facilities
11 that are very likely to be impacted by that development and the pumping of
12 water by that development. And I'll go into that a little bit more detail
13 later. But to look at the mitigation measures, under 4.1-6a, which seems to
14 be requiring the Applicant to participate in a toilet retrofit plan, or program.
15 Looking at the staff report, or the addendum, you might get the impression
16 that we're dealing with retrofitting 1,320 toilets. What's simply mentioned
17 that, I think we're actually talking about retrofitting 1,320 dwelling unit
18 equivalents, plus the 500 unit motel, plus the golf course facilities and any
19 commercial activities that might occur out there. So we're talking about a
20 lot more toilets than the Woodlands addendum report seems to be
21 indicating. For instance, 1,320 dwelling units, if you retrofit the toilets in
22 1,320 dwelling units, you're probably going to retrofit something on the
23 order of 3,300 toilets, because there are an average of about two and a half
24 toilets per unit. And another thing I wanted to mention on that same line, if
25 you include the commercial uses, the golf course uses, the hotel, for this
26 project, we're probably talking about retrofitting upward of 5,000 toilets.
27 And I'd like to make sure the record's clear that we don't have an
28 Applicant hitting the ceiling later when he's told by staff that we're talking

1 about 5,000 toilets, not 1,320. Another aspect of the toilet retrofit program
2 is that commonly in water districts and cities, we don't just talk about a
3 toilet retrofit program, we talk about a dwelling unit retrofit program, and
4 that dwelling unit retrofit program would include retrofitting shower heads
5 and faucets, as well as toilets. And so to gain full impact, the program
6 really should be the full dwelling unit retrofit program, to include those
7 other facilities. Now, in the case of retrofitting facilities on the Nipomo
8 Mesa, whether it be in the District, or outside the District, you can't count
9 necessarily on the water savings that the Applicant has put forth in their
10 consumptive use or cumulative pumping water use reduction plan. The
11 reason is, and I'll give you an example, it doesn't matter whether you have
12 a 10 gallon toilet or a 2 gallon toilet, when you flush that toilet on the
13 Nipomo Mesa, the water goes back to the groundwater basin in general. In
14 other words, the vast majority of that water will flush, travel through a
15 sewer, be treated, and then infiltrate into the groundwater system. So, it's
16 not saved, whether you have a 2 gallon toilet or a 10 gallon toilet. So the
17 projected savings from that particular program, as set forth in that program
18 are not correct, because that water flows back to the groundwater system,
19 regardless of the size of the toilet or the amount of water that's saved. In
20 that same program, the Applicant's consumptive use or cumulative
21 pumping water use reduction plan talks about saving water through a water
22 system leak prevention and water metering measure. And they indicate that
23 they think they'll save upwards of 49 acre feet per year on that program.
24 But, you know, a water system leak, if it occurs on the Nipomo Mesa, and
25 I've District Engineer for 12 years, generally leaks into the ground, and
26 makes its way into the groundwater system. So a leak from a water system
27 isn't water lost, unless it leaks to the surface for a long period time, in
28 which case we'd be very remiss, anyway. So, the fact is, that water is

1 cycled into the groundwater system when it leaks from a pipe, it doesn't
2 surface, and it's not saved if you catch it early. With regard to the measure
3 entitled "irrigation pond integrity monitoring", ...

4 END OF TAPE 2, SIDE A

5 BEGIN TAPE 2, SIDE B

6 ... that water leaks out the liner, into the groundwater system, and is
7 recovered by the groundwater system. So detecting that leak early or late,
8 doesn't save water. With regard to other components of this water savings
9 plan that's been presented before you, there's not much incentive for the
10 developer or the later operator of that system to continue these measures.
11 And the reason is, that pumping the water, the cost to pump the water, over
12 the long haul is much cheaper than continuing to operate the measure to
13 save the water. As an example, when you look at compost management...
14 compost management plan, that plan seems to require that the developer
15 and/or later operator of this development, collect their green waste, chip it,
16 compost it, place it on landscaped areas, and thereby save the evaporation
17 that would otherwise occur. Well, it costs ... well, let me back up. That
18 plan would save roughly 3 acre feet per year. Admirable. But the savings,
19 in terms of pumping costs, is about \$800 a year. Now, I would submit to
20 you that that plan would not be continued by the private operator of that
21 system for economic reasons, unless there is some oversight, some way to
22 continue to make sure that they operate that plan. The same is true of this
23 tensiometer usage. Now, the tensiometer program will certainly save
24 water, but it requires a program of installing devices, telemetry, a computer
25 program that watches the moisture content of the ground, and operates
26 sprinklers to not overwater, and not underwater. Very admirable. But the
27 cost to operate that system, maintain it and replace the components far
28 exceeds the savings that you would otherwise realize in terms of water

1 pumping costs. So the main concern for the whole plan, really, is that there
2 needs to be some way to cause the operator of this system to continue to
3 operate these plans, and continue to save this water that otherwise would be
4 lost, if they decide, “well, it’s too expensive, we won’t do it.” I mean there
5 are some options. The County could have some sort of a role in it, there
6 could be some sort of a private oversight agency hired at the cost of the
7 operator or developer to do that, but that’s not in place now, and I think it
8 should be, otherwise these programs will disappear, along with the water
9 savings. Now, John Seitz just went into some detail about our view on 4.1-
10 6d, and it does appear that there have been some changes in the wording.
11 We think the wording that’s presented in the supplemental EIR is strongest
12 and most protective of the surrounding pumpers, and that’s the wording
13 we’d like to see instituted as part of the addendum. Now that wording
14 requires that a complete survey of all surrounding wells to the Woodlands
15 area be conducted. That the complete survey involve actual impacts to each
16 and every well, that the impacts be verified and monitored, and a cure
17 developed. Not only that, in order to implement this measure as originally
18 envisioned, you would develop the cure, set the costs for the cure, and then
19 the developer, prior to being able to record a final map would have to bond
20 or otherwise provide financial security to implement that cure. None of
21 that is here. It is clear that District wells will be impacted. And let me
22 briefly go through ... I don’t know, Jay, if you still have that diagram that
23 shows the locations of the wells, if that could be put up, it would be great,
24 otherwise I’ll just go on here. It’s not the clearest in the world. As you
25 look at the wells with circles around them, the circles with a circle. We
26 have the Eureka well. It’s a 900 gallon a minute well. The Via Concha
27 well is a 700 gallon a minute well. Black Lake II is a 350 gallon a minute
28 well. Black Lake III is a 400 gallon a minute well. Bevington No. 2 is a

1 450 gallon a minute well, and the Sundale Way well, which is our latest
2 well, is 1,000 gallon a minute well. Those are all right there on the
3 perimeter of the Woodlands project, and I believe they will all be impacted,
4 and yet they are being ignored by the mitigation measure currently before
5 you. So we think that that needs to be modified and adjusted there
6 accordingly. Total pumping capacity, 3,800 gallons a minute, 6,000 acre
7 feet a year. Now in your staff report it mentions that Tim Cleath has
8 prepared a survey of the wells that he has surveyed, and he apparently has
9 surveyed some domestic wells, but he has not looked to my best knowledge
10 at our wells. And we think that as part of his work, he should be authorized
11 to do a detailed engineering survey to find out what the impact will be, help
12 set the degree of impact, the cost of the cure, and help develop a bonding
13 amount to account for that. One last thing. There is a requirement that the
14 developer of this tract implement whatever cure might be required. It needs
15 to be implemented now, because we can't wait for the next drought,
16 because if we do, the developer won't be here. They'll... either that, or
17 there'll have to be some sort of a financial instrument that succeeds him.
18 So, in order to protect the surrounding pumpers it needs to be done now,
19 implemented now, or financially secured. Thank you.

20 Roos: I see Jan DeLio.

21 DeLio: Mr. Chairman, members of the Commission, I have a comment regarding
22 Condition 7. I don't know if you'd rather that I wait until after the public
23 comment period is done, or if you want me to do it now.

24 Roos: Condition 7? Well, we were going to go over them one by one.

25 DeLio: Well, I have just a ... do you want me to explain what my concern is?

26 Roos: Sure.

27 DeLio: Kami, can you put the site plan on? And then can I see ... As you're
28 probably aware, we have perimeter trail systems that the Applicant will be

1 providing as part of this tract map. And basically on the west side, they
2 will be building for us a Class 1 bicycle path, and equestrian corridor along
3 Highway 1. Around the north, the east and the south side, there would be a
4 perimeter equestrian trail, and they would be building that for us as well.
5 What the intent was, when we requested ... if you notice under Condition
6 7A, there's mention of 25-foot wide easement. What our intent was is that
7 in future years, we may want to go back adjacent to the equestrian, the
8 perimeter equestrian path, and build a Class 1 bicycle path. My concern
9 with only having 25 feet is the buffers are purposely provided because
10 that's eucalyptus groves. For a 12-foot equestrian trail, say a 4 to 5 foot
11 separation between the trail and then a 12-foot bicycle path, that's going to
12 exceed 25 feet. In addition, when I go to build it, I have the limitations that
13 there may be trees in the way. If they have to be contiguous to one another
14 within that 25 feet, there is probably more likelihood I would have to
15 remove trees in order to build the bicycle path, or simply not build it. I
16 believe the Applicant was amenable to us even having a 50-foot easement,
17 and that would give me some opportunity to perhaps even separate the
18 equestrian trail from the Class 1 bicycle path. And I know one of Jay's
19 concerns is he didn't want me going in there and ... within that easement
20 removing trees, and I don't mind a condition that limits the amount of trees
21 we can remove, or to make it clear that the intent is to remove as few of
22 trees as possible, but, again, if I'm limited to 25 feet, I'm not sure I can go
23 back later and build that Class 1 bicycle path, should we ever have the
24 money and the ability to do it. So that was my concern.

25 Roos: Okay, while you have the floor, there were some questions that I think
26 perhaps you could answer best. Did you hear Ms. Kenninger's comments,
27 about wandering, or meandering trails versus a straight line, and whether
28 Mesa Road would have ... construct to an A1X standard, that is, to have a

1 trail along it and ... Remember her questions?

2 DeLio: I ... I was listening, but I was also taking notes on something else. In terms
3 of meandering trails, now we County Parks are only taking the perimeter
4 trails, so we're not involved in any of the interior trails, and I'm not sure if
5 she was talking about meandering trails around the perimeter. Again, in
6 order to have them meander, I need a bigger corridor to provide for that
7 meander, or my easement's going to have to shift. So again, if I could have
8 a bigger swathe, say 50 feet, there is more likelihood I could meander those
9 trails when they are constructed, or review the Applicant's submittal, and
10 require him to also meander the trails.

11 Roos: Thank you.

12 DeLio: You're welcome.

13 Roos: And Jay, we'll add that tract map Condition 7 ... our discussion is what we
14 need to do about it. Anyone else from the public wish to comment? I see
15 someone in the back. Would you state your name and spell it out if it's
16 complicated?

17 Wisel: I'm John A. Wisel, Grover Beach. I just come from the Woodlands about
18 two hours ago. I've lived here 45 years in this County, worked for the Big
19 S for 37 years as a meat cutter. And I ... my family and I have had beef for
20 the last 30, 35 years from Cambria to Los Alamos, from Guadalupe to
21 Tehachapi. Most of that time has been in the Nipomo area. And I'm there
22 now also, across the road, Highway 1 divides me and Woodlands. Two
23 weeks ago, the damn thing almost burned up because where I enter to the
24 ranch, people park, party, in fact when I left there was an RV there. And
25 there was a live cigarette there. And I stepped on it, because it was just
26 fractions of inches from dead grass. I've had ... Cal Trans and I don't get
27 along, like a lot of other people. If you talk to people, I'm the most hated
28 man in South County. There's one individual here probably tell you that

1 too. But anyway, you know, I voice my opinion. I learned how to read,
2 write and arithmetic in a one room school, north of Cincinnati. But
3 common sense has got me this far, and for the last 30 some odd years, we
4 have had to carry water in Nipomo area. And I got tired of that. And about
5 15 years ago on the Dana Foothill, a doctor built a house, and he ran out of
6 water. I'm not going to tell you why, 'cause the problem is down on
7 Thompson Road. And so he had two geologists come out there. We were
8 out of water. And I'm not carrying water up that mountain, I'm not doing
9 that. And I was younger then, too. And those two geologists, I called in
10 sick, first time I've ever done that, and the last time I ever did it, because I
11 wanted to hear what they had to say _____...and they told me at the end of
12 the day that there was a wall, now you got people here should know, on the
13 west side of 101, it goes from Los Berros south beyond down almost to the
14 racetrack. That water can't come back and forth. They described it as an
15 ... and I know for a fact, Kansas, Nebraska, the water doesn't go through,
16 there's a ... you know, a problem there. And they said 15 years ago that if
17 Nipomo ever got built out, they'd be just like the desert. And you know,
18 I've tried to find those two guys' names, and I can't remember their names,
19 but if I could, I'd ask them. But forty years ago I could have got any piece
20 property on the west side for \$50 to \$100 an acre. On this side, it was 900,
21 because they had the water. They knew that, way back 40 years ago. So,
22 like I said, I'm nobody, but, you know, I haul cattle. I pull a few thousand
23 pounds behind me, and I'm pushing 70 myself. And those roads can't even
24 handle a truck and trailer with cattle. They can't handle ... you got those
25 18 wheelers coming up from Guadalupe to Oceano, you got a lot of the
26 tourists now are coming off of Los Alamos coming that way, so they don't
27 have to go through Arroyo Grande and Grover, and it ... there's lots of
28 times I can't even get on the Highway 1, because of the traffic. So they're

1 going to ... they've started already, and today they were working really fast
2 on the half moon at Willow Road and Highway 1, which will help an awful
3 lot, because people don't stop there no more. But then, as you go down
4 from the Mesa Market to Valley, that road's been there a hundred and some
5 years, because I know Mrs. Brackett, she's my neighbor out there, and I've
6 talked to her when she was Supervisor about that, or study, catch or study.
7 You know, there's about ten school busses go up that, and I remember
8 when I was fifteen years old, a train ripped out a side of a school bus I was
9 on, but there was only three kids in it. And, you know, some day, that road
10 is breaking on that curve, Highway 1, that goes down, or comes up, on that
11 curve. It's breaking up. And you have some school busses or...and the 18-
12 wheelers, when they come round that, they're on your side, and there's a
13 soft spot, Mr. Nevins, Safety, CalTrans. I called him five years ago about
14 it. Called him three years ago about it. So as I said to the San Luis _____
15 the other day, and supervisor, if you want 14,000 houses in here, then you
16 tell them, fix the damn streets, fix the roads, and fix the highway, because
17 45 years ago, that's when 101 was all brand new, and so, you know, I'm
18 nobody, but you got a lot to think about before you put houses in this
19 County.

20 Roos: Thank you. Anyone else from the public? Seeing none, Mr. Janneck, do
21 you wish to comment or have members or your team ...?

22 Janneck: Yes, all members of my team have something to say. But I've ... you
23 know, I'd like to thank the one lady here, for at least saying "thank you" for
24 years, for 14 years that I've been around, of people being able to use our
25 trails. That was at least nice of her. And I appreciate that. Whereas all
26 these people here that are criticizing me, I've had about enough, because
27 we've done everything this County has asked for, and we try to cooperate
28 with everybody, and then it's like the Christmas tree. What ... what can I

1 have next? What more, what more, what more? And I want to tell you one
2 story about the NCSD. And Doug Jones.

3 Roos: Now this is not the time for personal attacks.

4 Janneck: It's not a pers... this is a fact, and about a well ...

5 Roos: I'd ask you to respond to issues that were brought up with your ...

6 Janneck: Mr. Garing brought up this issue, okay? It's about the well on Sundale that
7 was put in in 1998, and put on line in 1990 ... sorry, 1999. The NCSD
8 knew about our project since 1994. They tried to buy from us three
9 different times one of our wells, and instead, they go ahead and put in the
10 Sundale well, 50 feet from our property line, and now they're asking us to
11 maintain it for them, as well as their whole system. There's just no fairness
12 in that. Plus, I want to tell you where the mitigation ... I'm sorry, I'm
13 shaking, because I just feel betrayed ... But, where the mitigation came
14 from, was from L. J. Johansen, and Istar Holliday, and small overlying
15 residential users, and they were worried that they had ... their wells might
16 run dry because they were in the Callender Garrett area, and that they were
17 shallow. And I agreed, I opened my mouth, and I said, "Look, we'll make
18 sure, we'll take care of your wells." That was the intent of the mitigation.
19 And Tim Cleath, and the rest of my team, will go on to explain the rest of
20 that, and I'll speak at the end, if I have to. Thank you very much.

21 Roos: Thank you. Who's next? Mr. Montgomery?

22 Montgomery: Mr. Chairman, I'm prepared to do the dialogue with Jay about the
23 conditions, if you would like ... I have a couple of clarifications ...

24 Roos: We'll close the public hearing and do that ...and you'll be allowed ... if
25 there was anything that was mentioned that you wished to respond to or
26 rebut, or ...

