



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 AGENDA DECEMBER 6, 2005 ACTION MINUTES

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 County Administrative Officer Susan Thompson, County Counsel Claude Biddle and Senior Board Clerk Linda Churchill (morning session) and Assistant Board Clerk Sally Navarez (afternoon session). Chairman Monaco called the meeting to order at 9:30 a.m.

9:30 a.m. CALL TO ORDER:

- a) Pledge of Allegiance.
- b) *Acknowledged Certificate of Posting.*
- c) **Public Comment:** Robert Scattini, came forward, stating that he was elected Mayor of the City of Hollister at the City Council meeting last night, December 5, 2005. Mr. Scattini said that he has been a member of the Governance Committee the last two years and he wanted to assure the Board of Supervisors that the City will be working with them on all of the issues. Mr. Scattini stated there are gang problems, water problems and the like and he would make sure that the City and County will work together as a team to solve these issues.

Kathleen Ruiz, Chair of the Homeless Task Force, came forward stating that they had everything ready to go and there is only a day's work in the building to be done in order to get the homeless in the shelter. Ms. Ruiz stated that the contractor was months behind and is being fined \$500 per day but that doesn't seem to get the work done. Ms. Ruiz noted that Kathy Flores, HHSA Executive Director, and Don Anderson of HHSA/CSWD would be meeting with the contractor and she urged the Board to do whatever they could to help get this expedited and the get homeless people out of the cold.

Peggy Kingman, Homeless Task Force member, came forward also stating they have done everything they could possibly do to get this project off the ground and ready and they are already a week late in their plans to open and when they go out to the site there are no workmen working. Mrs. Kingman said they did not understand why this has been dragging on so long and would appreciate anything the Board could do to help.

Joe Thompson, Tres Pinos resident, came forward stating that as the debate unravels or goes forward about transportation infrastructure improvements for the Central California Coast Region he thinks that our County is handicapping itself by the failure to have a policy advisory committee. Mr. Thompson felt it would be an improvement for San Benito County to have such a committee because we need to have more than the advice we get from the Technical Advisory Committee but we have no committee from the private sector giving advice to Council

of Governments (COG). Mr. Thompson recommended at the very least there should be a task force or a subcommittee of the Board of Supervisors to help COG with this tremendous problem of how to get enough money and what to spend the money on for transportation infrastructure improvements and he urged the Board to get it done as soon as possible.

d) **Department Head Announcements:** Susan Thompson, County Administrative Officer, reported that they have now identified a final candidate for the Planning Director position and she will have this individual meet with each of the Board member later this week and if everything goes well between now and the next couple of days she should be able to bring his name forward for confirmation on December 20, 2005. Ms. Thompson further reported that the Public Works Director recruitment is now open and will be closed on December 28, 2005 and we've begun some very intensive recruitment with our contracted recruiter and she has high hopes for this recruitment as well.

Sheriff Curtis Hill came forward reporting that last Thursday, December 1, 2005 he was lucky enough to be able to have Eddie Escamilla accept the new Lieutenant position for the Corrections Division of the Sheriff's office. Sheriff Hill stated he was very happy to have Lieutenant Escamilla in this position.

e) **Board Announcements, Introductions and Presentations:** Supervisor Botelho reported that he attended the local Gang Task Force meeting last week and he found it very informative noting this continues to be a big issue with him. Supervisor Botelho was very pleased to hear that in the near future this Task Force would be asking the Board to appoint someone from the Board to sit on this committee. Supervisor Botelho stated that we have to get more aggressive with this issue and the Board is going to bring this issue forward for more public discussion.

Supervisor Loe asked if there was anyway possible, since she has been working on the Homeless Task Force all of this time, that she could be appointed to work with Kathy Flores to get the matter resolved as to getting the shelter completed for the homeless.

BOARD ACTION: *Chairman Monaco made a motion to appoint Supervisor Loe to represent the Board of Supervisors on the Homeless Task Force. Supervisor Botelho seconded the motion. (Unanimous)*

Supervisor De La Cruz congratulated Mr. Scattini on being elected Mayor of the City of Hollister and he hoped that he helps to bring forward the relationship between the County and City, and although its not there presently he knows the Governance Committee members (Loe and Marcus) are working towards building that relationship.

Supervisor Marcus echoed Supervisor Botelho in mentioning the gang intervention and the County's participation and what is happening to San Benito County and other counties across the nation with gang involvement. Supervisor Marcus said he and Supervisor Botelho had a discussion with the District Attorney regarding the County's position and also talked with Sheriff Hill about bring the county forward and noted that they will be working with Tim Foley, Superintendent of Schools and the City to take a strong stance on this rising problem.

Supervisor Marcus reported that he has met with the Administrative staff and Jeff Row of the County Fire Department and they are working towards a rural fire sprinkler policy in order to get some consistency on fire prevention.

Supervisor Marcus further reported that he had met with Interim Planning Director Michael Bethke and Administration on our proposed One Stop Center at the Southside Road Hazel Hawkins Convalescent Home and they are working towards that happening.

Chairman Monaco congratulated Mayor Scattini and stated that the Board of Supervisors looks forward to working with the Hollister City Council. Specifically, Chairman Monaco noted that he was happy to announce that the Board of Supervisors has taken an active role in working with the Gang Task Force and the gang problem. This is a countywide

problem and he has noticed tagging all over the county that is occurring making it obvious that this is not just a city problem but a county and statewide problem.

Chairman Monaco reported that he had attended the annual CSAC conference last week in San Jose, along with County Administrative Officer Susan Thompson and Senior Board Clerk Linda Churchill and we were privileged to hear the Governor speak noting that the conference was a good experience.

CONSENT AGENDA:

Upon motion made by Supervisor De La Cruz and seconded by Supervisor Marcus, approved Consent Agenda Items 1 through 11 with the exception of Items 3, 7, 8, and 9 noting that Supervisor Botelho abstained from Items 4 and 5. (Unanimous)

ASSESSOR – T. Slavich:

- 1) Regarding Land Conservation Act contracts, consider the following:
 - a) **Adopted Resolution No. 2005-114** establishing Ag Preserve 05-01 – Brian & Cynthia Holthouse and **authorized** Chair to sign said contract and resolution
 - b) **Adopted Resolution No. 2005-115** establishing Ag Preserve 05-02 – John & Jae Eade and **authorized** Chair to sign said contract and resolution
 - c) **Adopted Resolution No. 2005-116** establishing Ag Preserve 05-03 – Humbolt West, Inc. / John & Jae Eade and **authorized** Chair to sign said contract and resolution. *File #7*

COMMUNITY SERVICES & WORKFORCE DEVELOPMENT – K. Flores:

- 2) **Adopted Resolution No. 2005-117** authorizing the CSWD Executive Director to apply for and sign Emergency Housing and Assistance Program (EHAP) grant, any grant amendments, and all documents pertaining to said grant, in an amount not to exceed \$14,704. *File #939*
- 3) **Regarding sub recipient contract for the 2005 Community Development Block Grant (CDBG) between the County and the Homeless Task Force, consider the following:**
 - a) **Receive and approve the H&HSA Director's report and allow the sub-recipient agreement with the Homeless Task Force for the period of December 6, 2005 through June 30, 2007 in the amount of \$139,500; and**
 - b) **Authorize signing authority for the H&HSA Director after the County receives the fully executed 2005 CDBG contract from the State Department of Housing and Community Development.**

Kathy Flores, HHSA Executive Director, came forward noting that this also gave her the opportunity to provide an update on the construction project at the Unaccompanied Migrant Labor Camp. Ms. Flores stated that with regards to this item she would like to continue it to the December 20, 2005 meeting due to not receiving written approval from the State to begin incurring program costs.

