



# SAN BENITO COUNTY BOARD OF SUPERVISORS

**Margie Barrios**  
District No. 1  
**Chair**

**Anthony Botelho**  
District No. 2

**Robert Rivas**  
District No. 3  
**Vice-Chair**

**Jerry Muenzer**  
District No. 4

**Jaime De La Cruz**  
District No. 5

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

## REGULAR MEETING MAY 19, 2015 ACTION MINUTES

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in *regular session*. Supervisors Barrios, Rivas, De La Cruz, Botelho and Muenzer were present. Also present were County Administrative Officer Ray Espinosa, County Counsel Matt Granger, and Asst. Clerk of the Board Janet Slibsager. Chair Barrios presided.

### 9:00 a.m. CALL TO ORDER:

- a) Supervisor Muenzer led the Pledge of Allegiance.

*A Moment of silence for Memorial Day which is coming up real soon, to honor and recognize those who have served.*

- b) *Upon motion duly made, seconded and carried, acknowledged Certificate of Posting.*

- c) **PRESENTATIONS & RECOGNITIONS:** *Upon motion made by Supervisor Muenzer and seconded by Supervisor Botelho, **approved** proclamations. (5-0 vote)*

### **BOARD OF SUPERVISORS:**

**Approve Proclamation honoring the San Benito Health Foundation for 40 Years of Service.**

Chair Barrios presented proclamation to the Health Foundation for their 40 years of service. Margaret Luis from the Health Foundation thanked everyone who attended their celebration last Friday. She announced that they would be having a community event tomorrow May 20<sup>th</sup> from 2:00 p.m. to 6:00 p.m. and invited the public. *(File #430)*

### **EMERGENCY MEDICAL SERVICES – M. Morrow:**

**Proclaim May 17-23, 2015 as Emergency Medical Services Week; and recognize all members of AMR, Hollister/San Juan Fire, Hazel Hawkins Memorial Hospital Emergency Dept., CalStar, CalFire, Aromas Tri-county Fire Protection District, Hollister PD, Santa Cruz Regional 911, California**

**Highway Patrol and San Benito County Sheriff's Office for outstanding EMS Service in our County.**

Supervisor Botelho presented proclamation to Marcie Morrow of the Emergency Medical Services for National Emergency Medical Services Week.

Ms. Morrow thanked the Board for the proclamation. She said that this was an opportunity to celebrate the heroes that serve our community 24 hours a day, 7 days a week. We have 57 heroes that are being recognized at a reception directly after this presentation. She introduced the different agencies that participated in their team so that we can acknowledge them and thanked them for their services: American Medical Response; Aromas Tri-County Fire Protection District; CalFire; CalStar; Hazel Hawkins Memorial Hospital; Hollister Fire Department; Hollister Hills State Park; Pinnacles National Park; Santa Cruz Regional 911; Hollister Police Department; California Highway Patrol and the San Benito County Sheriff's Office. The list of individuals being honored are: Eugena Chua, Paula Russell, Kristine Tate, Sara Stearns, Russell Farris, Kerry Brown, Mike Badano, Ashley Fellows, Ryan O'Connor, Christy Ravera, Virginia Jones, Ivan Gonzalez, Carlos Ramirez, Vince Grewohl, Leo Alvarez, Michael O'Connor, Bill Olquin, Wayne Thomas, Greg Bettencourt, Nate Pruit, Kris Klay, Daniel Clampitt, Matthew Miguel, Andrew Davidson, Dave Sumner, Sean Schorovsky; Jennifer Maggio, Michael Woodhouse, Julia Benford, Karla Mayorga, Berle Bigelow, Jennifer Caposella, Cortney McPhee, Carlos Ramirez, Ryan Coustette, David Lopez, Ben Kerkes, Meghan Dixon, Billie Surran, Joe Guerrero, Josh Buzzetta, Rodney Dover, Sean Olquin, Nathaniel Mendonza, Mel Nielsen, Mitchel Cook, Andrew Henderson, Jesus Zepeda Alvarado, Jennifer Guerrero, Brian Lee, Reade Collins, Nathaniel Mendoza, Andrew Henderson, Vincent Munoz. Ms. Morrow thanked them and said that we appreciate the work that they do.

Chair Barrios thanked the staff and all the volunteers that make it possible for all of us to be able to benefit from the jobs that they do. *(File #1068)*

- d) **Public Comment:** Marty Richman, Hollister resident, spoke in regards to the Board getting serious about a strategy for our Library. He said that we need a centralized library. We need to come up with a plan.
- e) **Department Head Announcements:** Interim Planning Director Byron Turner provided an update to the General Plan. He mentioned that everything is running on target. He mentioned that they were asked to extend the comment period but declined in order to stay within their target dates.

HSA Director James Rydingsword provided an update on the Homeless issue in San Benito County. He mentioned that they are making progress. He said that they have been introduced to the architects that the county has engaged to help us in the process by Interim Public Works Director Joe Horwedel.

Supervisor Botelho asked if we have a timeline for beginning of construction of the Homeless Center.

Mr. Rydingsword replied hopefully within the next 12-18 months. Hopefully ready for the winter of 2016.

Supervisor Rivas said that it was great that HSA has taken the lead on this but any type of action or decisions that need to be made need to come to the

Board. He said that this is a county department and we need to keep everyone in the loop.

Supervisor De La Cruz has received concerns from constituents in regards to the homeless on the Westside of town.

Mr. Rydingsword said that he has been working with the City of Hollister and discussing alternatives for this issue.

Chair Barrios thanked Mr. Horwedel and Mr. Rydingsword and Mr. Arreola for yesterday's great meeting in regards to the Homeless. She said I think you are going to see this movement for the Homeless Center become real in the next couple of years. She said that we will continue to keep everyone posted.

Mr. Rydingsword said that they would plan on bringing an update to the Board at the July 21<sup>st</sup> meeting.

CAO Ray Espinosa introduced the new Clerk of the Board Louie Valdez.

Mr. Valdez said that he was very pleased and excited to be here as the new clerk of the board and looks forward to working with everyone.

