

**SAN BENITO COUNTY
BOARD OF SUPERVISORS
REGULAR MEETING MINUTES
FEBRUARY 3, 2004**

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in regular session at 9:30 a.m. Supervisors Loe; Monaco, Kesler and Cruz were all present. Supervisor Scagliotti was absent. Also present was County Administrative Officer Terrence May, County Counsel Karen R. Forcum and Assistant Clerk Sally Navarez. Chairman Bob Cruz presiding when the following was had to wit:

CALL TO ORDER:

- a) Pledge of allegiance.
- b) *Upon motion duly made, seconded and carried, acknowledged the Certificate of Posting.*
- c) **Public Comment.** There was no Public Comment.
- d) **Department Head Announcements.** Per County Administrative Officer May, there were no Department Head Announcements.

Chair Cruz asked Counsel if it was appropriate to include Board of Supervisors members who may wish to give an overview of a meeting that had been attended and wanted to make a verbal report under this heading.

Counsel Forcum noted that any Board member may provide an overview of a meeting, conference, etc. update under this heading.

CONSENT AGENDA:

Supervisor Monaco made the motion to approve the Consent Agenda, Items #1 through #6. Supervisor Kesler was second on the matter.

Upon motion duly made, seconded and carried, approved the Consent Agenda Item #1 through Item #6. Motion passed 4-0 with Supervisor Scagliotti being absent for the vote.

- 1) Approved letter of support for S.B. 1306, the California Missions Preservations Act and authorized Chair to sign said letter. *(Board - file #156)*
- 2) Approved Departmental Claims. *(Auditing)*
- 3) Approved extension of audit services agreement with Bartig, Basler & Ray CPA's for fiscal year ending June 30, 2003 and authorized Chair to sign. *(Auditing - file #608)*
- 4) Rejected claim of Tracy Lee Curtis filed with the clerk of the board on December 23, 2003 and directed clerk to notify claimant. *(Counsel - file #235)*
- 5) Approved agreement with the San Benito Joint Union High School District re: school nursing services with a contract term of December 1, 2003 through June 30, 2004 and authorized Chair to sign. *(cont. from 1/27/04 mtg.) (H&HSA - file #420)*
- 6) Approved agreement with the City of Hollister Police Department re: Family Wellness instruction with a contract term of February 16, 2004 through April 23, 2004 and authorized Chair to sign. *(Substance Abuse - file #1053)*

REGULAR AGENDA:

7) **Consider proposed resolution Authorizing The Consolidation Of The Municipal Primary Election Of The City Of San Juan Bautista With The March 2, 2004.** Clerk/Auditor/Recorder John Hodges came forward. Mr. Hodges explained that the City of San Juan Bautista was requesting consolidation with the Primary and this is normal procedure. Mr. Hodges concluded that the City of San Juan needs Board of Supervisors approval and noted San Juan is also contributing towards the costs of this matter.

Supervisor Kesler made the motion to approved the matter. Supervisor Loe was second on the motion. Counsel Forcum interjected that this item required the passing of a Resolution.

Supervisor Kesler amended her motion to include approving Resolution 2004-11 authorizing the consolidation request of San Juan. Supervisor Loe, as second on the matter, concurred.

*Upon motion duly made, seconded and carried, approved **Resolution 2004-11 Authorizing The Consolidation Of The Municipal Primary Election Of The City Of San Juan Bautista With The March 2, 2004 Election** and authorized Chair to sign said resolution. Motion passed 4-0 with Supervisor Scagliotti being absent for the vote. (Elections - file #285)*

8) **Consider proposed resolution Authorizing The Consolidation Of Gavilan And Cabrillo Community College District Elections With The March 2, 2004 Statewide Primary Election And Provision Of Services By The Registrar Of Voters.** Clerk/Auditor/Recorder John Hodges noted this, like the previous item, was routine in nature and requested approval.

Supervisor Kesler made the motion to approve the consolidation request and adopted Resolution 2004-12. Supervisor Monaco was second on the matter.

*Upon motion duly made, seconded and carried, approved **Resolution 2004-12 Authorizing The Consolidation Of Gavilan And Cabrillo Community College District Elections With The March 2, 2004 Statewide Primary Election And Provision Of Services By The Registrar Of Voters** and authorized Chair to sign said resolution. Motion passed 4-0 with Supervisor Scagliotti being absent for the vote. (Elections - file #285)*

- 9) a) **Consider approval of Local Public Health Preparedness budget augmentation**
b) **Consider authorization to hire temporary part-time extra help; and,**
c) **Authorize Chair to sign Certification Form.**

Health and Human Services Agency Director Marilyn Coppola came forward. She noted this was a request for budget revision and augmentation for the Local Public Health Preparedness program. The reason for the request is when this was budgeted last year, a certain amount was budgeted and the department has actually received, in the allocation, more than what was budgeted. In addition, there are rollover monies that is in addition to what was anticipated. Ms. Coppola indicated the request was to augment this budget by \$55,190.

Ms. Coppola noted she was also requesting approval to hire extra help staff, Administrative Services Specialist. She noted the position was originally approved as a part of the original plan, an actual full-time position, but during the budget process, that position was eliminated. She noted she would like to bring this position on as extra help from now until the end of the fiscal year. Ms. Coppola noted that reporting to the State and the budget preparation is very labor intensive and it would be helpful to have this position as originally planned. That person would be able to do the final reporting as we come to the end of this cycle of funding.

Ms. Coppola also noted it was requested that the Chair sign a Certification Form that states these funds would not be used to subvent other funds for existing public services.

Ms. Coppola noted the items that would be using the augmentation are consistent with the Plan that the Board had approved last year. Some of the things scheduled to continue are the 24-7 on-call response which consists of Environmental Health staff, Public Health Nurse staff and the extra help position and somebody for Professional Services for maintenance of the computer system which is a very important part of the preparedness system during an emergency. This is to be able connectivity and everyone being able to communicate.

Supervisor Monaco asked Ms. Coppola that the person that is being proposed to hire is just a temporary position for a finite period.

Ms. Coppola indicated that was correct as the position was being asked for through the end of this fiscal year only. Ms. Coppola indicated she didn't know yet how much that the department will receive next year, but felt it would be a similar amount, but nothing is definite yet. Whether she is going to request to continue this position or how to allocate the funding, she noted she will be doing that for next fiscal year.

Supervisor Monaco asked how was the position being funded during the specified period of time.

Ms. Coppola indicated via this augmentation through the end of this year and that would be enough for three days a week, extra help.

Chairman Cruz asked for clarification that the extra help request was a part of the overall augmentation to which Ms. Coppola indicated that was correct.

Chairman Cruz asked if there was no more money, would this person only be working as long as these funds were available or if it doesn't make it through the end of the year, this person wouldn't be working through the end of the year?

Chairman Cruz asked that this Board has said before, when we hire people under grants, when the grant runs out and there is no more money for how these people were hired, with that understanding.

Ms. Coppola indicated that was correct.

Supervisor Kesler made the motion to approve the request. Supervisor Monaco was second on the matter.

Chairman Cruz asked CAO May that since this all goes under one item, was it necessary to make two motions or could one motion cover the augmentation request.

CAO May indicated that one motion could deal with this because the authorization for the hiring of extra help goes hand in hand with the request for approval of the budget augmentation and the signature on the Certification Form is simply a verification by the Board that the funds are going to be spent on this program as stated in the budget transfer.

Chairman Cruz emphasized that the extra help person would only be working as long as there were monies to cover the position.

Upon motion duly made, seconded and carried:

- a) Approved augmentation of the Local Public Health Preparedness budget in the amount of \$55,190; and*
- b) Authorized the hiring of temporary part-time extra help with the understanding that once the funds for temporary help are exhausted, the position will be eliminated; and*
- c) Authorized the Chair to sign said Certification Form.*

Motion passed 4-0 with Supervisor Scagliotti being absent for the vote. (H&HSA - file #420)

10) **Consider two (2) proposed resolutions Approving the Volunteer Mounted Search & Rescue Unit and Authorizing the Sheriff Search & Rescue Authority per Government Code Section 26614; approve Mounted Search & Rescue Duty Manual and proposed Bylaws.** Sheriff Curtis Hill came forward. He indicated this was to request approval of establishing a Volunteer Mounted Search & Rescue team under the Sheriff's office. With that proposal, it is recommended that there be five separate actions necessary by the Board and at the end of the discussion, he would outline those recommended actions for the purposes of a motion.