Ms. Flores further commented that regarding the Camp project that was referred to in the Public Comment session of this morning's meeting, she and Don Anderson will be meeting with the contractor late this morning. There has been a delay with the contractor and she has conferred with County Counsel as to options to speeding things up or to terminating the relationship. Ms. Flores indicated that the project is very close to being completed.

Supervisor Loe asked if this meant that the homeless shelter can't be open now until after the Board meeting of December 20, 2005.

Ms. Flores explained that the county can enter into a contract with the Homeless Task Force once we have written approval that we, the county, can expend funds from the grant for the shelter program and we do not have that yet.

Discussion was held as to how to expedite this process

BOARD ACTION: Upon motion made by Supervisor Loe and seconded by Supervisor Marcus, authorized the HHS Executive Director to expend funds when the written confirmation is received from the State. (4-1 Vote. Botelho abstained)

Discussion was held regarding the plans for the homeless shelter.

Kathleen Ruiz, Chair of the Homeless Task Force, reported that they have already contacted the Mental Health Department, the Employment Office, medical services, attorneys, job training personnel and the Substance Abuse Department will come out in the evening and talk to the homeless in the shelter about the services that are available in our County. Ms. Ruiz stated that they will be trying to give these people all of the tools that we possibly can to help them get on their feet.

Chairman Monaco directed staff to agendize a status report regarding this item for the meeting of December 20, 2005. *File #939*

4) **Approved** change to the lease of the Southside Road Migrant Labor Camp, unaccompanied adult section, allowing the Farm Labor Association to sublease to the Homeless Task Force; and **authorized** the Executive Director of H&HSA/CSWD to sign said change on behalf of the County. (4-1 vote. Botelho abstained) *File #750*

5) **Approved** and **received** H&HSA Director's report and **accepted** sublease contract, as written, between the Farm Labor Association and the Homeless Task Force and **authorized** its use. (4-1 vote. Botelho abstained) *File #750*

COUNTY ADMINISTRATIVE OFFICE:

6) **Approved** agreement extension with the Department of General Services and SBC/MCI (formerly PacBell) for CalNet communication services for the time period of December 3, 2005 through December 3, 2008. (Mgmt Analyst) *File #119*

7) **Consider salary adjustment for the Public Health Officer and approve amendment to the Class Title and Pay Plan. (CAO)**

Supervisor Loe asked how this item was budgeted and if it was an increase.

County Administrative Officer Susan Thompson explained that this means that there are funds in her budget to allow us to do this without adding any additional funds noting this was a large budget and there is always a turnover and dollar savings and it was approximately \$4000.

Supervisor Loe asked if it wouldn't be better to update the job description before going forward to increase the hourly rate.

Ms. Thompson said that she would like to have done it that way but when the inequity came to her attention it was a great concern and she is moving it forward for expeditious purposes. A new job description will be forthcoming but will not change what the Health Officer is currently doing. It will just codify.

Supervisor Loe asked about the status of the Human Resources Director recruitment.

Ms. Thompson answered that the recruitment has been completed and we received two qualified candidates and because it is a Director's recruitment the review of the applications did not produce a candidate so we are now re-grouping and possibly doing it in a different way.

BOARD ACTION: Upon motion made by Supervisor Loe and seconded by Supervisor Botelho approved a salary of \$75.00 per hour for the Public Health Officer position and approved amendment to the Class tile and Pay Plan. (Unanimous) File #420

- 8) **Consider amendment to agreement with Waters-Oldani Executive Recruitment, A Division of the Waters Consulting Group, Inc. for Executive Recruitment for County Counsel in an amount not to exceed \$16,500 plus expenses for the period of September 6, 2005 through June 30, 2006. (CAO)**

Supervisor Botelho asked for a short explanation as to how the recruitment process has been working under a prior contract and what the satisfaction level is.

CAO Susan Thompson explained that thus far Waters-Oldani has help with the recruitment and background check and personnel profile on the Planning Director candidate. Ms. Thompson said that she has been very satisfied noting that we have pushed them pretty hard in terms of time frame.

Assistant CAO Susan Lyons stated that she has been very satisfied noting that they have been very responsive and have responded to all of our requests and the profiling is an outstanding tool for us for evaluating the candidates. Ms. Lyons also stated that Waters-Oldani offered a \$3,000 savings.

Supervisor Marcus asked why Avery & Associates were less and not acceptable.

Ms. Thompson answered that the conversation with Avery & Associates did not come with a very positive response and they didn't give us anything in writing.

BOARD ACTION: Upon motion made by Supervisor Botelho and seconded by Supervisor Marcus, approved amendment to the contract with Waters-Oldani Executive Recruitment as recommended. (Unanimous) File #160

PUBLIC WORKS:

- 9) **Consider agreement with Quincy Engineering, Inc. for continued design/engineering/project management services re: bridge replacement on Cienega and Lone Tree Roads with a term of December 1, 2005 through June 30, 2007 in an amount not to exceed \$444,740 which includes any monies paid prior to December 1, 2005.**

Supervisor Botelho asked if this was just an extension of these contracts.

Assistant Public Works Director Arman Nazemi explained that due to Quincy Engineering being called to work after a Southern California emergency they were not able to get the environmental work done last year and therefore the contract expired. Basically this is a time extension at no additional cost.

Supervisor Botelho asked when these bridges would be constructed.

Mr. Nazemi answered that the county is hoping to get these bridges constructed next summer.

Supervisor Botelho asked if there was a priority as to which one would be built first stating that he would like to see Cienega Road bridge constructed first.

Mr. Nazemi answered that there was no priority and it is a matter of which gets done first and gets through the federal requirements such as Fish and Game, Corp of Engineers, etc.

Supervisor Marcus asked about the possibility that Lone Tree Road Bridge can be historically built stating that he is adamantly opposed to a big bridge in that spot.

Discussion was held regarding how and if that could be accomplished.

Chairman Monaco stated that he would meet with Supervisor Marcus and Mr. Nazemi regarding this project.

Supervisor De La Cruz expressed concern that if we were deny the project at Lone Tree Road right now then who would be responsible down the road for its maintenance noting it would be the taxpayers.

BOARD ACTION: Upon motion made by Supervisor Marcus and seconded by Supervisor De La Cruz, approved agreement with Quincy Engineering, Inc. as recommended. (Unanimous) File #105

- 10) **Approved** agreement with Hollister Tremors Youth Soccer League for use of Veterans Memorial Park soccer fields with a contract term of September 1, 2005 through August 31, 2006. File #127

SAN BENITO COUNTY LAW LIBRARY BOARD OF TRUSTEES – J. Zlotkin:

- 11) **Accepted** annual report from the San Benito County Law Library Board of Trustees and adopted **Resolution No. 2005-119** increasing Law Library fees collected by the Superior Court. File #595

REGULAR AGENDA:

Chairman Monaco announced that at this time they were going to hear Item 15 due to the presenters having to be at the San Jose Airport by 1:00 p.m.

SHERIFF – C. Hill:

- 15) **Informational report re: The Facility Group findings following the space needs assessment and master plan for County Criminal Justice agencies and receive report from CSAC Finance Corporation regarding financing options for such a project.**

Sheriff Curtis Hill provided background information that this project first came before the Board of Supervisors in October 2004 and at that time the Board approved the request to solicit proposals for a 20-year needs assessment and master plan for county criminal justice agencies. On January 11, 2005 the Board approved the submitted proposal of The Facility Program Management Group, Inc. in the amount of \$30,008. Sheriff Hill noted that today this was an informational item only.

Sheriff Hill referred to the documents provided in the Board packets prepared by The Facility Group which included the Final Report, Justice Facilities Master Plan; the Power Point Presentation for today's presentation and lastly the Power Point presentation titled The Financing Tools to Implement the Master Plan.

