



## 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 SEPTEMBER 5, 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. (Supervisor De La Cruz was absent during the afternoon session). Also present was County Administrative Officer Susan Thompson, County Counsel Dennis LeClere and Clerk of the Board Linda Churchill. Chair Pat Loe presided.

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

- a) Pledge of Allegiance was led by Supervisor Botelho.
- b) *Upon motion duly made, seconded and carried, acknowledged Certificate of Posting..*

#### **PRESENTATIONS / RECOGNITIONS / PROCLAMATIONS:**

- 1) **Declare the month of September 2006 as “California Wine Month” in San Benito County. (Supervisor Monaco)**

Supervisor Monaco presented local wine grower Josh Jensen of Calera Wine with a proclamation declaring the month of September 2006 as California Wine Month in San Benito County.

Mr. Jensen accepted the proclamation on behalf of all of the wine growers in San Benito County and thanked the Board of Supervisors for their support. Mr. Jensen commented that he hoped that the planning process would help persons to get a permit for a winery in the county and also stated that he has some ideas for building affordable housing on his property for the vineyard workers and hopes the county can do something to make it easier for people to find affordable housing.

Supervisor Botelho encouraged people to use the Southside Migrant Camp noting there is space there.

- c) **Public Comment:** Joe Thompson, County resident, came forward stating that we are under attack here in San Benito County and he felt that the Board of Supervisor’s jurisdiction is under attack. Mr. Thompson stated it was important to realize that as Council of Governments (COG) powers grow the Board’s power shrink noting that the way the power structure is set up in COG the residents of three district’s lose their representation and they lose their choice and lose their power to influence what goes on in the County. Mr. Thompson stated that the disparity in power and in resources between Santa Clara County and San Benito County still exists today and he did not think that this County should be adopting plans and programs and solutions that work in a county like that. Mr. Thompson stated that we need to stand up for the residents and our code in San Benito County and reject these blueprint ideas that do not work in small rural and impoverished counties like ours and he hopes to see this on an agenda soon.

Chair Loe noted that the "Blueprint Plan" would be on the next Board of Supervisor's agenda (September 12, 2006).

d) **Department Head Announcements:** Health and Human Services Agency (HHSA) Director Kathy Flores provided an update on West Nile Virus activity stating there has been one dead bird found here that tested positive for West Nile Virus noting that staff responded rapidly. Ms. Flores reported that overall there are 50 counties within the state where there has been West Nile Virus activity noted this year and 138 human cases throughout the state and zero cases in San Benito County.

Agricultural Commissioner Paul Matulich reported that surveillance was done within a five-mile radius around the area where the dead bird was found and the mosquitoes that were trapped were taken to Monterey County for testing and all turned up negative for West Nile Virus. Mr. Matulich reported that they followed up on several complaints from neighbors about water sources and people were provided brochures and some dunks to put in those water sources to prevent mosquito larva. Mr. Matulich further reported that an irrigated area in North County, where mosquitoes were being bred, was fogged to eliminate the mosquitoes from spreading to adjacent areas and also in other areas all storm drains have been taken care of.

e) **Board Announcements, Introductions and Presentations:** Supervisor Marcus reported that a letter was received from Court Executive Officer (CEO) Gil Solorio noting it was a favorable announcement to the success of our new courthouse moving forward.

Supervisor Marcus announced the Central Coast Regional Water Quality Control Board had the discharges to land with low threat to water quality and San Benito County District Pajaro Watershed Groundwater Desalinization Feasibility Study on its agenda for Thursday, September 7, 2006 and he was going to try to make that meeting in Monterey to hear that report and also on Friday, September 8, 2006, was the City of Hollister/San Benito County Compliance deadline update with the Regional Water Board.

Supervisor Monaco reported that on August 31, 2006 he attended the CSAC (California State Association of Counties) Board of Directors in Sacramento who met to consider taking a position on the following November 6<sup>th</sup> ballot initiatives: Proposition 84 – Neutral position; Proposition 86 – Neutral position; Proposition 87 – Opposed; Proposition 87 – Opposed; Proposition 88 – Opposed; and Proposition 90 – Opposed. Supervisor Monaco announced that information relative to this meeting was available in the County Administrative Office. Supervisor Monaco further reported that they discussed AB 1634 which is the reimbursement for the special election and noted that this has been passed and is now in the Governor's office.

Supervisor Monaco echoed Supervisor Marcus' report with regards to the letter from CEO Gil Solorio clarifying the status of our new court facilities noting it was good news at this time.

Supervisor De La Cruz announced the City of Hollister City Council was having a meeting today on the sewer rate increases and it would be an opportunity for the public to express their opinions about these rates and he encouraged the public to attend.

Supervisor De La Cruz further reported that last Tuesday City Mayor Robbie Scattini hosted the 2007 Motorcycle Rally meeting. Supervisor De La Cruz indicated that there were about 35 community members on this committee and he was including himself on that committee. Supervisor De La Cruz reported that they are discussing various committees such as law enforcement and finance committees. Supervisor De La Cruz stated he would be bringing a resolution to the Board of Supervisors showing either support or opposition of the Rally Committee.

