



SAN BENITO COUNTY BOARD OF SUPERVISORS

Don Marcus
District No. 1
Chair

Anthony Botelho
District No. 2

Pat Loe
District No. 3

Reb Monaco
District No. 4

Jaime De La Cruz
District No. 5
Vice-Chair

County Administration Building – Board of Supervisors Chambers, 481 Fourth Street, Hollister, California

REGULAR MEETING SEPTEMBER 25, 2007 ACTION MINUTES

The Board of Supervisors of San Benito County met in the Board Chambers on the above date *in regular session*. Supervisors Monaco, Loe, Botelho, De La Cruz and Marcus were all present. Also present was County Administrative Officer Susan Thompson, County Counsel Dennis Le Clere and Clerk of the Board Linda Churchill. Chairman Don Marcus presided.

9:30 a.m. CALL TO ORDER:

- a) Supervisor Monaco led the pledge of allegiance.
- b) *Upon motion duly made, seconded and carried, acknowledged Certificate of Posting.*
- c) **Public Comment:** Stephen Rosati, Hollister resident, came forward. Mr. Rosati stated that although the Highway 25 Bypass was ahead of schedule the intersection of Sunnyslope Road, Nash Road and Airline Highway is an issue and this was due to P.G.& E. dragging their feet and with the rainy season coming this could create a big problem and the City and County should contact P.G.& E.
Joe Thompson, Tres Pinos resident, requested that an urgent item be placed on the agenda regarding the continuing erosion of the powers of the Board of Supervisors relative to the Council of Governments (COG). Mr. Thompson expressed concern over the bid process that COG used for a recent project.
Chairman Marcus assured Mr. Thompson that he personally looked over all of the bids and he had expressed his opinion about it being improper the way it was presented and he personally reviewed the other bids and the accepted bid by the COG Board and staff was over \$200,000 under all of the other competing bids.
- d) **Department Head Announcements:** County Administrative Officer (CAO) Susan Thompson reported that she has accepted an invitation by the Senate Committee on Local Government, as the CAO of a small county in California, to join a work group in Sacramento to assist them in re-writing the legislation and law around Community Service Areas (CSA's).
Ms. Thompson also reported that we have been invited by the David & Lucille Packard Foundation to attend an open house in Los Altos and she would be attending and take advantage of the opportunity to meet with people and have a San Benito County presence.

The Board of Supervisors supported Ms. Thompson's attendance to both the work group and the open house.

Ms. Thompson stated that she attended the Regional Council of Rural Counties (RCRC) Annual Conference last week held in Napa noting that it was an excellent conference with many valuable workshops.

Public Works Director Jerry Lo reported that San Benito County was rejected for the Prop 50 (River Parkway Grant) that we applied for last year but we are in the process of applying for a new grant for next year.

Planning Director Art Henriques provided a General Plan Update Progress Report and handed out a flyer announcing three town hall meetings hosted by the Planning Department to gather community comments.

e) **Board Announcements, Introductions and Presentations:**

Supervisor Botelho reported that he also attended the RCRC Annual Conference in Napa last week stating it was a great learning experience addressing issues such as gangs, housing crisis impact on local government, wastewater affordability, small community grant programs, State Revolving Fund and others.

Supervisor Botelho further reported that he attended a meeting at the San Benito County Water District office with Supervisor Monaco where they learned that potentially there could be cuts of 30% to 40% in water allocations for agriculture and this would make a tremendous impact on agriculture here in San Benito County.

Supervisor De La Cruz announced that the Gang Task Force Committee would be meeting on Wednesday, September 26, 2007 at 5:00 p.m. at the Veteran's Memorial Building and he encouraged the public to attend.

Supervisor Marcus reported that he and the CAO, along with other local agencies, the courts and State advisors met and discussed the new courthouse facility and they are beginning to research certain properties as a location.

