



# SAN BENITO COUNTY BOARD OF SUPERVISORS

*Don Marcus*  
District No. 1  
Vice-Chair

*Anthony Botelho*  
District No. 2

*Pat Loe*  
District No. 3  
Chair

*Reb Monaco*  
District No. 4

*Jaime De La Cruz*  
District No. 5

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

## REGULAR MEETING AGENDA AUGUST 22, 2006 ACTION MINUTES

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in regular session. Supervisors Monaco, De La Cruz; Botelho, Marcus and Loe were all present. Also present was County Administrative Officer Susan Thompson, County Counsel Dennis LeClere and Assistant Clerk Sally Navarez for the morning session and Clerk of the Board Linda Churchill for the afternoon session. Chair Pat Loe presiding when the following was had to wit:

### 9:30 a.m. CALL TO ORDER:

- a) Pledge of Allegiance to be led by Supervisor De La Cruz.
- b) *Upon motion duly made by Supervisor Monaco and seconded by Supervisor De La Cruz, acknowledged the Certificate of Posting.*

### PRESENTATIONS / RECOGNITIONS:

#### 1) **Presentation of Certificates of Recognition to Youth Baseball and Softball Champions. (Supervisor De La Cruz)**

Supervisor De La Cruz asked the Hollister Little League Manager, Coaches and team members to please come forward to the podium. Team Manager Robert Fabing, assisted by Supervisor De La Cruz, presented Certificates of Recognition to all team members and coaching staff of the Hollister Little League American 9-10 Year Old All Stars, Northern California State Champions.

Team Manager Robert Fabing thanked the Board for recognizing the team and staff and commended the players for a job well done. Mr. Fabing cited it was important to recognize the accomplishments of the teams presented today and thanked the Board as well as the community for its support.

Supervisor Monaco asked Hollister Heat Manager Darrell Clayton to come forward. Supervisor Monaco presented Mr. Clayton with Certificates of Recognition for Mr. Clayton, his coaching staff and all members of the Hollister Heat 14 & Under "A" Team ASA Nor-Cal Champions.

Team Manager Darrell Clayton thanked the Board for recognizing this team. Mr. Clayton stated while he wished the players could also be present today, this was only the second day of the new school year and it was difficult for the players to attend today. Mr. Clayton indicated it would be his pleasure to present the Certificates to his players and coaching staff and thanked the Board and the community for their continued support.

Chair Pat Loe asked that Hollister Heat Manager Burley to come forward. Chair Loe presented Mr. Burley with Certificates of Recognition to Mr. Burley, his coaching staff and all members of the Hollister Heat 10 & Under "B" Team ASA Nor-Cal Champions.

Team Manager Robert Burley thanked the Board for recognizing this team. Mr. Burley agreed it was important to recognize the attributes of the youth of our community, thanked the Board for their support and thanked the community for its support of youth athletics.

c) **Public Comment:** Joe Thompson, local resident, commended that at its last meeting, the Council of Governments attempted to violate due process rights of the community by allowing City of Hollister and San Juan Bautista delegates to provide input on the County General Plan "blue print." Mr. Thompson noted the Board of Supervisors cannot provide input on how the City of Hollister develops its General Plan and by allowing COG to provide direct input into the County General Plan Update, violates and robs county citizens as only members of the Board of Supervisors should be able to provide input on this process.

Supervisor Marcus noted to Mr. Thompson that the "blue print" outline will come before this Board at a future meeting, and quite possibly at the next meeting of September 5<sup>th</sup>.

d) **Department Head Announcements:** Per CAO Thompson, there were no Department Head announcements.

e) **Board Announcements, Introductions and Presentations:** Supervisor Monaco reported that at the last Monterey Bay Unified Air Pollution Control District meeting, San Benito County secured grant monies in the amount of \$90,910 from AB2766. Supervisor Monaco noted Veronica Lezama of the Council of Governments was present and instrumental in securing grant funds for a variety of COG related equipment purchases. Supervisor Monaco publicly thanked Ms. Lezama for all of her hard work in securing the monies for San Benito County.

Supervisor De La Cruz stated he conducted a Town Hall meeting last week which was attended by approximately 70 people.

Supervisor De La Cruz commented there will be a 7:00 p.m. meeting tonight at the City of Hollister to discuss the 2007 Motorcycle Rally and encouraged the public to attend.

Supervisor De La Cruz asked what the status of the collection of solid waste fees for the County – where was the process at currently? Would this include the bid process?

CAO Thompson noted this matter was being discussed at the Inter-Governmental Committee level and a report will be made at the next regularly scheduled Board of Supervisors meeting.

Supervisor De La Cruz thanked Assistant Board Clerk Sally Navarez for her assistance in the preparation of the Certificates of Recognition for the Hollister Little League and Hollister Heat athletes.

Chair Loe thanked Supervisor De La Cruz for his recognition of the youth All Stars this morning.

**CONSENT AGENDA:**

Chair Loe noted there was a request to pull Items #17, #23, #29, #30 and #31 and then called for the motion.

**BOARD ACTION:** Upon motion duly made by Supervisor Monaco and seconded by Supervisor Marcus, **approved** the Consent Agenda minus the referenced items. Motion passed unanimously.

**BEHAVIORAL HEALTH – A. Yamamoto:**

- 2) **Approved** agreement renewal with Kings View Corporation for a maximum annual total of \$76,412 for Management Information System (MIS) with a contract term of July 1, 2006 through June 30, 2007. (file #810)
- 3) **Approved** agreement renewal with Heritage Oaks Hospital, Inc. and Sierra Vista Hospital, Inc. in an amount not to exceed \$50,000 for the provision of inpatient psychiatric hospital services for acute care treatment need with contract terms of July 1, 2006 through June 30, 2007. (file #810)

**BOARD OF SUPERVISORS:**

- 4) **Approved** response to the Civil Grand Jury Report dated June 6, 2006 and **directed response be forwarded** to the presiding Judge of the Superior Court of California, San Benito County. (Operation of County Jail) (file #605)

**CLERK OF THE BOARD:**

- 5) **Approved** the minutes of the meetings of July 25, 2006 and August 1, 2006.

