

### **OPENING STATEMENT**

**COMMISSIONER OSTERMAN** read the opening statement which describes the role of the Planning Commission and the procedures used in conducting this meeting.

### **REGULAR AGENDA**

2. 4-GP-2002 (STATE LANDS/ARIZONA PRESERVE INITIATIVE) request by City of Scottsdale, applicant, Arizona State Land Department, owner, for a General Plan amendment to the City of Scottsdale 2001 General Plan to:
- The Open Space and Recreation Element to add open space and a neighborhood park;
  - The Public Services and Facilities Element to recognize the potential need for a school; and
  - The Land Use Element to revise the Land Use map *from* Commercial, Resort/Tourism, Suburban Neighborhoods, Rural Neighborhoods, Developed Open Space - Golf and Neighborhood Park, Open Space, Cultural/Institutional *to* Suburban Neighborhoods, Rural Neighborhoods, Open Space, Resort/Tourism, Neighborhood Center, Commercial, Office, and Natural Open Space.

The subject property is approximately 16,600+/- acres of State Trust land and is generally located between Scottsdale Road & 136th Street, and Happy Valley Road & Stagecoach Pass.

**CHAIRMAN GULINO** remarked this is the second hearing for the General Plan Amendment.

**MR. EKBLAW** provided an introduction to Case 4-GP-2002. He stated this case is a joint request by the City of Scottsdale and the Arizona State Land Department to amend the Scottsdale General Plan Land Use, Open Space and Recreation, and Public Services Facilities Element. He remarked that Bob Cafarella, Preservation Director would present information on the preservation effort. Lillian Moodey, State Land Department would present information on the Commissioner's order and Greg Keller, Project Manager for the State Land Department would bring forward information on the position of the State Land Department.

**MR. CAFARELLA** presented this case as per the project coordination packet. He stated this request is made jointly by the City of Scottsdale and the Arizona State Land Department to amend the Scottsdale General Plan Land use, Open Space and Recreation, and Public Services and Facilities Elements for approximately 16,600 acres of State Trust Lands. The entire project area is included in the Recommended Study Boundary of the McDowell Sonoran Preserve and was the subject of the City's Arizona Preserve Initiative application in 1998 and the State Land Commissioner's decision regarding that application in 2001. This amendment will better reflect the State Land Commissioner's Order reclassifying 13,021 acres as suitable for conservation purposes, it will update the General Plan to reflect changes that have occurred in the community since previous planning efforts for this area, and will encourage appropriate land uses that fit the environment and character of the 3,543 acres considered suitable for development.

**GREG KELLER**, Arizona State Land Department, Project Manager, presented information on Commission Order #078/2001-2002. He stated within the context of that order the State Land Commissioner reclassified as suitable for conservation purposes with possible deed restrictions on 11,391 acres reclassified as suitable for conservation purposes with possibly no deed restrictions on 16,032 acres and not re-classified were 3,543 acres of State Trust Land.

**LILLIAN MOODEY**, Arizona State Land Department, Manager of the Land Conservation and Transfer Section, addressed the questions that were brought up at the last meeting regarding the API order. She stated when the Land Commissioner issued the order to reclassify certain land suitable for conservation and denying others not be suitable for conservation he laid it out in his order his thoughts and rational and actual statements he would like to consider at a future date.

Ms. Moodey presented the Commission with a copy of the Land Commissioner's Order. She presented a brief overview of that order.

Ms. Moodey presented information on patent restrictions. She noted this property is difficult for the Commissioner to make a determination of which lands should have patent restrictions and which lands would not. The Commissioner has to have a trust reason to patent restrict parcels. Right now, so far into the future those reasons are not clear. They do not know which parcels are going to be auctioned off first, nor do they know the location or the size so that determination would be made at a much later date.

Ms. Moody presented information on the Timeline of Withdrawal Order. The Commissioner has approved a three to five year period with a possible extension of another three years. She stated that eight years is the amount of time allowed for an entity to get their funding sources in place. She also presented information on the Commissioner's thoughts and rationale for reclassifying the lands.