Sheriff Hill introduced Norma Lammers, Executive Director of the CSAC Finance Corporation and James Handle, Program Manager, CSAC California Statewide Community Development Authority who were present to report on the financing options portion of this proposed project.

Sheriff Hill introduced Peter Rich, Vice President of The Facility Group who made a Power Point presentation of his findings pertaining to this proposed project.

A lengthy question and answer period ensued.

Robert Scoles, Aromas resident, came forward. Mr. Scoles stated that we need to look to the future and go ahead with the building and use the facilities for other things right now and then be able to expand. Mr. Scoles stated that he worked 20 years in the jail in Santa Cruz County and he has seen what happens if you don't build with expansion in mind. Mr. Scoles supports this project.

Mr. Handle provided a Power Point presentation on the types of possible financing including General Obligation Bonds, Certificates of Participation and Tax-Exempt Commercial Paper Lease.

Questions and answer period ensued.

Web Winans, Lovers Lane resident, came forward. Mr. Winans said he has been following very carefully the fact that we are running out of space in the jail and he has talked with the Sheriff many times about it. Mr. Winans stated that the time involved should be looked at and also he felt that the County owned properties that they should think about getting rid of and use that money to apply towards this cost. Mr. Winans stated that this project should be looked into carefully.

Norma Lammers of CSAC came forward and brought attention to the blue folder that was included in the Board's packet stating that basically the CSAC Finance Corporation, through a number of joint powers authorities that it has created, has created quite a few investment, debt and purchasing types of opportunities.

No action taken. File #110

The Board adjourned for a short break at 11:30 a.m. and reconvened at 11:35 a.m.

Chairman Monaco announced that the Board would be breaking at noon and reconvening at 1:00 p.m. to continue with the Regular Agenda Items.

Chairman Monaco stated that Item 17 would be heard at this time in order to give people who have been waiting the opportunity to speak to this item.

17) Consider a community-wide library services visioning workshop. (ACAO)

County Administrative Officer Susan Thompson provided background information stating that there seems to be a lot of interest from several different factions in the community right now to talk about some more global solutions to improving our libraries and for the county as a whole. Ms. Thompson felt it was good time for all of us to sit down together and have some good public discussion and visioning about what we would like our library to look like and what our partnerships might provide us. Ms. Thompson said she primarily brought this forward to ask the Board to consider providing instruction to put together a visioning process and bring in all stakeholders.

Mary Schneider, President of the Friends of the San Benito County Free Library came forward with a report regarding the 2006 Library Bond Act. Ms. Schneider stated that the legislature has placed a \$600 million statewide library bond on the June 2006 ballot that would provide a 35% local, 65% state, match in funding for grant recipients. Ms. Schneider said we are in trouble because of our population growth combined with local budget cuts and we are left with increased demand for services and little space in which to provide them.

Ms. Schneider provided a handout titled California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2006 along with a handout entitled Lessons Learned from Proposition 14. Ms. Schneider feels that an Interim Librarian is hesitant by nature to take on a long term project or community leadership so she is looking to the Board of Supervisors for that kind of vision and that kind of leadership.

Chairman Monaco appointed a sub-committee of the Board of Supervisors consisting of Supervisors De La Cruz and Loe to begin working with staff to facilitate the Board's interaction with various groups concerning our library projects.

Discussion was held with regards to moving forward with a long-term plan without a permanent librarian.

Ms. Schneider encouraged the Board to endorse the Proposition for the library construction and renovation that will be on the ballot in 2006. Ms. Schneider offered to meet with the sub-committee because she felt that there are technical aspects specific to libraries.

Dick Fish, Vice President, Friends of the Library felt that this was the cart before the horse and he thinks a good librarian would love to have the chance to be in the very beginning of the planning process and would want to have input in the vision.

Web Winans, Lovers Lane resident, came forward stating that he lives in the country and he doesn't really find much use for the library and it doesn't seem to very handy. Mr. Winans feels that the library belongs more to the City than to the county and he felt the City should take over on the library or turn the library over to the school system. Mr. Winans said now we have the internet and the nature of the library is changing.

Harriet Brim, Secretary/Treasurer, Friends of the Library, stated she understood that the Librarian hiring process should go forth and be accomplished within a year from the time of the resignation of the previous Librarian. Ms. Brim urged the Board to hire the librarian first and allow the new librarian to be involved in the visioning process.

Supervisor Botelho clarified that the plan is to not hire a librarian until this visionary process is complete.

BOARD ACTIONS: Upon motion made by Supervisor Loe and seconded by Supervisor De La Cruz approved a Community-wide Library Services Visioning workshop with the Board of Supervisors and the community to be held in January 2006. (Unanimous)

Supervisor Botelho stated that he would support this action with the understanding that the sub-committee will look into ways into partnering up with Gavilan College and the City of Hollister as far as the visionary process.

Upon motion made by Supervisor Loe and seconded by Supervisor De La Cruz directed staff to come back on the December 20, 2005 meeting with costs pertaining to a facilitator. (Unanimous) File #80

The Board adjourned for lunch at 12:05 p.m. and reconvened at 1:00 p.m.

SITTING AS THE COUNTY BOARD OF EQUALIZATION:

The Board adjourned as the Board of Supervisors and reconvened as the County Board of Equalization re:

12) Consider the minutes of Assessment Appeal Hearings held on November 8, 2005.

BOARD ACTION: Upon motion made by Supervisor De La Cruz and seconded by Supervisor Loe, approved the minutes of Assessment Appeal Hearings held on November 8, 2005. (4-0 vote. Botelho absent during this item.)

The Board adjourned as the County Board of Equalization and reconvened as the Board of Supervisors re:

PUBLIC WORKS:

13) Proposed resolution approving conveyance agreement in lieu of condemnation; accept Quit Claim Deed and Grant of Easement for Nash Road to purchase real property right of way; authorize payment and authorize Chair to sign. (Res. No. 2005-118)

Assistant Public Works Director Arman Nazemi provided background information indicating that the County must acquire certain property rights to private property located on Nash Road for purposes of road right of way and associated easements related to construction of Nash Road Bridge at San Benito River Crossing. Mr. Nazemi reported that staff and County Counsel have been involved in extended negotiations to acquire the last portion of the

necessary right-of way for the Nash Road Bridge project from Sandman, Inc. and the documents are submitted for approval.

Supervisor Marcus expressed concern with the ongoing litigation with Sandman and also with the possibility of setting a precedent regarding property owners giving up right of ways that are not serving the county's needs.

County Counsel Claude Biddle stated that this was totally isolated from any other litigation and the only property involved in this trade was necessary for the project and it is not setting any precedent.

BOARD ACTION: *Upon motion made by Supervisor Marcus and seconded by Supervisor De La Cruz, adopted **Resolution No. 2005-118** approving conveyance agreement in lieu of condemnation, and to accept the Quit Claim Deed and Grant of Easement for Nash Road to purchase real property right-of-way and to authorize payment. (4-0 vote. Botelho absent.)
File #645*

Supervisor Botelho returned to the meeting during the discussion of Item 14.