Sheriff Hill stated the packet before the Board was quite extensive and contained a lot of information. Sheriff stated staff was interested in getting into the search and rescue business over the long term. With search and rescue, he and staff have done quite a bit of work with the State Office of Emergency Services to discuss the most appropriate method in order to establish a fully functional search and rescue component.

Sheriff Hill noted in speaking with OES, it happened that establishing a fully volunteer Mounted Search and Rescue team is the most appropriate method and that is the very same interest that he has had from a number of people in the community to do something of this nature. It is a perfect coming together of not only the idea of the approach that we had when originally approached OES, but OES stated this is the appropriate way to start and then go towards long term expansion of the program.

Sheriff Hill noted staff worked with a number of people at OES and also worked with neighboring Counties. Monterey County has a non-profit Mounted Search and Rescue Team and it does exactly what Sheriff believed was what before the Board today.

Sheriff Hill noted there were a couple of aspects to this. One, it would be strictly voluntary with citizen volunteers from San Benito County. This would also establish a set of Bylaws to have organization which would make it non-profit. One of the big questions for San Benito County, which was worked out with Mr. May and Counsel on was the question of liability. This is where State OES was able to confirm that we would be able to designate these volunteers as paid State Disaster Service Workers. These are people that we have employed in this County in a number of incidences, most, notably, back in 1989 during Loma Prieta. When we have volunteers that show up, we give them that Disaster Service Worker designation and that sets up a case law proven, court tested mechanism to protect the County relative of liability, Workers' Comp, etc. that would be potentially incurred with an injury in the performance of their duties. That is part of the package that was submitted to the Board.

Sheriff Hill noted he also included in that package, all the Authorities that surround the Search and Rescue in the State, all the responsibilities of law enforcement and the responding agencies relative to Search and Rescue. Those Authorities are attached for your review also.

Sheriff Hill noted there was a resolution included approving the Mounted Search and Rescue Unit. There is also a second resolution which is important to this project, and that is relative Government Code Section 26614. This currently says that the County Board of Supervisors may authorize the Sheriff to perform search and rescue functions and charge a reasonable fee for that function. Sheriff Hill explained via resolution, he would like the Board to approve the Search and Rescue Unit.

Sheriff Hill stated contained within one of the resolutions, is it states that the Sheriff may transfer all or part of the Search and Rescue responsibilities to another agency or jurisdiction through a written agreement. Where this fits in, in the way he interpreted this, we have a project that we would like to get started here to perform search and rescue is to primarily focus on wilderness searches, swift water rescue, lost hikers, lost children, going out looking for elderly/disabled people that may be suffering from Alzheimer's or dementia, those types of things. Sheriff indicated this wasn't for the urban, technical type rescues. For example, if there were an earthquake and there were buildings down anywhere in the County, he wasn't asking for the possibility of going into the rubble pile type of rescues. We will assist the appropriate agencies that can handle that type of function. Would this be a benefit to the County to reach some written agreements with fire agencies in the County to build a performance function, absolutely. Sheriff noted he wasn't here to get into that area of rescue responsibilities.

Sheriff Hill noted he discussed with CAO May was that there was a tremendous amount of dialog for legislation at the state level to streamline the relationship between the Sheriff and fire functions relative to search and rescues. He wanted to be sure the Board understood that he wasn't looking to taking on all of it as it would be inappropriate.

Sheriff Hill noted that primarily the responsibility that he had was, in many of these instances (lost adult, missing/kidnapped child) it starts out to what is potential for a criminal investigation as part of the rescue effort. Sheriff explained he was looking at those types of relative issues and sometimes when you get into long term efforts where you are out searching many hundred square miles of land for perhaps, a plane crash or lost hunter or hiker. Some of these missions we would go on, take hours and hours where you have people in there over night, working the next day, etc. where fire cannot go in based on their level of response that their equipment has, to be able to take on the long haul type of search and rescue action which is before the Board here today.

Supervisor Kesler asked Sheriff if a child were to be lost today or tomorrow, doesn't the Sheriff go look for that child now to which the Sheriff replied yes.

Supervisor Kesler noted the only difference is that the Sheriff now wants to charge the child's' parents to go and look for that child?

Sheriff Hill noted not in that type of an incident. We are looking where we would have hikers. For example, and he has already paid this bill which he receives one or two a year from other counties, we had a gentleman who lived on the west side of the county who was in the Sierras' wilderness trail and ran into some difficulties. We, San Benito County Sheriff, got the bill from that county, either Riverside or San Bernardino, to rescue him out of there for reasonable costs. The bill was a couple of thousand dollars. That is the reason for the charges. We wouldn't be charging.

Supervisor Kesler noted but the monies he would be asking for would be coming to the Sheriff department.

Sheriff noted the money would go back into the General Fund.

Supervisor Kesler asked what was being done now - do you charge them?

Sheriff indicated no. What he was looking to do is, and that is what one of the resolutions is for, is codifying that via resolution to authorize the Sheriff to charge that reasonable fee.

Supervisor Kesler asked if this county was so destitute that it has to charge to go look for a child, man or woman with Alzheimer's, anything like that, we do it now so why are you asking for those people to pay the County when the County is already doing that?

Sheriff Hill indicated he wasn't looking at charging local residents. We would charge people that come and get lost in San Benito County who live in other counties.

Supervisor Kesler noted that isn't stated here.

Sheriff Hill indicated that is what the primary focus here is as he receives those types of bills from other counties at least twice a year now.

Supervisor Kesler noted she would like to see that written in here that it is for someone from another county that would have to pay and not our own people.

Sheriff Hill explained we may charge somebody if a county resident goes to a portion of our county and through their own negligence or their inability to prepare themselves appropriately for the terrain they are going to and get lost, perhaps that is something we may consider charging them for. Charged when someone shows negligence which creates a cost to the county, a potential liability for those types of things, etc.

Supervisor Kesler stated the Sheriff was doing that now, already. Supervisor Kesler noted it bothered her to say this county is going to charge somebody to go get them.

Sheriff Hill understood what Supervisor Kesler was saying.

Supervisor Kesler noted we had a good Sheriff department, good Police department and everybody works together when an emergency occurs, flood, or anything.

Sheriff Hill indicated that each of these incidents were separate incidents unto themselves. What he was asking for was authorization for the Sheriff where he may charge a reasonable fee for that. For example, the gentleman who was lost in another county, the actual cost from either San Bernardino or Riverside county, was \$20,000 to get him off the mountain. The bill sent to San Benito County was \$1600 to \$2000. They lowered that reasonable rate back to us. What it comes to, is that the Sheriff isn't looking at this search and rescue team to augment his budget to gauge the community or a parent that had a child wandered off. Absolutely not, he never thought that in this process. However, there are incidences where somebody who lives in this county go to the southern part of this county with inappropriate kind of gear and maybe need to be held responsible for what their actions are if they go into a remote area of this county unprepared.

Supervisor Kesler stated she would think that the people living in this county expect that from the Sheriff and Police department and to bring in extra people, and they don't expect monies.

Sheriff Hill stated he understood that and that is why the language has that the Sheriff may charge reasonable fees.

Supervisor Kesler noted when it says "may," nine times out of ten, that is what is going to happen.

Supervisor Loe noted she supported this program, but had a few questions for the Sheriff. Supervisor Loe noted the Sheriff mentioned long term expansion, but what did that actually mean?

Sheriff Hill noted it means as population increases in this community, as the program is reviewed, we may want to expand it to have volunteers that have specific, certified skills such as divers. Or, we may want to bring somebody onto the program that has can provide a fixed wing aircraft and is a pilot and understands search and rescue, a member of the Civil Air Patrol and wants to do something on a volunteer basis for his community. It may also mean people that have dogs that are capable of wilderness search and rescue. One time, a group of people came to the Department to talk to him that had technical, certified rope rescue. If they were a part of a volunteer group with equipment, they could go down and marry up with the Pinnacles Rangers in order to help a rock climber off the pinnacles should the need arise, which is a big hobby down there. When you have these incidences, people will walk in the door to help and it happens all the time. We were looking for a drowning victim at San Justo and overnight, we had three divers walk in the door volunteering to help, people in this community that are certified divers, had that training on dive rescue, walked in the door to help. Sheriff Hill noted with this program, we will be able to follow the guidelines establishing that technical aspect, but hope we would never have to use it. This is the long term approach.

