

SAN BENITO COUNTY PLANNING COMMISSION

February 6, 2008

Minutes

PRESENT: Bettencourt, DeVries, Machado, Scattini, Tognazzini

ABSENT: None

STAFF: Principal Planner (PP) Byron Turner; Senior Planner (SP) Chuck Ortwein; Assistant Planner (AP) Michael Kelly; Deputy Director of Public Works (DDPW) Arman Nazemi; Public Works Engineer (PWE) Art Bliss; Deputy County Counsel (DCC) Shirley Murphy; and Clerk Trish Maderis.

Chair Tognazzini called the regular meeting of the San Benito County Planning Commission to order at 6:01 p.m. as he led the pledge of allegiance to the flag and reiterated the standing rules of order.

DIRECTOR'S REPORT

PP Turner reported on recent Board of Supervisor meetings and information on the following items:

- A joint meeting is being planned with the Board of Supervisors and Planning Commission to review and discuss Phase One of the General Plan Update. The tentative date of March 6th at 1:30 PM has been selected and staff is waiting for confirmation from the members of the Board.
- Appeal filed by Larry Anderson for preliminary allocations was granted and the appellant was awarded a total of 15 allocations for 2 projects (8 and 7). Those allocations will be deducted from the quantity determined during the next application process.
- The Ag Exempt Ordinance is expected to be returned to the Planning Commission after meeting with the Cattlemen's Association and the Board of Supervisors. Staff has met with the Farm Bureau and received good comments from them.
- The Spur Hotel project was continued to a future meeting of the Board due to all Board members not in attendance. It is expected that the Board will repeal the Zone Change and recommend the project be returned to the Planning Commission to be reconsidered as a whole project.
- DMB has submitted a Specific Plan but pursuant to the PRGI Ordinance, the submission is deemed incomplete as the Reimbursement Agreement has not been filed. Several meetings are being held to complete the Agreement. Once the Reimbursement Agreement is final and a deposit is made, the application will be processed and distributed.

PUBLIC COMMENT

Chair Tognazzini opened and then closed, the opportunity for public comment as there were no persons present to address matters not appearing on the agenda.

Commissioner Scattini stated he was present at the Board of Supervisors meeting on February 5, 2008 when the City Manager of San Juan Bautista addressed the Board during Public Comment stating there was no water being sent to St. Francis Retreat. Commissioner Scattini requested input and clarification from staff on the item.

PP Turner stated he understood that the City of San Juan Bautista did not have any water problems and that he was not present at the Board meeting to comment further. DCC Murphy suggested placing the item on the next Agenda to discuss further as items not appearing on the Agenda could not be discussed per the Ralph M. Brown Act.

Commissioner Scattini stated he would like to discuss the comments made by San Juan City Manager further and requested the item appear on the Agenda scheduled for February 20, 2008. PP Turner stated the item would appear as a discussion item on the next agenda.

ELECTION OF CHAIR AND VICE-CHAIR

Commissioner Scattini offered nomination for Gordon Machado as Chair, and was seconded by Commissioner Bettencourt. By an affirmative vote of all Commissioners, Gordon Machado was elected Chair for the term of February 6, 2008 to February, 2009.

Commissioner Scattini offered nomination for Richard Bettencourt as Vice-Chair and was seconded by Commissioner Machado. By an affirmative vote of all Commissioners, Richard Bettencourt was elected Vice-Chair for the term of February 6, 2008 to February, 2009.

Clerk Maderis then assisted the newly elected officers in seating on the dais.

Commissioner Tognazzini stated he wished to thank his fellow Commissioners for their year of hard work, dedication, hard questions and hard decisions during his term as Chair. Commissioner Tognazzini also thanked staff.

Commissioner DeVries offered thanks and appreciation on behalf of the entire Commission for his leadership, participation and hard work throughout his term.

CONSENT AGENDA

1. Acknowledge Public Hearing Notice
2. Acknowledge Certificate of Posting
3. Minutes of January 16, 2008

COMMISSIONERS TOGNAZZINI/BETTENCOURT MOTIONED TO APPROVE CONSENT AGENDA ITEMS 1 THROUGH 3 WHICH PASSED UNANIMOUSLY.

4. **MINOR SUBDIVISION NO. 1211-07** – APPLICANT: Eric Painter. LOCATION: 254 Payne Road. APN: 11-03-55. REQUEST: To subdivide 13.24 acres into two parcels of 8.24 acres and 5 acres. ZONING: Rural (R). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.

SP presented his staff report explaining the application and request of the applicant. SP Ortwein explained that both proposed parcels contained existing homes, sewer was in place and water was provided by Aromas Water District. SP Ortwein advised staff recommends approval.

With no questions from the Commission, Chair Machado opened the Public Hearing.

Anne Hall, San Benito Engineering stated there were no issues with the Conditions of Approval as presented and was available for questions.

Commissioner Bettencourt asked Ms. Hall about Condition No. 13 since the residences were already in place and how the improvements could be made. Anne Hall stated she understood that Condition No. 14 allowed for deferred improvements and the intent of the applicant was to enter into a deferred improvement agreement with Public Works.