## **CONSENT AGENDA:**

*Upon motion made by Supervisor Monaco and seconded by Supervisor Marcus approved Consent Items 2 through 10 with the exception of Items 4 and 7, and hearing Items 11 and 12 as Regular Agenda items. (Unanimous)*

#### **CLERK OF THE BOARD – L. Churchill**

- 2) **Approved** the minutes of the meeting of August 8, 2006; August 22, 2006 and the August 10, 11 & 14, 2006 FY06/07 Budget Hearings.

#### **COUNTY CLERK / AUDITOR / RECORDER– J. Hodges:**

- 3) **Approved** agreement with Michael Hodges, dba H.C.S, regarding the implementation of Recorders RIIMS Version 4.0 Upgrade in the amount of \$45,000 with a contract term of August 22, 2006 through September 15, 2006. *File #1112.5*

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

- 4) **Adopt resolution approving the Operation and Maintenance contract with the State Housing and Community Development in the amount of \$352,757; authorize Chair to sign said Resolution and authorize the H&HSA Director to be the signature authority for this contract and any subsequent amendments therein. (Res. No. 2006-95)**

Supervisor Botelho asked if the \$352,757 runs the entire housing area.

Kathy Flores, H&HSA Director, answered yes noting this was the Family Migrant Center (67 units) stating that these units are available for 6 months out of the year from June 1<sup>st</sup> to approximately November 30<sup>th</sup> of each year. Ms. Flores said that this camp was used during the winter for some limited activities.

Discussion ensued with regards to the usage of this facility and the costs of operating the facility.

*Chair Loe directed Ms. Flores to come back with a report to the Board of Supervisors after taking the issue of private business partnering to the Community Action Board.*

*Chair Loe directed staff (Planning & CSWD) to come back with a report on the Inclusionary Housing Ordinance and how much money we have set aside.*

Ms. Flores stated she would have this item placed on the Community Action Board agenda for discussion on potential uses of the camp, the Family Migrant Center in the off season and what organizations are permitted to use it and etc.

**BOARD ACTION:** *Upon motion made by Supervisor Botelho and seconded by Supervisor De La Cruz, adopted **Resolution No. 2006-95** approving the Operations and Maintenance contract with the State Housing and Community Development as recommended. (Unanimous) File #130*

- 5) **Approved** agreement with the Department of Health Services in the amount of \$42,750 for implementation of an immunization registry with a contract term of July 1, 2006 through June 30, 2007 and **authorized** the H&HSA Director to sign on behalf of the County. *File #130*

#### **INTEGRATED WASTE MANAGEMENT – M. Rose:**

- 6) Regarding status of grazing lease at county owned property located at 2733 John Smith Road, Hollister, request continuance until the meeting of September 12, 2006 as additional time is needed to complete the Invitation to Bid process.  
**(Approved continuance)**

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

- 7) **Approve request to rescind board action of March 25, 2003 and reaffirmed on June 23, 2006 to impose a hiring freeze for all current and future county vacancies.**

Supervisor Marcus stated that he would like to hear from the Board members with regards to rescinding the board action regarding a hiring freeze. Supervisor Marcus stated that he did not support this action right now.

Lengthy discussion ensued with regards to the merits of rescinding this action.

*Supervisor Marcus suggested that this issue be discussed further at the next Board Retreat.*

**BOARD ACTION:** *Upon motion made by Supervisor De La Cruz and seconded Supervisor Monaco, denied the request to rescind the board action of March 25, 2003 and reaffirmed on June 23, 2006 to impose a hiring freeze for all current and future county vacancies. (Unanimous) File #630*

### **PUBLIC WORKS – J. Lo:**

- 8) **Declared** Juvenile Hall vehicle as surplus per County procedure and remove from inventory.  
*File #105*
- 9) **Declared** Sheriff vehicle as surplus per County procedure and remove from inventory.  
*File #105*
- 10) **Declared** Probation Department equipment as surplus per County procedure and remove from inventory. *File #105*

### **SHERIFF – C. Hill:**

- 11) **Approve out of state travel for the Emergency Services Manager to attend training for “WMD Incident Command” at the Center for Domestic Preparedness in Anniston, Alabama September 24 – 30, 2006.**

Supervisor De La Cruz asked what WMD meant.

Brian Tempero, Acting Manager of the San Benito County Office of Emergency Services, explained this was a training that the Sheriff wants him to attend. Mr. Tempero explained that WMD (Weapons of Mass Destruction) is the title of this course which we got through a grant noting that at this training it teaches about Hazmat cleanup, local emergencies and how to handle quick responses to those emergencies that are large in size.

**BOARD ACTION:** *Upon motion made by Supervisor De La Cruz and seconded by Supervisor Monaco, approved out of state travel as requested. File #75.5*

- 12) **Approve sole source agreement with Frank Ledesma in the amount of \$15,480 for the provision of inmate GED instruction services with a contract term of October 1, 2006 through September 30, 2007.**

Supervisor De La Cruz asked if this person was getting a pay raise from last year's contract.