**DISTRICT ATTORNEY – J. Sarsfield:**

- 6) **Approved** out of state travel request for Deputy District Attorney Hooper to attend training in Park City, Utah for the period of October 14-18, 2006. (file #206)

**ELECTIONS – J. Hodges:**

- 7) **Approved Resolution No. 2006-83** authorizing consolidating Special District Elections (Sunnyslope County Water District, Aromas Water District, Tres Pinos Water District, San Benito County Water District and Pacheco Pass Water District) with the November 7, 2006 General Election. (file #285)
- 8) **Approved Resolution No. 2006-84** authorizing consolidation of San Benito Health Care District with the November 7, 2006 General Election. (file #285)
- 9) **Approved Resolution No. 2006-85** authorizing consolidation of Aromas Tri-County Fire District with the November 7, 2006 General Election. (file #285)
- 10) **Approved Resolution No. 2006-86** authorizing consolidation of the City of San Juan Bautista with the November 7, 2006 General Election. (file #285)
- 11) **Approved Resolution No. 2006-87** authorizing consolidation of the City of Hollister with the November 7, 2006 General Election. (file #285)
- 12) **Approved Resolution No. 2006-88** authorizing consolidation of School Districts with the November 7, 2006 General Election. (file #285)

13) **Approved** agreement with Hodges Consulting Services in the amount of \$10,000 for election services for the November 7, 2006 State-wide General Election with a contract term of August 22, 2006 through November 30, 2006. (file #285)

14) **Approved** agreement with K & H Integrated Print Solutions in the amount of \$60,000 for the printing of ballots and booklets; address/ mailing services for sample ballot booklets and ballots; and printing of absentee envelopes with a contract term of September 1, 2006 through December 31, 2006. (file #285)

15) **Approved** agreement with Transcend for translation of election materials for the November 7, 2006 State-wide General Election with a contract term of August 14, 2006 through November 7, 2006. (file #285)

#### **HEALTH & HUMAN SERVICES AGENCY – K. Flores:**

16) **Approved** agreement with the California Department of Health Services in the amount of \$102,925 for the provision of nutrition education and physical activity promotion to Food Stamp Nutrition Eligible families with a three (3) year contract term of October 1, 2006 through September 30, 2009 and **authorized** the H&HSA Director to sign on behalf of the County. (file #130)

17) **Approve agreement with Quinn Power Systems in the amount of \$1,239 for the provision of emergency generator services for the Public Health Division with a contract term of July 1, 2006 through June 30, 2007.**

Chair Loe noted this matter was pulled at the request of Supervisor Botelho.

Supervisor Botelho questioned whether or not Public Works staff had the capability to perform the requested services.

Discussion ensued regarding the current vendor servicing other County generators under separate agreements, cost of County Public Works staff versus amount of contract with vendor and concluded with contracting with the proposed vendor was the more cost effective route to pursue at this time.

Supervisor Botelho requested staff look into the possibility of consolidating such services with the City of Hollister in the future to be more cost efficient.

**BOARD ACTION:** *Upon motion duly made by Supervisor Botelho and seconded by Supervisor De La Cruz, approved agreement with Quinn Power Systems in the amount of \$1,239 for the provision of emergency generator services for the Public Health Division with a contract term of July 1, 2006 through June 30, 2007. Motion passed unanimously. (file #130)*

18) **Approved Resolution No. 2006-89 accepting** award of civil penalties from Pacific Bell Telephone Company pursuant to Court Order, People v. Pacific Bell and **augmented** Budget Unit 2214-429 by \$1500 reflecting anticipated revenue. (file #130)

#### **INTERNAL SERVICES – R. Inman:**

19) **Approved** the reclassification of Heavy Equipment Mechanic III to Supervising Mechanic at Range 23; **allocated** one Supervising Mechanic and **deleted** One Heavy Equipment Mechanic III; and, **adopted** job description for Supervising Mechanic. (file #630)

20) **Approved Resolution No. 2006-90** Concerning Access To Criminal History Information For Employment Purposes. (file #630)

21) **Designated** Richard Inman, Internal Services Director / Assistant CAO, as the alternate representative to the Trindel Insurance Fund Board. (file #36)

22) **Designated** Richard Inman, Internal Services Director / Assistant CAO as the alternate representative to the CSAC Excess Insurance Authority (EIA) Board of Directors. (file #36)

**LIBRARY – B. Mason:**

23) **Regarding Live Homework Help Targeted Grant Program – Group 4, consider the following:**

- a) **Approve acceptance of the Live Homework Help Targeted Grant Program – Group 4; and**
- b) **Authorize the Interim County Librarian to complete the required reports and forms; and**
- c) **Approve budget augmentation to increase the Library’s revenues and expenditures by \$6,133.**

Chair Loe noted this matter was pulled at the request of Supervisor Botelho.

Supervisor Botelho questioned if this program was available to all county residents.

Interim Librarian Betty Mason indicated that was correct as access was possible through the Library website and if residents have internet access, they would also have access to this program.

Discussion ensued regarding maintenance of this website and concluded with Ms. Mason stating the California Library Support Program offered these types of grants and the County had acquired funding via this mechanism.

**BOARD ACTION:** *Upon motion duly made by Supervisor Marcus and seconded by Supervisor Monaco;*

- a) **Approved** acceptance of the Live Homework Help Targeted Grant Program – Group 4; and
- b) **Authorized** the Interim County Librarian to complete the required reports and forms; and
- c) **Approved** budget augmentation to increase the Library’s revenues and expenditures by \$6,133.

