

Tuesday, April 20, 2004

The Board of Supervisors of the County of San Luis Obispo, and ex-officio the governing body of all other special assessment and taxing districts for which said Board so acts, met in regular session at 9:00 A.M..

PRESENT: Supervisors Shirley Bianchi, Peg Pinard, K.H. 'Katcho' Achadjian, Michael P. Ryan and Chairperson Harry L. Ovitt

ABSENT: None

PLEDGE OF ALLEGIANCE TO THE FLAG LED BY CHAIRPERSON HARRY L. OVITT.

SUM **AGN**

1 A-1-A **Thereafter, on motion of Supervisor Ryan, seconded by Supervisor Bianchi and on the following roll call vote:**

AYES: Supervisors Ryan, Bianchi, Pinard, Achadjian, and Chairperson Ovitt
NOES: None
ABSENT: None

RESOLUTION NO. 2004-103, resolution commending Library Volunteers, Members of Friends of the San Luis Obispo City-County Libraries and members of the Foundation for San Luis Obispo County Public Libraries, adopted.

Mr. Rich London: Chair of the Foundation for the City-County Library, states on behalf of the libraries he would like to thank the Board and the volunteers; indicates there are 14 branches and one book mobile; addresses the importance of preserving the library and the benefits it holds for everyone.

2 A-1-B **Thereafter, on motion of Supervisor Ryan, seconded by Supervisor Bianchi and on the following roll call vote:**

AYES: Supervisors Ryan, Bianchi, Pinard, Achadjian, and Chairperson Ovitt
NOES: None
ABSENT: None

RESOLUTION NO. 2004-104, resolution proclaiming April 18 through 24, 2004 as "Safety Seat Checkup Week", adopted.

Ms. Barbara Baranek: Public Health, thanks the Board for the proclamation on behalf of the Car Seat Coalition; states there are over fourteen community agencies involved in offering public car seat check-ups to help keep children safe; indicates this Friday there will be a car seat check up at Target in Paso Robles.

Supervisor Pinard: asks what is the biggest error people make relating to the installation of a car seat, with Ms. Baranek, responding.

Mr. Michael Hennessey: California Highway Patrol, thanks the Board for their support and recognizes the cooperation of so many agencies that have come together for the safety of our kids.

3 A-1-C **Thereafter, on motion of Supervisor Ryan, seconded by Supervisor Bianchi and on the following roll call vote:**

AYES: Supervisors Ryan, Bianchi, Pinard, Achadjian, and Chairperson Ovitt
NOES: None
ABSENT: None

RESOLUTION NO. 2004-105, resolution proclaiming the week of April 18 - 24, 2004 as “San Luis Obispo County Crime Victims Rights Week”, adopted.

Ms. Cindy Marie Absey: Victim Witness, states the rights of crime victims has greatly improved over the years; addresses the creation of the Domestic Violence Task Force due to the increase of domestic violence in the County and the State; thanks the Board for the proclamation.

Ms. Sara Galletti: addresses prevention grants; states the County was one of seven counties who received funding to start a prevention program; indicates they will also be looking for collaboration with various agencies in the County to see that this program moves forward; thanks the Board for their support.

4 PC This is the time set for members of the public wishing to address the Board on matters other than scheduled items.

Ms. Carol Krasner: addresses the importance of Transitions Mental Health Day Program; urges the Board to keep this program thriving.

Dr. Fred Cutter: President of the Psychology Association, addresses suicide and suicide prevention; presents statistics relating to suicide in the County; urges the Board to consider mental health funding during the budget hearings.

Mr. John Lamas: addresses the need for Transitions Mental Health funding.

Ms. Lisa Schicker: Los Osos Technical Task Force, addresses the unanimous decision of the Coastal Commission to hold off on the sewer; indicates the members of the Coastal Commission share the community concerns; urges the Board to listen to the people and have the environmental document redone.

Ms. Julie Tacker: President of Concerned Citizens of Los Osos, states they are united against the proposed sewer location; states the better alternative for the sewer has always been out of town; addresses the Coastal Commission’s decision and urges the Board to pull the permit.

Mr. John Euphrat: reports on the Coastal Commission’s activities: 1) the Oceano Specific Plan has been acknowledged and is now in effect; 2) a home site in Harmony was approved after the Commission reduced the size and scope to protect the view of the ocean; and 3) the Commission found there were significant issues raised by the Appellants relating to the Los Osos sewer and they will be taking over the permitting authority as it relates to the Coastal Development Permit for this project and the County no longer has a role.

Mr. Al Barrow: President of Citizens for Affordable and Safe Environment, urges the Board to pull the Coastal Development Permit for the Los Osos CSD Wastewater Treatment Facility; addresses the need for a subsequent EIR; states the community no longer supports a sewer in the middle of town; suggests the sewer be moved out of town.

Mr. Pravin Bhuta: Appellant, supports some of the comments made by prior speakers; addresses noticing requirements.