27 Montgomery: All right. In response to a couple of comments, in particular, Eric
28 Greening raised the issue of composted sludge and land application. We

1 are not proposing to land-apply, or to compost sludge on site. And we have
2 suggested that the County add the language that I referred to, which is “in
3 accordance with State law” for exactly that reason. State law does not
4 currently permit, as far as we are able to tell and from what we’ve been told
5 by the Integrated Waste Management Authority, you’re not allowed to do
6 that. So, we’re not proposing that, and I wanted to clarify it. Second, Mr.
7 Garing’s testimony, he talked about the water recycling, reclamation,
8 conservation plans, and he said that, as I took his comments, many of the
9 mitigation measures that we have proposed, and many of the conservation
10 measures we have proposed won’t save water. The correct title of that
11 program, and the mitigation measure that required it, is to reduce pumpage,
12 and to save water. And that’s precisely why some of those mitigation
13 measures are in there, such as lining recovery on the ponds, leak prevention
14 in the system, and those sorts of things. Those...those aspects of this
15 project aren’t something we cooked up, they’re required, we are required to
16 try and reduce pumpage, and recycle and save water. That really concludes
17 my comments with regard to public testimony, and I’m available for
18 questions. I think Mr. Bornholdt’s got some questions.

19 Roos: Ms. Cooper?

20 Cooper: Commissioners, I’d like to respond on a few of the water issues. First of
21 all, a few housekeeping matters. The findings that are before you in your
22 staff report on page 8B-4, refer to the 2000 DWR report. Since we now
23 have an executive summary that was revised, edited in 2002, I think that
24 reference should be changed to 2000/2002 DWR report. Mr. Orton is
25 apparently proposing some changes to the condition on the map that I
26 believe are stylistic changes that make the map condition more clear, that a
27 water supply verification is required before final map. We agree with that
28 change. We have no objection to that change. Secondly, on the issue of

1 continuanance. I note that according to newspaper articles, NCSD has
2 indicated that unless you refuse to verify the water supply, they are going to
3 appeal this issue to the Board. So there will be more time to address these
4 issues. NCSD will have more time to address these issues before the
5 Board. There's no need for a continuance here. Thirdly, I believe it was
6 Mr. Wynn indicated that the law requires a verification by a public water
7 agency, if I heard him correctly. And, as I indicated to you, that the law
8 does generally presume that if a public ... agency will serve the project,
9 then the public water agency must verify the supply, but it also says, and I
10 quote "If there is no public water system, the local agency shall make a
11 written finding of sufficient water supply." That's what we're asking you
12 to do here today. On the executive summary of the DWR report, I would
13 like to clarify. The DWR report is the document that was prepared in 2000.
14 It was the document that Mr. Bornholdt submitted for the record that...it
15 was the document that provided the basis for the supplemental EIR. It's a
16 document that is based on studies that were completed in 2000. DWR has
17 not conducted new studies. What's happened between 2000 and 2002, is
18 that people have been sitting in rooms rewriting the report, editing the
19 report, refining the report. Yesterday DWR released an edited executive 20
20 summary. It's all of 23 pages. That's all that's happened. And it reaches
21 the same conclusions as did the 2000 DWR report, it reaches the same
22 conclusions as did the 2000 ... the supplemental EIR. And I'll quote this
23 language from the revised executive summary "Supplies appear adequate to
24 meet water demands through water year 2020." On the mutual water
25 company, as I said in my letter, a mutual water company does exist. We
26 are in the process of refining and beefing up the corporate documents. We
27 are required to have the mutual water company in full and final form before
28 final map. It...I don't see that it's an issue here for today. And I'd like to

1 explain that it's simply a procedural technical vehicle. The water rights are
2 held by the owner of the land. The water rights exist today. They've
3 existed for years. They've existed for eternity, since water rights have been
4 in existence, belonging to whoever owns the land. The mutual water
5 company is simply a procedural vehicle by which a bunch of overlying
6 owners can pool their resources and have the water company act as their
7 agent in pumping it out of the ground, in treating it, and in piping it to their
8 houses, instead of having individual wells all over the Mesa. It is simply a
9 procedural vehicle. Another gentleman mentioned about ... he wasn't
10 certain whether the mutual water company and the water supplies could
11 satisfy the State Health Department regulations. We're perfectly happy to
12 have a condition placed on the map requiring us to get the State Department
13 of Health certification, or permits, prior to final map. On NCSD's issues
14 about new information, I want to emphasize again the Board of Supervisors
15 of this County certified in 1998 that the basin is not in overdraft, and that
16 the Woodlands water supply will not cause any significant impacts, either
17 directly or cumulatively with other projects. In 2002, in January of this
18 year, the Board adopted that conclusion again. The only question before
19 you is whether anything has changed since 2002. If NCSD has a beef about
20 how the environmental documents treated its well on Sundale, they should
21 have raised that claim then, it's too late to raise it now. And I also note in
22 response to NCSD's claim that it doesn't have time to get evidence, they
23 drilled that well in 1998. Presumably they did CEQA work and water
24 supply analysis before drilling a well, before expending the funds to drill a
25 well. If there were any untoward impacts from the cumulative impacts of
26 their well on top of the Woodlands well, it would have shown up in the
27 environmental documents, and I bet you dollars to donuts they would have
28 submitted those papers for your consideration today. The fact that they

1 haven't submitted any papers shows itself that there's no problems with
2 these wells. And then, finally, on the existence of the law suit. NCSD is
3 asking you to believe that because they have sued us, and said that we don't
4 have water rights, you can't possibly find that we have water rights. Well,
5 we've also sued NCSD. Does that mean they don't have water rights?
6 There are a thousand people involved in this water rights proceedings. It
7 doesn't ... the pendency of a lawsuit does not take away water rights, it
8 means people are fighting over water rights. We've showed you the
9 evidence that we own the land, and that it overlies the basin, and unless
10 there's an overdraft, that means we have water rights. And, again, this
11 Board has found twice that we have ... that there is sufficient water for all,
12 and that there is no overdraft.

13 Roos: Before you go, and this question might be from Mr. Orton also, there was a
14 issue raised that perhaps the State might require you to become an
15 appropriator, rather than an overlying user?

16 Cooper: I frankly didn't understand the comment. I don't know under what
17 conditions ... he mentioned financial responsibility. Usually that's an issue
18 of posting a bond to make sure that if problems arise, you'll have the
19 money to provide extra treatment for water. But, again, we're happy to
20 condition the map upon getting the permit, upon posting whatever ... and
21 so that we would have to deal with Department of Health Services, and post
22 whatever bonds they require.

23 Roos: So, to your knowledge, then, mutual water companies can exist in large
24 numbers ... or have a large number of individual shareholders, without
25 having to be an appropriator?

26 Cooper: Yes, an appropriator means that you're using water for other than overlying
27 purposes. Overlying purposes is you're taking the water out from
28 underneath your land, and you're using it on your land. This land overlies

1 the basin. They're taking it out from under the land, they're using it on
2 their land. The mutual water company simply allows everybody to pool
3 their resources and take it out of three or four wells, instead of 1,300 wells.
4 Appropriation happens when you use it for other purposes. NCSD is not
5 taking water out of its land and using it on its land, it's taking water out of
6 its land and sending it to other people's lands, land owned by its customers.
7 That's why it's an appropriator. There's no risk of the mutual water
8 company becoming an appropriator, because the mutual water company is
9 not going to own this water. It's not going to take the water out and send it
10 to somebody else's land, it's going to be the agent of the overlying owners.
11 The overlying owners will retain their water rights.

12 Roos: And again, I'm asking Mr. Orton ... I'm sure he's paying attention, even
13 though he's ... I hate to just rely on one side only for...for this, but the ...
14 is there anything that prevents you some day from applying for State water,
15 and ... or Nacimiento water, or desalination, or some other source of water
16 that's not an overlying source?

17 Cooper: I'm sorry, were you asking me or Mr. Orton?

18 Roos: Asking you, but I'm also asking him to agree with that, or rebut ...

19 Cooper: Well, there ... [laughter]

20 Roos: Wise move.

21 Cooper: We are focusing on the here and now, and I have to tell you honestly I'm
22 not frankly completely up to speed on that issue. We have been dealing
23 with... there's a condition in the Specific Plan that we are implementing
24 that says the mutual water company has to make darn certain that there's no
25 way possible it could ever acquire the rights of the overlying owners, so
26 that it can't buy water rights from the overlying owners, and that's what I
27 do know.

28 Roos: And I read that you have to say you will not be an appropriator.

1 Cooper: Correct.

2 Roos: I'm trying to understand that, that term. I know you guys make careers out
3 of water law.

4 Orton: Well, there's a requirement of the Specific Plan that the sole water supply
5 for all parcels in development be the Woodlands Mutual Water Company,
6 and that it not be an appropriator. In other words, it not get water from
7 elsewhere and bring it in to serve the Woodlands. My understanding from
8 the requirements of the Specific Plan is that the water company is to be like
9 an agent of the landowners collecting the water and then delivering it to
10 each of the parcels. And that's a specific requirement of Item 19 of the
11 Specific Plan. So I don't believe go...going out and obtaining water from
12 elsewhere and bringing it in would be consistent with the Specific Plan.

13 Roos: Thank you.

14 Boche: I had a question too. Somewhere in something we got from you, I think I
15 remember reading that as an overlying user, in the event of a water
16 shortage, your claim to water would actually be superior to that of an
17 appropriator.

18 Cooper: Yes.

19 Boche: So, if there's ... we did get into an overdraft situation, or a situation or...a
20 drought situation, for some reason there's not enough water to go around,
21 Woodlands would have more rights to whatever water there is, than the
22 NCSD would?

23 Cooper: There ... I think of it as a list of priorities. The top priority is overlayers.
24 All overlayers together as one group share what's called correlative rights,
25 which means in times of shortage, we all share with each other. Then
26 comes appropriators, and appropriators are listed first in time, first in right,
27 and appropriators lose water rights by not using them. Folded onto that
28 there's public agencies. Public agencies, of course, have the power of

1 eminent domain, so they could come in and condemn our water rights. I
2 mean, I can't give you a general absolutely all times, but yes, that is the
3 general rule, that overlyers are superior to appropriators.

4 Orton: I wasn't here when the Specific Plan was adopted, Mr. McNulty did that,
5 but I believe one of the reasons that they required that the water company
6 not be an appropriator was so it wouldn't have lesser rights and lose water.
7 Want to make sure that if we're going to establish homes here, it's going to
8 have a water supply, and that's the reason that they ... this Item 19 was put
9 into the Specific Plan.

10 Roos: Thank you. Mr. Bornholdt?

11 Bornholdt: Ken Bornholdt, again, Mr. Chairman, and members of the Commission. I
12 think Vic and Marie covered most of the points. The only two points I
13 think that were...that were left that are worthy of comment, is one, still this
14 issue of changing the wording of that mitigation measure dealing with
15 water, and including the wells from NCSD. I think your Commission has
16 before you the EIR and the mitigation measure. You have the references
17 into the EIR that we pointed out that make it quite clear that they were
18 talking about wells of overlying users, and that was the intent. And the
19 Board approved that in 1998, and that was in turn incorporated into the
20 Specific Plan. And the EIR and the Specific Plan are consistent. The
21 Specific Plan provision is consistent with the provision that staff has put in
22 as a condition on this project. In other words, that's consistent with the
23 Specific Plan, and it's consistent with the EIR. I don't think you can
24 change that condition without amending the Specific Plan. In other words,
25 if NCSD had a problem with that condition, they should have taken it up in
26 1998 when it was put in. They should have taken it up when the Specific
27 Plan was approved with that mitigation measure put in there, and they
28 chose not to. And I think that those two things are final now. The Board

1 has decided that's the way they want it to be. The Board has decided that
2 that mitigation measure will adequately mitigate the environmental impacts
3 from this project. And those are the wells that they wanted protected, and I
4 think it's clear that that's what was intended, and I believe your
5 Commission should follow the action of the Board. The only other issue,
6 Mr. Chairman, is this lingering issue of continuance. I think you can see
7 from today, you've had a very full hearing, a lot of experts, a lot of
8 testimony. We still have the water verification hearing to go, where we can
9 discuss water in greater detail at the pleasure of the Commission. But I
10 think the answer to the continuance is clear, it's not necessary. I don't
11 think that anybody here today raised anything new that you can really say is
12 a justifiable reason for wanting to continue this hearing to some other date.
13 I think you have everything in front of you. I think staff has done a great
14 analysis of a very complicated situation for you. We've tried our best to
15 answer everything that's come up as recently as yesterday, and I think we
16 have ... I don't think there's anything new, and with that, we would urge
17 you to approve the map, and we can get into a discussion, hopefully, of the
18 conditions and also the findings that I have requested. Thank you.

19 Roos: Mr. Janneck, one last brief comment.

20 Janneck: Yes, I apologize for getting somewhat emotional in my last presentation.
21 It's just 14, 15 years, I care very much about this project, I care about the
22 community. Please accept my apology, and Mr. Bornholdt took care of the
23 issue much better than I could. Thank you very much.

24 Roos: That's why they have lawyers.

25 [laughter]

26 Sale: My name is Laurie Sale, I work for Environmental Health for the County.
27 And I just wanted to make a clarification of some issues that I heard. We'll
28 talk about it in much further detail when the water hearing comes up, but

1 there's been some...some comments made that I'd like to at least kind of
2 maybe make it generally clear or cloudy clear. As far as the large water
3 company that will be generated, information has been coming into our
4 office since the project began. We've been evaluating it. It started long
5 before I was there. We also have been in contact with the State Department
6 of Health Services, our contact is Kurt Souza. He e-mailed me a response
7 to me e-mailing him indicating that we would like to coordinate efforts with
8 them in getting everything that is necessary for this water system to be
9 developed. He e-mailed me back saying that the Woodlands will be in
10 contact with them, and generating the information that they would need,
11 that the State would send them a technical report to be filled out, and that
12 they would do inspections at the time of construction, and permit the
13 system itself. So, I just wanted to clear some things up, if that helps, that's
14 the process that we'll be going through in the future.

15 Roos: Thank you. With that, I'll close the public hearing, and bring it back to the
16 Board for discussion, possible actions. Did the Board have an opinion on
17 continuance?

18 Mehlschau: Yeah, I'd like to get it done today.

19 Boche: I feel like we've got ... I mean, we've...we've been given reams of paper
20 today that I haven't even begun to have a chance to really read or digest.
21 And we have yet to go through all the new conditions that have been
22 proposed, and...and try to figure out what the impacts of those are. I don't
23 feel like two more weeks is that much in the context of a 15-year project,
24 and I'd personally like to have the additional time to really absorb all this
25 information, and feel like I was making a well-informed decision.

26 Roos: How about ... well, I'd like to make some progress. I, for one, am a little
27 uncomfortable, Mr. Orton's advice notwithstanding, about approving A
28 before B, but I was willing to continue A until we did B, and then go back

1 to A. But I think many of the condition changes that we've got in front of
2 us, I think we need to make a decision on ... it's my opinion, that we need
3 to make a decision on them now, whether we continue it or not, so that ...
4 well, if we go ahead today, that's obvious, but if we wait two weeks, that
5 ... what is on the table is known to everyone. For example, the 100 or 165
6 acre feet, we ought to decide on that today, so if it was continued, the
7 public knows that ... at least what our viewpoint is. Could we go that far?

8 Boche: Yeah, I'm fine with hearing what staff's input on all the suggested changes
9 ...

10 Roos: And coming to a collective opinion on where they ought to go ...

11 Boche: And then we'll see if we feel comfortable with making a decision or not at
12 that point.

13 Orton: I'd just comment that I'm not going to be here on the 11th, I'm going to be
14 at a meeting, and so if it was going to be continued, it would be our
15 recommendation it go to the 24th, and not the 11th. But I think it's a good
16 idea, like you indicated, to discuss the ... changes that were recommended,
17 and go through those one by one, and maybe make a decision on the ones
18 that were suggested by the Applicant, if staff is prepared to respond.

19 Roos: And ... is there openings on those meetings? Okay. Okay, let's take a 13
20 minute break, and come back here at 3:30, and we'll start going through
21 conditions.

22 BREAK IN TAPE

23 Roos: I see the County Counsel's back. We have a quorum, so we're ready to
24 work our way through the findings and conditions of the development plan
25 and tract map. And our purpose here is to come up with a ... something
26 firm that we can vote on, or agree to continue, or Plan B. So I'll start with
27 the proposed findings for the development plan, which is on page 8A12.
28 Jay, did you have any changes to those?

1 Johnson: No changes to development plan findings. We have a handful ...

2 Roos: Well, they do, but ... they have a suggestion, I'm asking you first.

3 Johnson: On the development plan findings, Exhibit A, I have no changes
4 recommended on that.

5 Roos: All right. But they did. They suggested, and they gave us a letter dated
6 September 25th, Woodlands plan proposed findings for development plan.
7 Briefly make your case for that, sir.

8 Johnson: Well, I think, if I could, Mr. Chairman, these are changes to Exhibit C, the
9 tract, correct?

10 Bornholdt: There's one for each.

11 Roos: Yeah, one for each.

12 Bornholdt: The one...the one Jay ... excuse me, Ken Bornholdt, Mr. Chairman. The
13 ... we made two suggestions. One was to ask the Planning Commission to
14 incorporate into the environmental determination findings. This is before
15 the addendum, the CEQA findings, that the Board of Supervisors made in
16 support of the 1998 EIR and the 2002 SEIR. I think it's implied from that
17 finding that you have before you, but I just wanted to make it specific. You
18 can incorporate findings made by the Board. The second item was simply
19 to address a change in the wording from "low and moderate income
20 housing" to "affordable housing contribution", and that gets into this issue
21 of do you follow the affordable housing requirement in the Specific Plan,
22 versus what staff was recommending as a condition of approval, Mr.
23 Chairman. It's a...it's a wording thing. If you agree with our interpretation
24 of what the affordable housing requirement should be as a condition of
25 approval, then you need to change this language in the finding to make it
26 conform.