*Motion passed unanimously. (file #80)*

**PROBATION DEPARTMENT - D. Botts:**

24) **Approved Resolution No. 2006-91 authorizing** the Chief Probation Officer to submit and sign agreement with the Corrections Standards Authority (CSA) for the Title II Formula Grants Program. (file #510)

25) **Approved** agreement funding the Truancy Reduction Program in agreement with the Superintendent of the San Benito County Office of Education in an amount not to exceed \$45,000 with a contract term of July 1, 2006 through June 30, 2007. (file #510)

**PUBLIC WORKS – J. Lo:**

26) **Declared** CSWD equipment as surplus per County procedure and **removed** from inventory. (file #105)

27) **Declared** Library equipment as surplus per County procedure and **removed** from inventory. (file #105)

28) **Approved** agreement with Senior Baseball League for use of ball fields at Veterans Memorial Park with a contract term of August 9, 2006 through November 30, 2006. (file #127)

29) **Regarding Cienega Road Bridge project, consider the following:**

- a) **Approve Right of Way Agreement and accept the grant deed from Robert and Tina Enz; and**
- b) **Approve proposed resolution accepting the Grant Deed for the Purchase of real property for road right of way and granting maintenance and temporary construction easements for the Cienega Road Bridge project (Res. No. 2006 - 92); and**
- c) **Authorize payment for such purchase.**

Chair Loe noted Items #29 - #31 were pulled at the request of Supervisor Monaco.

Supervisor Monaco asked staff for clarification as to whether these three items were interrelated due to the Cienega Road realignment project and what was the timeline associated with that project.

Public Works Director Jerry Lo explained the paperwork for these three items needed to be on file with CalTrans by the beginning of their Fiscal Year, September 1<sup>st</sup>. Mr. Lo explained that due to the Federal Highway Commission changing their reporting regulations, actual construction of the Cienega Road bridge as well as the Lone Tree Bridge would begin next year.

Supervisor Marcus asked Mr. Lo if the redesign of the Lone Tree Bridge to have the retaining wall was an effort to minimize impact on the oak trees to which Mr. Lo indicated that was correct.

**BOARD ACTION:** Upon motion duly made by Supervisor Monaco and seconded by Supervisor De La Cruz **approved** items #29-#31 individually as recommended by staff with Item #29 as follows:

- a) **Approved Right of Way Agreement and accepted the grant deed from Robert and Tina Enz; and**
- b) **Approved Resolution No. 2006-92 accepting the Grant Deed for the Purchase of real property for road right of way and granting maintenance and temporary construction easements for the Cienega Road Bridge project; and**
- c) **Authorized payment for such purchase.**

Motion passed unanimously. (file #645)

30) **Regarding Cienega Road Realignment Project, consider the following:**

- a) **Approve Right of Way Agreement and accept grant deed from Granite Rock;**
- b) **Approve proposed resolution to accept the Grant Deed for the purchase of a permanent storm drain easement for said Realignment project (Res. No. 2006 - 93); and**
- c) **Authorize payment for such purchase.**

**BOARD ACTION:** Upon motion duly made by Supervisor Monaco and seconded by Supervisor De La Cruz **approved** items #29-#31 individually as recommended by staff with Item #30 as follows:

- a) **Approved Right of Way Agreement and accept grant deed from Granite Rock;**
- b) **Approved Resolution No. 2006-93 accepting the Grant Deed for the purchase of a permanent storm drain easement for said Realignment project; and**
- c) **Authorized payment for such purchase.**

Motion passed unanimously. (file #645)

- 31) **Regarding Cienega Road Bridge project, consider the following:**
- a) **Approve the Right of Way Agreement and accept the grant deed from Harlan and Maryann Winkle,**
  - b) **Approve proposed resolution accepting the Grant Deed for the purchase of real property for road right of way and granting maintenance and temporary construction easements for the Cienega Road Bridge project (Res. No. 2006 - 94); and**
  - c) **Authorize payment for such purchase.**

**BOARD ACTION:** *Upon motion duly made by Supervisor Monaco and seconded by Supervisor De La Cruz approved items #29-#31 individually as recommended by staff with Item #31 as follows:*

- a) **Approved the Right of Way Agreement and accepted the grant deed from Harlan and Maryann Winkle; and**
- b) **Approved Resolution No. 2006-94 accepting the Grant Deed for the purchase of real property for road right of way and granting maintenance and temporary construction easements for the Cienega Road Bridge project (Res. No. 2006 - 94); and**
- c) **Authorized payment for such purchase.**

*Motion passed unanimously. (file #645)*

**REGIONAL DEPARTMENT OF CHILD SUPPORT SERVICES – D. Ogawa:**

32) **Approved** proclamation declaring August 2006 as “Child Support Awareness Month” in San Benito County. *(file #430)*

**REGULAR AGENDA:**

**ASSESSOR – T. Slavich:**

33) **Receive Assessor’s Annual Report.**

Assessor Tom Slavich stated there were extra copies of the report in the back o the Chambers should members of the public wish to receive one. Mr. Slavich thanked his staff and in particular, Cheryl Tyler, Assistant Assessor, for the assistance received in the compilation of this document. Mr. Slavich then provided an overview of

**INTERNAL SERVICES – R. Inman:**

34) **Hold discussion and take action regarding increasing compensation for Planning Commissioners.**

Director Rich Inman indicated that Supervisor Marcus had requested that the compensation for Planning Commission be evaluated and the possibility of increasing that compensation.

Lengthy discussion ensued and comments were received from the Board of Supervisors and staff which included the Planning Commission receiving compensation for mandatory training the Commissioners receive.