AUDITOR – D. Vrtis:

- 14) **Regarding agreement with Grace & Associates for the financial and single audit of Fiscal Year End (FYE) June 30, 2005, consider the following:**
- a) **Waive the bid requirements due to the critical time constraints in getting the audit performed; and**
 - b) **Accept the Engagement Letter with Grace & Associates for the provision of audit services for FYE June 30, 2005 and June 30, 2006; and**
 - c) **Authorize the Finance Director to sign said Engagement letter on behalf of the County.**

Dan Vrtis, Finance Director, provided background information, stating that Bartig, Bassler and Ray have been our outside auditors for approximately the past five (5) years and of that three (3) years were under a contract and the last two years have been on a year to year basis. Mr. Vrtis reported that in November 2005 it was brought to his attention by Bartig, Bassler, and Ray that they would not have the time to do the audit. Mr. Vrtis noted that this audit must be done within a certain time noting we could risk federal funding being withheld until the audit is actually completed. This then became time sensitive and he contacted Grace and Associates of Hollister, the prior auditor before Bartig, Bassler and Ray, to see if he would be able to perform the audit in a relatively quick period of time and whether he would be willing to do it for a two-year period of time. Mr. Vrtis stated that because Grace and Associates had done the audit in previous years he didn't have all of the start up costs and it also allows us to get the buildings, roads, and bridges valued to bring those aboard also. Mr. Vrtis indicated that the contract amount being proposed (\$40,000) is lower than it would have been if we had continued with Bartig, Bassler and Ray and after two years we will go out to bid.

Discussion was held expressing concern that the county should go out to bid.

Mr. Vrtis felt it was the best business decision at the time.

BOARD ACTION: *Upon motion made by Supervisor De La Cruz and seconded by Supervisor Marcus, waived the bid requirements due to the critical time constraints in getting the audit performed; accepted the Engagement Letter for audit services for fiscal year ending June 30, 2005 and June 30, 2006 and directed staff to seek other auditors in two years; and, authorized the Finance Director to sign said Engagement Letter on behalf of the County.
(Unanimous)
File #608*

ADMINISTRATIVE BUSINESS:

16) Consider Memorandum of Understanding (MOU) with the San Benito County Office of Education for a pilot project providing after hours computer and internet accessibility to the public at Tres Pinos and Jefferson Elementary schools. (Supervisor Monaco)

Tim Foley, County Superintendent of Schools, provided background information stating that he and Chairman Monaco attended a meeting of AMBAG (Association of Monterey Bay Area Governments) that was called to discuss the future of broadband internet infrastructure and services along the Central Coast. After discussing the idea with Chairman Monaco they came up with the idea of funding this pilot program on a short term basis. The Board of Supervisors is requested to put \$500 towards this program and the School Districts is also putting in \$500. This program will be for teaching the community in these areas, both English and Spanish speaking parents, how to use the internet.

Chairman Monaco stated that he and Mr. Foley visited both of these school sites that would be used for this pilot program and the school boards were very receptive of the idea and see it as a great asset. Chairman Monaco supported this pilot program to see how this may work for the future..

BOARD ACTION: Upon motion made by Supervisor Botelho and seconded by Supervisor Monaco, approved the MOU with the San Benito County of Education as recommended. File #13

18) Consider appointment of a Board Subcommittee for Courthouse Security and County Building Security. (CAO)

Chairman Monaco clarified that there is a current subcommittee of Supervisor Botelho and himself that was set up to work on the issuance of the transference of the court facility. Chairman Monaco stated there is a separate concern of security in the courthouse building and he would like to set up a separate subcommittee of Supervisor Marcus and himself who will serve on the security issues of the present court facility.

BOARD ACTION: Upon motion made by Supervisors De La Cruz and seconded by Supervisor Botelho appointed Supervisors Marcus and Monaco to a subcommittee to work on the general Courthouse and County Building security. File #595

The Board adjourned as the County Board of Supervisors and reconvened as the County Financing Corporation. The minutes for this meeting have been prepared separately.

The Board then adjourned as the San Benito County Financing Corporation and reconvened as the County Board of Supervisors at 2:05 p.m. re:

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

INTEGRATED WASTE MANAGEMENT – M. Rose:

23) Hold public hearing to consider a resolution approving amended rates for solid waste disposal as follows:

- a) Computer CPU's and monitors and TV's = No charge.
- b) Microwaves, 25 pounds and under = No charge.
(All other electronics charged at refuse rate)
- c) "CLEAN" dirt, asphalt, concrete and wood = \$10.00 per pick-up load
(Commercials vehicles are weighed)
- d) Elimination of measured or weighted option requiring all vehicles be weighed.

Director Mandy Rose came forward. Ms. Rose indicated this was to approve amended rates on four (4) different items only. The items pertained to electronic waste (computers and TV's). The contract operator obtained a contract with a vendor that will no longer charge for those materials; therefore there will no longer be a charge to the residents. Additionally, microwaves under 25-pounds will also have no charge. There is a change to recyclable items such as green waste, dirt, asphalt, concrete and wood if those items come in a pickup, there will be a flat \$10.00 fee regardless of the height of the load. The transporter must still obey the Department of Transportation and highway rules, but at a flat \$10.00 fee. Ms. Rose noted this was probably the first time in having a rate schedule that does actually reduce rates.

Ms. Rose noted the last item, due to the fact that now the Landfill has its own scale at the cost of the operator, the elimination of measurer option and all vehicles will be weighed. The reason to do this is to take away the subjectivity for individuals coming over the scale so that everyone will be treated the same.

Ms. Rose asked that the Chair open the public hearing at this time.

This being the duly noted time and place, Chairman Monaco opened the public hearing. Hearing no one wishing to address the Board, Chairman Monaco closed the public hearing and brought the matter back before the board.

BOARD ACTION: Upon motion duly made by Supervisor Botelho and seconded by Supervisor Marcus, **approved Resolution No. 2005-119 Approving Amended Rates For Solid Waste Disposal.** Motion passed unanimously. (file #75.4)

24) Direction to staff on setting the daily average maximum tonnage limit at the John Smith Road Landfill.

Ms. Rose noted description of this item leads directly into the following item. That public hearing on the next item is done on behalf of the State of California and will be explained at that time.

Ms. Rose requested from the Board, direction on setting the daily limit at the John Smith Road Landfill tonnage. The current permit, as it stands, allows 250 tons per day, on an annual average, we cannot take more than 500 tons. There is an environmental document that addresses those numbers.

Ms. Rose noted in working with the operator and in trying to come into compliance with AB939, the County has been trying to get more diversion at the Landfill. For example, on any given day, someone could come in with 200 tons of concrete which might leave only potentially 50 tons of disposal. While trying to work within the parameters given by the State of California and within the permit, we came up with language that said because the State counts every ton that goes over the scale and in the current permit, we were looking for a way to only count the tons that are buried. In clarifying the difference between buried tons counting against the daily annual average and diverted tons going against the 500 ton limit peak.

Ms. Rose stated the best approach to stay in compliance with the State and to allow local flexibility, was to change the State permit, the next item, to a daily and peak of 500 tons. Knowing that, in the third amendment to the operating agreement, Condition #21A allows the Board of Supervisors to set the disposal tonnage. Ms. Rose asked that the Board reconfirm or change at their discretion, the disposal tonnage at either 250 or any number between 250 and 500.

Discussion ensued regarding the setting of the rate as disposed tonnage, diversion efforts, the revision to the State permit, out of county waste and ended with Supervisor Marcus making the motion to approve setting the limit at 250 tons with Supervisor De La Cruz as second on the matter.

Ms. Rose asked that the maker of the motion clarify the approved rate as "disposed" tons.

Supervisor De La Cruz asked why the clarification.

Ms. Rose responded the clarification indicates “buried material” versus diverted materials.

