



SAN BENITO COUNTY BOARD OF SUPERVISORS

Don Marcus
District No. 1

Anthony Botelho
District No. 2

Pat Loe
District No. 3
Vice-Chair

Reb Monaco
District No. 4
Chair

Jaime De La Cruz
District No. 5

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

REGULAR MEETING ACTION MINUTES JUNE 28, 2005

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in regular session. Supervisors Marcus, De La Cruz, Botelho, Loe and Monaco were all present. Also present was Acting County Administrative Officer Susan Lyons, Interim County Counsel Claude Biddle and Senior Board Clerk Linda Churchill. Chairman Monaco called the meeting to order at 9:30 a.m.

9:30 a.m. CALL TO ORDER:

- a) Pledge of Allegiance.
- b) *Upon motion duly made, seconded and carried, acknowledged Certificate of Posting.*
- c) **Public Comment:** There was no public comment.
- d) **Department Head Announcements:** There were no announcements.
- e) **Board Announcements, Introductions and Presentations:** Supervisor Botelho wished everyone a happy, safe and sober 4th of July weekend in San Benito County.

CONSENT AGENDA:

Upon motion made by Supervisor De La Cruz and seconded by Supervisor Marcus approved Consent Items 1 through 33 with the exception of Items 7 and 13 that were pulled for discussion.

AGRICULTURAL COMMISSIONER – P. Matulich:

- 1) **Approved** agreement with the State Department of Food and Agriculture re: Sudden Oak Death (SOD) inspection services for FY2005/2006. *File #1.1*

AUDITOR – J. Hodges:

- 2) **Approved** Departmental Claims.

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- 3) **Approved** cooperative agreement with the City of Hollister and the San Benito County Water District re: preparation of the EIR for the City of Hollister Waste Treatment Plan Improvements and Water District Recycled Water Facility EIR. (Supervisor Loe and Supervisor Marcus) *File #695*

CLERK OF THE BOARD:

- 4) **Approved** Proofs of Publications. *File #530*
- 5) **Approved** the minutes of the June 7, 2005 meeting and special meeting of June 9, 2005.

COMMUNITY SERVICES & WORKFORCE DEVELOPMENT – K. Flores:

- 6) **Approved** agreement with Go Kids, Inc. for the provision of childcare services in an amount not to exceed \$15,000 for the period of July 1, 2005 through June 30, 2006 and **authorized** the CSWD Director to sign on behalf of the County. *File #1055*
- 7) **Regarding mattresses bid for Southside Road Family Migrant Labor Camp, consider the following:**
- a) **Accept bid of Chavez Furniture in the amount of \$36,000 as the lowest, responsive bid; and**
- b) **Approve the purchase contract with Chavez Furniture; and**
- c) **Authorize the CSWD Director of the Chair of the Board to sign said purchase contract with Chavez Furniture, total purchase price not to exceed \$30,179.**
- Supervisor De La Cruz asked if the Chavez Furniture store was going out of business. Angel Santos, Migrant Camp Manager, answered that Chavez Furniture has two other stores in Watsonville and Salinas.
- Supervisor De La Cruz asked if payment would be made upfront.
- Kathy Flores, CSWD Director, explained that 30% down payment was required and the balance upon delivery.
- BOARD ACTION:** *Upon motion made by Supervisor De La Cruz and seconded by Supervisor Botelho approved Consent Item #7 as recommended. (Unanimous) File #750*
- 8) **Approved** agreement with the Small Business Development Center at Gavilan College re: emergency assistance workshops and training to targeted businesses in the County in the amount of \$20,176 with a contract term of July 1, 2005 through March 31, 2006 and **authorized** CSWD Director to sign on behalf of the County. *File #750*
- 9) **Approved** agreement with the Economic Development Corporation to provide one-to-one initial assessment for purposes of determining the needs of businesses in the county with a contract term of July 1, 2005 through March 31, 2006 at a cost of \$12,000 and **authorized** CSWD Director to sign on behalf of the County. *File #939*
- 10) **Approved** agreement with Certified Appraisal Service for appraisal services in the amount of \$3,150 to obtain an appraisal of the camp property with a contract term of June 29, 2005 through August 30, 2005 and **authorized** CSWD Director to sign on behalf of the County. *File #750*

