

**SAN BENITO COUNTY  
COUNCIL OF GOVERNMENTS  
MEETING**

**June 18, 2009 2:00 P.M.**

**FINAL MINUTES**

**MEMBERS PRESENT:**

Vice-Chair Edge, Director De La Cruz, Director Emerson, Director Gomez, Director Loe

**STAFF PRESENT:**

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

**OTHERS PRESENT:**

David Murray, Caltrans District 5: Jennifer Donlon, Matt Lasky, Alta Planning + Design; Carl Guardino, California Transportation Commission

**CALL TO ORDER:**

Vice-Chair Edge 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 Emerson, and seconded by Director Loe, the Directors unanimously approved the Certificate of Posting.*

**C. PUBLIC COMMENT: (Items Not on the Agenda)**

**Joe Thompson  
Tres Pinos, CA**

Mr. Thompson asked to remember his standing objection to the items that the COG Board passes on the agenda. He stated that he objects to the jurisdiction and illegality of the COG Board for its violation of the California State Constitution.

Vice-Chair Edge stated for the record that the COG Board received Joe Thompson's public comment correspondence dated March 23, 2009 through June 17, 2009. The correspondence was entered into the public record.

**D. EXECUTIVE DIRECTOR'S REPORTS:**

None

**PUBLIC COMMENT:**

**Joe Thompson**

Mr. Thompson commented on the Executive Director's report and stated that she did not mention the

“taxpayer injustice”. Mr. Thompson stated that the Executive Director should be focusing on transportation problems in San Benito County and should not be traveling to other counties to support Caltrain.

**E. BOARD OF DIRECTOR’S REPORTS:**

None

**CONSENT AGENDA:**

1. **APPROVE** Council of Governments Transaction Report (Financial Claims) Dated May 2009 – Postigo
2. **APPROVE** Council of Governments Minutes dated May 21, 2009 – Gomez
3. **APPROVE** Special Joint Meeting Minutes dated May 21, 2009 – Gomez
4. **RECEIVE** Construction Projects Report – Caltrans District 5
5. **APPROVE** and **AUTHORIZE** Chair to Sign Contract Between the Council of Governments and San Benito County for Personnel Services for FY 2009/2010 – Postigo
6. **APPROVE** Resolution No. 09-15 **ADOPTING** the Fiscal Year 2009/2010 Overall Work Program, which Includes Planning Activities to be Performed by the Council of Governments – Lezama

*Upon a motion duly made by Director Emerson, and seconded by Director Gomez, the Director’s unanimously approved Items 1-6 of the Consent Agenda.*

**REGULAR AGENDA**

**TRANSPORTATION ITEMS:**

Vice-Chair Edge moved Item 8 up on the agenda at the request of the Executive Director.

8. **Highway 25 Bypass Project** – Dinkuhn
  - a. **RECEIVE** Update on the Highway 25 Bypass Project,
  - b. **DENY** Claim for \$615,904 from AVA Global Enterprise for Alleged Damages Related to Project Construction,
  - c. **APPROVE** Grant Deed for Excess Land, Transferring Title to K&S Market, Inc. and **AUTHORIZE** Chair to Execute, and
  - d. **APPROVE** Amendment No. 8 to Agreement for Legal Services with Erickson, Beasley, Hewitt & Wilson LLP for an Amount Not to Exceed \$200,000 and Authorize the Executive Director to Sign

Transportation Planning Manager, Mary Dinkuhn, stated that the City of Hollister, San Benito County, and Caltrans conducted a speed survey on the roadway in mid-May, due to concerns about the 35 mile per hour speed limit. It is anticipated that the City and County will adopt ordinances to establish new speed limits on the roadway in each jurisdiction and that these speed limits will take effect later this summer. Preliminary data shows a likely 45 mile per hour speed limit in the area between Tres Pinos Road and Santa Ana Road, and a 50 mile per hour speed limit in the area between Santa Ana Road and San Felipe Road, would be appropriate.