Art Bliss, Public Works advised the Commission that there were two sections of Payne Road and 2 conditions of approval apply to separate pieces of Payne Road. Condition No. 14 would be deferred until Payne Road was completed and pertained to the upper section. The lower section would have to be improved now.

Anne Hall stated that she and the applicant did not realize the conditions were for separate sections of Payne Road and believed that the applicant had an option of deferring all improvements. Ms. Hall added that she would like to request a continuance to speak with her client who was not present and clarify the Public Works conditions as written.

Commissioner Bettencourt advised he visited the proposed site and was unaware that Payne Road went around to the property. Ms. Hall stated a right of way existed, however there was no physical road present.

With no other speakers wishing to address the Commission, Chair Machado closed the Public Hearing.

Commissioner DeVries moved to continue Item No. 4 to the regular meeting of February 20, 2008, Commissioner Scattini offered a second to the motion which passed unanimously.

5. **MINOR SUBDIVISION NO. 1206-07** – APPLICANT: Billy and Dana Aviles. LOCATION: 477 Magladry Road. APN: 17-15-72. REQUEST: To subdivide 25 acres into three, 5 acre parcels and one 10 acre parcel. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.

SP presented his staff report explaining the application and request of the applicant. SP Ortwein corrected his staff report stating the parcel shown as a remainder should be shown as a remaining parcel. SP Ortwein advised staff recommends approval.

With no questions from the Commission, Chair Machado opened the Public Hearing.

Anne Hall, San Benito Engineering addressed the Commission requesting Condition No. 18 be modified to state the applicant also has an option to join an existing CSA. Commissioner Scattini asked how long the CSA had been existence. SP Ortwein advised the CSA has been in place approximately 25 years per Public Works staff.

Commissioner Bettencourt confirmed that the applicant would be responsible for a small water district. Commissioner Bettencourt asked if the funds specified in Condition No. 34 would be reimbursed to Ruben Rodriguez. Ms. Hall explained that the funds would be paid to San Benito County and the portion paid by Mr. Rodriguez above and beyond his obligation would be refunded to him. SP Ortwein added that it may not be the entire sum but a large portion would be refunded to Mr. Rodriguez.

DDPW Nazemi added that incremental payment would be refunded to Mr. Rodriguez.

With no other speakers wishing to address the Commission, Chair Machado closed the Public Hearing.

Commissioner Tognazzini asked about the Fish & Game fee that was being assessed. SP Ortwein stated it was a one time fee for the entire project per state law. Commissioner Tognazzini also questioned the Habitat Conservation fee.

SP Ortwein added that meetings are being set up with several stakeholders in the County pertaining to fees paid under Habitat Conservation program to determine a county-wide plan and who is interested in participating.

Commissioner Tognazzini asked DDPW Nazemi if the conditions for this project would complete Magladry Road or when Magladry Road would be completed. DDPW stated that the conditions only apply to the applicant's property on Magladry Road and the road would be completed as applications are submitted.

Commissioner Tognazzini again asked when Magladry Road would be completed and what triggers the numbers for completion.

DDPW Nazemi stated it was a long process and that development would dictate completion of a road. DDPW Nazemi stated the triggers were contained in the Subdivision Ordinance or a traffic study which identify the counts. After a lengthy discussion DCC Murphy stated usually 100% is not developed before a road is built. DDPW Nazemi stated that 80% development completion usually triggers the road improvements and calculations for contributions are computed on that percentage.

Commissioner Scattini asked if the fees assessed were comparable to Monterey and Santa Clara Counties. DDPW Nazemi stated that he was unsure what Monterey County assessed, but the amounts are calculated on a fair share distribution which has to be acceptable with the engineers.

DCC Murphy added that benefit areas are allowed under the Subdivision Map Act and when a benefit area is established by the Board of Supervisors a pro-rata fee has to have a reasonable calculation based on engineering costs of the project and is done by Resolution.

Commissioner Scattini asked about Condition No. 21, Inclusionary Housing and the fees stated in the Conditions of Approval. SP Ortwein confirmed the amounts listed in the staff report adding it was a standard condition and applied to 2 of the 4 lots being created.

Commissioner Scattini also requested an explanation about Condition No. 19, water softeners. SP Ortwein stated the softeners were like a Culligan system.

Chair Machado clarified the softeners would be traded out and the no disposal would take place on site.

Commissioner Bettencourt stated he calculated approximately \$35,000 per lot is due from applicant for this application before a building permit is ever applied for and wanted the public to be aware of the costs involved to develop land.

SP Ortwein stated he wished to amend Condition No. 18 striking 'form a Home Owner's Association' and replacing with the language "the applicant can annex into CSA 29".

With no further discussion or questions of staff, Chair Machado called for a motion. Commissioner Scattini moved to adopt the Mitigated Negative Declaration, adoption of findings and conditions contained in the staff report, modification of Condition No. 18 and approval of Minor Subdivision No. 1206-07, Commissioner Tognazzini offered a second to the motion which passed unanimously by all Commissioners present.