County Administrative Officer (CAO) Susan Thompson answered that she did know the answer and there was no one present to speak to this question.

Supervisor De La Cruz asked also why we didn't bid out for this contract.

*Upon motion made by Supervisor De La Cruz and seconded by Supervisor Monaco, continued this item to 1:30 p.m. when the Sheriff could be present to respond to questions.*

### **REGULAR AGENDA:**

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

- 13) **Regarding a proposed resolution increasing the compensation for Planning Commissioners, consider the following:**

a) **Adopt Resolution identified as Exhibit “A” or**

b) **Adopt Resolution identified as Exhibit “B” or**

c) **Provide direction to staff to bring back an alternative Resolution.**

Rich Inman, Director of Internal Services, provided background information stating that on August 22, 2006 the Board discussed the current stipend being paid to the Planning Commission and gave direction to staff to return with a new resolution covering that discussion.

**BOARD ACTION:** *Upon motion made by Supervisor Monaco and seconded by Supervisor Marcus, adopted resolution identified as Exhibit “A”, **Resolution No. 2006-96**, a resolution rescinding Resolution 91-99 entitled “Resolution to Revise Planning Commission Stipend to Allow Compensation for up to Three Meetings per Month; and authorizing a stipend and other Reimbursable Expenses for County Planning Commissioners. (Unanimous) File #790.2*

### **BOARD OF SUPERVISORS:**

- 14) **Receive report from Supervisor Loe regarding NACO conference attended.**

Chair Loe provided a report on the NACO Convention she attended stating that it was an incredible experience noting that she believed that the chair of the board or their appointee should go every year. Chair Loe stated that she brought back a binder full of information to share with everyone and it would be available in the County Administrative Office for review. Chair Loe highlighted the important information she learned while attending this session. *File #156*

#### **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 and reconvened into Regular Session re:

**15) Public Employee Performance Annual Evaluation**

**Title: County Administrative Officer**

**Authority: California Government Code Section 54957**

*No reportable action. File #235.6*

**16) Conference with Labor Negotiator**

**Authority: California Government Code Section 54957.6**

**Agency Designated Representative:**

**Susan Thompson, CAO**

**Employee Organization:**

**Law Enforcement Mid-Management**

*No reportable action. File #235.6*

#### **SITTING AS THE PUBLIC AUTHORITY FOR IN HOME SUPPORTIVE SERVICES:**

**17) Conference With Labor Negotiator**

**Authority: California Government Code Section 54957.6**

**Agency Designated Representative: Susan Thompson, Co. Admin. Officer**

**Employee Organization: SEIU, Local 817 – In Home Supportive Services (IHSS)**

*County Counsel Dennis LeClere reported that a committee of Supervisors Monaco and Marcus was appointed to consider agency designated representatives. File #235.6*

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

**CONTINUED PUBLIC HEARING (Continued from August 22, 2006):**

*Supervisor De La Cruz was absent during the afternoon session.*

**12) Approve sole source agreement with Frank Ledesma in the amount of \$15,480 for the provision of inmate GED instruction services with a contract term of October 1, 2006 through September 30, 2007. This item was continued from the morning session.**

Chair Loe noted that there were two issues raised during the morning session and one was whether we should go out to contract and are we paying the same amount this year as last year.

Sheriff Curtis Hill explained that by law they are required to offer GED in the facility and they advertised and no else responded noting that this is all from Inmate Welfare Fund and there is no General Fund money involved. Sheriff Hill explained that the total amount was increased by 10% but only a certain amount of the total is paid out.

Chair Loe asked if this was an hourly rate?

Sheriff Hill answered yes.

**BOARD ACTION:** Upon motion made by Supervisor Monaco and seconded by Supervisor Botelho, approved sole source agreement with Frank Ledesma as recommended. (4-0 Vote. De La Cruz absent.) File #110

**18) Adopt a resolution upholding the Planning Commission's approval of the amended tentative subdivision map for San Juan Vista Estates – TSM 99-63(A) with modifications to Conditions of Approval 18(e)(5), 19 and 29 and denying the appeal of Tracie Cone.**

Byron Turner, Principle Planner, provided background information stating that the Board of Supervisors heard this item on August 22, 2006 and directed staff to return to the September 5, 2006 meeting with a resolution denying the appeal as well as amending Conditions 18, 19 and 29. Mr. Turner reported that specific language was added to Condition 18 regarding visual quality to dictate what staff and the Planning Commission may require in order to look at each individual lot which may require anything including, but not limited to: story pole analysis, landscaping plans, color palates, grading plans, elevations, and photo representations. Mr. Turner reported that Condition 19, regarding affordable housing, has been changed to require the in lieu fee of \$444,747 at a minimum and Condition 29 was changed to prohibit further subdivision.

Mr. Turner further reported that the applicants have authorized him to state that they are in agreement and do not have any objections to these amended conditions.