**BOARD ACTION:** *Upon motion duly made by Supervisor Monaco and seconded by Supervisor De La Cruz,*

- a) *Directed staff to come back with a resolution revising Resolution No. 91-99 to set compensation for the San Benito County Planning Commissioners at \$100 per meeting for up to three (3) meetings per month (meetings defined as duly publicly noticed meetings including meetings for training of said Commissioners); and*
- b) *Be consistent with mileage compensation that is still available; and*

- c) *Directed that the Board of Supervisors review the issue of Planning Commissioners' compensation every four (4) years.*

*Staff to bring back said resolution as quickly as possible. Motion passed unanimously. (file #790.2)*

**ADMINISTRATIVE BUSINESS – S. Thompson:**

35) **Approve Memorandum of Understanding (MOU) between the County of San Benito and the Hollister School District for School – County Partnership services (Asset Builders' Program) with a contract term of July 25, 2006 through June 30, 2007 and authorize respective Department Heads to sign said MOU.**

CAO Thompson explained this was a collaboration of County Departments working with the School District under the Asset Builders' Program. Ms. Thompson noted the master agreement would provide a variety of services and resources be made available at the middle school level with staff assigned to the Rancho San Justo and Margarite Maze middle schools. Resources available would include:

**Behavioral Health Department:** Perinatal program staff offering drug and alcohol counseling for pregnant and parenting women and children;

**Probation Department:** Asset Builders staff to monitor progress of families related to attendance problems;

**Sheriff Department:** Sheriff intends to provide a school resource officer but will revisit this matter with the Board of Supervisors at a later date;

**Health & Human Services Agency:** Family Resource Center staff will provide family wellness information as well as academic assistance information.

Discussion ensued as to whether or not these services would be made available to all school districts including the rural schools for at risk students; problems facing the middle school aged student; providing maximum visibility to all students so students and their families are aware of the programs available and that schools have additional resources via grant funds to further and/or enhance such programs at all school levels.

Joe Thompson, local resident, stated the Board and County should not overlook the Safe Kids Coalition program which also provides resources to the youth of the community such as the provision of bicycle safety helmets.

**BOARD ACTION:** *Upon motion duly made by Supervisor De La Cruz and seconded by Supervisor Monaco, **approved** Memorandum of Understanding (MOU) between the County of San Benito and the Hollister School District for School – County Partnership services (Asset Builders' Program) with a contract term of July 25, 2006 through June 30, 2007; **authorized** respective Department Heads to sign said MOU and **authorized** Chair to sign same. Motion passed unanimously. (file #13)*

**CLOSED SESSION:**

36) **Conference With Real Property Negotiators**

**Authority: California Government Code Section 54957.8**

**Property: APN: 053-14-0-013-0**

**Agency Negotiator: Susan Thompson, CAO**

**Under Negotiation: Price and terms of payment**

Chair Loe noted for the recorded that this matter was to allow the County to enter into negotiations for the purchase of real property identified as 424 West Street; Selling Agent is Coldwell Banker; Buying Agent is County Administrative Officer Susan Thompson.



County Counsel Dennis Le Clere noted under the Brown Act, that the Chair allow public comment on this matter.

Chair opened this matter up for public comment; however, hearing no one wishing to address the Board on this matter, Chair Loe stated the Board would take a ten (10) minute break and then adjourn into Closed Session to hear Items #36 and #37.

**BOARD ACTION:** *Upon exiting Closed Session, County Counsel Le Clere reported that the Board of Supervisors authorized the CAO to obtain an appraisal on the subject property. (file #235.6)*

- 37) **Public Employee Performance Annual Evaluation**  
**Title: County Administrative Officer**  
**Authority: California Government Code Section 54957**  
*No reportable action. (file #235.6)*

**1:30 P.M. PUBLIC HEARINGS (or as soon thereafter as the matter(s) may be heard):**

**PLANNING AND BUILDING – A. Henriques:**

- 38) **Hold a public hearing to review the traffic study prepared by Hexagon Transportation Consultants, Inc. regarding the Appeal of Use Permit No. 858-02(A), an amendment to increase quarry production initially heard on April 5, 2005. Applicant: Robert Enz. Location: Limekiln Road. Appellant: James Ryan. (Continuance granted from the scheduled hearing date on August 8, 2006.) (Request for continuance has been received from applicant's attorney).**

Byron Turner, Principle Planner, came forward stating that a request for continuance has been received from the applicant and also from the appellant supporting the request and Planning Staff recommended continuing the matter.

**BOARD ACTION:** *Upon motion made by Supervisor De La Cruz and seconded by Supervisor Monaco continued this hearing as recommended. (Unanimous) File #790*

- 39) **Hold public hearing to consider an Appeal of a Planning Commission decision made on July 19, 2006 re: Tentative Subdivision Map No. 99-63. Location: Hwy. 129 & Searle Rd., San Juan Bautista. Request: To amend Vesting Tentative Map Conditions of Approval. Zoning Rural (R). Environmental Evaluation: EIR. Applicant: Hollister Ranches c/o Mark Johnson (San Juan Vista Estates.) Appellant: Tracie L. Cone.**

Art Henriques, Planning Director, provided background information beginning with an introductory Power Point presentation showing the time line for this project and noting that the original map for the project showed significantly more units than ultimately what the Board of Supervisors approved in August 2003, which reduced the project to 14 lots. Mr. Henriques noted for the record that the EIR mitigation measures that were in effect with the previous Board approval remained in effect. Further, Mr. Henriques clarified that this project is still 14 units and any future changes at this site is just like any other site in this county and is subject to going back to the Planning Commission or on an appeal to the Board of Supervisors.

Byron Turner, Principle Planner, presented the staff report stating that staff has identified eight (8) individual items in the appellants appeal as included in the staff report of the Board's packet. Mr. Turner presented each of these eight items along with the staff's response to each item.

Chair Loe asked about posting of the Negative Declaration and what was included in the document.

Mr. Turner explained that the original EIR adequately described all environmental impacts associated with the project.

Dan DeVries, Planning Commissioner (District 2), came forward and addressed an article from the weekend Pinnacle newspaper stating that he wrote the Conditions of Approval for this application and that he submitted the application on behalf of the developer. Mr. DeVries stated that this was categorically untrue. Mr. DeVries explained how the design review process came into place.

County Counsel Dennis LeClere called for a Point of Order requesting that the Chair ask Mr. DeVries if he was present as a result of a vote of the Planning Commission or whether he was present in his individual capacity.

Mr. DeVries responded that he was speaking in his individual capacity and hasn't spoken to any of the other Planning Commissioners about this.