CONDITIONS OF APPROVAL ~ AVILES:

- 1. Hold Harmless:** Pursuant to Section 66474.9 of the California Government Code, upon written notice by the County, the subdivider shall defend, indemnify and hold harmless San Benito County and its agents, officers and employees from any claim, action or proceeding against San Benito County or its agents, officers or employees to attack, set aside, void or annul the approval of this minor subdivision and applicable proceedings. San Benito County reserves the right to prepare its own defense pursuant to Section 66474.9 of the Government Code. [Planning]
- 2. Conformity to Plan:** The development and use of the site shall conform substantially to the proposed site plan and Conditions of Approval as approved by the Planning Department. Any increase, change, or modification in the nature or intensity of the land use on the site shall be subject to further Planning Commission review and approval. [Planning]
- 3. Compliance Documentation:** Prior to recordation of the parcel map, the applicant shall submit a summary response in writing to these conditions of approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]
- 4. Assessment:** Prior to recordation of the parcel map, the applicant shall pay applicable security for taxes and special assessments as required by Sections 66492, 66493, and 66494 of the Subdivision Map Act. [Planning, Assessor]
- 5. Recordation:** The applicant shall submit a parcel map to the County and the parcel map shall be approved by the County Planning Department and the County Public Works Department and recorded with the County Recorder. The tentative parcel map shall expire two (2) years after the Planning Commission approval date, unless extended as provided by the Subdivision Map Act and the County Subdivision Ordinance. Failure to record a parcel map within the period of approval or a period of extension shall terminate all subdivision proceedings. [Public Works, Planning]
- 6. Easements:** The parcel map shall show all easements for access, utilities, and drainage. All future development shall maintain a ten (10) foot setback from the noted easements. [Public Works, Planning]
- 7. Notice of Determination (Fish & Game Fees):** The applicant/developer/owner shall file the Notice of Determination, provided by the County Planning Department, with the County Clerk within five (5) days of approval of the tentative map. Department of Fish and Game fee (\$1,976.75 – Fish & Game Code section 711.4(d)) must be submitted with the filing. A copy of the filed notice shall be submitted to the County Planning Department. Should the Notice not be filed and the fee not paid within five (5) days, the application is subject to action described in Public Resource Code section 21167 and the project is not operative, vested, or final until the Notice is filed and the fee is paid (Public Resources Code section 21089(b)). [Planning]
- 8. Conditions of Approval, Easements, and Restrictions:** All unmet conditions of approval, mitigation measures, easements, and restrictions shall be noted on a separate sheet(s) and recorded with the parcel map. [Planning]
- 9. County Service Area:** Prior to recordation of the final map, the applicant shall make application to LAFCO to join a County Service Area (CSA #43). All related processing fees, including State Equalization fees, must be submitted prior to recordation of the final map. [LAFCO, Planning]

- 10. Improvement Plans:** As a condition approval, the applicant shall be required to submit and have approved, by the County Public Works Department, improvement plans for the proposed subdivision. [Public Works]
- 11. Habitat Conservation Plan Impact Fees:** In accordance with County Ordinance 541, which sets fees for habitat conservation plan financing, the applicant shall contribute, prior to recordation of the parcel map, a habitat conservation plan mitigation fee of \$1500 (\$300 per 5 acre parcel and \$600 for 10 acre parcel). [Planning, Department of Fish and Game]
- 12. Construction Hours:** As required by County Ordinance, construction shall be limited to the hours of 7 a.m. to 7 p.m., Monday through Saturday. No construction activities shall be allowed on Sundays and holidays. The applicants for building permits within the subdivision shall be required to place a note to this effect on all construction plans. [Mitigation Measure #12] {Planning}
- 13. Dedication:** Prior to the recordation of the parcel map, the applicant shall make an irrevocable offer of dedication to the County of San Benito for the public use to maintain;
 - a. Adequate right-of-way radius for the portion of the property abutting Magladry Road to maintain 30 foot half road right-of-way width;
 - b. A 60 foot road right-of-way for the proposed Equuss Lane;
 - c. A 50 foot radius right-of-way, to San Benito County, for a turnaround facility,
 - d. A 30 foot road right-of-way for the proposed shared driveways serving parcels within the proposed subdivision,
 - e. Adequate right-of-way for a turnaround facility serving parcels 1 and 2 [Public Works]
- 14. Roadway Improvements:** Prior to the recordation of the parcel map, the applicant shall bond for the following roadway improvements
 - a. The applicant shall provide 24 foot AC on 34 foot road bed along Magladry Road frontage,
 - b. A full 16 foot AC on 20 foot road bed for the proposed access road plus 40 feet AC radius turnaround,
 - c. A full 16 foot and 20 foot road bed for the common driveways to serve parcels 1, 2, and 3 through parcel 4, as shown on the parcel map. A standard turnaround facility must be provided where common driveways terminate at parcels 1 and 2. [Public Works]
- 15. Encroachment:** Prior to commencement of any improvements associated with this project the applicant shall obtain a Public Works Encroachment Permit for any work being performed within the County Right-of-way. [Public Works]
- 16. Drainage and Erosion Plan:** As part of the submission of engineered Improvement Plans, the applicant shall comply with County Drainage Standards and provide erosion control details. Included in this will be drainage calculations and construction details for either a retention or detention pond for impermeable surfaces created as part of this project. All drainage improvements must be installed or bonded for prior to recordation of the parcel map. [Public Works]

