SAN BENITO COUNTY PLANNING COMMISSION

Minutes of August 17, 2005

PRESENT: Bettencourt, Machado, Smith, Tognazzini

ABSENT: None

LATE: DeVries, arrived late and was seated at 7:11 p.m.

STAFF: Interim Director of Planning (IDoP) Bethke, Senior Planner (SP) Mary Paxton, Associate Planner (AP) Byron Turner, Planning Intern (PI) Chris Herrera, Deputy Director of Public Works (DDPW) Arman Nazemi; Deputy County Counsel (DCC) Shirley Murphy; Management Analyst (MA) Susan Lyons, and Clerk Trish Maderis.

Chair Bettencourt called the meeting to order at 7:06 p.m., and reiterated the standing rules of order.

PUBLIC COMMENT:

Chair Bettencourt opened the floor to opportunity for public comment.

No persons in attendance wished to speak to items not on the agenda; the public comment period was closed.

CONSENT AGENDA:

COMMISSIONERS MACHADO/SMITH MOTIONED TO ACCEPT THE CONSENT AGENDA AS PRESENTED. MOTION PASSED 4 – 0, WITH DeVries ABSENT.

Chair Bettencourt announced that agenda item 6: 2005-2006 Fiscal Year Preliminary Allocations Process (which had been continued from a prior meeting) would be moved to item 12 on the current agenda; other items were subsequently renumbered in order.

CONTINUED ITEMS:

Use Permit 895-04 – REQUEST: Phased construction of a new winery, tasting room, and future event center. APPLICANT/OWNER: Donati Vineyards. LOCATION: Highway 25 at Panoche Road, Paicines. ZONING: Agricultural Rangeland. ENVIRONMENTAL REVIEW: Mitigated Negative Declaration. Staff report by AP Turner (continued from 8-3-05) Use permit request to construct a 65,000 winery building, including a production facility, tasting room, administration offices, and a 'future events' room. The project would be completed in three phases. AP Turner called attention to the findings and conditions, and noted the clarifications to the mitigation measures (#2) contained in the staff report.

No speakers during the public comment period.

Commissioners raised the following issues during discussion:

- special events (hours, etc.) / consistency with other wineries
- engineering – will be to Commissioner in the future question on condition #6 (B.A.C.T.) (addressed in the mitigation measure referenced in staff report)

DDPW Nazemi clarified the B.A.C.T. could be conditions required during the construction phase. Commissioner Smith informed the B.A.C.T. was under the jurisdiction of the Regional Air Quality Control Board.

COMMISSIONERS MACHADO/SMITH MOTIONED TO ACCEPT THE MITIGATED NEGATIVE DECLARATION AND APPROVE USE PERMIT 895-04, WITH PASSAGE AT 5 – 0.

CONDITIONS OF APPROVAL:

1. **Hold Harmless:** The permittee 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 Use Permit and applicable proceedings. [Planning]
2. **Compliance Documentation:** 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]
3. **Conformity to Plan:** The development and use of the site shall conform substantially to the application site plan and Conditions of Approval as approved by the Planning Commission and filed with the Planning Department. Any increase in the nature or intensity of land use on the site shall be subject to further Planning Commission review and approval. [Building, Planning]

4. **Improvement Plans:** Prior to issuance of a building permit, the applicant shall submit building and improvement plans to the County Building and Planning for approval. [Building, Planning]
5. **Lighting:** All building or event lighting shall comply with the standards set forth in County Ordinance #748, Lighting Regulations (Mitigation Measure 1).
6. **BACT:** Best available control technology for construction equipment (BACT) shall be applied to the piece of construction equipment estimated to cause the highest level of combustion emissions during construction, based on APCD standards. BACT measures shall include two-degree timing retard, high pressure fuel injectors and reformulated diesel fuel, if available. These measures shall be noted on all construction plans and local jurisdiction shall perform periodic site inspections.(Mitigation Measure 2).
7. **Dust Control:** The following measures shall be implemented to reduce PM_{10} emissions during project construction:
    1. Water all active construction areas at least twice daily;
    2. Prohibits grading activites during periods of high wind (over 15 mph);
    3. Apply chemical soil stabilizers on inactive construction areas;
    4. Apply non-toxic binders to exposed areas after cut and fill operations and hydroseed area;
    5. Haul truck shall maintain at least two feet of freeboard;
    6. Cover all trucks hauling dirt, sand, or loose materials;
    7. Plant vegetative ground in disturbed sites as soon as possible;
    8. Cover inactive storage piles;
    9. Install wheel washers at the entrance to construction sites for all exiting trucks;
    10. Frequently water all unpaved roads within construction sites;
    11. Sweep streets if visible soil materials is carried out from the construction site;
    12. Post a publicly visible sign which specifies the telephone number and person to contact regarding dust complaints.(Mitigation Measure 3)
8. **Stockpile Top Soil:** If importation, exportation, or stockpiling of fill material is involved, soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation. Trucks transporting material shall be tarped from the point of origin.(Mitigation Measure 4)
9. **Kit Fox Survey:** Pre-construction survey- One pre-construction survey shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities or any project likely to impact the SJKF by the proposed activity. The status of all active, known, and/or potential dens shall be determined during the pre-construction survey.(Mitigation Measure 5)