Director Gomez asked what the next steps will be now that the speed survey has been completed.

Ms. Dinkuhn stated that Caltrans requested an Engineer’s Record of Speed Survey. Staff will work with the City of Hollister staff to complete this report.

With regard to Item 8c, Ms. Dinkuhn stated that in compliance with an agreement reached as part of the right of way negotiation process, staff recommended that the Board approve the Grant Deed for excess land, transferring title to K&S Market, Inc. and authorize the Chair to sign.

With regard to Item 8b, Ms. Dinkuhn reviewed photos, (provided by Mr. Faquiryan) of the Valero gas station taken during construction. Ms. Dinkuhn stated that staff’s analysis of AVA Global’s claim

indicates that the loss appears to be business and personal expenses, not loss of revenue items. Therefore, staff recommended that the Board reject the claim from AVA Global enterprise due to insufficient evidence to support the claim and in accordance with the judgment entered.

Following discussion between Board members and staff regarding the documentation that was provided by AVA Global Enterprises, the Board stated that that they failed to see a loss of business due to construction.

**PUBLIC COMMENT:**

**Sayed Faquiryan**  
**AVA Global Enterprises**

Mr. Faquiryan stated that he understood that the compensation in the amount of \$4,500 was for the easement, not to close down his business. He never would have agreed to the amount if he was fully aware. Mr. Faquiryan mentioned that he provided COG staff with over 100 pictures of the Valero Gas Station during construction; however it seems that the only ones that were presented seemed to benefit COG. Mr. Faquiryan added that he has tried other avenues of assistance to avoid closing his business, but has been denied.

Mr. Faquiryan provided the Board with additional pictures of the Valero gas station during construction, and added that he could provide additional evidence of loss of business if the Board so wishes.

Vice-Chair Edge reiterated that the Board would not approve AVA Global's claim based on County Counsel and staff's recommendation, however COG Board members suggested that Mr. Faquiryan seek legal representation to address the issue.

Staff also recommended approval of Item 8d, Amendment with No. 8 to agreement for legal services with Erickson, Beasley, Hewitt & Wilson LLP for an amount not to exceed \$200,000 and authorize the Executive Director to sign.

Director De La Cruz inquired about the number of cases that are pending.

Ms. Dinkuhn stated that there are 3 pending cases, including a case that is set to go to trial this summer and another that filed an appeal.

*Upon a motion duly made by Director Gomez, and seconded by Director Emerson, the Director's unanimously approved Item 8b, denying AVA Global's claim.*

*Upon a motion duly made by Director De La Cruz, and seconded by Director Emerson, the Director's unanimously approved Item 8c.*

*Upon a motion duly made by Director De La Cruz, and seconded by Director Emerson, the Director's unanimously approved Item 8d.*

**9. Highway 25 Safety and Operational Enhancements Project – Dinkuhn**

- a. **RECEIVE** Update on the Highway 25 Safety and Operational Enhancements Project,
- b. **APPROVE** Agreement with California Highway Patrol for Traffic Control Services for an Amount not to Exceed \$49,500
- c. **APPROVE** Use of Approximately \$1.7 Million in Surplus State Transportation Improvement Program Funds to Complete Asphalt Concrete Overlay
- d. **APPROVE** Guidelines for Executive Director Approval of Contract Change Orders

Transportation Planning Manager, Mary Dinkuhn, provided an update on the Highway 25 Safety and Operational Enhancements Project and introduced Dean Russu, of MNS Engineers. Mr. Russu is the Construction Manager and Resident Engineer for the project.

Ms. Dinkuhn mentioned that the contractor proposed to begin night work the week of June 22, which will require temporary lane closures and will be in effect for fourteen days. MNS Engineers will oversee public outreach to ensure that the public is notified in advance of items of work that may cause delays. MNS Engineers will maintain a phone hotline that members of the public can call to receive construction updates and leave messages with construction concerns.