- 17. Geotechnical Recommendations:** Prior to recordation of the parcel map, all preparation, grading, foundations, site drainage and finish improvement shall be designed to the recommendations the Geotechnical Engineering Report (File No. LSS-0570-01) prepared by Landset Engineers Inc. A letter of geotechnical compliance shall be submitted upon completion of the site improvements. A note shall be placed on the parcel map referencing the aforementioned reports for future reference by potential property owners. [Mitigation Measures #8] [Public Works]
- 18. Homeowner's Association:** Prior to recordation of the parcel map, the applicant shall establish a maintenance agreement or annex into CSA 29 for the maintenance of roads and common facilities. [Planning, Public Works]
- 19. Water Softeners:** A note shall be placed on the subdivision improvement plans and on an additional sheet to the Parcel Map that states: "The use of on site-regenerating water softeners is prohibited. Off site regeneration softening systems may be used subject to the approval of the San Benito County Water District". [Planning]
- 20. Mitigation Monitoring:** Prior to the recordation of the parcel map, the applicant/owner, County Counsel and the Planning Director shall agree to and sign the Mitigation Monitoring Program form(s). [Planning]
- 21. Inclusionary Housing:** Prior to recordation of the Parcel Map the applicant/owner shall pay Inclusionary Housing fees. Developments of 3-4 units shall pay a fractional fee. A four-unit/lot development shall pay 4/5ths of the required fee for the third and fourth lot. $[4/5 \times 27,019.60 \times 2 \text{ (lot three and four) } = \text{\$43,231.36 total}]$ [Planning]
- 22. Exterior Lighting:** A note shall be placed on an additional sheet to the Parcel Map that states: "All exterior lighting for new development shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. All fixtures shall comply with County Ordinance 748. Prior to the issuance of a building permit, the applicant shall indicate the location, type, and wattage of all proposed lighting fixtures and include catalog sheets for each fixture." [Mitigation Measure #1] [Planning]
- 23. Air Quality:** A note shall be included on all improvement or construction plans to minimize particulate emissions: "The contractor shall require water trucks to operate in conjunction with grading equipment and application of water shall be made as frequently as is necessary to control dust at a minimum of two times a day. If dust is not adequately controlled through the application of water, grading activities will be suspended and an hourly watering schedule and/or maximum limit on the daily number of cubic yards to be graded will be imposed prior to the resumption of grading." [Mitigation Measure #2] [Planning]
- 24. Fugitive Dust:** A note shall be included on all construction plans that involve site grading and/or improvements prohibiting all grading activities during periods when winds are over 15 miles per hour. [Mitigation Measure #3][Planning]
- 25. Truck Hauling:** A note shall be placed on all improvement or construction plans requiring all trucks hauling dirt, sand or loose materials to be covered. [Mitigation Measure #4][Planning]

- 26. Diesel Emissions:** A note shall be placed on the improvement or construction plans requiring that all diesel or gasoline powered machinery not in actual use must turn off engine when idle. In order to reduce Acrolein emissions the applicant shall be required to use diesel powered machinery that was produced after the year 2003 or equip the diesel powered machinery with Air Resource Board approved Catalysis Diesel Particulate Filters or Diesel Orientated Catalysis Filter. The applicant may also opt to use Bio-diesel fuels B99 or B100 as an alternative to the filter. [Mitigation Measure #5][Planning]
- 27. Cultural Resources:** If , at anytime in the preparation for or process of excavation or otherwise disturbing the ground, any human remains of any age, or any significant artifact or other evidence of an archaeological site is discovered, all further excavations and disturbances within 200 feet of the discovery shall cease and desist. The applicant shall contact the San Benito County Planning office to report the findings and to prepare the proper documentation and reports as determined by the Planning Director. If human and/or questionable remains have been discovered, the sheriff-coroner shall be notified immediately pursuant to County Ordinance 610. A note to this effect shall be placed on all construction, grading, or other improvement plans. [Mitigation Measure #6][Planning]
- 28. Seismic Design:** All structure shall be designed to resist seismic shaking in accordance with current California Building Code requirements. [Mitigation Measure #7][Planning]
- 29. Erosion Control:** Prior to the issuance of the grading permit, the applicant shall provide a detailed erosion control plan that complies with County standards and shows the location of erosion control devices on the site. The erosion control plan shall be submitted to the County Planning and Public Works Departments for review and approval. [Mitigation Measure # 9][Planning, Public Works]
- 30. Hazards and Hazardous Materials:** A note shall be placed on an additional sheet to the Parcel Map that states: "Prior to the issuance of any permits for new development, the applicant shall comply with all requirements of County Fire Department, including the provision of an adequate water supply and flow for fire suppression. Required fire flow for this project shall be in accordance with 2000 UFC Division III, Appendix III-A-A-I, Table A-III-A-I. All residential structures shall be equipped with NFPA 13D sprinkler systems." [Mitigation Measure #10] [County Fire]
- 31. Fire Standards:** Any and all development on this property shall be required to meet the standards set forth in the latest editions of the Uniform Fire Code, the California Fire Code, Public Resources Codes 4290 and 4291, Chapter 17 of the San Benito County Code and other related codes as they apply to a project of this type and size. [County Fire]
- 32. Water Content:** Prior to the recordation of the Final Parcel Map, the applicant shall record a note on each deed stating: "The concentration of chloride, specific conductance, TDS, iron and manganese in the proposed water source exceeds the maximum contaminant level permitted by the San Benito County Code." [Environmental Health, Planning]
- 33. Water System:** Prior to the recordation of the Final Parcel Map, a Local Small Water System Permit shall be obtained and the applicant shall install or bond for all components of the water system as required by the County Public Works Department. [Mitigation Measure 11] [Environmental Health]

