

**SAN BENITO COUNTY
COUNCIL OF GOVERNMENTS
REGULAR MEETING**

December 17, 2009 2:00 P.M.

FINAL MINUTES

MEMBERS PRESENT:

Chair Botelho, Director De La Cruz, Director Gomez, and Director Bilich

STAFF PRESENT:

Deputy County Counsel, Shirley Murphy; Executive Director, Lisa Rheinheimer; Administrative Services Specialist, Kathy Postigo; Veronica Lezama; Transportation Planner; Transportation Planner, Betty LiOwen; Secretary, Monica Gomez

OTHERS PRESENT:

Dave Murray, Caltrans District 5; Mike Grace, Grace & Associates

CALL TO ORDER:

Chair Botelho called the meeting to order at 2:01 P.M.

A. PLEDGE OF ALLEGIANCE

B. CERTIFICATE OF POSTING

Upon a motion duly made by Director Gomez, and seconded by Director De La Cruz, the Director's unanimously approved the Certificate of Posting.

C. PUBLIC COMMENT:

**Jerry Muenzer
Leadership San Benito**

Mr. Muenzer spoke on behalf of Leadership San Benito Class of 2009. Mr. Muenzer stated that they would like to erect a "Welcome to Hollister" sign at the old South Valley Trailer location off of Highway 25 and San Felipe Road. Mr. Muenzer stated that the City, County, and the Hollister Downtown Association support the welcome sign idea, and asked if COG could place the item on a future agenda to discuss the possibility of using the site.

Chair Botelho directed staff to place the item on the January 2010 agenda.

**Joe Thompson
Tres Pinos, CA**

Mr. Thompson stated COG's Joint Powers Authority is unconstitutional and violates the civil and constitutional rights of the citizens of three districts because they don't have an elected representative on the COG Board. Mr. Thompson stated that the COG Board continues the course of other wasteful government agencies in the state.

D. EXECUTIVE DIRECTOR'S REPORT:

Executive Director Lisa Rheinheimer reported that the COG office will be closed next week due to the holidays and staff's scheduled furlough days.

E. BOARD OF DIRECTOR'S REPORTS:

Director De La Cruz inquired about the digging that was going on northbound on the Highway 25 Safety Enhancements Project.

Ms. Rheinheimer stated that she would provide an update on the project under Item 7 of the COG agenda.

Chair Botelho directed staff to obtain an update from Caltrans on the status of the streetlight at Buena Vista Road and Highway 156, as well as the status of truck signs on Highway 156.

F. Closed Session:

1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

No. of cases: 2

Authority: California Government Code Section 54956.9(a)
Council of San Benito County Governments v. Hollister Inn
Council of San Benito County Governments v. McNamee

2. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: COG Executive Director

COG reconvened from closed session at 2:25 p.m.

Deputy County Counsel Shirley Murphy stated that there was no reportable action taken under Existing Litigation 2 Cases: COG v. Hollister Inn/Roberts and COG v. McNamee.

Deputy County Counsel Shirley Murphy stated there was no reportable action taken under Public Employee Performance Evaluation Title: COG Executive Director.

CONSENT AGENDA:

- 1. APPROVE** Council of Governments Draft Meeting Minutes Dated November 19, 2009 – Gomez
- 2. APPROVE** Council of Governments Transaction Report (Financial Claims) Dated November 2009 – Postigo
- 3. APPROVE** Contract with Blue Heron Design for Bike Week Consultation Services for an Amount Not to Exceed \$2,231 – Lezama
- 4. SET** Unmet Transit Needs Hearing Dates – LiOwen
- 5. RECEIVE** Construction Projects Report – Caltrans, District 5

Upon a motion duly made by Director Gomez, and seconded by Director De La Cruz, the Director's unanimously approved Items 1-5 of the Consent Agenda.

REGULAR AGENDA

2:00 P.M. PUBLIC HEARING (Or as soon thereafter as the matter may be heard):

Chair Botelho opened the Public Hearing at 2:27 p.m.

6. Council of Governments v. Hollister Inn – Rheinheimer

- a. **CONDUCT** a Public Hearing to Receive Testimony and Evidence Relating to Whether it is in the Greatest Public Good and Least Private Injury to Provide Hollister Inn with Alternative Access to Highway 25.
- b. **EXERCISE ITS DISCRETION** Pursuant to Code of Civil Procedure Section 1240.350 to Determine Whether or not it Should Condemn Private Property to Provide Hollister Inn with Alternative Access to Highway 25.

Executive Director Lisa Rheinheimer provided the following report to the Board:

All property rights needed for the Project have been acquired and just compensation has been paid with the exception of the Ms. Roberts/Hollister Inn matter Case No. CU 06 00051 [(Assessor's Parcel No.053-380-009) (Consolidated with Case No. CU 06 00054) (Assessor's Parcel No. 053-380-008)].

The property interests at issue in the Ms. Roberts/Hollister Inn matter is an acquisition of 1,904 square feet that includes access rights of 180.72 linear feet.