Supervisor Marcus stated that his main concern, based on the last Board meeting, has to do with the individual site and architectural review that pertains to Condition 18. Supervisor Marcus asked about the individual items referred to by Mr. Turner as requiring the story pole analysis, the landscaping, etc. and asked if they were going to more clearly define a process for that as far as site and architectural review criteria.

Mr. Turner answered that as a building permit application comes in the Planning staff will review it, as they do with all building permit applications, and then based on the location of the building permit application they will be asking for as much information as they deem necessary to make a determination or as much as the Planning Commission deems necessary to make a determination.

Supervisor Marcus asked if each individual lot will go to the Planning Commission for the site and architectural review and won't be reviewed in-house.

Mr. Turner answered that each one will go to the Planning Commission noting that another change had earlier been identified to go to the Planning Commission on the Consent Agenda has been removed and it now states that it will now go to the Planning Commission as a Regular Item.

Chair Loe noted that on Page 17 of the resolution it reads Consent agenda.

Mr. Turner said that should be stricken, as it was an error.

Chair Loe re-opened the public hearing.

Appellant Tracie Cone came forward and thanked the Board of Supervisors for making the changes in the conditions that were the reason for her appeal originally. Ms. Cone stated that securing money for workforce housing and stopping further subdivision of the large lots so that we could all understand the final size of the project were her primary concerns for the appeal and as the Board eventually saw at the last meeting some of that vague wording could have caused the affordable housing money to be challenged. Ms. Cone stated that her intent was never to stop the project but it seemed to her, and her understanding of the appeals process, that is what had to be done to make an appeal -- there had to be laws broken, maps expired or any number of legal problems and she was just seeking some fairness on what she thought was vague wording.

Ms. Cone stated that developers seek us out because this is a beautiful place to live and build and when a developer gives something back, such as money or workforce housing, or open space, or parks then we are all thanked, so to speak, for the intangible value our community creates for a project and for that project's bottom line. The public has the expectation that we won't let them come in the back door and change that.

Ms. Cone further stated that she did not think she should have to pay the \$575.00 for pointing out that the changes in the conditions that the Planning Commission had approved were vague. Ms.

Cone said she knows that there was a county cost but if that language hadn't been changed then none of this appeal would have happened to begin with, but she did not want to get bogged down on a discussion about that, she really just wanted to thank the Board for making this a better project.

Janet Brians, Shore Road resident, came forward stating that she was rather concerned after the discussion last month when we discussed siting poles for instance and this was not specifically mentioned and that these sort of things are not required in a site that is of obvious concern to a lot of people in the community and in fact a site that is so visible for anyone going on Highway 101. Ms. Brians said she hoped that this will be written in our Planning Staff design features in a very clear and strong way and that we have as many conditions as are needed so that we have a project that will be approved and will be admired by the community instead of being a sad item.

Hearing no one else wishing to address the Board the Chair closed the public hearing.

Chair Loe asked with regards to Page 17, Condition 18, regarding visual impacts, that as she understood it from the last meeting that we were talking about all lots would go through site and architectural review and all lots would have to go through the pole tests indicating that she was very uncomfortable with this gray area in saying that it's going to come back to the Planning Commission and the neighbors can come up and appeal it at the Planning Commission level. Chair Loe felt that at least certain lots, we know that are visible from the valley floor, have got to be spelled out and it has to be a deed restriction so the people know that when they buy that lot that they are going to have to meet a certain standard.

Mr. Turner answered that they could incorporate it into a deed restriction in order to ensure that anyone that purchases any of these lots will know that they will coming back before the Planning Commission and that staff and the Planning Commission can require anything from story poles to requiring them to hire a firm to give us some photo representation.

Chair Loe stated her point was that it says *may* require and that is not what she remembered from the last meeting. She remembered that it was going to be specific that certain things were going to happen and she did not think it was fair to the public to buy a lot not knowing. Chair Loe said if we know Lots 11 and 17 are visible from the valley floor and they are going to have to have the pole test it needs to be spelled out in these conditions.

Chair Loe further stated that with regards to the water treatment it says in the findings today that we make a finding that this is consistent with the MOU with the City of Hollister on the wastewater and reclaimed water. Chair Loe asked why doesn't the condition say to MOU standards. The condition says that it's to County Water Conservation Plan and the Resolution 92-82.

Mr. Turner answered that has not changed from the original condition.

Chair Loe said that we made a finding that it was consistent with the MOU so shouldn't the condition say that the water will be treated to MOU standards plus.

County Administrative Officer Susan Thompson stated that for clarification it has the terminology that it must be treated to unrestricted use standards and the MOU standards are specific TDS's asking if they were different.

Chair Loe said that it basically says in the finding that we are making today that the revision did not violate MOU standards.

Chair Loe asked Mr. Turner to give her some kind of idea on the grading on the lots indicating that originally we were talking about 1200 to 1700 cubic yards per site but now the building envelopes have been changed.

