

SAN BENITO COUNTY
BOARD OF SUPERVISORS
REGULAR MEETING MINUTES
JANUARY 27, 2004

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in regular session. Supervisors Loe, Monaco, Kesler and Cruz were all present. Supervisor Scagliotti was absent. Also present was County Administrative Officer Terrence May, County Counsel Karen Forcum and Senior Board Clerk Linda Churchill. Chairman Bob Cruz presided.

9:30 a.m. CALL TO ORDER:

- a) Pledge of allegiance.
- b) *Upon motion duly made, seconded and carried, approved Certificate of Posting.*
- c) **Public Comment:** Chairman Cruz presented a Certificate of Appreciation to Ken Perry, Past President of the San Benito County Water District Board of Directors, for his involvement in achieving mutual goals between the City of Hollister, San Benito County Water District and the County of San Benito with respect to transportation and water quality in our county. Chairman Cruz stated that Mr. Perry spent many hours with the Board of Supervisors sub-committee along with the City of Hollister sub-committee to achieve these goals.

Mr. Perry came forward and accepted the certificate and thanked the Board. Mr. Perry stated that in the 1-1/2 years of being on this committee they achieved more than in the other eight years that he has been on the Water District Board. They have helped to develop the water tertiary treatment plant, which was one of the main issues, and they are now working on some flooding in San Juan Bautista. Mr. Perry said this is a great achievement for the two Boards to speak as one pertaining to water.

- d) **Department Head Announcements:** There were no announcements.

CONSENT AGENDA:

Upon motion duly made, seconded and carried, approved Consent Agenda Items 1 through 13 with the exception of Item 9 which was continued to the February 3, 2004 meeting.

ADMINISTRATION:

- 1) Approved Certification of Child Care Local Planning Council Membership. (Supervisor Kesler)

AUDITOR:

- 2) Approved Departmental Claims.

CLERK OF THE BOARD:

- 3) Approved the minutes of the meetings of January 6, 2004 and January 13, 2004.

COMMUNITY SERVICES & WORKFORCE DEVELOPMENT:

- 4) Appointed Mary Damm to the Workforce Investment Board representing the private sector for a three year term effective February 1, 2004 through January 31, 2007. *File #939*

- 5) Adopted **RESOLUTION NO. 2005-6** authorizing signing authority for Low Income Home Energy Assistance Program (LIHEAP) Grant funds for 2004. *File #939*

COUNTY COUNSEL:

6) Rejected claim of Paul Casarez filed with the clerk of the board on December 19, 2003 and directed clerk to notify claimant. *File #235*

7) Approved agreement with Cullinan Appraisal & Realty for appraisal services with a contract term of January 27, 2004 through March 2, 2004. *File #160*

ELECTIONS:

8) Approved agreement with Michael Hodges re: election services for the March 2, 2004 Presidential Primary Election with a contract term of January 26, 2004 through March 31, 2004. *File #185*

HEALTH & HUMAN SERVICES AGENCY:

9) Consider agreement with the San Benito High School re: school nursing services with a contract term of December 1, 2003 through June 30, 2004.

This item was continued to the February 3, 2004 meeting.

10) Approved Declaration of Intent **not** to contract for FY2003/2004 Emergency Medical Services Appropriation (EMSA) funds. *File #420*

HUMAN RESOURCES:

11) Adopted **RESOLUTION NO. 2004-7** amending county payments of severance benefits for the County Administrative Officer. *File #630*

OFFICE OF EMERGENCY SERVICES:

12) Authorized the Emergency Medical Services (EMS) Administrator to submit application for 2003 Federal Health Resources and Services Administration (HRSA) Cooperative Agreement for Local Funding Grant. *File #1068*

SHERIFF:

13) Adopted **RESOLUTION NO. 2004-8** authorizing temporary road closures for 21st Annual Mission 10, 10 mile, 5-k run on February 7, 2004. *File #110*

9:40 a.m. REGULAR AGENDA:

CITY OF HOLLISTER - W. Avera:

14) **Consider proposed resolution accepting the Overall Economic Development Program 2004 Update.**