Supervisor Loe asked Sheriff Hill if he would be able to absorb these expenses into his budget.

Sheriff responded yes. He indicated in order to keep a level of expertise relative to the search and rescue coordination component, i.e. South County Deputy to that type of training, also in the last month or so, Sheriff indicated he has ensured that the South County Deputy if a member of the State Sheriffs' Association Task Force which is being chaired by Dan Paranick of Mono County who is reviewing all the policies and procedures for all search and rescue teams in the State. The South County Deputy has been a part of that project and has brought back a tremendous amount of wealthy information and knowledge back to us. We are building a foundation based only on the Deputy's' current salary.

Supervisor Monaco noted he supported this request as his father was a certified diver out of Santa Clara County in the 1950's and Supervisor Monaco noted he served on a search and rescue team in the 1960's and 1970's. Supervisor Monaco noted most of his questions were answered through Supervisor Leo's questions, but

he asked the Sheriff how would the Sheriff interface, for example, with Pinnacles in South County if they do need assistance?

Sheriff Hill indicated Pinnacles Rangers had a tremendous amount of expertise in a number of things and at one point, they were a training location for technical rope rescues to assist down there. Sheriff Hill noted if there were a lost hiker, on the Monument proper and it looked like it would be something beyond the Rangers' capabilities and/or manpower, we would come in and work with them. The Rangers know the land and terrain better than Sheriff personnel, but we would work with them side by side and mitigate whatever the issue was, lost hiker, injured person, etc.

Supervisor Monaco asked regarding the expansion, Sheriff Hill mentioned divers, rock climbers, etc., and would assume that the potential of people who have off-road vehicles and some type of certification for that vehicle could be used. Supervisor Monaco also mentioned utilizing ham radio operators, and the like, would be frequently called in and become a part of these kinds of issues, but right now, it is just going to focus on just equestrian skills, was that correct?

Sheriff Hill indicated that was correct and nothing more than that at this point in time. One of the things, when discussing issues related to search and rescue, the interest of the people in the community is unbelievable. Sheriff indicted he noted one of the benefits is that this builds community spirit to do the common good. He has received an incredible amount of input from interested people, some of which are present in the audience, in doing this.

Chairman Cruz noted he supported the program, but noted we were mandated to go and help in the South County area should something happen. If someone were to happen to go into the mines in that area knowing that it is off limits; breaks in and there is a cave in, if this costs the County thousands of dollars, he had no problem charging that person or persons for the costs of the rescue. But, he felt the County needed to help anybody who may become stranded and they can know that there is help.

Chairman Cruz did note that he was concerned about money. He noted that with anything like this the County would need insurance and the way insurance was nowadays, was Sheriff Hill sure that the liability insurance would be covered by the State of California as disaster service workers? Chairman Cruz noted some years ago, the County bought a boat which sat in a garage for years and years, but the County bought the boat for rescue purposes, floods etc, but he hoped the Sheriff would use common sense in this area. Chairman Cruz noted he didn't want the Sheriff to come before this Board and tell them there was a need for a dozen horses for this program, but other than that, because of the volunteers, he supported this program.

Web Winans, Lovers Lane resident, came forward. Mr. Winans noted it was a good idea except he wondered if there should be another party involved to monitor these charges and the payments made so there is something amenable. Mr. Winans noted he didn't think there was anything from the State indicating what you can charge. This was a subjective thing and he would hope that there would be a separation on this item so there wouldn't be any overcharges nor overlook any charges should we do something for another county. Mr. Winans felt this would be an interesting thing to have another party involved in this in order to have checks and balances.

Sheriff Hill noted those types of things, the potential to charge someone, it to talk to the folks at State OES. The State Sheriffs' Association has done a great network of people that coordinate the search and rescue function. He knew that Mono County could have charged \$20,000 and yet they didn't by only charging between \$1600 and \$2000. This is where the term "reasonable" comes in. Sheriff noted he didn't care as much about the money as much as providing the functions to the community. The money is always secondary. Who cares about the money when you can get someone off the mountain top. However, if they are negligent in doing that, then we can charge them because they were unprepared. He noted he could figure out other things to generate revenue for the county other than charging somebody for costs as this is not what he was about.

Supervisor Kesler noted she didn't support this because if it is worded "not anyone in this County" after all, the people of this county already pay - they pay taxes. Most of the people in this county pay taxes and expect so much from the Sheriff, Police, Planning, etc. Everybody expects that, but then to say we are going to charge you if you get lost, it is horrid. If the Sheriff were to just put those words in there somewhere so everyone in this county would understand, if you get lost, we don't have the money to have someone find you, you are going to be out of luck.

Sheriff Hill noted to Supervisor Kesler that he understood the tremendous tax burden that the taxpayers were under. He noted while he was Sheriff, there were going to be a number of fees and revenue streams that other counties and cities are charging out there that he is not going to charge here.

Supervisor Kesler asked what happens if due to the economy, the Sheriff has to layoff a couple of people? This was a big possibility.

Sheriff Hill noted that he didn't, at any time, view this project as an offset for a deputy's salary. That is not what this was about, but rather doing a good work for the people of the community.

Margie Riopel, OES Director, came forward. Ms. Riopel indicated she supported this program as it will be a real asset to the county. Ms. Riopel noted Sheriff Hill has worked on this project for a long time and she fully supported this as does the State Office of Emergency Services in each county. This is a real asset to the community and hoped the Board would support this.

Supervisor Kesler noted she couldn't hear Ms. Riopel's comments and asked her again if she supported this program to which Ms. Riopel indicated she did indeed support this program.

Sheriff Hill indicated that his request was to request that the Board of Supervisors:

a) approve a proposed resolution approving the Volunteer Mounted Search and Rescue (MSAR) unit; and

b) approve a proposed resolution authorizing the Sheriff Search and Rescue authority in the county per Government Code Section 26614; and

c) approve Mounted Search and Rescue Duty Manual; and

d) approve Mounted Search and Rescue Bylaws; and

e) authorize the Chair to sign proposed resolutions.

Supervisor Monaco asked if his motion needed to recap what the Sheriff had just requested.

Counsel Forcum noted the Sheriff clearly read the recommended action and Supervisor Monaco can simply make a motion to adopt the action as recommended.

Supervisor Monaco made the motion to adopt the action as recommended.

Counsel Forcum noted the Clerk could reference the two resolution numbers for the record.

Clerk Navarez indicated the resolution numbers would be Resolution No. 2004-13 and No. 2004-14, respectively.

Supervisor Loe was second on the matter.

Upon motion duly made, seconded and carried:

a) *Approved Resolution No. 2004-13 Approving the Volunteer Mounted Search & Rescue (MSAR) Unit; and*

b) *Approved Resolution No. 2004-14 Authorizing the Sheriff Search and Rescue Authority in the County Per Government Code Section 26614; and*

c) *Approved Mounted Search & Rescue Unit Duty Manual; and*

d) *Approved Mounted Search & Rescue Unit Bylaws; and*

e) *Authorized Chair to sign said Resolutions.*

Motion passed 3-1 with Supervisor Kesler voting no on the matter and Supervisor Scagliotti being absent for the vote. (Sheriff - file #110)

Counsel Forcum noted for the record that Closed Session would be postponed until 11:00 a.m.

Chair Cruz adjourned the meeting to 11:00 a.m. for Closed Session per request of Counsel.

CLOSED SESSION AGENDA:

11) 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**

Prior to entering Closed Session, Counsel reported that all three cases had been withdrawn. (file #235.6)

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

Prior to entering Closed Session, Counsel reported that all three cases had been withdrawn. (file #235.6)

12) Conference with Legal Counsel - Existing Litigation

a) Frascioni et al. vs. County of San Benito et al.