27 Roos: But there is ... Jay, correct me if I'm wrong, there is no finding on Exhibit
28 A that ... affordable housing now?

1 Johnson: I...I understand where ... Mr. Bornholdt's point, so if I can direct your
2 attention to page 8A, this is the only one I haven't prepared a written form
3 on, and you look at finding D...

4 Roos: D.

5 Johnson: ...and this is ...

6 Voice: Which page?

7 Johnson: Page 8A-11...

8 Voice: Okay.

9 Johnson: ...finding D, and we look at the fourth to the last full...full line. We have
10 ... it says "low and moderate income housing". We can strike "low and
11 moderate" and change it to "affordable housing contribution". That works.
12 And then make the same change to finding E on the third to last and second
13 to last line.

14 Bornholdt: That...that's agreeable.

15 Roos: And that doesn't box us in whether we're going to go with the ... your plan
16 or his plan on the moderate income? Correct.

17 Johnson: That would be correct, I mean, if you wind up going with my plan on the ...

18 Roos: ... but I did miss what you said on finding E here on page A...8A-11.

19 Johnson: On 8A-11 on the third to last line, and continuing on to the second to last
20 line, the words "low and moderate income" can be stricken, and add
21 "affordable housing contribution". You just mentioned or asked, would
22 this affect my version? After ... on the break, at lunch time, after meeting
23 with County Counsel, you will find in our revisions we're going more in
24 tune with what the Applicant had recommended. So those findings will
25 work.

26 Roos: So changing findings D and E, is there a consensus on the Board to do that?
27 Cynthia? And I also agree, so that's a three-zero change. We've changed
28 finding D and E.

1 Johnson: Mr. Chairman, I apologize, we have one more on this page, on finding A.
2 Roos: Finding A.
3 Johnson: This is our environmental determination finding. And we can take Mr.
4 Bornholdt's recommendation on ... for the tract, up here, and apply it also
5 to the development plan. And this recognizes the CEQA findings by
6 reference. That's from his September 25th, 2002 letter.
7 Roos: So you're completely throwing out A, and adding his?
8 Johnson: No, we're just simply adding that sentence to the end of A.
9 Roos: So, at the end you add "the CEQA findings made in support of the
10 previously certified 1998 EIR and 2002 SEIR are incorporated herein by
11 reference."
12 Johnson: Correct.
13 Bornholdt: That's an additional sentence to the one that's already there.
14 Roos: Thank you.
15 Johnson: If we...if we may, Mr. Chairman, if we can wrap up the findings on the
16 tract, and then go back and do conditions, it'll be easier for my ...
17 Roos: Certainly, if I can get the Commission to agree to that last finding, and I'm
18 seeing three heads nodding "yes". Okay, now we'll go to the tract findings,
19 which are on page 8A36.
20 Johnson: With that, Mr. Chairman, on ...
21 Voice: 35.
22 Johnson: ...35. 8A-35.
23 Roos: Oops. 35.
24 Johnson: Simply take the recommended corrections in Mr. Bornholdt's letter, and
25 apply them to...to our conditions. Our findings, pardon me.
26 Roos: On A?
27 Johnson: On A, and then ...
28 Voice: So you're talking about adding to finding A, the additional sentence?

1 Johnson: Adding the additional sentence on finding A, and then adding Mr.
2 Bornholdt's 2, 3 and 4, and then the modifications to finding D, and finding
3 E recommended by Mr. Bornholdt. And, on the next page, finding F.

4 Roos: Which was add public facility, recreational ... commercial after residential,
5 and the second, do it twice.

6 Johnson: Yes.

7 Roos: The clerk got that? And if we are agreeing to this language, we're agreeing
8 that the supplemental EIR is ... or the EIR addendum is appropriate? Kind
9 of bringing that out.

10 Orton: Talking about adding that same sentence to the end of A, right? That he
11 had recommended, similar to what you did with the development plan?

12 Roos: That's correct. I'm just pointing out to the Commission, this is the one that
13 someone objects, now's the time to raise the issue that the EIR addendum is
14 not appropriate, if that was, in fact, their feeling. So, could you ... I'm
15 sorry, could you summarize what we did on the findings of the tract map,
16 Exhibit C here? Changed A, added that sentence, and in finding D, we
17 deleted "of the proposed subdivision". B, change ordinance to ordinances.
18 C, add Specific Plan after words "General Plan" and finding E, and F, add
19 "the public facility recreational open space and commercial" after
20 "residential". That cover everything?

21 Johnson: And ... and to add Items 2, 3 and 4 under tentative map.

22 Roos: Items 2, 3 and 4. "The proposed map takes into consideration the housing
23 needs of the region balancing those needs against public service needs of its
24 residents, available fiscal and environmental resources," and quotes the
25 Government Code. Next, "the division or subdivision to the extent feasible
26 provides for the future passive or natural heating of ... or cooling of the
27 subdivision, and fourthly, "the design of the subdivision or proposed
28 improvements are not likely to cause serious public health problems."

1 Then again quoting the Government sections.

2 Johnson: That's correct.

3 Orton: So that would be new J, K and L, then.

4 Roos: That seems reasonable, right? Jay, can you do J, K and L?

5 Johnson: Seems reasonable.

6 Roos: Nodding yes. So is that the wishes of the group? I'm seeing one head nod

7 "yes", Gene is, as do I. Okay, we've finished the findings.

8 Johnson: Okay, Mr. Chairman, Kami has on the screen a large version for everyone

9 to see of what I have. I have extra copies if anyone wants a hand-held

10 version. Seeing none, okay. Let's start, if we may, on page 8A-12. This is

11 Exhibit B to development plan conditions of approval. This is an additional

12 sentence to Item 2. This would be "this approval authorizes multiple final

13 maps. The project shall be completed in a maximum number of 25

14 phases." And that's something the Applicant has agreed to before the

15 break, or during the break. The next condition would be Item 7. And this

16 is where we include ... make a differentiation between "tree removal" and

17 "tree cutting", taking Mr. Montgomery's definition of those two and

18 placing them in the condition.

19 Roos: I had got a concern about that. The ... what's important here is when they

20 start doing things with trees, whether it be removing them, cutting them

21 down and grinding them up, that there be a minor use permit so someone

22 can review the methods that they're going to use, including the traffic

23 routes, and how much noise the chipper's going to make, and that sort of

24 thing. Right? That's the purpose of this.

25 Johnson: The purpose of this is that those activities get a closer look. That can be

26 part of the development plans for the major phases. For example, Phase 1A

27 originally was supposed to be part of today's activities. With that in mind,

28 that may require a little more analysis on staff's part to include it as a part

1 of the Phase 1...Phase 1A development plan. So, with that bit of direction,
2 without adding it to the condition, that would help me in my next set of ...
3 review for next project, the next ... the Phase 1A project that's coming
4 down soon.

5 Roos: Well, that's my concern. I saw one of them tree choppers while I was
6 down in Nipomo, and boy, it's noisy.

7 Johnson: Right.

8 Roos: So it's reasonable that that would go somewhere other than the edge of the
9 property.

10 Johnson: The...the use permit, if it's the next development plan or subsequent minor
11 use permit, that authorizes the actual tree removal, the tree cutting, in this
12 case. We'll have to analyze those aspects, the noise, the ... how often ... if
13 they're chipped, can somebody come on site and collect those chips? Can
14 they have yard sales deliver ... you know, there's ... it's really what do we
15 do with the chips, what do we do with the noise? That will have to be
16 analyzed with the use permit that authorizes the tree removal. So the way
17 it's worded, is fine, just means...

18 Roos: Okay.

19 Johnson: I need more analysis at this time.

20 Roos: So she's highlighted what we've added there. Mr. Montgomery's in
21 agreement with that? Am I seeing him nod his head? Yes. Okay.

22 Johnson: The next ... and I'm just ... let the audience know and your Commission
23 know that there had been numbers of ... through the testimony, there's this
24 many conditions that have changed. You're going to find that there aren't
25 that many changed, because we, as staff, did not agree with the change ...
26 some of the changes the Applicant had proposed. So, we're only
27 highlighting the ones where we're recommending in agreement. On No.
28 11, would be the next one. This is where ... this was a ... came out of the

1 Board's hearings on the Specific Plan to provide some facilities for the
2 Sheriff's Department and staff had placed minimum of 3,000 square feet,
3 and the Applicant then was recommending a maximum. That's acceptable
4 to us, and the Applicant is also requesting that those not have holding cells
5 and jail facilities, and we're also agreeable on that.

6 Roos: Wait a minute, the way that's worded, you could have a 2 square foot
7 space, and meet that requirement.

8 Johnson: The Sheriff's Department will get to have ... will have a say on that. We're
9 not going to agree to a ... something that's not functional.

10 Roos: Couldn't we say something like approximately 3,000 square feet, or ...

11 Johnson: Yes.

12 Roos: I'm a little uncomfortable with just saying the max, you know.

13 Orton: Jay, did Condition 10 remain as it was with no change?

14 Johnson: Condition 10 ... staff's recommending no changes to Condition 10, nor to
15 Condition 5.

16 Roos: And ... but ... he did, so we should resolve that now?

17 Johnson: Let me...let me go ahead and take these ... I will mention the ones ... I was
18 trying to save some time. I will mention the ones that the Applicant
19 brought up, and staff's not recommending changes to.

20 Roos: Right, and we should resolve those.

21 Johnson: Okay. On No. 5, staff is recommending no changes to...to that language.

22 ...

23 END TAPE 2, SIDE B

24 BEGIN TAPE 3, SIDE A

25 Roos: ... agreement with you, Jay.

26 Johnson: Okay, No. 10 we're recommending no changes to that condition.

27 Roos: And if you guys want to get up and make your case ... I don't see anybody
28 jump up. It's economically feasible? I have a little trouble with that. I

1 intend to agree with Jay.

2 Bornholdt: Mr. Chairman, members of the Commission, Ken Bornholdt again. The
3 reason for this request is we got into this discussion as part of the hearings
4 on the GMO amendment in terms of phasing, or rate of growth. And at one
5 point there was some language suggested in the GMO amendment drafts
6 that there be a requirement that a certain number of buildings be built out in
7 the business park, whether or not there were anybody there available to
8 lease them. Kind of like spec business buildings. And we argued at that
9 time successfully in front of the Board, and the language was eventually
10 removed, that if you look at the Specific Plan, there's provisions in the
11 front of the Specific Plan that talks about objectives and goals, and one of
12 them is to make this an economically viable project. There's also another
13 provision in the Specific Plan that's called a "flex plan provision" that
14 allows them to move the business park to different locations if they choose
15 to later on. The whole idea is to not force the Applicant to build a building
16 when they don't have anybody to lease it. All of the infrastructure will be
17 put in. All the pads. Everything will be put in. It'll be ready to go, and
18 we're more than happy to build a building for anybody who wants to rent it.
19 But we didn't want to be put in the position of building a building when
20 there was no one there to rent it. And we were concerned that as written,
21 that could be interpreted to require us to do that very thing. So the reason
22 for the word "economically feasible", Mr. Chairman, and perhaps it's the
23 wrong words, but the intent was we didn't want to put ourselves in that box
24 by this condition, and it was very similar to what we had discussed with the
25 Board at the time of the GMO amendment. And so that was ... maybe we
26 could choose other words, but, I hope I've explained the intent we were
27 after.

28 Roos: So you're thinking that, when you say landscaping, or construction of

1 initial buildings, that kind of _____ uses, someone's going to construe that
2 to mean you need to build a bunch of buildings?

3 Bornholdt: Yeah, even though there's no one there to lease them before we could move
4 on, for example, into another phase. And I don't think that's the intent of
5 the Specific Plan at all, and if you look at the beginning of the Specific
6 Plan, it emphasizes economic feasibility. It's our hope that, of course, we'll
7 have tenants and build the whole thing out, and ... but our concern is, early
8 on in the project, what's to stop someone come in and say "Hey, you're
9 supposed to be bulding buildings in the business park."

10 Roos: Jay or Kami, can you respond?

11 Johnson: We...we have a thought. It was not our intent to force a building to be built
12 that couldn't be used. It was ... if there ... as with Phase 1A, they're going
13 to be building a building that's going to accommodate an interim use, their
14 sales office. It's not going to be a sales office forever, it will be converted
15 to something else. And that's our intent here. So our thought would be at
16 the end of this sentence, where it says " ... landscaping and the construction
17 of initial buildings" ... "only if they can accommodate interim uses" period.
18 Well, actually ... If it, and then go on to a new sentence: "If permanent
19 uses are not identified, a marketing plan for the ... " I want to come back
20 to that one.

21 Roos: You want to come back to that one.

22 Johnson: I want to come back to that one. I just want to let you know it's not our
23 intent to force them to build a bunch of empty buildings.

24 Roos: It's your job to remember it, then.

25 Mehlschau: _____ you're trying to carry forth the requirement that it be a mixed-use
26 project, and just not turn into a bunch of homes, isn't that correct? 'Cause,
27 I mean, if you look at 1.5 on page 7 of the Specific Plan, you know,
28 develop a Specific Plan with long-term implementation of an economically

1 viable mixed-use project that includes the following components.

2 Roos: Well, my thought is, why can't they build ... don't have any ... or just
3 build a couple of buildings, get those rented. They don't have them rented,
4 then wait, so that seems to say they've started the mixed-use project, not
5 requiring them to build the whole bunch of buildings.

6 Bornholdt: If I may comment on that, Mr. Chairman, it's a good idea. One of the other
7 concerns is, if you build a spec building, it may not be the building that
8 the user who comes along later wants there, and you're put in the position,
9 as the owner you may have to tear it down, or rent it to people who aren't
10 going to pay for market rent. It's a ... if we could add words similar to
11 what Jay was suggesting after ... "that can accommodate interim uses, if
12 the market dictates"? I don't know.

13 Johnson: Mr. Chairman, I think we can move along. I will ... we will come back to
14 10.

15 Roos: We will come back to it.

16 Johnson: We will come back to 10.

17 Roos: Okay. 11?

18 Johnson: 11 would be ...

19 Roos: We dealt with that. 12

20 Johnson: We dealt with 11. We changed it to "approximately" instead of
21 "maximum". And do we want to say approximately five vehicle spaces?
22 Are you good with a maximum of five vehicle spaces?

23 Roos: I'm good with existing wording.

24 Johnson: Thank you. No. 12, we changed to ... previously, in my other memo, that
25 all public improvements for each final map shall be completed prior to
26 occupancy of new structures for that Phase. Item 15, we're adding the
27 words "tree cutting" to that. Item 17, we changed previously. The open
28 space will be recorded concurrently with each final map.

1 Roos: Okay, and as we're going through there, Commissioners, if you object, ...
2 don't know, we'll stop and discuss.

3 Johnson: Item 23. We changed ... I recommended changes earlier today about it
4 adding the word "first" final map. The next item was ... is No. 32, and that
5 appears on this hand-out we created this afternoon.

6 Roos: Wait a minute ... didn't he have ... 23, wasn't that 100 versus 165?

7 Johnson: Right, we're ... the ... I believe the Applicant is agreeing to the 165.

8 Roos: That's good, because I like 165.

9 Montgomery: 165 is accepted.

10 Roos: We're all agreeing at 165.

11 Johnson: 32, we're adding the words ... we're striking "logging operation" and
12 changing that to "tree removal". 34b is the change there, and we're adding
13 "prior to recordation of each final map for Phase 1B". Item 35, it shows on
14 this hand-out from this afternoon, that's the language directly out of the
15 appendix E of the Specific Plan, as approved by the Board of Supervisors.
16 Next item is 36b. We're simply striking "tree removal" and starting that
17 sentence with "Public road improvement." Item 39. We've added "prior to
18 the beginning of any tree cutting, tree removal, grading." The next item
19 that came up was Item 49 and 50. Those were recommendations I made
20 this morning, adding the word "significant" to Item 49, and "if necessary"
21 to Item 50. Item 56 is next. It shows in this afternoon's changes, and we're
22 adding the word "tree cutting" to that condition. Item 57 was next. We are
23 also adding the word "tree cutting" to that condition, as shown on this
24 afternoon's hand-out. Next item discussed was Item 59f. We've returned
25 to the language of Appendix E, that reads "Only EPA-approved fireplaces".
26 Item 62 was raised, we're recommending no changes to Item 62.

27 Roos: Let's ... let's discuss that a little bit more. I ... could somebody describe
28 what's going to happen. This coastal scrub habitat out there today, and it

1 may contain this species, but we haven't caught any yet, but we might.

2 Johnson: I'm going to defer this to John.

3 Roos: John?

4 McKenzie: Yes, John McKenzie. Because it is ... the potential is there, that that ...

5 and just because they didn't find any at the time of the survey, it doesn't

6 mean that they ... there couldn't be lizards in the area that could be

7 migrating in or have just not been seen during that survey. So because of

8 the potential habitat and it being their proper habitat, that we have that

9 concern for the legless lizard. The reason...