Chair Barrios welcomed him to the San Benito County family.

- f) **Board Announcements:** Supervisor Rivas thanked department heads and Dina Bies at the CAO's office for coordinating a visit from a High School group. It was a real educational experience for the students.

Supervisor Botelho thanked Public Works for filling in the pot holes in his district.

Supervisor Muenzer reported that he attended the San Benito County Health Foundation 40<sup>th</sup> year celebration; he said it was an excellent dinner and great program. He also reported that he attended the open house at the Esperanza Center. He said that they have great staff and they are doing fine work.

Chair Barrios reported that she too attended the 40<sup>th</sup> year celebration at the San Benito County Health Foundation. She said that it was an excellent job in bringing people together and was a wonderful program. She thanked staff for all their hard work.

Chair Barrios said that she met with a representative from the California Strawberry Commission and May is to recognize the importance of strawberries and what they bring to this county and to the community and regional as well. She said that she wanted to thank them and show her appreciation for their contribution to the county and the region.

Chair Barrios reported that the Pajaro River Water Shed Flood Prevention Authority met and that she is Chairing that authority. She spoke as to how San Benito River is a contributor of the sediment for the Pajaro River.

#### **CONSENT AGENDA:**

*Upon motion duly made by Supervisor Botelho and seconded by Supervisor Muenzer, **approved** Consent Agenda items 1 through 19. (5-0 vote)*

#### **ASSESSOR'S OFFICE – T. Slavich:**

- 1) **Adopted Resolutions No. 2015-30, No. 2015-31, No. 2015-32, No. 2015-33, No. 2015-34, No. 2015-35, No. 2015-36, Res. No. 2015-37,** establishing Agricultural Preserve and authorize the Chair to sign the Land Conservation Contracts. These contracts are a result of prior action and approval by the Board. (File #7)

**ASSESSOR'S OFFICE – T. Slavich:**

- 2) **Approved** the reclassification of 1.0 FTE Computer Mapping Specialist III to 1.0 FTE Supervising Computer Mapping Specialist to the Assessor's Office using County Personnel Rule 7.G.1. (File #7)

**ASSESSOR'S OFFICE – T. Slavich:**

- 3) **Approved** the maintenance agreement with Megabyte System, Inc. for the Megabyte Property Tax System at a cost not to exceed \$129,717 for the period of July 1, 2015 through June 30, 2016. (File #7)

**BEHAVIORAL HEALTH DEPARTMENT – A. Yamamoto:**

- 4) **Approved** contract renewal with North Valley Behavioral Health, LLC for acute care treatment needs for the period of July 1, 2015 through June 30, 2016, for a maximum amount of \$100,000. (File #810)

**BEHAVIORAL HEALTH DEPARTMENT – A. Yamamoto:**

- 5) **Approved** contract renewal with Natividad Medical Center, Mental Health Unit for the period of July 1, 2015 through June 30, 2016, for an amount not to exceed \$250,000. (File #810)

**BEHAVIORAL HEALTH DEPARTMENT – A. Yamamoto:**

- 6) **Approved** contract renewal with Unity Care Group, Inc. for residential treatment facility for the period of July 1, 2015 through June 30, 2016, for a maximum amount of \$40,000. (File #810)

**BEHAVIORAL HEALTH DEPARTMENT – A. Yamamoto:**

- 7) **Approved** contract renewal with Front Street, Inc. for residential care facility for the period of July 1, 2015 through June 30, 2016, for a maximum amount not to exceed \$48,000. (File #810)

**BEHAVIORAL HEALTH DEPARTMENT – A. Yamamoto:**

- 8) **Approved** contract renewal with 7th Avenue Center, LLC for skilled nursing facility for the period of July 1, 2015 through June 30, 2016, for a maximum amount of \$89,000. (File #810)

**BEHAVIORAL HEALTH DEPARTMENT – A. Yamamoto:**

- 9) **Approved** contract renewal with Kings View Corporation for telepsychiatry services for the period of July 1, 2015 through June 30, 2016, for a maximum total of \$220,000. (File #810)

**CLERK OF THE BOARD:**

- 10) **Approved** the action minutes of the April 21, 2015 regular meeting and the April 28, 2015 special meeting.

**FIRST 5 SAN BENITO – L. Faulkner:**

- 11) **Approved** Waiver of County Policies and Procedures Handbook Rule 1.H.3 Prohibiting CalPERS benefits for Temporary Employees and **authorized** the current Secretary II temporary employee at First 5 to exceed 1,000 hours for the 14/15 fiscal year, with employment not to exceed June 30, 2015 without further approval by the Board of Supervisors. (File #1055)

**HEALTH & HUMAN SERVICES AGENCY – J. Rydingsword:**

- 12) **Reappointed** Frank Ledesma as the Representative for the Board of Supervisors for District #1 to the Community Action Board for a three-year term effective 6/1/15 through 6/1/18; **reappointed** Robert Scoles as the Representative for the Board of Supervisors for District #2 for a three-year term effective 3/1/15 through 3/1/18; **reappointed** Juan Cruz as the Representative for the Board of Supervisors for District #3 for a three-year term effective 2/21/15 through 2/21/18; and **appointed** Gerry Wright as the Representative for the Poor for District #3 for a three-year term effective 2/21/15 through 2/21/18. *(File #130)*

**HEALTH & HUMAN SERVICES AGENCY – J. Rydingsword:**

- 13) **Adopted Resolution No. 2015-38**, authorizing the submittal of a grant application from the 2015 California Workforce Accelerator Fund 2.0; and **authorized** the HHS Director to apply and sign the grant application and any grant amendments, and all documents pertaining to said grant, for an amount not to exceed \$150,000. *(File #130)*

**HEALTH & HUMAN SERVICES AGENCY – J. Rydingsword:**

- 14) **Approved** contract with Gavilan College CalWORKS Program to provide ongoing case management services for the period of July 1, 2015 through June 30, 2016, in the amount not to exceed \$50,000; and **authorized** the HHS Director to sign. *(File #130)*