Tracie Cone, Appellant, came forward to present her case. Ms. Cone stated that the government regulations in place ensure that if the regulations are followed then all developers are treated equally. Ms. Cone stated that if someone, or some Board, decides not to enforce all of the rules then the game is no longer fair for all of the players. Planning decisions then become subjective, which can lead to allegations of favoritism or vindictiveness and this is why she appealed the changes made by the Planning Commission to the conditions, approved in August 2003 by the Board of Supervisors, regulating development of the San Juan Vista Estates project. Ms. Cone addressed the approval of Planning Commission minutes that she felt was a hurried decision. Also, she felt that not having the minutes ready in a timely manner affected the preparation of her appeal.

Ms. Cone further stated the reasons for her appeal and also noting that on August 7, 2006 the map expired and all of her arguments are now moot. Ms. Cone addressed whether or not the changes made should be considered minor or major and whether or not the county violated state and federal rules to keep a subdivision alive.

Ms. Cone ended by adding that it cost her \$575.00 to appeal a Planning Commission decision noting that there is a provision in the state statute that if someone appeals a decision in order to force the Board to follow the laws they can be reimbursed for the cost and she would like the Board to reimburse her \$575.00 and she would also like for the Board to instruct the Planning Commission to abide by the laws that govern it. Also, Ms. Cone stated she would like the Board to instruct the applicants to get back in line and re-file their project if they want it to move forward. Ms. Cone asked the Board to please overrule the July 19, 2006 actions of the Planning Commission.

Supervisor Botelho said that he was interested in the particular charges as far as the timing of the application and the map and would like an answer from staff as to if this is legal or illegal.

Mr. Turner responded that the applicant has filed for a map extension prior to the expiration date.

Deputy Counsel Shirley Murphy quoted that Section 66452.6(e) of the Subdivision Map Act allows applicants to apply for a discretionary extension of their maps prior to when the map expires and the fact of filing an application automatically extends the expiration date for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first.

Chair Loe asked for clarification of whether the Planning Commission has to publicly accept the findings of the EIR indicating she had not found that those findings were approved.

County Counsel will provide this answer a later time.

The following members of the public spoke with regards to this project: Jim Weaver, representing the owners of the property spoke in favor of the project. Mark Johnson, one of the owners of the property indicated that he was disappointed that the appellant has never spoken to the owners and felt that Planning Staff has done a good job; Marty Richman, local resident, defended the Board of Supervisors stating that San Benito County is the grudge capital of the world and these types of accusations has poisoned the well of public trust in our elected representatives; Richard Saxe, Aromas resident, and part of negotiations of the original project, asked that this be considered as a new application and not an amendment and commented with regards to the affordable housing in-lieu fees.

Supervisor Monaco supported Supervisor Marcus that the affordable housing mandated in-lieu fee should be addressed today.

Greg Weiler, one of the owners of the property, stated that the affordable housing issue was discussed extensively with staff noting there was no hidden agenda and they have now asked to be treated like everyone else and offered to provide three units on site or pay the in lieu fee. Mr. Weiler further stated that if there was a technical mistake in the minutes regarding CEQA the Board could adopt those findings today.

Gordon Machado, Planning Commissioner, came forward indicating that he was speaking as an individual and not representing the Planning Commission. Mr. Machado felt that the applicant should not have the right to change the Vested Map just as the County shouldn't have the right to change it. Mr. Machado felt that the design guidelines were not adequately addressed. Mr. Machado expressed concerns about Planning Commission meeting minutes that were approved and did not include his concerns about changes to certain lots.

Richard Place, Hollister resident, stated that he feels that the Planning staff has done an exemplary job and noted that the Tiger Salamander is a threatened species and not an endangered species. Further Mr. Place stated that he did not think it was in the best interest of the development of the General Plan to restrict this from any further commercial development.

Ms. Cone rebutted some of the statements made noting that from November 1999 she was the publisher of the Pinnacle until August 2005 and she covered this project very thoroughly at the Pinnacle but it was not appropriate for her to come to Board meetings as an activist. Further Ms. Cone stated she would appreciate it if the Board would make some of the conditions more clear to make sure that what was intended is what is going to happen as this project develops.

Supervisor Marcus referred to quotes made by Ms. Cone in an article in the weekend Pinnacle Newspaper with regards to the appeal fee and the approval of the Planning Commission minutes.

Ms. Cone responded to those quotes and explained that with regards to the fee she felt that if she was proven correct in her appeal then the money should be refunded.

Mr. Machado explained that he was concerned that the minutes were not inclusive of his statements and he was referring only to the minutes of the August 2, 2006.

There being no further public comment the Chair closed the public hearing.

Planning Director Art Henriques responded to previous comments by the appellant and the public. Mr. Henriques stated that it was his goal and the goal of the Board of Supervisors and the entire County staff to treat everyone equally and fairly and he tries to communicate to people that if they have questions about how his department operates then to talk with him.

Mr. Henriques further responded that regarding the procedural questions the staff report talked about the Initial Study. The Initial Study was circulated on the CEQA question and there was substantial discussion about the EIR. Mr. Henriques stated that he did not see the exact words about reaffirming the EIR in the minutes of the July 19, 2006 Planning Commission

meeting but County Counsel has indicated that because the previous EIR stands every project using that EIR doesn't necessarily have to go back and be reaffirmed constantly.

Mr. Henriques addressed the issue of the written record not being complete and that there were some delays, which was true, and that in the future, particularly on significant projects, he will try to make sure that the delay time is minor.

Mr. Henriques stated that with regards to improper CEQA review, they worked with County Counsel and reviewed with all of the County departments the proposed revisions and staff's response to see if there are any further concerns noting that the CEQA process was followed.

Mr. Henriques stated that with regard to the comment about giving away affordable housing the Commission did make a decision to go with the countywide in lieu fee which is \$27,000 per unit right now and would work out to \$378,000 which is less than the previous \$444,000. Mr. Henriques noted that within the next month he anticipates coming back to the Board with an update regarding the in lieu funds.

