

SAN BENITO COUNTY PLANNING COMMISSION

May 6, 2009

Minutes

PRESENT: Bettencourt, DeVries, Machado, Scattini

ABSENT: Culler

STAFF: Director of Planning (DoP) Art Henriques; Assistant Director of Planning (ADoP) Byron Turner; Assistant Planner (AP) Ann Dolmage; Public Works Engineer (PWE) Art Bliss; Acting County Counsel (ACC) Barbara Thompson and Clerk Janet Somavia.

Chair Bettencourt called the regular meeting of the San Benito County Planning Commission to order at 6:11 p.m. as he led the pledge of allegiance to the flag.

DIRECTOR'S REPORT

DOP Henriques reported the following recent Board of Supervisor 4/28/09 meeting information:

- Council of Governments received State approval for the Highway 25 safety median project.
- Approval of the draft Parks Master Plan subject to further review by the County.

Board of Supervisor of 5/5/09 meeting information:

- General Plan Advisory Committee had a meeting. Tim Foley appointed Chairman and Jim West as Vice-Chair. Established a schedule of meetings.
- Hearing on the budget by the Board early August now.

Commissioner Scattini inquired regarding the funds for Highway 25. DoP Henriques responded that this is for concrete median barrier and closing some driveways and frontage roads. Further improvements are years off.

Commissioner Bettencourt inquired regarding the update of the Housing Element. DoP Henriques stated that the update is due this summer and the initial draft will be soon circulated to the Planning Commission for comment.

PUBLIC COMMENT

Chair Bettencourt opened the opportunity for public comment.

There being no public comment, the public comment period was closed.

CONSENT AGENDA

- These items will be considered as a whole without discussion unless a particular item is requested by a member of the Commission, Staff or the public to be removed from the Consent Agenda. Approval of a consent item means approval of the recommended action as specified in the Staff Report.
- If any member of the public wishes to comment on a Consent Agenda Item please fill out a speaker card present it to the Clerk prior to consideration of the Consent Agenda and request the item be removed and considered separately.

1. Acknowledge Public Hearing Notice
2. Acknowledge Certificate of Posting
3. Minutes of April 1, 2009

Commissioner Machado moved to approve Consent Agenda Items 1, 2 and 3, Commissioner Scattini offered a second to the motion which **passed 4-0-1**; Commissioner Culler absent.

CONTINUED ~ PUBLIC HEARING

4. ZONE CHANGE NO. 06-148, GENERAL PLAN AMENDMENT NO. 09-40 & M-DISTRICT REVIEW NO. 82-06 REQUEST: Applicant is requesting a Zone Change and General Plan Amendment from Agricultural Productive (AP) to Heavy Industrial (M-2). Applicant is also proposing an M-District Review to address that the property will continue to be used for manufacturing. APPLICANT/OWNER: Ruben Rodriguez LOCATION: 2321 Fallon Road, Hollister (APN 017-090-011) ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration. (*continued from 4-1-09*)
PLANNER: Lissette Knight (lknight@planning.co.san-benito.ca.us)

ADoP Byron Turner requested an extension to 6/17/09 Planning Commission meeting.

After a brief discussion regarding the request for extension, Chair Bettencourt opened the Public Hearing.

Ann Hall– Engineer for the Applicant – Ann Hall expressed her frustration regarding the continuance and requested that the Commission keep this project moving.

There being no further public hearing, Chair Bettencourt closed the Public Hearing.

Commissioner DeVries moved to continue Zone Change 06-148, General Plan Amendment 09-40 and M-District Review 82-06 for Public Hearing and discussion to June 17, 2009. With a second by Commissioner Machado the motion carried with a **4-0 vote**. Commissioner Culler Absent.

PUBLIC HEARING ITEMS ~ COMMISSION ACTION

5. ZONE CHANGE 08-167 & GENERAL PLAN AMENDMENT 08-39:

OWNER: Josh Jensen APPLICANT: Calera Wine Company LOCATION: 11300 Cienega Road, Hollister. REQUEST: Applicant is requesting a Zone Change and General Plan Amendment from Agricultural Rangeland (AR) to Agricultural Productive (AP) ZONING: AR (Agricultural Rangeland). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.

Planner: Lissette Knight (lknight@planning.co.san-benito.ca.us)

Commissioner DeVries excused himself from hearing this project due to conflict of interest.