Ms. Moodey discussed what in the order is firm, and what is flexible. She requested that the Commission read this order.

**COMMISSIONER NELSEN** stated there has already been an interest expressed on the two parcels directly to the west the southwest of those properties. He inquired how far in the future would Ms. Moodey guess there would be an offer on those lands from a private developer. **MS. MOODEY** stated she would hesitate to guess mainly because she does not work in the sales department and is not privy to the contacts that they have had.

**COMMISSIONER NELSEN** stated with regard to lease options rather than purchase could the City apply for an agricultural lease on that land? **MS. MOODEY** stated the way the statutes are written in order for the Commissioner to approve a lease application it has to be consistent with the proposed use. **COMMISSIONER NELSEN** commented the reason he was asking is because he would assume the cost of leasing land for agricultural use would be tantamount to grazing rights and would be considerably cheaper over the long run to come up with the money to purchase the land. He inquired if that option had ever been considered.

**MR. KELLER** presented information on the position of the State Land Department. He also presented information on the State planning process. He discussed the order that was signed by the State Land Commissioner. It was decided that the City and the State Land Department would work together in the 2002 General Plan amendment process to reflect this decision. He discussed the challenges with putting the plan together. He remarked the General Plan amendment that is

presented tonight is the compilation of tremendous amount of work on the part of the State Land Department and the City planning staff.

**MR. CAFARELLA** presented information on the joint planning effort. He reported the intent of the Mayor and City Council is to acquire all of this land, and work with the community to come up with a package that could go before voters, if necessary, to fund the acquisition of this land. While the Land Trust and others work to try and change the constitution to make that easier.

Mr. Cafarella addressed the questions that were brought up at the last hearing.

Mr. Cafarella stated staff recommends approval of this General Plan amendment. He further stated this request would go before City Council on October 29<sup>th</sup> and if necessary would be continued to October 31<sup>st</sup>.

**COMMISSIONER NELSEN** stated the report indicates that the guidelines for the Foothills Desert Character Area Plan will be followed if the area is developed. He inquired how they would require these guidelines will be followed if they do not indicate how. **MR. EKBLAW** stated that for the property to move forward with development it would require a rezoning process. They would anticipate if such a process would be proposed and come forward they would be able to identify through stipulations and review the case at that time regarding any issues related to things that are identified in the Character Plan. There is also the alternative of the Desert Foothills overlay being applied to lands. **COMMISSIONER NELSEN** inquired if an applicant were not requesting a rezoning if they would have to follow these guidelines. **MR. EKBLAW** stated it is a matter of what the development proposal would be if they came through the Development Review Board or whether they are coming through the zoning process. The alternative is the application of the Foothills overlay or the amendment to the overlay districts. There are a number of alternative tools to do that. **COMMISSIONER NELSEN** stated the bottom line is that these guidelines are not enforceable. The packet talks about the Desert Foothills Character Plan and guidelines but it does not talk about the Desert Foothills Overlay. The overlay has not been implemented. The zoning change to the area has not been addressed in this packet.

**COMMISSIONER NELSEN** stated the character that has been established for this area is rural and equestrian and that is what is in the General Plan and has been established with close to 17 years of work with the residents and decision makers of the community. He further stated there are suburban neighborhoods in what has already been established by the residents and decisions makers of this community as a rural equestrian area. He remarked his real concern is the City has gone through a public process and this general plan contradicts work that has already been done in that area. He further remarked he does not understand why there cannot be an equestrian designation on these properties.

**COMMISSIONER NELSEN** stated the role of the Historic Preservation Commission is to prevent the loss of valuable historic resources. The ability to partake in the equestrian lifestyle is a historic resource to the City. Somewhere they have to say these areas are appropriate for equestrian use because where else in Scottsdale are you going to do it. These are undeveloped lands.

**COMMISSIONER NELSEN** stated he would like to address the issue of scenic setbacks that were addressed on Pima, Scottsdale Road, and Dynamite. Dynamite Road with the exception on

a one-mile stretch is pretty much developed. The area of land between Hayden and Pima and just south of Dynamite they need a setback. The two-mile stretch along Jomax Road, which has a mile on the south side of the road and a mile on the north side of the road adjacent to these State Lands. No one asked for a scenic setback and that is something that needs to be requested.