Upon exiting Closed Session, Counsel reported that there was no action taken on this item. (file #235.6)

b) Sandman vs. County of San Benito

Upon exiting Closed Session, Counsel reported that there was no action taken on this item. (file #235.6)

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

Upon exiting Closed Session, Counsel reported that there was no action taken on this item. (file #235.6)

1:30 p.m. PUBLIC HEARING

13) **Hold public hearing to consider General Plan Amendment 02-24 and Zone Change 03-132 to change the land use designation from Agriculture to Residential and Commercial and to change the zoning designation from Agricultural Rangeland (AR) and Agricultural Productive (AP) to Rural Transition (RT) with a Planned Unit Development (PUD) overlay and Thoroughfare Commercial (C-1) for the development of a 154 single family detached units, 2 ranch estates, 30 affordable town homes, a 9400 square foot commercial center, a private championship 18-hole golf course and a public 9-hole golf course, clubhouse, driving range, a 200 room resort hotel, a regional park and agricultural/habitat conservation areas.**

Applicant: Rancho San Justo Company (San Juan Oaks Golf Club). Location: San Juan Oaks Drive at Union Road. Zoning: Agricultural Rangeland (AR) and Agricultural Productive (AP). Environmental Review: Environmental Impact Report (EIR).

Chairman Cruz noted before opening this matter up for discussion, he explained that there was not a full Board present. Chairman Cruz indicated this was a large project, an important project to the County, good bad or indifferent, but noted he was going to poll the Supervisors to see if they were agreeable to postponing this matter one week in order to allow a full Board be present to hear the matter or hear from someone who has traveled a long ways in order to be present to address this item.

Supervisor Kesler noted since there wasn't a full Board present, she would like to wait until a fully Board was able to be present. However, Supervisor Kesler noted since there were people who came to speak, the Board should still listen to what they had to say.

Chairman Cruz agreed with Supervisor Kesler, but just wanted to take a poll of the Board as to whether or not continue the matter in order for a full Board be present.

Supervisor Monaco noted he would like to continue the matter.

Supervisor Loe noted she would like to continue the matter as well.

Chairman Cruz asked Counsel if there was someone present who wished to address the Board on this matter, could the Board still take input even though the matter looks like it is going to be continued and no decision will be made today?

Counsel Forcum noted there were a few ways the Board could proceed. It is a noticed public hearing but the Board has indicated a desire to hear people if they wish to provide comment today. It may be appropriate to ask the applicant if they wish to make a presentation prior to the comment or given that the matter is going to be continued, it may be more appropriate to defer the applicant's presentation to the date that the matter is continued to and merely accept the public testimony and people that have come to the hearing today. It is really within the purview of the Board to decide the scope of the hearing today, but the Board has indicated a desire to hear the people that have taken the time off from work to present testimony today and can simply proceed in that manner as well.

Chairman Cruz asked Mr. Fuller what was his choice.

Scott Fuller, representing San Juan Oaks, came forward. Mr. Fuller indicated he would give his presentation today and if necessary, will do it again next week.

Chairman Cruz noted he would like to apologize to Mr. Fuller and the audience for having everyone present today, but felt that this item was too important to not make a decision without a full Board.

Mr. Fuller thanked Chairman Cruz and understood the Boards' position. Mr. Fuller noted he would still like to give his presentation today.

Mr. Fuller noted he was present today representing San Juan Oaks. We were here to answer any questions from the Board about the project, and to provide a summary of their proposal. Mr. Fuller indicated that would be all for today they would be requesting as that would be all that could be done today.

Mr. Fuller noted this project comes to the Board after an extensive planning process, under the County's Growth Management System, Ordinance #733. The process included an application and preliminary Environmental Review under the 1% allocation process, the ranking of the project under the 1% allocation point system; the granting of preliminary residential allocations; the completion of an extensive Environmental Impact Report under the direction of the Planning Department; many public hearings before the Planning Commission, so we have been through quite an extensive process.

Mr. Fuller noted they designed their project specifically to meet the goals of the managed growth system as outlined in the County's ordinance. Mr. Fuller noted he wanted to talk about some of those goals and was taking them directly from the County ordinance. First, it includes a 1% cap to "impose a leveling out period." It calls for the preservation of agricultural and open space lands. It calls for the provision of housing for all segments of the community particularly affordable housing. It encourages a balance between the supply of local housing and the supply of local employment opportunities. Finally, the growth management ordinance holds "the cost of residential development needs to be offset by the revenue from commercial or industrial development."

Mr. Fuller wanted to briefly note what they see as the benefits of this project. He hoped it becomes clear that as they designed their project, they tried to reach each and every one of those goals. The project consists of 156 market rate and 30 affordable unit on 3000 acres, less than one house per ten acres. It includes easements placed on the property to forever prevent future subdivision. The units are built out slowly over a seven year period as part of the 1% cap. The project, by their estimate, provides for about 150 permanent and part-time jobs, from laborers to executive positions. It includes a 60 acre park with hiking and riding trails or 1100 acres of open space / wildlife preserve and 55 acres of agricultural preserve.

Mr. Fuller continued by stating it provides 30 affordable units including 15 for the very low income category. We will be working with Brian Abbott and the local Community Services Development Corporation on the affordable aspects of this project. Our proposal includes a resort hotel and spa which will attract tourism dollars to the County and Transient Occupancy Tax for the County General Fund. Taking this and other economic benefit of the project into account, the EIR's fiscal analysis showed that buildout, 8+ years from, the project will run at a net positive \$800,000 per year to the County.

Finally, San Juan Oaks will reinvest lot sale proceeds to develop a hotel and new golf course - this represents a \$40-million capital improvement project in the County over the next seven plus years. The potential impacts of this project were mediated with approximately 200 Conditions of Approval. These are not on the agenda and he will not go into them in detail, but did wanted to discuss briefly traffic mitigations as Planning staff has raised traffic as a concern.

In addition to the \$2.8-million in traffic impact fees which every project has to pay and we will pay our share, we've already agreed not only to the traffic mitigations outlined in the EIR, but several additional measures requested by Public Works to include a stop light, widening the lane channelization on Union Road, widening and additional channelization on the Highway 156 approaches to Union Road.

Mr. Fuller noted he wanted to put some perspective and wanted to point out that even a 1% growth cap, naturally comes with some traffic impacts. In adopting the cap, the County has to accept the traffic impacts associated with 1% growth. Our project falls within this 1% impact to be accepted. In addition, if our allocations are taken and redistributed, they are very likely to be given to other projects. Over the next seven or eight years, these allocations will go to probably relatively unnoticed to 30 or 40 small subdivisions with 2, 3 or 4 lots. While these types of Minor Subdivisions fill an important housing need, the 1% growth management system sets aside allocations for that. In our case, these small subdivisions result in the same overall traffic impacts of our proposal and can naturally not offer our level of community benefit nor can they offer even traffic mitigations that our project has agreed to. As a result of these facts, Mr. Fuller asked that the Board carefully consider the high standard the San Juan Oaks project has met and to recognize that no project can meet an impossible standard.

Mr. Fuller noted he wanted it clear that if approved, they were committed to do their fair share and more to help the County catch up with critical infrastructure need. We recognize traffic as a legitimate, critical issue in the County.

Mr. Fuller noted in conclusion, he indicated to the Board he wanted to take the opportunity in taking some public acknowledgments, first being, while not always agreeing with them, the Planning Department, in particular lead Planner Fred Goodrich for the always professional job in processing information. Mr. Fuller also acknowledged Supervisor Cruz in support of this project since his time on the Planning Commission. In particular, Supervisor Cruz's guidance, encouragement and sometimes insistence on the affordable housing portion of the project. The affordable housing project was really designed in conjunction with Supervisor Cruz and wanted to acknowledge that.

Mr. Fuller noted there may be no questions today, but was available should there be any. Mr. Fuller thanked the Board for the opportunity to speak.

Chair asked the Clerk if there were any speaker cards and Clerk Navarez read off the names.

Moises Roizen informed the Board he would rather wait until the next meeting to address this matter.

Joseph Zanger, Sr., came forward. Mr. Zanger noted this was a very special day to be here discussing about San Juan and their project. Mr. Zanger thought this was one of the most important decisions the Board would make for San Benito County. There were many reasons and he wanted to tell the Board why.

