

Tuesday, August 27, 2002

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

ABSENT: None

PLEDGE OF ALLEGIANCE TO THE FLAG LED BY CHAIRPERSON BIANCHI.

SUM **AGN**

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

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

RESOLUTION NO. 2002-331, resolution proclaiming September 5, 2002 as "Fuel Cell Energy Independence Day" in San Luis Obispo County, adopted.

Mr. Richard Varenchik: California Environmental Protection Agency, thanks the Board for the recognition and raising awareness of this exciting technology; indicates he will take this resolution back to Sacramento and display it; hopes the Board has received their invitations to the California Fuel Cell Partnership Road Rally on September 5, 2002.

2 BPC This is the time set for members of the public wishing to address the Board on items set on the Consent Agenda.

Ms. Missie Hobson: PG&E, states PG&E opposes the allocation of funds referred to in Item B-9; feels this is a misuse of County funds and will be used in litigation against PG&E at the NRC; states according to the Mothers For Peace website their objective is to close Diablo Canyon; indicates if the real intent is to allocate money for dissemination of information to the public, the Board could simply instruct staff to do so through any number of means. **No action taken.**

Chairperson Bianchi: states she is in support of the on site above ground dry cask storage, however, feels it is important that the public receive all information from every side of every issue.

Supervisor Pinard: indicates the proposal is to create a survey to find out what the people need and want to know; feels PG&E is making every attempt to keep public dialogue from happening.

Supervisor Ryan: states there is nothing in the staff report that speaks to a survey.

Supervisor Ovitt: asks for a separate vote for Item B-9.

3 B-1 Consent Agenda Item B-9 is withdrawn for separate action. Item B-22 is added to the Consent Agenda. **Thereafter, on motion of Supervisor Ryan, seconded by Supervisor Achadjian and on the following roll call vote:**

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

Consent Agenda Items B-1 through B-22 are approved as recommended by the County Administrative Officer and as amended by this Board.

Consent agenda Items B-1 through B-22, as amended, are on file in the Office of the County Clerk-Recorder and are available for public inspection.

Items set for bid opening:

- B-1 Plans and specifications (Clerk's File) for the excavation of excess materials from the Arroyo Grande Creek Channel located near the community of Oceano; 4th District, **Approved and the Clerk is instructed to give notice of Bid opening set for September 16, 2002, at 3:00 p.m..**
- B-2 Plans and specifications (Clerk's File) for the construction of the New County Government Center; All Districts, **Approved and the Clerk is instructed to give notice of Bid opening set for September 26, 2002, at 3:00p.m..**

Auditor-Controller Items:

- B-3 **RESOLUTION NO. 2002-332**, setting tax rates and adopting contingencies, reserves, and designations for the 2002/2003 Final Budget, **Adopted.**
- B-4 Unannounced cash count report of the Tax Collector's Office conducted on June 28, 2002, **Received and Filed.**
- B-5 Audit report on the Dairy Creek and Morro Bay Pro Shop Concessionaire, Comerford Inc., dba Fairway Management, **Received and Filed.**
- B-6 Annual cash shortages report and departmental bank accounts/cash funds listing for the fiscal year ended June 30, 2002, **Received and Filed.**

Board of Supervisors Items:

- B-7 Appointment of Walter Heer to the Estrella Public Cemetery District, **Approved.**
- B-8 **RESOLUTION NO. 2002-333**, honoring the Grand Opening of the Oceano Sheriff's Substation, **Adopted.**
- B-9 Request by Board Members to allocate of \$6,500 from Community Project Funds (District Two - \$1,500, District Three - \$5,000) to the San Luis Obispo Mothers for Peace to be used to offset the cost of disseminating information relating to the radioactive waste storage and transportation safety issues at Diablo Canyon, **Withdrawn for separate action.**

General Services Items:

- B-10 Lease agreement with John C. Hough Separate Property Trust and John and Traci Wilson Family Trust for office space located at 1243 Monterey Street, San Luis Obispo, for the Department of Public Works, **Approved.**
- B-11 Contract with Shutt-Moen, Inc., to provide construction engineering services as part of the San Luis Obispo County Regional Airport Runway Extension Project; All Districts, **Approved.**
- B-12 Bid opening report for the construction of the taxiway and roadway work at the San Luis Obispo County Regional Airport and a request to approve: 1) a budget adjustment in the amount of \$636,592 from unanticipated revenues; and 2) an increase in the change order limit to 10% as allowed by Public Contract Code; All Districts, **Approved and the Chairperson is instructed to sign contract documents with R. Burke Corporation in the amount of \$2,178,864.**

Planning Items:

- B-13 Agreement with the Friends of the Elephant Seal using coastal resource grant funds to educate the public about elephant seals; 2nd District, **Approved.**
- B-14 **RESOLUTION NO. 2002-334**, accepting an avigation easement from Morton and

Sherry Spilkoman for property located near the Paso Robles Municipal Airport; 1st District, **Adopted.**

Public Works Items:

- B-15 Request to postpone the report of bid opening results for the construction of Water Well No. 3 at Lopez Lake Recreation Area; 4th District, **Continued to September 10, 2002.**
- B-16 Agreement to assign reservation of water supply for Heritage Ranch with H.R. Holdings, LLC and John and Carole King; 1st District, **Approved.**
- B-17 The following final map has been received and has satisfied all the conditions of approval that were established in the public hearings on the tentative map: A) Tract 2400, a proposed subdivision resulting in 22 lots, by Karl and Cindy Wittstrom Family Trust, located on Stockdale Road, north of Paso Robles, reject the offer of dedication without prejudice to future acceptance, **Approved and, RESOLUTION NO. 2002-335 and 2002-336**, approving an open space easement agreement for the on-site open space easement associated with the cluster division and an open space easement agreement for an off-site open space easement as mitigation for the loss of 58.6 acres of San Joaquin Kit Fox habitat; 1st District, **Adopted.**

Social Services Items:

- B-18 Contract (Clerk's File) with the San Luis Obispo County Community College District to provide a work study program for CalWORKs participants, **Approved.**
- B-19 Contract with the Paso Robles Unified School District to provide after school services for CalWORKs students and their families, **Approved.**
- B-20 Contract with San Luis Obispo County Community College District to provide second language training to CalWORKs recipients and low-income residents, **Approved.**

Other Items:

- B-21 Policies and procedures for operation and conduct of hearings before the Assessment Appeals Board, **Approved.**

ADDED (All requirements of the Brown Act were met as this was posted prior to the 72-hour noticing requirement.)

- B-22 Letter to the California Coastal Conservancy requesting that they complete a contract with the Land Conservancy of San Luis Obispo County to implement two projects consistent with Public Resources Code Section 31251.2(a), **Approved.**

- 4 B-9 Request by Board Members to allocate \$6,500 from Community Project Funds (District Two - \$1,500, District Three - \$5,000) to the San Luis Obispo Mothers for Peace to be used to offset the cost of disseminating information relating to the radioactive waste storage and transportation safety issues at Diablo Canyon, is discussed.

During discussions on the Consent Agenda, Supervisor Ovitt requested this item be pulled for a separate vote.

Supervisor Achadjian: states he will support this item on the basis that County Counsel has not raised a concern.

Supervisor Ryan: feels this Item crosses the line; indicates he has a problem using the Community Project Funds in this manner; believes legally it is pushing the envelope; states he is not going to vote against or for the motion.

Supervisor Ovitt: states he will abstain; feels the monies will be used against the County in some mechanism and doesn't feel it is an appropriate use of discretionary funds.

Mr. Jim Lindholm: County Counsel, the Community Project Funds are to be spent for County public purpose and if that conclusion can be made they are within the legal

parameters.

Supervisor Pinard: states the Avila Valley Advisory Committee (AVAC) funded it's own money for any litigation; indicates AVAC is trying to get the information out on the table because there is no public forum for the public to come forward and discuss the issues.

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

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

the Board approves the allocation of \$6,500 from Community Project Funds - Budget Unit 2080 (District Two - \$1,500, District three - \$5,000) to the San Luis Obispo Mothers for Peace to be used to offset the cost of disseminating information relating to the radioactive waste storage and transportation safety issues at Diablo Canyon.