Ms. Roberts is the fee owner of Assessor's Parcel No. 053-380-009 and a portion of the take is encumbered by an easement in favor of two parcels owned by Hollister Inn. A driveway was located on part of the fee take that provided Hollister Inn with access to Highway 25.

The Court held that COG failed to exercise its discretion to determine whether the project was planned in a manner that will be most compatible with the greatest public good and the least private injury by failing to consider whether or not to provide Hollister Inn with alternative access to Highway 25.

Therefore, at today's hearing we need you to consider whether or not you want to take private property to provide Hollister Inn with alternative access.

Caltrans has never approved this driveway and we would have to request an encroachment permit from Caltrans, which is at their discretion to grant or deny. Also, this driveway would have required the additional take of approximately 20,500 square feet from Ms. Roberts and split her remaining parcel in half.

Therefore, the total cost, not including preparing the final design, paying for an encroachment permit from Caltrans, and severance damages is estimated to be between \$142,000 and \$224,000.

In making a determination as to whether or not providing Hollister Inn with alternative access is in the greatest public good and least private injury, you can consider cost to the taxpayers of San Benito County for this acquisition. You also must take into consideration any hardship to Ms. Roberts, the private owner whose property you would be considering taking, to provide Hollister Inn with alternative access, under Code of Civil Procedure Section 1240.350(a).

Ms. Rheinheimer stated that the Board had the following alternative options:

- 1) You can find that, after considering all the testimony and evidence in the record that it is in the greatest public good and least private injury to provide Hollister Inn with alternative access. You can then order that an appraisal be conducted of the property needed to provide the alternative access to Hollister Inn, order that an offer be provided to the property owner under Government Code Section 7267.2, and hold a resolution of necessity hearing pursuant to Code of Civil Procedure Section 1245.235, if the parties cannot reach an agreement, to authorize that an eminent domain action be filed; or
- 2) You can find that, after considering all the testimony and evidence in the record, that providing Hollister Inn with alternative access is not most compatible with the greatest public good and the

least private injury.

PUBLIC COMMENT:

Dennis Kehoe
Attorney for Janet Roberts

Mr. Kehoe mentioned that his comments were for “settlement purposes only”. Mr. Kehoe asked the Board to refer to correspondence dated November 14, 2008 addressed to Brenda Aguilar-Guerrero. The letter is from Mr. Kehoe on behalf of Ms. Roberts indicating that they were willing to meet with COG to discuss a settlement on the terms outlined in the letter. Mr. Kehoe asked Ms. Murphy and Ms. Aguilar-Guerrero to meet with the COG Board to discuss the letter in closed session as soon as possible.

Anne Arnold
Briscoe Ivester & Bazel LLP
Attorney for Hollister Inn

Ms. Arnold provided before and after photographs of the easement in question and pointed out the access points that were eliminated by the Highway 25 Bypass project.

Ms. Arnold stated that the Eminent Domain Law requires that the Project is planned in the manner that is “most compatible with the greatest public good and the least private injury”. Ms. Arnold noted that prior to the Project there were four means of access, now there is only one. This makes it very difficult for customers to reach Hollister Inn’s property and severely impacts the property.

Ms. Arnold stated that the COG Board first considered the condemnation of Hollister Inn’s property at the resolution-of-necessity hearing on February 16, 2006. Board Members expressed concerns about the impacts the Bypass Project would have on the hotel. Ms. Arnold stated that the alternative driveway would have alleviated those concerns however the Board was erroneously told that the alternative could not be considered.

Ms. Arnold stated that the driveway advances the greatest public good with the least private injury. It minimizes the impacts on the hotel and the adjacent lot, while allowing the continued success of an important business.

Ms. Arnold stated that they do not see the need for an encroachment permit as a problem and would like the opportunity to discuss the issue further. Ms. Arnold stated that the Superior Court provided the COG Board with the opportunity to consider alternative access between her client’s property and Highway 25. The alternative will allow customers access to the hotel, and it is the right thing to do. Ms. Arnold noted that the alternative will provide the necessary factual support that is needed to have said that the Project really does affect the greater public good and the least private injury.

Joe Thompson
Tres Pinos, CA

Mr. Thompson stated that the exercise of the eminent domain power is not being undertaken by a lawful authority in this County, but by a joint powers authority that does not represent all of the taxpayers in this County. Mr. Thompson stated that this is an exercise of unconstitutional law by the state of California and by the COG Board of this county.

Marvin Jones
Hollister, CA

Mr. Jones stated that a motel is dependent upon access to highways and to eliminate three out of the four access points is going to cost Hollister Inn their entire business. Mr. Jones stated that the Board should keep in mind when making their decision that if there weren't businesses out there that earn a profit, and hire people that pay taxes, there wouldn't be any money to run the government.

Chair Botelho adjourned the meeting at 3:00 p.m. for a recess.

Chair Botelho reconvened the meeting at 3:13 p.m.

Ms. Rheinheimer stated that the cost of the land alone for the alternative driveway not including severance damages would be between \$82,000 and \$164,000 depending on whether an easement or a fee take were condemned. The cost to build the driveway according to Carla Vincent, the design engineer for the project, would be an additional \$60,000.