Mr. Zanger noted his family has been very much involved with San Benito County since 1900 and planted the very first orchard on Pacheco Pass. It is important that we have an outstanding area. This valley is properly designed for San Benito County what San Justo is doing. Beyond that, it is important that we have a wonderful leader, Scott Fuller, patient, intelligent - he listens to people. Mr. Zanger noted Mr. Fuller tries to follow the County Planning Department. It is very important that we have a gentleman such as this to work with. Beyond that, the Planning Department has been working on this for a number of years - studying this. The Planning Department concluded that this event needs to move forward.

Mr. Zanger noted his family has been involved with large developments in Santa Clara County, the Cribari - The Villages, located on the east side of the San Felipe Road. It has two country clubs, homes, a big development, restaurants, all kinds of facilities. What that has done for Santa Clara County is unbelievable. People from IBM, Lockheed, Hewlett Packard, Fairchild, etc. that wanted to participate and live in this community at Cribari - The Villages. What it has done for Santa Clara County, industry wants to come in, it has to come in when you talk to these people. They moved in here from New York, Chicago, all over the world and this is a wonderful community. San Benito County is just as good if not better. We have an opportunity to put this event together here for San Benito County.

Mr. Zanger concluded that after watching the family progress, what would happen here in San Benito County with industrial, commercial business coming in. These factories would come in. There would be places for people to work and not drive 30, 40 even 50 miles. Mr. Zanger noted social events. His family participates many times at this wonderful facility with their wonderful food. Mr. Zanger stated he noticed when the Board had an event, Supervisor retirement, etc. it is held at this facility. The Chamber of Commerce as well. This is important for everybody in San Benito County. The Board is making the biggest decision they could make for San Benito County. This is proven by his family in Napa, Livermore, and he could cite many other places where this has happened. Mr. Zanger also noted in Gilroy, and felt the Board knew this as well as anybody.

Mr. Zanger concluded stating the Board should support this 100% and their grandchildren and families would be proud of them. Mr. Zanger thanked the Board for the opportunity to speak.

Ron Rodrigues informed the Board he would rather wait until the next meeting to address this matter.

Bob Greene informed the Board he would rather wait until the next meeting to address this matter.

David Baumgartner informed the Board he would rather wait until the next meeting to address this matter.

Roxy Montana, 7350 Pacheco Pass, came forward. Ms. Montana noted some of the Board may know her as a former Grand Jury member of San Benito County and she has had a unique position to see of the needs that this County has, in particular in revenue generating areas that certainly feed back to the County.

Ms. Montana noted she saw tourism and jobs paired with the attractive high standards that San Juan Oaks has already given to us. Ms. Montana felt it was very exciting and important. She hoped the Board would consider what they (San Juan Oaks) had to offer. Ms. Montana thanked the Board for the opportunity to speak.

Brian Abbott, Executive Director of the Community Services Development Corporation, came forward. Mr. Abbott indicated he wouldn't be able to attend next week so he wanted to make his comments today. Mr. Abbott noted the CSDC is the local low-income housing development corporation in Hollister. Mr. Abbott noted the organization will be involved in the low income part of this project. This is something that has been

looked at very carefully before CSDC decided to become involved in projects outside of their organizations' development. This was something new for them.

Mr. Abbott noted based on the merits of the project we decided to go ahead and get involved because we think this is an important project to the community. Depending upon which way the project goes, Mr. Abbott noted his agency would get involved whether it is for sale housing or rental housing. Mr. Abbott noted he wanted to let the Board know that CSDC supported this project and urged the Board to approve the project so it can move forward.

Mr. Abbott encouraged the Board and the Planning Department to consider, as he knew right now the project for low income housing, is set up for "for sale" housing. Mr. Abbott encouraged the Board to move towards rental housing as opposed to "for sale" housing and the reason is based upon his experience with Riverview, there will be only one in twelve that will actually qualify to buy a house. There is a greater need for rental housing rather than "for sale" house for the low income and especially the very low income because they have a tough time qualifying for loans for purchase. Mr. Abbott noted rental housing makes more sense because with employee turnover, if you have rental housing, you will be able to turn the rental housing over with a greater probability than you would if you had "for sale" housing.

Mr. Abbott noted they were also finding that with the "for sale" housing, it is a headache to manage especially for the County to the extent that a homeowners default on their loan, it goes into default, then there are problems with who is going to buy the house, maintain affordability and will be spending a lot of staff time monitoring to make sure which houses go up for re-sale or sold to other low or very low income families. This is a difficult process to manage. Rental housing alleviates the County of all those types of management problems and will just fit the needs of the community better as rental housing.

Mr. Abbott concluded by asking the Board to consider the possibility in making a change in the conditions so that it can be rental housing. Mr. Abbott thanked the Board for the opportunity to speak.

Rebecca McGovern informed the Board she would rather wait until the next meeting to address this matter.

Wayne Norton informed the Board he would rather wait until the next meeting to address this matter.

Dave Brigantino informed the Board he would rather wait until the next meeting to address this matter.

Noting there were no more persons wishing to address the Board, Chair Cruz closed the public hearing and brought the matter back before the Board.

Chair Cruz asked Counsel if the Board had to take action by motion to continue the public hearing to the next meeting?

Counsel Forcum noted that by motion, the Board should continue the matter to a date certain, of February 10, 2004.

Supervisor Kesler made the motion to continue this matter to the meeting of February 10, 2004. Supervisor Loe was second on the matter.

Upon motion duly made, seconded and carried, continued the public hearing to the meeting of February 10, 2004. Motion passed 4-0 with Supervisor Scagliotti being absent for the vote.

Chairman Cruz apologized to the audience noting he felt this was too big of a project to not hear without having a full Board present.

Counsel Forcum asked for clarification that the motion stated this is continued to the next meeting of February 10, 2004 at 1:30 p.m. to which Chairman Cruz indicated that was correct.

14) Consider presentation on the Purpose for and Objectives of a Code of Ethics. (Supervisor Loe)

John Sarsfield, District Attorney, came forward. Mr. Sarsfield noted approximately six weeks ago, we were here discussing the idea of local, county, campaign reform and what can be done at the County ordinance level. One of the ideas that was considered was campaign contribution limits which has been continued to sometime after the election in March. The other half, which was an idea discussed briefly was the creation of a entity, Board or Commission, that would have fact finding and investigatory powers that could essentially provide an immediate forum for an aggrieved county candidate, currently not filled by any entity. Currently the only two places you can go to for an elected office for someone who was righteously aggrieved, was to the FPPC. The FPPC are nice people and they work very hard, but they are swamped because they have to literally regulate the entire State of California. The FPPC just doesn't have time respond quickly to local campaign disputes. They will eventually, but it may literally be 3-4 years later. The only other alternative is to go to court. Going to

court is just sometimes not a viable option for a small county candidate where it may be a part time job or it may not be worth the expense of the tens of thousands of dollars that a court case can bring. In addition, the courts have their own problems where you cannot get timely relief. There is a huge void that can be filled, by little or no cost, by a commission or board, but Counsel would have to advise the Board on how to staff it. The idea is that you could go to this entity if you were a candidate for a county office and file a complaint and say that the other candidate has violated a Code of Fair Conduct or Code of Ethics, whatever it is called, and is unfairly outright lying or claiming endorsements that he/she doesn't have or claiming degrees that he/she doesn't have, work experience, etc. This should not be allowed.

Mr. Sarsfield believed that all the true information is perfectly fine for the voters, good or bad, what's true is true. What Mr. Sarsfield felt was a threat to democracy is an organized, systemic attempt to put out false information, things that are objectively false, not exaggerations, but false information. He noted there has been instances of this in the not too distant past and felt it has now become the time to deal with it. Along those lines, Mr. Sarsfield noted he did some research on one of the models that can be followed comes from Santa Clara County and that is why Supervisor Wilson is present today. Supervisor Suzanne Wilson first served as a two-time member of the City Council in the mid 1970's and then to a three-year term to the Santa Clara County Board of Supervisors. Mr. Sarsfield noted Supervisor Wilson was one of the original founders and still serves on the Campaign Ethics Foundation (CEF). This is an organization in the Bay Area that is well known and very well respected and felt this would be a good model to start with in our County.