**HEALTH & HUMAN SERVICES AGENCY – J. Rydingsword:**

- 15) **Approved** contract renewal with Youth Alliance for counseling services related to child welfare for the period of July 1, 2015 through June 30, 2016, in the amount of \$20,000. *(File #130)*

**PLANNING DEPARTMENT – B. Turner:**

- 16) **Adopted Ordinance No. 938**, an Ordinance Adjusting the Codification of Articles within Chapter 25.29 of Title 25 of the San Benito County Code” in regards to Tree Protection. *(Continued from the May 5, 2015 meeting) (File #790)*

**PUBLIC WORKS DEPARTMENT – J. Horwedel:**

- 17) **Approved** the plans and specification for the Sheriff Department Emergency Generator, PWB-1501; and **authorized** the Public Works Director to solicit bids for the Sheriff Department Emergency Generator. *(File #105.3)*

**PUBLIC WORKS DEPARTMENT – J. Horwedel:**

- 18) **Approved** the purchase order to Lyle Signs, Inc. for the purchase of Sign Shop Equipment Supplies in an amount not to exceed \$21,700.50. *(File #105)*

**SHERIFF’S OFFICE – D. Thompson:**

- 19) **Approved** the addition of one (1) FTE Deputy Sheriff Range L1 to the Sheriff’s UNET Schedule of Authorized Positions; and **approved** the \$15,700 budget augmentation to the Sheriff’s UNET budget for a Deputy Sheriff, Range L1, Step F, to be paid by the Edward Byrne Memorial Justice Assistance Grant (JAG). *(File #110)*

**COUNTY ADMINISTRATION OFFICE – R. Espinosa:**

- 20) **Receive information regarding a potential sales tax initiative from Intergovernmental Committee held on May 7, 2015; take action in support or against the proposed Intergovernmental Committee Sales Tax Initiative; or support the Intergovernmental Initiative and a separate sales tax measure for roads by COG; or provide direction to staff.**

CAO Ray Espinosa provided background information on the sales tax initiative. He said that this was discussed at the Intergovernmental Committee meeting on May 7<sup>th</sup> and out of that discussion there was a presentation by Management Analyst Sara Fontanos. He said that consensus out of the committee was to move forward with a 1 percent countywide initiative. The City of Hollister representatives on the committee mentioned that they would repeal their current initiative of 1 percent and go through a sharing with the two cities and the county. He said that would then free up some more availability to COG if they were to move forward with their initiative. He said dates of June and November were discussed as far as ballot dates.

Discussion ensued with Board and staff.

Ms. Fontanos provided the presentation that she gave to the Intergovernmental Committee in regards to the countywide new rates, options and pros and cons. Ms. Fontanos also provided timelines for the June 7<sup>th</sup> and the November 8<sup>th</sup> elections.

Those speaking from the public were: Marty Richman, Hollister resident, said that he would support it if it includes the leveling of the tax. He said that you need to put in a tax in the unincorporated areas and get everybody even and if you want to use that tax for whatever you want then you can. He said that the people that live in the unincorporated areas do not think they are getting anything from this; they do not believe that you have a plan to fix their roads.

Lengthy discussion ensued by Board and staff.

Chair Barrios asked Supervisor De La Cruz if he would like to put his support in a way of a motion.

***Supervisor De La Cruz made a motion to go with Option 1; Countywide Sales Tax of 1% in the interest of making the playing fields even with the City of Hollister, motion was seconded by Chair Barrios.***

County Counsel Matt Granger provided information in regards to the City's sales tax and how it could be repealed or revoked.

***Supervisor De La Cruz said that he wanted to revise his motion; Support Option 1; Countywide Sales Tax of 1 % in the interest of making the playing fields even with the City of Hollister with a condition that the City of Hollister adds a stipulation that the will revoke their current sales tax and have this put on the June election; motion was seconded by Chair Barrios. (2-3 votes, Muenzer, Botelho and Rivas voted no) (Motion failed)***

Chair Barrios asked for another direction since motion failed.

Discussion continued by Board and staff.

Chair Barrios asked the Board if they wanted to present a motion for any of the other options before we leave today or do we come back and mull over it again. She said that time is of the essence if we are going to do anything at all.

**Supervisor Rivas said that he would make a motion and encourage the Board to move forward with Option 4; Unincorporated Measure. I**

believe it offers more flexibility for the Cities and COG and the easiest way to move forward from our perspective in trying to achieve a level playing field with our tax base and certainly trying to generate the revenue we need to improve the level of activities and services that we want to offer.

*Motion under discussion with questions for Management Analyst Sara Fontanos.*

**Motion was seconded by Supervisor Botelho. (2-3 votes, Muenzer, Barrios, and De La Cruz voted no) (Motion failed)**

Chair Barrios said that we will now discuss other options as to how we can come together.

Supervisor Botelho said that he would like to see a joint meeting with the City to discuss a special tax that we can all join in and have it specific for roads, library and the quality of life for San Benito County.

Chair Barrios asked if there was a consensus from the rest of the Board to move forward with a joint meeting.

*The consensus of the Board was to move forward with a joint special meeting with the Cities and the County for an evening meeting on a Monday or a Tuesday.*

CAO Ray Espinosa said that he would do his best to make it happen, he had already talked to the City of Hollister. *(File #119)*

*The Board took a break at 10:40 a.m. and reconvened at 10:52 a.m.*

#### **COUNTY ADMINISTRATION OFFICE - R. Espinosa:**

- 21) **Approve sending a letter of support for Senate Bill 16 (Beall) of the 2015-16 Legislative session, a bill that would create the Road Maintenance and Rehabilitation Program to address deferred maintenance on the state highway system and the local street and road system; or authorize Chair to jointly sign a letter of support with the Council of Governments on behalf of the Board of Supervisors.**

CAO Ray Espinosa provided information in regards to letter of support of Senate Bill 16 (Beall).

Supervisor Botelho provided additional information in regards to the discussion at RCRC level. He said that RCRC is asking the Board of Supervisors to take position on this and support. He said the importance of this is road maintenance needs on a local level.