Supervisor Marcus further reported that he and Supervisor Loe would soon be meeting again as representatives to the Governance Committee with the new District Manager for the San Benito County Water District.

CONSENT AGENDA:

Upon motion made by Supervisor De La Cruz and seconded by Supervisor Monaco, approved Consent Agenda Items 1 through 24, with the exception of Item #18 and Item #5, which was moved to Regular Agenda to be heard with Item 29. (Unanimous)

Chairman Marcus stated for the record that he would abstain from Item #18 due to his family members being involved financially.

BOARD OF SUPERVISORS:

- 1) ***Approved*** proclamation declaring October 5, 2007 as "California Arts Day" in San Benito County and authorize Chair to sign said proclamation. (Supervisor Monaco)
File #430

ADMINISTRATIVE BUSINESS – S. Thompson:

- 2) **Approved** contract with Jovenes de Antano to provide meals to senior citizens in San Benito County in the amount of \$40,000 for period of September 25, 2007 to June 30, 2008. *File #1040*
- 3) **Approved** contract with Seniors' Council to provide services to the senior citizens of San Benito County in the amount of \$29,388 for the period of September 25, 2007 to June 30, 2008. *File #1040*
- 4) **Canceled** the Board of Supervisors meetings of January 2, 2008 (Wednesday) and November 12, 2008 (Wednesday) due to the New Year's and Veteran's Day holidays falling on a scheduled Tuesday meeting date. *File #156*

AGRICULTURAL COMMISSIONER– P. Matulich:

Item #5 was moved to Regular Agenda to be considered with Item #29.

- 6) **Approved** out of state travel expenses in the amount of \$560.32 for Christina Rachuy-Clayton who attended the Western Weights & Measures Association's annual conference in Lake Tahoe, Nevada on September 10-11, 2007. *File #1.1*

CLERK OF THE BOARD – L. Churchill:

- 7) **Approved** the minutes of the August 7-9, 2007 budget hearings.

CLERK/AUDITOR/RECORDER – J. P. Gonzalez:

- 8) **Approved** contract with Grace and Associates, CPA's effective September 11, 2007 to June 30, 2008 for the audit of the County's Financial Statements ending June 30, 2007. *File #608*

HEALTH & HUMAN SERVICES – K. Flores:

- 9) **Appointed** Mr. Nicholas L. de Lorenzo to the Workforce Investment Board to represent the public sector for a three-year term effective September 25, 2007 to September 24, 2010. (CSWD) *File #939*
- 10) **Appointed** Mr. Todd Farr to the Workforce Investment Board to represent the public sector for a three-year term effective September 25, 2007 to September 24, 2010. (CSWD) *File #939*
- 11) **Appointed** Ms. Gina Perry to the Community Action Board to represent District #3 Private Sector Representative for a three-year term effective September 25, 2007 to September 24, 2010. *File #939*
- 12) **Approved** purchase and installation of new EMS Base radio from Eden Radio and augment EMS budget by increasing fixed assets by \$10,200 and transfer from trust by same amount. *File #1068*

INTERNAL SERVICES – R. Inman:

- 13) **Approved** employment agreement with Ms. Judi Johnson as Executive Director of LAFCO effective September 2007 and ending September 2010. *File #790A / 630*

- 14) **Ratified** out of state travel for the Director of Internal Services to attend the California Association of Joint Powers Authorities annual conference in South Lake Tahoe, Nevada from September 18, 2007 to September 20, 2007. *File #630*
- 15) **Approved** amendment extending term of contract with Jo Dan and Associates for negotiation services to February 29, 2008 and increase maximum amount by \$20,000. *File #119*
- 16) **Approved** Amendment #1 to Memorandum of Understanding with the Deputy Sheriff's Association effective October 1, 2006 to September 30, 2008. *File #1010 / 630*

PUBLIC WORKS – J. Lo:

- 17) **Approved** allocation of 2000 Per Capita Grant funds for the renovation of one of the restroom buildings in Veteran's Memorial Park and **directed** staff to prepare the project application to the State of California for use of the grant funding for the proposed project. *File #93*
- 18) *Upon motion made by Supervisor Monaco and seconded by Supervisor De La Cruz, adopted Resolution No. 2007-76 approving right-of-way agreement and accepting grant deed for the purchase of 1.5351 acres of real property for road right-of-way and grants of permanent drainage and overhead utility easements and temporary construction and landscape easements for the Lone Tree Road Bridge from Thomas and Patricia Grant; and authorized the vice-chair to sign related documents; and authorized payment for such purchases. (4-0 Vote. Marcus abstained.) File #645*
- 19) **Approved** contract with Matthew J. Kelley, Inc. dba Kelly Engineering & Surveying for surveying services for an amount not to exceed \$80,000 for period of September 26, 2007 to September 25, 2008. *File #105*
- 20) **Approved** plans, specifications and bid documents for repair of the Cienega Road Bridge at Bird Creek Crossing and **authorized** staff to solicit bids for said project. *File #105*

SHERIFF'S DEPARTMENT – C. Hill:

- 21) **Approved** out of state travel for Sheriff Curtis Hill to attend the 3rd Annual National Learning Congress on Organ Donation and Transplantation in Nashville, Tennessee on October 9-10, 2007. *File #110*
- 22) **Approved** contract with Nelda Escamilla to provide anger management counseling to the inmates for period of October 1, 2007 to October 31, 2008 and **authorized** the Sheriff to sign said contract. *File 110*
- 23) **Approved** appointment of the Communications Dispatcher II position at Step F (Range 17.2) effective September 25, 2007. *File #116 / 630*

TAX COLLECTOR/TREASURER – M. Andrade:

- 24) **Approved** lease/rental agreement with Newcal Industries, Inc. for a Canon IR 3035 Copier for a period of 5 years at a cost not to exceed \$1034 per year for period of September 25, 2007 to September 24, 2012. *File #685.2*

REGULAR AGENDA:

INTERNAL SERVICES – R. Inman:

- 25) **Approve request from Pacheco Pass Water District to allow a five-year audit instead of an annual audit.**

Rich Inman, Internal Services Director, provided background information stating this was a request for policy direction by the Board.

Mike O'Connell, Chairman of the Pacheco Pass Water District, came forward. Mr. O'Connell stated the District is looking for ways to save money noting there was not a lot of activity and they just do not have the income to support the expenditures that they do have.

Lengthy discussion ensued.

Clerk/Auditor/Recorder Joe Paul Gonzalez stated that he did not have a problem with the five-year audit noting the authority to make this decision rests with the Board of Supervisors.

BOARD ACTION: *Chairman Marcus directed staff to bring back a resolution authorizing the annual audit requirement to be changed to a five-year period audit and stating that if the district's annual budget exceeds \$50,000 then an annual audit would be required; and also requiring that an un-audited annual statement be provided to the County Auditor for review and if any red flags are noted then an audit may be required.*
File #695

- 26) **Appoint a member of the Board of Supervisors to an interview panel for the position of Chief Probation Officer.**

Internal Services Director Rich Inman provided background information stating that the ultimate decision is that of the presiding judge. Mr. Inman explained the two-step process.

BOARD ACTION: *Upon motion made by Supervisor Monaco and seconded by Supervisor De La Cruz, appointed Supervisor Botelho to sit on the interview panel for the position of Chief Probation Officer. (Unanimous) File #510*

- 27) **Approve the Memorandum of Agreement (MOA) to implement and sustain the Geographical Information System (GIS) program for period of July 1, 2007 to June 30, 2008.**

Management Analyst Margie Riopel provided background information stating this is the third MOA with various partnering agencies. Ms. Riopel stated that the maps have been digitized and this MOA outlines commitment to implement and sustain the GIS Program.