Mr. Sarsfield noted for this to be truly effective, he felt there needed to be input from all of the governmental agencies and hoped as this matter is discussed and formed, that it could be, perhaps, a joint organization with the City of Hollister and the City of San Juan Bautista. Mr. Sarsfield felt we were a small enough community where everybody sees the advantages of having an organization like this. Personally, as a voter, this is what he would like to see and felt the Board should take and make the final decision. With that, Mr. Sarsfield introduced Suzanne Wilson.

Chairman Cruz welcomed Ms. Wilson to San Benito County.

Suzanne Wilson came forward and noted she has been to San Benito County frequently and has known previous Board of Supervisors members. Ms. Wilson noted she was involved in working with San Benito County regarding the widening of Pacheco Pass and noted she was the Supervisor for this particular area and met a lot of people between San Benito County and Santa Clara Counties.

Ms. Wilson noted some material was provided to the Board about their foundation, which was an independent foundation, and would discuss some of the ways to do this, the pitfalls, and indicated there should be no reason to "reinvent the wheel" if the Board were to look at the Santa Clara County models. She noted her organization has been unique in that they have been successful and noted when they first started organizing, they rebutted an editorial in the *San Jose Mercury News* that said the organization would never work. The editorial noted no one could stop the campaign managers from what they wanted to do and there was no way to solve the problem. Ms. Wilson noted there were sixteen hearings and three different elections and had affected the outcome of those elections. They affected that in a changed way because the person who wanted to be on LAFCO, didn't get elected.

Ms. Wilson stated this came to be around 1996 because there are some things during an election there that people got riled up about. They first started meeting as a group of concerned citizens. There were attorneys, Democrats, Republicans and they came together, taking two years to form the model. There were committees that worked very hard and model was a "three legged stool" and because they were independent, 501C4 which is non-profit status and they cannot accept donations and cannot get credit for donations because they are political, thereby justifying the C4 status rather than C3.

Ms. Wilson noted the committee felt they needed a "three legged stool" and the main stool was the Board of Trustees and their stationery showed two legs of the stool which included the Board of Directors and the second leg was the Stakeholders, which they needed because they had no clout like the County does with the District Attorney. Ms. Wilson noted the third leg, which you don't see on the stationery because the third leg are the Commissioners who hold the hearings when a hearing is called for. The way it worked is that they put forth the issuance of, first a pledge that was modeled after the State pledge, that each County Clerk has and have the people sign. This pledge has what is valued as ethical. Attorneys helped to draft the pledge, one model used which was compiled after the Berkeley Ethics Foundation. Secondly, they got the candidates to sign the pledge and that is where the Stakeholders came in. In their case, the Stakeholders were the people who give

endorsements and give money, ie. Chamber of Commerce, Democratic Party, Republic Party, the Association of Realtors, etc. which have been added through the years. At the beginning, there were only four Stakeholders but they hold the reviews and endorse candidates to give them money and they had clout that previously wasn't held. Their pledge states the candidates will abide by the decision of the Commission at a hearing, if one is called, and they will do what the Commission says to do, whether they must issue a press release saying their endorsed candidate has been found unethical and must make amends. Or whether, as was one case, rescind an endorsement, and that is a very and that happened during the very first election. The Democratic Party, after much struggle, rescinded the endorsement of their candidate for Sheriff and he lost, plus this made the headlines because we knew the unspoken force is the press. The press will print it if they find something sensational enough and certainly, that was since the Democratic Party was pulling their endorsement of a candidate. That occurred during the first year, 1998, some clout.

Ms. Wilson noted the Commission itself is random. We ask people who have been involved in politics, as we don't want neophytes, those who don't understand politics, around to reason through a hearing. There are applications and the Board of Directors searched for people from both sides of the table, Democrats, Republicans, Green Party, Independents, to become Commissioners. This info and application is available on their web page. There is an application that a Commission can make, someone who wants to be a Commissioner. We currently have three retired judges, two Republicans and one Democrat. They reviewed the Commissioner applications and determined that, yes, they felt the applicants could be fair.

Ms. Wilson noted they have former Council members, people who are a part of the Democratic Central Committee or the Republican Central Committee, to be part of something and when it comes to a hearing, you cannot be a participant on either side of that hearing. She noted she might support somebody for the City Council for the City of San Jose, but she could be on the hearing for a Commissioner for the City of Cupertino, because she hasn't endorsed anybody in that race for Commissioner. You, yourself, have to have no conflict of interest in order to be a Commissioner at a hearing.

Ms. Wilson noted the key was that none of the Stakeholders would even hear a candidate to interview if the candidate hadn't signed the pledge. That gave the organization the clout because once you sign the pledge, you will abide by the pledge. Therefore, if an opposing candidate indicated you were unethical, then the Board of Directors would immediately call for a public hearing on that. Everything is done in a public hearing - the hearing is in public, the discussion of the Commission is in public and the vote is in public. The only people that can testify are the two candidates and one other person that the candidate might bring, such as a campaign manager or their attorney. We limit it to just the candidate and only a candidate can accuse another candidate. This gets rid of all the strong man that comes in and say somebody maligned my candidate. This might happen and it did happen in San Jose. So, the candidate never has to face the fact of whether or not he has done something wrong by somebody else always does it for him or her. This way you have a candidate that must be held accountable for what happens in that campaign and the other candidate can call him on it.

Ms. Wilson noted one of the real problems that they had was while you have all of these independent expenditures and what can you do with them and how can you really or define what is unethical. Ms. Wilson stated that when there is training with the Commissioners, the standard is what would a reasonable person, reasonable voter, what would they say or believe? It is not a high legal standard, but rather what would the average voter see if they saw that credit. One example was that the candidate for Sheriff said that his opposing candidate lived in Tahoe and was illegally a candidate. The other candidate, presented at the hearing that she had a home in Palo Alto, her daughter went to school in Palo Alto, her voting registration for fifteen years and so, the accusers' material was proven to be wrong that he was using. The candidates' husband lived in Tahoe and she commuted there on the weekends, but she lived in Palo Alto. This made a difference for the voters because he was found to be lying and in the end, didn't win.

Ms. Wilson noted if you look at the pledge, some people have said you can't do anything with independent expenditure. But, number six has been very effective because it says "I shall immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy, or in opposition to that of my opponent, to the methods and tactics which I condemn." If there is an independent expenditure that says Supervisor Cruz beat his wife yesterday, although he is very good today, that independent expenditure can say that, but the candidate must disclaim that and say I will have nothing to do with that independent expenditure, I know that to be false and I repudiate it. Therefore, that independent expenditure gets the black eye. It doesn't get the effect that they wanted because it was found to be improper. This has been used

very much and was used in the last election in Palo Alto. What was interesting about that was a firefighting group that said one Palo Alto Council member had imperiled the City public safety because she had reduced the number of firefighters that were going to be in the next budget. All five of the City Council members had reduced the budget. They had found a way not to reduce but were saying to vote for this other candidate because she won't do that. The sitting Council member filed a complaint against the candidate. The candidate didn't like it. The candidate said let me investigate this and if you are innocent, she would repudiate it, but give me time to investigate. This happened the last wee of the race, of course. Well, she investigated it in one days' time, they issued a short press release and the candidate repudiated the firefighters union which is the first time that had happened in Palo Alto and they both won the election because they could both win because they found a way to repudiate that independent expenditure. It can be done.

Ms. Wilson noted that is prime example of the success of this. There were three commission in San Jose besides her organization. One was the County of Santa Clara and that is defunct as it really didn't work. It wasn't well enough thought out. The second is the City of San Jose. Their weakness, and they were in the newspapers a lot this last election, was that the candidates never had to appear. There were surrogates fighting it out. Eventually, they called them in because they had the power of attorney to call the candidates in, but it should have been the candidates in the first place. You shouldn't let somebody else cover for you. To her, Ms. Wilson noted you are responsible for your campaign and you should be held accountable. This is how her organization runs.

Ms. Wilson noted the City of Santa Clara, in modeling an ordinance after theirs, involved the D.A. George Kennedy. They are just beginning and are working on their first election but are still struggling in reviewing what happened as they need to make some modifications on theirs.