10. **Natal/Pupping Dens:** If a natal/pupping den is discovered within the project area or within 200-feet of the project boundary, the DFG and USFWS shall be notified immediately. Natal/pupping dens which are occupied shall be avoided and not destroyed until the pups and adults have vacated the den and only after consultation and approval by the DFG and USFWS. A non-disturbance buffer zone shall be established around natal/pupping den site as approved by the DFG and USFWS. Destruction of any known or natal/pupping SJKF dens requires the take authorization/permit from the DFG and USFWS.(Mitigation Measure 6)

11. **Known or Potential Dens:** If a known or potential den is identified within the project site of the 200-foot radius around the project site, disturbance to all SJKF dens shall be avoided to the maximum extent feasible. Protection provided for the SJKF dens for use a shelter, escape, cover, and reproduction is vital to the survival of the species. In consultation with and approval by the DFG and USFWS, limited destruction of SJKFdens may be allowed, if avoidance is not feasible, provided the following procedures are observed. The DFG and USFWS shall determine if the following activities require an Endangered Species Act take permit or if the following could be conducted in a manner that would not result in take of the SJKF.

    a. Known or potential dens occurring within footprint of the project and/or within the 200-foot radius of the project site must be monitored for three days with tracking medium or an infra-red beam camera to determine the current use. If no kit fox activity is observed during this period, the den should be destroyed immediately to preclude subsequent use. No further mitigation would be required once the known or potential den has been destroyed.

    b. If kit fox activity is observed at the den during the three-day monitoring period, the den shall be monitored for at least five consecutive days from the time of the observations to allow any resident animal to move to another den during its normal activity. Use of the den shall be discouraged during this period by partially plugging its entrance(s) with soil in such a manner that any resident animal can escape easily. Only when the den is determined to be unoccupied may the den be excavated under the direction of a qualified biologist. If the animal is still present after five or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a qualified biologist, it is temporarily vacant, for example during the animal's normal foraging activities. The DFG and USFWS encourage hand excavation, but realize that soil conditions may necessitate the use of excavation, but realize that soil conditions may necessitate the use of excavating equipment, however, extreme caution shall be exercised.

c. Destruction of the den should be accomplished by careful excavation until it is certain that no kit foxes are inside. The den should be fully excavated, filled with dirt and compacted to ensure that kit foxes cannot reenter or use the den during the construction period. If at any point during excavation a kit fox is discovered inside the den, the excavation activity shall cease immediately and monitoring of the den as described above shall be resumed. Destruction of the den may be completed when in the judgment of the qualified biologist the animal has escaped from partially destroyed den. If any den was considered to be potential den, but is later determine during the monitoring or destruction to be currently, or previously used by kit fox (e.g. if kit fox sign is found inside), then destruction shall cease and the DFG and USFWS shall be notified immediately.(Mitigation Measure 7)

12. **Construction Measures:** Given that the project site falls within an identified SJKF movement corridor, the following mitigation measures shall be implemented during construction to avoid and minimize potential impacts on the SJKF should they occur.

a. Construction vehicles shall observe a 20-mph speed limit in all project areas, particularly at night when the kit foxes are most active.

b. To prevent inadvertent entrapment of kit foxes or other animals during construction of the project, all excavated, steep-walled holes or trenches more than two-feet deep shall be covered at the close of each day by plywood or similar materials, or provided with one or more escape ramps constructed to earth fill or wooden planks. Before such holes or trenches are filled, they should be thoroughly inspected for trapped animals. If at any time a trapped or injured SJKF is discovered, the DFG and USFWS shall be notified immediately.

c. The SJKF is attracted to den-like structures such as pipes and may enter stored pipe becoming trapped or injured. All construction pipes, culverts, or similar structures with s diameter of four-inches or greater that are at a construction site for one or more overnight periods shall be thoroughly inspected for SJKF before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If SJKF is discovered inside pipe, that section of pipe should not be moved until the DFG and USFWS have been consulted. If necessary, and under the direct supervision of a qualified biologist, the pipe may be moved once to remove it from the path of construction activity, until the fox has escaped.

d. So as to not be an attractive nuisance or to attract potential SJKF predators like coyotes, all food-related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in closed containers and removed at least once a week from the construction site.

e. A representative shall be appointed by the project proponent who will be the contact source of any employee or contractor who might inadvertently kill or injure a SJKF identified to all construction related personnel at the outset of construction.

f. If a known or potential den is discovered during the pre-construction survey, an employee and construction contractor education program shall be conducted prior to any construction activities including but not limited to equipment mobilization, clearing and grubbing, and materials stockpiling. The program shall be implemented by a qualified biologist and include at a minimum a description of the SJKF and its habitat needs; a report of the occurrence of SJKF in the project area; and explanation of the status of the species and its protection under the Endangered Species Act; and a list of measures being taken to avoid and minimize impacts to the species during project construction and implementation. A fact conveying this information should be prepared for distribution to the above-mentioned people and anyone else who may enter the project site.(Mitigation Measure 8)