Mr. Henriques responded to the map process issue noting that the map was extended through October and there has been a request for a further extension. With regards to the concern about the appeal cost, different agencies handle it very differently and that would be a Board of Supervisors decision. Mr. Henriques stated that with regards to the issue of the Vesting Map it has been clarified that it is still proposed to be a Vesting Map, although revised, and one item that the Board may wish to pursue in the future is to look at a Development Agreement.

Mr. Henriques stated that with regards to Lots 1 and 14, theoretically someone could come in on those lots at some time in the future and request additional units but that is looking at the site as if it were a flat piece of ground with no environmental constraints.

Mr. Henriques responded with regards to the issue with the Tiger Salamander stating it is all subject to the EIR requirements and mitigation measures and those are still in place.

Mr. Henriques addressed the issue of public information with regards to Planning Commission meetings and particular items and how the public could access this information.

Mr. Henriques addressed the issue of the minutes noting that agencies can decide how much or how little of a person's concerns will be in the public record.

The Board took a five-minute break at 3:15 p.m.

Chair Loe questioned the change to the original conditions which stated that there would be no gates to the property asking if that was correct.

Mr. Henriques responded yes.

Chair Loe asked if there was still a condition prohibiting a gate at the entrance.

Mr. Henriques responded that the Planning Commission basically approved the removal of the prohibition so theoretically they could gate the whole community but they do have to provide emergency access for public safety.

Chair Loe asked why then if they were going to gate the whole would they get a credit for their open space against the properties.

Mr. Henriques responded that it would be a trade off. If they gated it they wouldn't get credit for the park fees and they would then have to pay.

Supervisor De La Cruz stated he wanted to ensure that the applicant agreed to approximately \$440,000 for affordable housing and now they want to comply only what is in effect right now. Supervisor De La Cruz asked if the Planning Commission agreed to forfeit that \$450,000.

Mr. Henriques responded that the Planning Commission agreed that they would be subject to the current county-wide in-lieu fee which is \$27,000 per unit for a total of approximately \$378,000 with the understanding that there has been Board of Supervisor's direction to the Planning Department for quite a while to come back to the Board with an update to the fee. Mr. Henriques anticipates this will be coming back to the Board shortly.

Supervisor De La Cruz supported going back to the original agreed upon lieu fee and commented with regards to the county giving the in lieu fees to the City of Hollister to build affordable housing.

Supervisor Marcus stated that maybe they should make it a minimum of \$443,000 because it's a three-year old figure and it may be more than that.

Discussion ensued regarding the in lieu fee structure.

Supervisor De La Cruz stated that the affordable housing should be in the San Juan Bautista area.

Chair Loe expressed her frustration in that the developer is coming back now after the original approval and wants to change conditions that she feels benefits only the developer. Chair Loe commented with regards to the pole tests and the view shed that she felt will make a huge difference. Chair Loe felt the Board should take some time and bring this matter back after looking at all of the issues in detail. Chair Loe stated these were trophy homes on a beautiful hill, on a scenic highway and they should make sure that whatever they do is something we can live with forever.

Supervisor Botelho commended his Planning Commissioner, Dan DeVries, for all of his work with this project and his leadership on the Planning Commission. Supervisor Botelho stated that he chose Mr. DeVries because he has the same value structure as himself. Supervisor Botelho said he was very proud of the idea of design review and feels we will be able to minimize the effects of what level of development should occur in certain areas. Supervisor Botelho noted that this project has been whittled down to what is now 14 units and that is what they have to work with and the design review process will help to make it a win-win situation. Supervisor Botelho stated he would like to deny the appeal.

Supervisor Botelho expressed his concern that the appellant had not participated in any of the public hearings or talked with the developers regarding this project. Supervisor Botelho further stated that the \$575.00 fee is cheap in comparison to many other counties. Supervisor Botelho felt this whole process today was more politics than substance.

Chair Loe expressed concern with a design review committee at this point and just to say that we are going take all of the conditions off that were previously put on by a former Board, after weeks and weeks of study, and put it to some nebulous Board that isn't even in existence being adopted is wrong.

Lengthy discussion ensued regarding the merits of a design review process.

Chair Loe felt it was very important to at least look at the pole tests at this point.

Mr. Henriques explained how a design review committee works and the various ways the committee could be established indicating that he has many years of experience with this process having been a design review staff person for many years and then supervised that process for many years.

Mr. Henriques read examples from the Planning Commission conditions and minutes as follows: colors proposed for structures with the building envelope consistent with requirements of the conditions; heights of structures; balanced visual impacts; architectural design; consistent with mitigation measures set for in the final EIR; the location of structures within the building envelope to balance the need for grading; visual impact in views of such structures. Also, the senior granny units to be architecturally compatible with the primary residence and the specified building envelope; the water storage tank to be painted non-reflective earth tone and screened

from view through the use of native shrubs and trees. Mr. Henriques stated it was the Board's call if this was adequate or if they want to go beyond that.

Mr. Henriques explained that each project would go through this design review process noting that staff would conduct the first level of design review on each of the proposed lots with structures and then there would be a report with noticing which would go to a Planning Commission meeting and reviewed and that record of the Commission would be appealable to the Board of Supervisors or the Board could consider an appeal if they had a concern.

Supervisor Loe asked if an individual person were to buy a lot and wants to build their home would they have to follow all of the steps of the design review process.

Mr. Henriques responded yes it would be a deed restriction and it would be very clear and Planning would work with the County Counsel to make sure it was clear to the typical, average lay person.

Supervisor Monaco stated he appreciated the fact that we were able to attract someone who didn't come from very far away, the City of Santa Clara, and Art Henriques' experience in Santa Clara lends well to our own county in the idea of design review and we don't have to re-invent the wheel here. Supervisor Monaco stated that it has been demonstrated around this State that it works.