- 34. Fair Share Contribution:** Prior to recordation of the parcel map, the applicant shall pay the following pro-rata fair share contribution towards the listed benefit areas:
- a. Fairview Road/Lone Tree Road Intersection - \$5,001.32 per lot (\$5,001.32*3 = \$15,003.96),
 - b. Magladry Road - \$14,801.10 per lot (\$14801.10*3 = \$44,403.30)
- 35. Parkland Dedication:** In accordance with §17-59 of County Ordinance 617 (Chapter 17 of County Code, or the County Subdivision Ordinance), prior to recordation of the parcel map, the applicant shall pay an in-lieu fee for park dedication and improvements. [Planning, Public Works]

6. **MINOR SUBDIVISION NO. 1165-05(A)** – APPLICANT: Jeff Hall. LOCATION: McMahan Road. APN: 17-050-009 REQUEST: To amend the conditions of approval of Minor Subdivision 1165-05, dividing a 395 acre parcel into one 213 acre parcel and one 182 acre parcel. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.

PP Turner presented his staff report explaining the application was for an amendment pertaining to Condition No. 18 (road dedication) which was originally approved on August 17, 2005. PP Turner explained that according to the Applicant, Condition No. 18 was unable to be met and cited the San Benito County Subdivision Ordinance; “all parcels in a development project shall have access to a County maintained road either directly or by private right of way or easement offered for dedication to the County. The use of a private right of way or easement for access shall be approved by the Planning Commission or County Engineer.”

PP Turner explained that the applicant has submitted an amended application to subdivide the property without the requirement of Condition No. 18. PP Turner added that without dedicated access or the ability to dedicate to the County, this subdivision could not be completed or the final map recorded. PP Turner added that access to a county maintained road by a private right of way or easement is permissible provided the easement or right of way is offered for dedication to the County but the applicant is requesting that he not be required to dedicate the easement to the County which is inconsistent with San Benito County Subdivision Ordinance and the Subdivision Map Act. PP Turner cited Section 17-21 of the Subdivision Ordinance stating “a tentative map may be disapproved by the Planning Commission on any grounds set forth in the Subdivision Map Act or this Chapter. The Planning Commission shall deny approval if it makes any of the certain findings including but not limited to the finding that the site is not physically suitable for that type of development”.

PP Turner stated that denial of the amended application is recommended by staff by making the findings provided in the staff report being that access is a requirement of the subdivision and that access shall be dedicated to the County in order to record the final map.

Chair Machado then opened the Public Hearing.

Anne Hall, San Benito Engineering addressed the Commission stating she was representing the applicant and are requesting that Condition No. 18 of the original approved subdivision be removed. Ms. Hall stated the applicant has legal access to the parcel through an easement with a neighbor and the Commission has the authority to approve such use for access. Ms. Hall stated the applicant does not own the property where the easement is and is unable to dedicate the easement to the County, thus not meeting the Condition. Ms. Hall stated that Brad Sullivan would address the legal aspects of the situation.

Brad Sullivan, Lombardo & Gilles Law Firm spoke on behalf of the applicant Jeff Hall stating that the applicant owns the right to use, not the property. Mr. Sullivan stated that an easement can be moved and this easement has been deeded by the property owner to the applicant. Mr. Sullivan stated he believed the Commission has the authority to remove the Condition.

Commissioner Bettencourt confirmed with Mr. Sullivan should the easement become dedicated, it would become public rather than remaining private. Mr. Sullivan stated the easement is intended for the neighbors to cross their land not for public use.

Commissioner DeVries confirmed there was an easement with a legal description which is not the driveway to the property with Mr. Sullivan. Mr. Sullivan stated the easement was planted in vineyard and was the reason it was not being used for access and added the applicant could enforce their rights to use this easement however the vineyard would have to be removed.

Commissioner DeVries agreed that the language in the condition was subject to interpretation. DCC Murphy added that the more relevant point was that the applicant shall have access to a County maintained road by public right-of-way or private easement and in this application was not being used for access. DCC Murphy cautioned the Commission the argument is of a legal nature and the Planning Commission does not have the authority to resolve private disputes pertaining to property rights.

Commissioner Tognazzini stated the issue was not between the applicant and the property owner but the requested action would potentially involve others. Mr. Sullivan stated he agreed it was a concern, but the use could be reverted to the deeded easement should the neighbor no longer agree.