13. **Cultural Resources:** If, at anytime in the preparation for or process of excavation or otherwise disturbing the groud, any human remains of any age, or any significant artifact or other evidence of an archaeological site is discovered, all further excavations and disturbance within 200 feet of the discovery shall cease and desist. If human and/or questionable remains are discovered, the sheriff-coroner shall be notified immediately pursuant to County Ordinance No. 610.(Mitigation Measure 10)

14. **Soils Engineering Report:** The winery shall be designed and constructed in accordance with the recommendations contained in the "Soils Engineering Report- Donati Winery" on March 4, 2005 by Earth System Pacific (pages 8 through 24). All recommendations contained in the Report are mandatory including any recommendation (s) that contain permissive or non-mandatory language (i.e., "should" vs. "shall").(Mitigation Measure 11)

15. **Hazardous Material :** If any hazardous materials are to be stored in the proposed winery facility, a hazardous materials business plan shall be completed and submitted to the County Environmental Health Department.(Mitigation Measure 12)

16. **Pollutant Removal Techniques:** The applicant/ developer/owner shall integrate into any proposed project design available technologies and techniques to remove pollutants from site runoff prior to entering the drainage courses. Such techniques shall include (but would not be limited to) reduce slope grading, drainage through vegetative zones (e.g., swales that use natural processes, vegetation, and associated beneficial bacteria and microorganisms to break down pollutants) and other options to intercept pollutants being conveyed toward drainage paths. Technological solutions such as pollutant filter blankets or particulate filters (e.g., Fossil Filters) may also be installed as pollutant-removal solutions. (Mitigation Measure 13)

17. **Storm Water Detention:** The applicant shall implement on-site physical improvements (e.g., detention basins, etc.) that ensure that existing peak discharge to downstream drainages is not increased as a result of development. Detention basins shall be deigned in accordance with applicable County Standards. The design must consider the volume of water that the basin is expected to store as well as operation and maintenance of the basins. The detention basins are to have a filtering device on the inflow side to prevent the flow of contaminants and sediments into the basins. Basins shall be designed to meet the following standards:

    1. ***Volume:*** All detention basins shall be sized to provide capacity for a 100-year storm event (minimum) and to meet the outflow requirements listed below.
    2. ***Outflow Device:*** All detention basins are to be designed to be free draining. Terminal basins (i.e., pumped basins) are not allowed. Outlet pipes shall be oversized (18-inch minimum) with an orifice restriction to limit outflow to 0.07 cubic feet per second per acre of developed land or as determined by the County. Orifice restriction plates shall be removable for emergency situations. A removable trash rack shall be provided at the outlet.
    3. ***Slopes:*** Maximum side slopes shall be four horizontal to one vertical on interior slopes and two horizontal to one vertical on exterior slopes. A soils engineering and geotechnical report shall be required for all levee sections. The report shall address remedial grading, benching, and slope stability of the level sections.
    4. ***Emergency Overflow:*** An emergency overflow spillway shall be sized for the peak 100-year storm runoff. The spillway shall be engineered and shall be sized for the reinforced concrete. The spillway should be designed with a minimum of one foot of freeboard above the 100-year spill water surface elevation.
    5. ***Low Flow Drainage:*** The bottom of the basin shall have a minimum gradient of 2% drainage to the outlet, or a low flow reinforced concrete swale shall be provided with a minimum gradient of 0.5% drainage to the basin outlet.

6. ***Access Ramp:*** A maintenance access ramp shall be provided down into basin in a manner and dimension acceptable to County Public Works staff
7. ***Landscaping:*** The County shall require review and approval of any proposed basin landscape plan. Landscaping shall be selected to minimize maintenance, while minimizing impact to native and sensitive species that could be harmed by invasive plant species. No trees or shrubs shall be planted within 15 feet of the basin outlet. Floating objects such as railroads ties and landscape bark are not permissible.
8. ***Maintenance:*** Prior to final development approval, the applicant/developer/owner shall enter into a maintenance agreement with the County to assure perpetual maintenance of the basin and related on-site private drainage improvements and to allow the County emergency access.(Mitigation Measure 14)

18. **Noise:** Any site preparation, grading, construction, or building activity related to the construction of the winery shall be limited to between the hours of 7:00 am and 7:00pm, except Sundays and federal holidays, when no work shall take place.(Mitigation Measure 15)

19. **Percolation Tests:** The applicant shall submit to the County Environmental Health Department a combination soil profiles and/ or percolation test that address the requirements outlined in the Central Coast Plan. (Mitigation Measure 16)

20. **Water:** The applicant shall demonstrate a sufficient quantity of water for the project and shall submit evidence that the water quality meets relevant standards. Water quantity and quality reports shall be reviewed and approved by the County Environmental Health Department prior to commencement of project construction. (Mitigation Measure 17)

21. **RWQCB:** Prior to final occupancy construction, the applicant shall obtain any required discharge permits for the Regional Water Quality Control Board.(Mitigation 18)

22. **Special Events:** Special events including Wine Maker's Dinners, Charity Events, Weddings, & Educational Events shall be limited to the following yearly breakdown:

- 24 events @ 50 people
- 18 events @ 200 people
- 5 events @ 350 people [Planning]

23. **Traffic:** Prior to issuance of a building permit, the applicant shall install or bond for a right turn lane along Highway 25 to accommodate additional traffic entering the project site. The additional turning lane shall be designed for a minimum 45 miles per hour to Caltrans standard. The project entrance shall be designed to commercial driveway standard. [Public Works, Caltrans]

24. **Encroachment Permit:** An encroachment permit for work within Caltrans right-of-way is required. [Public Works, Caltrans]

24. **Fire Protection:** All structures and buildings shall be fire sprinklered per NFPA 13. All sprinkler plans shall be submitted to the County Fire Department for review prior to any installation. The underground, framing, and test inspections shall be scheduled with County Fire. FDC shall be located where indicated on the site plan. Sprinkler systems and alarms shall be monitored. If an established water company is available, fire department connections shall be located and approved by the Fire Department. All fire hydrants shall be "Steamer Type" hydrants. If an adequate water source is not available for fire suppression, the applicant shall install an above ground water tank to ensure there is adequate fire flow. Fire flow shall be determined utilizing the 2000 UFC Division III, Appendix III-A, Table A-III-A-I. The fire department shall be able to access water supply from one or more private on-site "Steamer Type" hydrants conforming to County Codes and standards. Hydrants shall be located with fire department approval. [Fire]
25. **Wine Tasting**: The winery shall be authorized to engage in public wine tasting as part of the winery operation. Wine tasting shall be permitted seven (7) days a week from 10 a.m. to 5 p.m. [Planning]
26. **Parking**: All parking for special events/gatherings shall be located on the winery site. No event parking shall be permitted off site. [Planning]
27. **Use Permit Review/ Extension/ Revocation:** Any expansion of this use beyond what is currently proposed must first be reviewed by the Planning Director, and if necessary, shall require further Use Permit review by the Planning Commission. In the event of a compelling public necessity, non-compliance, problems, concerns, or complaints, this permit will be subject to further review and conditioning or, if necessary, revocation by the Planning Commission. Violation of the permit, creation of a nuisance, or a compelling public necessity could cause the revocation of this permit. [Planning]

Minor Subdivision 1165-05 – REQUEST: To subdivide a 394.94-acre parcel into two parcels of 213.27 acres and 181.67 acres. APPLICANT/OWNER: Jeff Hall. LOCATION: East end of McMahon Road, Hollister. ZONING: Agricultural Rangeland. ENVIRONMENTAL REVIEW: Mitigated Negative Declaration. (Continued from 8-3-05) Staff report by AP Turner who said any reference to the Board of Supervisors should be corrected to read County Engineer.

During the public hearing, Dan Weatherly of San Benito Engineering offered comments:

→ having reviewed the Conditions, he agreed that the references should be to the County Engineer
→ offered objections to improvement to the access road (is County standard, but asks that requirement be deferred due to use of road for farm equipment)

Commissioners asked Mr. Weatherly:

✦ about dust associated with project
✦ acreage size

It was noted that the objective of the 'split' is to resolve inheritance issues.

Commissioners asked DDPW Nazemi to comment on reasons for the requirement of the conditioning the road (consistency). It was determined that the Commissioners have the authority to waive/defer the requirement. Further, a note can be placed on the map for the deferment until a building permit request is received in the County office.

Other issues discussed:
Subdivision Ordinance section (clarified) regarding deferments; findings required for deferment
need to have note on map regarding road improvements at time of development

COMMISSIONERS DeVRIES/TOGNAZZINI MOTIONED TO APPROVE MINOR SUBDIVISION 1165-05, AND GRANT A DEFERMENT TO THE ROAD IMPROVEMENT REQUIREMENT AS DISCUSSED. THE MOTION PASSED 5 – 0.

CEQA FINDINGS:

Finding 1: The Initial Study for MS 1165-05 has been prepared in compliance with the provisions of the Public Resources Code, the State CEQA Guidelines, and the San Benito County Implementing Procedures for CEQA.
Evidence: *All provisions including both State and County environmental guidelines and policies for the preparation of an Initial Study have been followed. The environmental documents used in the preparation of the Initial Study are on file with the County Planning Department in file numbers MS 1165-05.*
Finding 2: The Planning Commission has considered the proposed Mitigated Negative Declaration together with all comments received from the public.
Evidence: *The Initial Study, comments received thereon, the staff report as well as verbal testimony was presented to the Planning Commission in preparation for, and during, the August 3, 2005 Planning Commission meeting.*
Finding 3: The Mitigated Negative Declaration reflects the independent judgement of the Planning Commission.
Evidence: *The project planner prepared the Initial Study and responses to comments for the Mitigated Negative Declaration, this report, and the staff recommendation. The consideration thereof and the making of findings as enumerated herein reflect the Planning Commission's independent evaluation and judgement.*
Finding 4: The Planning Commission has found that there is no substantial evidence that the proposal will have a significant effect on the environment.
Evidence: *The Planning Commission considered all the evidence prior to deciding to adopt the Mitigated Negative Declaration and the Mitigation Monitoring Report Program. The Planning Commission determined that the Mitigation Measures and the Conditions of Approval included in the staff report would reduce the impacts of the proposal to a less than significant level.*

REQUIRED FINDINGS:

Finding 1: The proposed map is consistent with the General Plan and any applicable specific plan.