ADoP Byron Turner presented the staff report. The Applicant is requesting a Zone Change and General Plan Amendment for one parcel. Parcel Number 023-090-033 is owned by Josh Jensen (Calera Wine Company), is approximately 73.18 acres and is zoned Agricultural Rangeland with an Agricultural Rangeland General Plan designation. The property owner and company are requesting to change the current Zoning and General Plan designation to Agricultural Productive. A power point presentation was shown detailing the project.

ADoP explained to the Commission the following steps must be taken if the Commission finds this project acceptable:

1. The Planning Commission must make the required findings to support the Mitigated negative Declaration, conditions of approval, Zone Change and General Plan Amendment as outlined in the staff report.
2. Adopt the attached draft Resolution reflecting the Commission's findings to support the Mitigated Negative Declaration, conditions of approval, Zone Change and General Plan Amendment with a recommendation of approval to the Board of Supervisors.
3. Direct Staff to forward the Resolution and all documentation, reports, and meeting minutes to the Board of Supervisors for consideration.

After a brief discussion among the Commissioner's regarding fault zones and the difference between AR and AP, Chair Bettencourt opened the Public Hearing.

Ann Hall – Applicant Engineering. Asked if the Commission had any questions. There were no questions.

There being no further public discussion, Chair Bettencourt closed the Public Hearing.

Commissioner Machado moved to adopt the Mitigated Negative Declaration, the Mitigation Monitoring and Reporting Program, Resolution 2009-04 recommending approval of Zone

Change No. 08-167 & General Plan Amendment No. 08-39 based on the findings and conditions of approval contained in this staff report and Resolution 2009-04.

With a second from Commissioner Scattini, the motion carried with a **vote of 3-0**. Absent Commissioner Culler and Abstaining Commissioner DeVries.

CONDITIONS OF APPROVAL

Standard Conditions:

1. **Hold Harmless:** Upon written notice by the County, 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 Zone Change and General Plan Amendment and any applicable proceedings. San Benito County reserves the right to prepare its own defense. [Planning]
2. **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 Zone Change Resolution. Department of Fish and Game fee (\$2,043 – 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]
3. **Conditions of Approval, Easements, and Restrictions:** The applicant shall record a Declaration of Deed Restrictions against the property indicating that a hold shall be placed on each parcel, restricting development until all unmet conditions of approval, mitigation measures, easements, and restrictions are completed [Planning]
4. **Habitat Conservation Plan Impact Fees:** The applicant/owner shall pay their portion of the Habitat fee as stated in San Benito County Ordinance 541. The total sum of the Habitat Conservation fee will be \$600. [Planning, Department of Fish and Game] [Mitigation Measure #1]

Planning Conditions:

5. **Mitigation Monitoring:** Prior to final approval, the applicant/owner, County Counsel and the Planning Director shall agree to and sign the Mitigation Monitoring Program form(s).
6. **Cultural Resources:** Any property owner who, at anytime in the preparation for or process of excavation or otherwise disturbing the ground, discovers any human remains of any age, or any significant artifact or other evidence of an archeological site shall:
 - a. Cease and desist from further excavation and disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains.
 - b. Arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of not less than one hundred feet from the point of discovery; provided, however, that such staking need not take place on

adjoining property unless the owner of the adjoining property authorizes such staking. Said staking shall not include flags or other devices which may attract vandals.