BOARD ACTION: *Upon motion duly made by Supervisor Marcus and seconded by Supervisor De La Cruz, established the daily disposed tonnage rate at the John Smith Road Landfill at 250 tons per day. Motion passed unanimously. (file #75.4)*

HEALTH & HUMAN SERVICES AGENCY ENVIRONMENTAL HEALTH DIV – K. Flores:

25) **Hold public hearing to take public comment on an application for a revised Solid Waste Facilities Permit, John Smith Road Landfill Class III Area, Solid Waste Facilities Permit No. 35-AA-0001.**

H&HSA Kathryn Flores indicated Environmental Health Specialist Matt Fore will take the lead on this matter. Ms. Flores requested the Chair open the public hearing to receive comments on proposed modification to the Solid Waste Facilities Permit. The County Environmental Health Division is the Local Enforcement Agency (LEA) for the State Integrated Waste Management and must submit the proposed changes to the local enforcement agency and this will be explained by Mr. Fore.

Matt Fore, Environmental Health Specialist stated in this proceeding, he was acting as the local enforcement agency on behalf of the California Integrated Waste Management Board. In October of this year, the County Waste Management Department submitted an application to his office to revise the operating permit for the John Smith Road Landfill. In 2004, the State Legislature passed AP1497 which requires local enforcement agencies such as the Health Department, to conduct a public hearing for revisions to the operating permits for its solid waste disposal facilities.

Mr. Fore indicated this hearing is to comply with the requirements of AB1497 and to accept public comment on the permit application. These comments will be used by his office as well by the State Integrated Waste Management Board at a subsequent hearing to approve the permit.

Mr. Fore indicated the permit application proposed modifications as follows:

- 1) Proposes to change the 250 ton annual daily average to a 500 ton average and threshold as evaluated in the most recent CEQA document.
- 2) Proposes to include language in the joint technical document to account for the recent installation of an out-bound scale and a permanent Household Hazardous Waste facility.

The joint technical document will also be change to include updated tonnage, traffic and disposal data and modified procedures for the storage of wood and green waste for possible use as alternative daily cover.

Mr. Fore stressed in his capacity, the LEA reviews the application for compliance with Title 27 of the California Code of Regulations as well as the Public Resources Code. Mr. Fore deferred any questions regarding the rationale behind the permit proposals to Ms. Rose of the Waste Management Department.

Supervisor De La Cruz asked if the company made any money off the diversion by separating the materials and reselling or recycling?

Ms. Rose indicated it depended upon the material. There was a processing fee paid to take the green and wood waste away. The concrete is used on site, mattresses had a fee but not the electronic waste won't have a fee but other electronics not mentioned earlier will, so there are some fees associated with the process of recycling.

Chairman Monaco noted for the record that public comment will be taken on this matter; however, there is no Board action to be taken at this time.

This being the duly noted time and place, Chairman Monaco opened the public hearing. Hearing no one wishing to address the Board, Chairman Monaco closed the public hearing and brought the matter back before the Board.

BOARD ACTION: Held public hearing to receive comments on proposed modification to the Solid Waste Facilities Permit for the John Smith Road Landfill. No formal Board action necessary. (file #75.4)

PLANNING DEPARTMENT – M. Bethke:

27) Hold public hearing to consider an appeal of a decision made by the Planning Commission on October 25, 2005 regarding Tract Map 03-69 (Bertuccio). Location: Union Road at Summerset Drive, Hollister. Appellant: Mary Damm. Applicant: Tina Bertuccio. Zoning: Agricultural Productive (AP). (cont. from 11/22/05 mtg.)

Bryon Turner of the Planning Department came forward. Mr. Turner indicated the Planning Commission approved Tract Map 03-69 authorizing five one-acre parcels and a sixth of approximately 25-acre parcel for an agricultural caretaker facility to be located on property zoned Planned Unit Development (PUD) located on Summerset Drive at Union Road. The October 19, 2005 decision of the Planning Commission has been appealed based on the following:

- 1) From July 2004 to October 2005, planning procedures have not been properly followed on the project including the vote of the Planning Commission as made on December 1, 2004 meeting;
- 2) That the tentative map does not follow project descriptions of the CEQA document or the PUD ordinance;
- 3) That the Board of Supervisors motion was not followed by the Planning Commission.

Mr. Turner noted staff's response to these items:

- 1) The only action being appealed is the decision of the Planning Commission of October 19, 2005 that approved the Tract Map. Any other decisions have not been appealed. It is the decision at that meeting that is being appealed.
- 2) This project was opened up for public hearing on twelve different occasions; underwent numerous changes as a result of Planning Commission direction, Board of Supervisors direction; direction of the Planning Department and response to public comment including the appellant.

The initial project description consisted of six-one acre lots and an open space parcel with secondary access being provided through the easement located on the Damm's property. This was changed to five-one acre parcels with a sixth 25-acre parcel at the request of the Planning Commission. The overall density did not change.

Mr. Turner explained at subsequent public hearings, the community park was relocated; the sixth parcel has been required to be placed in a land trust and the secondary access has been abandoned. None of these modifications create any significant impact. The overall density at the site has not changed. As the project was heard, changed and at multiple public hearings, subsequent staff reports were generated with previous documents included for the record. The approved Tentative Map follows the project description from the October 19th meeting and the project was approved.

Mr. Turner stated the County regulations regarding the PUD specified the residential development area of a PUD shall not be located on areas of Grade 1 soils. According an exception to the PUD ordinance may be made if the development area is surrounded by property undeveloped at the maximum density of at least three sides. The PUD regulations also expressly allow for complementary structures and improvements on the open space parcel as are necessary and appropriate for this use. The open space parcel for Tract Map 03-69 is surrounded on three sides by maximum density of development. The Planning Commission directed that the neighborhood park be moved away from Grade 1 soils and likewise, all of the one-acre parcel lots were directed away from Grade 1 soils. Although the agricultural caretaker unit will be placed on property identified as Grade 1 soils, the building envelope has been

situated to locate the resident near the other existing farming buildings and to minimize the use of Grade 1 soils.

Mr. Turner noted in this case, it is the caretakers unit that will promote the ongoing management and maintenance of the majority of the open space parcel in agriculturally productive use.

3) The Board of Supervisors motion was that the proposed parcel 6 be placed in a land trust and that the secondary access be rerouted.

Mr. Turner explained at a subsequent Board hearing clarified the rerouting condition by requiring the Applicant to enter into a deferred improvement agreement for the construction of as 12-foot wide, gravel driveway and that secondary access to not be included at this time. Both of these items were incorporated as Conditions Of Approval. It is staff's recommendation that the Board motion was followed by the Planning Commission.

Mr. Turner provided background and the evolution of the map as it changed over the course of the planning process.

Mr. Turner noted it the recommendation of staff to conduct a public hearing to consider the evidence submitted to the Board and deny the appeal and uphold the decision of the Planning Commission by adopting the amended resolution that has been provided to the Board of Supervisors.

Supervisor Loe asked how large the caretakers unit was.

Mr. Turner noted no limitation was placed on the caretakers unit.

Chairman Monaco asked Counsel if it was appropriate for the applicant placing the appeal to address the Board at this time and then hold the public hearing?

Counsel Biddle noted that would be appropriate.

Bruce Tichinin, Attorney for Mr. & Mrs. Damm, indicated regarding the staff report indicates there were twelve public hearing held on this matter. Mr. Tichinin submitted for the record a refined and cogent overview of the important points of the record and presented a copy of the documents to the Board Clerk and members of the Board of Supervisors as well as another set of documents.

Mr. Tichinin provided in great detail questions revolving the need to re-circulate an Environmental Impact Report due to the issue of the sixty foot right of way, partially or fully developed is a potentially significant impact on the environment; the caretakers residence on the open space parcel is inconsistent with the initially proposed application as that is the one where the initial study and the negative declaration were based on; the now proposed bonding of the twelve feet of the sixty foot roadway was not anywhere mentioned previously and the CEQA document didn't analyze whether there was an impact that needed to be mitigated; citations from of the PUD ordinance, regarding residential development area of a PUD shall not be located in areas of Grade 1 soils and that an exception may be made if the development area is surrounded by property developed at the maximum density allowed in the applicable zoning category on at least three sides; 25-acres proposed for agricultural land, it is completely undeveloped; if not developed at its maximum density therefore the exception doesn't apply; the caretakers residence isn't exempt; the bonding of the 12-foot section of the sixty foot right of way and making his clients financially responsible for improvements of some future development in the area.