BOARD ACTION: *Upon motion made by Supervisor De La Cruz and seconded by Supervisor Botelho, approved the MOA with the City of Hollister, City of San Juan Bautista, San Benito County Water District, San Benito County Office of Education, Gavilan Joint Community College, Council of Governments (COG) and Local Agency Formation Commission (LAFCO) to implement and sustain the GIS Program and authorized the Chairman to sign on behalf of the County. (Unanimous) File #119*

COUNTY COUNSEL – D. LeClere:

- 28) **Approve agreements with Bingham, McCutchen, LLP and Hoge, Fenton, Jones & Appel, Inc. to provide outside legal services to the County to be effective September 25, 2007.**

County Counsel Dennis LeClere reported that Supervisors Loe and Marcus were appointed to a committee to review and make recommendations to the Board concerning the use of outside counsel to assist in processing the expected application for the El Rancho San Benito land use project. Mr. Le Clere stated that the committee has completed its review of three law firms and is recommending entering into an agreement with two law firms to provide these legal services. Mr. Le Clere noted that the fees for these services will be reimbursed by the applicant (DMB).

Cecily Talbert of Bingham McCutchen LLP and John Hickie of Hoge, Fenton, Jones & Appel Inc. addressed the Board and the public.

Joe Thompson, Tres Pinos resident, complimented the Board of Supervisors on the hiring of these two law firms of very high standards. Mr. Thompson stated that the taxpayers should be certain they will get their money back.

Supervisor Loe suggested that an item should be agendized for a future agenda to discuss how this will work and if the monies are paid up front, who is responsible for going over the bills, who is responsible to make sure it is all handled correctly and etc.

BOARD ACTION: *Upon motion made by Supervisor Monaco and seconded by Supervisor De La Cruz, approved the legal service agreements with the law firms of Bingham, McCutchen, LLP and Hoge, Fenton, Jones & Appel, Inc., and authorized the Chairman to sign said agreements. (Unanimous) File #160*

The Board adjourned for a ten minute break at 10:50 a.m. and reconvened at 11:00 a.m. re:

AGRICULTURAL COMMISSIONER – P. Matulich:

- 5) **Accept West Nile Virus Grant Award funding in the amount of \$11,110 for mosquito control surveillance and equipment; authorize purchase of listed equipment and approve budget adjustment.**

- 29) **Accept first quarter report on the Wildlife Services Program.**

Agricultural Commissioner Paul Matulich combined his report on both Item 29 and Item 5 as previously approved earlier in the meeting.

Mr. Matulich explained the grant process and stated the County was awarded \$11,110 in emergency funding for mosquito control.

Mr. Matulich stated that originally Item 5 was on the Consent calendar but at the advice of County Counsel it was suggested that this be changed to a Regular agenda item and to change the recommended action to read: Accept the Letter of Awarded Funds and ratify the Agricultural Commissioner's signature on the accepted award.

BOARD ACTION: *(Item 5) Upon motion made by Supervisor Monaco and seconded by Supervisor De La Cruz, approved the Mosquito Abatement Program Fixed Asset Schedule in the amount of \$7000; and, approved the increase to the Agricultural Commissioner's expenditure and revenue schedules to provide for grant related expenditures and offsetting revenue in the Mosquito Abatement Program budget Unit 2610-101. (Unanimous) File #1.1*

BOARD ACTION: *(Item 29) Upon motion made by Supervisor Monaco and seconded by Supervisor De La Cruz, accepted the first quarter report on the Wildlife Services Program. (Unanimous) File #1.1*

HEALTH & HUMAN SERVICES – K. Flores:

- 30) **Accept Federal Emergency Shelter Grant (FESG) follow-up report and authorize chair to sign support letters to other funding sources on behalf of the Homeless Task Force and the Emmaus House.**

Health & Human Services Agency Director Kathy Flores provided background information stating that at the September 11, 2007 Board meeting she was directed to consult with the Community Action Board (CAB) regarding potential recommendations for assisting the two non-profits that were affected by the denial of the FESG funding. On September 13, 2007 the CAB provided recommendations

Supervisor Loe met with local legislative representatives and they will be helping with funding possibilities.

