

**COUNCIL OF SAN BENITO COUNTY GOVERNMENTS  
MEETING**

**May 21, 2009 2:00 P.M.**

**FINAL MINUTES**

**MEMBERS PRESENT:**

Chair Botelho, Director De La Cruz, Director Edge, Director Emerson, and Director Gomez

**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

**CALL TO ORDER:**

Chair Botelho called the meeting to order at 2:05 P.M.

**A. PLEDGE OF ALLEGIANCE**

**B. CERTIFICATE OF POSTING**

*Upon a motion duly made by Director Emerson and seconded by Director De La Cruz, the Directors unanimously approved the Certificate of Posting.*

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

None

**D. COG DIRECTORS' REPORTS:**

Chair Botelho noted that the Highway 25 Safety and Operational Enhancements Project groundbreaking ceremony went well with several people in attendance.

**E. EXECUTIVE DIRECTOR'S REPORT**

None

County Counsel, Shirley Murphy, made a technical correction to Item 4 of the consent agenda and asked the Board to approve the amended agenda Item 4 as follows: APPROVE the Proposed Amendment to the California State Association of Counties General Liability I Program Memorandum of Understanding and AUTHORIZE the Chair to Sign.

*Upon a motion duly made by Director Edge and seconded by Director Emerson, the Director's unanimously approved the amended agenda.*

## **CONSENT AGENDA:**

1. **APPROVE** Council of Governments Transaction Report (Financial Claims) Dated April 2009 – Postigo
2. **APPROVE** Council of Governments Minutes dated April 16, 2009, Special Joint Meeting Minutes dated April 16, 2009, and Special Meeting Minutes dated April 30, 2009 – Gomez
3. **RECEIVE** Construction Projects Report – Caltrans District 5
4. **APPROVE** the Proposed Amendment to the California State Association of Counties General Liability I Program Memorandum of Understanding and **AUTHORIZE** the Chair to Sign – Postigo
5. **RECEIVE** Update on the American Recovery and Reinvestment Act of 2009 – Dinkuhn

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

## **REGULAR AGENDA**

### **TRANSPORTATION ITEMS:**

Chair Botelho moved Item 8 up on the agenda.

#### **8. Highway 25 Bypass Project – Dinkuhn**

- a. **RECEIVE** Update on the Highway 25 Bypass Project,
- b. **APPROVE** Increase in Contract Change Orders No. 72, 74, & 81 for a Total Amount Not to Exceed \$9,000,
- c. **APPROVE** Contract Change Orders No. 27-S2 and No. 82 for a Total Amount Not to Exceed \$28,000,
- d. **CONSIDER** Claim from AVA Global Enterprise for Alleged Damages Related to Project Construction, and
- e. **CONSIDER** Request from Hollister Downtown Association to Place Directional Signage Along the Bypass Corridor

Transportation Planning Manager, Mary Dinkuhn, provided an update on the Highway 25 Bypass. The City of Hollister, San Benito County, and Caltrans conducted a speed survey on the roadway in mid-April, due to concerns about the 35 mile per hour speed limit. Staff will provide a report on the survey results and recommendations at the June meeting.

With regard to Item 8b, Ms. Dinkuhn noted that the Board approved a change order at its April meeting for an additional \$1,000 to allow payment for the time-related overhead, however, staff made an error, the appropriate amount for the time-related overhead was \$10,000; therefore, staff recommended approval of the additional \$9,000 payment.

*Upon a motion duly made by Director Gomez and seconded by Director Edge, the Director's unanimously approved Item 8b.*

Staff also recommended approval of Item 8c, Contract Change Orders No. 27-S2, which compensates the contractor for removal of buried man-made objects not shown on the plan, and No. 82, which will authorize the contractor to complete work needed to ensure proper drainage of the Casillas property on Santa Ana Road, for a total amount not to exceed \$28,000.

The Director's inquired if the design engineer should be held responsible for the drainage issues at the Casillas property.

Ms. Dinkuhn stated that it is likely that the drainage issues should have been identified in advance in the original contract plan, which would have brought up the cost of the contract.

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

With regard to Item 8d, Ms. Dinkuhn stated that after reviewing the information provided by Mr. Faquiryan, staff was unable to determine a correlation between the project construction and the sales at the gas station. Staff consulted with legal counsel and could not make the determination that the loss in sales is attributable to any construction activity or the construction of the concrete median.