Reverend C. Hite: addresses “Kids for Saving Earth” and the dream of Clinton Hill (cancer victim) to have a cleaner and healthier future for our planet; hands the Board a packet of information relating to this issue.

Mr. Chuck Cesena: states the Coastal Commission was in no way coerced or bullied by the citizens of Los Osos into the determination that this project needed another look; indicates the Overriding Considerations contained in the report are no longer valid; states the more affordable alternative is outside of town.

Mr. Bruce Payne: addresses voting on misinformation being given relating to a sewer line not being able to cross a creek; speaks to the money the CSD has spent trying to sell this bad idea to the public; urges the Board to pull the permit.

Mr. Eric Greening: states when the Commission called for a de Novo hearing it took the issue out of the County's hands however, the County is tied to this issue because the Estero Area Plan leans on the Habitat Conservation Plan for this project to accomplish a lot of biological mitigations; urges the Board to pull the permit with the purpose of calling for a subsequent EIR; states he would like to see the Board get on the same page as the Coastal Commission.

Mr. Vic Holanda: Planning Director, states the Los Osos sewer project and the Estero Area Plan can be bifurcated; once the appeal was granted by the Coastal Commission the County lost their jurisdiction and in essence this is their project; urges the citizens from Los Osos to go to the next Coastal Commission meeting in Marin County and contact the staff in Santa Cruz.

Ms. Kathleen Jensen: questions if the Planning Commission approved the proposed sewer site, with Chairperson Ovitt responding.

Supervisor Bianchi: states on Tuesday, in Los Osos at 7:00 p.m., at Sunnyside School, there will be a public meeting held by the CSD and she urges everyone to attend.

Mr. David Edge: County Administrative Officer, states in 1998 the Citizens of Los Osos overwhelmingly voted to take the County out of the wastewater treatment process and the CSD was created and now the opponents of the CSD's plan need to work through the process; addresses the Mental Health Transition Program and indicates this is one of the issues the Board will be dealing with in June at the budget hearings; states funding for mental health is predominately State and Federal with the County having about 10% of the total share of the budget; indicates it will be a process of creating priorities. **No action taken.**

5 B-PC This is the time set for members of the public wishing to address the Board on items set on the Consent Agenda.

Reverend C. Hite: addresses Item B-6 indicating she is pleased the Department of Social Services is being watched; addresses fraud and how funds are being used. **No action taken.**

6 B-1 Consent Agenda Item B-4 is amended by changing the coversheet to read:
thru "Introduction
B-28 of a resolution." Item B-16 is amended to extend the Bid date to May 6, 2004, at 3:00 P.M.. Item B-25 is amended to correct the coversheet reflecting submittal of one resolution. **Thereafter, on motion of Supervisor Ryan, seconded by Supervisor Bianchi, and on the following roll call vote:**

AYES: Supervisors Ryan, Bianchi, Pinard, Achadjian,
Chairperson Ovitt
NOES: None
ABSENT: None

Consent Agenda Items B-1 through B-28 are approved as recommended by the County Administrative Officer and as amended by this Board.

Consent Agenda Items B-1 through B-28, as amended, are on file in the Office of the County Clerk-Recorder and are available for public inspection.

Items set hearing:

B-1 Plans and specifications (Clerk's File) for the Lopez Pipeline Valve Replacement Project; 3rd District, **Approved and the Clerk is instructed to give notice of bid opening set for May 20, 2004 at 3:00 P.M..**

- B-2 **RESOLUTION NO. 2004-106**, of Intention of the County Flood Control and Water Conservation District to annex Tract 2530 to Flood Control Zone 16; 4th District, **Adopted and the Clerk is instructed to give notice of hearing date set for June 22, 2004 at 9:00 A.M..**
- B-3 Authorize approval of assessment proceedings for Tract 2530 for the purpose of drainage basin maintenance located in the community of Nipomo; 4th District, **Approved and the Clerk is instructed to give notice of a hearing date set for June 8, 2004 at 9:00 A.M..**
- B-4 Introduction of a resolution approving a proposed ordinance and proposed ballot measure to authorize a 0.25 percent transactions and use tax dedicated to funding countywide public library programs and operations, **Approved as amended and the Clerk is instructed to give notice of hearing date set for April 27, 2004 at 9:00 A.M..**

Auditor-Controller Items:

- B-5 Unannounced cash count of the County Treasurer's Office, conducted on March 10, 2004, **Received and Filed.**
- B-6 Unannounced cash count and limited review of cash handling procedures of County Department of Social Services, conducted on March 24, 2004, **Received and Filed.**
- B-7 Unannounced cash count of the County Sheriff's Animal Services division, conducted on March 23, 2004, **Received and Filed.**

Behavioral Health Items:

- B-8 A grant agreement (Clerk's File) with the State Department of Alcohol and Drug Programs to fund Safe and Drug Free Schools grant Part II "Dare to be You" and approve a corresponding budget adjustment in the amount of \$49,709, **Approved.**
- B-9 A grant agreement (Clerk's File) with State Department of Alcohol and Drug Programs to fund Year 2 of Safe and Drug Free Schools Program Grant Part I for Friday Night Live prevention programs, **Approved.**

Board of Supervisors Items:

- B-10 Allocation of \$5,000 from Community Project Funds (District Two - \$500, District Three - \$500, District Four - \$200, District Five - \$3,800) to the San Luis Obispo County YMCA to be used to provide financial assistance to children enrolled in the Bitty Sports Program, **Approved.**
- B-11 Allocation of \$2,500 from District Five Community Project Funds to the City of Atascadero to offset expenses associated with the Summer Concert Series at Atascadero Lake Park, **Approved.**
- B-12 Letter supporting the continued operation of the California Conservation Corps Center in San Luis Obispo, **Approved.**

County Fire Items:

- B-13 Request to apply for Federal Hazard Mitigation Grant Program Funds for the development of a road and hazard map and approve the related designation of applicant's agent resolution and certification, **Approved.**
- B-14 Grant agreement (Clerk's File) from the Emergency Medical Services Authority to acquire Automatic External Defibrillators and approve corresponding budget adjustment in the amount of \$9,950, **Approved and instruct the Fire Chief, or Designee to sign.**

- B-15 **RESOLUTION NO. 2004-107**, commending CDF/County Fire employees Captain Richard Clawson, Captain Larry Williams, Captain Mike Williams, Heavy Fire Equipment Operation Dayton Schroeder, and Fire Apparatus Engineer Dan Patchett for a combined 123 years of dedicated service, **Adopted**.

General Services Items:

- B-16 A one-week bid extension for the construction of a new Superior Court facility in downtown Paso Robles, extending the bid date to May 6, 2004, 3:00 P.M., **Approved as amended**.
- B-17 A new capital project entitled "San Luis Obispo Airport - Rental Car Facilities-P5206" and approve corresponding budget adjustment in the amount of \$75,000 from Customer Facility Charges to partially fund the planning and design work, **Approved**.
- B-18 **RESOLUTION NO. 2004-108**, accepting real property donations from People's Self-Help Housing Corporation of: 1) fee title to Lot 47 of Tract 2136, approximately 3.13 acres of real property along the Salinas River in San Miguel, and 2) easement of approximately 0.46 acres over Lots 1 through 11 of Tract 2136 in San Miguel; 1st District, **Adopted**.

Pension Trust Items:

- B-19 **RESOLUTION NO. 2004-109**, amending Section 6:02: Safety Member; Retirement Plan, Section 10:04: Industrial Disability of the retirement plan and approving changes to the County rate of appropriation for safety members employed in specified bargaining units and improvement of the retirement allowance formula for management peace officers, **Adopted**.
- B-20 **RESOLUTION NO. 2004 -110**, amending the San Luis Obispo County Employees' Retirement Plan to conform to the current structure of the plan and to reflect previous Board actions, **Adopted**.

Planning and Building Items:

- B-21 **RESOLUTION NO. 2004-111**, approving an agreement for mitigations, with Nathan and April Vasquez, for property located at 1343 "L" Street, San Miguel; 1st District, **Adopted**.
- B-22 **RESOLUTION NO. 2004-112**, accepting an avigation easement from Daniel and Grechen Shetler, for property located near the Oceano County Airport; 4th District, **Adopted**.
- B-23 **RESOLUTION NO. 2004-113**, accepting an avigation easement from Joe and Karen Plummer, for property located near the Paso Robles Municipal Airport; 1st District, **Adopted**.
- B-24 **RESOLUTION NO. 2004-114**, accepting an avigation easement from Daniel and Tammy Evans, for property located near the Oceano County Airport; 4th District, **Adopted**.

Public Works Items:

- B-25 **RESOLUTION NO. 2004-115**, authorizing execution of a notice of completion for the installation of cathodic protection system on the Salinas Pipeline near San Luis Obispo, **Adopted as amended**.
- B-26 The following maps have been received and have satisfied all the conditions of approval that were established in the public hearings on their Tentative Maps:
- A. Tract 2212, a proposed subdivision resulting in 8 lots, by Justo Andrade et al., Harvest Place, Nipomo, reject the offer of dedication without prejudice to future acceptance; 4th District, **Approved**.