- c. Notify the sheriff-coroner of the discovery if human and/or questionable remains have been discovered. The Planning Department Director shall also be notified.
 - d. Subject to the legal process, grant all duly authorized representatives of the coroner and the Planning Department Director permission to enter onto the property and to take all actions consistent with Chapter 5B of the San Benito County Code and consistent with Section 7050.5 of the Health and Human Safety Code and Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code. [Planning] [Mitigation Measure #2]
7. **Future Permits:** The applicant(s)/Owner(s), at the time of development would have to apply for a grading permit application (if grading exceeds 50 cubic yards), a use permit (if the items are listed as a condition use within the zoning restrictions) or any other planning/building related application as they apply to the specific project request. These planning/building applications shall be required to evaluate the air quality impacts to the specific proposed project(s) and how to mitigate for these potential impacts. Future development would also require the full compliance to the California Fire Code and Policy 37 of the General Plan's Open Space and Conservation Element. [Planning]
8. **Construction Related Noise Impacts:** The hours of construction shall be limited only to normal working day-time hours. Therefore, the hours of operation for this business shall take place only from 7am to 7pm and shall not take place on Sundays or Federal holidays. [Planning]
9. **Landslide Hazards:** Prior to any construction in areas of the property listed under landslide hazard area four (4), a site specific geo-technical report shall be complete by a qualified registered engineer addressing this issue. The Planning Director and Building Official shall review the geo-technical report and approve the proposed building site at his/her discretion.[Planning] [Mitigation Measure #3]
6. **USE PERMIT NO. 1015-09 REQUEST:** To change the appearance of the sign near San Juan Bautista from 76 to Valero, in conjunction with the re-opening of the service station at 63 Muckelemi Street under the Valero name. **APPLICANT/OWNER:** Sign Development/Kathleen Manning **LOCATION:** APN 012-140-017 **ZONING:** Agricultural Productive (AP) **ENVIRONMENTAL EVALUATION:** Categorical Exemption. **Planner:** Ann Dolmage (adolmage@planning.co.san-benito.ca.us)

AP Dolmage presented the staff report with a power point presentation. The applicant is proposing to change the appearance of an existing pole sign located just outside the city limits of San Juan Bautista, California. The sign currently bears a 76 logo to advertise the Union 76 station that once operated on a separate parcel at 63 Muckelemi Street, within San Juan Bautista city limits. The station was vacated in 2007. The City of San Juan Bautista was approached with a proposal to reopen the station under the Valero brand name, including gasoline pumps, a mechanics bay, a food store, and a car wash. To accompany these changes, the 76 sign in County jurisdiction will need to be altered to bear the Valero logo. The applicant proposes to do this by replacing the existing sign panels. The ground-mounted spotlights currently located at the base of the sign will be removed.

AP Dolmage made minor changes to the Conditions. Condition #1: the word subdivision will be deleted and the words Use Permit inserted. Condition #3: add San Benito County to the public liability insurance.

There was much discussion among the Commissioners regarding the involvement of San Juan Bautista and the possibilities of illuminating the sign. AP Dolmage explained that the current ordinance does not allow for illumination in the current zoning. After this discussion Chair Bettencourt opened the Public Hearing.

Mardeen Gordon – Sign Development. She was at the Design Review meeting. There was some comments regarding this use permit, however since it was not in the city they did not make any comments. The original plans for the sign was for illumination from below, however, San Juan Bautista wanted illumination from above. Because of the County Ordinance they did not pursue this issue. Because the time and expense of applying for a variance is not justified at this time, they will cap the power and wait for change.

There being no further public comment, Chair Bettencourt closed the Public Hearing.

After some discussion regarding the illumination of the sign and the Sign Ordinance in general, Commissioner Machado moved to Approve Use Permit 1015-09 with the findings and conditions of approval as amended. With a second by Commissioner DeVries the motion carried with a **vote of 4-0**. Commissioner Culler absent.

CONDITIONS OF APPROVAL

- 1. Hold Harmless:** Upon written notice by the County, the applicant 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 use permit 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. [PLANNING]
- 2. 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. [PLANNING]
- 3. Liability Insurance:** The applicant shall be required to maintain public liability insurance for this sign to protect the City of San Juan Bautista and San Benito County against claims that may arise in relation to the sign. [PLANNING, CITY OF SAN JUAN BAUTISTA]
- 4. Term of Permit:** A use permit shall expire one year from the date of granting said permit unless construction and activities authorized by the permit for use of the subject property in conformance with the permit has commenced, in good faith, within one year of the approval date. If any such use ceases for a period of at least one year, the use permit shall become invalid and a new permit must be obtained prior to continuing said use. [PLANNING]
- 5. Periodic Review:** An annual/periodic review of the sign may be made administratively by the Planning Department to determine conformance with the conditions of approval of this

permit. 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. 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.
[PLANNING]

7. **USE PERMIT 1006-08:** OWNER: Fernando Jimenez APPLICANT: Frank Paura LOCATION: 9644 Betabel Road, San Juan Bautista. REQUEST: The applicant is requesting a Conditional Use Permit to allow for a seasonal flea market to be conducted on the property. ZONING: Agricultural Rangeland (AR) /Scenic Corridor / Flood Plain ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.
Planner: Michael Krausie (mkrausie@planning.co.san-benito.ca.us)

AP Michael Krausie presented the staff report with a power point presentation. The proposed project is located off Betabel Road, just south of Highway 101/Betabel Road interchange and approximately 6 miles northwest of the City of San Juan Bautista. The proposal, if approved, would allow for a seasonal flea market to be conducted on the property. The use would encompass approximately 8.5 acres of the 34 acre site. The vendor area would be situated on 3.8 acres and parking would be provided on 4.5 acres.