COUNTY COUNSEL – C. Biddle:

- 11) **Rejected** claim of Francisco Ruiz filed with the Clerk of the Board May 20, 2005 and **directed** clerk to notify claimant. *File #235.6*

DEPARTMENT OF EMERGENCY SERVICES – M. Riopel:

- 12) **Reaffirmed** 14-Day Proclamation of Local Emergency – Thomas Road. *File #104*

DISTRICT ATTORNEY – J. Sarsfield:

- 13) **Consider agreement with Ship Vantage for District Attorney website design with a contract term of June 7, 2005 through June 30, 2006. (cont from 6/7/05 mtg)**
- Supervisor Botelho stated that he had pulled this item from the last meeting with the thought that we could see how we could work load this better through our IT system throughout the whole county that we are looking into with Santa Cruz County IT personnel.
- Acting County Administrative Officer (CAO) Susan Lyons reported that she has since met with Santa Cruz County and they are going to bring forth a proposal to us for our overall IT needs and that will probably be a month or two away. Ms. Lyons stated that she talked to Santa Cruz County about doing a web page for our District Attorney but found the cost would be less through the contract that Mr. Sarsfield is presenting today. Ms. Lyons recommended that this item be approved.

BOARD ACTION: Upon motion made by Supervisor Marcus and seconded by Supervisor Botelho, approved agreement with Ship Vantage as recommended. (Unanimous) File #205

FIRST 5 SAN BENITO – K. Castillo:

- 14) **Approved** agreement with the Tres Pinos Union School District for “Rural Mobile Preschool” Program services with a contract term of July 1, 2005 through June 30, 2006. **File #155**
- 15) **Approved** agreement with the Aromas-San Juan Unified School District for the Health and Ready Program with a contract term of July 1, 2005 through June 30, 2006. **File #155**

HEALTH & HUMAN SERVICES AGENCY – K. Flores:

- 16) **Approved** agreement with Patricia Leary in the amount of \$2,640 for the term of July 1, 2005 through December 31, 2005 for occupational therapist services. **File #130**
- 17) **Approved** agreement with Miller Networks, Inc. for annual information technology (IT) service agreement for F/Y2005/2006. **File #130**
- 18) **Approved** agreement with California Department of Health Services for the Immunization Assistance Program (IAP) in the amount of \$20,000 with a contract term of July 1, 2005 through June 30, 2006. **File #130**
- 19) **Approved** contract with the Hollister School District for the provision of summer school nursing services by H&HSA Nursing staff and **ratified** the signature by Kathryn Flores, H&HSA Director on said contract. **File #130**
- 20) **Ratified** executed contract with the Hollister School District for the provision of scoliosis screening by H&HSA Nursing Staff. **File #130**

INTEGRATED WASTE MANAGEMENT – M. Rose:

- 21) **Approved** agreement with Conor Pacific/Golder Associates for the provision of groundwater monitoring at the John Smith Road Landfill Class I and Class III sites for FY2005/2006. **File #142**
- 22) **Approved** agreement with Conor Pacific/Golder Associates for consultation services for general regulatory compliance at the John Smith Road Landfill for FY2005/2006. **File #142**

PUBLIC WORKS:

- 23) **Approved** agreement with the State Controllers Office, Division of Audits for services to prepare Annual Road Fund Audit Report for FY2004/2005 and **authorized** Assistant Public Works Director to sign on behalf of County. **File #105**
- 24) **Approved** plans and specifications for the Southside Road Bike Lane project and **authorized** staff to solicit bids for construction of same. **File #105**
- 25) **Accepted** all bids and **approved** contract for carpet replacement with The Carpet Outlet as the lowest, responsive, responsible bidder and **waived** immaterial defects for an amount not to exceed \$14,244 commencing on or about June 30, 2005 through August 31, 2005. **File #105**

RESOURCE CONSERVATION DISTRICT – L. Hain:

- 26) **Acknowledged** vacancy within the San Benito County Resource Conservation District (RCD) Board of Directors due to election of RCD director to the San Benito County Board of Supervisors. **File #1059**