Commissioner DeVries asked DCC Murphy if her interpretation of the Subdivision Ordinance was that a private right of way or an easement would have to be dedicated to the County. DCC Murphy stated 'no', adding it was not the preferred option but was an option that could be approved by the Planning Commission or the County Engineer.

Commissioner Tognazzini asked if the reason for dedication was to avoid potential future problems. DCC Murphy stated this was one of the policy reasons established.

Commissioner DeVries asked what the criteria was to approve or deny a private right of way should be considered. DCC Murphy stated it would be approved in the form of a Condition.

After a lengthy discussion between Commissioner DeVries and Mr. Sullivan, DCC Murphy requested that the Item be continued in order for her to research the questions.

PP Turner added that part of the problem with the deeded easement is that it is physically unable to provide access that could meet County standards due to over 30% slopes and the easement the applicant does have is not physically suitable to access the subdivision.

Commissioner Bettencourt asked if the County had to accept the dedication. Mr. Sullivan stated that the County never has to accept a dedication. DCC Murphy added that a dedication can be accepted at any time by the Board of Supervisors.

Commissioner Tognazzini then moved to continue the Item to the regular meeting of March 19, 2008 in order for Counsel to research the questions.

Commissioner Scattini confirmed that the staff recommendation was for denial based on the inability of the applicant to dedicate the easement to the County. PP Turner stated that the original subdivision was approved with the requirement of dedication per County Ordinance. PP Turner added the removal of the requirement would make the map inconsistent with the Subdivision Ordinance of Subdivision Map Act. Mr. Sullivan clarified that the request was to remove the requirement to dedicate the private access.

Clerk Maderis reminded Chair Machado that the Public Hearing was still open and held a speaker card for additional testimony.

Matt Kelley, Kelley Engineering addressed the Commission stating that he believed the property has physical and legal access and the road is very well graded and is 20 feet wide. Mr. Kelley also stated that fire access has been met, having a all weather surface and has reasonable slopes. Mr. Kelley added that he didn't feel the County would accept the offer of dedication for this road and that the Ordinance referred to the boundaries of the subdivision.

With no further testimony, Chair Machado closed the Public Hearing. Chair Machado reminded of the motion of Commissioner Tognazzini which Commissioner DeVries offered a second to the motion which passed with an affirmative vote of 4/1, Commissioner Bettencourt voted No to the continuance.

7. **MINOR SUBDIVISION NO. 1207-07** – APPLICANT: James A. Friebel III. LOCATION: 2033 Orchard Road. APN: 16-02-06. REQUEST: To subdivide a 12.8-acre parcel into 2 lots containing 7.8 acres and 5.0 acres. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.

AP Kelly presented his staff report explaining the request of the applicant. With no questions from Commission, Chair Machado opened the Public Hearing

Anne Hall, San Benito Engineering representing the applicant stated there was a question regarding the status of Orchard Road in front of the property, the request for dedication and where the property would be dedicated. Ms. Hall added the question is being researched and doesn't affect the condition as written.

Commissioner Bettencourt stated he conducted a site visit and observed a private road sign which is being investigated. Ms. Hall stated the road has been treated as a private road and has not been maintained by the County.

With no other speakers, the Public Hearing was closed.

Commissioner Tognazzini asked about a condition for Kit Fox fees. AP Kelly stated he overlooked that requirement and would add the appropriate language for the condition pursuant to Ordinance No. 541. From the audience, applicant Mr. Friebe agreed to the added condition.

Commissioner Bettencourt asked why there was a condition for Parkland dedication. AP Kelly stated that project didn't meet the exemption in the Subdivision Ordinance, Section 1759 and was subject to the condition.

PP Turner clarified that the condition was specific to this project.

With no further discussion or questions, Commissioner DeVries offered a motion for approval with the conditions of approval contained in the staff report, adoption of the Mitigated Negative Declaration and findings for approval and added a condition of approval for Kit Fox fees consistent with San Benito County Ordinance No. 541, the motion was seconded by Commissioner Scattini and passed unanimously by all Commissioners.

Conditions of Approval

Planning:

- 1. Hold Harmless:** Pursuant to Section 66474.9 of the California Government Code, upon written notice by the County, the subdivider shall defend, indemnify, and hold harmless San Benito County and its agents, officers, and employees from any claim, action, or proceeding against San Benito County or its agents, officers, or employees to attack set aside, void, or annul the approval of this minor subdivision and applicable proceedings. San Benito County reserves the right to prepare its own defense pursuant to Section 66474.9 of Government Code. [Planning]
- 2. Conformity to Plan:** The development and use of the site shall conform substantially to the proposed site plan and conditions of approval as approved by the Planning Commission. Any increase, change, or modification in the nature or intensity of the land use on the site shall be subject to further Planning Commission review and approval. [Planning]
- 3. Compliance Documentation:** Prior to recordation of the parcel map, the applicant shall submit a summary response in writing to these conditions of approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]