Evidence: *Staff has compared this proposal with the County General Plan and did not find any inconsistencies. No Specific Plan has been adopted for this area.*

Finding 2. The design or improvements of the proposed subdivision are consistent with the General Plan or any applicable specific plan.

Evidence: *The design and improvements as proposed and required are consistent with General Plan goals, policies, and objectives of the County. No specific plan is applicable.*

Finding 3. The site is physically suitable for the type of development.

Evidence: *An initial study was conducted and the site has been determined to be physically suitable. The site is not located within any environmentally hazardous zone, including flood, fault rupture or landslide hazard zones. A portion of the property is in an area which has greater than 30% slopes, however, no grading or other development will take place in areas with 30% slope.*

Finding 4. The site is physically suitable for the proposed density of development.

Evidence: *The site density is consistent with the General Plan density requirements. Staff has conducted an initial study (attached) which did not indicate that there will be any un-mitigatable environmental effects associated with the density.*

Finding 5. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Evidence: *The Initial Study concluded that no substantial damage to the environment or fauna would result through project implementation. Mitigation Measures agreed to by the applicant would reduce impacts to an insignificant level.*

Finding 6. The design of the subdivision or type of improvements is not likely to cause serious public health problems.

Evidence: *There is no evidence that the septic service currently in use is unsafe. Adequate water service is available. Septic and water systems will be required to comply with state and local regulations to ensure public health and safety and to minimize the impacts to groundwater quality.*

Finding 7. The design of the subdivision or type of improvements will not conflict with easements, acquired by the public at large, for access through, of use of, property within the proposed subdivision.

Evidence: *The applicant has submitted a Title Report, which is on file with the Planning Department. No easements were identified that would conflict with the subdivision.*

Finding 8. The land is not subject to a contract entered into pursuant to The California Land Conservation Act of 1965 (Government Code Section 51200 et seq.) and that the resulting parcels following a subdivision of that land would not be too small to sustain their agricultural use.

Evidence: *The property is currently under a Williamson Act contract. On June 8, 2004, the Board of Supervisors approved the request to divide the Williamson Act contract into 2 new preserves of 182 and 213 acres.*

Finding 9. The discharge of waste from the proposed subdivision into an existing community sewer system would not result in violation of existing requirements prescribed by the Central Coast Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code.
Evidence: *There would be no discharge of waste into a public sewer system. Private septic tank service is in use, and the site can continue to accommodate such service. A septic system will be utilized for any future development.*

Conditions of Approval:

1. **Recordation:**
   A Parcel Map shall be submitted for review by the Planning and Public Works Departments before filing for recordation. The tentative map shall expire two (2) years after Planning Commission approval, unless extension(s) are granted pursuant to local regulation and the Subdivision Map Act. [PLANNING, PUBLIC WORKS, RECORDER]
2. **Hold Harmless:**
   Pursuant to Section 66474.9 of the 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 the County or its agents, officers, or employees to attack, set aside, void, or annul the approval of the subdivision and applicable proceedings. San Benito County shall be subject to Section 66474.9(b)(2) of the Government Code. San Benito County reserves the right to prepare its own defense pursuant to said section. [PUBLIC WORKS]
3. **Assessment:**
   Prior to recordation of the Parcel Map, the applicant shall pay applicable security for taxes and special assessments as required by Sections 66492 through 66494 inclusive of the Subdivision Map Act. [ASSESSOR, PUBLIC WORKS]
4. **Easements:**
   The Parcel Map shall show all easements for access, utilities, and drainage. [PLANNING, PUBLIC WORKS]
5. **Compliance Documentation:**
   Prior to action by the Board of Supervisors on the Parcel Map, the subdivider shall submit a summary response to these conditions of approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. The subdivider shall also submit a response as to how this project complies with all applicable impact fees. [PLANNING, BUILDING, PUBLIC WORKS]
6. **Encroachment Permits:**
   Prior to any construction within the County right-of-way, the applicant shall obtain the appropriate encroachment permit from the Public Works Department. [PUBLIC WORKS]

7. Conformity with Plan:

The development and use of the site shall conform substantially with the proposed site plan and the Conditions of Approval as declared by the Planning Commission. Any further development of additional units shall be subject to further Planning Commission review and approval. [PLANNING]

8. Air Quality:

A note shall be placed on the subdivision improvement plans and on an additional sheet to the Parcel Map that states: "All grading and building permits for new development shall be conditioned to require that disturbed soils be watered during site grading and construction activities to minimize dust." [Mitigation Measure 1]

9. Kit Fox Habitat: Prior to recordation of the Parcel Map, the applicant shall be required to pay the Kit Fox mitigation fees as required by Ordinance 541, and any amendments. [Mitigation Measure 2]

10. Archaeological 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. 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 3]