- 27) **Acknowledged** resignations submitted by the current members of the San Benito County Resource Conservation District (RCD) District Board of Directors as follows:
- a) Brian Holthouse effective June 6, 2005; and
 - b) Tim De La Grange effective June 6, 2005; and
 - c) Emama Mar Shimun effective upon appointment of qualified candidate as a replacement.
- File #1059**
- 28) **Approved** appointments of Mark Dickson, Dale Coke, John Gregg and Robin Pollard as Directors of the San Benito Resource Conservation District. **File #1059**

SHERIFF – C. Hill:

- 29) Regarding the transfer of a Ford Crown Victoria to the City of San Juan Bautista, consider the following:
- a) **Authorized** transfer of ownership for one (1) Ford Crown Victoria to the City of San Juan Bautista; and
 - b) **Authorized** the Chair to sign State of California Certificate of Title; and
 - c) **Authorized** the Sheriff to deliver said Certificate of Title to the City of San Juan Bautista.
- File #110**
- 30) Regarding law enforcement services contracted to the City of Hollister for the 2005 Hollister Independence Rally, consider the following:
- a) **Authorized** the Sheriff to sign said contract on behalf of the County; and
 - b) **Authorized** the Sheriff to bill the City for actual costs incurred. **File #110**
- 31) Regarding records management software, consider the following:
- a) **Accepted** agreement with Executive Information Services (EIS) for maintenance services for the period of July 1, 2005 through June 30, 2006; and
 - b) **Authorized** the Sheriff to sign said agreement on behalf of the County. **File #110**
- 32) **Approved** agreement with the 33rd Agricultural District for the Work Alternative Program with a contract term of July 1, 2005 through June 30, 2006. **File #110**
- 33) Regarding lease purchase of a Patrol car through Ford Motor Credit for the City of San Juan Bautista, consider the following:
- a) **Approved** lease purchase agreement from Ford Motor Credit; and
 - b) **Authorized** the Sheriff to sign said agreement on behalf of County. **File #110**

REGULAR AGENDA:

INTEGRATED WASTE MANAGEMENT – M. Rose:

- 34) **Consider Request For Proposal (RFP) to perform a Potentially Responsible Party and Insurance Archaeology research for the New Idria Mercury Mine.**

Mandy Rose, Integrated Waste Management Director, provided background information explaining that San Benito County was awarded a Brownfields Assessment Grant in the amount of \$200,000 to assist in the evaluation of pollution at the New Idria Mercury Mine. Ms. Rose explained that because the county does not own the property and does not intend to own the property we have had to re-format how we use these funds. A work plan has been prepared that was approved by the EPA and consists of two parts. This was put together specifically to keep the county from any liability with this site. Today is the first part and that is the request for a proposal to hire a firm to search out the potentially responsible party.

Discussion was held.

Kate Woods, New Idria resident, came forward stating she lives 1/8 mile below the watershed and on behalf of her family thanked and commended the Board for continuing toward a plan for the clean-up of the acid mine drainage that pours throughout the county and throughout state from the abandoned

New Idria mercury mines. Ms. Woods brought in a jar of water from the San Carlos Creek to show the Board and public. Ms. Woods asked the Board to stay the course.

BOARD ACTION: *Upon motion made by Supervisor Monaco and seconded by Supervisor De La Cruz approved the Request for Proposal to perform a Potentially Responsible Party and Insurance Archeology research for the New Idria Mercury Mine. (Unanimous) File #142*

HEALTH & HUMAN SERVICES AGENCY – K. Flores:

35) **Regarding West Nile Virus Task Force update, consider the following:**

- a) **Receive the West Nile Virus Task Force report; and**
- b) **Authorize the Agricultural Commissioner to enter into the Cooperative Agreement with the State Department of Health Services as the local vector control agency at the time of funding availability and subject to the agreement's approval as to legal form by County Counsel; and**
- c) **Provide direction with regard to future West Nile Virus Task Force efforts.**

Received report given by Kathy Flores, Interim Director Health & Human Services Agency, on behalf of the West Nile Virus Task Force and their ongoing efforts.

Ms. Flores reported that two County employees have passed the State certification exam noting that the County must designate a department to serve as the local vector control agency and sign a cooperative agreement with the State Department of Health before we can utilize one of these employees to oversee a West Nile Virus larvicide abatement program. Also, funds must first be secured in order that such a program can be implemented.