5 C-1 This is the time set for hearing to consider adoption of the 2002 South County Circulation Study Update and a resolution imposing modified road improvement fees for the South County area; 4th District.

Mr. David Flynn: Public Works, presents the staff report; addresses the purpose of the Circulation Study; the Goals; discusses the Impact Fee areas and building activity Area 1 and Area 2; states there have been no appeals since the last update; speaks to the transportation improvements in Area 1 and Area 2; addresses the pedestrian improvements and the impact fee changes; describes the fee structure; recommends the Board receive Exhibit A - 2002 Update Report; Adopt revisions to Area fees and direct staff to continue working with NCAC Traffic Committee on priorities and clarification on Woodland fee expenditures.

Mr. Jesse Hill: submits to the Board comments from the Nipomo Community Advisory Committee; compliments the Traffic Committee and County staff for the circulation plan; addresses allocation of fees from the Woodland Area.

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

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

RESOLUTION NO. 2002-337, resolution of the Board of Supervisors of the County of San Luis Obispo modifying the Road Improvements Fee for all development within portions of the South County and San Luis Bay Planning Areas of the County of San Luis Obispo and adopting the required annual update, adopted.

6 C-2 This is the time set for hearing to consider an appeal by the Black Lake Village Association of the Planning Commission's approval of a proposal by Craig Family Trust/Jim McGillis (S000249U/TR 2381) for a development plan and tentative tract map to allow subdivision of a 20.0 acre parcel into 20 lots in the Recreation Land Use Category, located in the County on the northwest corner of Willow Road and Pomeroy Road in the Black Lake Village northwest of Nipomo; 4th District.

Mr. Jay Johnson: Planning, presents the staff report; displays a vicinity map; states on June 13, 2002 the Planning Commission took action to approve the Applicant's request to subdivide an existing 20 acre site into 20 lots; the Appellant is raising the issue that the approved project, in particular the circulation, is non-conforming with the Black Lake Specific Plan; presents photos of the area and indicates staff's recommendation is to

uphold the Planning Commission's decision.

Supervisor Achadjian: questions staff's position prior to the Planning Commission hearing; asks why Pomeroy wasn't considered instead of Willow Road; questions the speed limit on Willow Road; asks what the Master Plan calls for regarding internal connection to the golf course from the community; questions what mitigation measures have been taken regarding automobile lights shining into near-by homes, with Mr. Johnson and Mr. Richard Marshall, Engineering responding.

Supervisor Ryan: addresses the map that was approved by the Planning Commission and questions if the pedestrian/bike path will also be emergency access and to meet emergency access how wide does it have to be, with Mr. Robert Lewin, CDF, responding.

Mr. Ron Swenson: Appellant, representing Black Lake Village Association, states they are appealing because they do not feel this plan for a golf cart/pedestrian/bike path is the best thing for the community; indicates the community supports an internal street system; feels using Willow Road would not be safe for the community; urges the Board to see the need for the internal circulation within the Black Lake community.

Mr. Jim McGillis: representing the Applicant, states he agrees with the Appellant; addresses the road alternatives; indicates they came to the Planning Commission with a plan not to generate another access to Willow Road but to use the open space; states the Planning Commission redesigned the road; urges the Board to deny the Planning Commission's approval and adopted staff's recommendation to the Planning Commission.

Mr. Greg Nester: Applicant, states they are proposing passing through lot No. 11 of Tract 1779 which will impact some open space; discusses offering mitigation for the loss open space; states at the Planning Commission hearing they were not allowed to comment on the road and feels this issue needs to be re-analyzed today.

Mr. Ed Henderson: speaks in support of the Planning Commission's decision; states their decision was not a violation of the Specific Plan; feels their decision was a fair compromise.

Mr. Robert Stanger: speaks in support of the Planning Commission's decision; addresses the traffic circulation in the area.

Mr. Norm Burdick: addresses the traffic impacts in the area; states the open space makes this community unique; addresses the safety issues; urges the Board to deny the appeal.