Ms. Rheinheimer stated that the alternative driveway was taken out of the plans by Carla Vincent, the design engineer for the project. Ms. Vincent took the driveway out because she was informed that you cannot take private property to give to another private owner. In addition, the driveway was never approved by the COG Board or Caltrans.

Ms. Arnold stated that without the alternative, their appraisers estimated that the loss to Hollister Inn's property resulting from the elimination of its access could reach one million dollars. Ms. Arnold stated that the alternative would not be inexpensive however; the cost would be significantly lower than the cost of a new trial and damages to Hollister Inn.

Discussion continued amongst Board members, staff, County Counsel, and Ms. Arnold, with regard to the condemnation of said private property.

Chair Botelho closed the Public Hearing at 3:30 p.m.

Board members stated that it was a tough situation to be in, however, after listening to all of the testimony and evidence the Board made the following motion:

Upon a motion duly made by Director Gomez, and seconded by Director De La Cruz, the Director's unanimously found that after considering all of the testimony and evidence in the record, that providing Hollister Inn with alternative access is not most compatible with the greatest public good and the least private injury.

TRANSPORTATION ITEMS:

7. RECEIVE Update on the Highway 25 Safety and Operational Enhancements Project – Rheinheimer

Ms. Rheinheimer reported that work continues with construction scheduled to be complete next May. The contractor is nearly complete with Stage I of the construction on the west side and has begun construction of Stage II on the east side of the project.

Ms. Rheinheimer noted that Pavex will not be working from December 24th, through January 4th. This should give drivers time to get through without construction delays during the Holidays.

Ms. Rheinheimer mentioned that during excavation on Stage II, the contractor encountered another wet area that will need additional excavation work for construction of the access road. It is not known if there are other wet areas on the Stage II side of the roadway. An update and change order will be brought before the Board in January.

8. RECEIVE Update on the 2010 San Benito County Regional Transportation Improvement Program – Rheinheimer

Ms. Rheinheimer stated that the Regional Transportation Improvement Program provides future funding of regionally significant projects. Over the last several years, state funding for this program has been less than adequate to meet the needs.

Ms. Rheinheimer stated that changes are needed for the 2010 Regional Transportation Improvement Program to add funding to the San Juan Highway Bike Lanes project, delay funding for the transit vehicle replacement, and add funding for Planning, Programming, and Monitoring. These changes will be brought before the Board for consideration at its January meeting.

Ms. Rheinheimer noted that the San Benito County 2010 Regional Transportation Improvement Program is due to the California Transportation Commission by February 12, 2010. Staff will provide a proposal to the Board at its January meeting.

Chair Botelho inquired if it was possible to consider the improvements needed at the intersection at Union Road and Highway 156 as part of the Regional Transportation Improvement Program list of projects.

Ms. Rheinheimer stated that the improvements could be considered as part of the Regional Transportation Improvement Program.

Chair Botelho inquired about the status on the 4-Lane Project.

Ms. Rheinheimer stated that the 4-Lane project is fully funded. Caltrans is preparing a supplemental Environmental Impact Report to answer questions required by a Court discussion. The Project is scheduled for construction within the next three years.

ADMINISTRATIVE ITEMS:

9. RECEIVE Council of Governments Draft Audit Report for FY 2008/09 (Verbal Report) – Postigo/
Mike Grace

Ms. Postigo introduced Mike Grace who provided an overview of the Draft Audit Report for FY 2008/09.

Mr. Grace stated that the governmental accounting standards required him to perform a single audit because COG's level of federal financial assistance for the year ending June 30, 2009 exceeded \$500,000.

Director De La Cruz asked how many persons COG employs, due to COG's compensated absences of \$216,000, which was noted under the Management letters section of the Audit.

Ms. Rheinheimer stated that there are currently ten COG employees.

Chair Botelho commented that Mr. Grace has been performing COG's Audit's for the last three years and inquired if there were any specific items that stood out to him and that should be brought to the Board's attention.

Mr. Grace stated that based on the size of COG's organization, the internal controls are adequate. Mr. Grace also took the opportunity to thank Ms. Postigo for all of her efforts in drafting the financials.

PUBLIC COMMENT:

**Joe Thompson
Tres Pinos, CA**

Mr. Thompson stated that businesses are regulated to use “generally accepted accounting principles” (GAAP). Mr. Thompson asked how can there be private carriers competing with the government in this County for the carriage of passenger business if the government does not have to follow GAAP?

Ms. Postigo noted that the Final Audit Report is due to the State by December 31, 2009.

Upon a motion made by Director De La Cruz, and seconded by Director Gomez, the Director’s accepted the Draft Audit.

Upon a motion made by Director Gomez, and seconded by Director Bilich, the Director’s voted to adjourn the COG meeting.

ADJOURN TO COG MEETING JANUARY 21, 2010. AGENDA DEADLINE IS JANUARY 12, 2010 AT 12:00 P.M.