11. Soils Report:

Prior to recordation of the parcel map, a note shall be placed on the parcel map or an additional page shall be provided for informational purposes stating: "A Soils Engineering Report shall be required prior to any development of either Parcel 1 or Parcel 2". [Mitigation Measure 4]

12. Non-buildable Areas:

Prior to recordation of the Parcel Map, all areas with 30% or greater slopes shall be clearly identified and labeled on the Parcel Map and these areas shall be designated as non-buildable. [Mitigation Measure 5]

13. Septic Feasibility:

Prior to construction of a residence on parcel 1, a soil analysis and soil profile shall be completed to determine feasibility of a septic system. A soil percolation test may be required pending the data from the soil profile. [Mitigation Measure 6]

14. Special Studies Zone:

Prior to recordation of the Parcel Map, a note shall be placed on the Parcel Map or an additional page shall be provided for informational purposes, stating the area affected by the Alquist-Priolo Special Studies Zone, and this area shall be clearly marked on the Parcel Map and designated as a nonbuildable zone. [Mitigation Measure 7]

15. Noise:

A note shall be placed on an additional sheet to the Parcel Map that states: "As required by County Ordinance, any grading and construction on the parcels shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No grading and construction activities shall be allowed on Sundays and holidays. The applicants for any future building permits within the subdivision shall be required to place a note to this effect on all construction plans." No airport is located in the vicinity of this project. [Mitigation Measure 8]

16. Turnaround:

Prior to the recording of the Parcel Map, adequate right-of-way for a turnaround shall be made at the common boundary between the proposed parcels. [Mitigation Measure 9]

17. Water

Prior to recordation of the Parcel Map, the applicant shall provide evidence to the Environmental Health and Water District that the water source utilized for the proposed project meets County standards. [Mitigation Measure 10]

18. Road Dedication:

Prior to the recording of the Parcel Map, applicant shall make an irrevocable offer of dedication for full 30 feet road right-of-way to San Benito County for the proposed access road, from McMahon Road to the common boundary between the proposed parcels. [Public Works, Subdivision Ordinance Section 17-53]

19. Road Improvements:

Prior to Recordation of the Parcel Map, applicant shall enter into a deferred improvement agreement to make roadway improvements which shall consist of widening of the proposed access road, from McMahon Road to the common boundary between proposed parcels (full-width 16 feet AC on 18 feet road bed, plus 40 feet radius AC turnaround). [Public Works, Subdivision Ordinance Section 17-64, 65(a), and 17-B.4]

20. Fire Standards:

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 on Parcel 1 or 2, the applicant shall comply with all requirements of the California Department of Fire, including the provision of an adequate water supply and flow for fire suppression." [Public Works, Fire]

21. Improvement Plans:

As part of the submission of any engineered improvement plans required for this project, applicant shall comply with County Drainage Standards and provide erosion and drainage control details for the project sheet. Any drainage calculations submitted shall comply with the requirements of the County Drainage Standard, and shall be engineer signed and stamped. Applicant shall submit drainage calculations for: any proposed or existing drainage courses to the proposed ponds, the proposed ponds, and the discharge lines for the proposed ponds. Further, applicant shall insure that all drainage courses shall either maintain a critical velocity less than maximum for the soil type, or be properly lined to handle a high critical flow velocity. [Public Works]

22. Utilities:
Prior to recordation of the parcel map, the applicant shall record a deed restriction that states: "Utility service systems to all parcels shall be placed underground". [Public Works, Subdivision Ordinance Section 17-65 (f)]

23. County Service Area:
Prior to recordation of the parcel map, the applicant shall make application to LAFCO to join County Service Area 43 for fire and sheriff protection. All related processing fees, including State Board of Equalization fees, must be submitted prior to recordation of the final map. [LAFCO, Ordinance 651]

PUBLIC HEARING ITEMS:

Minor Subdivision 1123-02 – REQUEST: To subdivide a 20.8 acre parcel into four five acre parcels. APPLICANT: Dave Grimsley. LOCATION: Thomas Rd., Hollister. ZONING: Agricultural Productive. ENVIRONMENTAL REVIEW: Mitigated Negative Declaration Staff report by SP Paxton. [Staff asks for direction as to other environmental information needed for decision making before vote.] Clarification by DCC Minor Subdivision 1165-05 regarding portion of the Growth Ordinance and ability of Commissioners to reinstate allocations, following expiration with findings.

Speakers during the public hearing:

- Doug Marshall, Attorney, 108 Locust #11, Santa Cruz: spoke at length regarding the Mitigated Negative Declaration (Exhibit C {CA Tiger Salamander}) claiming there was no basis for mention of the species on this property. Asks for date certain to have decision made by Commissioners. Says that many of the issues 'left hanging' have been addressed.
- Roger Grimsley: said storm drain and berms recommended by staff, but there would be no increase in storm water runoff from grading. Said each lot would be designed to County standards.