Bill Avera, Program Manager for the City of Hollister Redevelopment Agency, came forward stating that this is an item that comes before the Board of Supervisors (BOS) once a year to get the process done. Mr. Avera asked the BOS to adopt the resolution authorizing the Redevelopment Agency to submit the Overall Economic Development Program to the Federal Government Division of Economic Development Administration (EDA). The purpose for this project every year is to remain in compliance with them. Mr. Avera noted that any time anyone in the county wants to apply for EDA funds we have to have submitted this Update on an annual basis. Mr. Avera said that the City of Hollister has not applied for any ADA funds for a number of years and he did not believe that the County had either; however, San Juan Bautista has a number of grants either in the process or has just received them recently for some public infrastructure type of projects. Therefore, we update and give them our trends and projects that are coming up and these are the main parts of this particular document. The Hollister City Council has adopted the resolution to submit on January 20th and Mr. Avera asked for the authorization of the Board of Supervisors as well.

Supervisor Loe asked if what they would be doing was to agree with the overall concept of the Plan?

Mr. Avera answered yes stating that any projects in the plan have to go through a normal approval process so if there are things that are projected in the plan that don't have current approval this is not a document that would approve the project per se. They all have to

go through the formal process with either the Cities or the County. Mr. Avera said these were just concepts that we are sending and also the past projects that are completed on or in the process of completion.

Supervisor Loe said then we are not agreeing with any type of project and not agreeing with any of the statements particularly in the Update. This is just an overall view.

Mr. Avera answered yes.

Supervisor Loe asked what the numbers were based upon.

Mr. Avera answered that the numbers come from various sources. Al Martinez of the Economic Development Corporation (EDC) actually puts this document together based on information he receives from the various organizations. Mr. Avera stated that they usually try to have this document before the BOS in October, but as budgets are being cut and things are slower they are not receiving the information as fast as they once were.

Mr. Avera said we are already in 2004 and we are adopting a document that is basically for the last year fiscal year.

Mr. Avera said the numbers come from the State Department of Commerce, the Employment Office and all types of resources. The projects that are listed in the Update typically come from the City of Hollister Public Works Department, the County Public Works Department and the City of San Juan Bautista Manager's office.

Supervisor Loe asked then if trending was based basically on state numbers.

Mr. Avera answered yes.

Chairman Cruz stated that for the record he wanted to clarify that the Board was not signing off on any development.

Mr. Avera said no they weren't. Mr. Avera said that all the BOS was really doing was to authorize himself, as a staff person, to submit the Update to the EDA and then they review it as well.

*Supervisor Loe made a motion to adopt **RESOLUTION NO. 2004-09** ACCEPTING THE OVERALL ECONOMIC DEVELOPMENT PROGRAM 2004 UPDATE and authorizing the Chair to sign said resolution. Supervisor Monaco seconded the motion.*

The motion passed 4-0 with Supervisor Scagliotti absent. File #20

PLANNING DEPARTMENT - R. Mendiola:

15) **Consider ordinance to establish inclusionary housing regulations to provide in-lieu fee for affordable housing units or the construction of affordable housing units as part of new residential/subdivision development projects. and consider proposed resolution approving Inclusionary Housing Administrative Manual. (cont from 1/13/04 mtg.)**

Fred Goodrich, Assistant Director of Planning, provided background information stating at the last Board of Supervisor's meeting on January 13, 2004 the Board of Supervisors (BOS) reviewed the Inclusionary Housing Ordinance, the Administrative Manual that went along with the ordinance and the Negative Declaration. The BOS heard and considered public testimony. At the close of the public hearing the Board indicated unanimous approval for the Negative Declaration and the Ordinance and directed staff to make some minor changes to the Ordinance and the Administrative Manual. Mr. Goodrich said that has been done and the revised Ordinance and Administrative Manual are in the Board's packet for review and the recommendation by staff is to adopt the Negative Declaration and adopt the Ordinance and by resolution adopt the Administrative Manual.

There were no questions by the Board.