Supervisor De La Cruz stated it was quoted by the appellant, that this Board has been bought by the developers, and he takes offense to this quote because after all this person is running for office too and talks about ethics and yet this is an implementation of reverse ethics. Supervisor De La Cruz stated then when you bring an appeal before the Board of Supervisor then bring it on its merits and bring it on the best interest of the community and don't bring it forward for political gains or political reasons.

Supervisor De La Cruz stated that he would like to deny this appeal and if there were no further questions he would like to make a motion.

Chair Loe stated she had more issues she would like to talk about.

Supervisor De La Cruz withdrew his motion.

Chair Loe stated that with regards to the size and the elevation she felt there should be some guidelines on these conditions.

Supervisor Botelho stated that there are 14 different lots without some sort of review process. We have to have faith in this process. Supervisor Botelho asked how do you put a limitation on property rights and why should we put limitations on property rights. Let's see how this process works out.

Chair Loe stated that we didn't limit property rights. This whole thing was approved so the developer got their rights to develop but we need to put conditions on it to protect the public. Chair Loe stated she did not believe that a 10,000 square foot house is appropriate on the hillside, and there are big problems with this project and there always has been, and if we approve this today those building pads are set with the Vested Map.

Mr. Henriques responded that the building envelope range would be set but the actual structures within the building envelopes would not be set.

Chair Loe stated that those envelopes were moved to make them closer to the road and were moved from where they originally were and asked how much study has gone into saying that yes it was the appropriate place.

Mr. Henriques responded that staff thought it was reasonable and the Planning Commission concurred. Mr. Henriques stated that staff has spent hours on this noting that he and Byron Turner have visited the site several times and have looked at the different angles and have recently gone out and looked and every single lot (except for Lot 14) and he was satisfied with where the lot envelopes were and that it could be successfully mitigated.

Supervisor Botelho stated that they still have control over this vested map and that's what he likes about this idea.

Chair Loe stated we have plenty of time to look at this and we've approved the development and she would be more comfortable if we say no further subdivisions on Lot 1 and Lot 14.

Supervisor Botelho said his position has always been 14 lots on this property and he wasn't aware that this is a change.

Supervisor Marcus stated that he respects Chair Loe's opinion and those opinions of people who don't like large houses, but personally his main philosophy in life, and the last time he checked, we live in a democracy and a free country and he has never felt good as a part of the hillside element that somehow we as a government are allowed to control the size of someone's home. Supervisor Marcus stated that how you build a 10,000 square foot low profile ranch home in the right location could be as confined and inconspicuous as a 2000 square foot built like a tower. Supervisor Marcus stated that this vision for site and architectural review is where need to go and he wouldn't put any restrictions on the size and the height and let the planners, the Commissions and the Board of Supervisors approve these individually and he thinks we'll get what Chair Loe wants without trying to umbrella a design over a total subdivision.

Supervisor Marcus concurred that they are led to believe that this is a 14 home, 14 parcel subdivision and he would not endorse further dividing of that lot at this particular time.

Chair Loe stated she is not hooked on 5000 square feet, or the 18 feet, but she is saying that if we could have some kind of condition in here to minimize the view shed of the valley floor then she would feel more comfortable about it.

Supervisor Marcus felt this review process was a good one.

Chair Loe agrees but she would like to see the conditions that we're asking for in this approval so we say when you come in for the review this is what you're going to have to furnish and there is nothing nebulous.

Mr. Henriques stated that it was not as specific as was being talked about now but certainly the Board could amplify the conditions to talk about to make sure that it's very clear for the record that any applicant or any future prospective buyers that pole tests would be required on each of the lots to the satisfaction of the County prior to any building permits being issued as part of this overall design review process; and, a photo montage will be done on each of the lots to the satisfaction of the County prior to the County sign off in any issuance of building permit. Mr. Henriques stated that they could even add a condition about every lot's design, and after initial staff report there will be pier review by a qualified architect who has experience in the area of reviewing view sheds in hillsides prior to notice of public hearing and review by Planning Commission. Mr. Henriques stated that these are things they would be looking at anyway.

Chair Loe stated that she didn't want any member of the public to be caught off guard if they buy something.

Supervisor Monaco stated he would like to see some conclusion on this today noting that he was involved the first time when this was approved by the County and at that time he had reservations particularly around the square footage. Supervisor Monaco agreed with Supervisor Marcus that you could put a 10,000 square foot house in some locations and it is very appealing and not visible from anywhere and yet you can put a 2000 square foot house somewhere and it would look like a monstrosity. Supervisor Monaco said that this balance against size of house and view shed and the idea of design review satisfied his concerns about size. Supervisor Monaco stated that design reviews work and there are many examples of this around the nation and he did not feel we have to re-invent the wheel to make it work here.

Supervisor Monaco supported the idea that those additional units on the lots in question would not be developed and that we still have this as the original size that was brought before

us. Supervisor Monaco noted that he visited each building site on this project and he can see tremendous potential and he thinks it offers the ability to generate some significant revenue in our county, and it has the potential of developing a kind of model development in our county in a very sensitive area.

Supervisor Monaco further stated that in his opinion these owners/developers have experienced a great deal of frustration for a very long time – 10 years minimum – and at a great deal of personal expense to them. These frustrations and costs have been caused by procedures that have not been clearly navigable to them and the recent propaganda circulating in the media and elsewhere have further exasperated this situation. Supervisor Monaco felt that the Planning Commission and staff have tried diligently to clarify this situation and therefore he supports their most recent decisions on this project and he would support denying this appeal.

Chair Loe re-capped the conditions that were agreed upon as follows: The affordable housing will stay at the amount it was set at the \$440,000 minimum and the money will stay in the San Juan-Aromas area. There will be no further lot splits. The review committee will be made up of the Planning Commission and the Planning Department will come back with some kind of guidelines that will be put in the conditions so a property owner knows what kind of review they will be going through.

Mr. Henriques clarified that the way it is from the Commission is that staff would conduct the initial round of design review and that would go to the Planning Commission at a noticed public hearing and they would then conduct their own separate, independent review of the design to see if they were satisfied with each building proposal on each lot.