Commissioners discussed:

- unresolved issues concerned with the property
- not acting on scheduled matters in a timely manner (deadline issues) and required findings for approval/rejection of a project
- requirements of CEQA
- habitat problems other than salamanders
    - grading concerns
- process of environmental review
- intertwining of allocations and environmental process
- reinstatement of allocations
- need to adhere to procedural process
- issues joined to staff's analysis

FOLLOWING IN-DEPTH DISCUSSION, COMMISSIONERS DeVries/TOGNAZZINI MOTIONED TO CONTINUE THE MATTER TO OCTOBER 19, 2005, (WITH THE ALLOCATION REINSTATEMENT TO BE CONSIDERED SEPTEMBER 7, 2005). THE MOTION PASSED 5 – 0.

Use Permit 924-05 – REQUEST: To convert a 576 square foot garage to an accessory senior second unit. APPLICANT: Marjorie Palmer. LOCATION: 1528 Merrill Rd., San Juan Bautista ZONING: Agricultural Rangeland. ENVIRONMENTAL REVIEW: Categorical Exemption. Staff report by SP Paxton, calling attention to condition #1, requiring revisions to findings (septic and water systems).

Commissioners discussed:

- if non compliance with condition #1, continue for six months
- possible delays weather due to weather
- potential for construction completion prior to septic system installation (building has been converted – not new construction – not occupied yet)
- how conditions of approval are met
- typical building permit process
- use permit requirements/septic permit approval(s)-issuance

No speakers during public hearing; applicant was not present due to conflict (out of area).

COMMISSIONERS TOGNAZZINI/SMITH MOTIONED TO CONTINUE THE MATTER TO SEPTEMBER 7, 2005 AND REQUIRE THE APPLICANT BE PRESENT. THE MOTION PASSED 4 – 1; DeVries DISSENTED.

Tentative Subdivision Map 03-69 – REQUEST: To subdivide an approximately 32-acre parcel into 5 1-acre parcels and 1 open-space parcel including a caretaker unit. APPLICANT: Tina Bertuccio LOCATION: Union Road at Summerset Dr., Hollister ZONING: Agricultural Productive – Planned Unit Development (AP-PUD). ENVIRONMENTAL REVIEW: Mitigated Negative Declaration Staff report by AP Turner. Matter had been reviewed several times previously, changes to project as previously indicated noted and changes in the Conditions within staff report noted.

Commissioners discussed with staff:
final map approval ~~Planning Department/County Engineer~~ Board of Supervisors
Condition #4 strike reference to Kit Fox
Condition #17: acreage is 23.46
~~caretaker residence~~ residence for caretaker
Condition #24A: parcels 1, 4, 5 & 6
Condition #25 ~~6~~ 5
add Condition #28: Prior to recordation of final map, applicant shall dedicate a 15-foot wide easement for right of way and public utilities along the southeastern property line parcel 2 and 3 and easterly property line of parcel 6.

DDPW Nazemi called attention to a 'missing Condition': Prior to recordation of final map, applicant shall improve (or place bond for) left-hand channelization on Union Road at the project entrance. Spoke on need for dedication of 'half of right of way'.

Clarification was requested for Condition #28. Correction to Condition #18 (Air Quality): Note on map *to specify all grading and building permits for new construction shall be conditioned to require……*

Speakers during the public hearing were:
Engineer Roger Grimsley correcting the ~~easterly~~ westerly property line of parcel 6, and indicating concurrences with other changes as outlined. Reminded of:
5 findings for CEQA, 9 findings for mitigations, and 29 Conditions of Approval, subject to amendments.

The following spoke in opposition:
Kristen Damm, 289 Sommerset, requests a five-acre 'no building' zone on parcel 6 directly in front of her home.
Mary Damm, 289 Sommerset, asked questions of Condition #23. Discussion with staff re: 'half of right of way' (1/2 of 30-foot right of way). Asked about 'between hours of construction'. Reminded of abandonment of PUD at previous meeting. Agreement about 1/2 of road right of way; wants clarification that is 1/2 of 30-feet right of way. Drive to be located in way it is buildable. [IDoP Bethke explained the requirements/agreements of the meeting earlier in the week during which each of the parties made agreements.] She also requested the five-acre 'no building' zone on parcel 6 directly in front of her home. Spoke on several issues of the initial study, which she felt to be unresolved, many of which were reiterations of her statements/questions at previous public hearings.
Commissioners discussed with Mrs. Damm:

- no-build zone request
- map
- distance of 'bench' (14 feet between 2 properties)
- trees along property line
- houses restricted to single story
- view lines

IDoP Bethke advised that n lieu of building envelope, there could be a condition of a landscape buffer. IDoP Bethke explained the process which will occur in the future

Roger Grimsley offered rebuttal to issues raised by the speakers and reminds of previous directions given regarding the remainder property.

Mrs. Damm returned to the podium to argue her points, including issues about grade 1 soils.

DCC Murphy clarified sections of the PUD Ordinance relating to Open Space. She also spoke to matters of interest relating to Grade 1 Soils. DCC Murphy will provide further information regarding the caretaker residence.

Chris Parga, 255 Union Road, asked for a 'no house' zone as well as road change access. He spoke on the need for a retaining wall and clarified that the house he has will be occupied following remodeled. Spoke on problems with driveway sloughing off resultant in other issues.