With regard to Item 9b, Ms. Dinkuhn stated that the California Highway Patrol has agreed to provide traffic control services during construction under the Construction Zone Enhanced Enforcement Program (COZEEP), which is designed to improve project safety through the use of supplemental California Highway Patrol Units to assist in the management of traffic passing through the construction zone.

With regard to Item 9c, Ms. Dinkuhn stated that due to a lower than estimated construction contract bid, COG has approximately \$1.825 million in surplus State Transportation Improvement Program (STIP) funding for the project. If these funds are not used, they will be returned to the State. Staff recommended use of approximately \$1.7 million in surplus STIP funds to complete final asphalt concrete overlay over the entire project area when construction is complete.

With regard to Item 9d, Ms. Dinkuhn stated that staff was recommending that the Board consider a policy for change order approval to ensure that change orders can be approved as quickly as possible.

*Upon a motion duly made by Director Loe, and seconded by Director Emerson, the Director's unanimously approved Item 9b.*

There was discussion from Board members and staff on Item 9c regarding whether or not the use of STIP funds was an efficient use of funds for this project.

Ms. Rheinheimer stated that the majority of the funds would be used to cover the cost of asphalt. The only question would be the cost of labor; however, staff still considered it to be an efficient use of STIP funds as the funds can only be used for this project.

Mr. Russu stated that the efficiency of the overlay would be working it within the current process of the construction of the project. MNS would be able to work with the contractor and develop a favorable price.

*Upon a motion duly made by Director De La Cruz, and seconded by Director Emerson, the Director's unanimously approved Item 9c.*

There was discussion from Board members and staff regarding Item 9d.

The Board directed staff to amend the guidelines for Executive Director Approval of contract change orders as follows:

1. (2<sup>nd</sup> sentence) The Executive Director shall report all approved contract Change Orders to the COG Board within 35 days.
2. The Executive Director may approve individual contract Change Orders less than \$10,000 for a total amount not to exceed \$300,000.

*Upon a motion duly made by Vice-Chair Edge, and seconded by Director De La Cruz, the Director's unanimously approved Item 9d as amended.*

**10. RECEIVE** a Presentation and **COMMENT** on the Draft San Benito County Bikeway and Pedestrian Master Plan – Lezama

Transportation Planner, Veronica Lezama, along with Jennifer Donlon of Alta Planning + Design, provided a Power-Point presentation on the Draft San Benito County Bikeway and Pedestrian Master Plan.

Ms. Lezama noted that the public comment period closes July 10, 2009. The Board will consider adopting the Bikeway and Pedestrian Master Plan at a future meeting.

**PUBLIC COMMENT:**

**Marvin Jones**

Mr. Jones comment was in regards to safety. Mr. Jones stated that it would be nice to have the space between Santa Ana Road and Santa Ana Valley Road widened for bicycle riders.

Director De La Cruz inquired about the Buena Vista Road Project and asked if the Project can be moved up on the priority list since it is in close proximity to Calaveras School and it is also a safety issue.

Mr. Rheinheimer stated that staff will research and try to move this project up on the list.

**TRANSPORTATION ITEMS:**

**11. APPROVE** Letter Opposing Legislative Analyst’s Office Proposal to Loan Gas Tax Monies, Suspend Proposition 42, and Loan Proposition 1B Funds to Balance the State Budget – Rheinheimer

Executive Director, Lisa Rheinheimer, stated that the Legislative Analyst’s proposal would be a devastating blow to the economy. The loss of Proposition 42, and Proposition 1B funding would significantly impact all the cities and counties by virtually eliminating their budgets overnight for road maintenance and operations. Most counties and cities would be forced to lay off road maintenance staff and will not have the ability to do even the most basic maintenance on their roadways. Ms. Rheinheimer noted that this is a very serious situation and a safety threat to the public.