Ms. Wilson noted one key she didn't mention, was how to do this. If during the last week of the campaign, the dirt flies, how can you call a hearing in time? Ms. Wilson explained what they do is they have 21 commissioners, all at large to cover the county, and we set up a matrix so they have at least eight that will commit to two hearings - one Friday night before the election, one Saturday before the election, one Sunday and one Monday. There are four hearings set up for anything that gets in the mail during those last three days. Immediately, if a complaint is filed, we will call a hearing. We canvass the Commissioners and ask if they can be there at 5:30 at the Realty board, where they meet, so there can be a hearing. We verify that they can be present, notify the opposing candidate that there is a hearing and they must appear because of the signed pledge. If the candidate doesn't appear, he will flunk that hearing and be found guilty and the opposing candidate will be found innocent because of forfeit. The candidate has got to come, hold the hearing and those results will change an election.

Ms. Wilson noted they covered all the cities in the county, cover the State, the Assembly and those that touch the values that are elected by the citizens of Santa Clara County. One involved a candidate from Salinas who came all the way up to Santa Clara County, but we held a hearing on that one and a Monterey newspaper reported it. Since a majority of the voters on the issue were in Santa Clara County, we held a hearing on that Assembly race, the State Senate races and cities, so when it comes time for an election, we send out the pledge to everyone that has applied for the election. The candidates can send it back or not, but if they want any endorsements, they must send it back. While she didn't know what San Benito County required, Santa Clara County indicated that all candidates must return the pledge.

Ms. Wilson agreed with DA Sarsfield that it would be good to have the cities involved in the county pledge as it was workable. She suggested to keep the Board of Supervisors out of it by having a Commission that the citizens apply for and have a retired judge select them because there is nothing that smacks more politics that to have the sitting body who will be on the Commission. It will never work that way. Ms. Wilson stated that the attorneys' that are on the San Jose City Water are scrutinized, who appointed them because that Council member was for a certain candidate and you could see where their appointee was leading into it. This keeps the Board out of the loop which is good. If you have Supervisors running with a concern, they can file and doesn't have to state they have friends on a Commission but also that they didn't have anything to do with the appointment of those Commissioners and can file a complaint and feel free to file the complaint because they weren't involved in the selection of the existing Commissioner.

Ms. Wilson felt that there could be found three retired judges in the County that would be happy to follow that function. There also needs to be a Task Force to work out for the County if the County is serious about doing this. The members should be people who understand politics.

One newspaper put in their editorial that such an organization would never work as campaign managers would never, ever consult. Ms. Wilson noted that if the campaign managers would call her and spend time with her on the phone saying, if I say this, would my candidate get in trouble, there is less likely to be problems. Ms. Wilson stated her first question would be was it published in the paper? Is it public record? She cited a circumstance regarding a school board race with a letter sent to the school board and the question raised was the letter made public record and the response was yes. As a result, Ms. Wilson noted that the information was then public record and could be published and wouldn't be unethical, it might be negative, but not unethical. Ms. Wilson noted as a result, campaign managers don't want to be called on the carpet by this commission.

Ms. Wilson concluded by asking the Board members if there were any questions or had she confused them.

Chairman Cruz noted that Ms. Wilson referred to holding hearings on Friday through Mondays to investigate an issue, but what happens when the vote is on Tuesday? Is the damage done?

Ms. Wilson indicated no. Each of the elections where a hearing was held and the person that was found guilty, like the person from Salinas and Monterey County, there were two counts and a press release was put out immediately to all media to be published not only in Santa Clara County because that particular race was published in the Monterey newspaper and it was published the next day. The person who made the accusations was found to be unethical and lost the race. It was that quick because the newspaper will print something if it is sensational. It is indeed when someone is guilty of lying and the press will print that. The press won't dare print it unless some commission looks into the matter. The accuser told two lies about the other candidate and the candidate was able to prove it and the one lying about the issue lost.

Ms. Wilson noted there was a case where there was a candidate for the Assembly in Santa Clara County that had to send an apology to one of our commissions' secretaries because he stated there was a conspiracy. It was proven to be untrue and the remedy that the Commission asked for, was a written apology. The press release was sent out that the person had been found guilty and there was to be an apology. It was also put out on the web page, that was in November. The candidate won but one of her staff called and noted the press release was still on the web page and wanted to know when it would be taken off. The inquiring staff member was told it would be removed upon receipt of the letter of apology from the Assemblywoman as she was told to do. The following week, the person received their apology. It does work.

Supervisor Monaco stated there were some elected officials present who may wish to ask questions or contribute to this as it was a discussion item.

Sheriff Curtis Hill came forward. Sheriff Hill noted he echoed what Ms. Wilson commented about the Sheriff's election held last year in Santa Clara County. Sheriff Hill noted he was also in the class of 1998 and there were a lot of his peers that were running for Sheriff up and down the State, including Santa Clara County. Sheriff Hill noted when he ran, he received the endorsement of the South Bay Labor Council which is comprised of some nineteen unions in Santa Clara County and the Central Coast area. One of the things that they made very clear about that endorsement was, in the literature received, you could use you have received the endorsement of the South Bay Labor Council. But, you could not use the individual unions that are members of that Council. That is one of the conditions of receiving that endorsement.

Sheriff Hill indicated not three days later, he was sitting at home and going through the *San Jose Mercury News*, and there was one of the candidates in Santa Clara County saying that they had received this endorsement and was endorsed by several other different unions. The candidate then rattled off the names of some of the unions that he felt were going to be beneficial to him in his candidacy for the Sheriff position up there. Then the candidate also mentioned, as cited by Ms. Wilson, the residency issue and that too was in the article. That matter was turned around on that candidate within two days. Sheriff Hill noted when he read the article, the thought to himself that the candidate can't do that and just made a mistake on using an endorsement. By reading through the lines, you could tell what unions the candidate was using from the Labor Council in order to enhance his position in the community within certain demographics there in Santa Clara County.

Sheriff Hill noted that had a tremendous effect on that campaign. The point Sheriff was trying to make was, and he spoke with many candidates who have run for office in this community over the years, when you are running for office and your candidate makes a comment either about you or misstates their qualifications or you see a flyer in your mailbox from your opponent that you know is clearly false and not based on any fact at all, you have to make a decision. Are you going to the media and expose that? If you do that, you take a political risk that you are going to be viewed as a petty whiner. What happens is you sit back and hold back on

some of these things. Then, you become your own victim of the political process. There are candidates out there, who quite frankly, have a problem with the truth. Sheriff Hill noted what he looks at in the positions that we run for, we go before the members of our community and state we are running for office because I feel I can do the best job. One of the foundational issues we work on is that we want to make sure the people understand that what we do is truthful, moral, ethical, etc. When you are running against a candidate that doesn't have that, it becomes a problem. Sheriff indicated he was pleased when he saw one of his peers who was able to utilize this process in the manner in which it was intended to make sure that the truth was told to the community as those are the very people that are flipping the switch in the voting machines.

Sheriff Hill concluded by noting he would welcome this process. It wasn't going to be easy if you choose to go down this road, but the presentation heard today, was good. He also knew that once the elections were over here, the community over the next several months, we are also going to have some official dialog regarding the financial side of this matter as well. Sheriff stated he knew that all of us have faced that issue of when are you going to jump in when you know your candidate is not being exactly forthright and honest. Sheriff thanked the Board for the opportunity to speak.

Supervisor Kesler asked Ms. Wilson what can be done when a newspaper is after you (a candidate).

Ms. Wilson noted you cannot chastise the press. She noted she had a man who called her and told her that one candidate was endorsed by a newspaper and said that he was not a viable candidate. The person wanted to go after the candidate the paper endorsed and make her (the candidate) repudiate what the newspaper had said.

Ms. Wilson noted she explained to the gentleman the newspaper was different in that it had a right to determine to interview people and decide who to endorse and who not to. That is a right that the paper has and her committee didn't get involved in matters like that. The other thing that her committee doesn't get involved with, is one candidate wanted them to make the other candidate give back money and cited it was given illegally. The FPPC involves money and her organization has no jurisdiction nor clout regarding money. As a county, you can do something about money and give the matter to the District Attorney as there is a different kind of clout involved. But, her commission can do nothing about money and are not an official body that can determine issues about money. That is separate and is an issue the DA can pursue not the ethics committee.