*Supervisor Kesler made a motion to adopt **ORDINANCE NO. 766** ADDING CHAPTER 35 TO THE SAN BENITO COUNTY CODE RELATING TO THE PROVISION OF INCLUSIONARY*

*HOUSING; and, adopt **RESOLUTION NO. 2004-10** ADOPTING AN INCLUSIONARY HOUSING PROGRAM ADMINISTRATIVE MANUAL. Supervisor Loe seconded the motion.*

The motion passed 4-0 with Supervisor Scagliotti absent. File #790

16) Consider clarification of Board of Supervisors directive to Planning Commission re: an Ordinance for Interim Management and Stabilization of the San Benito River.

Planning Director Rob Mendiola reported that the Board of Supervisors (BOS) has been wrestling with issues of San Benito River scour for some time. Some time in the past the BOS directed the Planning Department to prepare a River Management Plan and due to a number of reasons it has been delayed but we have prepared a draft plan and submitted it to the Planning Commission to address these issues. Mr. Mendiola said as the BOS may recall some of these issues are massive and expensive infrastructure problems. We've lost bridges. We've lost water lines. Private property owners have lost houses, acreage, etc. Mr. Mendiola stated that in looking at methods to help stabilize the river, or at least not cause it to be more imbalanced, those were the issues that the BOS wanted to be addressed to see what we could do.

Mr. Mendiola said they drafted an ordinance and have brought it to the Planning Commission and they have been wrestling with it. Mr. Mendiola said he knows that at some point somebody said that the BOS was going to consider this ordinance today. Mr. Mendiola said that was not the case and that is not what the BOS has been asked to do. In fact, we always wrestle with what is too much to give the BOS and what is not enough. In this case we thought we'd give the BOS pretty much all that we had. Mr. Mendiola pointed out that the only version of this ordinance is a draft version. It is stamped draft on every page. It is for discussion purposes and as a starting point.

Mr. Mendiola stated that the Planning Commission has received a lot of input and we have been directed to work on this ordinance and make some changes. Further, at the Planning Commission's request, staff scheduled a workshop meeting for the public to address items within this draft ordinance and that is scheduled for February 3, 2004 at 5:00 p.m. in the BOS Chambers. This is a work in progress and it needs to be seen as a work in progress and it is not before the BOS today for adoption so Mr. Mendiola said he apologized to anyone present who thinks that this was the case, but that is not what is here today. Mr. Mendiola said that when the Planning Commission was wrestling with this issue at one of its last meetings, and, after they suggested that they hold this Workshop, the Planning Commission said why don't we ask the BOS if it is still their intent and do they still want this ordinance. This is essence what the question is before the BOS today and it is the only question.

Mr. Mendiola turned the matter over to the BOS and stated he would answer any questions that they may have.

Supervisor Kesler asked if this was the same study that we started 15 years ago?

Mr. Mendiola answered that it is a derivative. We have done different studies and worked on different ordinances. Mr. Mendiola said he wouldn't call it the same, but it is a derivative. We, at one point, maybe nine or 10 years ago started working on what we called the Falwag study and worked on that for a while until we found that we were dealing in one dimension (only depth dimension) and that the river issue is a three dimensional problem and it's a volumetric problem. So we had to go back and try to figure a more comprehensive way to look at it. Mr. Mendiola said it was not the same study but it's the same topic.

Chairman Cruz stated that this Board was not going to make a decision today as to accepting this ordinance. That is not the issue before us. Chairman Cruz said that anyone who would like to speak today to please keep in mind that the Board was not making a decision to accept or reject the ordinance. What we are going to do is decide if we want to continue the study and if we do we want to send it back so the Planning Commission can do their study

along with staff. Chairman Cruz noted that if someone wanted to address the Board as to whether we shouldn't continue the study he would take that input, but, he did not want to get into how deep to go into the river, etc. because that is not what we are here for today.

Wade Stout, Paicines resident, came forward stating that he used to be a Certified Water Treatment Operator for public drinking water systems and worked in Lassen County, California. Mr. Stout said he read the complete report here and it looks to him as if the Planning Department/Planning Commission was given a resolution to study and stop the impact of the aggregate businesses not to completely regulate and destroy the agricultural community. After reading the full document that is basically what it's going to do. Mr. Stout said he researched the laws that govern this and it looks like what he (Planning Director) has done is to try to implement an emergency ordinance. Mr. Stout asked if that were true.