AP Krausie read changes to Condition #14 and #29. **See the following Conditions of Approval for changes.**

The Commissioner's then had a discussion regarding the continuation of this project. Commissioner DeVries felt that the project should be continued to address concerns from the public as well as County Counsel. Commissioner Scattini felt there would be nothing gained by continuation as the staff report was very thorough. Commissioner Machado felt that there could be alternatives, i.e. additional or modified conditions of approval, that would eliminate some of the concerns.

DoP Henriques stated that staff would like to have the applicant speak to these issues.

Chair Bettencourt then opened the Public Hearing.

Steve Graves – Representative of Applicant and Owner. He felt is was upsetting to hear the talk of a continuation. The application was filed last spring. The project has been subjected to extensive review. Biological reports, traffic studies, etc. Staff has taken several months to address all comments from the public comments and are answered thoroughly in the staff report. What will the Commission gain by a continuation. This project is a perfect fit for the location. It would be a daytime only project with no loud speakers. The project will have specialty goods, the location has good access, there will be no permanent structures, has a large set back from the Pajaro River. He would like to urge the Commission to reconsider a continuation and would like to have a decision tonight. After review of the staff report, he would like to call attention to Conditions #10 and #20 which both refer to operation only from April 1st thru October 31st.

Would like to change these conditions to have operations outside the period of April 1st thru October 31st subject to the following conditions: (1) conditions must be dry (2) notification to Planning Department 3 to 5 days prior to event (3) no erosion shall be allowed to occur on the site during winter season events and (4) Planning Staff as the discretion to determine if the site is suitable to conduct winter season events. There is a fairly extensive monitoring program in place with the applicant notifying the Sheriff, Fire Marshall and the Planning Department up front. There is also a provision for an annual review by the Planning Department and Planning Commission. Would like to have the opportunity after public comment to rebut any comments.

Fernando Jimenez – Owner - In 2006 they brought before the Commission a project for a motorcycle track which was denied. At that time the Commission suggested that this would be a good location for a flea market. He doing what the Commission suggested and has been working on this application for a long time and feels it is time to move on.

Frank Paura – Applicant - Very disappointed about the possibility of continuation. He wants to thank staff for all their help. He was instrumental in developing the Betabel RV Park and has made it a five star location. The plans are to make the flea market a first class operation. It will not be a red barn. Questions regarding the water flow into the Pajaro River, they are going to hydro seed the property and plant drought resistant landscaping. Asked for questions.

Commissioner DeVries stated that he had made a site visit with Supervisor Botelho. One of his concerns was with the run-off. He was impressed with the 9 acres in grass. The grass would filter run off.

Mr. Paura stated that grass would be the best filtration. It would also be cool in the summer months. To address the issue of security they are currently speaking with Presidential Security to be on site during operations. They will not allow the selling of stolen goods. They will have a process in effective to eliminate this concern. As for traffic, they have done a traffic study and Cal Trans does not have a problem with the project. There will be not parking on Betabel Road.

Commissioner DeVries wanted to clarify the 20 foot set back from the Pajaro River riparian corridor. As an example, Betabel RV Park is in some instances only 2 feet from the edge of the riparian corridor. Therefore, the applicants exceed that which already been built. Secondly, in regards to security, one of the things that Sheriff Curtis Hill was critical about was the initial study was devoid of measures regarding safety. This is an example of why he thought a continuance would benefit all parties, since some of these items are being heard for the first time.

AP Krausie spoke to the issue of the run-off and the Pajaro River. Regional Water Quality Control Board has reviewed the project and there are mitigation measures that are part of the Conditions of Approval that will protect the Pajaro River.

Commissioner Scattini stated the he felt Staff did an excellent job on the staff report and he cannot see any reason to continue this project. Everything is covered in the this report.

Curtis Hill – County Sheriff - Two main concerns he has with this project he will state next.