Douglas Marshall, Attorney for Mrs. Bertuccio, came forward. Mr. Marshall noted there have been twelve hearings on this matter and that was more than sufficient time to raise all issues to be raised. Mr. Marshall noted he was handed the packet that the Board received at the time this hearing commenced. He noted this was not the way business should be conducted. If issues needed to be raised, those should have been done so at the calendared hearings. This has gone well beyond the issued discussed throughout the review process.

Mr. Marshall indicated on the road issue, he noted the fact that the road was already in place. The easement for this road is shown on the maps that staff has reviewed with the Board

in their presentation. It was approved in connection with a prior division of the property and the applicant proposed that given its location and given the fact that it was already there, that the applicant would go ahead and improve it in order to satisfy the secondary access issue. That was in the beginning of the process. We have discussed at length that road. There have been different opinions about whether it should be or shouldn't be, but the fact is that before this permitting process ever began, it was already on the map.

Mr. Marshall cited the CEQA issues raised is a ruse; the road was approved as part of a previous land division and should have been opposed at that time and there were no objections to the road at that time; CEQA violations raised is well past the time on this issue that should have been brought to attention but didn't occur; PUD rules were discussed in June and those objections are late and if were opposed should have gone to court; regarding rules in the Zoning Code, there is a lot of discretion on the application of the PUD ordinance and its intent; discussions took place at length at the Planning Commission level what was needed to protect the agricultural land and the Planning Commission struggled with the issue, ultimately coming to the Board for approval. The caretakers residence was needed, some residential use on the property was needed in order to implement the protection and implementation of the PUD ordinance. Mr. Marshall concluded by indicating the all issues stated are being discussed too late.

Roger Grimsley, project engineer, came forward. Mr. Grimsley stated there have been twelve revisions made to the map. Comments regarding the appeal, specifically, yes the Planning Commission direction has been followed. Maps were submitted, revised and sent back before the Planning Commission. The Planning Commission wanted to keep the project limited to six parcels but the arrangement was to have a caretakers unit on the open space parcel. The request was complied with, map changed and this is what was approved as well as the intent of the PUD with innovativeness and flexibility of the design but still meets the intent of the PUD ordinance. Any restrictions placed on the living unit, all restrictions on all buildings are for single story in height, no secondary detached units, integrated into the overall design. Mr. Grimsley noted there were no restrictions to the square footages of the units and typically they vary between 2500 – 3000 square feet in size. The key was that the Planning Commission emphasized that when the Damms approached about two-stories, they were agreeable to single story structures.

Mr. Grimsley noted with regard to the finding that the Board of Supervisors direction wasn't followed on the rerouting, feasible versus infeasible, really was a question of interpretation of reasonable. Mr. Grimsley indicated he and Mr. Nazemi felt the present location of the route would be adequate to serve the future needs which is what Mr. Nazemi was trying for in the very first approval of the 4-lot subdivision in 1990. The existing right of way isn't in the boundaries of this subdivision and only pertained to this subdivision at the request of staff to say to plan for secondary access and then it was agreed to bond the improvements for future benefits.

Mr. Grimsley concluded by asking the Board to look at the three findings that the appellant indicates the errors were on, find that there is no substantial error made throughout the course of this project and uphold the Planning Commission decision to approve this matter.

Supervisor Loe questioned the size of the caretakers unit.

Mr. Grimsley noted it was referred to as the caretakers unit, but it really was a residential structure on the open space managing the remaining acres to make sure it is maintained. Mr. Grimsley stated when mentioned "caretakers unit" the Planning Commission wanted a living unit for someone to live in and take care of it. The first proposal was 6-one acre parcels and open space was to be in common with all owning it and subleasing it out. No one is willing to take care of 23-24 acres so, they wanted a buy-in, someone to own it and take care of it like its their own. The caretakers unit is a living unit, single story house.

Supervisor Loe stated there were 5-one acre parcel and one 25-acre parcel.

Mr. Grimsley stated that was correct an the 25-acre parcel would be in a land trust where it will be agriculture only with a living unit on it.

Supervisor Loe then noted the project description was wrong. Supervisor Loe cited the project description states there will be 25-acres will be in open space.

Mr. Gimsley indicated agriculture land trust / open space.

Supervisor Loe clarified that no development will take place on the lower shelf where the Grade 1 soils was to which Mr. Grimsley indicated that was in the original project description, yes.

Supervisor Marcus asked Planning staff if he had a right of way on his property and wanted the County to consider abandoning the right of way for whatever reasons, what was the process?

Planner Turner deferred to Public Works.

Shirley Murphy, Deputy County Counsel noted Public Works would proceed under the Streets and Highways Code as a petition to vacate the right of way and that would come before the Board of Supervisors, the Board would have to make certain findings in order to justify finding that it is no longer necessary for the public necessity, so that it's not a gift of public funds. Ms. Murphy explained in some cases if the County owns the fee title, you have to actually go through the process to sell it and not give it to the property owners, via a bidding process. If just an easement, when vacated, it automatically converts to the underlying fee title holder.

Discussion ensued regarding the vacating of right of ways, easement, posting of sufficient notices of said proceedings, reasonable costs associated and public bidding process if necessary.

Supervisor Botelho asked staff if the condition of approval relative to the deferred improvement agreement for the secondary access road specific to that project to which Planner Turner indicated specific to that location.

Supervisor Loe asked Deputy Counsel about the environmental document under CEQA that's basically changed.

Deputy Counsel Murphy noted the question was whether the change in the description is significant or not, which is a question of fact. Ms. Murphy noted in the proposed Board resolution, if upholding the Planning Commission decision, there was a statement of a number of basis for finding that this is not a significant change in the project description that would support you don't need to re-circulate or do supplemental review. If the Board feels as a factual matter, that it is a significant change, then that recirculation or some sort of a supplemental or subsequent environmental document would need to be prepared via the Planning Commission.

Counsel Biddle indicated there were no feelings involved in this, it is CEQA law and a standard checklist Mr. Turner made in reviewing this project and didn't believe they had that discretion.

Discussion ensued between Counsel, Deputy Counsel and Planning staff regarding review of CEQA impacts at this point if there was a significant change from what the CEQA document analyzed, the filing of the negative declaration and concluded with Planner Turner noting changes were made by the Planning Commission after the CEQA document was circulated.

Supervisor Loe questioned Mr. Turner under the agricultural resources it states clearly there would be no building on Grade 1 soil, so that seemed like a significant difference.

Mr. Turner noted it was determined in-house that it was a less than significant impact in that the purpose of the change was to better conserve agriculture.

Supervisor Botelho questioned the existing home on that parcel.

Mr. Turner stated there was an isolated parcel on an island there, the home seen which was shown in the presentation was not located on the 25-acres, the only building there was the agricultural shed.

Supervisor De La Cruz questioned the introduction of a whole set of new parameters. Wasn't the whole appeal was based on the right of way, the whole project or could something new be introduced here?

Deputy Counsel Murphy noted this was a *de novo* hearing and issues can be raised here. But they have essentially appealed the approval of the tentative map. Ms. Murphy noted anything that happened prior to the October 19th approval of the map has not been timely appealed.

Supervisor De La Cruz asked for clarification.

Deputy Counsel Murphy noted that was the subdivision map that was approved. The Zone Change that was done back in June, that was not timely appealed.