**PUBLIC COMMENT:**

**William Slade**  
**AVA Global Enterprises**

Mr. Slade noted that there was a dramatic decrease in sales at both gas stations; however, they focused on the Valero gas station because of its 65% decrease in sales. Mr. Slade stated that AVA Global was not aware that a center median would be constructed. Mr. Slade stated that their primary concern was the physical blockage to the gas station driveway, since customers were not able access the gas station.

**Brad Pike**

Mr. Pike stated that he was asked to attend as a character and physical witness to the obstruction at the Valero gas station entrance. Mr. Pike was called several times regarding this issue since at the time he was a member of the City Council and Council of Governments and the gas station was within his district. Mr. Pike stated that each time he received a call from Mr. Faquiryan, he called COG staff, and the issue was addressed immediately. However, he mentioned that he sympathized with Mr. Faquiryan for the loss of business, since he was witness to times that the gas station was not accessible to customers.

**Ali Saber**  
**AVA Global Enterprises**

Ms. Saber stated that she is an employee at the Valero gas station and was witness to the direct impact at the Valero gas station during the construction period. Ms. Saber stated that many times during construction the only customers were the construction crew because people could not enter the premises. Ms. Saber noted that on two occasions she had to move the barricade placed by construction workers to get to work.

**Sayed Faquiryan**  
**Owner of AVA Global Enterprises**

Mr. Faquiryan stated that AVA Global received \$4,500 compensation for the removal of the monument sign, no compensation was received for the loss of business. Mr. Faquiryan stated that he has gone to every source for assistance, and requested assistance from the COG Board to avoid closure of the gas station. Mr. Faquiryan stated that his records indicate that his business was seriously impacted by the Highway 25 Bypass construction.

Chair Botelho inquired about the length of time that access was denied to the business.

Ms. Rheinheimer stated that access was denied an estimated 3-4 hours on two occasions. However, staff would have to verify with the project engineer's records.

### **Sayed Faquiryan**

Mr. Faquiryan stated that access was denied on more than ten occasions and he had to close down for more than 24 hours. It was only after contacting Mr. Pike that the issue was addressed more rapidly, but by that time he had already been waiting several hours.

There was discussion between Board members and staff with regards to the compensation that was provided to property owners along the Bypass.

Board members noted that although it is apparent from the profit and loss statements that there was loss of business to the Valero gas station, it is difficult to determine a correlation between the project construction and the sales at the gas station.

### **Sayed Faquiryan**

Mr. Faquiryan stated that he could provide invoices from the oil company to back up the profit and loss statements accuracy. Mr. Faquiryan stated that the profit and loss statement for 2007 is only for eight months of business because the gas station underwent remodeling for four months.

Chair Botelho requested that Mr. Faquiryan submit a formal claim of desired compensation to staff at least two weeks prior to the June meeting. Staff was directed to compile a breakdown of total compensation amounts paid out for the land acquisition. In addition, staff will determine the timeframe that the business was inaccessible and whether or not AVA Global was fairly compensated during that period. Staff was directed to place this item on the June agenda.

Staff requested approval of Item 8e, a request from the Hollister Downtown Association to place directional signage along the Bypass corridor.

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

### **ADMINISTRATIVE ITEMS:**

#### **6. RECEIVE 3<sup>rd</sup> Quarter 2008/2009 Budget Report – Postigo**

Administrative Services Specialist, Kathy Postigo, stated that the 2008/2009 3<sup>rd</sup> Quarter Budget Report showed that overall expenditures for COG programs were low at 4.4% while revenues were at 42.97%.

*Upon a motion duly made by Director Emerson and seconded by Director Gomez, the Director's unanimously approved Item 6.*

#### **7. COMMENT on the Fiscal Year 2009/2010 Draft Overall Work Program, which Includes Planning Activities to be Performed by the Council of Governments – Lezama**

Transportation Planner, Veronica Lezama, stated that the 2009/2010 Draft Overall Work Program is a one-year statement of proposed work and budget for the Council of Governments transportation planning activities. This program qualifies the Council of Governments for state planning money. The Board will consider adopting the fiscal year 2009/2010 Overall Work Program at the June meeting.