BOARD ACTION: *Upon motion made by Supervisor Botelho and seconded by Supervisor Monaco, accepted the H&HSA Director's report and authorized the Chairman to sign support letters, as submitted, to other funding sources on behalf of the Homeless Task Force and the Emmaus House. (Unanimous) File #130*

PLANNING DEPARTMENT – A. Henriques:

- 31) **Receive report and update on proposed California High Speed Train and provide direction on attached letter.**

Planning Director Art Henriques reported that the period for written comments for the Draft Environmental Impact Report /Study phase ends on September 28, 2007.

CAO Susan Thompson noted that there should be a correction to the draft letter in the second paragraph. The letter should read \$74.3 million for an Altamont Pass alignment.

COG Director Lisa Rheinheimer reported that there were only three members at the last COG meeting when this item was agendaized and they felt it was premature to make any kind of pro or con comments to the High Speed Rail Authority.

Joe Thompson, Tres Pinos resident, stated that he has appeared before the High Speed Rail Authority six times in the last 11 years and he opposes this project, which is a mirage and is phony and would only cost the taxpayers.

Discussion was held and it was the consensus of the Board to send one letter addressing the environmental impacts to the County and also to include opposition to the project in the same letter.

Chairman Marcus summarized the items to be included in the letter as follows: environmental issues, farmland issues, the sensitive habitat, the traffic congestion and the costs.

BOARD ACTION: *Upon motion made by Supervisor Monaco and seconded by Supervisor De La Cruz, directed staff to prepare a letter for signature by the Chair to the California High-Speed Rail Authority including the items as summarized by Chairman Marcus and also include the Board's opposition to this project. (Unanimous) File #790*

CLOSED SESSION:

Matters discussed during Closed Session include existing and pending litigation, personnel matters and real property negotiations. Reportable actions taken by the Board during Closed Session will be announced during open session. (Gov. Code Section 54957.1(a) & (b), Ralph M. Brown Act.)

The Board adjourned into Closed Session at 11:35 a.m. and reconvened into Regular Session re:

- 32) **Conference with Legal Counsel – Existing Litigation – (Subdivision (a) of Section 54956.9)**
1. Jesse Polk v. California Department of Child Support Services, etal
(Case #CU06-00096)
No reportable action.
 2. Reynoso v. County of San Benito, etal (Case No. C06 07920)
No reportable action. File #235.6
- 33) **Conference with Legal Counsel - Anticipated Litigation – (Government Code Section 54956.9)**
- (a) Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9.
Number of cases: 1
No reportable action. File #235.6
- 34) **Conference with Labor Negotiators:**
Authority: California Government Code Section 54957.6
Agency Designated Representatives: Rich Inman
Employee Organization: Confidential and Confidential Management Employees
No reportable action. File #235.6

1:30 p.m. PUBLIC HEARING (or as soon thereafter as the matter may be heard):

PLANNING DEPARTMENT – A. Henriques:

- 35) **Held a public hearing to consider an ordinance for Zone Change 06-150. Applicants: Jae and John Eade. Location: Northwest corner of State Highway 25 and Southside Road in the unincorporated area of Tres Pinos, San Benito County, CA, APN: 22-20-09 and 22-20-10. Request: A zone change from R-1 (Single-Family Residential District) to C-1 (Commercial Thoroughfare District) in order to facilitate placement of a hotel. Zoning: Single-Family Residential. General Plan: Rural/Urban.**

Chairman Marcus set the stage for the afternoon public hearing by going through the procedural process for the hearing.

Chairman Marcus stated that we were all present today to discuss the merits of a proposed project and while he did not expect anything to the contrary he did expect civility and respect for everyone present, particularly the Board of Supervisors and staff.