First, would like to say that Staff and applicant did a great job of mitigating most of his concerns, especially the landscaping issue because this corridor of Highway 101 is a beautiful stretch of road. From the business side, he has never seen any flea market that did not have stolen property and a public disturbance problem. Would welcome sitting down with Presidential Security and applicant to talk about some of his concerns.

Commissioner DeVries - The Commission uses the Conditions of Approval for mitigating issues. What can be done to mitigate your concerns? Sheriff Hill stated that law enforcement can walk in to inspect the vendors. Possibly something in the conditions that law enforcement would have ongoing access to the project to check with the vendors. Mr. Paura indicated that he would not have any objection with this condition. Mr. Paura stated he would put up signs to this effect.

Sheriff Hill also indicated that there are problems with illegal transportation of fruit and vegetables. The food and agriculture code needs to be addressed for fruit and vegetable products.

Commissioner Scattini stated that Mr. Paura will require proper identification and tax identification to come in and sell at this flea market.

Joe Postigo – Hollister, CA. – Sorry to hear that this may be continued. Staff and Commission has done a great job. He is all for the project. Knows that Mr. Paura would do a great job. This will be something beneficial to the County and the community. This would give an opportunity for non-profits and the community to do fund raising. He hopes the Commission finds a solution to go forward.

Frank Paura – Regarding no-profit organizations he would invite them out for fund raising. He is also creating jobs for this County.

Steve Graves – Regarding the 20 foot set back, they are actually 160 to 200 feet from the River. In regard to the Sheriff's concerns the conditions are already in place. Condition #3 which calls for a plan to be submitted prior to the event that covers security, safety and signage. Condition #8 calls for modification or revocation if the project becomes and public nuisance and can be done at anytime.

With no further public comment, Chair Bettencourt closed the public hearing and the discussion to the Commission.

There was a great deal of discussion regarding the issues in the memo from County Counsel and the continuation of the project. Commissioner Machado stated that the project should be looked at with caution, however he felt the concerns of the memo had been addressed at the podium. The scenic highway issue and security were addressed with the mitigation. He feels that the project would have a positive effect on the economy. Chair Bettencourt expressed concern regarding parking on Betabel Road and would like to see a condition of approval reflecting this concern. He felt that additional conditions could be added and project brought back on consent agenda. He does not like to put things off. Commissioner DeVries stated that

he does not like to put things off either, but would also like to possibly add more conditions to address the concerns. He feels this is a good project but should be as tight as possible to avoid litigation. A continuance would be beneficial to all parties. Could Staff meet with applicant and agencies to clarify and address the concerns presented? Commissioner Scattini stated that he understands the concerns of the memo and Commissioner DeVries, but he feels that the Commission should deal with the project at this time and move forward.

ACC Barbara Thompson suggested that we determine how many Commissioner's would like to continue and how many would like to go forward and if there is a desire to go forward to take a short break to finalize any additional conditions. After a brief discussion a 10 minute break was called for this discussion. Break at 8:12 p.m.

Chair Bettencourt reconvened the Commission at 8:30 p.m.

DoP Henriques announced that there have been a series of amendments to some conditions and the addition of conditions that Staff will verbally walk the Commission thru. If the Commission is satisfied that we have captured everything and the Commission is prepared to act tonight please be sure to read the minutes carefully to be sure the conditions are as requested.

After a brief discussion regarding these changes ACC Barbara Thompson then read the changes and additions to the Conditions of Approval as follows: Addition and changes to Conditions 1,3,5,19 & 30. Addition of Conditions 44 thru 50. See attached Conditions of Approval for changes.

Chair Bettencourt suggested the possibly with the changes to the conditions that the applicant should have some time to review these changes. The applicant responded from the gallery that they did not have any problem with the changes and additions to the conditions. Commissioner DeVries then asked County Counsel their views on the changes. ACC Barbara Thompson stated she had not seen significant opposition to this project and if the Commission wished to move forward only time would tell if there would be an appeal. ACC Barbara Thompson stated that the additions to the condition have benefited the project. Commissioner DeVries then asked the Sheriff if he was satisfied with the additions and modifications. Sheriff Hill then answered in the affirmative.