Interim COG Director Mary Gilbert provided highlights of the bill. She said that the bill guarantees that all revenues collected would be used for roads, streets, bridges and improving freight mobility. She said that there is that provision for 5% being set aside for counties in which voters approve on or after July 1<sup>st</sup> 2015 a transportation sales tax.

Supervisor Muenzer asked what if the bill doesn't pass.

Ms. Gilbert provided information.

Those speaking from the public were; Marty Richman, Hollister resident, said that he wanted the public to realize that we are never going anywhere in this State with roads until we reduce the cost of doing what we do with roads.

Richard Bettencourt, Hollister resident, said that bikes should pay a small fee too.

**BOARD ACTION:** *Upon motion made by Supervisor Muenzer and seconded by Supervisor De La Cruz, **moved** per staff recommendation. (5-0 vote) (File #119)*

**PUBLIC WORKS DEPARTMENT – J. Horwedel:**

- 22) Receive public testimony from Property Owner; conduct a hearing on the Resolution of Necessity to authorize the acquisition of a fee interest of .888 acres and .687 acres as temporary construction easements from a portion of the property located at 331-351 Hospital Road in Hollister, California and make the required findings; and adopt Resolution of Necessity authorizing and directing the County of San Benito's Attorneys to prepare, commence, and file proceedings in eminent domain for the purpose of acquiring necessary right of way and real property interests for the proposed Hospital Road Bridge Project. (Res. No. 2015-39)

Interim Public Works Director Joe Horwedel provided information in regards to adopting Resolution of Necessity for property located on Hospital Road for the Hospital Road Bridge project. He said they are asking the Board to receive testimony from property owner and conduct a hearing on the Resolution of Necessity and adopt Resolution.

Chair Barrios opened the Public Hearing. There being no speakers the Chair closed the Public Hearing.

**BOARD ACTION:** *Upon motion made by Supervisor Muenzer and seconded by Supervisor Barrios, conducted hearing on the Resolution of Necessity to authorize the acquisition of a fee interest of .888 acres and .687 acres as temporary construction easements from a portion of the property located at 331-351 Hospital Road in Hollister; made the required findings and adopted Resolution No. 2015-39, of Necessity authorizing and directing the County of San Benito's Attorneys to prepare, commence, and file proceedings in eminent domain for the purpose of acquiring necessary right of way and real property interests for the proposed Hospital Road Bridge Project. (5-0 vote) (File #105)*

**PUBLIC WORKS DEPARTMENT – J. Horwedel:**

- 23) Accept report, and direct staff to set Public Hearing for June 16, 2015 to start the process of the creation of a new CSA, or with LAFCO's approval, annexation into existing CSA No. 9; and approve "Owner's Covenant and Irrevocable Agreement to Annex to County Service Area No. 9".

Interim Public Works Director Joe Horwedel provided information in regards to creation of new CSA with LAFCO's approval, annexation into existing CSA No. 9 (Ridgemark).

Those speaking from the public were: Richard Bettencourt, Hollister resident question in regards to process.

Mr. Horwedel explained that this would have to be approved at LAFCO first then back to the Board of Supervisors.

**BOARD ACTION:** *Upon motion made by Supervisor Muenzer and seconded by Supervisor Botelho, moved per staff recommendation. (5-0 vote) (File #CSA #9)*

**PUBLIC WORKS DEPARTMENT – J. Horwedel:**

- 24) Approval of Final Map TSM 08-77, Tract No. 317, commonly known as Tyler Knoll, lodged with the Clerk of the Board of Supervisors; accept all offers of dedications (except road right of way as explained below), as shown on the final map on behalf of public for public use, with the specific exception that the dedication of the road right of way is not accepted at this time but shall remain open for possible future acceptance, and subject to the



condition that the County is not responsible for any cost or expense, including maintenance, of any offer accepted; and authorize the abandonment of the dam maintenance easements as shown in Book 8 of Maps, Page 14, and in Book 9 Parcel Maps Page 23 and in Book 8 of Maps 61 and the temporary Cul-De-Sac easement shown on Book 9 of Parcel Maps, page 23 as their use ceased to exist and has been terminated; authorize Chair to sign the final map and authorize the County Engineer to record the Final Map.

Interim Public Works Director Joe Horwedel provided information in regards to the approval of Final Map known as Tyler Knoll for the annexation of subdivision into CSA No. 9.

**BOARD ACTION:** *Upon motion made by Supervisor Muenzer and seconded by Supervisor Botelho, **moved** per staff recommendation. (5-0 vote) (File #105.3)*

**PUBLIC WORKS DEPARTMENT – J. Horwedel:**

- 25) **Approve the agreement templates for form as required by the State of California for financing of the Main Jail Expansion; and adopt Resolution delegating to the County Administrator approval to sign the final Project Delivery and Construction Agreement (Design, Bid, Build) and other contract documents necessary to support the Main Jail Expansion project. (Res. No. 2015-40)**

Interim Public Works Director Joe Horwedel provided information in regards to jail expansion project and the agreement template forms required by the State of California for financing of the main jail expansion and the resolution delegating the CAO to sign the final project delivery and construction agreement.

Mr. Horwedel thanked Deputy County Counsel Shirley Murphy for her hard work to get this done for today's agenda.

Supervisor Botelho had a question as to how the reimbursement from the State on costs works.

Mr. Horwedel provided information. The first billing back to the State probably won't be until October 1<sup>st</sup>, they have sent us steps as to what we need to do.