Mr. Turner responded that based on similar hillside projects he guessed it would be between 500 to 5000 cubic yards depending on the location of the lot. The General Plan includes wording that we should minimize grading when at all possible and each individual lot will have an individual grading plan and not any mass grading of the site. Mr. Turner said that grading plans today are permitted through the Planning Department, although they do not go through any public hearing, and are permitted administratively.

Chair Loe asked that since we are changing the building envelope will that also be looked at to decide the building envelope or are the building envelopes set in stone?

Mr. Turner answered that the building envelopes have been located in a fashion that staff believes will minimize grading.

Chair Loe further asked about a gate at the entrance stating that we discussed no gate at the entrance.

Mr. Turner answered that it was their recollection that the only conditions that were being changed were 18, 19 and 29. The original condition that was approved was no gate at the entrance and the applicant requested that condition be removed and it not be determined at this time that there would be no gate at all. Mr. Turner stated that we could include that condition here today.

Chair Loe stated it was her concern that if we gate a community then we have problems with County Fire, police, ambulance and we also have the problem of the Impact Fees for parks for open space. Chair Loe stated you couldn't have it both ways in that you can't gate a community and then have credits for open space.

Mr. Turner answered that today, when other communities request to be gated, that does come back to the Board because the Board would then need to vacate the roads and give the roads back to the development or to the Homeowner's Association and that would be the case here also if somewhere down the line they did wish to gate it.

Chair Loe stated she thought that the conditions right now state that it would be private roads.

Mr. Turner answered in that case it would not have to come back before the Board if the County does not accept the roads.

Chair Loe felt that this community should not be gated.

Chair Loe referred to Page 13 noting they talked about right-hand channelization on Searle Road stating that she did not think it was in the new conditions asking why that condition would be removed. Chair Loe stated it was on Page 10 of the old conditions, #4 (e) where it states right turn channelization on southbound Searle Road at the residential access road.

Assistant Public Works Director, Arman Nazemi, explained that this was not going to change and would stay intact.

Mr. Turner stated that staff gave the Board the same information as last week with the three changes that the Board requested. Mr. Turner explained that what the Board had was the changes that were approved by the Planning Commission and with the amendments that the Board requested. Mr. Turner stated that if we were looking at other conditions now then he would have to confer with the Public Works Department.

Chair Loe asked why that information would be taken out.

Mr. Nazemi answered that it was his understanding that this condition was going to stay on. The only thing that was taken out was the improvements on Highway 129 itself and there is no longer a second primary entrance.

Mr. Turner explained that we are requiring installation or bond for road improvements noting that this was under 11(b).

Chair Loe asked don't we have to explain what the road improvements are noting that it was not open ended.

Mr. Turner stated that it has been pointed out to him that this channelization is on the Tentative Map dated May 15, 2006 and even if is not expressly stated as a condition the map that would be approved does reflect it.

Chair Loe said it should be in the conditions so the map doesn't get changed noting that the map hasn't been filed yet.

Mr. Turner explained that the map that gets finalized will also reflect both of the conditions as well as what has been submitted to us.

Chair Loe asked if that could be enforced if there was no condition for it.

Mr. Turner stated that there was a condition that states what is approved at this meeting is what will eventually be recorded. Mr. Turner stated that when the applicant submits their map to Planning for review they will go through each condition as well as the original map, the most recent map, that the applicant submitted that was approved by the Planning Commission and the Board received a copy. Mr. Turner stated that Planning staff would be looking at that map alongside of what the applicant submits as well as each condition to make sure that every condition is met.

Chair Loe stated then basically these aren't the final conditions.



Mr. Turner explained that these were the final conditions so if we need to add a condition to expressly state that the improvements are done, and we are all in agreement that this is exactly what is going to happen, we can expressly state it and the applicant doesn't appear to have a problem with that noting it was never intended to not happen by staff or the applicant.

Chair Loe referred to #3 where it talks about common driveways within the project asking why was the language changed from rural to standard. Chair Loe said this wasn't before the Planning Commission and asked if this was a typo or a different standard.

Mr. Nazemi referred to the Vesting Tentative Map dated May 15, 2006 explaining that the main driveway would be improved to 60 feet road right of way plus 24 feet of pavement, 34 feet of roadway and dropped to smaller standards for four parcels. Mr. Nazemi further explained there were two turnaround facilities.

Chair Loe asked if this went before the Planning Commission.

Mr. Nazemi stated that it was discussed at the Planning Commission and it was the way staff understood it.

Mr. Turner stated there was no objection to it.

Chair Loe referred to Page 15 (c), asking if it should read Title 22.

Mr. Turner answered that was a typo and it should say 22.

Chair Loe referred to Page 16, Visual Quality 18 (a) it says a landscaping tree plan shall be submitted to the County for review and in the other document it states and approval and she felt it should be included.

Chair Loe asked for clarification with regards to affordable housing and the County General Plan.

Mr. Turner explained that anytime it is between five (5) and 21 lots and the developers have the option of providing housing or paying an in-lieu fee. If it is over 21 they are required to build the affordable housing on site. As far as the language this is standard language for affordable housing with all of our subdivisions.

Chair Loe asked then isn't the Inclusionary Housing Ordinance now part of the General Plan.