Supervisor De La Cruz questioned the house on the 25-acres, was that up for discussion to which Deputy Counsel Murphy indicated yes because that was approved as a condition of approval of the map.

Supervisor Marcus asked Mr. Tichinin, hypothetically, there is a 60-foot right of way going through the center of the Damms property. Hypothetically, if you were to approach that as a separate issue, would he in his knowledge of the law process, all of the facts present, be able to convince this Board that that right of way can be abandoned.

Mr. Tichinin indicated he didn't know the law on that subject and would like to review it. However, based on what Ms. Murphy stated, he felt he could because he understood her to say that a sale was involved only where the county owns the underlying fee, that is inapplicable here as the county only owns the right of way. The Damms own the underlying fee title to the property and the easement is within it so you don't have to sell it or go through the market values issues to abandon it.

Mr. Tichinin stated he did understand Ms. Murphy say that there would have to be findings that the public necessity no longer requires it if following the initial determination in this matter were to require the rerouting of the secondary access road around the boundaries of the parcel, there would be no need for that road to be the secondary access, so there wasn't a public necessity. The Board had authority to impose the road around the boundary if it doesn't dissect the Damms' parcel as a condition of the map.

Supervisor Marcus didn't want the matter to involve the map. Supervisor Marcus stated this dealt specifically, hypothetically to abandon that right of way.

Mr. Tichinin indicated he understood that the only purpose identified for that road is as a secondary access for this subdivision if that is needed. The fire captain indicated it wasn't needed at this point. The Board determined that maybe one day there would be the need for the secondary access for this subdivision but there has been no showing that this 60-foot right of way is necessary. If taking the subdivision out of the picture, it's clear there is absolutely no need or public necessity for that right of way. Bring in the subdivision, you still don't need it.

Supervisor Marcus indicated that's what he wanted to hear, the subdivision approved as is, with future abandonment of the right of way, that was a separate process, is all doable to which Mr. Tichinin indicated that was correct.

Mr. Tichinin in his rebuttal noted it wasn't too late to challenge this matter and cited a CEQA case being heard before the District Court of Appeals in Sacramento Mr. Marshall made no substantive quarrel on any points, as in not addressing Government Code Section 66474, in that you can't approve a subdivision that is inconsistent with the General Plan when the General Plans stays to mitigate any disruption of agricultural operations, but you already found that you were going to mitigate this until you maybe change your minds, because it would disrupt agricultural operations there. It is not too late raise these issues as noted Ms. Murphy indicated that.

Planner Turner noted the right of way was a condition of approval for Minor Subdivision 1013-90 and that condition states that a 60-foot right of way be dedicated to the northwesterly boundary of parcel 4 for future road stub through adjacent property. Mr. Turner noted this was

the condition from the original map. Also, he addressed the term "infeasible," he was unaware of any legal ramifications of that term and he could have used "poor planning" or "bad design." The right of way is there and has been there through approval as well as the adjacent property goes all the way to Cienega Road and in staffs' opinion, that would be unnecessary grading which unnecessary and not being required.

Supervisor Marcus asked if any secondary access and improvement to that secondary access, even though past action by this Board requested that that be a burden placed on the Bertuccio subdivision, is not a necessity for that PUD to be constructed at any time to which Planner Turner stated that was correct.

This being the duly noted time and place, Chairman Monaco opened the public hearing.

Appellant Mary Damm came forward. Ms. Damm addressed that Mr. Grimsley stated the Commission directed the applicant to come back with a caretakers house on the remainder. In looking back at the minutes, and cited by Planner Turner, back in November, 2004, the Commission directed them to come back with the caretakers house, but they did not. In her appeal, Ms. Damm noted she quoted the minutes and it says they discussed it. One of the commissioners raised the question that maybe you might want to put a caretakers unit on there. It was discussed. Mr. Turner said at that time, this plan as presented, does not allow for a caretakers unit. Just right before the vote, the Chair person, Gordon Machado, said we are not voting on a caretakers unit. As it stands, there is no caretakers unit. The Commission made the vote to continue it and not at that time to vote on the caretakers unit, it was only discussed.

Ms. Damm noted then when revisited in March, 2005, and Mr. Grimsley came back five maps, Mr. Grimsley indicated Map A was the original map. Ms. Damm stated in her mind, the original map was the map that was submitted when they were asking to have the PUD done. The map that the initial study is based on is the original map, but Map A was not the original map. It showed five plus homes, didn't even show homes, but only six lots, five clustered and one big one. It didn't say anything about a caretakers unit. Map B was the five-acre configuration and the other three were other PUDs. For them to say that Map A was the original map, it was not. The Commission said bring us more detail on Map A – that was the direction at that meeting. They (the Commission) did not say they wanted to see a caretakers unit at all. For them to say that they were directed by the Commission to put a caretakers' unit down there is not a fact that you could find anywhere, in any minutes on any tapes. It definitely was not stated ever. They talk about it now because that is what came back. At the October 19th meeting, Ms. Damm stated she was told all along, especially by Mr. Turner, up to the point of August 17th, that all along the only thing that anybody was voting on was to accept the mitigated negative declaration and to approve a zone change. That's what the Commission voted on in May, that's what the Board voted on in June. You (the Board) voted to approve the zone change and to approve the mitigated negative declaration which wasn't based on any of those maps. You weren't approving maps, the Commission never approved maps, so up to that point, those were the only things voted on. Ms. Damm noted she was told she couldn't talk about it. The only time we could talk about the map was when it was presented to them as a tentative map. That is what happened at the October 19th meeting and that was why she was here because there are so many things on that map that are wrong. It isn't based on the initial study, the initial description. It's not based on any descriptions, every single notice she got said 6-one acre lots with a 25-acre remainder and she has heard the argument made, well that just a historical thing. Ms. Damm didn't think when it goes in the paper as a public notice that you're putting in history, you are putting in what's happening at the next meeting and that's always what it said.

Ms. Damm felt this was a sneaky way to say, we were told to put that house done there. She didn't think makes it a PUD. She asked the Board to look at all the things she cited, could read the ordinance themselves as a PUD is to cluster homes. Ms. Damm noted they all knew from the beginning that she was against a PUD. But, she thought if you were going to do a

PUD, you really ought to do a PUD and that a clustering homes. They bring it up now because the map just came out and the map shows that they are not clustered. They bring it up now about the road? The Board directed, in looking back at the Board motion of October, it is not what happened on that map and was not what discussed at that October meeting. There was grounds here to say that they (the Planning Commission) did not follow your direction.

Ms. Damm agreed with Mr. Tichinin about hearing the appeal in June. Most of what was contained in the pages she typed up from listening to the June 28th meeting, the Board heard the appeal. Just about every single one of you said it was ridiculous to divide their property. This is not right. Ms. Damm noted she wasn't quoting the Board directly, but it was in there. All these said we can hear that the Damms' don't want their property divided, move the road. We didn't say abandon it, the Board agreed to move it. Until the applicant drew a map and then said we can't do it. Well, he's the one who drew it. If that's not going to work let's draw a different one cause there are other configurations that could work. The engineer came back and told you it's not possible. As Mr. Tichinin pointed out, that's not based on fact at all. Why is it impossible, and he brought that up as there is lots to base that on.

Ms. Damm felt that in the room that we are bringing up things that we shouldn't be bringing up now, but this is the first time it could have been brought up because the map just came out. The map seems to change and change all the time, but we don't get copies of the map when it changes and it totally affects them. At the May meeting, Planner Turner said there had been some changes made to the plan. There will be a 25-foot green belt buffer along the Damms' property. The first map came out in August, it was a 20-foot buffer. The map that came out in October, was a 15-foot buffer. When do we put our foot down and say what's going on?