**PUBLIC COMMENT:**

**Joe Thompson**

Mr. Thompson stated that the letter is a “falsehood because it does not represent three county districts residents, it only represents two county districts residents”. Mr. Thompson added that the letter is a violation of our constitutional rights.

Director De La Cruz commented that the letter should be a stronger/firmer letter.

Director Gomez stated that he was comfortable with the letter as is; however, he believed it would not make a difference because they would find other areas from where to take the funds.

*Upon a motion duly made by Director Emerson, and seconded by Director Loe, the Director’s unanimously approved Item 11.*

**ADMINISTRATIVE ITEMS**

**12. APPROVE** Fiscal Year 2009/2010 Council of Governments Budget – Postigo

Administrative Services Specialist, Kathy Postigo, provided an overview of the Fiscal Year 2009/2010

Council of Governments Budget. The Council of Governments Budget meets the goals and objectives of the agency and matches revenues with expenses.

Ms. Postigo noted that a change was made in the final budget to reflect the anticipated reduction in Transportation Development Act funds. To fill the gap, unused Rural Planning Assistance funds from previous years and accumulated interest has been budgeted into the Council of Governments Administration. This change is an increase of \$14,968 from Rural Planning Assistance funds.

**PUBLIC COMMENT:**

**Joe Thompson**

Mr. Thompson stated that he objected to the Budget for the Council of Governments because his elected representative was not present to vote. The Budget did not have representatives from three county districts present to vote for or against it.

Vice-Chair Edge acknowledged Ms. Postigo for her diligent work on the Budget.

*Upon a motion duly made by Vice-Chair Edge, and seconded by Director Gomez, the Director's unanimously approved Item 12.*

**7. DISCUSS** State Transportation Funding Outlook and Regional Transportation Projects with Carl Guardino, California Transportation Commission – Rheinheimer

Ms. Rheinheimer introduced California Transportation Commissioner, Carl Guardino, who was invited to the Council of Governments meeting to discuss transportation funding needs and issues in the San Benito County region.

Mr. Guardino stated that Ms. Rheinheimer does an excellent job of reminding him of San Benito County's efforts and priorities. Mr. Guardino stated that it is very helpful to the Commission's work as individuals who are trying to represent the entire State, while knowing the region's best, to have a statewide, rather than a parroquial perspective.

Mr. Guardino provided an overview of where we are as a State, as it relates to transportation. Mr. Guardino discussed Proposition 42, Proposition 1B, and Rehabilitation Funds.

Mr. Guardino stated that one method that the California Transportation Commission (CTC) uses to communicate with the legislature is through an annual report which is efficiently written by CTC staff. However, Mr. Guardino stated that they have to be much more active, rather than passive, in how they disseminate the information to the legislature to ensure that our needs and the State of California's needs are met.

Director Loe asked for Mr. Guardino's support in the Highway 152 Mobility Partnership movement. Director Loe stated that Highway 152 is in need of major improvement. These improvements would have such a positive impact on San Benito, Santa Clara, Merced, and all other surrounding counties, in moving truck traffic much more efficiently.

Mr. Guardino stated that he supports the Mobility Partnership's efforts and he will continue to address the need for improvements on Highway 152. Mr. Guardino stated that the Mobility Partnership has an ally on the Commission.

Mr. Guardino thanked the Board and Ms. Rheinheimer for inviting him to the COG meeting and added that he would like to continue to attend COG meetings annually, or on a as need basis.

Board members expressed their appreciation to Mr. Guardino for attending the COG meeting.

**PUBLIC COMMENT:**

**Joe Thompson**

Mr. Thompson stated that we could do better with our transportation dollars if we did what other cities and counties have done, by privatizing and contracting out.

*Upon a motion made by Director Gomez, and seconded by Director Emerson, the Director's unanimously voted to adjourn the COG meeting.*

**ADJOURN TO COG MEETING JULY 16, 2009. AGENDA DEADLINE IS JULY 7, 2009 AT 12:00 P.M.**