4. **Assessment:** Prior to recordation of the parcel map, the applicant shall pay applicable security for taxes and special assessments as required by Sections 66492, 66493, and 66494 of the Subdivision Map Act; this includes pre-payment of taxes for the current year the parcel map is recorded.. [Planning, Assessor]
5. **Recordation:** The applicant shall submit a parcel map for review by the County Planning and Public Works Departments, approval by the County Engineer and recordation by the County Recorder. The tentative parcel map shall expire two (2) years after the Planning Commission approval date unless extended as provided by the Subdivision Map Act and the County Subdivision Ordinance. Failure to record a parcel map within the period of approval or a period of extension shall terminate all subdivision proceedings. [Planning, Public Works]
6. **Conditions of Approval, Easements, and Restrictions:** All unmet conditions of approval, mitigation measures, easements, and restrictions shall be noted on a separate sheet(s) and recorded with the parcel map. [Planning, Public Works]
7. **Easements:** The parcel map shall show all easements for access, utilities, and drainage. [Planning, Public Works]
8. **Notice of Determination (Fish and Game Fees):** The applicant/developer/owner shall file the Notice of Determination, provided by the County Planning Department, with the County Clerk within five (5) days of approval of the parcel map. The Department of Fish and Game fee (\$1,876.75—Fish and Game Code section 711.4(d)) must be submitted with the filing. A copy of the filed notice shall be submitted to the County Planning Department. Should the Notice not be filed and the fee not paid within five (5) days, the application is subject to action described in Public Resource Code section 21167 and the project is not operative, vested, or final until the Notice is filed and the fee is paid (Public Resources Code section 21089(b)). [Planning]
9. **Habitat Conservation Plan Interim Mitigation Fee:** In accordance with County Ordinance 541, which sets fees for habitat conservation plan financing and kit fox protection measures, the applicant shall contribute, prior to recordation of the parcel map, a habitat conservation plan mitigation fee of \$900.00. [Planning]
10. **Mitigation Monitoring:** Prior to the recordation of the parcel map, the applicant/owner, County Counsel, and the Planning Director shall agree to and sign the Agreement to Provide Mitigation Monitoring to enact the mitigation monitoring program. [Planning]
11. **County Service Area:** Prior to recordation of the parcel map, the applicant shall make application to LAFCO to join a County Service Area (CSA #43) for fire and sheriff protection. All related processing fees, including State Equalization fees, must be submitted prior to recordation of the parcel map. [Planning, LAFCO]
12. **Construction Hours:** As required by County Ordinance 667 §1(XV), construction shall be limited to the hours of 7 a.m. to 7 p.m., Monday through Saturday. No construction activities shall be allowed on Sundays and holidays. The applicants for building permits within the subdivision shall be required to place a note to this effect on all construction plans. [Planning]
13. **Water Softeners:** A note shall be placed on the subdivision improvement plans and on an additional sheet to the Parcel Map that states: “The use of on site-regenerating water softeners is prohibited. Off-site regeneration softening systems may be used subject to the approval of the San Benito County Water District”. [Planning]

14. Archeological Resources: If, at any time in the preparation for or process of excavation or otherwise disturbing the ground, any human remains of any age, any significant artifact, or other evidence for an archeological site is discovered, all further excavation and disturbances within 200 feet of the discovery shall cease and desist. If human and/or questionable remains have been discovered, the sheriff/coroner shall be notified immediately pursuant to County Ordinance 610. [Planning]

15. Exterior Lighting: A note shall be placed on an additional sheet to the parcel map that states the following: “All exterior lighting for new development shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. All fixtures shall comply with County Ordinance 748. Prior to the issuance of a building permit, the applicant shall indicate the location, type, and wattage of all proposed lighting fixtures and shall include catalog sheets for each fixture.” [Planning]

Fire:

16. Fire Protection:

- a. A note shall be placed on the parcel map that states that “when developed the project shall meet the standards set forth in the latest adopted editions of the Uniform Fire Code, Uniform Building Code, Chapter 17 of the San Benito County Code, Public Resources Code 4290 and 4291 and other related codes as they apply to a project of this type and size. The Planning Department shall be provided with written verification that County Fire Department has approved all fire code requirements.”
- b. The applicant shall ensure adequate ingress and egress to any and all buildings. Roadways and driveways shall be an all-weather surface conforming to applicable codes and standards. Driveways shall include turnouts and turnarounds as required. If a gate is utilized on an access or egress driveway, a Knox System shall be required.
- c. Addresses shall be posted and installed to ensure they are visible to responding emergency personnel.
- d. If on or near an established and recognized water distribution system, fire hydrants shall be provided in accordance with 2001 Uniform Fire Code Appendix III-B. Fire hydrants shall be provided along fire apparatus access roads and adjacent public streets. Existing fire hydrants on adjacent properties shall not be considered available unless fire apparatus access roads extend between properties and easements are established to prevent obstruction of such roads per Appendix III-B of 2000 Uniform Fire Code. Required fire flow for this project shall be in accordance with 2000 Uniform Fire Code Division III, Appendix III-A, Table A-III-A-I. If fire flow cannot be made, all residential structures shall be equipped with an NFPA 13D sprinkler system.
- e. Access and water supply shall be in place and operable prior to any construction.
- f. Upon completion of the aforementioned stated fire requirements and prior to occupancy of any building or structure specifically referred to in this project, the applicant shall request and receive a Project Fire Requirement Final Signature from the County Fire Department. [Planning, Fire]