After a brief discussion Commissioner DeVries moved to certify the mitigated negative declaration, adopt the mitigation monitoring and reporting program, and approve Use Permit No.1006-08, with the following findings and conditions of approval has modified based on Staff report, updates tonight and public testimony. With a second by Commissioner Scattini, the motion carried with **4-0 vote**. Commissioner Culler absent.

CONDITIONS OF APPROVAL:

- 1. Conformity to Site Plan:** The development and use of the site shall conform substantially to the ~~site plan and~~ Conditions of Approval as approved by Planning Commission. Any increase in the nature or intensity of land use on the site shall be subject to further Planning review and approval. [Planning and Building]

2. **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]
3. **Yearly Event Plans:** One month prior to the start of events for each year, the property owner shall submit eight (8) copies of an events plan to the San Benito County Planning Department. The Event plan shall include:
 - a. Dates, times, for any potential live music or entertainment event for that given year (if applicable).
 - b. Food booth(s) type(s) for each event (including beverages)
 - c. Safety Measures for each event
 - d. Signage/direction plan
 - e. Stage Plan (if applicable)
 - f. Security Plan to be approved by the County Sheriff's Office *prior to the start of any events*
 - g. Other requirements as determined by County staff (one month prior to submittal)
 - h. litter removal plan/measures
4. **Yearly Permit Compliance Review:** Each year, Planning Staff and other County staff (as necessary) shall conduct yearly site visits to ensure that all conditions of approval are being met and all approved plans and programs are being enforced. Site visits are subject to a fee per Ordinance 833. [Planning]
5. **Final Plans:** Prior to final approval and occupancy of the Betabel Flea Market, final plans shall be submitted to the Planning & Building Department *and Public Works Department* for final review and approval. Final plans shall include a detailed site plan, parking plan, phasing plan, floor plans of all structures to be utilized for the facility, use of each structure, and occupancy. Plan shall conform to mitigation measures and conditions of approval of Use Permit 1006-08 [Building and Planning & *Public Works*]
6. **Septic System:** If at any time the applicant/owner intends to use either of the exiting septic systems located on the property in combination with the use described in the project description, the applicant/owner shall be required to submit, have reviewed, and gain the necessary approvals from the County's Division of Environmental Health Planning [DEH, Planning]
7. **Term of Permit:** A use permit shall expire one year from the date of granting said permit unless construction and activities authorized by the permit for use of the subject property in conformance with the permit has commenced, in good faith, within one year of the approval date. If any such use ceases for a period of at least one year, the use permit shall become invalid and a new permit must be obtained prior to continuing said use. [Planning and Building]

- 8. Modification and Revocation:** The terms and conditions of any conditional use permit granted by the county may be modified or the use permit as a whole may be revoked. The use permit may be modified or revoked if the permit fails to comply with the reasonable terms or conditions expressed in the use permit granted or if there is a compelling public necessity. A compelling public necessity warranting the revocation of a use permit for a lawful business or use may exist where the conduct of the business constitutes a nuisance. [Planning and Building]
- 9. Drainage Standards:** The applicant/owner shall provide engineered improvement plans for this project. The owner/applicant shall demonstrate and show in the plan, proposed engineered mitigation measures, for review by the Public Works Department, including but not limited to, drainage calculations and construction details for all necessary drainage structures to be proposed for the project. Additionally, applicant shall indicate proposed drainage and retention/detention facilities for the project. [Public Works]
- 10. Operations Time Frame:** All flea market operations (excluding maintenance and preparation activities) shall be conducted between the dates of April 1st and October 31st of each year. No operation activities shall occur outside of this set time frame except if application is made and permission is granted to amend the approved use permit.[Planning]
- 11. Compliance Documentation:** Prior the issuance of a building permit, 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]
- 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 associated with this Use Permit shall be required to place a note to this effect on all construction plans.[Planning]
- 13. Encroachment Permit:** Pursuant to Section 14-3 of the San Benito County Code, 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. In addition, the applicant shall be required to obtain any necessary encroachment permit from CALTRANS. [Public Works]
- 14. Fire Protection:** A Minimum 10,000 gallon water in tanks to support three wharf hydrants off 4" hydrant line shall be installed. Two hydrants shall be located in vendor area, and one additional hydrant to be located in the parking lot. ~~(Note the applicant may be able to come to an agreement with the RV site to extend the six inch hydrant line to the gate area of the parking and new fire center cross access road. Which ever is cost effective. Applicant to work these details, for either the tanks or hydrant extension)~~ *Alternately, the applicant may extend the six inch hydrant line from the RV park to the gate area of the parking and new fire center cross access road. Access gate from parking through the center of the event site, minimum twenty foot width.* A letter from County Fire shall be provided to the Planning Department describing that all fire requirements have been met.