Further, Ms. Flores reported that there were two dead birds in the county but no positive results have been found to date.

The Board provided comments and encouraged the City of Hollister to send representatives to the West Nile Virus Task Force meetings.

BOARD ACTION: *Upon motion made by Supervisor Botelho and seconded by Supervisor Loe authorized the Agricultural Commissioner to enter into the Cooperative Agreement with the State Department of Health Services as the local vector control agency at the time of funding availability and subject to the agreement's approval as to legal form by County Counsel; and, directed staff to increase efforts to get the City of Hollister involved and to get the news media to publish information about West Nile Virus and the Task Force efforts. (Unanimous) File #130*

DEPARTMENT OF EMERGENCY SERVICES – M. Riopel:

36) **Receive informational report on Wireless 911 calls to a Public Safety Answer Point (PSAP).**

Margie Riopel, Director of Emergency Services, introduced Tamara Becker, Communications Manager for 911 who provided an update for this ongoing project. Ms. Becker reported that Assembly Bill 1263 passed in 2000 allows wireless 911 calls, which are currently routed to CHP, to route to a local Public Safety Answer Point (PSAP) if property equipped. The San Benito County Communications department is currently in the process of implementing Wireless 911 technology.

BOARD ACTION: *Received report. File #75.5*

PLANNING & BUILDING INSPECTION – M. Bethke:

37) **Regarding the reorganization of the Planning and Building Department, consider the following:**

- a) **Receive Report and review requested changes to staffing; and**
- b) **Approve new position of Principle Planner to replace the position of Assistant Director of Planning;**
- c) **Adopt Principle Planner job description; and**
- d) **Approve organizational change beginning July 1, 2005.**

Michael Bethke, Interim Director of Planning, reported that what he is trying to do is essentially identify the service delivery options of the Building and Planning Department for the citizens of this county. Mr. Bethke stated that it appears to be a little top heavy and the proposed re-organization will essentially provide more worker bees to manage the workload that he feels the county needs and it would actually realize a savings for the county.

Discussion was held and questions answered.

BOARD ACTION: *Upon motion made by Supervisor Marcus and seconded by Supervisor De La Cruz approved new position of Principal Planner to replace the position of Assistant Director of Planning; adopted Principal Planner job description and approved organizational change beginning Fiscal Year July 1, 2005.*

Supervisor Marcus amended his motion to include approval of re-classifications as recommended Supervisor De La Cruz concurred.

Supervisor Loe felt that the proposed re-classifications should wait to be considered during budget hearings to keep it consistent with the rest of the departments.

The Chair called for the question.

The motion passed 4-1 with Supervisor Loe voting no. File #790

ADMINISTRATIVE BUSINESS:

38) **Consider ratification of appointment of Director of Health and Human Services effective July 1, 2005 and adjust the salary to include the Department Head increase to the salary range table.**

Acting County Administrative Officer Susan Lyons reported that after a comprehensive recruitment process Kathy Flores has been appointed as the most outstanding and qualified candidate for the position (pending the Board's ratification) for the Health and Human Services Agency Director.

The Board unanimously recognized Ms. Flores as the outstanding candidate.

Supervisor De La Cruz questioned if the department head gets an increase then would the assistant get an increase.

Ms. Lyons answered that would be discussed by the County Administrative Officer and the department head.

BOARD ACTION: *Upon motion made by Supervisor Botelho and seconded by Supervisor De La Cruz ratified the appointment of the Director of Health and Human Services effective July 1, 2005 and adjust the salary to include the department head increase to the salary range table. (Unanimous) File #130*

39) **Consider acceptance of Proposed Budget for Fiscal Year 2005/2006 as expenditure authority until approval of the final budget at budget hearings and consider related recommended policies. (Acting CAO)**

Acting County Administrative Officer Susan Lyons presented the Proposed Budget for Fiscal Year 2005/2006 that will be reviewed during budget hearings to be held August 1 – 3 2005 at which time we will consider a final budget. Ms. Lyons stated that this is a difficult year with tight budget constraints and several changes in the CAO's position over the past year and we have a new Board seated mid-year and we have accomplished a great deal in spite of that.