Web Winans, Lovers Lane resident, came forward. Mr. Winans indicated this was an interesting subject. He felt it would be well worthwhile if we could borrow some of Ms. Wilson's thoughts and try working it into something this County can live with. A problem with this county's particular situation is we really don't have an apology to Kate Woods of *the Pinnacle*. We really don't have a newspaper that we can rely upon to get any immediate word out because *The Pinnacle* only comes out once a week. Whatever happens after their last issue on Thursday, you are out of luck.

Mr. Winans noted one thing he would like to also mention is that there should be some way, but didn't know by what mechanism, there should be some way to apply this not just to individual candidates or coming out with proposed ordinances, so that we can keep those on the straight and narrow also. Mr. Winans cited recently about what words are being put out that aren't true. That is a bad thing when people just up and say something that just is not so.

Mr. Winans noted it would be a very difficult thing but it could make an election something you can actually believe in, get behind and enforce it. He knew there were some here that are hurting yet you cannot ring a bell as once that bell is rung, it's tough. It is a hard thing to come about but he felt the effort would be worthwhile. Mr. Winans felt we were a small enough county with city involvement, can pull together and get something started and work it out. There should be some way that you could put sort of a fine here if you can't depend upon the papers. People will sign up to go on this, you might have a chance to get to them early, but other than that, we have to rely upon something other than the newspaper.

Tim Foley, Superintendent of Schools, came forward. Mr. Foley stated he was enthusiastically supporting this matter. The Board is elected, he was elected and all have felt frustrations within the process and thought this was a noble and honorable effort that is being brought forth.

Mr. Foley felt that in our community, our State, our entire society, that people are really hungering for a more honorable and honest, straight-forward government. Mr. Foley felt this could be a real step on the part of San Benito County for that in getting timely information and investigation for the people that we all serve. Mr. Foley concluded by indicating he supported this matter and any assistance he was able to provide, please let him

know. Sitting there, you get a lot of ideas regarding this and this and was sure there would be an open process with lots of input and perhaps something as Mr. Winans stated, uniquely for our community.

Kate Woods, representing *The Pinnacle Newspaper*, came forward. Ms. Woods noted it was a good point made by Mr. Winans about being the only viable paper. She was thinking that this matter really should be discussed with the publisher, Tracie Cone, because Ms. Woods felt that the last week of an election, it was hell time. They were all on guard in watching what is going on and are frustrated when they can't get something in on time. What could be possible, is they may be able to do a special, extra edition if something happens in that last week and it would count so much.

Ms. Woods noted if the Board were to go forward with this, she suggested that would be a really important thing to do in discussing the issue with the publisher.

Chair Cruz asked Ms. Woods if possible, were it possible to get two papers out in one week?

Ms. Woods noted she didn't know, but hoped it were possible.

District Attorney John Sarsfield came forward. Mr. Sarsfield indicated he knew the Board understood his stand on this matter. Mr. Sarsfield felt there needed to be additional hearings. He felt representatives from the City of Santa Clara should be invited to talk about how they do this there.

Mr. Sarsfield noted his personal preference would be to have this rather than a 501C4, to have this as an arm of the government because if it is a governmental entity, it is self funding essentially. Two, we could then commandeer the CMAP television system. If the concern is how do we get this information out at the last minute, this is how we do it. We have a televised hearing. We are already set up for this and we, with arrangements from Gavilan College, which runs CMAP, we could get this word out immediately. That goes to 30% to 40% of the houses in this community. That would be one way to do it. Mr. Sarsfield thanked the Board for the opportunity to speak.

Ms. Wilson noted after meeting for about a year, there was a public hearing held and we had the League of Women Voters there, and had people on the panel to listen to what the people had to say not us who were on the committee. We had impartial people to chair the hearing. We had one person who was on the San Jose City Council Commission and one from the County Commission. We didn't know what to expect and one hundred people came to that hearing. The testimony was all for the Ethics Foundation regarding campaign ethics committee at that point, as they were not yet a foundation. It was gratifying because the community is ready for this. They came forth, people whom she didn't know, but had only heard or read there was going to be a hearing. Ms. Wilson felt television was a very good idea. The only difference about that each of the Commissioners were kept low key. They don't get interviewed by the press, they could at the hearing, but we don't really say this is who you are and where you are from.

Ms. Wilson felt there must be some enforcing laws if San Benito County wanted to make this an arm of government. It will be more public and the Commissioners will have to be ready to sit in and have people watching them in a live, televised hearing. Ms. Wilson wasn't sure about having *The Pinnacle* doing a special release because, if you published a one paged release, the candidate that wanted that hearing is going to see that it gets to every home.

Supervisor Monaco noted he had some concerns regarding making this an arm of the government. Supervisor Monaco understood how Ms. Wilson's foundation operated, but his concern was there was always that risk of any kind of overseeing agency arm of the government having conflicts or other problems. Supervisor Monaco noted he would like Ms. Wilson to address those concerns.

Ms. Wilson noted the City of Santa Clara does it because the DA is an arm of the County and they have the DA to enforce their ordinance which is a legal ordinance. Here, the DA is separate and could enforce the ordinance that the Board would create. The DA is an enforcement officer. The one in San Jose had the power, enough budget, her foundation didn't have enough of a budget because they didn't get many contributions except from the Stakeholders, but they had enough of a budget to hire an investigator who could do investigations. One investigation did not get finished until after the election and because it involved the campaign manager, six months later, he was fined for his part in the independent expenditure mess. The election was over at that point, but they do, under governmental ordinance, where they have the power to give the commissioners the right of subpoena, the right to hire an investigator to conduct an investigation, to help them. She wasn't as fearful for the DA because he is the person the Board would depend upon for enforcement. Ms. Wilson felt it would work fine by depending upon the DA for that as they will prosecute.

Supervisor Monaco stated he supported the direction this was going in and thought the Board needed to look at carefully to tailor it to meet the needs of San Benito County. He appreciated the availability of information from Santa Clara County. Supervisor Monaco felt we needed to tailor something for our own county whether it be an arm of the government or not, but this was an area that needed to be investigated very carefully and make sure we don't end up in a situation where there may be a conflict.

Ms. Wilson stated when creating a Task Force, you need to have a balance there of people who are really willing to sit down and attorneys are good at this as they understand the law, get Democrats and Republicans, Conservatives and Liberals so that there are a lot of people out there that, although they might have different leanings, they are all very interested in this for politics, and she believed that. She believed that the candidate was responsible for their campaign. They cannot hide from view.

Chair Cruz noted on the heels of what Sheriff Hill stated, lots of things happen in campaigns that he sees or has seen happen, some who take the high road, don't want to hurt people and say things because it might hurt people or mislead people. He agreed something like this is needed.

Chair Cruz thanked Ms. Wilson for being present today. He indicated to Supervisor Loe that the only question he had was how to get going. Set up a sub-committee? He understood this was an informational item only but it should be looked into.

Supervisor Loe suggested that we agendize the matter for a later date for further discussion.

Chair Cruz indicated he would provide that direction to CAO Terrence May who was absent for the afternoon session. Chair Cruz indicated he will sit down with Counsel and the CAO and possibly get something going on this. It won't be done before the Primary, but will bring up matters of concerns. What works in Santa Clara County might not work in San Benito County.

County Counsel Forcum noted it states on the transmittal that if the Board is interested, the item can be placed on a future agenda, for consideration of ad hoc Board sub-committee with regard to this continued discussion.

Chair Cruz asked the Board what they would like to see.

Supervisor Kesler suggested agendizing this matter.

Counsel Forcum suggested that the Chair speak with CAO Terrence May as to placing this matter on a future agenda.

DA Sarsfield asked the Chair that if the Board does agendize this matter, that he be provided enough notice so that he can get City of Santa Clara reps here, but he will need a couple of weeks prior to the meeting date.

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 10, 2004 at 9:30 a.m.

BOB CRUZ, CHAIR
San Benito County, Board of Supervisors

ATTEST:

BY:

John R. Hodges
Clerk of said Board

Sally Navarez
Assistant Clerk of said Board