**BOARD ACTION:** *Upon motion made by Supervisor Botelho and seconded by Chair Barrios, **approved** the agreement templates for form; and **adopted Resolution No. 2015-40**, delegating to the County Administrator approval to sign the final Project Delivery and Construction Agreement and other contract documents necessary to support the Main Jail Expansion project. (5-0 vote) (File #105.3)*

*The Board adjourned into closed session at 11:18 a.m. and reported out at 11:58 a.m.*

**CLOSED SESSION:**

- 26) **Conference with Legal Counsel-Existing Litigation Subdivisions (a) and (d) (1) of Section 54956.9 Name of Case: BMC Promise Way, LLC, dba: Benchmark Communities v. County of San Benito, Case No. CU-15-00056 No reportable action. (File #235.6)**

- 27) **Conference with Real Property Negotiator:**  
**Property:** 1135 San Felipe Road (APN 051-110-034), Hollister, California  
**Agency Negotiator(s):** Alan Yamamoto, Behavioral Health Services Director; Joe Horwedel, Interim Public Works Director; Ray Espinosa, CAO; Joe Paul Gonzalez, Clerk-Recorder-Auditor; Maria Sanchez, Behavioral Health Case Management Services/Administrative Services Specialist II; Matthew W. Granger, County Counsel; Barbara J. Thompson, Assistant County Counsel; and Shirley L. Murphy, Deputy County Counsel  
**Negotiating Parties:** George L. Renz  
**Under Negotiation:** price and terms of payment  
**Authority:** California Government Code Section 54956.8  
*No reportable action. (File #235.6)*

*The Board adjourned for lunch at 12:05 p.m. and reconvened at 1:30 p.m. for afternoon session.*

## **AFTERNOON SESSION 1:30 P.M.**

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

### **PLANNING DEPARTMENT – B. Turner:**

- 28) (1) Hold a public hearing regarding the Appeals of Planning Commission's Approval of Use Permit 1023-09-A – Approval of Revised Panoche Valley Solar Project;  
(2) Consider the evidence submitted to the Board;  
(3) Deny the appeals filed on behalf of appellants, and uphold the decision of the Planning Commission as follows:  
Adopt Resolution certifying the Final Supplemental Environmental Impact Report and adopting findings of fact, a mitigation, monitoring and reporting program, and statement of overriding considerations for the Revised Panoche Valley Solar Project (Attachment 1 to staff report); and adopt Resolution denying the appeals and upholding the Planning Commission's decision (Attachment 2 to staff report).  
**(Res. No. 2015-41) (Res. No. 2015-42)**

Chair Barrios provided direction as to how the public hearing would be conducted.

CAO Espinosa introduced county staff.

Interim Planning Director Byron Turner provided background information and summary in regards to the project and the process, project milestones, SEIR appeal hearing, project process. He said that we are before the Board today on appeal. He turned it over to Susan Lee who provided a PowerPoint presentation in regards to the project: Items covered were: project that was initially proposed in 2010 and the project that was approved in 2010; revised project area and conservation lands; description of PG&E upgrades; location of the microwave towers; optical ground water system; SEIR cover all environmental issues; revised project impacts similar to approved; environmental impacts of solar project changes; biological resources; traffic and transportation; water resources;

other impacts; impacts of PG&E upgrades; draft SEIR; final SEIR; minor changes.

Mr. Turner said that before the Board today was to review and consider the Planning Commissions April 25, 2015 certification of the SEIR as well as all written and oral comments received and consider whether to uphold the Planning Commissions certification of the final SEIR and uphold the Planning Commission's approval of an amended conditional use permit application. He said that the staff's recommendation actions today are to: 1) Conduct a public hearing on the appeals; 2) Consider the evidence submitted to the Board; 3) Deny the appeals filed on behalf of appellants, and uphold the decision of the Planning Commission; and suggested motion was to adopt the Resolution to certifying the Final Supplemental Environmental Impact Report and adopt findings of fact, a mitigation, monitoring and reporting program, and statement of overriding considerations for the Revised Panoche Valley Solar Project; and adopt Resolution denying the appeals and upholding the Planning Commission's decision. He said that the Applicant team is here as our representatives of the Appellants, we have two Appellants. He said that includes his introduction.

Chair Barrios opened the public hearing.

**Applicant John Pimentel CEO of Panoche Valley Solar.** He said that he would like to hold his comments to three general areas; first is the environmental benefits created by this project; second are the economic benefits supported by this project; third is the process in by which we have gone through to come to today's action. He said that this project will generate 247 megawatts of a 100% of renewable energy, which is enough to fuel the operation of 68,000 California households. He said that in terms of helping the environment it is the equivalent of planting over 4,000 acres of trees. He said that we have also gone to extreme lengths to study the impacts of the project and understand it. This project is a net benefit for the species given the amount of effort that's gone into redesigning the project, reducing its foot print and of course creating the massive mitigation outcome in conservation benefit. We are literally going to be purchasing through this project almost 40 sq. miles of private land which will be converted into the public trust for the perpetual benefit of the species. While the project will have some impacts those mitigations redesign efforts and of course the conservation land will end up with a net benefit. He said from an economic benefit this project will cost 650 million dollars, which will be invested in this county, massive investment, that will generate 500 direct construction jobs and the overall creation of over 1,000 jobs direct and indirect. As far as the County's operations are concerned the project will generate nearly 40 million dollars in various sales and use taxes, which is greater than your County general fund on an annual basis. So this is a major economic benefit for the County's operations as well and the other critical services that you provide to your people. He said as far as the process, as a developer we have gone to extreme lengths to try to incorporate the input from the government agencies, from the biological experts and from the third parties that have been willing to work with us. We have done an admiral job in incorporating that, we have redesigned the project that was originally approved by the County as an almost 400 megawatt project; we have taken down to 240 megawatt. We have reallocated the footprint to minimize its impact on the giant kangaroo rat. We will not be touching; pursuant to state law, any blunt noise leopard lizards and the San Joaquin Kit Fox. That conversion of private land into the public trust is an important thing and something that we are

very proud of as an outcome of this project. He said that in the end you will hear from opponents that this is a special place, which we should try and preserve this land for the species, which that is what we believe we are trying to do. We are trying to take cattle ranching land convert it into higher and better economic use and create an environmental benefit for the Panoche Valley and for the whole Panoche region that will help these key species exist in perpetuity.

Mr. Pimentel said that he appreciates the Boards consideration; it has been a very long process. We are hopeful to get construction started late summer this year and continue through 2016 and we ask for the Board's Nye vote, in terms of the appeal. We appreciate your continued support for the project and are looking forward in getting started on the investment and the job creation shortly.