- B. CO 03-0226, a proposed subdivision resulting in 2 condominium units, by Charles and Diane Moorman, Brewer Street, Templeton; 1st District, **Approved.**
- C. CO 02-0246, a proposed subdivision resulting in 2 lots, by Cliff Branch and James Smith, Tefft Street, Nipomo, **Approved** and **RESOLUTION NO. 2004-116**, accepting the offer of dedication for road widening and reject the offer of dedication for drainage without prejudice to future acceptance; 4th District, **Adopted.**
- D. CO 02-0393, a proposed subdivision resulting in 2 lots, by Duncan and Judith Osborne, Corbett Canyon Road, south of San Luis Obispo; 4th District, **Approved.**

Other Items:

- B-27 Contract for placement of two Employment Resource Specialists (ERS) on site at Sierra Vista Regional Medical Center (SVRMC) to accept and process applications for Medi-Cal services for fiscal year 2003-04, **Approved.**
- B-28 **RESOLUTION NO. 2004-117**, amending the position allocation list for Budget Units 3200 - Social Services and 2110 - Personnel to transfer an existing Administrative Assistant position in support of the County's employee university training programs, **Adopted.**
- 7 C-1 This is the time set for hearing to consider an appeal by Brad and Pamela Frederic and Laurie Gage of the Planning Department Hearing Officer's decision to approve a request by Warren Frankel for a Minor Use Permit (D020206P) to convert an existing 3,000 square foot agriculture accessory structure to a commercial wine processing facility, located on the west side of Linne Road, east of the community of Paso Robles; 1st District.

Ms. Susan Callado: Planning, presents the staff report; describes the location and the plan for the property; discusses the issues of the appeal relating to setbacks, noise and traffic; states staff's recommendation is to adopt the resolution affirming the decision of the Planning Department Hearing Officer and conditionally approve the Minor Use Permit D020206P based on the Findings in Exhibit A and Conditions in Exhibit B.

Ms. Lori Gage: Appellant, indicates the other appellants Mr. and Mrs. Frederic are unable to be at this meeting due to a prior commitment; refers to page C-1-17 of the staff report which is a letter to the Board by Mr. and Mrs. Frederic relating to the appeal issues; states there are a number of inconsistencies in the staff report they would like clarified relating to parking, the access road/driveway, traffic, setback requirements, and impacts on the environment; urges the Board to revisit the setback waiver.

Ms. Rachel Dumon: representing the Applicant, addresses the access road; indicates the project will be a typical winery business; addresses the noise, indicating the Applicant is willing to conduct a noise study; states Dr. Frankle agrees to the conditions of approval.

Mr. Eric Greening: states he shares the concerns of the Appellants relating to the setback waiver being precedent setting and questions the accumulative effect if others in the area were to ask for a setback waiver.

Dr. Warren Frankel: Applicant, states at the Planning Commission meeting Ms. Gage asked what was in it for her; addresses the access road; states he supports the agriculture business and the General Plan; indicates the noise will not be a problem because he won't let it happen; feels they are doing what's good for the community.

Ms. Gage: clarifies her statement at the Planning Commission meeting indicating she was asking what the process was going to bring to the community;

speaks to the noise and increased traffic; questions the accumulative effect as other wineries move in.

Ms. Callado: presents a suggested language for Condition No. 21 to read: “a 20 foot wide paved driveway approach shall be installed off of Linne Road and shall not be used for parking for special events.”

Board Members: addresses various issues, comments and concerns regarding; the driveway; the location of the properties of the people who submitted letters of support; the amplified music, with staff responding.

Matter is fully discussed and thereafter, on motion of Supervisor Ryan, seconded by Chairperson Ovitt and on the following roll call vote:

AYES: Supervisors Ryan, Chairperson Ovitt, Pinard, Achadjian
NOES: Supervisor Bianchi
ABSENT: None

the Board amends Condition No. 21 to read: “A 20 foot wide paved driveway approach shall be installed off of Linne Road and shall not be used for parking for special events.” and RESOLUTION NO. 2004-118, resolution approving the decision of the Hearing Officer and conditionally approving the application of Warren Frankel for Minor Use Permit D020206P, adopted as amended.

- 8 D-1 This is the time set for submittal of a resolution acknowledging receipt and agreeing to the California Coastal Commission’s modified language pertaining to the Local Coastal Program.

Mr. John Euphrat: Planning, presents the staff report indicating staff attended two meetings, one with the Agriculture Liaison Board and the other with Agricultural Task Force; states the existing Local Coastal Plan is very strict; indicates staff doesn’t think the changes by the Commission will effect the projects that are processed in the County.

Supervisor Pinard: questions several changes relating to affordable housing; RV parks being exempt from a seawall; an attempt to simplify other agency involvement and lines that were drawn to identify coastal resource areas; questions if Phase II problematic issues will be revisited, with staff responding.

Ms. Pam Heatherington: Executive Director of the Environmental Defense Center, thanks the Ag Liaison Board for their unanimous approval of the changes to the Local Coastal Program (LCP); states it is the first step in updating the LCP and leaving our coastline in pristine condition.

Mr. Doug Buckmaster: Friends of the Ranchland, urges the Board to adopt the resolution; states it is vital this phase move forward.