Ray Pierce said he lives in Ashford Highlands and supports the project as preserving Open Space through clustering. "It's a good project and everyone should come together."

Commissioners discussed:

- right of way issues [DDPW Nazemi and Mr. Grimsley provided details and clarification]
- retaining wall
- easements – possibly staked to boundaries

Commissioner DeVries offered stance for continuation:

- no evidence for dwelling on parcel 6
- if OK for dwelling on parcel 6, where should it be
- sloughing of hillside onto easement
- corrections to Conditions noted in the staff report with clarification

COMMISSIONERS DeVRIES/TOGNAZZINI MOTIONED TO CONTINUE THE MATTER OF TENTATIVE SUBDIVISION MAP 03-69 TO THE SEPTEMBER 7, 2005 COMMISSION MEETING, IN CONSIDERATION OF THE POINTS RAISED (above). The motion passed 5 – 0.

It was strongly supported to have the parties involved work for resolution of the issues.

CONTINUED ITEMS:

2005-2006 Fiscal Year Preliminary Allocations Process ~ Discussion

IDoP Bethke presented staff recommendations:
Submit application (status quo)
Option to amend ordinance to give special consideration to partially allocated previous application; needs further refinement. DCC spoke on various possibilities for amending the Ordinance:

- 1 year 'grace period'
- Other issues raised by Commissioners
- Ranking system
- asking Board of Supervisors to adopt the 1 year 'grace period' immediately
- treatment possibilities for those getting partial allocations in the past

Commissioners expressed frustration this matter had not been dealt with as they have consistently listed this matter as 'high priority'. DCC Murphy said in the Ordinance there is no provision for the Commission to begin a process of recapturing partial allocations given last year. IDoP Bethke said in certain instances recapture is possible under provisions of the Subdivision Map Act.

Discussion ensued regarding:

- 1% growth cap
- partial allocations – 1 year grace period
- need for consistency in accepting and presenting applications
- how to free up extra allocations
- issues of liability in recapturing allocations
- legal issues relating to the past practices
- need to look to the 'best interest of the County'
- concern that because of previous actions the allocations may be 'locked up' for years
- criteria being used – must be abided with
- allocations which are expired/withdrawn
- ability of Commission to refuse requests of extensions

Roger Grimsley said the 2-year period for activation should start when fully allocated. There were no other speakers during the public hearing.

DCC explained the process as it had been set up: the application process, mandatory requirements, the rankings, anticipated reaction/action following the staff report; and other issues. She stressed the importance of following the Ordinance, and not consideration of assistance to a 'bad project'.

MA Lyons spoke to the importance of adhering to the 'processes', paying attention to the rankings, etc. She emphasized of working within the staff report as relating to the rankings.

Discussion of methodology of determining the number of allocations and clarification of the application deadline.

Earlier discussions were had regarding possibly changing the application date of September 1, 2005, but this was not recommended. Chair Bettencourt spoke on being consistent, fair, and 'sticking to the rules'.

COMMISSIONER DeVRIES OFFERED A MOTION DIRECTING COUNTY COUNSEL TO PREPARE A STAFF ANALYSIS RELATING TO POLICY AND PROVIDE LEGAL ADVICE WHAT IS THE BEST WAY FOR THE COMMISSIONERS/COUNTY TO PROCEED WITH THE DATA TO BE PROVIDED AT THE NEXT MEETING. THERE WAS NO SECOND; THE MOTION DIED.

DCC Murphy reminded that discussions have been had regarding possible revision of the entire Ordinance. Several issues regarding various portions of the Preliminary Allocations procedures were noted. DCC Murphy said it is multifaceted.

AP Turner explained how the questions have been handled when presented at the Planning Department.

COMMISSIONER DeVRIES MOTIONED TO DIRECT COUNTY COUNCIL TO PREPARE A MEMORANDUM TO THE PLANNING COMMISSION WITH COPY TO THE BOARD OF SUPERVISORS RECOMMENDING A COURSE FOR PROCEEDING WHICH HIGHLIGHTS THE BEST INTEREST OF THE COUNTY.

DCC Murphy asked if the memo referenced in motion should be confidential? "Since this body doesn't have anything to do directly with litigation, I'm not sure that any advice could be pulled into a closed session discussion under the Brown Act and retained as confidential."

Commissioners then discussed potential scenarios the County Counsel could discuss with the Board of Supervisors. DCC Murphy advised that anything related to policy should be (Planning) staff recommendation.

COMMISSIONER DEVRIES WITHDREW THE MOTION.

Staff was requested to work with DCC Murphy to plan a recommended course of action.

Chair Bettencourt directed the following items continued to the August 17, 2005 meeting due to the lateness of the hour and the standing rule that no new items are heard after 10:30 p.m.

Planning Commission Procedures – Discussion of Amendments

Recreation requirements for Planned Unit Developments (PUD) - Discussion

With no other business to be discussed at the meeting (*standing rule invoked*), the Planning Commission meeting was adjourned at 10:40 p.m.

Minutes transcribed by:
Judi Johnson

Attest:
Michael Bethke, Interim Director of Planning