10 Roos: Describe what's going to happen. We've moved everything, and now

11 they've going off to build stuff. What's going to happen?

12 McKenzie: At this point, the Applicant is looking at offsite mitigation, as an alternative

13 to avoiding or preserving this nine-acre area that's on the property.

14 Roos: And what are you requiring for offsite?

15 McKenzie: We don't have a final plan at this time, but it would be something that

16 would be ... we would have to consider it comparable to what is there now.

17 We're ... we've ... as I think was mentioned in earlier testimony, I think

18 Herb Kandell, the Land Conservancy was contacted about possibilities for

19 offsite mitigation, and they did identify that ... that they could be, you

20 know, one of several organizations that would be able to provide for that

21 degraded habitat that would be restored, that would be comparable to what

22 is currently on site. And then before this area gets disturbed, then, again

23 another survey would happen for the legless lizard to be looking for that,

24 and then transferring that ... the lizard to the site that's been restored

25 offsite, is...is one approach to resolving or to mitigating the impact here.

26 And I don't know if I've been too brief here in trying to describe that

27 scenario, but I'd be more than happy to elaborate more, or ...

28 Roos: Maybe some of the Commissioners got it, but I didn't. So we got this nine

1 acres out there...

2 McKenzie: Yes.

3 Roos: ...and they want to put pavement over it and build houses there.

4 McKenzie: That's right.

5 Roos: And what's got to happen? Do they have to go buy nine acres across the

6 street that is appropriate for a habitat?

7 McKenzie: Yes.

8 Roos: Nine acres, not eight?

9 McKenzie: Right.

10 Roos: Not one?

11 McKenzie: Right.

12 Roos: But they have to buy nine before they can start doing anything?

13 McKenzie: That's right, and they'll not be allowed ... and most of this is in the

14 business park area, so that area will be reserved until such time as all the Ts

15 are crossed, and the Is are dotted, as far as any kind of offsite program.

16 And that offsite area has been established, so we can take the lizards that

17 may exist on the existing site, and then move them over to the other site.

18 Roos: So, by the time ... before the bulldozer hits there, the nine acres has to

19 exist, the Land Conservancy or some similar agency has to be maintaining

20 it, and so the bulldozer uncovers one of these little fellows, and we buy him

21 a ticket to ...

22 McKenzie: Exactly.

23 Roos: ... across the street or wherever it's going.

24 McKenzie: Exactly.

25 Mehlschau: What if it's less than nine acres?

26 McKenzie: I'm sorry?

27 Mehlschau: What if you find habitat on less than nine ... that's less than nine acres?

28 McKenzie: I ... well, that's something we'll ... there won't be ... we're going to

1 require that nine acres be found, and be restored, so ... and there are areas
2 off the property that are available. It's just a matter of finding that non-
3 profit organization that, you know, is in the process of or can restore those
4 nine acres, and so ... and all of that will have to be worked out before the
5 dozer comes in and destroys the nine acres on the property.

6 Roos: They could, if they chose to, just leave it as coastal scrub?

7 McKenzie: That is an option, yes. And that's not what they're proposing at this time.

8 Roos: Okay. Why isn't that a good idea?

9 Montgomery: We don't have a problem with the suggested mitigation measure, that is
10 going and finding at least nine acres off site, restoring it, and if we find a
11 lizard on our site, moving the lizard over there. The problem we have is
12 one of timing. The way this is written by the staff, if they find one lizard,
13 they freeze the whole nine acres until this other mitigation area is all fixed
14 up and ready to go. Even if that one lizard needs 100 square feet for his
15 normal habitat, we're stuck with the whole nine acres frozen, which is a big
16 chunk of the business park.

17 Roos: But, you're going to have to get the whole nine acres, anyway.

18 Montgomery: But we could develop ... let's say the business park needs seven out
19 of those nine acres. We'd leave two for the lizard, and we'd develop the
20 seven that's part of the business park, and then when the other mitigation
21 area is ready, we move the lizards over there, and then do the last two. The
22 way it's worded it's all or nothing with the nine acres that's on our site.
23 We preserve none of it, or we preserve all of it. And that's where we're
24 having the problem, is if the lizard only needs 100 square feet, why are we
25 freezing nine acres?

26 Roos: John?

27 McKenzie: It's ... I ... I don't know how to best answer it. It is ... we feel that nine
28 acres are appropriate to ... it's a matter of whether you restore one acre,

1 or...or nine acres, it all has to be done, you know, the earlier the better, so
2 we can get that reestablished so at the time that, you know, the area that's
3 being of concern, is developed, that it'll minimize the conflicts with the
4 Applicant's intent. There is a larger area, I believe it's 22 acres, of ... nine
5 of those, and it's not all nine acres, actually, there's some of it goes into the
6 golf course area, to the east of the business park, so it's ... but it is a chunk
7 of the business park area. I mean, there's certain ... you know, the business
8 park could be phased so the non-critical areas are what's developed first,
9 with this being held in reserve, and so, I mean, there are ways to deal with
10 it, but ... you know, we feel we don't know at this point, you know, how
11 much of lizard there is, and so we feel that it should be the nine acres, is
12 what is restored.

13 Roos: And he's kind of asserting that these don't need a very large area. Are you
14 trying to protect the habitat for other critters that need larger ones?

15 McKenzie: There are, yes, there are other animals that were called out as being
16 potentially in this area, but it is the legless lizard that's specified. So, yes,
17 by restoring habitat, you are creating a habitat for other animals that live in
18 the area.

19 Montgomery: Mr. Chairman, I'm not asserting that they need less than nine acres. That
20 lizard may need nine acres. I don't know. What we're looking for is the
21 flexibility to be able to deal with a smaller habitat area, if that's what
22 needed, and not simply be stuck with nine acres, no matter what is needed.
23 The other thing we're trying to avoid here is a chain of events where all the
24 improvements for Phase 1 need to be done, in order to occupy the final map
25 for the first part of Phase 1. The mitigation area they're working on off site
26 can't be ready for three years. We can't finish the business park, because
27 we've had to preserve the whole nine acres, not just part of it, and therefore
28 we can't finish the stuff over by Via Concha, because we have to have to

1 have the whole map done. So it's this chain of events with zero flexibility
2 that's really got us spooked. Because it's ... the way it's written, it's the
3 nine acres all in, all done. Even if it's not required.

4 Roos: Anybody else want to weigh in there?

5 Montgomery: So ... it's that flexibility we're trying to find, to be able to use less than
6 nine acres. If the biologist says it only takes one, we want to deal with one,
7 not nine.

8 McKenzie: I guess just ... you know, there's going to be ... there's two issues here,
9 one is the legless lizard issue, as well the Central Coast habitat, is also just
10 a sensitive habitat, as recognized by the State, so it is going to be ... nine
11 acres of habitat is going to be required to be restored elsewhere.

12 Montgomery: Correct. We have no problem with that. And we know approximately how
13 much it's going to cost to restore the nine acres, and we have some idea of
14 where that nine acres is and, as John's pointed out, we have an agency that
15 thinks they can do it for us. This is a timing and flexibility issue, not a
16 debate over whether we're going to have nine acres of scrub. Nine acres of
17 scrub mitigation is fine.

18 Boche: The survey has not yet been done, that says whether there are lizards there,
19 or not, right?

20 McKenzie: There was an initial survey done, no lizards were found as a part of that
21 initial survey. However, as common with animals, if the habitat is right,
22 they do recognize that, you know, just because they didn't see it during this
23 one survey, the timing couldn't have been, you know, it was a night survey,
24 or time of year, when you don't see very many of them. They have to
25 qualify it and say, the habitat is there, but we didn't find any of the animals,
26 or they could be migrating, or just be off in another part of the area, finding
27 food, or something. So, it's ... with moving animals, it's much more
28 difficult to...to quantify it as ... when you compare it to for example,

1 vegetation or something like that.

2 Boche: And, basically, I ... I mean, if you find one lizard, then that means that it is
3 good lizard habitat, and there have to be more lizards, or that one lizard
4 wouldn't be there either. [laughter] So, I mean I'm inclined to leave the
5 condition as is, and just give the critters the benefit of the doubt.

6 Roos: It's a black and white solution, then maybe we need a black and white
7 solution here. I'll agree with you.

8 [inaudible voices]

9 Montgomery:Mr. Chairman...Mr. Chairman, I just wanted to point out that this entire
10 issue is going to be directed by a biologist, who does the survey, and either
11 finds these lizards or doesn't. And what we're trying to do is give him
12 some flexibility and us some flexibility. That's why we've said the
13 delineated portion of the nine acre scrub, adequate to support the identified
14 lizard or lizards, shall remain undisturbed. And if he says four and a half's
15 enough, we'll keep four and a half, and if he says it's all nine, we'll have to
16 keep all nine. But if he says one is enough, we want to have the flexibility
17 to follow the biologist's delineation of the habitat, and preserve that one.

18 Roos: Then, what happened to the eight acres of habitat that now exists?

19 Montgomery: We would use that, because it's not required for the lizards' habitat.
20 We would continue to work on the nine acres off site that we have to
21 provide as mitigation. In fact, we have to do that right from the get go
22 because the condition is read...reads "prior to issuance of a construction or
23 tree removal permit", so we're ... we've got to make this arrangement very
24 early on.

25 Roos: But I think we like that. Next ... ?

26 Johnson: One other, just on that same one, there's a Condition 54 referenced; that
27 should be 61. 54 is an archeology condition.

28 Roos: Okay, in the fourth line, ...

1 Johnson: Yes, that should be Item 64 ...

2 Roos: ... removal of vegetation is authorized per Condition No. ...

3 Johnson: 61.

4 Roos: Scratch 54 and make it 61.

5 Johnson: Thank you. Okay, the next item was discussed is Item 69, and this appears

6 in this afternoon's hand-out with the corrections recommended by the

7 Applicant.

8 The next item that was discussed is Item 74a, the final bullet, and staff had

9 originally recommended striking ... striking out on the third to last line,

10 "water amount" ... so we're ... how it would read is "in addition, the dust

11 control grading plan must specify the water source". I think we'd like to be

12 able to get a grasp of the frequency, not necessarily the amount, but the

13 frequency. And if the Applicant's agreeable to that, we would like to say

14 "water frequency", rather than water amount.

15 Roos: So, scratch "amount", in that last bullet, and ...

16 Johnson: And put "frequency".

17 Roos: Frequency.

18 Johnson: The next item discussed was Item 75b, striking b altogether, old

19 technology. The next item that was discussed is Item 81. And staff has ...

20 this is where the Applicant wanted the requirement to go from 25

21 employees to 50 employees, we're recommending no change to that.

22 Roos: Cynthia, I'm sure you have an opinion? It's the threshold for the bike

23 amenities being 25 or 50 employees.

24 Boche: Yeah, I like it as is.

25 Roos: Gene?

26 [unintelligible]

27 Roos: No, no. we're talking about the shower for 25 employees.

28 Johnson: Mr. Chairman, I would ... I would add that that is right out of the

1 mitigation measure, and that would be a little difficult to change at this
2 time. The number. From 25 to 50, without additional analysis, discussion
3 with the Air Pollution Control District.

4 Roos: Better leave it as is, Gene? Okay, that's three of us.

5 Johnson: The next item that was discussed is Item 82, and we added the discretionary
6 permits for commercial uses. The next item that came up is Item 85, staff
7 is not recommending changes to Item 85.

8 Roos: Ah, CDF is here.

9 [[unintelligible]]

10 Roos: Been waiting all day to get his _____. Why should they have to put in
11 sprinklers when the fire place ... or the fire station is now manned?

12 Lewin: Robert Lewin, with CDF County Fire Battalion, Chief Fire Marshal. And
13 your question, I'm sorry, what was the question again?

14 Roos: I believe the question here is why should these people have to sprinkler
15 their buildings, when that basis was supposedly because there was no
16 manned fire station nearby, but now, evidently, there is a manned fire
17 station.

18 Lewin: Okay, well, thank you. First I'd like to start ... to answer that question
19 with, we'd also like to see a change to 85, but our change would be that the
20 word "commercial" is added with residential, so that all residential and
21 commercial buildings are sprinklered. That was left out inadvertently, and
22 I'll show you some correspondences in other places in the earlier
23 documents that indicate that. The Applicant is correct in that is ... that
24 Title 19 does talk about automatic fire sprinklers. However, that
25 requirement is for 5,000 square feet in all buildings, regardless of whether
26 it's commercial or residential. Fire sprinklers save lives, they provide a
27 means of keeping fires small, they allow people time to escape, and most
28 often they completely extinguish a fire, thus preventing it from spreading to

1 other locations. This is a dense housing environment, so you know, we
2 want to prevent fires from spreading through the neighborhood.
3 Sprinklers...sprinklers are often used for mitigation purposes throughout
4 the County. One of the questions was does sprinklers ... have they been
5 applied in other places as mitigation, and, yes, in fact they have. I haven't
6 had any time to research whether they were put into Black Lake, but I do
7 know that recently we used them as a mitigation on Price Canyon, which I
8 think your Commission saw a few weeks ago. The fire sprinklers cost
9 about \$1.50 a square foot in residential, about \$2.50 a square foot, this is
10 from a sprinkler contractor, on average, and that compares in his ... say to
11 carpet, which is a good deal more. As far as a mitigation, to answer your
12 question, now, originally during the EIR review, if we...you turn to page
13 326 in the EIR, in the second paragraph, there's a section in there about
14 using residential sprinklers in lieu of staffing. At the time we did have 24-
15 hour 7 staffing at both our fire stations of the Nipomo area. However, it
16 was just one person on the engine. We now, after the County Board of
17 Supervisors approved, we have 2-0 staffing, or two people on the engine
18 24/7. That was as a result of legislation that required that our fire fighters
19 have two in, two out, on any kind of structure fire. We will have a staffing
20 issue in this County. Our staffing is a good deal less than any other type of
21 fire department in a municipality situation where... and we would ... we're
22 okay if the Applicant would prefer to use staffing as a form of mitigation.
23 However, it's been indicated since 1998 that that was a very difficult thing
24 for the Applicant to be able to provide staffing for the next whatever
25 amount of years into the future, and ongoing process. So in lieu of staffing,
26 the option then was how else do we reduce the impacts on the Fire
27 Department, and one way to reduce impacts on the Fire Department is by
28 putting in sprinklers, because they ... a fire ... in a structure fire takes a lot

1 of time. We can tie up our folks for an extended amount of period on one
2 incident. The stations in the Nipomo area are at threshold now, or are ...
3 they've exceeded it, or they are coming up to exceeding it. With a 20%
4 growth in call volume, which is what we anticipate from this development,
5 we anticipate that we're going to have simultaneous calls, which means that
6 our units will be tied up on one call, and unable to respond to another.
7 This, of course, is exasperated by a structure fire which can tie up our
8 resources for twelve hours, and not just one engine, it can tie up multiple
9 engines. Staffing was an issue, it still is an issue, where we are trying to
10 mitigate the problem by...by having sprinklers. If ... some of the
11 references for this are on the supplemental EIR on page 53 and 55. There's
12 a letter dated August 4th last year that did talk about the need to have
13 sprinklers in all residential and commercial occupancies. This was
14 elaborated on more by ... in the EIR on page 54, so this is not a new item,
15 it's all...and it goes all the way back to 1998. And if you turn to letter 1 in
16 the EIR, and also ... which is ... and also page 508, and also page 323 in
17 the EIR, all those talk way back to 1998 on the need for sprinklering all
18 buildings.

19 Roos: And if a residence is sprinklered, is there any benefit to the homeowner,
20 other than minimizing the damages? Like you get cheaper insurance?

21 Lewin: Yes, many insurance companies do lower their rates for sprinklered
22 buildings. When people are building houses, I would hope that the value of
23 their home increases with ... when they also can add on their sale that they
24 have sprinklers. As I mentioned earlier, a residential sprinkler system is
25 relatively inexpensive. It's \$1.50 a square foot approximately. I've even
26 heard as low as \$1.25 a square foot. That's about \$13 something dollars a
27 yard. I think carpeting is \$20 to \$40 a yard.

28 Roos: Thank you.

1 Montgomery:Mr. Chairman?

2 Roos: Rebut that?

3 Montgomery:Yes, please. First of all, Title 19 of the County's ordinance says structures
4 over 5,000 square feet, and were that the case being imposed here, we
5 wouldn't have a problem with it. The problem we've got is Black Lake ...
6 we're in a competitive environment, building a project, selling homes, and
7 trying to rent buildings. At Black Lake they don't have fire sprinklers. At
8 Cypress Ridge, we don't believe they have fire sprinklers. Other
9 commercial buildings in the area don't have fire sprinklers if they're
10 over...if they're under 5,000 square feet. So what this is doing is just
11 saying it's going to cost more to be in the Woodlands. This is particularly
12 bothersome with the commercial area. We're trying to make a mixed-use
13 community work, and yet imposing additional conditions on specifically on
14 the Woodlands projects that don't apply elsewhere, and have us compete in
15 that environment. It is very expensive. The question was asked "are your
16 insurance ratings ... are your insurance prices cheaper because you have a
17 sprinkled building?" And in general in Nipomo the answer is going to be
18 "no". Insurance prices are based on your ISO rating, not on your
19 individual building specification, and I don't believe that the Nipomo area
20 ISO ratings are going to change unless there's additional mitigation done
21 County-wide to improve the ISO ratings for the Nipomo area. So from...
22 from our perspective, properties within 100 feet of the Woodlands are
23 going to build a house, and they're not going to have sprinklers in them.
24 Commercial buildings may be built within a half mile of the Woodlands,
25 and they won't have sprinklers in them. We're going to have sprinklers.
26 It's an added cost issue. Going back to 1998 and the discussions that we
27 had at the time, there was one person in that station. And our
28 understanding was, because of the staffing problem of one guy shows up,

1 he can't really fight a fire, he's trying to drive a truck and get out a ladder
2 and all those things that go on in a fire, that that was a problem and
3 sprinklers could help mitigate that problem. Our understanding was when
4 ... if staffing increased, and that's why we had the whole discussion that's
5 in the letter in the back of the EIR about staffing issues, that if staffing in
6 the station's increased, we wouldn't need to do the sprinkler requirement.
7 So those are...those are the issues involved for us, and we would request to
8 be treated more like our neighbors, and not special treatment that adds
9 additional cost just for this project, and puts us at a significant competitive
10 disadvantage.