**Jason Retterer spoke on behalf of the project applicant.** He said that he has been involved with the project since 2010 and along with County Counsel successfully defended the Boards approvals back in 2010. Today you are going to hear claims that the SEIR is inadequate, that the studies are flawed; that more studies are required to fully understand the impacts and that the extensive mitigation measures that are set forth in the SEIR are inadequate. He said as you hear the various comments; just keep in mind, a couple of CEQA principals that are all laid out in the case law in the CEQA guidelines; 1) The purpose of the SEIR is not to reevaluate the environmental impacts of the original project, it is to look at the incremental changes in this project to the overall disturbance area that has been reduced since 2010; technical protection is not required in an EIR; good faith analysis is required in an EIR. He said that this SEIR contains 200 or 300 pages of good faith reason analysis. There is always going to be differences of opinion and disagreements with the conclusions of the EIR, but again the courts say that doesn't make an EIR inadequate. He said that every significant environmental impact of the revised project has been addressed in the findings of fact that are set forth in your resolution. Those findings explain how most of these impacts will be reduced to a level of insignificance with the mitigation program that has been recommended by Aspen and the consultant team.

Mr. Retterer said that he would request that the Board deny the appeals that are before you today. He introduced two consultants for some quick comments, Jim Finnegan and Randi McCormick.

**Jim Finnegan hydro geologist** spoke in regards to the SEIR and ground water supplies and data.

**Randy McCormick, biologist,** spoke in regards to inventory and assessment of impacts to sensitive of plant and animal species that occur in and around the Panoche region and San Joaquin Valley. My team and I have been participating on project survey since 2009. Based on my professional judgment the FSEIR has described the potential impacts of the revised project on biological resources. The proposed mitigation strategy includes the development and implementation of several resource specific management and protection plans in coordination with the Fish and Wildlife Service in the California Department of Fish and Wildlife and the County. The mitigation strategy requires that preconstruction surveys be conducted, avoidance and minimization measures be implemented; the relocation of sensitive species to minimize direct mortality and ongoing monitoring of construction activities by qualified biologist and the permanent conservation of over 24,000 acres of land that will contribute to the recovery of may threaten and endangered species in the Panoche region.

**Appellant Rachael Koss** spoke on behalf of San Benito residents for responsible development. She said that we respectfully request that the Board not approve the project and deny certification of the supplemental EIR pending recirculation of revised supplemental EIR for the following reasons: 1) the supplemental EIR removed a previous required mitigation measure for significant impacts to vernal pool fairy shrimp during project construction and operation without any legitimate reason supported by financial evidence to do so. This mitigation measure that was removed required full protocol level surveys for vernal pool fairy shrimp which are protected under state and federal law. The results of those surveys would then been used to determine which pools would be protected. She said that the record contains substantial evidence that the location of vernal pools change frequently over time, the threatened species frequently disperses to new locations, and the county knows that suitable habitat exists across the project site. But now the supplemental EIR protects only those pools where the species were found about 5 years ago despite clear evidence that the location of the pools change and the species have likely moved. The Fish and Wildlife Service stated, specifically, that they would no longer consider those previous surveys to be valid. The County simply lacks substantial evidence to support its conclusion that impacts to vernal pool fairy shrimp will be reduced to less than significant. Instead, substantial evidence clearly shows the project will undoubtedly cause unmitigated impacts to this protected species. The County must require new surveys to determine the presents of the fairy shrimp through the reestablishment of that mitigation measure and include this information in a revised EIR that is circulated for comment; 2) the supplemental EIR is severally flawed with respects to its impact analysis for sensitive avian species. The project area itself is an important refuge for rear avian species and all potential impacts to migratory birds, which are protected under federal law, must be carefully considered and mitigated. Unfortunately the Counties mitigation scheme for avian species is inadequate. The supplemental EIR requires 1 year of post construction mortality monitoring, the U.S. Fish & Wildlife Service actually recommends a minimum of 3 years and other researchers who have studied this particular issue recommend at least 2 years of daily surveys. In addition, the supplemental EIR fails to provide an adequate list of potential measures that could be implemented once a future threshold is met. The EIR is vague; it merely states that the potential measures may include flight diverters which could only lead to a small decrease in mortality, if any, and white boarders which is actually inconsistent with recommendations by those that are researching this issue. The measures in the EIR are inadequate, they are unenforceable, and they do not satisfy CEQA; 3) the supplemental EIR does not adequately analyze impacts to groundwater. The revised project increases the amount of water used for project construction but the supplemental EIR fails to adequately analyze and mitigate the increase in water usage. It grossly over estimates recharge, grossly under estimates draw down, fails to consider that draw down is exasperated by the current historic drought, the EIR fails to provide clear and enforceable mitigation and the EIR completely fails to identify a true alternative water source and any environmental impacts associated with delivering the water from that alternative water source to the project. The EIR's mitigation for over pumping is vague and ineffective. The County says that the project will stop pumping local ground water if it falls below a certain level in comparison to other off site wells. The supplemental EIR fails to identify a true alternative water source should the

project be required to stop pumping. The County lacks substantial evidence to support its assessment of ground water impacts; the County has failed to identify an alternative water source and any environmental impacts from supplying water to the project from that alternative water source as required by CEQA.

Ms. Koss said for all of these reasons we urge the County to uphold our appeal and direct staff to revise the supplemental EIR to adequately evaluate and mitigate significant impacts to vernal pool fairy shrimp, to protect avian species and to groundwater. Unless the County does this it is approval of the supplemental EIR and the project will violate CEQA.