Mr. Turner answered that it could say Inclusionary Housing Ordinance.

Chair Loe stated that the last thing is how many trees are going to be moved with this project.

Mr. Turner answered he did not know.

Chair Loe asked then shouldn't there be a condition included that says that this will concur with the Conservation and Woodland Ordinance.

Mr. Turner explained that since it is already an ordinance we don't always include every single ordinance as Conditions of Approval although we do often make sure that the applicant is aware of all of our county ordinances that may come into play. Mr. Turner stated it goes without saying that they will be required to maintain all of the oak trees per the County Woodlands Ordinance and if any were to be removed they would have to go through the standard process of oak tree removal and he believed it was 6-1/2 to one replacement.

Chair Loe asked wouldn't it be better if we actually put a condition in there spelling it out noting she just wanted to protect the people buying these lots.

Mr. Turner answered that it would not be inconsistent to include that as a condition noting that it is something they would enforce either way.

Chair Loe further commented with regards to the EIR Mitigation where it states a conservation easement shall be across all non-developable, open space portions of all lots and the way the condition is written now (Page 21s) it says open space area on Lot A only.

Mr. Turner answered that they did not change any of the EIR Mitigation Measures and if there is a change then it is an error and no changes of the EIR Mitigation Measures were supported by staff or through the Planning Commission.

Chair Loe commented then it was just an error then. Also, with regards to Page 21(r) it doesn't spell out the acres noting that original document said no less than 25 acres around the large stock pond.

Mr. Turner answered that it shouldn't have been changed at all and it would be corrected.

*Supervisor Botelho made a motion to deny the appeal and amend Conditions #18, #19, and #29. Supervisor Marcus seconded the motion.*

Under the question.

Supervisor Marcus asked if the other six items we have talked about this morning were included.

Chair Loe stated she understood it that Mr. Turner said he was going to go back and change them so every one of them would be consistent.

Supervisor Marcus asked if that should then be included in the motion.

County Counsel Dennis LeClere stated that it should be specifically pointed out what is to be changed and what is not to be changed. Right now there is a motion on the floor to basically deny the appeal and approve the map with those three minor conditions. Anything including the deletion of the consent issue should be indicated in the motion noting it is not a requirement of Supervisor Botelho to do that unless he wishes to do so.

*Supervisor Botelho stated that what he understood was some wording clarification from the Chair and he was perfectly satisfied that the conditions are covered very well already in what is in front of them and that this would be a good project through the design and review process and he would leave the motion as it stands.*

Under the question. Chair Loe asked then if Supervisor Botelho was not concerned about not spelling out in the actual Condition #18 which lots.

Supervisor Botelho answered that he did give that some thought and referred to Page 18, Number 22, it was covered where each and every lot will be subject to the limitations of the Conditions, Covenants and Restrictions and applicable county ordinances and he feels that the wording was strong enough. Supervisor Botelho stated that in discussing this with his Planning Commissioner he feels that there needs to be some flexibility as far as how we cover the goals we are trying to establish with the design review process and we are all working towards the same thing.

*Supervisor Marcus rescinded his second.*

Supervisor Marcus stated he wanted to be clear, indicating that we have spent a lot of time at the last meeting and he feels we are very close, and by the Chair's determination he has only noted six items and can we get these on the record and clarify to the Chair's satisfaction so that we are all in agreement.

*Chair Loe stated there was motion on the floor asking if there was a second to the motion. There being no second the motion died for a lack of second.*

Supervisor Monaco asked the Chair to clarify the six items that she brought forward that concerned her that either were listed as errors that can be corrected by staff and also other items that she suggested.

Chair Loe responded that there was one about Wastewater Treatment to MOU standards.

Supervisor Botelho indicated that he had written it down and they could take them one at a time. Supervisor Botelho asked with regards to Page 20(o) wouldn't that fall under the MOU standards anyway. Hopefully if you get a water supply of 500 TDF's it should come under the discharge standard.

Chair Loe responded that all she was saying was that we are making a finding that this does not violate the MOU so she is asking that the language be clarified in the conditions.

Supervisor Monaco asked if there was a problem with that issue.

The Board and staff responded no.

Supervisor Monaco asked if the applicant had a problem with that issue.

The applicant stated it was okay.

Chair Loe asked then about the deed restriction where we talked about showing the pole tests and those different things being included in the deed restriction so that anybody buying the property and the site and architectural review understands upfront.

Mr. Weiler asked if that could be incorporated into the CC & R's so that everything would be in one spot.

Chair Loe stated she also wants it in the conditions.

Mr. Weiler approached the podium stating that he was representing the applicant. Mr. Weiler stated that it was just a clean-up item and they would have multiple restrictions on the property that would be all dumped into one spot just for clarity so when somebody comes to buy they would look and see that they would have the entire design and review committee and tree restrictions and all of the restrictions would be in one spot. Mr. Weiler stated so rather than have them all listed in the deed we would like to put it in the Covenants, Conditions and Restrictions (CC & R's) for the whole development. Mr. Weiler stated that from their point of view it was cleaner and would be a matter of record deferring to County Counsel that it would still be of record and the buyer would still see it before it they buy.