Mr. Mendiola and Chairman Cruz answered that was not true at all. Chairman Cruz stated that hopefully, what Mr. Stout just pointed out, that when it does go back to them (Planning Commission) somebody, a sub-committee or member of the public will bring that up and discuss it so when it does come back to us the BOS will have those facts.

Mr. Stout stated that at this time he would like to clarify exactly what this document's intent was. He would like to know exactly what it is.

Chairman Cruz said it was a study that we started about a year or so ago and it has a lot of information – good, bad or indifferent -- and now we are sending it back.

Mr. Stout said it looks as if – according to Resolution 95133 – that the staff has gotten completely off target as to what they intended to do.

Chairman Cruz said let's hope that the public will bring it back.

Mr. Stout stated that basically this would establish a monarchy in our County – Government Controlled by One – which would be the Planning Director.

Chairman Cruz stated that he didn't think so.

Mr. Stout said that the way it was written it was going to violate everyone's civil rights.

Chairman Cruz said only if the BOS accepted the ordinance today and they were not doing that.

Mr. Stout said he knew that. Mr. Stout stated that right now as this stands he would have to sue the BOS himself, which he would do to look into the legality of this, and he believes that this report is actually a misappropriation of County funds and he cannot believe that any man that is suppose to care about the public in any way, shape or form is writing a document like this. Mr. Stout said that was his opinion and that he would sue personally and he has a right to do that.

Mr. Mendiola came forward stating that first of all this does not establish a monarchy and he would like to make that very clear. There is an appeal process. Mr. Mendiola stated that he didn't want to get into the meat and potatoes of the ordinance, but, perhaps he should say that among the issues that we have found are the hot ticket items are there seems to be a feeling that the ranching and cattle industry feels that this is aimed at them and that isn't the case. Mr. Mendiola stated that among the things that we realize is that we are going to have to par back at this point is where and how we actually regulate this because it is very encompassing to start. Among the things we realize is we are going to have to par it back and we know that and we are working on that. Mr. Mendiola said there are things that we realize we have to regulate, but we are not interested in regulating whether a rancher puts up a fence. That is not the case. It hasn't been the case and so there is a lot of rumor and innuendo out there about this and too much of it simply isn't true and Mr. Mendiola said he needed to make that point. We recognize that there are some flaws with it and we will polish them.

Mr. Mendiola stated that he wanted to repeat what he said in the beginning. We also know that there have been millions of dollars of public infrastructure loss. There have been

millions of dollars worth of private property loss and we are attempting to address that and he would suggest that is very important as a public process. It is very important that our police powers are used to protect other people's private property as well. It is not good enough for someone to stand at the podium and say that this is going to encroach on my rights. Mr. Mendiola said we have to look at not only theirs but their neighbors rights and some of their neighbors have already been damaged so we need to look at the whole and that is something we are attempting to do and it is not an easy task.

Mr. Stout asked if he could have time for rebuttal.

Chairman Cruz answered no he could not.

Paul Wattis, Paicines resident and rancher, came forward stating that he has been following this matter since he first picked it up in the newspaper in November. Mr. Wattis said he has attended three Planning Commission meetings and now is has been brought back to the BOS. Mr. Wattis said that at the last Planning Commission meeting, when the BOS was directed to reconsider this ordinance, you were asked by the Planning Commission to decide if we need this ordinance or not. Mr. Wattis stated that it was his concerned opinion that the county has plenty of facilities in place to regulate what is out there and you don't need another one. Mr. Wattis stated that there are 16 agencies that regulate this river (Corp of Engineers, Fish and Game, etc). This ordinance as written is an all-encompassing ordinance and it goes too far, too fast and takes in everything that doesn't need to be done. This started in 1986 with some gravel guys that overextended the mining of the river or something and this was brought out to the BOS to request the Planning Commission on October 2000. It is now 2004 and this is coming back as an interim ordinance. Mr. Wattis stated that you need to define what the river is that you want to regulate and where in that river you want to regulate it. You can't just say the San Benito River and all of its tributaries because that takes up every little gulch and every little draw that comes out of the hill and 100 feet on either side if supposedly any time water ran down there. Mr. Wattis said that would be the whole county.