Mr. Hugh Robinson: presents a map of the area where the residents are most affected; asks the Board to support the Planning Commission's ruling.

Mr. Don Woodson: states the Planning Commission looked at this issue for three hours and came up with a fair compromise; urges the Board's support of their decision.

Mr. Don Woods: states he supports the Planning Commission's decision and feels it was a fair compromise; indicates it does not violate the Specific Plan; states the residents of the Oaks were promised open space; urges the Board to deny the appeal.

Mr. Ian Wallace: asks the Board to uphold the Planning Commission's decision; states he would like the Board to consider: 1) preserving the open space, 2) no matter which way the Board votes today a few residents will be unhappy, 3) Bike path does satisfy the requirement for the vehicular connection, and 4) safety issues.

Ms. Jan Turner: presents a video of the area describing the need for internal circulation.

Mr. David Sachson: speaks to the Specific Plan regarding circulation.

Ms. Florence Odom: compares the Planning Department's staff reports and urges the Board to disregard the second staff report and approve the internal connecting street as described in the original report.

Mr. John Odom: states he's in favor of the internal road and addresses the safety issues.

Mr. Richard Parrish: presents a map from the EIR of Tract 1779; addresses the open space agreement and the duration of the easement; indicates any amendments or modifications thereto which may be approved by the County; states the open space agreement is binding; speaks to the number of valid signatures on the Petition received from the Oaks home owners.

Mr. Paul Karnafel: addresses the traffic circulation and the need for a road; states a cart path would not help.

Ms. Rita Eppard: states she doesn't feel there is a traffic problem in the area; indicates her main concern is fire safety; states she favors an internal road.

Mr. Robin Hunt: states he favors a connecting road and feels it will enhance security; addresses the idea of a gated community.

Ms. Judy Sachson: states she supports a connecting road and reads a letter from Mr. Ed Kreins stating the same.

Ms. Joanne Karnafel: presents a map of the conceptual plan for a roadway through the open space; addresses the traffic flow and the landscaping of the intersection.

Mr. Jerry Turner: addresses the convenience of having internal circulation.

Mr. John Eppard: states each phase of Blake Lake was supposed to be internally connected with roads; this is the last chance to eliminate traffic on Willow Road and Pomeroy.

Mr. Hugh Martin: addresses the need for a connection into the community.

Mr. Si Ely: states a good case has been made for a connecting road; feels a lot of weight should be given to the unanimous recommendation of the Black Lake Association who's membership includes a representative from the Oaks.

Mr. John Brantingham: speaks on behalf of the Price Family; states the proposed cart path and road would run extremely close to the Price Family home; indicates both circumstances would drastically change the nature of their property; urges both choices be denied.

Chairperson Bianchi: continues this item to the afternoon calendar.

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

Mr. Richard Hill: feels he and his mother are being harassed by the City of Atascadero because of their way of life and asks for the Board's help.

Ms. Rochelle Becker: Mothers for Peace, addresses Item B-9 on the Consent Agenda and thanks the Supervisors who supported it.

Mr. Gary Fowler: addresses the increase of State Tax on cigarettes.

Supervisor Ryan: thanks Mr. Fowler for his efforts in getting rid of abandoned automobiles in the County. **No action taken.**

8 C-2 This is the time set for the continued hearing to consider an appeal by the Black Lake Village Association of the Planning Commission's approval of a proposal by Craig Family Trust/Jim McGillis (S000249U/TR 2381) for a development plan and tentative tract map to allow subdivision of a 20.0 acre parcel into 20 lots in the Recreation Land Use Category, located in the county on the northwest corner of Willow Road and Pomeroy Road in the Black Lake Village northwest of Nipomo; 4th District.

Mr. McGillis: representing the Applicant, responds to the public's testimony indicating

they will be required to replace the open space at a four to one ratio; there will be a row of large bushes so the Price family will not see the road.

Mr. Swenson: Appellant, representing the Black Lake Village Association, states the open space will be changed no matter if it's a path or a road; states this is a community issue; feels the traffic will be minor and urges the Board to support the road.