Ms. Lyons recommended that the Board approve the ten (10) recommendations as listed in the Board's staff report.

Discussion was held and it was determined that Item 10 re: eliminating the Auditor's claims paid regularly appearing on the Board of Supervisor's agenda should be studied further until determination was made how the Board would receive the claims by different means than the Board's agenda.

BOARD ACTION: *Upon motion made by Supervisor De La Cruz and seconded by Supervisor Botelho accepted the FY 2005/2006 Proposed Budget as expenditure authority until adopted as the Final Budget at budget hearings with such changes, additions or deletions as approved by the Board of Supervisors and adopted the following related policies (Items 1 through 9) as recommended in the staff report as follows:*

1. *Accept the FY 2005-2006 Proposed Budget as expenditure authority until adopted as the Final Budget at budget hearings with such changes, additions or deletions as approved by your Board.*
2. *Set budget hearings for August 1, 2 and 3 of the year 2005 to publicly review and adopt the FY 2005-2006 Proposed budget as the Final Budget for FY 2005-2006 and direct the Clerk of the Board to post and publish public notice of the hearings as required by law.*

3. *Adopt a fixed asset rate of \$3000 for all County departments wherein any fixed asset purchase that exceeds \$3000 requires Board approval prior to point of purchase.*
4. *Withhold authorization for all new information technology equipment, such as computer hardware and software, recommended in the FY 2005-2006 Proposed Budget pending completion of budget hearings.*
5. *Upon completion of budget hearings, require all departments to purchase new information technology equipment, such as computer hardware and software, through authorization of the County Administrative Office in order to establish uniform information technology systems countywide.*
6. *Withhold authorization for all new positions and fixed assets recommended in the FY 2005-2006 Proposed Budget pending completion of budget hearings.*
7. *Extend the hiring freeze for all vacant positions indefinitely (under parameters as adopted on March 25, 2003) until rescinded or amended by your Board.*
8. *Set General Fund Contingencies to departments at \$1.0 million pending any changes made by your Board during budget hearings, with \$250,000 set aside for employee vacation and leave payouts.*
9. *Set General Fund Contributions to departments to the limit of the amount required to balance the department budget, notwithstanding balances due are less than the budgeted amount approved by your Board.*

(Unanimous) File #865

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:

40) **Conference with Legal Counsel - Anticipated Litigation**

- a) Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9. Number of cases: **2**

No reportable action. File #235

41) **Conference with Legal Counsel – Existing Litigation**

Authority: California Government Code Section 54956.9(a)

- a) Fancher & Roybal v. County of San Benito

No reportable action.

- b) Martinez v. County of San Benito, et al.

No reportable action.

- c) Fort v. County of San Benito

No reportable action.

- d) Stafford-Pelt v. State of California

No reportable action.

- e) De La Cruz v. County of San Benito

No reportable action. File #235

42) **Conference with Labor Negotiator**

Authority: California Government Code Section 54957.6

Agency Designated Representative: Megan Booth, Interim HR Director

Employee Organization: General Unit – SEIU, Local 817

No reportable action. File #235

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

- 43) **Held a public hearing to consider an ordinance re: Zone Change 03-135 - a request to change the zoning designation of a 33.84-acre parcel from AP (Agricultural Productive) to AP-PUD (Agricultural Productive – Planned Unit Development) in order to accommodate a 6-lot residential subdivision and 25-acres of agricultural open space preserve. Applicant: Tina Bertuccio. Location: Union Road and Summerset Drive. Zoning: AP (Agricultural Productive). Environmental Review: Mitigated Negative Declaration.**

Byron Turner, Associate Planner, presented the staff report noting that this was a zone change (03-135). On May 5, 2005 the Planning Commission adopted resolutions recommending that the Board of Supervisors approve a Mitigated Negative Declaration and a change of zone from Agricultural Productive (AP) to AP Planned Unit Development (AP-PUD) for an approximately 31-acre parcel located on Summerset Drive at Union Road.

The purpose of the zone change would be to facilitate the placement of a Planned Unit Development on the site that would consist of five (5) one-acre parcels and a caretaker residence also on a 26-acre Agricultural Open Space parcel.