Mr. Wattis ended by stating that his advice to the Board is you have adequate regulation in place at this time. If something all of sudden happens the BOS meets three times a month and you certainly can put something on the agenda to address something as an emergency for a 60-day period until you have some time to study. Mr. Wattis said you don't need this.

Chairman Cruz asked Mr. Wattis if he was stating that he did not want it sent back for more study.

Mr. Wattis said he didn't want it to go back for more study. He wanted it killed.

Don Trinchero came forward stating that he has a ranch in Southern San Benito County and it has approximately three miles of the San Benito River that passes through it and its tributaries would amount to approximately another 20 miles. Mr. Trinchero stated that if this ordinance were adopted it would affect approximately 500 acres on his ranch and it would be devastating to his ranch and the cattle industry in San Benito County. At this point Mr. Trinchero stated that at this point he would have to agree with what has been said by the other people prior to him and basically he stood in opposition of continuing this ordinance. There are already plenty of laws that are already in place that the BOS can use to deal with any problems that may come about from mining or cattle operations as well.

Mike Bailey, South County resident, came forward. Mr. Bailey stated that he wished to express that the BOS not reconsider or continue with this particular ordinance. He reiterated that there are ample agencies, ordinances and laws regulating what is done in the river. Mr. Bailey stated that if you have a problem with a particular section of the river then deal with particular section. Mr. Bailey said he didn't think we need an all-encompassing measure such as this at this time. However, if the BOS does decide to go on with this study he would like to find some way to include cattlemen, ranchers and farmers in the development of this

ordinance because Mr. Bailey stated that he did not know any one of them that had a say so in how it has been developed so far.

Mike Baumgartner, South County resident, came forward. Mr. Baumgartner stated that they had roughly six miles of river. Mr. Baumgartner stated that as this ordinance stands or as this thing is proposed it really would decimate the ranching communities out there. Mr. Baumgartner said that he agrees that if we are going to go ahead with an ordinance you have to have input from these people that are up on the top part of this river. Mr. Baumgartner stated that these are mostly generational families and have been there since roughly the late 1800's. They have had to deal with this river before there were tractors, before there was stuff that had any kind of an impact that you are talking about as far as erosion – moving heavy loads. Mr. Baumgartner said that if we are going to do something with the river to save the environment down there then you have to take into consideration what these people have learned over the years and that is your best source of how that river runs and how that river will cut or change its location.

Mr. Baumgartner ended by stating that he was opposed to this going forward like this and he believes that there are laws there, but, we just need more communication from down at that point where the water comes from and down to here. We just need a better chain of communication to inform the ranchers to convince them and to help and assist them in developing a river that will hold its channel. Mr. Baumgartner stated they don't want their land to be stripped off and eroded away. We are farmers and ranchers and we want that there for generations to come and most of their orders from the generational farmers are to hold the land. Mr. Baumgartner said they were with the county on this and we are all reasonable people here so let's work together on this.

Supervisor Kesler asked Mr. Baumgartner if he had ever been told no by the Planning Department on anything pertaining to this program?

Mr. Baumgartner said sure. Mr. Baumgartner said that as far as this particular program he just barely heard about this particular ordinance. We just heard about it and we just had a meeting with Supervisor Monaco in South County. We set up a community meeting down there and we are just now hearing about this. Mr. Baumgartner said that communication is breaking down and we need to be able to get these people informed then you will get very good input from these people.

Supervisor Kesler stated that she thinks that you are entitled at any time to call the Planning Director to make an appointment and talk with him and you will then find out for sure right from the horse's mouth.

Mr. Baumgartner said they are basically 50 miles from Hollister.

Supervisor Kesler asked don't they come into town that often?

Mr. Baumgartner said no. Somebody has to feed the cows, somebody has to maintain the tractors and it's basically that a lot of people are busy and it's a long way.