Ms. Karen Mansfield: Ag Task Force, thanks the Board for the time to allow the Task Force to review the amendments; states the Task Force is satisfied with the language as it stands and they will monitor Phase II and III.

Ms. Joy Fitzhugh: Ag Liaison Board and North Coast Farm Center, states the Ag Liaison Board unanimously agreed to move forward but are still concerned with some unresolved issues; indicates the North Coast Farm Center still has concerns over the alternative review process when dealing with certain issues.

Board Members: discuss various issues, comments and concerns regarding; agricultural issues coming back; time frame of these changes being heard; appealable development, with staff responding.

Matter is fully discussed and thereafter, on motion of Supervisor Bianchi, seconded by Supervisor Achadjian, and on the following roll call vote:

AYES: Supervisors Bianchi, Achadjian, Pinard, Ryan,
Chairperson Ovitt
NOES: None
ABSENT: None

RESOLUTION NO. 2004-119, resolution acknowledging receipt and agreeing to California Coastal Commission's modified language pertaining to Local Coastal Program - Major Amendment Number 1-03, adopted.

9 E-1 This is the time set for a discussion of genetically modified crops in San Luis Obispo County.

Mr. Bob Lilley: Agricultural Commissioner, presents the staff report; addresses how the County was sought as a potential growing location for genetically modified rice; states this production draft emergency regulation was presented to the State Secretary of Agriculture for signature and the Secretary of Agriculture rejected the emergency regulation; hands the Board a copy of the State's Findings; indicates the basis for the rejection on the State level is that it didn't qualify as an emergency; states there is no immediate action necessary because the Secretary of Agriculture did reject this production protocol and the County is no longer listed as a potential location; discusses how genetically engineered crops (GEC) are regulated; indicates Mendocino County passed a voter initiative to ban GEC; states he is available to answer any questions the Board may have.

Ms. Liana Forest: addresses the benefits and drawbacks of genetically modified organisms (GMO); states there is little information relating to this process; addresses her concerns for the contamination of life and health and unintended consequences.

Ms. Karen Mansfield: Ag Task Force, believes there just isn't enough information relating to this process.

Mr. Michael Zelina: believes genetically engineered crops are headed to this County; urges the Board to adopt an ordinance similar to Mendocino County's; hands the Board a proposed ordinance; believes an interim moratorium would allow the public the opportunity to become educated and informed as to what the benefit and drawbacks are relating to GEC.

Ms. Teresa Campbell: urges the Board to support a temporary moratorium on the growing of GEC in the County; believes there is not enough information in order to make an educated decision on whether genetically engineered crops are wanted in this County.

Ms. Pamela Heatherington: Executive Director of the Environmental Center, states we are all becoming test subjects for genetically engineered crops; urges the Board to consider an interim moratorium to prohibit genetically engineered crops in the County while the community can decide whether or under what circumstances they would tolerate GE crops.

Ms. Joy Fitzhugh: Farm Bureau, feels there are a lot of issues that have not been addressed; believes there needs to be more facts and information relating to the process before any decisions are made.

Mr. Eric Greening: states he agrees with the previous speakers relating to the interim moratorium; feels there is a lack of information; believes the County needs to be proactive and collect information about what is currently known about GE crops and their impacts in California and lobby to protect the County's ability to control locally.

Board Members: discuss various issues, comments and concerns regarding: more discussion and information needing to take place; impacts, if any, where this process has been used; bringing this issue back at a future date with a full report; retaining local control; any known GEC in the County already, with staff responding.

A motion by Supervisor Ryan to direct the Agricultural Commissioner to work with the Agriculture Task Force and Farm Bureau and bring this item back with more information on the GEC in two months, is discussed.

Supervisor Bianchi: indicates she will not support the motion because she supports an interim moratorium.

Supervisor Pinard: states she is supportive of on going discussions however, there is no provision that would give immediate access to being notified of any new genetically modified material coming into the County.

Matter is fully discussed and thereafter, on motion of Supervisor Ryan, seconded by Chairperson Ovitt and on the following roll call vote:

AYES: Supervisors Ryan, Chairperson Ovitt, Achadjian
NOES: Supervisors Bianchi, Pinard
ABSENT: None

the Board directs the Agricultural Commissioner to work with the Agriculture Task Force and Farm Bureau and bring this item back with more information on the GEC in two months.