Mr. LeClere answered that it was entirely up to the Board to do it either way. Mr. LeClere stated that CC & R's are a matter of record but they are not the same as a condition of the map so it is up to the Board as to which way they want to go.

Chair Loe stated that the reason she came up with this was because when the Planning Director Art Henriques was before the Board he talked about doing this as a deed restriction.

Mr. Turner responded that they could add it to Condition 18(e)5 with language that these requirements shall be noted in the Deed Restriction to the property or we could amend Condition 22 dictating that the entire Conditions of Approval be recorded as a Deed Restriction for deed notification for property owners notifying them that they are required to comply with the CC & R's and the conditions of the map.

Supervisor Monaco commented that either way was a fairly standard procedure.

Mr. LeClere responded that was correct.

Chair Loe stated that she would rather have the deed restriction.

Supervisor Monaco asked if the applicant would have a problem with that.

Mr. Weiler responded that they have no problem with the Conditions of Approval being recorded against the property noting it was just a matter of form rather than substance. Mr. Weiler stated that the deed typically is a one page document saying you grant it rather than having it going on for pages and pages. Mr. Weiler stated that he did not think that you'd want to just for sake of form because people would be looking at this for the next 500 years so you wouldn't want to record all of the conditions you would just want to refer to them by reference. Mr. Weiler stated that they have no problem with any of these conditions being of record.

Chair Loe stated that the Deed Restriction was mentioned by our Planning Director as what they were going to do.

Supervisor Monaco noted that the issue that is being raised here is that it is relatively standard procedures to have these kind of conditions in the CC & R's. Supervisor Monaco stated that having it recorded on the deed doesn't make any difference because the restriction still exists and is attached to the property.

Chair Loe responded that she was only going by what the Planning Director told us that they were going to do on these conditions and it is not there.

Mr. Turner stated that they can add that statement with respect to the applicant wanting everything in the same place, but we can add that behind 18 (e) 5 that these restrictions shall be noted in a Deed Restriction attached to the property.

Supervisor Monaco asked if that met with Chair Loe's approval.

Chair Loe responded that was fine.

Chair Loe stated there would be no gate at the entrance.

Supervisor Botelho stated that this was where he has a problem and he thinks that a gated community is a premium community that requires less law enforcement noting that he has another development that would like to have a gate and he felt that they should leave that up to the development. Supervisor Botelho further commented that with respect to the discussion stemming from the open space aspect – open space is not public lands so to speak where you can go out have a picnic and he preferred that this community had a gate and it would be less headaches to the county as well.

Chair Loe responded that they are giving a credit for that space in their Park Impact Fees.

Supervisor Botelho responded that we also took away density from them noting that we could add 15 to 16 houses and what we should have for Park Impact Fees is a set fee structure that goes into a big pot and that we utilize throughout the entire county. Supervisor Botelho stated that these parks or credits that are in these little developments don't amount to anything to the average citizen in the county.

Chair Loe asked if Supervisor Botelho meant then that we just won't give the credit asking if that is what he was saying.

Supervisor Botelho responded that we shouldn't give a credit in future developments such as this. We should have a Park Impact Fee and that is it. The nature of the density lends itself to open space anyway. Supervisor Botelho noted that the problem going on in another County Service Area (CSA) is that people drive up there, drink beer and throw their bottles out and it is subject to burglaries and as long as we don't have a high level of law enforcement then why not put a gate up. Supervisor Botelho stated that he felt that gate issue is a minor detail and he hoped that they would just let that one go.

Chair Loe stated that she did not believe in exclusive communities.

Chair Loe further noted that with regards to Hydrology, Page 15, 16(c) where it just said Title it should be changed.

Supervisor Marcus responded that this was just a clerical error that would be changed.

Chair Loe also brought up the section that refers to the EIR where Mr. Turner stated that he would go back and correct the typos noting that there shouldn't have been changes to that wording.

Mr. LeClere stated not if there were not changes and if they did an initial circulation with the initial study and it was found that there was no significant impacts.

Chair Loe stated that on the actual EIR document before the Board today there are actual changes that Mr. Turner indicated were typos asking if they had to call those typos out.

Mr. LeClere stated that the changes will be made and that should be on the record today.

Chair Loe indicated that under 30 (r) it was stated no less than 25 acres.

Mr. Turner stated that 30 (r) and (s) will be changed to reflect the original EIR.

Chair Loe further noted the change with regards to affordable housing

Mr. Turner responded that they can add the language "Inclusionary Housing Ordinance".

Chair Loe stated that then we were going to add the Condition about the tree removal just to show that we do have a Conservation and Woodland ordinance.

Mr. Turner stated also with regard to Condition 18(a) they would add review and approval.