Mr. Turner stated that this project was originally heard by the Planning Commission in November 2004 and it was continued at that time so it could be re-designed to include a building site on the agricultural parcel. It was the Planning Commission's wish that we get a caretaker on that site in order to maintain the agriculture. It was then heard again at the December 1, 2004 Planning Commission meeting and at that hearing the Planning Commission directed staff to abandon the zone change and return with a subdivision which reflected 5-acre parcels which was permissible under the AP zoning; however, it was not consistent with the General Plan and the protection of Class 1 soils. Mr. Turner reported that staff returned to the Planning Commission early in 2005 with the 5-acre option as well as several other alternatives. The Planning Commission, at that meeting, determined that they did want to see the zone change re-evaluated and the original configuration of the cluster development pursued. This is the configuration that is before the Board today with the zone change and the zone change would be required before we can approve any map for the subdivision.

Mr. Turner ended by stating that it was recommended that the Board hold a public hearing, approve and adopt the Mitigated Declaration and adopt the ordinance approving the zone change.

Supervisor De La Cruz referred to a letter submitted by Bill and Mary Damm dated June 23, 2005. Copies were made for review by the Board and affected parties.

Chairman Monaco opened the public hearing.

Roger Grimsley, Grimsley & Associates, Inc., the Project Engineer for Tina Bertuccio and the late Paul Bertuccio came forward and provided the history of this property and how they reached this point. Mr. Grimsley stated that if the zone change is approved then the Board of Supervisors will recommend back to the Planning Commission this project so they can place the appropriate Conditions of Approval on the project plan.

Mr. Grimsley answered questions by the Board regarding the plan for open space, the access roads and the right of way and the possibility of an alternate route for an access road referring to the map as submitted.

Adam Damm, Summerset Drive resident, came forward. Mr. Damm stated this project mostly affects his parcel that would border the cluster housing. Mr. Damm stated he was not against development but his main concern is that this project has been his Mom's and Dad's baby for 20 years now and it has taken a lot of hard work to reach this point and there is a lot of sentimental value and attachment to this property. Mr. Damm stated he was not totally against the cluster development but he was very concerned about the road and where it will be placed and the potential to take away some of their farmland.

Bill Damm, Summerset Drive resident, came forward. Mr. Damm noted that there were two judgments made on this land – one at the end of the term of the last Planning Commission which ruled in favor of the 5-acre parcel and then it came back when a new Planning Commission was seated and the new Commission decided to change it – so there is really two sides here and not 100% recommendation from anybody. Mr. Damm spoke in favor of preserving farmland but he always visualized the PUD as a situation where there was more acreage (such as 500 acres) where you would choose to use 50 of those

acres to put in houses and preserve 450 of those acres that you would farm. Mr. Damm did not feel that this PUD in this particular circumstance was a good fit.

Mr. Damm stated he was mostly disturbed about the road right of way issue and where it may be placed and he felt the secondary access road should be totally abandoned. Mr. Damm stated that this could affect his family's income.

Mary Damm, Summerset Drive, came forward. Mrs. Damm stated that she believed the current zoning should be kept the way it is and gave reasons as described in her letter to the Board of Supervisors. Mrs. Damm was concerned about the fact that there are no guarantees and felt that if the zoning were kept the same at 5-acres it would do more to preserve prime ag land than a PUD. Mrs. Damm felt that the applicant should have to follow the 5-acre zoning just as she has had to follow it.

Mrs. Damm express concern about the secondary road issue which would create a problem if placed in the middle of a field. Mrs. Damm felt there were too many unanswered questions.

Lengthy discussion ensued and the issues of the right of way, the 5-acre parcel issue, open space, the need for a secondary access, preserving agricultural land and the prospect of establishing a land trust to preserve open space.

Jim Dellamonica, California Department of Forestry, addressed the issue of the need for a secondary access stating that if the fire department was assured that this was going to stay exactly the way they are describing right now (4 parcels on this cul-de-sac) then he would have no problem with the secondary access and could live with the cul-de-sac. If they start to get a lot of density in there then it would need the secondary access.

Arman Nazemi, Assistant Public Works Director, stated that they would agree to a re-alignment for the secondary access if the Board of Supervisors wanted to pursue that option.

Further discussion was held regarding the secondary access and moving the right of way or abandoning it.