10 CS The Board announces it will be going into Closed Session regarding:

I. PENDING LITIGATION (Gov. Code, § 54956.9.) It is the intention of the Board to meet in Closed Session concerning the following items:

A. Conference with Legal Counsel - Existing Litigation (Gov. Code, § 54956.9(a).) (Formally initiated) 1) *In re PG&E Bankruptcy*, 2) *NRC Proceedings Concerning Diablo Canyon License Transfer*, 3) *NRC Proceedings Concerning Spent Fuel*, 4) *AT&T v. County of San Luis Obispo*, 5) *MCI WorldCom v. County of San Luis Obispo*, 6) *Omega Chemical PRP Group LLC v. County of San Luis Obispo*, 7) *Los Osos Community Services District v. County of San Luis Obispo*, **All Requirements of the Brown Act have been satisfied as this notice was posted prior to the 72-hour noticing requirement. and** 11) *M & R. Investment Co., Inc. V. County of San Luis Obispo, et al.*

B. Conference with Legal Counsel - Anticipated Litigation (Gov. Code, § 54956.9.) 8) *Significant exposure to litigation (Gov. Code, § 54956.9(b).)* No. of cases 2. Facts and circumstances not known to potential plaintiff which indicate significant exposure to litigation. 9) *Initiation of litigation (Gov. Code, § 54956.9(c).)* No. of cases 2.

II. CONFERENCE WITH LABOR NEGOTIATOR (Gov. Code, § 54957.6.)

It is the intention of the Board to meet in Closed Session to have a conference with its Labor Negotiator concerning the following: 10) Negotiator's Name: *Santos Arrona, Gail Wilcox*; Name of employee organization: *Deputy Sheriff's Association*

Chairperson Ovitt: opens the floor to public comment without response.

Thereafter, pursuant to the requirements of the Brown Act, County Counsel reports out on the items discussed during Closed Session as follows: Items 1 through 11 - No public report required because no final action was taken, and the Board goes into Open Public Session.

11 C-2 This is the time set for hearing to consider appeals by the Sierra Club (Santa Lucia Chapter), San Luis Obispo Mothers for Peace, Carrie Filler, Richard Keller, and David Weisman of the Planning Commission's decision to approve a Coastal Development Permit (D010153D), from the Pacific Gas & Electric Company for an Independent Spent Fuel Storage Installation site at the Diablo Canyon Nuclear Power Plant, approximately 6 miles north of the community of Avila Beach; 3rd District.

Mr. James Caruso: Planning, presents the staff report indicating there are four appeals; describes the location and the project; explains the projects preemption issue; states the EIR is final; discusses the preparation of the EIR; the significant impacts and the mitigation measures; addresses the Statement of Overriding Considerations.

Ms. Michelle Becker: Mothers for Peace and Appellant, states her motive for appearing today are her grandchildren; indicates seismic information is not available; questions the safety; indicates there is a meeting down in Palm Springs relating to the earthquake safety and the San Simeon fault this Thursday and the Board should not make a decision until after that information is available; addresses the issue of terrorism; believes moving forward without all the information is a lack of responsibility.

Mr. David Weisman: Appellant, addresses the issues of preemption; speaks to and reads portions of articles relating to fuel storage for Connecticut Nuclear Power Plant and Millstone Power Station and the differences that remain between the plants and the towns; states in Waterford the town had the authority to regulate the company's use of its land; indicates with regard to these two power plants the Nuclear Regulatory Commission (NRC) preemption is not mentioned; questions what they are doing in Connecticut that we are not doing here.

Mr. Fred Frank: Sierra Club and Appellant, states this project is inconsistent with the Local Coastal Plan; addresses concerns relating to the seismic design of this project; states this project was designed before 9-11 and consideration was not given to possible terrorist attacks; questions the safety of the design of the proposed casks; discusses transport to Yucca Mountain.

Mr. Richard Keller: Appellant, addresses the safety of storing the fuel rods and shows pictures of children who have suffered when things have gone wrong.

Ms. Carrie Filler: Appellant, addresses the quality of the casks; urges the Board to take a "wait and see approach."

Mr. Larry Womack: Vice President of Nuclear Services at Diablo Canyon with PG&E, presents photos and; explains the proposed project; states the issues by the appellants are not related to the project that is before the Board today; feels the challenge is to focus on the issues that is within the Board's jurisdiction; hands the Board transcripts of the Coastal Commission hearings from February 14 and 15, 2000 indicating they have no jurisdiction and that the Nuclear Regulatory Agency is the responsible agency and addresses preemption; addresses access; urges the Board to decide today; states there has been extensive public input and they have followed all the rules and procedures; indicates the facts are clear and urges the Board to deny the appeal and certify the EIR.

Mr. Ross L. Pepper: addresses a resolution the Board passed in August 2003 relating to the Diablo License; indicates terrorism threats and earthquake problems have not been dealt with; urges the Board to demand the safety of the residences in the County.

Reverend C. Hite: addresses the people with disabilities and the unmet needs with regard to transportation in the case of an evacuation; asks for equal opportunity for the disabled during a PG&E alert; states above-ground storage is an unacceptable risk.

Ms. Carmela Vignocchi: addresses the company that makes the casks and questions the quality; indicates this company failed the NRC safety standards; urges the Board to postpone their decision.

Mr. Mark Skinner: addresses the design flaws in the casks; indicates these casks are no better than oak barrels or an aluminum can; feels this weak plan must be replaced.