**Donald Mooney, Attorney representing the Appellants,** Sierra Club, Santa Clara Audubon Society, Center for Biological Diversity and the Defenders of Wildlife. Mr. Mooney spoke in regards to the impact this project would have on the species and the land that is being impacted here. This land that is being impacted is so critical to the San Joaquin kit fox, the giant kangaroo rat and other species. So we have come to this conclusion that we need to continue to fight this project and continue to oppose it because there are better locations for this project. He said that we cannot be doing it at the expense of the species that are already being threatened and endangered. He said that we have concerns about the EIR. Not only are we facing climate change but in California we are also facing an unprecedented and historic drought which has also impacted the giant kangaroo rat and the San Joaquin kit fox. Under CEQA when you have significant new information that wasn't available at the time that indicates the impacts will be greater, more severe or the mitigation measures will not be sufficient to mitigate the impacts. He said that the agency has legal obligation under CEQA to conduct further studies. Under the law you are obligated to conduct further studies, further analysis and make that determination, of whether or not, additional environmental review and additional mitigation measures need to be addressed and implemented because of the significant new information.

Mr. Mooney said that this new information makes it very clear of what the Counties obligation is here.

Chair Barrios opened the public hearing.

**Those speaking from the public were:** Jennifer Lee, resident of San Benito County; Marty Richman, Hollister resident; Manuel Pinheiro, Operating Engineers Local #3; David Huboi, Hollister resident; Reb Monaco, San Benito County resident; Bob Tiffany, San Benito County Business Council; Chris Khan, President of Joint Venture Monterey Bay; Daniel Dodge Sr., Field Representative of Assemblyman Luis Alejo's Office; Cesar Flores, President of LULAC; Larry Ronnerberg, Owner of Mercy Hot Springs; Rob Bernosky, Hollister resident; Damon Felice, Hollister resident; Shani Kleinhaus, Santa Clara Valley Audubon Society; Keith Wandry; Carlos Vargas, Local Soccer Coach; Paul Rovella, Local business owner/resident; Joe Silveira, Hollister resident; Ray Friend, Hollister resident; Reed Sanders, San Benito County resident and a representative of Senator Canella's Office; Sergio Sanchez, Local business owner; Nader Javid, Local business owner; Lupe Sanchez, Local business women; Jason Noble, Resident of San Benito County.

*Chair Barrios invited the applicant and the appellant to speak for rebuttal. She said that they would each be given 5 minutes to speak.*

**Applicant John Pimentel** spoke in regards to rebuttal. He said as far as the vernal pool fairy shrimp. Protocol level surveys were conducted of all the vernal pools and they were done within 5 years of the publication of the draft and

final EIR. So it was appropriate for the EIR to rely upon those protocol level surveys, which they did. Those surveys showed there were 2 pools adjacent to each other that where the presence of vernal pool fairy shrimp was observed. He said that those have actually been carved out of the revised project foot print so they are no longer part of the project site; they are part of the Valley Floor Conservation area.

He said in terms of the avian conservation plan that was mentioned. This plan is something that is required under one the litigation measures in the EIR. The applicant prepared a draft plan but has not been bedded yet with United States Fish & Wildlife Service and or the California Department of Fish & Wildlife. We fully expect that there call is to protect wildlife species.

He said there were criticisms about the adequacy of the groundwater impacts analysis. The project hydro geologist disagrees with those conclusions with the appellants assessment. Not only Jim Finnegan of Kleinfelder, who you heard from earlier today but also Aspen, had a consulting hydro geologist to evaluate the information. He said that they concurred with the analysis in the EIR as well as Geologica who was the original consulting hydro geologist that actually did the analysis and the studies that Jim Finnegan commented on that were appropriate and adequate.

He said that he wanted to point out in terms of potential impacts on biological species of this project. So if you review the project description of the EIR the project is going to permanently disturb 1,888 acres, 2,500 acres is going to be fenced in. So to mitigate for those impacts the project is setting aside a 2,500 acre conservation area in the valley floor that includes a giant kangaroo rat corridor that was actually expanded since 2010. This project has backed off the of all these most highly sensitive suitable habitat areas for these species to protect them.

He said that in terms of the Valley Fever comment. This is something that Aspen was very careful with and analyzed in the final supplemental EIR and there is a whole discussion about Valley Fever in the SEIR and there is also a mitigation measure that deals with this issue. It talks about the types of protections they are going to implemented to protect construction workers from Valley Fever.

**Randi McCormick for the applicant** said that the length of time that the study is a very short snap shot in time and giant kangaroo rat is an aired land adopted species. They do under go large fluctuates in their population and the record that was provided with the EIR information does reflect that fluctuations are expected. That is one of the reasons that large landscape level cedi sides are necessary for the species. The large land provides a lot of room for the species to undergo those fluctuations and have protected areas that would support populations as they increase again.

Chair Barrios asked Ms. McCormick if during the construction would there be biologists on sight.

Ms. McCormick replied yes there would be. Biological monitoring is required and all the giant kangaroo rats found on the site would be relocated to a nearby offsite location as required by the State and Federal agencies.

Chair Barrios asked if employees would be trained on what to look for.

Ms. McCormick replied that all employees will have an orientation that includes photographs, typical burrows for giant kangaroo rats and other species

as well that may occur there. They will be instructed to inform a biological monitor and there are procedures for protecting those species.

Supervisor Muenzer asked if she was seeing the population of the kangaroo rat decline due to the drought.

Ms. McCormick replied yes that is expected, it has occurred in other portions of its range as well.

**Appellant Rachael Koss** responded to Counsels points on vernal pool fairy shrimp in regards to the statement that protocol surveys had been done within 5 years. She said that the protocol surveys were done in 2009 and 2010 and they were not actually full protocol surveys which the Fish & Wildlife Service would require. The Fish & Wildlife Service has indicated with respect to this project and these studies that they would no longer accept them as valid, they would need to update those surveys. Also with respect to the 2 identified pools in 2010 now being in the conservation area. As I mentioned earlier it is well known that pools change locations as do the species themselves that is why it is imperative that new surveys be done now.

Ms. Koss said that in respect to avian impacts the mitigation scheme in the EIR has not been bedded yet by Fish & Wildlife Service, and that is a big problem. The adapted management strategy and any triggers need to be established and evaluated now through the CEQA process, they need to be developed and circulated for public review and comment, that is the whole point of CEQA.

Ms. Koss said that in respect to ground water. Counsel said that their hydro geologist simply disagreed with our analysis, but we are not talking about a question for an expert, this is a legal question. The test and the law say you need to evaluate an alternative water source and any impacts associated with delivering that source to the project. It is not a question for an expert, it is not a battle of the experts it is legal test and the EIR has failed that test.