The Chairman closed the public hearing.

Supervisor Botelho suggested that the 26 acres be transferred to a land trust to preserve agricultural land which would be a more viable means than placing it under the Land Conservation Act and that may alleviate the concerns of the Damms of having it divided into 1-acre parcels in the future. Supervisor Botelho supported eliminating the secondary access all together.

Supervisor Loe did not feel that 25 acres was what a PUD is all about and would support that land going into a land trust and that would be the only way she would support this zone change.

Supervisor De La Cruz stated he had a big issue with the right of way road because it takes away other people's right to do whatever they want with their property; however, that concern has been mitigated with the discussion and he was now comfortable with approving PUD with the lot division.

Supervisor Marcus concurred with guaranteeing that the remaining 25 acres be set in conservation and placing it into either a land trust or in a Land Conservation Act contract to guarantee preserving agricultural land. Supervisor Marcus stated that to preserve the county's interest by giving up the right of way was a legal concern because the property could be sold at any time and he believed that we can't approve this map as it is drawn right now if the right of way is going to be abandoned or given up. Supervisor Marcus felt that the right of way could be re-routed.

Chairman Monaco agreed with Supervisor's Loe assessment of the 25 acre parcel which is now in an apricot orchard. If there is not a guarantee that this is put into some kind of land trust or something like it then he could not support this zone change. Supervisor Monaco supported the re-routing of the secondary access.

Supervisor Botelho made a motion to send this back to the Planning Commission and to add two conditions for the approval and adoption of the Mitigated Negative Declaration and the approval of the Zone Change 03-135; 1) 25 acres goes into a land trust; and 2) The secondary access not be considered or developed at this time.

Chairman Monaco asked for clarification if this meant the existing right of way would not be developed or that it would be re-routed as discussed.

Supervisor Botelho stated that the existing right of way through the Damm's property has nothing to do with it.

Supervisor De La Cruz and Supervisor Marcus stated that it has a lot to with it.

Supervisor Botelho said they were talking about the secondary access and he did not think we even need the secondary access.

County Counsel Claude Biddle stated that this was not a forum for abandoning property noting that would be a special proceeding which goes through Streets and Highways Code procedures. This is a mitigation measure that the Board is addressing along with a Negative Declaration. Mr. Biddle stated the Board was getting outside of the scope of the hearing.

Supervisor Botelho stated then that the secondary access remains non-improved at this point.

Chairman Monaco stated that it would leave it open for the future for the county to come in and he would prefer that we look at re-routing that secondary access as a condition.

Supervisor Botelho amended his motion to have the secondary access re-routed. Supervisor De La Cruz seconded the motion.

Chairman Monaco clarified the motion stating that the Board of Supervisors is approving the PUD with conditions that the 25 acres be placed in a land trust and that the secondary access road as presently shown is re-routed to prevent it from being bisected.

Supervisor De La Cruz questioned the procedure asking if we can amend the Mitigated Declaration or does that have to go back to the Planning Commission.

Interim Planning Director Michael Bethke stated that the suggestions made by the Board today are actually superior mitigation measures to the minimum mitigation measures that were presented and circulated already.

Supervisor Botelho clarified the motion that the Mitigated Declaration is accepted.

The Clerk asked for clarification that the proposed ordinance was also being adopted.

Chairman Monaco answered yes.

BOARD ACTION: *Upon motion made by Supervisor Botelho and seconded by Supervisor De La Cruz directed Planning Commission to add to two conditions of approval as follows: 1) 25 acres must be placed in a land trust; and 2) Secondary access must be re-routed; adopted the Mitigated Negative Declaration and adopted **Ordinance No. 789** approving Zone Change No. 03-135. (Unanimous) File #790.2*

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: Don Marcus, Jaime De La Cruz, Anthony Botelho, Pat Loe,
Reb Monaco
NOES: SUPERVISORS: None
ABSENT: SUPERVISORS: None

There being no further business the Board adjourned to its next regularly scheduled meeting on July 5, 2005 at 9:30 a.m.

REB MONACO, CHAIRMAN

San Benito County Board of Supervisors

ATTEST:

John R. Hodges
Clerk of the Board

BY:

Linda Churchill
Senior Board Clerk