Nenette Corotto, Blossom Lane resident, came forward. Mrs. Corotto stated that they also have cattle land and from that viewpoint she has been very concerned. On their Blossom Lane property they were one of those people who were affected by the 1998 storm. The river encompassed and moved into the neighbor's property and then about two and a half acres of theirs. Mrs. Corotto felt that 15-20 years ago there were very poor mining practices and permits were issued that were inappropriate without any thought as to what was going to happen 20 or 30 years from then. Mrs. Corotto said she would probably still see some effect from that because you can't undo those things. Mrs. Corotto stated that she also worked at the Public Works Department for about 23 years right there on the river edge and so she has watched and listened and heard the discussions. Mrs. Corotto said she felt this ordinance was inappropriate because she thinks that the one issue is what happened with most of the mining.

Some of this may have been corrected. Some of the practices now may be different, but you're not going to undo what has happened by putting in something that is so encompassing as this ordinance.

Charles McCullough, Panoche Road resident, came forward. Mr. McCullough handed out photos showing some of the results of existing Fish and Game regulations that damage was done by the regulations, by the ordinance and by the act of God. Most of the problems we are having here are by the act of God the results of wet years and this is what happened. Mr. McCullough referred to one of the photos that he had was something that should be of concern to the county. In 1995, the wet year, it shows Cherry Hill where the water came through the bridge, hit the brush turn and went right into bank and just about wiped out the road. Mr. McCullough said that coming down into town today he saw the same occurrence. The brush has not been cleared. Fish and Game will not let us get in there and do these maintenances. It is the same as with gravel bars. When the water comes through an area and leaves a gravel bar it turns and goes into the farming fields. These regulations that are in existence now are harmful to our area.

Mr. McCullough said he wanted to mention, and felt it would be helpful to the BOS, that they have a CRIMP (Coordinated Resource Management Planning) in South County the watershed that goes into the valley. This was instigated by environmentalists (EPA). They called a meeting and everybody (ranchers and farmers) was notified. Mr. McCullough said he and his brother were the only ranchers who attended the meeting and there were three farmers and the rest were all federal and state agencies. These agencies were basically the Natural Resource Conservation Services, Westside Water Resource District, Regional Water Quality Board people and Bureau of Reclamation. They got together and formed this CRIMP with the agencies to get their input. Mr. McCullough stated that Tim Hatton with EPA from San Francisco, who instigated all of this, said basically we have to reduce and remove the cattle from range. They are causing sediment and problems going into the bay. So we implemented it and weren't going anywhere and didn't have a director. Mr. McCullough stated that EPA and taxpayer dollars funded the project. We are into it about three years and we have contracted with an engineering firm from Colorado. The study was made at 40 years ago and they wouldn't accept it. He had to have one current. Mr. McCullough said they got the engineers in there and the results were basically the same as what it was 40 years ago. Basically to solve the problem you put dams in the upper watershed. The answer was dams and that applies to the same thing here. All of the scouring and damage is due from mismanagement of the creeks, but most of it is act of God with the wet years. Mr. McCullough said that should be taken into consideration.

Mr. McCullough went on to say that after three years into the study there, the Chronicle newspaper came out with an article in the paper stating the biggest polluter in the bay was San Francisco residents. Mr. McCullough said he laid that out to Tim Hatton of the EPA and he walked away because they had said to remove or reduce the cattle. The study said that the cattle impact was minimal. The coyotes and badgers digging into the banks after squirrels, piling the dirt in the creek was just as much as an influence. At that point he took his money and he left. This is still going on in the CRIMP. Mr. McCullough stated that there was a lot of good information in those studies and the current study so that information is available. Mr. McCullough stated that he did not think there was any need for this ordinance because there is enough Fish and Game and the ordinance already in the books can handle it. The problem is due to the act of God and he did not feel we needed to go any further than that.

Mr. McCullough said as a board, because they have studied the Panoche Silver Creek and San Carlos Creek, it is noted that it was still in the streambed. Mr. McCullough stated that in reference to the San Carlos Creek coming down if you read the paper you are getting false

information. Mr. McCullough said he has seen in the paper where the water is coming out of the San Carlos and comes into the Panoche Valley and he has even seen in the paper where it even affects our aquifer down here. Mr. McCullough said their study says it comes right from the San Carlos and it goes through one residence there and families property and two ranchers and it goes into Fresno County and from Fresno County it goes into the City of Mendota. This water is coming out. We have had the water quality people up there taking samples of the water and he has found no problem with the water and to spend the \$30,000 that you have here already on that project up there is a waste of our taxpayers dollars and this study pretty much backs that up.