11 Boche: Mr. Chairman, we're currently trying to find out if, in fact, Cypress Ridge
12 is sprinkled or not. Black Lake was not required to be sprinkled. However,
13 I would like to think that we've gotten much smarter since we approved the
14 Black Lake specific plan.

15 Lewin: May I add one thing also. I think Blacklake's contribution to mitigating
16 their fire problem was donating a piece of property for a future fire station.

17 Bornholdt: Mr. Chairman, if I could add just one more point. I'm looking at page 508
18 of the EIR, and it's a response to the Fire Department's letter at that time,
19 and it refers to the mitigation measure that's in the EIR, and basically what
20 it says is that the developer is required to develop a fire safety plan in
21 accordance with Building and Fire Department standards. And I think Title
22 19 is pretty clear that the standard for the Fire Department at this time is
23 sprinklers have to be in buildings greater than 5,000 square feet. I'm not
24 sure that Title 19 anywhere talks about sprinklers required in residential
25 buildings less than 5,000 square feet. My suggestion is an alternative for
26 your to consider, would be to simply use the mitigation measure that's
27 already in the EIR, that the developer will comply with current Building
28 and Fire Department standards, as found in Title 19.

1 Boche: The mitigation measure that I see in the EIR is that residences will be
2 sprinklered. Page 327.

3 Roos: That's what I read, too. Although the one above that does say that a
4 proposed project must comply with Title 19 building of structures ...
5 provide for automatic ... fire extinguishing devices being installed in
6 commercial structures. But the very next one is ... as she points out, very
7 clear, residence is needed. So, Mr. Orton might chime in here, we'd have a
8 hard time changing this, would we not? Without additional environmental
9 review?

10 Orton: I need to take another look at it here. Just a minute, please.

11 Bornholdt: If I could respond, Mr. Chairman, while he is looking to Commissioner
12 Boche's comment. The miti...the mitigation says "in accordance with
13 Building and Fire Department standards" in terms of residential
14 sprinklering. What I'm saying is, their standards are 5,000 square feet in
15 Title 19.

16 Lewin: You know, we...we had a ... we responded to the supplemental EIR as a
17 form of clarification, page 53 of the supplemental EIR, and then the next
18 page, page 54, addresses our letter. And we still have a staffing problem,
19 and if they would prefer that it be revisited as a mitigation that they add
20 staffing to our station, I'm sure that was...is still open. We've offered that
21 in lieu of staffing, which was the original mitigation, that they could
22 sprinkler. We still have ... the reason we have two people on our engine is
23 because of federal ... or excuse me, state legislation, OSHA regulations
24 that required two in, two out. The extra person at the fire station is a result
25 of the County Supervisors.

26 Roos: So this letter ... and I'm reading it here, it says ... and this is to Mr.
27 McKenzie from the Battalion Chief here, " ... we reviewed in the EIR ...
28 the Woodlands EIR, in order to ensure an understanding of the Fire

1 Department requirements for mitigation of impact 471 in the EIR, page
2 322, we have suggested that the developer include sprinklers in all
3 residential and commercial occupancies. This would be regardless of their
4 size, and in lieu of increased staffing at the Mesa Nipomo fire stations.
5 This was not clearly stated in the mitigation 471a and 471b. We hope this
6 clarifies ...” So it looks like that was the position in early this year.

7 Lewin: And in the next page, also, talks about that.

8 Roos: Right. The supplemental EIR does not propose to modify existing
9 mitigation members, although...measures, although it appears your letter is
10 a little bit clearer. I’d raise the comment that you’ve raised to services
11 district, you had your chance to complain then, you didn’t, time’s up.

12 Lewin: And, frankly, I just heard about it when I came to the hearing this morning.

13 Bornholdt: Mr. Chairman, in terms of matters of health and safety, that rule is bent. In
14 other words, if the standard in Title 19 today said what they’re saying they
15 would like, we wouldn’t be here arguing. We look at that as their standard,
16 and we understood that we were supposed to comply with their standard. If
17 their standard is Title 19, and it ... all we’re saying is, that should be the
18 standard that we all operate under. We ... we’ll go with whatever decision
19 the Commission makes.

20 Roos: Mr. Orton?

21 Orton: I think it’s up to the discretion of the Commission how you want to decide
22 on this issue.

23 Roos: Sprinklers are good. To me it’s a selling point. I’ll grant it’s ... more
24 money. Cynthia?

25 Boche: I like sprinklers technically, reading...reading what we have here in front of
26 us, I’d have to say that ... that one’s correct ... sorry, I’m losing it. That ...
27 really, it does say that...that sprinklers are required in accordance with
28 current standards, and if the current standard is Title 19, and we don’t

1 require it normally on buildings less than 5,000 square feet, then technically
2 perhaps it shouldn't be required. On the other hand, I think sprinklers are
3 good too. I think that Mr. Lewin raises some valid points about the short
4 staffing. I'd love to see sprinklers.

5 Lewin: Excuse me for one second if I could chime in. I apologize for not
6 mentioning this. Title 19 includes a lot of information about sprinklers, not
7 just specifically about square footage, and that ... we of course want to ...
8 Title 19 is the Fire Code, In other words, it's the State Fire Code, and when
9 we say Title 19, we're in essence saying the California Fire Code, which
10 has many applications as such, like is it an ordinary hazard 1, or an ordinary
11 hazard class 2 sprinkler system requirement? So, we make that reference
12 also for that reason.

13 Roos: Well, I like it from the cumulative nature of what this project will do, this
14 lessens that cumulative need for lengthy responses.

15 Montgomery: Mr. Chairman, I'd just like to point out that Title 19 specifically
16 exempts residential structures under 5,000 square feet, and commercial
17 structures under 5,000 square feet. There are specific paragraphs in there
18 that do that, which is why we're saying, that's the standard.

19 Roos: True, but his letter ... in the 2002 supplemental EIR said "everywhere", and
20 you had your opportunity to object then.

21 Johnson: Mr. Chairman, I have a few bits more of information. I did look into
22 Cypress Ridge. It appears that Syntax, who is the largest builder at Cypress
23 Ridge, does not provide sprinklers. Then again, that was an older project, a
24 few years older than this one, and times do change. The other point that I
25 think ... in any building code or whatnot, there's many standards that are
26 applied to, in this case fire sprinkler, that this ... the Title 19 may have
27 provisions for the spacing of sprinklers, or water pressure for sprinklers,
28 and that may be what's implied in terms of meeting Title 19, is the

1 specifications of how they're built, not if they're built.

2 Lewin: Also if I could just draw your attention to a letter, letter No. 1, page 506 of
3 the EIR, is a letter written in 1998 from then Fire Marshal Ben Stewart,
4 who concludes the letter with "The Fire Department is in agreement that
5 with the staffing ... " Let me start a little earlier. "The developer feels that
6 if staffing is a real issue, then together we should try to come up with a plan
7 to get additional staffing. The Fire Department is in agreement that...with
8 that, however, if no plan is found to increase staffing, our Department
9 would recommend residential sprinklers to be used to mitigate the staffing
10 issue." That was in April 23rd, 1998.

11 Montgomery:Mr. Chairman, in the interests of moving the hearing along, we'll agree to
12 it.

13 Roos: Okay, does that include adding the word "commercial"?

14 Montgomery:We'd prefer not, since that's an addition as of today.

15 Lewin: That was an addition as of August last year.

16 Roos: Right, his letter did say that. Views of the Commission? I kind of like
17 adding "commercial", and leaving it as ... other than that, leaving it as is.
18 Got three heads nodding "yes". Moving on, what's next?

19 Johnson: Item 90. This was discussed this morning. Item 93 was brought up ...

20 Roos: Wait a minute ... I have 90, we discussed ...

21 Johnson: That was discussed ...

22 Roos: What did we do about it?

23 Johnson: Oh, what did we do about it, sorry. In the ... you want to know what we
24 did about it. [laughter] Third line, "Prior to issuance ..." Instead of saying
25 "prior to issuance of tract improvements", what we want to say is " ... with
26 improvement plans and tree removal plans".

27 Voice: How will that read?

28 Johnson: It will read, strike the words "prior to issuance of tract map", and begin the

1 sentence with “With improvement plans and tree removal plans”. Item 93
2 was ...

3 Roos: I ... I didn’t get that, but as long as the Applicant got it, and is in agreement
4 with ... seeing an affirmative nod, and the secretary has it.

5 Johnson: Next, there was discussed was Item 93. I don’t know what was discussed,
6 we’re proposing no change to that.

7 Roos: You want to ... prior to the ... added “prior to the commencement of tree
8 cutting”.

9 Johnson: You know ...

10 Roos: I’m not sure where that fit in. The very beginning. “Prior to the approval
11 of any permit ... ” Well, I suppose there are some permits that have got
12 nothing to do ... like an encroachment ... an encroachment permit to make
13 his improvements to Highway 1, why should he have to care about
14 eucalyptus removals? And he has to do that, prior to ... has to make the
15 Highway 1 improvements before his trucks move the logs in and out. Or
16 ...

17 Montgomery:Mr. Chairman, that was our exact problem with it, it says “any permit”. It
18 could be an unrelated permit, and we’d have to go through this process,
19 because we do have to encroachment permits for off site improvements,
20 and if one of those went first, then we’d have to do this whole thing, in
21 order to go improve an off site road.

22 Johnson: We could keep it to tree removal, grading, or tract improvements,
23 commencement of tract improvements, I think those are the major things
24 that we would ...

25 Roos: Okay, so it’s changed “prior to the ... “

26 Johnson: “ ... prior to approval of tree removal, grading, or tract improvements”.

27 Roos: Okay. 93 mitigation 47-1h, prior to the ... prior to tree removal, grading or
28 tract improvements, in order to reduce the fire hazards, etc.

1 Johnson: That's right.

2 Boche: Do we want it "tree removal" or "tree cutting"? [laughter]

3 Johnson: Cutting.

4 Boche: Cutting.

5 Roos: Good point.

6 Johnson: Okay. 95 was discussed, raised by the Applicant, and this was ... they
7 wanted prior to occupancy, of permits, and staff is recommending no
8 change to that.

9 Montgomery: That's acceptable to the Applicant as well. That's fine.

10 Roos: Leave is as.

11 Johnson: 98 was discussed this morning, and adding at the end of the last sentence,
12 comma, take away the period, put comma, "... consistent with state law".
13 Item 100, this is the affordable housing. We've agreed in part with the
14 Applicant, and we're recommending the language that appears in this
15 afternoon's...this afternoon's memo where we strike ... we put the period
16 after "3%" and strike "for low-income housing, and 5% for moderate
17 income housing".

18 Roos: ... as you have ... on the screen.

19 Johnson: And then it's a little different on the second sentence as well.

20 Montgomery: That second condition as reworded is acceptable.

21 Roos: Agreeing?

22 Orton: I haven't seen that, Jay, is what you're talking about ... what's on the
23 board?

24 Johnson: It's on the screen.

25 Roos: Okay, have you done anything ... to add the affordable housing fee ...

26 Johnson: ... with the tentative map, we will address that.

27 Roos: Okay.

28 Johnson: Now that concludes the development plan. Moving on to Exhibit ... we

1 have to go back to 10, Kami has 10.

2 Orton: Can I make one suggestion before we go back, add 104 in indemnification
3 conditions.

4 Roos: Oh ... wondered when he was going to get that in. You're proposing what?

5 Orton: I'll pass it around, it's our standard indemnification condition.

6 Bornholdt: Mr. Chairman, Ken Bornholdt again. We have no objection to that.

7 Roos: Nor do I. How about you two? No objections to the adding new
8 indemnification condition? I'm seeing two heads nod "yes". Okay, now
9 we're back to 10.

10 Johnson: Back to 10.

11 Roos: That's this initial buildings business. To build buildings, and no one came.

12 Johnson: Okay, "This shall include, but not be limited to, the installation of
13 infrastructure, provision of amenities, landscaping, and the construction of
14 initial buildings that can accommodate interim uses where those uses are
15 proposed, if permanent uses are not identified, in a marketing plan for
16 attracting permanent businesses."

17 Roos: Can you guys live with that?

18 Johnson: The first sentence still would remain, as it shows in the staff report.

19 Roos: Keeping the first sentence, but adding a new ... after ... "This shall include
20 ... "

21 Janneck: ... for example, sorry, John Janneck for the Applicant. Jay, would that ...
22 what you're talking about is, in the development plan, our marketing center,
23 for example, and our temporary golf club house, would that qualify under
24 this condition?

25 Johnson: That's right. Those would qualify.

26 Janneck: And it would not push us anything beyond that?

27 Johnson: With each phase, we'll make a crack at it, and if there's some interim use
28 that could occupy a building, knowing that it's going to be used in the

1 future, we'll get it up and running. It it's not going to happen, we're not
2 going to require it.

3 Montgomery: With that...with that understanding, it's acceptable.

4 Roos: The Commission happy with that? Make 10 so.

5 Johnson: Now, may we skip on to Exhibit D, or not?

6 Boche: No.

7 Johnson: No.

8 Boche: I had some questions about some of the other conditions that haven't been
9 brought up yet.

10 Johnson: OK.

11 Boche: And it's been a few days since I made my little notes on here, so ... I have
12 a note somewhere at the top of page 8A-15, wondering whether we can
13 require strong price incentives for water conservation. Some sort of tiered
14 pricing, something like on the utility bills, where there's a base line
15 quantity that's billed at a lower amount than...than above base line
16 quantities of usage. Is that something that can be required of a
17 development in order to help enforce the water conservation?

18 Johnson: Let's see if Mr. Orton can help with that one. I'm just trying to formulate
19 how that...how that would be done.

20 Orton: What ... what exactly were you proposing, now?

21 Boche: I'm not sure, and I have no idea whether this is the place or time to do this,
22 but since they have their own water company, and presumably they'll be
23 billing the residents and businesses of the Woodlands through that water
24 company, could we require some kind of tiered pricing that strongly
25 encourages conservation? So that, say, if you use up to a certain base line
26 quantity of water, the price is X, but if you use more than that, then the
27 price for the ... the over and above base line usage ... to three or four X.

28 Orton: You know ... I...I can't answer that question, I don't know. I've never

1 seen a condition like that as a part of one of our permits, so I'd be hesitant
2 to recommend something like that without having a chance to look further.

3 Cooper: Marie Cooper for the Applicant. The mutual has to be a non-profit, and we
4 have to be very closely looking at how much the costs balance the ... how
5 much the rates balance the cost. It would be extremely complicated from a
6 legal perspective to satisfy the corporate people who are looking at our
7 corporate returns that this is happening, if we have tiered rates, 'cause you
8 can't project people that are going over, because it's necessarily something
9 that you're encouraging not to happen. So, it would be extremely
10 complicated from a technical perspective, I don't know if it would be do-
11 able, but it would very, very difficult from a technical perspective to end up
12 with a non-profit with tiered rates.

13 Orton: Another idea is if you wanted to request water conservation measures, you
14 could maybe consider something in the CC&Rs. I've...I've seen ... but I
15 haven't seen a tiered system like that, I was thinking ... requesting that the
16 CC&Rs include provision for water ... encouraging water conservation,
17 and at least you're not forcing the mutual water company to do something
18 where you may have some difficulty doing it, but you'd be given a notice
19 requirement in the CC&Rs. I'm ... I think in the past we've had develop a
20 program for inclusion in the CC&Rs to encourage water conservation,
21 approved by the planning director, I seem to recall some time in the past,
22 something like that. But I would suggest that if you're going to do
23 something, that's a better place to do it.

24 Boche: Yeah, or it's totally toothless.

25 Orton: Excuse me?

26 Boche: It seems pretty toothless.

27 Orton: Well, it's ... more trying to encourage people to ... right, it doesn't have
28 the enforcement, but remember you're approving a subdivision at this point

1 with conditions for public improvements and, you know, somewhere
2 you've got to draw the line with how far further into the future you can
3 condition and enforce requirements.