Supervisor Marcus asked if this was to be done when applying for a building permit.

Mr. Henriques said it would probably be done sooner if they were in for an expectation that they were going to get a building permit and you would have to come to Planning Department first to get planning clearance. Mr. Henriques stated that under Condition #18 one of the sub-conditions says that as part of the building permit process for the primary residence in any structure greater than 600 square feet, the property owner shall submit to the County Planning Department a request for a design review, approval for each structure and there are number of criteria that the Planning staff would be looking at.

Chair Loe clarified that each of those would go before the Planning Commission and would be public noticed.

Mr. Henriques answered yes.

County Administrative Officer Susan Thompson noted that the wording says that once the applicant has obtained administrative approval from the San Benito County Planning Department, the applicant shall be placed on the San Benito County Planning Commission Consent Agenda for final approval with standard notice to neighboring property owners.

Mr. Henriques stated that what has been clarified with the Planning Commission is that we have two levels of Consent. Consent would be a routine item such as adoption of minutes and this Consent item would be a Consent Public Hearing noticed item so it would be clear that the Commission would open up the item and ask if anyone in the public has anything to say.

Supervisor De La Cruz said he did not like the word Consent.

Mr. Henriques stated that the Board could direct that the word Consent be taken out and it would just be on the Regular agenda.

Supervisor De La Cruz responded yes.

Chair Loe asked if the Board would like to give that direction to staff today and have them bring the conditions on our Consent calendar.

Mr. Henriques indicated that if it comes back to the Board on September 5<sup>th</sup> he will be at a CAL LAFCO Conference that day and he will be not present personally.



Supervisor Monaco asked if they could make it a date certain to come back on September 12<sup>th</sup>.

Deputy County Counsel Shirley Murphy advised that under the Sub-division Ordinance the Board has to render their decision within 10 days of concluding the public hearing so she suggested that the Board continue the public hearing to date certain and also that way if what gets prepared generates additional comments the Board will be covered as well.

Supervisor Marcus asked if they were continuing the appeal based on conditions or did they act on the appeal and then move forward to further this project based on their conditions.

Ms. Murphy suggested that the Board continue it for preparation of findings in support of the denial in the form of a resolution.

Chair Loe clarified then that the motion would be to continue this for the denial conditions.

Ms. Murphy answered yes and to direct staff to prepare the findings and revised conditions consistent with Board direction.

Supervisor Monaco stated that he understood Supervisor Marcus' question and couldn't they legally take action today to deny this appeal and then return to a date certain on September 12<sup>th</sup> with these conditions.

Ms. Murphy responded that the Board's decision to deny the appeal needs to be based on findings supported by substantial evidence in the record so it would behoove the Board to have that prepared to vote on at the time the Board votes to deny it.

Supervisor Monaco stated that in this situation we have discussed the conditions of the denial of this appeal and those being that we have not increased the number of units on this project and that we have in place a design review process. Supervisor Monaco stated that they had heard those kinds of arguments at length today and so he believes there was enough documentation to render a decision on either granting this appeal or not. Supervisor Monaco stated it was his concern to not drag it out any longer for these applicants.

Ms. Murphy responded that the Board also wants their decision to be sustainable and upheld if it gets challenged in court and if the Board adopts findings after the fact they could potentially expose themselves to some challenges based on adequacy of the findings.

County Counsel Dennis LeClere stated that he agreed wholeheartedly with what Ms. Murphy has said; however, to answer Supervisor Monaco's question the bottom line is that yes the Board can act today; but, again if the Board does act they are subjecting themselves to a little more risk; however, should the Board decide to go that way and act with a motion at this time then he strongly recommends that certain findings be included along with specific direction to staff to return with a resolution but again that is the exception that you are raising additional risk by taking that action as opposed to that as recommended by Ms. Murphy, but it can be done.

County Administrative Officer Susan Thompson stated that the staff report responds to each and every one of the points as she understood it and asked if that could be the findings.

Ms. Murphy stated that she and Byron Turner had worked on developing a proposed resolution that has four pages of proposed findings that are not all incorporated into the staff report.

**BOARD ACTION:** *Supervisor De La Cruz made a motion to continue the public hearing to September 5, 2006 for proper findings. Supervisor Botelho seconded the motion.*

Under the question: Supervisor Marcus asked if there was going to be further discussion on other findings asking what findings were they talking about that were not in the staff report.

Ms. Murphy responded that there were findings under the Subdivision Ordinance, the standard findings that are made in regard to approving any subdivision. Ms. Murphy indicated

that some of the findings regarding the alleged errors have had some elaboration beyond what was in the staff report and ideally they would like to pull in additional evidence and findings that the Board has made on the record today.

Ms. Murphy further stated that there are findings regarding the procedural status of denying the appeal and upholding the Planning Commission decision. There was also a question raised whether CEQA findings need to be added.

Supervisor Marcus stated that he was in hopes, in a general sense, that in the spirit of where we are moving on this matter is that the only thing that is going to be brought forward is to clearly define where we are going from here on this development review process. Supervisor Marcus said that he guessed there was not an action, or even a motion, or discussion on the appeal even though that we have talked about these points and is the whole thing just continued?

Chair Loe responded that we will have the written findings.

Supervisor Marcus stated that he was disappointed but he guessed that he understood.

*The Chair called for the question.*

***The vote was unanimous to continue this item to September 5, 2006 for proper findings and conditions.***

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; De La Cruz; Botelho; Marcus & Loe

NOES: SUPERVISORS: None

ABSENT: SUPERVISORS: None

There being no further business the Board adjourned to its next regularly scheduled meeting on Tuesday, September 5, 2006 at 9:30 a.m.

PAT LOE, CHAIR

San Benito County Board of Supervisors

ATTEST:

Linda Churchill  
Clerk of the Board  
P. M. Session

BY:

Sally Navarez  
Assistant Board Clerk  
A. M. Session