Chairman Cruz asked about the studies that Mr. McCullough had mentioned. Some people have come before him (Mr. McCullough) and they said they haven't heard about a study and there has been no communication. Chairman Cruz said to just forget about the ordinance for a moment and just an overall good study so more people would know exactly what he (Mr. Cullough) knows. If it is a year or 6 months – just to bring back communication so we can draft a good ordinance once and for all.

Mr. Cullough said he didn't know if Supervisor Cruz was here or not, but, he was Chairman for two years and he insisted that the secretary come to the BOS and inform them exactly what was taking place. They did come to the BOS and spent an hour or so informing the BOS exactly what they were doing. Former Supervisor Ron Rodrigues attended the meetings and we have minutes from those meetings sent to the county here so we tried to keep the BOS and people from the county aware. Mr. McCullough said the minutes were sent here and a presentation was made to the BOS and he did not know what more they could do.

Tom Tobias, representing the Farm Bureau and also speaking as a private citizen, came forward. Mr. Tobias stated they don't think this is necessary and as you can see most people don't want it and its all a matter of interpretation. Some experts say we do and some say we don't. The fact is that we have numerous public agencies covering this issue. Why create another one? We're short of money as it is. We don't have to re-invent the wheel. Let's just turn the wheel. Mr. Tobias said let's deal with the San Benito County Water District and the Fish and Game. We don't have to write a whole new ordinance for this.

John Gregg, San Benito County District Manager, came forward. Mr. Gregg assured the BOS that the Water District is interested in this matter and is working with county staff. Our interest is in the river for the long term. As we understand the interim ordinance, it continues to pursue a comprehensive river management plan, which they feel is a critical activity. Mr. Gregg said they were concerned about how it will be resourced and funded and he felt that the inability or lack of commitment of this community to a practical river plan is why it has been going on so long and why there isn't one. Mr. Gregg said that with regards to the issue of the use of police powers they feel there are some serious questions and we have raised those and are discussing them with county staff. If there is a need – over what activities, over what area and for what time period? If there is need for police powers how is the policing going to take place? Mr. Gregg said the county regularly hears from staff but they don't have enough personnel to deal with current workloads. Mr. Gregg said they felt there were some serious issues that need to be addressed just in the practicality of what we are doing and we are in discussion with county with respect to those and we understand it to be a work in progress and there is clearly work to be done. Mr. Gregg they were committed to participate in and contribute to that work.

Jim West, Granite Rock Company, came forward. Mr. West said he has looked at this carefully and he thinks that everything in the ordinance is important and is critical to the future of the river. Mr. West said he agreed with that and he has had some input with Mr. Mendiola about some of the things that have happened. Mr. West said he doesn't want to go back. He is

60 years old and has been a miner for 40 years so he mined in rivers 30, 40 and 20 years ago and he didn't want to go into that at this point. Mr. West said he is a lot smarter than he was 20 or 30 years ago. Mr. West said he just wanted to point out one thing about this ordinance. Mining in the river, or out of the river, is a discretionary act by this county. In other words there is no place that he can go and mine. There is no zoning where he can go and mine so every time he goes to mine, he has to do an Environmental Impact Report (EIR) and he has probably done hundreds of thousands of dollars to date (he is looking at geomorphology of the river). Mr. West said he hoped to mine at Mitchell Road and he would have to do everything in the ordinance and win or lose at the Planning Commission it will come to this BOS and all of the things in this ordinance that he thinks are good, and he agrees with Mr. Mendiola on that, will be done before he can even get up to this podium. Mr. West said there is nothing in this ordinance that bothers him and there will be conditions added. We've all gone through these in the last few years and truly love the permits that he got 20 years ago, 30 years ago and even 7 years ago because they were not much more than a piece of paper and the conditions were vague, and he wouldn't say unenforceable, but they were so vague it was difficult to tell if their operations were in compliance or not in compliance.