4 Bornholdt: Mr. Chairman, Commissioner, if I could just...this mitigation measure No.
5 26 lists a number of conditions that are going to be imposed on each of the
6 lot owners. In essence what this...these mitigation measures already do, is
7 tighten down the screws pretty tightly, that you're not going to have a lot of
8 water thrown around in these yards where, for example, "residential
9 landscaping shall not exceed 50% of the lawn surface". Things like that.
10 This ... in order to save water as part of the water conservation program,
11 everything possible will be done to screw down the use of water. I think it
12 would be natural, frankly, for the mutual water company to take your
13 suggestion in the future if one lot owner is abusing it, but given these
14 constraints that are in here that dictate, for example, restricted surface areas,
15 it's likely there won't be the sprinklers out there to pull the water, as
16 opposed to a normal ... if you take a city like this, that's been developed
17 out, and there are no restrictions, that's a real risk, and the tiered system
18 makes sense. So I think what I'm trying to say is, there's a lot of things
19 built in here already that tighten it down.

20 Boche: I just would like to see it even tighter. As long as we're talking about
21 condition 26, the very last sentence says that the landscaping should be at
22 least 50% natives, but it doesn't say native to what. I'd like to see it say
23 San Luis Obispo County.

24 Roos: Consensus for that? Seeing ...

25 END OF TAPE 3, SIDE A

26 START TAPE 3, SIDE B

27 F. Voice: Mr. Chairman, typically we use the native as meaning native to California,
28 or...or Central Coast of California. Native to simply this County might be

1 too limiting. That's our standard plant list actually contains natives from
2 California. It's a broader ...

3 Roos: Let's use it, then.

4 Boche: I'd like things tighter, personally. I've always thought it was strange that
5 we allow, you know, things from the Southern California desert to be
6 considered native, you know, as natives here, or things from the redwood
7 forest be considered native here.

8 Johnson: Is Central Coast comfortable?

9 Boche: Sure.

10 Roos: Central Coast it is. They're close to Santa Maria, and Santa Barbara
11 County, aren't they?

12 Boche: My next question was about the conditions ... Condition 59, and what
13 provisions there are for enforcement of 59d and 59f.

14 Johnson: Again, those are going to be in the CC&Rs, and ... and those were written
15 to be meant to be advising to where self-policing it would not involve ... it
16 would not involve the County.

17 Roos: She raises a good point. I mean, you know, backyard barbecues are kind of
18 a ... a right, you know, for weddings and things like that. I would think
19 people would want to do that, and I was...kind of want to ask the
20 Applicant, how are you going to sell a house if you tell them you can't have
21 a barbecue in the back?

22 Montgomery: First of all, it would probably be a requirement in the CC&Rs that you're
23 not allowed to have...not allowed to have them. But I guess ... more to the
24 point is if you're really talking about are we going to have the barbecue
25 police out, I think it's going to be more neighbor to neighbor. I live in a
26 community where there are CC&Rs, and they are enforced. They are
27 enforced by area of interest. If people are interested in these butterflies, and
28 there's a huge chunk of property right in the middle, preserved for them, I

1 think it would get enforced that way. A prime target of this particular
2 requirement were the uses that are very close to that habitat area, in
3 particular the hotel. And a commercial building, now would be much
4 easier to enforce, than on a residential back-yard by back-yard sort of
5 policing effort. So that was a target of this, was to aim at the hotel.

6 Roos: A question for Mr. McKenzie. Are barbecues a problem during the non-
7 overwintering times, like why can't some have it in July?

8 McKenzie: That would be fine in the non-overwintering periods, 'cause it is...it's the
9 smoke that does tell the butterfly danger, and it'll abandon the nesting
10 areas, so during the non-wintering ... or non-overwintering periods, that
11 would not be a problem.

12 Montgomery: Likewise, if I may, with respect to Commissioner Boche's question about
13 No. D, I believe that although not specifically targeted on here, clearly this
14 is aimed at the golf course, and that's relatively easy to enforce, because the
15 golf course operators have to have a whole list of things they're going to do
16 for pesticide management, including time periods for application,
17 application rates, there's a whole laundry list of things the golf course
18 operator has to adhere to, and this will be one of them.

19 McKenzie: And I would concur with that. And you know, the CC&Rs, in addition to
20 that, you know, there are a number of measures that are enforceable,
21 implementable. We do have the other buffer areas for the butterfly, and a
22 number of other conditions that can be more easily regulated or met. These
23 others that are included in the CC&Rs, we do recognize that enforceability
24 is going to be limited, but we did want to get the information out to...to
25 those ... the users of the area, so they know what, you know, will do the
26 best for the butterfly.

27 Roos: So did we want to add barbecues during October and March, or just leave it
28 as is, and not let them buy any? Because there is a danger you've got one

1 back there well ... it's Christmas, let's have a barbecue. Leave it as is.
2 Next?

3 Boche: I guess my next question was what happens to all of those toxic chemicals
4 and hazardous materials that get dumped on the golf course? And are they
5 being dealt with somehow in the ... ? Or are they percolating into
6 groundwater?

7 McKenzie: John McKenzie. There is an integrated pest management plan that they
8 will be subjected to and required to comply with, and as part of that
9 process, they do regulate the types and amounts of applications of
10 chemicals applied to the golf course. So, yes there...there is a process in
11 place. It's managed by the Ag Commissioner's office, for the most part, as
12 an arm of the State to implement or to oversee these plans.

13 Johnson: And Mr. Chairman, if I might add, you will see conditions directed
14 specifically at the golf course with that application, and it will be here in
15 the next couple of weeks.

16 Boche: And I guess the last comment I had was on Condition 99. There's a whole
17 lot of wishy-washy language in there, where you've got a bunch of
18 "shoulds" and "woulds" instead of "shalls" and "wills". It seems like they
19 ought to be ... starting with ... it says "routes would be selected to
20 minimize proximity to sensitive receptors the greatest practical degree,
21 passage through residential neighborhoods should be minimized, parking of
22 waste haulers on residential streets should be prohibited ... " blah, blah,
23 blah. Shouldn't it be, "parking shall be prohibited" and "passage shall be
24 minimized"?

25 Johnson: On this one, maybe John can shed ... can shed some light. This came
26 directly out of the mitigation measure.

27 McKenzie: John McKenzie. It's ... the reason I think it's as general as it is, is because
28 it's unknown the quantities or types of hazardous materials that...that could

1 be found, and ... it's more on a case by case basis, that we would look at
2 that particular hazardous material or ... I guess it's just hazardous
3 materials. So, that's why there's the "shoulds", and just kind of the general
4 guidelines that we would be looking to to follow, to make sure that any
5 kind of hazardous materials, you know, don't pose a safety problem for the
6 general public. At this time, I don't think they're proposing any hazardous
7 materials, so that's again why it's ... you know, we're trying to just set up
8 the guidelines for future development, when they come in with the
9 subsequent phases to the development.

10 Montgomery: If I may, as a bit of background, that condition, much like the back yard
11 barbecues and stuff, is targeted at the business park. We don't know who
12 the tenants will be. As the project currently stands, without commercial
13 tenants, we don't have any hazardous waste generators.

14 Janneck: I'd like to add ... John Janneck again. I'd like to add one more thing. It's
15 in our interest above anyone, never to have any hazardous materials on your
16 property. You know, we as the landlords, will be responsible for it under
17 federal law, state law, any kind of law, so we're going to be watching it like
18 a hawk.

19 Roos: Okay, we've finished the conditions of approval for the development plan.
20 Moving right on to those for the tract map.

21 Johnson: Okay, Mr. Chairman, if we could look at 8A-36, please, and look at item
22 2b, this was briefly discussed. We have a condition in the development
23 plan for when tree removal begins to do the improvements to Highway 1.
24 This condition is needed for ... under the subdivision rules, so no change is
25 needed there. On 2d, the Applicant wanted a change on 2d. We're not
26 recommending any change to 2d. And perhaps ... I see Mr. Montgomery
27 getting up, maybe we could talk about that, as well as e3, we're
28 recommending no change to that one as well. They're similar

1 requirements.

2 Roos: Now, there was the lady that had some trail issues, and wanted to know, she
3 didn't say it, but she wanted to know if Mesa Road was going to approved
4 A1X standards, but I see we've got A1 rural here. Sure.

5 Marshall: Richard Marshall, Department of Public Works. You are correct, the
6 conditions as presented to you currently do not recommend the inclusion of
7 trail standard for those off-site roads. Our usual approach is when
8 somebody's constructing something off-site like that, we make the basic
9 vehicular connection, and then subsequent development along the frontage
10 of those roads would be required to add the standard trail at that time. But
11 if your Commission is interested, it's easy...it's an easy change to
12 incorporate the trail as part of the cross-section of those off-site roads.

13 Roos: So ... does ... maybe it doesn't necessarily have to be built, but certainly
14 the possibility of it being built has to be there. I see Jan getting up with an
15 opinion.

16 DeLio: Mr. Chairman, members of the Commission, I'm Jan DeLio with County
17 Parks Division. Typically, to be honest, we don't usually require off-site
18 road improvements, and actually if I could just get all my trails that I'm
19 requiring through the actual development, I would be satisfied. But I also
20 have conditions ... changes to Condition 7, that I don't want you to forget,
21 because I need to leave.

22 Roos: We're almost there.

23 Marshall: The basic County standard road improvement and the standard dimension
24 of right-of-way will accommodate a basic trail improvement, with
25 subsequent development along the frontage. It won't provide enough space
26 for the more deluxe version with the detached trail and a greater separation,
27 but that is consistent with what's being done throughout the residential
28 rural land use category and the Nipomo Mesa.

1 Boche: I don't see what power these folks would have to get more right-of-way,
2 anyway.

3 Marshall: Yeah, well, the Subdivision Map Act would extend them the power to do
4 that, and the County the power to help them, if needed. But the basic trail
5 is basically just widening the road shoulder. It would be constructing a 4-
6 foot wider shoulder along the roadway than the standard road improvement
7 would otherwise require. And the question is whether we make this
8 Applicant do those 4 feet, or other people along the route when they
9 subdivide later. And the latter is more consistent with how we've treated
10 projects in the area. Well, Mr. Chairman, I believe the Applicant is still
11 interested in talking to you about the function equivalent concept.

12 Roos: What condition's that?

13 Marshall: That would be 2d and 2e3, and perhaps planning staff could put the tract
14 map on the screen.

15 Johnson: Is that a good one, or...?

16 Marshall: Yeah, I think so, if I could borrow one of the pointers again. Okay.
17 Condition 2d refers to Dawn Road, and Dawn is the northerly edge of the
18 site. And as a platted road it continues this direction over there somewhere.
19 As I discussed earlier, we're recommending standard frontage
20 improvements with this subdivision, as we would with any other. And
21 between Via Concha and Albert, they have provided a roadway length that
22 we concur is a functional equivalent of Dawn Road, but from here to there,
23 the interior circulation that's shown we don't feel currently as...as depicted
24 represents a functional equivalent. They're requesting that you consider
25 that the connection to Highway 1 through the site be considered a
26 functional equivalent, and you know, have the jump ball.

27 Roos: Your turn.

28 Montgomery: Just to clarify, we're talking about from there to the end of our property.

1 The end of our property is not to Highway 1. What we have said we
2 believe is the functional equivalent for somebody who wants to get from
3 here to Highway 1, is to take Via Concha, which will be a fully improved
4 road to there or, if you're at Albert Way, to go there, as opposed to coming
5 to here and having the road dead end, and then waiting for this piece of it to
6 be improved at a future date. That's with regard to Item d.

7 Roos: Do you own that little sliver?

8 Montgomery: Which little sliver?

9 Roos: At the end of Dawn Road there, where that road dead ends.

10 Montgomery: From here... from here to there we believe we own half of the right-of-way.
11 I heard one of the earlier pieces of testimony testify that Case Dobey's
12 greenhouse operation ... It appears that ... we're not sure if his ... if the
13 right-of-way exists on his side, and if it does, there appear to be
14 greenhouses and flower growing and fences in the County's right-of-way,
15 which quite frankly we'd like to avoid the fight to try and make him move
16 his operation. When, if you're at Albert Way and you want to get to
17 Highway 1, you can just drive down there.

18 Boche: But if somebody wants to go north on Highway 1, that's adding, what?
19 About two miles of travel?

20 Montgomery: If they want to go north on High... well, they wouldn't get to Highway 1
21 from here, anyway, it's going to dead end at our property.

22 Boche: But eventually they could, though when that other ...

23 Montgomery: You would just go up to Willow Road and over. Albert Way ... we are
24 building Albert Way from here to Willow Road.

25 Roos: So your contention is that this 2d requires you to make that Dawn Road
26 from Albert Way to a dead end. There's no use in that.

27 Montgomery: Correct.

28 Roos: I kind of agree with him.

1 Montgomery: Especially when we've built a brand new road that goes like that.

2 Roos: I tend to agree with him. Anyone else?

3 Boche: Well, I don't see any reason to make him build a dead end now, but at such
4 time as that other property develops, and there is the opportunity to make a
5 road go through up there, it seems like it would improve circulation in the
6 whole area.

7 Roos: But that wouldn't be the logical way to get back on Highway 1. Going up
8 to Willow Road would be ... seem to make more sense on this new...newly
9 paved Albert Way.

10 Montgomery: We believe that if anybody who lives in here wants to get to Willow Road,
11 they're not going to go over to Highway 1 and drive around to it, they're
12 going to go straight over Willow or straight over Via Concha, which are
13 brand new, fully improved roads. And likewise with the south route, to
14 Highway 1.

15 Marshall: Jay, do you have any land use category map? Or something.

16 Johnson: Yes.

17 Marshall: And a regional ...

18 Johnson: Richard, look at 8B-33 and see if that helps. John's looking at ... we have
19 some regional maps.

20 Marshall: Umm ... not really.

21 Roos: [Laughs] There's your basic road right there, buddy. Did ask for land use
22 category.

23 Marshall: Yeah, can I have it on that screen? The concept we're trying to implement
24 with this recommendation is to provide for more of a grid system to the
25 circulation for the Mesa, and as you can see, the roads in this area are quite
26 regularly spaced. This one is Willow. That one ... that's Dawn. That's
27 Camino Caballo, Mesa, and Eucalyptus. They're equally spaced, serving
28 this area, and it has less to do with whether people inside the project are

1 going north or south on Highway 1 and more to do with the circulation for
2 the neighborhood that is served by the rest of Dawn Road, and their ability
3 to complete a circulation link. They might be going to another neighbor's
4 house, they might be going to one of the businesses over here. There's any
5 number of things that people do on a grid circulation pattern, and it's fairly
6 routine that we require subdivisions to construct what we call stub-out
7 streets, that dead end until the adjacent property develops and, in fact, it's a
8 requirement of Title 21 of the County Code that we make such
9 recommendations to provide for the extension of streets to serve future
10 development of adjacent properties. And that's the source of our
11 recommendation.

12 Roos: Well, the street will still exist, it's just will it be paved or not. It'll still ...
13 it'll be one of them sand roads that ...

14 Marshall: And, as a matter of routine, we recommend that developments of this type
15 construct paved road improvements on streets along their frontage, even if
16 for the interim they don't make a full connection all the way through. This
17 developer does ... that the portion that's in their control, when the adjacent
18 property constructs the part that's in their control, and make a completed
19 facility at that time. But we can't later come back and require this
20 developer to build their part, if we didn't put it as a condition on their
21 subdivision.

22 Roos: What do you want to do, Gene?

23 Mehlschau: Leave it like it is.

24 Roos: Leave it like it is. Cynthia?

25 Boche: Yeah, I want to leave it like it is, although I'm happy with what we've been
26 calling the functional equivalent thing too, so if you wanted to rearrange the
27 internal streets slightly so that you end up with a cul de sac over there, that
28 would be easy to connect across, that's okay with me.

1 Marshall: As so would work with us as well. Jay, can you put the tract map back?
2 What we consider to be the functional equivalent is to get something
3 connected to that corner, or pretty darn close. That will enable the grid
4 system to have continuity in this direction. Now, the other topic that's ...
5 the other item that's the same topic is Item 2e3. Viva Way is the road
6 along this edge of the property, and as shown here, we consider that this
7 does consist of a functional equivalent between Mesa and Camino Caballo,
8 but Eucalyptus down here, we don't have a functional equivalent that gets
9 to that point. And again, it's... their proposal is that this is your functional
10 equivalent. Our recommendation is that it is not.

11 Roos: I tend to agree with you.

12 Montgomery: The problem we run into with this one, if I may, is from ...

13 Roos: Doesn't like to be horizontal.

14 Montgomery: I'm going to have to go from here to here, becomes an off-site ... I'll just go
15 back here. It becomes an off-site road improvement to us. We don't own
16 the property. We'd be building roads across other people's property, trying
17 to acquire right-of-way if the County ... I don't know, Richard, whether
18 you already have that right-of-way, or not.

19 Marshall: We do.

20 Montgomery: It's another off-site road improvement in what's already obviously an
21 extensive road improvement program, both on-site and off-site, and we
22 believe that you can ... you can't get to this intersection ... from our site
23 from... from ... either here, or this way, because Eucalyptus Road exists,
24 and so it's this segment in here that's the problem. We're ... think we're
25 basically doubling up and building parallel roads, and we believe the
26 functional equivalent is there for people who want to go there. And that
27 those roads are likely to get built by the intervening property owners when
28 they develop, and that we don't need to go out and do off-site roads in

1 advance. Those off-site roads.

2 Roos: A comment that I had when I was out there, that's really rugged country,
3 and there's no clue where that road runs now. I'd bet that's it not what you
4 had planned, and they're going to have to have detailed survey. And he
5 does raise a point that he may ruffle some feathers of some people who
6 think that's their road when, in fact, that's ... their front yard is what ought
7 to be the road.