**COMMISSIONER HEITEL** stated the Desert Foothills overlay has not been implemented. He inquired if the overlay process is similar to the rezoning process. **MR. EKBLAW** replied in the affirmative. **COMMISSIONER HEITEL** stated one of the issues he is troubled by is the Class B Property the 1,600 acres some of which is within the Foothills area large portions are labeled N and O in the Dynamite Character area but most of those are not changing their zoning. So there would never be the need for those 1,600 acres to come through the rezoning process and would not be subject to the Foothills overlay. **MR. EKBLAW** replied they are not changing the General Plan and the lands as they are zoned today are consistent with the General Plan.

**COMMISSIONER HEITEL** stated Ms. Moodey had indicated in her presentation that there is not a withdrawal order so essentially there is not a commitment. He further stated he understands that there is a certain amount of goodwill involved in this process, but the devil for him is in the detail. The certainty issue is something he is having a difficult time trying to grasp in this process. He inquired with regards to the withdrawal order what harm would there be if the Commissioner issued a withdrawal order essentially taking those conservation lands off the market as a reflection of his goodwill for eight years, which is the statutory time allowed. **MS. MOODEY** stated one of the reasons the Commissioner did not issue a withdrawal order was for the benefit of the City of Scottsdale because they do not know how long it would take the City to acquire the funds to purchase these properties. The way that the statutes are written there is only one extension allowed. She further stated she felt the Commissioner has shown very good faith because those lands are still available to the City for purchase and they have not been offered to anyone else for sale or lease. She added she felt a sign of good faith would be for the City to put in an application for purchase of those lands.

**COMMISSIONER HEITEL** inquired if it is the intent of the State to in a timely and short period of time apply for a rezoning of all of these properties so the rezoning would reflect the classifications included in the General Plan. **MR. KELLER** stated they view the General Plan amendment and the working with these lands as a multi-step process. Tonight they are taking the first step. Somewhere down the road, a rezoning action could take place but it is not on the screen at this point.

**COMMISSIONER HENRY** stated she has a question regarding funding. She summarized what has occurred up to this point. She inquired if this is approved and goes through the next step for the City would be to get the funding to buy this and it would have to go to the voters and be approved. **MR. CAFARELLA** replied that is correct. He noted additional revenues will be needed to successfully purchase all 16,600 acres. The Council and citizens who have participated are aware of that.

**CHAIRMAN GULINO** inquired how long do they have to raise those funds and purchase this land. **MR. CAFARELLA** stated when the Land Commissioner issued that order he did not give us that time frame when they had to perform because of the enormous amount of land. They would move expeditiously but they probably have more time to make the acquisitions than if there was a withdrawal order.

**CHAIRMAN GULINO** requested a layman's definition of a withdrawal order. **MS. MOODEY** stated a withdrawal order serves two purposes. The first is it removes the property from application for a period of time. The second purpose is to allow the petitioner to be able to plan and gather the resources in which to pursue acquiring acquisition of the parcels. She further stated the withdrawal order can be between three to five years with a one time extension that can be between one to three years.

**CHAIRMAN GULINO** asked a series of questions regarding this process. **MS. MOODEY** provided clarification on how the process would move forward.

**COMMISSIONER HEITEL** inquired if it would be more beneficial to the City not having a withdrawal order on the 11,000 acres because it would allow them additional time to purchase the land. He further inquired if the staff was recommending they approve their proposal without any commitments or certainty from the State in regards to any of the issues that they had discussed in that hearing with regard to the preservation land. When they would sell it. How long they would hold it off of the market. **MR. CAFARELLA** stated staff believes having the potential for additional time to purchase the land is an advantage.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY)

**JANE RAU**, 8148 E. Dale Lane, spoke in favor of this request. She stated she has been with this process since the beginning as cofounder of the McDowell Sonoran Preserve Land Trust. She further stated this preservation effort is very important. This is the Commission's opportunity to pass this and to move it ahead because this is what they all want for future generations.