**Appellant Donald Mooney** said that he had 2 quick points: One on the fluctuation based on the report that we provided indicated that species decline has been 95%, in terms of unprecedented drought. It is more than just a mere reduction of rainfall or reduced rainfall. We have a species that is on the brink, 95% decline in the population over the last several years. If the drought continues it is obviously going to get worse.

Mr. Mooney said in regards to the relocation of the giant kangaroo rats, the biologists have informed us that the mitigation measure in regards to the relocation has essentially failed miserably with significant mortality of the giant kangaroo rats when they are relocated. He said that this is information that is now available and should be looking into prior to certifying and approving this project.

Chair Barrios closed the public hearing.

Supervisor Rivas said that he was not here in 2010 for the initial decision, but has had a lot to think about and observe. He said that this project is my opportunity to act. I see this as an opportunity for us and the Board of Supervisors to take this County one step into the future. As an elected official for a County that I love and lived my entire life. I want my words to mean something. If I am going to stand against fracking and advocate that we need more renewable energy, not only in this Country or State but in San Benito County. I don't just want to just say it I want to do it. He said that I have come to realize that as a community we need to take advantage of solar energy and we



need to do our part, however big or small, to produce more clean energy and reduce carbon emissions as mandated by State Law. This project is certainly a viable option in my opinion for generating clean electricity to meet our energy requirements, not only in San Benito but in the State. One of the main benefits of renewable energy is that it generates significantly low carbon dioxide emissions and it will help to reduce global warming. He said that this project is not perfect; no project ever is especially here in San Benito County. I want to acknowledge the local residents out in the Panoche Valley. I have been out there and I saw the impacts that this project would have on their lives, it is going to have an impact on their quality of life. He said that I would like to apologize to them, but I stand by this project and I think it is a good project and am ready to support it today.

Supervisor De La Cruz said that he is passionate about the idea of solar energy. He thanked Chair Barrios for taking the lead on this project. He said that they have visited Sacramento in regards to this project. He said that we want this project and he would support this project, it is about time.

Supervisor Botelho thanked everyone that took the time out of their busy schedules to testify today and give their input to the Supervisors, it is very valuable. He said that he was here in 2010 when the Board approved this project and at that time I made every effort to talk to the people that were going to be impacted. He asked them what I can do to address some of their concerns as one Supervisor in consideration of this project. He said that it was a no project position, there was no compromising or anything, and that just doesn't resonant with me. He said that it is a sad commentary that we approved something in 2010 and we are sitting here trying to approve it again in 2015, 5 years has gone down the road. Some of the testimony from the solar folks noted that the amount of carbon emissions that this project will save is tremendous. The environmental groups are the ones that are fighting this thing and they have fought it for 5 years. How much carbon emissions have they allowed to occur in our environment that has affected the species that they are trying to protect. He said that he was very much in favor of this solar project back in 2010 and feels stronger about it today. He said that we are fortunate to have a project like this in our County. The benefits to this County not only in a way of habitat preservation but also the creation of jobs and revenue cannot be over stated for us. This project absolutely needs to go forward not only for the benefit of San Benito County but for the State and the future generations of Californians. I hope that the environmental groups take this decision as our decision and quit this fight and let's work together.

Supervisor Muenzer mentioned that he was here in 2010 but sitting in the audience and Supervisor Monaco was sitting where he is sitting now, so I have followed this project since 2010. He said that his support for this project has been lukewarm over the 5 years, but we are here now looking at a project that has been approved by this Board, the EIR has been challenged in court and stood up to that challenge and now we are here to approve an EIR that shrinks the project down and attaches a transmission line upon existing poles that are already there. He said I almost don't understand the reason for an EIR in the first place. He said that he feels that he could support this projects EIR. I think the due diligence has been done it is time for this project to move forward and hopefully be a substantial benefit to this County.

Chair Barrios said that she agreed with the other four Supervisors and that she too will support the project. She thanked the 5 of them, former Supervisor Monaco who is sitting in the audience, former Supervisor Loe who sits on the Planning Commission, she thanked them for having a vision and the strength to be able to go through a process of this magnitude. It has been huge and a difficult process but it has some very important results. Every aspect of this project has gone through a considerable amount of study; no rock has been left unturned. We have ensured that every living species is protected including the human race by providing them with jobs that not only protect them while they work, it will help put food on their table, they will be able to afford medical care, and it will put a roof over their heads and gives them an opportunity for a greater quality of life. She said who can deny that, that is what we are here for as Supervisors to try and improve the quality of life for the residents in this County.

Chair Barrios commended the Board of Supervisors and former Supervisors for not only doing it right but doing the right thing. She also urged the groups that have fought us every step of the way to let San Benito County bring this project to fruition. Please help us instead of hindering us. She thanked everyone for being here today and said that she looks forward to this project moving forward.

She asked for the Board to make a decision and entertain a motion.

**BOARD ACTION:** *Upon motion made by Supervisor De La Cruz and seconded by Supervisor Botelho, **denied** the appeals filed on behalf of appellants, and uphold the decision of the Planning Commission; **adopted Resolution No. 2015-41**, certifying the Final Supplemental Environmental Impact Report and adopting findings of fact, a mitigation, monitoring and reporting program, and statement of overriding considerations for the Revised Panoche Valley Solar Project (Attachment 1 to Staff Report); and **adopted Resolution No. 2015-42**, denying the appeals and upholding the Planning Commission's decision. (5-0 vote) (File #790)*

\*\*\*\*\*

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:	Barrios, Rivas, De La Cruz, Botelho, Muenzer
NOES:	SUPERVISORS:	None
ABSENT:	SUPERVISORS:	None

There being no further business the Board adjourned at 3:37 p.m. to June 2, 2015 at 9:00 a.m.

**MARGIE BARRIOS, CHAIR**  
San Benito County Board of Supervisors

**ATTEST:**  
Janet Slibsager, Asst. Clerk of the Board