8 Boche: Well, once again, even if we just require them to do some sort of a stub-out
9 to the end of their property, until the rest of that develops, or something.

10 Johnson: Well, we do have another issue with this particular one that's slightly
11 different than Dawn Road, is that the segment from Bannecker, which is the
12 corner of their property, the segment from Bannecker down to Eucalyptus,
13 is a mitigation measure that says "Viva Way, or its functional equivalent,
14 shall be paved between Bannecker and Eucalyptus Road". So it's really
15 your Commission's question to be answered for what this one is, does the
16 internal roads shown in red here, that go from Mesa through to Eucalyptus,
17 is that a functional equivalent of a straight shot down ... Richard's
18 highlighting it now. It either is or, you know, ... our opinion is it isn't.

19 Boche: Yeah, I don't believe it is.

20 Roos: So we'll ... leave as is?

21 Mehlschau: I guess.

22 Roos: That's an "I guess", and a "yes", and I'll join the "yes". That's two and a
23 half yeses. Leave as is. Next item?

24 Johnson: Okay, we need to step back one to 2e2. This was language that was
25 presented to your Commission this morning, and I believe the Applicant
26 was in agreement with ... I'm seeing a nod from Mr. Montgomery.

27 Roos: Are you getting a nod in the affirmative?

28 Johnson: Then, continuing on with the tract, here's where Jan would like to speak to

1 Item No. 7, so ... that would be on page 8A-38.

2 DeLio: Jan DeLio, County Parks. I have some recommended wording, and I
3 believe the Applicant did not have a problem with providing us with a
4 larger corridor along the perimeter of the property. I guess if they do have
5 a problem, if they could jump up and down, or something, ...

6 Montgomery: We don't want to make promises we can't keep. From our perspective, a
7 25-foot wide easement that meanders is probably the best thing, because if
8 there is a particularly nice tree, we can go around it, so I don't think we
9 ever envisioned it as being perfectly straight to begin with. We do have
10 some concern with going to a much wider easement, because that's going
11 to give us less flexibility on how we deal with the other half of that
12 easement. So I don't know what the actual width required for your two
13 parallel trails is. If we could define that, we're willing to meander it on the
14 assumption that you're going to build the trails in relative proximity to each
15 other, but just taking a 50 foot whack down one side is half the trail.
16 Again, for us, it's a flexibility issue with what we're going to do with the
17 other 50 feet, and we're required to keep a tree buffer, and I don't want to
18 be having Jay coming out to see me and say "Hey, where are all your
19 trees?" and I turn around and say, "Well, I didn't do anything, they built the
20 trail, and now too many trees are gone." And I know we have the same
21 objectives here in retaining the trees, but this is an issue for us where,
22 again, we're reluc...we're seeing eye to eye on the objective, we just don't
23 want to give up a 50-foot easement without any control over where it goes.

24 Boche: But Vic, aren't you already required to put an open space easement over all
25 those buffers, anyway?

26 Montgomery: Yes, we are.

27 Boche: What are you planning to do with it, besides a trails easement?

28 Montgomery: A good example is we would not, quite frankly, want the trail to meander

1 right over against somebody's back yard. We're going to try and avoid
2 that, and I think for understandable reasons.

3 Boche: You've got a 100 foot buffer, so if the easement is the 50 feet closest to the
4 outside edge of it, that can't happen.

5 Montgomery: I guess that would be a refinement of this that it's the 50 feet furthest from
6 our development, so that we don't have those issues of whether the trails
7 are coming right up along back...backyard fences, and that sort of thing.
8 That's why we're ... like I'm saying, we're in agreement with what Jan
9 wants to do. We would like some control over how it gets done.

10 DeLio: And Mr. Chair, my intent was that it would be the 50 foot adjacent to the
11 roadway in all cases, because, for example, if I'm doing an equestrian
12 corridor, or a bicycle corridor, in general I want eyes on from the street.
13 It's a safety issue as well. So I am only interested ... if we were to do 50
14 feet, and I can go less. In the trails plan that they submitted that is
15 referenced in the conditions, they show a 12-foot bicycle corridor, a 12-foot
16 equestrian corridor, and a 5 foot separation. That already is 29 feet, not 25.
17 If I could even have some flexibility of 40 feet, but, again, if we're trying to
18 avoid trees and removing vegetation, that it...doesn't mean that I want to
19 use the entire 40 feet, but I may want to diverge the two trails periodically
20 so I'm not taking out trees. So let me run you through what I ... my
21 recommended language, and then you can make comments accordingly. I
22 would recommend a new Condition 7, that says "Prior to recordation of the
23 map for the first phase, the Applicant shall offer an easement for a
24 minimum 40-foot wide detached trail corridor located along the property's
25 perimeter," and in parenthesis "the entire site, subject to the review and
26 approval of the Parks Division", and we can go further and state that is
27 shall be the 40 feet closest to the adjacent street. And then I would revise
28 No. 7 and make it No. 8. Am I going too fast? And start that one out

1 “Subject to the review and approval by the Parks Division” and then as it’s
2 stated, “the Applicant shall design and construct the following trails...trails
3 consistent with the Woodlands Trail Plan dated July 24th, 2001, within the
4 trail easement required under Condition No. 7.” And then in a, the second
5 sentence says “The equestrian trail shall be a minimum 12 feet wide” and
6 then it says “within a 25 foot wide dedicated easement”, that “within a 25-
7 foot dedicated easement” could simply go away. And the only other
8 change would be No. 8 would become No. 9, and it references Condition
9 No. 7, and that would need to be changed to Condition No. 8. I can do that
10 again if you want. Is that fast? Well, I just...I wrote it on my copy, if that
11 would help.

12 Roos: Well, you’re going to have to leave that copy here.

13 DeLio: Does that make sense? So what I’m trying to do in the first ... the new
14 condition No. 7 is create my trail corridor. I need them to dedicate that
15 with the...with their map.

16 Roos: And that’s 40 foot wide next to the road.

17 DeLio: Around the ... next to the road, and around the entire perimit...perimeter of
18 the site, so all phases, and then the second part ...

19 Roos: Well, before we go further, the Applicant, does that work for you?

20 Montgomery: With the understanding that it’s the 40 feet closest to the road, we believe
21 we can live with that, and with the understanding that tree removal within
22 that 40 feet, if there are issues with it, it’s issues with the Parks Department,
23 not with us.

24 DeLio: I concur. If I have to go through and remove trees, I’m going to work with
25 the Planning Department in order to do that. I’m subject to CEQA, just like
26 anybody else, or I ...County Parks Division is.

27 McKenzie: Gentlemen ... if I could add something. One of the concerns that we have
28 is we are trying to retain the rural character, and that was the intent of the

1 buffers around the perimeter of the property. So we would encourage
2 something maybe along the lines of that either through avoidance or
3 planting, that they maintain a 75% of the tree...trees that are there,
4 something along those lines, so there's a clear intent that we're going to
5 maintain that visual protection.

6 Roos: Is that more language?

7 DeLio: That would probably be added to my condition ... yeah, we have no
8 problems with that. And I assume we're going to bring back these ... all
9 the conditions revised for the next hearing?

10 Orton: No. Well, this is ... they're proposing...

11 Roos: We're having the hearing now. Whether we continue or not has not yet
12 been determined.

13 Orton: Just one comment I had, it sounded like she the...the corridor would be
14 created around the entire site with the first map, and I thought the maps are
15 going to be done in phases, and so you won't have a map that does
16 everything, so I'm not sure how it'll work with what she's suggesting.

17 DeLio: So it could be with each phase, they would show that perimeter easement,
18 although this condition obviously is relevant to the entire site, and that just
19 needs to be clear, that's relevant to the entire site, but each phase would
20 show the easement for that phase.

21 Montgomery: That's ... that was what I thought was going to go on. We're talking about
22 each phase, not one big map covering the whole property. With each phase
23 is fine.

24 Marshall: So in letter a of what Jan's recommending, now will be considered No. 8,
25 printed No. 7 but she's inserted a new one before. In No. a, the first
26 paragraph you would say "Prior to recordation of each final map."

27 Roos: Uh huh, each.

28 Marshall: And that would accomplish that part.

1 Roos: Is the Commission in agreement with that?

2 Johnson: Mr. Chairman ... planner confusion here. Let's let Jan read this into the
3 record, and we're just going to have to wait and see if Diane's got it, and ...
4 Okay. Please read it, Jan, and we're going to all ...right.

5 DeLio: You going to edit it as I go. Okay, because there's been some changes
6 made, so we may have to edit this as we go. So, a new No. 7, No. 7 would
7 say: "Prior to recordation of the map for each phase of the project, the
8 Applicant shall offer the County a minimum 40-foot wide trail corridor
9 located along the property's perimeter 'the entire site', subject to the review
10 and approval of the Parks Division" and then I would add another sentence
11 ...

12 Roos: How about the adjacent to the road concept?

13 DeLio: Yeah, and maybe the next sentence would say: "The proposed trail
14 easement shall be located adjacent to perimeter ... shall be located adjacent
15 to the perimeter road."

16 Boche: Although, if we just ... if we just require it around the perimeter, and don't
17 specify, then the Applicant has a little more flexibility about where exactly
18 they want to put it. There may be some areas where it's not convenient to
19 put it right up next to the road, although then we run up ... it's a safety
20 thing, huh? Never mind.

21 DeLio: Go ahead.

22 Bornholdt: I hate to jump in here! It's Ken Bornholdt again. It is conceivable that a
23 phased map could be like an island in the middle of the property, not bound
24 by the exterior boundary line. You're talking about a trail around the
25 exterior boundary line, is that correct?

26 DeLio: Well, as shown on the July 2001 trail map ...

27 Bornholdt: Jay ... Jay's nodding "yes", so I think if we said "Prior to recordation of
28 final map for each phase, the Applicant shall offer a minimum 40 foot wide

1 corridor along the exterior boundary line of ...

2 DeLio: ... the buffer, the required buffer? It's the exterior line of the required
3 buffer, really.

4 Bornholdt: Exterior boundary line of the project site.

5 DeLio: I think that defines it. You want to say something, Richard?

6 Marshall: I would suggest referring to the perimeter of the Specific Plan.

7 Bornholdt: Fine.

8 Marshall: And I would suggest saying little else.

9 Bornholdt: All right. [laughter] At this time of night, I ... we concur. [laughter]

10 DeLio: I think I need to pick up John McKenzie's comment that 75% ... I don't
11 know if you want me to say "when building" ... "when the County builds
12 the bike way, they shall maintain 75% of the trees, and replace any trees
13 removed?" Or ... Okay. Then we're adding a new No. 8 ...

14 Orton: Okay, what are you suggesting again? The last one you just ... you were
15 talking about John McKenzie's recommended, and then you started talking
16 about conditioning what the County does when they build something ...
17 and it sounded ...

18 DeLio: Typically we don't condition the County, so what ... I don't know if you
19 have suggested wording that ... Again, I have to go through a minor use
20 permit. I don't know if we can put "the intent is to maintain at least 75% of
21 the trees in any trail corridor" or "within that...that buffer area" ... "when
22 constructing any ..."

23 Roos: Seems like we could capture that during the minor use permit process, not
24 encumber this with that.

25 DeLio: Okay. I like that, I don't know if John does ...

26 Roos: How about you, John? Do you buy that?

27 McKenzie: Sure. I could give you some language here, possibly, if you want, or we
28 could ... I know it's late.

1 Roos: Well, don't want to unnecessarily complicate the matter. If we have a
2 process to take care of it later, during the minor use permit.

3 McKenzie: Sure, yeah, we could just say we have some performance standard that says
4 something along the lines that "75% of the area will be retained, you know,
5 in trees", and I'd have to rework it to create a performance standard, and
6 then the details could be worked out at such time that the actual trails go in.

7 Roos: Great.

8 DeLio: You got all that, Diane, right? Okay, a new No. 8, starts off: "Subject to the
9 review and approval by the Parks Division," the rest of that sentence stays
10 the same, except where the colon is, you would add "within the trail
11 easement required per Condition No. 7:" a, the second sentence, you would
12 delete after "12 feet wide" delete "within a 25-foot wide dedicated
13 easement" so the period would go after "12 feet wide", and then "the
14 surface may be natural sand" would stay. No. 8 would become No. 9, and
15 thus in the last sentence in No. 8, which is now No. 9, it says "Trails and
16 open space not designated in Condition No. 7" should now read "No. 8".
17 And I think that's it. How about "not designated in Condition No. 7 and 8"
18 actually. Because we're creating the easement in No. 7, and I think that's
19 why you got up. That way it's clear that I'm maintaining that trail corridor
20 that they were required to provide.

21 Roos: Okay.

22 McKenzie: And I'll just ... here's some specific language that I'm proposing for the
23 tree removal. "All efforts will be taken to avoid tree removal. At least 75%
24 of required tree density shall be retained. All trees removed shall be
25 replanted on a one to one basis in close proximity of removed trees."

26 Roos: And that goes where?

27 McKenzie: Within this ... the ... actually I'm ... it would be one of the letters, I'm not
28 sure if would be a new "e". Okay the end of new No. 7. Thank you.

1 Voice: We'll take care of the sequencing o the numbers and conditions, because
2 it's going to bounce this stuff all the way through _____.

3 Roos: Is the Commission in agreement with that? Good. Next.

4 Johnson: Okay, moving along. Item 22 was discussed and deleted this morning.
5 We've deleted "cost of engineering" out of 22. 26 was the CDF issue. I'm
6 hoping we've resolved that earlier, but we're recommending no changes to
7 No. 26.

8 Roos: We agreed.

9 Johnson: No. 27 was discussed... 27i was discussed this morning. We changed it
10 from "pellet stove" to "EPA approved". And then we have on this now
11 evening's list, we have a new 35 that speaks to ... this is our traditional in
12 lieu fee for public facility fees for affordable housing. We have ... and this
13 is on the list you have typed. We have the project 36, is "The project shall
14 be completed with the maximum number of 25 phases" regardless, it can't
15 go past ten years, so ... 37 would be as follows: "The restated articles of
16 incorporation and bylaws for the Woodlands Mutual Water Company shall
17 be approved as consistent with the requirements of the Woodlands Specific
18 Plan in parenthesis, (that is Section 5.1.2A-19)".
19 Lastly, ...

20 Orton: Not lastly, but next to the last ...

21 Johnson: Next to the last. Thanks, Mr. Orton. We have standard condition of
22 approval No. 2 on page A...8A-44, and we're deleting that last sentence, to
23 where it will read: "Operable water facilities from an approved community
24 water source shall be assured prior to filing of the final map. A final will-
25 serve letter shall be obtained and submitted to the County Health
26 Department for review and approval, stating there are operable water
27 facilities immediately available for connection to the parcels created."

28 Orton: And the only other thing I wanted to add was with regard to Condition 32,

1 old 32, “Verification that a sufficient water supply is available under ... ”
2 and then finish it as it’s currently written, so “... verification that a
3 sufficient water supply is available under Government Code Section
4 66473.7 is required prior to final map approval.”

5 Voice: By who?

6 Orton: As required by the Code section. The Code section requires the County to
7 do it.

8 Voice: You talking about the Planning Commission?

9 Roos: Come to the microphone, there, and state your name.

10 Orton: Right now the section says “Verification of a sufficient water supply under
11 Government Code section 66473.7 is required prior to final map approval.”
12 This Government Code Section has a provision in it that says “Before an
13 advisory agency can approve a tentative map, it shall condition it that a
14 sufficient water supply is available.” And so all I did was add the words “
15 is available” after “water supply” and change “of” to “that”, so it read
16 “Verification that a sufficient water supply is available” and then under the
17 Section.

18 Seitz: I guess I got two comments. One, is what you’re doing is taking Agenda
19 Item b...I mean, if they approve this, you’re taking Agenda Item b off the
20 Agenda? B says the Planning Commission ... go ahead. I’m sorry.

21 Orton: Go ahead and finish what you’re saying.

22 Seitz: Okay, it looks like first of all it says “The Planning Commission will make
23 a determination and verification whether an adequate water supply is
24 available for the subdivision pursuant to Government Code Section
25 66473.7.”

26 Orton: Right. All I’m doing is adding to the condition of the tract map the words
27 “is available”. I think it’s implicitly there, but I wanted to make clear that it
28 was there, and that’s why I suggested that be added. And then I changed

1 “of” to “that” to have it read better.

2 Seitz: And secondly, what I don’t ... what I hear here, and maybe you’re going to
3 come to it, is ignoring the mitigation measures that were adopted by the
4 Board of Supervisors in the SEIR, having to do with the water study. Now,
5 I’ve heard Mr. Bornholdt and ...

6 Roos: All we’re...all we’re working on now is these conditions for this tract map.
7 We will have another hearing here shortly, and we can raise those issues at
8 that time.

9 Seitz: Well ... all ...

10 Roos: He just made some rather minor changes defining that the verification ...
11 that this water supply is available, has been made under this Government
12 Code section, which we may or may not do, next.

13 Seitz: I understand that, but we haven’t had a discussion at all about the
14 mitigation measure that was adopted by the Board of Supervisors that has
15 to do with the condition that I’ve read to you from the SEIR. Now I
16 haven’t heard anybody say that that mitigation measure was not in effect,
17 and I’m just...I just request that, I think it’s page 8A-15, paragraph 29,
18 include that mitigation measure.