**BOB VAIRO**, 10040 E. Happy Valley Road, No 451, representing Coalition of Pinnacle Peak, spoke in favor of this request. He reported the Coalition of Pinnacle Peak has well an over 1000 members and they are all in support of this amendment. He further stated he would like to thank everyone who has worked on this process. This is something that both the staff and State Land Department could be proud of. He remarked this is a very complex process. He further remarked they are being asked to move forward with a leap of faith but he felt they would get the result they are seeking in the future.

**MR. VAIRO** stated the issue of the Desert Foothills overlay is an important issue but should be taken up separately.

**MR. VAIRO** stated the issue of funding needs to be taken into consideration. The history of funding in the City strongly suggests that the votes and residents of this City are supportive of this effort.

**MR. VAIRO** stated this is a piece of land that should be set aside for conservation and the Commission has the opportunity this evening to recommend that to the City Council.

**CARLA**, PO Box 14365, representing McDowell Sonoran Land Trust, spoke in favor of this request. She stated she would like to provide a reality check. She reported a short time ago the majority of this land was planned for another city called Sonoran Villages with 15,000 units. This request is a big step forward. She further reported this plan is not perfect but nothing in life is perfect. It is a compromise between the citizens' desires and the constraints of the State Land Department. She commented the land is too valuable for an agricultural lease so that is not an option.

CARLA commented on the fact that the Land Commissioner is doing the City of Scottsdale a favor by not placing a withdrawal order on this land to allow them additional time to purchase the land. She further commented that is special treatment.

CARLA remarked the McDowell Sonoran Land Trust supports the commitment to equestrian in this area and if there are ways to increase that commitment in this plan or in the further process they would support that. She pointed out if this land is not preserved there would not be much land any where for the equestrians to ride and this is very compatible with that.

CARLA stated she would like to have guarantees but if they had waited for guarantees in the beginning in the early '90s, they would not have a Preserve. She further stated while they are waiting for guarantees they might lose their window of opportunity. She concluded she hopes that does not happen and would recommend they move forward with this request tonight.

**(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY)**

**COMMISSIONER HENRY** stated she is 100 percent in support of this General Plan Amendment. She acknowledged that this is the first step in a very complicated process. She noted this has been a learning process for her. The comments and questions that have been raised have allowed her to gain a clearer picture of where the City is going. She concluded she supports this request because they need to preserve this land for future generations.

**COMMISSIONER NELSEN** stated the intent of the original rural overlay that became the Foothills Character Area and became the Desert Foothills overlay was to allow them a place to ride. Development has encroached in this area with the Desert Foothills Guidelines largely being ignored by developers. He further stated he finds it real difficult to accept that the City would entertain a General Plan Amendment that contradicts the 17-year efforts of the City staff and residents of this area. The reason they have the Desert Foothills areas is because it embraces the equestrian lifestyle even with development they have a place to ride and keep our animals. He remarked he felt it was time for the city to show its resolve and support what is left of the equestrian community in the City of Scottsdale.

**COMMISSIONER NELSEN MOVED TO FORWARD CASE 4-GP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH THE ADDED STIPULATION THAT SUBURBAN DESIGNATION ON THE MAP THAT WAS PRESENTED BE REMOVED AND RECLASSIFIED AS RURAL NEIGHBORHOODS.**

**COMMISSIONER OSTERMAN** stated the plan is not perfect. It is based on a measure of good faith. It has been developed by consensus through a large amount of participation by a wide spectrum of citizens. He further stated he believed it was the right thing for the citizens of Arizona. It is definitely the right thing for the citizens of Scottsdale. It is an opportunity that they cannot take any chance of missing out on. He added he supports this General Plan Amendment 120 percent. He further added he would strongly urge each member of the Planning Commission to join him in sending this to the City Council with a unanimous vote of support.

**COMMISSIONER HEITEL** stated he felt it was very important that everyone involved in this process understand exactly what they are approving or disapproving. He further stated that he is very enthusiastic about preserving this land and supports the concept. He remarked he would suggest an additional consideration to Commissioner Nelsen's motion that perhaps they consider