Mr. West went on to say that today we all remember the Brigantino overburden project and the documents in that. You all remember more recently their (Granite Rock) Southside Sand & Gravel operations. Conditions are not vague anymore. At Southside they do topographical maps every year for the county and they are also regulated by the Army Corp of Engineers and they are also regulated by the California Department of Fish and Game for their 1603 Permits and those organizations are very much like the county and the mining industry. They are a lot smarter today than they were 10 years or 20 years ago. Mr. West said if the county wants to look at a River Management Ordinance that is fine, but, as far as controlling mining, everything that is in there is already covered by both the County and the State Department of Mines and Geology, U.S. Fish and Wildlife Service, Federal Army Corp of Engineers and we will do it all and we will have it in place before they stand at this podium.

Supervisor Monaco said that many people who have spoken are residents or property owners in his district and he just wanted to say that this issue is of great concern to many people in our county and for this reason it is probably best to proceed cautiously and work toward a solution that addresses all these concerns at whatever level they may be.

Supervisor Monaco stated that it seems that this process might be time consuming and seem to some to be a waste of time, but by expending the necessary time to deal with these concerns about our river management policy in the beginning, we can accomplish clear meaningful solutions to these concerns and issues. Therefore, Supervisor Monaco stated that he personally wanted to commend the Planning Commission and staff for all of the time and effort that they have expended on this to this date. Supervisor Monaco encouraged the Planning Commission and staff to continue this process that they have already begun of reviewing public input on this matter and the Planning Commission and staff should review all of the issues and considerations of technical information and public concerns and then take an action in advising this BOS as to the most appropriate policies to adopt.

Supervisor Monaco made a motion directing the Planning Commission and staff to continue to take input and determine if a river management ordinance is needed and if so begin the process of drafting a River Management Plan; and, report back to the Board of Supervisors within 60 days as to their progress. Supervisor Kesler seconded the motion.

Under the question. Chairman Cruz stated that he agreed with Supervisor Monaco and he knew that quite a few people spoke today and he would like to send it back for a study. Chairman Cruz said let's try to change it and get some communication and study here. Maybe

Supervisor Monaco can have a meeting in South County to discuss this issue and put it all together to make it better.

The Chair called for the question.

The motion carried 4-0 with Supervisor Scagliotti absent.

Mr. Mendiola came forward to remind everybody that there was going to be a meeting on February 3, 2004 at 5:00 p.m. in the Board of Supervisors Chambers to talk about this ordinance. Mr. Mendiola encouraged everyone to come and give his or her input. If that isn't convenient then his telephone number is 637-5313 and he is more willing to take input and he would appreciate comments.

Chairman Cruz said that because that is Supervisor Monaco's district he has said that he will get together with some of constituents and they can have study sessions in South County.
File #790

10:00 a.m. CLOSED SESSION AGENDA:

The Board adjourned into Closed Session and reconvened into Regular session re:

17) Conference with Legal Counsel - Anticipated Litigation

- a) Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9. Number of cases: **3**

All three cases withdrawn by County Counsel.

- b) Initiation of litigation pursuant to subdivision (c) of Government code Section 54956.9. Number of cases: **3**

2 cases withdrawn by County Counsel.

1 case – No reportable action. File #235.6

18) Conference with Legal Counsel - Existing Litigation

- a) Francioni et al. vs. County of San Benito et al.

No reportable action.

- b) Sandman vs. County of San Benito

No reportable action.

- c) Torres vs. County of San Benito et al.

No reportable action.

- d) Monteon vs. Richard Scagliotti, San Benito County Board of Supervisors, San Benito County Financing Corporation, et al.

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: P. Loe, R. Monaco, R. Kesler, B. Cruz

NOES: SUPERVISORS: None

ABSENT: SUPERVISORS: R. Scagliotti

There being no further business the Board adjourned to its next regularly scheduled meeting on Tuesday, February 3, 2004 at 9:30 a.m.

BOB CRUZ, CHAIRMAN

San Benito County Board of Supervisors

ATTEST:

John R. Hodges

Clerk of the Board

BY:

Linda Churchill

Senior Board Clerk