Supervisor Achadjian: questions what level of participation the sub-associations have with the Black Lake Village Association, with Mr. Swenson responding.

Supervisor Achadjian: hands the Clerk e-mails for the record; states regardless of which way the vote goes today the open space will be disturbed; indicates he is looking for what will be good for the entire community.

Supervisor Ryan: feels it would be dangerous to pull out on Willow Road when there could be internal circulation; addresses the Open Space Agreement where it states it can be modified by the Board; questions County Counsel regarding amending the Open Space Agreement, with Mr. Jim Orton, Deputy County Counsel, responding.

A motion by Supervisor Achadjian, seconded by Supervisor Ryan to uphold the appeal, is discussed.

Mr. Jay Johnson: Planning, indicates they have a resolution that will modify the Planning Commission's decision.

Mr. Warren Hoag: Planning, suggests a strike out version of C-2-17 C and for C-2-27-J; states they will both read as follows: "Connecting this tract to Redberry Place by a full street connection satisfies the circulation provisions of the Black Lake Specific Plan."

Clerk: questions if this is the only change.

Mr. Richard Marshall: Engineering, states the easiest way to do what the Board is looking for would be to take the language from page C-2-29 -2a,b,c,and d as follows: a) On-site streets shall be constructed to a Figure 18 of the Black Lake Specific Plan or county A-2 (urban) section within a 50 foot dedicated right-of-way and extended to Willow Road, b) Pomeroy Road and Willow Road widened to complete a Specific Plan figure 19 section fronting the property and include detached trails per the County Trails Plan and class 2 bikeways on Willow Road, the trail will be aligned with both sides of the new alignment of Willow Road. The intersection at Willow Road will be designed to Cal Trans standards with a left turn acceleration and deceleration lanes as determined by the Department of Public Works, c) Provide a 10 feet wide bicycle and pedestrian easement between lots 3 and 20 from the end of the cul-de-sac to Pomeroy Road, and d) The applicant shall construct a paved golf cart/pedestrian/bicycle path from the cul-de-sac from where lots 1,5, and 8 meet Redberry Place. The minimum paved width shall be 12 feet unless a greater width is required by CDF and replace it with language from page C-2-79 a, b, and c as follows: a) On-site streets shall be constructed to a Figure 18 of the Black Lake Specific Plan or county A-2 (urban) section within a 50 foot dedicated right-of-way and extended to Redberry Place. The extension portion may be modified to the satisfaction of the Department of Public Works by eliminating parking lanes and/or using a center median to avoid oak tree removal and headlights shining into neighboring residences. All turning movements shall meet county standards. Landscape may be required to help screen headlights, b) Pomeroy Road and Willow road widened to complete a Specific Plan Figure 19 section fronting the property and include detached trails per the County Trails Plan and class 2 bikeways, 3) Provide a 10 feet wide bicycle and pedestrian easement between lots 3 and 20 from the end of the cul-de-sac to Pomeroy Road, with the Board agreeing to the change.

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

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

the Board upholds the appeal and adopts the Mitigated Negative Declaration in accordance with the applicable provisions of the California Environmental Quality Act, Public Resources Code Section 21000 and RESOLUTION NO. 2002-338, resolution modifying the decision of the Planning Commission and Conditionally approving the Application of the Craig Family Trust for Development Plan S000249U, adopted as amended.

9 C-2 **Thereafter, on motion of Supervisor Achadjian, seconded by Supervisor Ryan and on the following roll call vote:**

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

RESOLUTION NO. 2002-339, resolution modifying the decision of the Planning Commission and conditionally approving the Application of the Craig Family Trust for a Vesting Tentative Map for Tract 2381, adopted as amended.

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) *MCI Worldcom 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.)** 6) *Santa Maria Water Conservation District v. City of Santa Maria*.

B. Conference with Legal Counsel - Anticipated Litigation (Gov. Code, § 54956.9.) 4) *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. 5) *Initiation of litigation (Gov. Code, § 54956.9(c).)* No. of cases 2.

Chairperson Bianchi: 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: No report required as no final action was taken and the Board goes into Open Public Session.

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, August 27, 2002, 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: 08/30/2002
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