Supervisor Monaco stated that it seemed that they had reached some kind of resolution in all of these items except the issue of the gate community. Supervisor Monaco said he concurred with Supervisor Botelho and he realized with this issue that they have a credit associated with it, but, on the other hand, Park Impact Fees are something that he has always been supportive of but he did not know that we would ever be creating a park out in this facility. Supervisor Monaco said he understood what the concerns are with regards to having what turns out to be a sort of attractive nuisance to the public in a lot of ways where we then open it up to where we are going to maintain some kind of lifestyle for these individuals who purchase this property and they would then be subject to people coming in and throwing stuff around and do whatever else. Supervisor Monaco stated that if they have the option in the future as we have done in the past (and not too long ago) while the conditions were different we have allowed some gated communities and he doesn't have any opposition to allowing a gated community out in this area in the future.

Chair Loe stated that she did not agree with that.

Supervisor Marcus asked about the turn lane issue.

Chair Loe asked then if that was something that was just missed.

Mr. Turner stated that it could be added as a condition just for clarification noting it was reflected on the map.

Chair Loe re-opened the public hearing.

Web Winans, local resident, came forward. Mr. Winans stated that year after year we have sat in the Board Chambers and we talked about all of the problems that we have had out at Ridgemark on the roads that have to be taken care of and whose is going to do it and this is what

happens from a gated community. Once you get a gate in there, if you do that, they will have to understand that they maintain them and the county can't do that because they will want more for their gated community roads than we would probably be able to put up for the non-gated communities for the rest of the county. Mr. Winans said he would like to have the Board re-consider this and either say you put in the whole thing and go the whole way and understand all of the details that have to go behind it and they agree to it, or leave it open and take care of it like you would any place else.

Richard Place, local resident, came forward. Mr. Place stated that he was the president of his homeowners association noting that there are new state laws that have been passed now that require that homeowners associations do a periodic review, or audit, of facilities and the re-assessment of the reserves to take care of those things so those old problems at Ridgemark couldn't happen. Mr. Place stated any new projects are covered pretty well now under this 2005 act that was just passed and it is very effective in taking care of those problems such as making sure there is adequate reserves.

Marty Richman, local resident, came forward. Mr. Richman stated he doesn't live in a gated community and he didn't think he would ever live in one because he did not like that lifestyle but he just wanted to comment about exclusive communities as mentioned by the Chair. Mr. Richman said he doesn't have a problem with them and if somebody wants to pay \$5 million for a house then he didn't have a problem with them wanting to put up a gate. We are not giving them anything for free. They are going to give us a half a million dollars for housing to help people who can't afford it and they are going to pay a fortune in taxes. Mr. Richman said he was sick and tired of going to his front door for every salesman coming around but he if paid one half million bucks, or \$1 million or \$1.5 million for a house he wouldn't want it and no one enforces those laws. People come around and throw beer cans on your lawn and nobody enforces the law. Mr. Richman stated people want a gate because they want to protect themselves and he felt they ought to let them have the gate if they want it and they are going to pay for the privilege.

Mr. Richman further stated that this has been going on for eight years and for eight years that \$440,000 that could be helping people live somewhere else has been sitting there doing no one any good and hasn't done the developer or the county any good and meanwhile everybody suffers. Mr. Richman stated he didn't think this was the way to do business. Mr. Richman stated he did not think the planning process is working very well. Mr. Richman said he doesn't think that all of these changes at five minutes to midnight make any sense and he hoped the Board would let them have their gate so we can have their money.

The Chair closed the public hearing.

Supervisor Monaco stated that he did not want to have this misinterpreted that he necessarily supports this development to be a gated community in the future, but he thinks that the option should be open for these people to allow us to do that. Supervisor Monaco stated that he feels it may turn out in the best interest of the county in general to have a gated community there. Supervisor Monaco stated he was only saying that they should have the right to have that option.

Chair Loe asked staff what happens with fire, ambulance and police if they gate that community.

Mr. Nazemi answered that breakaway keys would be provided to emergency services, such as police and fire so they would have that.

Chair Loe asked then there wouldn't be any problem?

Mr. Nazemi responded that there wouldn't be any problem and he hadn't heard any different from CDF or anybody else.

**BOARD ACTION:** *Supervisor Marcus made a motion to deny the appeal and uphold the Planning Commission's decision to approve amendments to Tract 99-63a with the modifications to Conditions 18 (e) (b); Condition 19, Condition 29 and the conditions as specified which will include the option for a gate; the discussion of the restrictions on the turn lane as discussed; the deed restrictions; inclusionary housing; the consistent tree removal with our current ordinance; and, that the EIR reflects the original EIR language. Supervisor Monaco seconded the motion.*

Under the question.

Chair Loe asked with regards to the affordable housing would it be to include the Inclusionary Housing Ordinance.

*Supervisor Marcus answered yes. Supervisor Monaco concurred.*

The Chair called for the question.

*The motion passed 4-0 with Supervisor De La Cruz absent for the afternoon session.*

**(Appeal File)**

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 12, 2006 at 9:30 a.m.

PAT LOE, CHAIR

San Benito County Board of Supervisors

ATTEST:

Linda Churchill

Clerk of the Board