19 Roos: Thank you. Other conditions?

20 Johnson: That’s it.

21 Roos: So now we have a development plan, we have findings for that, we have
22 tract map findings, we have conditions. What’s your pleasure? As I
23 mentioned earlier ... no one’s jumping up here, I will. I ... there was a
24 request for a continuance. I don’t support continuing it off to next month,
25 I’d just as soon deal with it at this time, I think we have sufficient evidence
26 given to us, or the possibility that will be given to us during the next
27 hearing, but I’m reluctant to approve this until we’ve had that hearing. So
28 I’d like to continue it until after the next item. I think we have ... what

1 we've done here is we've solidified what we're talking about, but let's
2 determine that we have that water, and then go back to it. Or we can ...
3 after we have the next hearing, we can talk about whether we want to go
4 back to it next, or wait a month, or whatever, whatever the Commission
5 would like to do.

6 Orton: Well, my recommendation is that the sequence should be to approve the
7 subdivision first, and then address the issue of whether there's a sufficient
8 water supply as required by the Code. Of course, in addressing the issue of
9 the subdivision and the environmental review of the subdivision, water is
10 an issue. I mean ... and some of the evidence that's being used to show
11 that there is a sufficient water supply for the next hearing has to do with the
12 water studies that were already done in connection with the EIR and the
13 SEIR. I think the sequence should be to approve the subdivision first, and
14 then subsequent to that approve the second issue, is there sufficient water
15 supply available? Now, if you want to make a tentative decision to approve
16 the subdivision, and then hold your hearing on the next item, and then come
17 back and do the subdivision first, and then the next item, you could do that,
18 but I...I don't think that the proof of a sufficient water supply should be
19 done before the subdivision.

20 Roos: Say more about that tentative ... that would be tentative ...

21 Orton: You could make a tentative motion to approve the subdivision development
22 plan, subject to the conditions as outlined by staff here, and...and as
23 amended, and then go ahead and hold your hearing. At the conclusion of
24 the next hearing, act on the subdivision first, and then act on the water
25 issue, if you want to do that.

26 Voice: Mr. Chairman, if I might put an oar in the water here. You can certainly do
27 that, and that would be an option available to you, but the purpose of
28 Condition 32 on page 8A-43, and it may be renumbered now, but the one

1 that counsel just read some information ... some slight wording changes
2 into the record. What the purpose of that condition is just basically say,
3 “Okay, you’re adopting ... you’re approving the tract map with all these
4 conditions, and this condition says, you don’t get to record your final map
5 until the verification process required by the Government Code has been
6 completed. Which is what you’ll do in your next hearing. So you could go
7 ahead and act on the tract map with this condition, and they still don’t get to
8 move forward with recording the final map until you complete the process
9 you’re going to do in your next hearing.

10 Roos: Let’s just say that I am now of the opinion that there’s not sufficient water,
11 based on what I’ve heard so far ...

12 Voice: Then the tract map approval won’t move forward.

13 Roos: But we’re going to have a hearing ... and now more evidence may be
14 presented, which I could perhaps at that point, say “Oh, well, there is
15 water.” I have a hard time proving something when I ...

16 Voice: Well, let’s put it this way. If you adopt the tract map right now with this
17 condition, and then you don’t complete the next hearing, the water
18 verification hearing successfully for the Applicant, then the first action
19 can’t comply with the condition, it doesn’t move forward.

20 Orton: Let me...let me state it another way. I ... if ... the Code requires that when
21 you have a subdivision like this, that you put this condition on the tentative
22 map. The final map cannot record until that condition is satisfied. And the
23 Applicant has requested that we do the water verification hearing
24 immediately ... or after or concurrent with the map, so if they’re both done
25 at the same time, if there’s a feel that they can both go together. This
26 project could have been done if the County or the Applicant ... we...we
27 can both request it be done sooner. We could have delayed and had that
28 matter heard later. I disagree with the statement that someone made earlier

1 that water verification hearing would not be subject to being appealed. I
2 think it's a separate administrative hearing that has its own right of appeal
3 and challenge. But, anyway, I think what Warren was saying, that if...if
4 the water verification hearing does not verify that a sufficient water supply
5 exists, that condition would not be satisfied. If the condition isn't satisfied,
6 the final map will not record. Yeah

7 END TAPE 3, SIDE B

8 BEGIN TAPE 4, SIDE A

9 Voice: Thank you.

10 Boche: And just because I'm kind of brain dead now, once that ... the final map
11 has to record before they can do anything? Is that correct?

12 Orton: They can't sell lots until they have a final map record. Typically a tentative
13 map gets approved, and then they prepare improvement plans, and...and
14 satisfy the conditions, and then enter into a subdivision agreement, then
15 they can either construct all their improvements prior to the map, or ...
16 subdivision agreement where they can construct them after the approval of
17 the final map.

18 Boche: So, it would not be in their best interest to invest any more money in this
19 project until they have that water verification, because ...

20 Orton: Well, I think the most significant hearing on a subdivision is approval of
21 the tentative map. Someone stated earlier, once you have a tentative map
22 approved, once ... if you've satisfied the conditions, you have an
23 administrative right to a final map. But this other hearing would have to take
24 place and have to be successfully completed in order to satisfy one of those
25 conditions.

26 Boche: So in the meantime, if we approve this tentative tract map, but we fail to
27 verify that there's sufficient water, they could go out there and cut down the
28 trees and build all their roads, and do just about everything except record

1 the final map, if they wanted to just on the gamble that eventually
2 somebody sitting up here will say “Yeah, I think there’s enough water.”

3 Orton: Well, I assume ... I assume that if ... they would have two choices, they
4 could either appeal your decision to the next level, or they could wait and
5 come back and have a hearing...another hearing later on. I’m assuring that
6 ... if somebody’s dissatisfied with the decision of the Commission, the
7 matter will be appealed to the Board.

8 Roos: Say more about this. If we tentatively approve this, how’s that different
9 than just approving it, knowing that these two, I call them poison pills, are
10 in here, requiring the sufficient water be found? How’s that different?
11 Seems kind of odd, I’m tentatively approving a tentative map. [laughter]

12 Orton: Well, let’s say you held your hearing, and you decided you wanted to
13 continue everything, you could continue it all and do it all at one time.
14 I’...all I’m suggesting is that the sequence be you do the map first, and then
15 you do the water issue second. And one way of doing it is to approve the
16 map in accordance with staff recommendation, and then hold a hearing and
17 deal with the issue of is there a sufficient water supply available. And then
18 make a ruling on that.

19 Boche: So, if we did a tentative approval, and then later on it turns out that we
20 decide that we can’t certify that there’s enough water, that tentative
21 approval never has to be finalized, it just ... what happens ...

22 Orton: Well, you’re going to have to make a final decision.

23 Boche: But we could go back and say “we deny”.

24 Orton: Well, if you had findings that would support a denial, and then ...

25 Boche: Okay, well if...

26 Orton: ...the Map Act has real specific findings of the procedure that you have to
27 go through when you deny a tentative map.

28 Roos: That’s starting to make sense to me that if we tentatively approve it, and

1 then come upon the next hearing, and say “No, there’s no water”, then we
2 can take our tentative action and rescind it, and then ask to come back for
3 findings of there’s no water, therefore we don’t approve this development
4 plan and tentative map. That seems to be a logical ...

5 Orton: Let me give you another option. You could just go ahead, open the hearing
6 on the second issue, take in testimony, and then take a motion one after the
7 other on what you want to do.

8 Roos: I like that. Please, Cynthia.

9 Boche: I like that too, except that it’s almost 6 o’clock, and I suspect that water
10 hearing is going to take another couple of hours.

11 Roos: Well, we have a potty break.

12 Boche: I’m brain dead. I don’t feel ... I don’t know. I...my preference would be
13 at this point to either make a tentative action on Item 8A, and continue 8B
14 until whenever we have to continue it to, or just continue both of them.

15 Orton: I think ... the reason we brought them to you the way we did was so that
16 they could go together, otherwise they would have to be separate.

17 Voice: If we’re going to do that, then we need to continue this hearing until....

18 Roos: Okay, how about we tentatively approve the development plan and tract
19 map, and then continue the next hearing, which would be before the full
20 Commission then, or perhaps some other players.

21 Orton: Well, I...your tract map approval will not be complete until you have a
22 motion ... a final motion on it. If you were to tentatively approve it and
23 then continue the hearing to another date, everybody would ... the other
24 date would be when the final motion would take place.

25 Roos: That tells the public and the Applicant where we’re going, that we’ve
26 tentatively approved it.

27 Orton: I think staff’s recommendation would be that you take ... make a motion on
28 the development plan and the tentative map that’s before you, and

1 either...either approve it or continue it to another date, the 24th October,
2 and then go into the hearing on the next item. I don't know how long that
3 will take.

4 Roos: Well, somebody needs to make a motion.

5 Janneck: Sir? Mr. Chairman? A question? If this gets continued on a tentative
6 basis, does that mean all these conditions, everything's wide open, and we
7 could do another eight hours on everything again?

8 Orton: When we come back, it would be open to comment from the floor, and
9 there would be more time involved. Also, if there was a ... other
10 Commissioners available, if they'd reviewed the record, they'd be able to
11 participate in the decision.

12 Roos: Well, I think that would be counterproductive. So, how about we act on ...
13 I'm being pushed to do what I don't want to do, but that's not the first time
14 it's happened in my life.

15 Boche: Let me interrupt. I know that we've spent you know, almost a whole day
16 on this so far, but as, you know, several people in the audience pointed out
17 today, this is a huge project. We don't come across projects like this every
18 day. And the amount of information that we're being asked to assimilate
19 and pass judgment on here today is ... it's kind of overwhelming, and so ...
20 I don't think it's that unreasonable to say let's take a tentative action today,
21 that gives us a little bit of time, staff can come back with nicely typed up
22 conditions as we've revised them today, so we can all read it again and
23 make sure we're all really clear about it. The other Commissioners can
24 look at it, and make sure they don't have any additional concerns that we
25 haven't addressed ... I don't ... I guess I just ... I don't see that the public's
26 interest is served by...by rushing through this, just because we're tired of it.

27 Roos: I've just started enjoying myself.

28 Boche: And so ...

1 Roos: Is that your motion?

2 Boche: Sure, I could make it a motion to tentatively approve and...

3 Roos: Get your first page out. There you go.

4 Boche: ...move that we certify the addendum to the EIR in accordance with
5 CEQA, and tentatively approve development pan...plan S990187U, basting
6 on...sorry, based on the findings in Exhibit A, the conditions in Exhibit B,
7 and approve the vesting tentative tract 2341, based on the findings in
8 Exhibit C, and conditions in Exhibit D, all as amended.

9 Mehlschau: Before I second it, when....to a date certain, or what?

10 Boche: We haven't...haven't moved continuance yet, we're just moving tentative
11 approval.

12 Mehlschau: Okay, but I want to...when we come back to this, we start the hearing
13 where we're leaving off ...

14 Orton: I...I want to get in my own mind what you wanted to do with your tentative
15 approval. Were you planning on going on with the second water hearing
16 now, and then making a final decision on each item afterwards, or were you
17 thinking about continuing it to another date in the future, and having staff
18 come back with everything all printed up and ...?

19 Boche: My...my preference would be to continue both these to another date in the
20 future.

21 Mehlschau: Well, then, we don't have to tentatively approve it now, then, do we?

22 Orton: No, you don't have to, you could just continue it, if that's what you want to
23 do.

24 Roos: But wouldn't tentatively approving solidify something? No?

25 Orton: Well, you could direct staff to come back with all the changes in one final
26 form printed out, so you'd have it all in front of you. If...if you did make a
27 tentative motion, it would give some indication of what you wanted to do,
28 but normally what we've done in the past when we've had tentative motion

1 that maybe there's been a...a change and there's a direction to prepare,
2 additional findings, conditions, bring it back at a future date so that you
3 make a final decision on it. If you've gone through everything and decided
4 what you think the conditions should be, I don't see a reason for making a
5 tentative decision on it. The only reason I had suggested it earlier is if you
6 wanted to delay making a final decision on the map, and go ahead and open
7 your hearing on the water issue, then take all that in, you could then make
8 your decision on the map, and on the water issue, one right after the other.

9 Boche: Okay, I'll rescind my motion and move that we continue this item to
10 October 24th.

11 Mehlschau: Second.

12 Roos: Roll call vote. All those in favor, signify by saying "aye".

13 Voices: Aye.

14 Roos: Those opposed? Nay. Two to one, it carries.

15 Voice: [unintelligible]

16 Roos: Motion to receive all this material?

17 Boche: So move.

18 Voice: If I might clarify ...

19 Roos: We've got one more item to go here.

20 Voice: Okay.

21 Voice: We have Item B, right?

22 Roos: Right, we've got Item B to go, which I suspect we'll generate another
23 motion. You introduce this item for us?

24 Tingle: Item B, the Planning Commission will make a determination and
25 verification whether an adequate water supply is available for the
26 Woodlands project.

27 Roos: Any motions here?

28 Boche: Well, I don't know, do we want to hear the staff report, or hear if there's

1 any public that can't come back, things like that?

2 Roos: Well, I thought you'd had it, that was enough. How long would your staff
3 report be?

4 Johnson: My staff report will be one minute, and you can clock ...

5 Roos: Well, go ahead and make a ...

6 Johnson: No, that's what it's going to be, anyway. There's not much to it. I'll
7 read...I could read the thing in a minute. I will be brief. I will be as brief
8 as I can. I'm sorry, I don't know if it's going to be a minute.

9 Voice: I guess that's what they're deciding.

10 Voice: It really depends on whether you'd want to segment....

11 Roos: Well, I'm pretty sure we're going to continue this, so why waste time?

12 Voice: That's my feeling. Why not have ____ package at the next meeting. At the
13 24th?

14 Roos: Why not let's have a motion to continue and ...

15 Boche: Don't we normally at least ask if there's anyone here that can't come back,
16 and wants to testify?

17 Roos: We'll certainly do that. Anyone here that can't come back? Oh, I know
18 you're going to come back. [laughter]

19 Janneck: Okay, I appreciate all the hard everyone's done, we're all trying to go to the
20 same place. But then, can we have two dates, please? We're going to need
21 ... because clearly this takes a lot of time, then there's a whole other section
22 of the golf course and the other development plan, so the 24th, if it's ...
23 what we're talking about today, plus water verification, that's half the
24 project, then there's two more parts. So I humbly request another date, or
25 why not make it Woodlands Day, and put some houses up here, and how
26 about a special meeting of the Planning Commission, and we just ... we,
27 you know, to the last man standing. Let's just finish this baby.

28 Roos: Might not make good decisions that way.

1 Janneck: Okay.

2 Roos: So, I guess there's no one here that can't make it back to another date?

3 Cooper: Mr. Chair? I just wanted to clarify that the public hearing on 8A is closed,
4 so we're not going to repeat the six hours of testimony again, we're only
5 continuing deliberations, is that correct?

6 Orton: No, that's not correct. When we come back, it'll be an item on the agenda,
7 and people will be able to comment on it.

8 Cooper: You'd reopen the public hearing? I thought I heard you closed the public
9 hearing.

10 Orton: Yes, ... well, we've closed it for the day, we've continued it, then we'll be
11 coming back with the continued item, and there'll be an opportunity for
12 people to comment on it.

13 Cooper: I hate to disagree with your County Counsel, but I don't know anything in
14 law that requires you to reopen a hearing just because you continue it, and
15 you've had hours and hours and hours of testimony today. I don't see any
16 need to continue the public portion, if your only concern is you want to
17 hear the public hearing on the water issues first.

18 Roos: Well, that decision will be made on another day.

19 Orton: That's not the way we do it here. Our advice is that the Brown Act requires
20 that people be able to comment on what's on the agenda, and we are ... our
21 custom has been to reopen and let additional people testify, if they wish to.

22 Roos: But I suspect that we have covered quite a bit of ground here, we've
23 shortened some things, and there'll be other things that'll be brought up
24 again, I'm sure. But I'm closing the public hearing for Item 8B, is there a
25 motion to continue?

26 Orton: Well, we haven't had the staff ... if ... we haven't opened and had the staff
27 report, if you want to continue it, why don't you just continue it to the 24th?

28 Roos: I've got that power?

1 Orton: Well, a motion.
2 Roos: That's what I'm trying to get.
3 Boche: I move we continue Item 8B to October 24th.
4 Roos: All those in favor signify by saying "aye".
5 Voices: Aye.
6 Roos: Those opposed. The ayes have it. C and D. Now, I suspect we will have
7 crowded up that date. Jay will you have a ...
8 Johnson: Mr. Chairman, I would recommend, based on Mr. Janneck's comments to
9 continue the next two items to first meeting in November, or ... unless ...
10 you don't have time?
11 [unintelligible]
12 Johnson: That's fine, October 24th, that's fine.
13 Roos: We ... ask for it available for ... Phase 1A and the golf course, Jay?
14 Johnson: Yes, that's correct.
15 Boche: Move that we continue Items 8C and 8D to October 24th.
16 Roos: All those move to continue C and D to October 24th? All those in favor
17 signify by saying "aye".
18 Voices: Aye.
19 Roos: Those opposed, same sign? The ayes have it. Well, thank you for your
20 patience. You've received everything into the record, we have a motion for
21 that. I declare the Planning Commission adjourned.
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