Planning Director Art Henriques provided, through a Power Point Presentation, a summary of the information that went to the Planning Commission, the Planning Commission's deliberation and the request before the Board of Supervisors. Mr. Henriques noted that Principle Planner Byron Turner and Planner Chuck Ortwein were present to answer any questions.

Questions posed by the Board regarding adequate parking, water and wastewater discharge, septic system, C District review, environmental review and the proposed ordinance were answered by Planning staff, Environmental Health staff and County Counsel.

The Chairman opened the public hearing.

Matthew Thompson of Thacher & Thompson Architects spoke on behalf of the applicant. Mr. Thompson showed photos through a Power Point Presentation that captured what the hotel complex would look like.

Jim Pleyte, Hollister attorney, spoke on behalf of 93 Tres Pinos residents, who were opposed to the zone change for this project.

The Chairman adjourned the hearing at 2:50 p.m. for a five-minute break and reconvened the hearing at 2:55 p.m.

The following members of the public addressed the Board of Supervisors:

- Paul Rovella, Attorney for John and Jae Eade; spoke in favor of the zone change;
- Fred Flook, Hollister resident supported the project;
- Susan Modic, Tres Pinos School Board; stated that the Tres Pinos School and safety of the children must be considered;
- Ed Schmidt, Tres Pinos resident and neighbor of the proposed project, opposed the zone change;
- Pamela Alvarado, Tres Pinos resident and Manager of the Tres Pinos Water District, supported the project;
- Al Guerra, Ridgemark resident, supported the project;
- Mike Howard, Inn at Tres Pinos owner, supported the project;
- Phil Barrett, Flapjack's owner, supported the project;
- Diana Hawkes, Tres Pinos resident and business owner, opposed the project;
- Bobby Zaucha, Tres Pinos resident, felt a full Environmental Impact Report (EIR) should be required;
- Sharlene Van Rooy, Hollister resident, felt a need for an EIR;
- Paul Hain, Tres Pinos resident, opposed the zone change;
- Larry Hail, Pinnacle Traffic Engineering, answered questions posed by the Board; Robert Frusetta, Tres Pinos resident, opposed the project due to lack of EIR;
- Jane Schmidt read a letter written by Cheryl Mullen who opposes the zone change and the project;
- Jane Schmidt, Tres Pinos resident and neighbor of proposed project, opposed the zone change;
- Ann Marie Sayers, Indian Canyon Road resident, supported the project;
- Sue Alvarado, Tres Pinos resident, opposed the zone change;
- Helen Frusetta, Tres Pinos resident, opposed the zone change;
- Jack Tyler, Hidden Valley Road resident, supported the zone change request;
- Don Rider, Tres Pinos resident, opposed the zone change; and,
- Joe Zanger, Hollister resident, supported the zone change.

The Chairman closed the public hearing at 4:02 p.m.

Members of the Board of Supervisors expressed their support for the project but felt that an Environmental Impact Report should be done prior to approving a zone change in order to address the concerns of the Board and also the concerns expressed by the members of the public today.

BOARD ACTION: *Continued the public hearing to the October 23, 2007 regular meeting at 1:30 p.m. and directed staff to return to the Board with options and procedures for requiring an Environmental Impact Report (EIR). File #790*

The vote of each member of the Board of Supervisors upon each matter at the foregoing meeting, unless otherwise stated, was as follows:

AYES: SUPERVISORS: Monaco, Loe, De La Cruz, Marcus, Botelho
NOES: SUPERVISORS: None
ABSENT: SUPERVISORS: None

There being no further business the Board adjourned at 4:40 p.m. to October 2, 2007 at 9:30 a.m. for a regular meeting.

DON MARCUS, CHAIRMAN
San Benito County Board of Supervisors

Attest:
Linda Churchill, Clerk of the Board