Public Works:

- 17. Road Dedication:** Prior to recordation of the parcel map for this project, the applicant shall make an irrevocable offer of dedication for half of a 60-foot right-of-way along the frontage of Orchard Road. [Public Works]
- 18. Road Improvements:** Prior to recordation of the parcel map for this project, the applicant shall make or bond for half of a 24-foot asphaltic concrete road surface on a 34-foot road bed along the portion of the property abutting Orchard Road.
- 19. Encroachment Permit:** Per §14-3 of County Code, prior to commencement of any improvements associated with the project, the applicant shall obtain a Public Works Encroachment Permit for any work being performed within the County road right-of-way. [Public Works]
- 20. Drainage:** As part of the submission of engineered improvement plans for this project, the applicant shall comply with County Drainage Standards and provide erosion and drainage control details for the project sheet, including, but not limited to, drainage calculations and construction details for the detention pond compensating for new impermeable surfaces created as part of this project. All drainage improvements must be installed or bonded for prior to recordation of the parcel map. An adequate easement to the County shall be provided on the site for all drainage facilities. [Public Works]
- 21. Parkland Dedication:** In accordance with §17-59 of County Ordinance 617 (Chapter 17 of County Code, or the County Subdivision Ordinance), prior to recordation of the parcel map, the applicant shall pay an in-lieu fee for park dedication and improvements. [Planning, Public Works]

Environmental Health:

- 22. Water System:** Per County Ordinances 564 and 592, the applicant shall obtain a permit for a Local Small Water System from the County Department of Environmental Health prior to recordation of the parcel map. [Environmental Health]

San Benito County Water District:

- 23. Water Supply:** Prior to recordation of the parcel map, the applicant shall obtain a letter from a San Benito County Water District Engineer stating the proposed Local Small Water System is in compliance with the San Benito County Groundwater and Aquifer Protection Ordinance (County Ordinance 664, or Chapter 7C of County Code), specifically with respect to “Permits Required” and “Radius of Influence.” [County Water, Planning]

Monterey Bay Unified Air Pollution Control District:

- 24. Fugitive Dust:** Emissions of fugitive dust during construction shall be controlled by the following measures:
- a. Grading shall be limited to 8.1 acres per day and excavation to 2.2 acres per day.
 - b. Graded and excavated areas shall be watered at least twice daily. Frequency of watering shall be based on the type of operations, soil, and wind exposure.
 - c. Grading activities during periods of winds over 15 miles per hour shall be prohibited.
 - d. Chemical soil stabilizers shall be applied to areas of inactive construction (disturbed lands within construction projects that are unused for at least four consecutive days).
 - e. Nontoxic binders (e.g., latex acrylic copolymer) shall be applied to exposed areas after cut-and-fill operations, and the areas shall be hydroseeded.
 - f. Haul trucks shall maintain at least 2 feet of freeboard, and all trucks hauling dirt, sand, or loose materials shall be covered.

- g. Prior to grading for the purpose of stabilizing earth, tree windbreaks shall be planted on the windward perimeter of areas to be graded within the eastern half of Parcel 1.
- h. Vegetative ground cover shall be planted on disturbed areas as soon as possible following disturbance.
- i. Inactive storage piles shall be covered. [Monterey Bay Unified Air Pollution Control District]

Office of the Agricultural Commissioner:

25. Vector Control: The applicant or subsequent property owner/developer shall employ measures to prevent the spread of vector-borne diseases. Prior to obtaining a building permit on any of the proposed parcels and upon completion of the proposed detention pond's construction, the applicant or subsequent property owner shall schedule an inspection with the Office of the Agricultural Commissioner to verify the detention pond's use of vector control measures. [Office of the Agricultural Commissioner]

Mitigation Measures:

26. Dust Control: A note shall be placed on the improvement plans for the subdivision stating that the soils shall be watered during site grading and construction activities to minimize dust. The note shall also state that, if dust is not adequately controlled through the application of water, grading activities will be suspended and an hourly watering schedule and/or maximum limit on the daily number of cubic yards to be graded will be imposed. [Mitigation Measure 1]

27. Geotechnical Engineering Recommendations: A note that shall be placed on the recorded map shall state, "A geotechnical engineering report, dated April 30, 2007, was prepared for this property by Earth Systems Pacific (file number SH-10672-SB), and is on file at the San Benito County Planning Department. The recommendations contained in said report shall be followed in all development of the property." [Mitigation Measure 2]

INFORMATIONAL – NON-ACTION ITEM

Commissioner Announcements/Reports/Discussions

There were no announcements, reports or items for discussion.

ADJOURNMENT

ON A MOTION BY COMMISSIONERS BETTENCOURT/SCATTINI THE MEETING WAS ADJOURNED AT 7:52 P.M.

Minutes prepared by:

Trish Maderis

Planning Commission Clerk

Attest:

Byron Turner

Principal Planner