Ms. Susan Harvey: addresses Diablo Canyon's vulnerability.

Mr. Eric Greening: agrees with the previous speakers urging the Board to gather all the information before making a decision; indicates this will be appealed to the Coastal Commission and local control will be lost.

Mr. Klaus Schumann: addresses the Statement of Overriding Consideration on page C-2-24 and addresses the safety of the Independent Spent Fuel Storage Installation; urges the Board to only issue the land permit.

Ms. Jay Adams: Green Party, urges the Board to phase out nuclear power and use another form of energy; believes nuclear power is a threat to national security; recommends robust storage as developed by Dr. Gordon Thompson.

Mr. Steven M. Weiner: Executive Secretary/Treasurer of the Santa Barbara/San Luis Obispo Counties Building and Construction Trades Council, indicates they will be building this project; states they have been working with PG&E on a project labor agreement; indicates local people will be used and safety will be paramount; urges the Board to move forward.

Mr. Walter French: supports the Planning Commission's decision; the Appellants are just rehashing old issues; addresses Diablo's safety record; indicates this is a straight forward permit and urges the Board to consider this issue as any other coastal development permit.

Ms. Henriette Groot: presents an update on the case of Regional Water Quality Control Board versus PG&E relating to the loss of marine life.

Ms. Lucinda Nichols: urges the Board to support the people here today and deny the permit until more studies are completed.

Mr. Russel Ferriday: states his concern to PG&E reminding the Board of their role and the number of jobs they provide; the people are told their concerns are a rehash of old issues; addresses the profit motive; urges the Board to limit approval and place conditions and not allow PG&E to overrule; presents a map of Chernobyl fallout and a map of Chernobyl fallout pattern centered on Diablo Canyon.

Ms. Carol Paulsen: shares photos of her family and urges the Board to think about this issue with their hearts.

Ms. Joan Carter: states there is only one solution to safe storage of spent fuel and that is to stop production; addresses her concerns to safety and environmental standards.

Mr. Allen Meeker: Chairperson of the Los Osos Community Advisory Council, addresses the draft EIR; questions long-term storage; indicates this issue will effect people who have not even been born yet.

Ms. Marilyn Brown: urges the Board to say "no" to the Coastal Development Permit.

Ms. Leslie Halls: states there are no easy answers; feels the Board should continue with the Planning Commission's recommendation; states she hasn't heard any satisfactory alternatives.

Ms. Pam Heatherington: feels this permit should be denied based on a large concrete pad being poured in the Coastal Zone.

Ms. Susan Biesek: indicates she is here for the children; addresses the adequacy of the waste storage facility and the time frame it took to fill it; speaks to cask makers and their learning process.

Mr. Lionel Johnston: questions if there is an evacuation plan; feels there is no need for Diablo; believes the answer is in conserving and moving forward with alternative technologies.

Ms. Constance Dunbar: states nuclear waste is inconsistent with public health; addresses the concrete pad in the Coastal Zone; believes there is a long-term threat of generations being held hostage.

Mr. Womach: states the issues brought up today have already been addressed by the NRC; indicates the project is zoned Industrial; urges the Board to follow the law regarding preemption and vote today.

Ms. Becker: states steam generators at Diablo are failing and need to be replaced; indicates there is no intervention at San Onofre and to ignore the intervention in this County would not be in the Board's best interest; addresses the NRC's lack of oversight at Diablo relating to the retrofit; states she would like to hear from the fire department; states after this County allows the storage there will be no turning back.

Mr. Wiseman: addresses preemption and would like to see how the NRC "spells that out"; questions if this is the best design concrete pad for Diablo.

Mr. Frank: addresses the restriction of coastal access and believes this must be mitigated; feels there are many questions regarding safety, and studies and legal actions that have yet to be resolved; urges the Board to carefully consider this project and formally request PG&E to adopt a measure to protect the residents of this County.

Mr. Keller: urges the Board to look at the big picture and take everything into account.

Mr. Wiseman: continues Ms. Biesek's information relating to casks.

Thereafter, on motion of Supervisor Achadjian, seconded by Supervisor Pinard and unanimously carried, the Board agrees to continue the meeting past 5:00 p.m. to 5:15 p.m..

Board Members: discuss various issues, comments and concerns regarding: the location and safety of the concrete pad and casks; the consequences for not having a plan for storage; moving the pad; who controls the cask design; what PG&E brings to the County versus what PG&E costs the County; the dilemma of leaving the fuel rods in the pools knowing the earthquake potential or proceed to get the rods out of the pools into dry cask storage; coastal access; the safety of the emergency sirens; the idea of transporting the casks underground; incorporating the system, safety and risk of upset conditions into the conditions of approval, with staff responding.

A motion by Supervisor Bianchi to partially deny the appeals but uphold the appeal on the coastal access, is discussed.