Ms. Damm stated these things can't keep changing and changing. We see changes on there all the time and it just came out in October and that's why we were here today to say we are against the map, not the road on the map, but the map. There were too many things wrong and she hated to see what the next map was going to be like because she didn't feel like she would have a chance to say anything. This is the time to say it and she needed to have the board listen to what they were saying and to realize that things have gone sideways.

Ms. Damm noted she was warned by on of the Supervisors to keep an eye on this because it will go sideways and it has gone sideways. Ms. Damm stated she feels violated because of this.

Supervisor Marcus asked Ms. Damm her opinion, if every map they have seen, this is the third time that we have approached this appeal, that every map that they have seen did have six houses on it: five one-acre parcels and one 25-acre parcel.

Ms. Damm stated that was not the original map.

Supervisor Marcus asked Ms. Damm in the third time that the Board has looked at maps, and every map that he remembered looking at had five one-acre parcels and one house on the larger parcel. Supervisor Marcus asked Ms. Damm if she agreed to that?

Ms. Damm agreed to that, but was told she couldn't talk about it until the tentative map came out. Ms. Damm stated she was also told that the voting on the zone change and the mitigated negative declaration were based on maps. The maps don't have anything to do with the Board voting on the zone change and not on the map. Ms. Damm didn't believe that anybody voted on it until the Commission voted on it in October and that was why she was protesting.

Supervisor Marcus indicated he wanted to make sure, as he understood it, everything that we've seen (the Board) that has come to us has been approved by the Planning Commission and has been appealed for our discussion. Everything that we have seen has had five houses on individual one-acre parcels and a house on the 25-acre parcel. We never did have a map that was appealed where that 25-acre parcel vacant.

Ms. Damm stated she never had a map appealed until right now, right now was the first appeal on the map. She indicated the Board should have a copy of the first map as it was part of the initial study and it showed six one-acre lots on top and a remainder with no building on it at all and that is what the initial study is based on.

Supervisor Marcus asked if at the last two times we've met was not an appeal of a Planning Commission decision?

Ms. Damm stated this was the first appeal. Ms. Damm stated the Board heard the first one because the Board had to decide on the zone change and heard the second one because the Planning Department asked it to come back to you, no appeal. We didn't talk about maps then, we didn't talk about configurations. We talked about zone change and talked about the declaration.

Supervisor Marcus asked if this was the most recent map approved by the Planning Commission.

Ms. Damm noted that was correct – from October.

Hearing no one further wishing to address the Board, Chairman Monaco closed the public hearing.

Attorney Marshall, on behalf of Mrs. Bertuccio, addressed the last issue discussed by Ms. Damm. Mr. Marshall stated he was looking at the staff report of June, and at that meeting the Board approved the negative declaration and approved the PUD. That staff report shows exactly what Supervisor Marcus was talking about. It shows the five one-acre parcels and the caretakers unit on the 25-acre parcel and discusses it as such. Mr. Marshall read from the staff report for that hearing on that day which contains a copy of the map. He read "that the purpose of the zone change was to facilitate the placement of a Planned Unit Development on the site, consisting of five one-acre residential parcels and a 26-acre agricultural parcel including a building site for a caretakers' residence."

Deputy Counsel Murphy stated if the Board was inclined to do something that would require bringing back modified conditions or coming back in any way, the requirements of the Subdivision Map Act and the County Subdivision Ordinance say that once you have concluded the public hearing, you need to render a decision within ten (10) days and the Board doesn't have another Board meeting scheduled within the ten day period, so she recommended that the Board continue the public hearing to the December 20th meeting with direction on what the Board would like to have come back.

Supervisor De La Cruz indicated he would like to make a decision today and didn't want to delay this any more.

Supervisor Botelho indicated he liked the PUD concept as it was an effective way of good sound land use management. The five clustered homes on the top bench and felt very strongly that the caretakers' home on the bottom 25, to him was a landowners home. Odds were that that person is going to commute to San Jose for their day job and run horses on it in the future, or whatever for their pleasure, but that would be an open space parcel that can no longer be developed to a higher density.

Secondly, Supervisor Botelho stated the secondary access road, he was very clear about that in prior meetings. Supervisor Botelho didn't think it serves that PUD, he didn't see the necessity of it and from what he understood, the decision is for that not be improved at this time, but just the condition given to the Bertuccios to put funds into a deferred account for some future use. Maybe that's a possibility, but some of the questions laid out by Supervisor Marcus and answered by Deputy Counsel Murphy, there is a process that the Damms' can follow to offer to buy that easement if we are so inclined to sell it, but that is a separate issue. Supervisor Botelho stated he was inclined to uphold the decision that has already been made and let this move forward on that basis.

Supervisor Loe stated she saw this differently. Supervisor Loe said she didn't see this anymore as a PUD, but saw it as five one-acre parcels and one 25-acre parcel and didn't go

along with that at all. Supervisor Loe felt the six should be clustered, the Grade 1 soil should be in open space as that what the PUD is set up for.

Supervisor De La Cruz believed the PUD, as Supervisor Marcus stated, staff has been honest with the Board and if they haven't, they were answerable to the Board, but at the same time, it was a five unit with one 25-acre and agreed with Supervisor Botelho.

Supervisor Marcus stated he had a hard time with these decisions because it worked so much better when neighbors can work these things out and we don't have to be the deciding body that certainly affects lives and affects people's pocketbooks or held accountable for statements made, and held accountable for using the wrong terms. We were under the magnifying glass on handshakes and we've been through a long process on this.

Supervisor Marcus noted everyone has probably said things and done things, on all parts, that as information changed, minds changed we get rule out.

That being said, Supervisor Marcus felt strongly that we needed to move ahead and uphold the Planning Commission decision to approve this map, deny the appeal and let the applicant come forward, through the process, to petition or work with this Board, which he would strongly support, to eliminate that right of way or that easement from their property. Supervisor Marcus stated he would give it every bit of consideration through a different process, but at this point, in order to finalize this decision, Supervisor Marcus made the motion to deny the appeal and uphold the decision of the Planning Commission.

Supervisor Botelho seconded the motion.

BOARD ACTION: *Upon motion duly made by Supervisor Marcus and seconded by Supervisor Botelho, adopted Resolution No. 2005-212 Upholding the Planning Commission Approval of Tract map 03-69 For Tina Bertuccio and Denying The Appeal Of Mary Damm. Motion passed 4-1 with Supervisor Loe voting no on the matter. (Appeal file)*

CLOSED SESSION:

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

The Board adjourned into Closed Session at 4:40 p.m. and reconvened into Regular Session at 5:25 p.m. re:

19) Conference with Legal Counsel – Existing Litigation

Authority: California Government Code Section 54956.9(a)

a) Stafford-Pelt vs. County of San Benito et al.

No reportable action.

b) Fancher & Roybal v. County of San Benito

No reportable action. File #235.6

20) Conference with Legal Counsel – Anticipation Litigation

a) Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9. Number of cases: **1**

No reportable action. File #235.6

21) Conference with Labor Negotiator

Authority: California Government Code Section 54957.6

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

Employee Organization: Deputy Sheriff's Association (DSA)

Department Heads

No reportable action. File #235.6

22) Conference With Labor Negotiator

Authority: California Government Code Section 54957.6

Agency Designated Representative: Susan Thompson, Co. Admin. Officer & Gifford Swanson, Public Authority Manager (IHSS)

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

No reportable action. File #235.6

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: Marcus, De La Cruz; Botelho; Loe & Monaco

NOES: SUPERVISORS: None

ABSENT: SUPERVISORS: None

There being no further business the Board adjourned to its next regularly scheduled meeting on Tuesday, December 20, 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 (am session)

Sally Navarez
Assistant Clerk (pm session)