## **TRANSPORTATION ITEMS:**

### **9. APPROVE** Amendment No. 5 to Co-Operative Agreement with Caltrans and the Valley Transportation Authority – Dinkuhn

Ms. Dinkuhn reported that Amendment No. 5 increases COG's funding commitment to the project to include an additional \$800,000 in federal funds for the project's environmental phase. The project is currently in the Environmental Document stage. A Draft Environmental Document is anticipated to be available for public review in October 2009.

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

### **10. 2010 Regional Transportation Plan** – Dinkuhn

- a. **CONSIDER** 2010 Regional Transportation Plan Draft Goals and Policies, and
- b. **ADOPT** Resolution 2009-13, Approving the Change from a Four Year to a Five Year Transportation Planning Cycle

Ms. Dinkuhn stated that COG is required to update its Regional Transportation Plan every five years, with the next update scheduled for completion in 2010. Due to new regulations associated with Senate Bill 375, there is an impetus to reduce the update schedule to every four years, allowing for more consistency among planning efforts in San Benito County and the AMBAG region. Ms. Dinkuhn mentioned that the Technical Advisory Committee reviewed and commented on the updated policy element at its May meeting and their comments have been incorporated.

Ms. Dinkuhn stated that the next steps for the 2010 RTP development include public outreach and an update of the Plan's action element. Staff will bring the updated project list to the Board for consideration at its July meeting. Following preliminary Board acceptance, staff will hold a public workshop to receive input on the proposed project list. Staff will also meet directly with interested agencies to receive comments on the Plan.

Director Emerson noted a typo on the COG Agenda, Item 10b.

The Agenda was corrected to read as follows:

- 10 b. **ADOPT** Resolution 2009-13, Approving the Change from a Five Year to a Four Year Transportation Planning Cycle.

*Upon a motion duly made by Director Edge and seconded by Director Emerson, the Directors unanimously approved the correction to the COG Agenda, Item10b.*

Chair Botelho recommended a modification to the Plan on page 157 of the agenda, under Chapter 6 Transportation Policy, second paragraph; delete mention of public workshop held in May 2000. In addition, Chair Botelho recommended that staff add language to the Plan that identifies the necessity to establish a new east/west connector, perhaps under the Goods Movement Goal 20 section.

Director Emerson commented that it is clear that COG would like to improve regional connectivity however; the implementation of an east/west connector perhaps should be mentioned under a "goals and implementation plan."

Ms. Rheinheimer mentioned that the Board may provide comments at a later date and staff will

incorporate any additional comments into the Plan.

**PUBLIC COMMENT:**

None

*Upon a motion duly made by Director Emerson and seconded by Director Gomez, the Directors unanimously approved Item 10b.*

**11. RECEIVE** Presentation on the San Juan Highway Bike Lanes Project – Lezama

Ms. Lezama provided a Power-Point presentation on the San Juan Highway Bike Lanes Project.

The San Juan Highway Bike Lanes Project includes the construction of a Class II bike lane on San Juan Highway from U.S. 101 to Monterey Street in San Juan Bautista. The project is currently in the right-of-way phase. Construction is anticipated to begin by the fall of 2009.

Staff requested that the COG Board representative to the California Transportation Commission (CTC) attend a future California Transportation Commission (CTC) meeting to request an advancement of Transportation Enhancement funds for the project.

Board members were pleased to see the progress on the project and acknowledged Ms. Lezama for her diligent work on the project.

Chair Botelho mentioned that if the CTC representative cannot attend the meeting, he may be able to attend, or appoint a fellow director to attend.

**12. APPROVE** Letters of Support to Senator Jeff Denham and Assemblywoman Anna Caballero Naming the Highway 152/156 Flyover after Joseph Anthony Zanger, Sr. – Rheinheimer

Ms. Rheinheimer stated that the County Board of Supervisors recently approved a resolution, which supports naming the Highway 152/156 Flyover after Joseph A. Zanger, Sr. Mr. Zanger was a long-time supporter of transportation improvements between the Coast and the Valley.

Chair Botelho noted his support to the letter and added that Mr. Zanger was very passionate about transportation improvements especially to the 152/156 Flyover, and went as far as opening the doors to his home and business to hold meetings with major stakeholders on the project.

**PUBLIC COMMENT:**

None

*Upon a motion made by Director Edge and seconded by Director Emerson, the Director's unanimously approved Item 12.*

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

**ADJOURN TO COG MEETING JUNE 18, 2009. AGENDA DEADLINE IS MAY 9, 2009 AT 12:00 P.M.**