Supervisor Bianchi: refers to page C-2-80 of the staff report and in section 1a would like to add the words "while the plant is in operation" at the end of the first sentence and delete the words "and the protection of fragile coastal resources" in the last sentence; indicates on page C-2-83 she would like to delete the last sentence in Finding (f) "Further, there exists no essential nexus for the access requirement" in the first paragraph and would like to add back into the Conditions the Planning Commission's Condition No. 41 but change the heading from "Prior to issuance of a construction permit" to "At the Decommissioning of the Plant" and will read: Public Shoreline Access 41. **At the Decommissioning of the Plant**, the applicant shall offer for dedication to the public in a form approved by the Director of the Dept. of Planning and Building and County Counsel: a) A public access easement on the existing Diablo Canyon access road from the Avila Beach Drive plant entrance, north to the boundary of the Montana de Oro State Park that shall be a minimum of 50 feet wide. b) A lateral access easement from the toe of the bluff to mean high tide line from the property's southern boundary line to the northern boundary. c) Vertical access easements from the existing road to the toe of bluff at one mile intervals of coastline as approved by the Director of Planning and Building. The offers of

dedication of public access shall remain valid but not be accepted until the license for the subject project has lapsed and other radioactive components on the project site have been removed or other operational licenses have lapsed. Because offers of dedication can expire, in no case shall the offer of dedication lapse prior to the year 2030.”

Mr. Tim McNulty: Deputy County Counsel, states on page C-2-80 (1a) there is a reference in the middle of the paragraph to proposed access requirements amounting to a taking that would contradict the change that Supervisor Bianchi proposes and suggests removing that sentence as well, with Supervisor Bianchi agreeing.

Mr. Bob Schieblehut: Attorney for PG&E, states they understand the language, however are not sure they understand the reasoning; addresses an analysis of the nexus.

Thereafter, on motion of Supervisor Achadjian, seconded by Supervisor Pinard and unanimously carried, the Board agrees to continue the meeting past 5:15 p.m..

Thereafter, on motion of Supervisor Bianchi, seconded by Supervisor Ryan and on the following roll call vote:

AYES: Supervisors Bianchi, Ryan, Achadjian, Chairperson Ovitt

NOES: Supervisor Pinard

ABSENT: None

the Board partially denies the appeals and upholds the Coastal Access on page C-2-80 of the staff report in section 1a and adds the words “while the plant is in operation” at the end of the first sentence and deletes the words “Here, the proposed access would amount to a “taking,” Nollan v. California Coastal Commission, 483 U.S. 825, 834 (1987) (new house which would have impeded view from street not required to provide lateral access across beach in front of new house) because there was no nexus”in the middle of the paragraph and also deletes the words “the protection of fragile coastal resources” in the last sentence; on page C-2-83 deletes the last sentence in Finding (f) which reads “Further, there exists no essential nexus for the access requirement” in the first paragraph and adds back into the Conditions the Planning Commissions Condition No. 41 which will be new Condition No. 43 and will read: Public Shoreline Access 41. At the Decommissioning of the Plant, the applicant shall offer for dedication to the public in a form approved by the Director of the Dept. of Planning and Building and County Counsel: a) A public access easement on the existing Diablo Canyon access road from the Avila Beach Drive plant entrance, north to the boundary of the Montana de Oro State Park that shall be a minimum of 50 feet wide. b) A lateral access easement from the toe of the bluff to mean high tide line from the property’s southern boundary line to the northern boundary. c) Vertical access easements from the existing road to the toe of bluff at one mile intervals of coastline as approved by the Director of Planning and Building. The offers of dedication of public access shall remain valid but not be accepted until the license for the subject project has lapsed and other radioactive components on the project site have been removed or other operational licenses have lapsed. Because offers of dedication can expire, in no case shall the offer of dedication lapse prior to the year 2030” and RESOLUTION NO. 2004-120, resolution affirming the decision of the Planning Commission and conditionally approving the application of Pacific Gas & Electric for a Development Plan D010153D, adopted as amended.

On motion duly made and unanimously carried, the Board of Supervisors of the County of San Luis Obispo, and ex-officio the governing body of all other special assessment and taxing districts for which said Board so acts, does now adjourn.

I, **JULIE L. RODEWALD**, County Clerk-Recorder and Ex-Officio Clerk of the Board of Supervisors of the County of San Luis Obispo, and ex-officio clerk of the governing body of all other special assessment and taxing districts for which said Board so acts, do hereby certify that the foregoing is a fair statement of the proceedings of the meeting held Tuesday, April 20, 2004, by the Board of Supervisors of the County of San Luis Obispo, and ex-officio the governing body of all other special assessment and taxing districts for which said Board so acts.

JULIE L. RODEWALD, County Clerk-Recorder
And Ex-Officio Clerk of the Board of Supervisors

By: /s/Cherie Aispuro,
Deputy Clerk-Recorder

DATED: 4/23/04
cla