~~Knox pad lock for access gates.~~ *The applicant shall install a knox pad lock for emergency vehicle access through any access gates.*

Any and all development on this property shall be required to meet the standards set forth in the latest editions of the 2007 California Fire Code, Public Resources Codes 4290 and 4291, Ordinances 822 and 823 of the San Benito County Code and other related codes as they apply to a project of this type and size.[Fire]

- 15. Archeological:** Any property owner who, at anytime in the preparation for or process of excavation or otherwise disturbing the ground, discovers any human remains of any age, or any significant artifact or other evidence of an archeological site, shall:
1. Cease and desist from further excavation and disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains.
 2. Arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of no less than one hundred feet from the point of discovery; provided, however, that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking. Said staking shall not include flags or other devices which may attract vandals.
 3. Notify the sheriff-coroner of the discovery if human and-or questionable remains have been discovered. The Planning Department Director shall also be notified.

Subject to the legal process, grant all duly authorized representatives of the coroner and the Planning Department Director permission to enter onto the property and to take all actions consistent with Chapter 5B of the San Benito County Code and consistent with Section 7050.5 of the Health and Human Safety Code and Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code. [Planning]

- 16. Lighting:** No exterior lighting will be allowed without prior approval from the County. If at any time in the future lighting is approved by the County any/ all exterior lighting shall be reviewed to insure that fixtures are shielded to reduce any potential impact to an insignificant level. Any/all exterior lighting 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. Additionally, all fixtures shall comply with County Ordinance 748, the Dark Skies Ordinance. [Planning and Building]

- 17. Electrical and Communication Lines:** All new electric and communication distribution facilities proposed shall be placed underground whenever feasible. [Planning]

- 18. Grading:** Grading in the Scenic Corridor shall be reviewed for compliance with the objectives of Element #6 of the County's General Plan by County staff. Final contour and landscaping recommendations shall be made to minimize the visual impact of the grading on the scenic corridor, in conformance with the County's grading requirements. Vegetative cover shall be provided to hide grading scars, blend with the natural landscape, and provide erosion control.

- 19. Parking:** Maximum allowable parking on the project site shall be *as approved in the final plans referenced in Item 5, and shall in no event exceed 550 vehicles*. No vendor or attendee parking will be allowed along Betabel Road. All parking of vehicles relating to the proposed use shall be required to park onsite at all times during flea market operation.

- 20. Seasonal Operation:** Operation shall be conducted during the date(s) of April 1st –October 31st only. In addition, the use shall only take place on Saturday, Sunday, holidays, and occasional Fridays, with notification to Planning, Fire, CHP, and the County Sheriff's Department.
- 21. Hours of Operation:** Flea market operation shall be conducted between the hours of 7am and 5pm during the allowed days of operation.
- 22. Access ways:** the main access road and secondary vendor access road will be required to meet County Fire Department standards.
- 23. Restroom Facilities:** The restrooms will be required to be inspected regularly to ensure County standards are being met. In addition, the restrooms shall be removed 48 hours after the last event of the season and during any period of heavy rain in order to eliminate the possibility of contamination due to flood.
- 24. Vendor Equipment:** All vendor supplies and materials including shade structures, booths, and tables shall be removed from the site at the close of business each day.
- 25. Modular Unit:** The un-permitted modular unit, currently located on the property, shall be removed from the site prior to opening of business. This plan shall also include the number of waste receptacles to be used and where the receptacles will be placed on the property.
- 26. Pet Waste:** The applicant shall be required to post signs requiring pet owners to dispose of pet waste properly, and provide materials for proper disposal.
- 27. Spill Management Plan:** The applicant shall be required to submit an automobile spill management plan to the Planning Department for review and approval. This plan shall describe how spills will be identified, isolated, and remedied.
- 28. Riparian Corridor:** The project area shall be located a minimum of 20 feet from the outer edge of the riparian woodland (as demarcated by the dripline of the existing trees). In addition, Section 7A-5 of the County Code states: "No grading activity shall take place within 50 feet (measured horizontally) from the top of a bank of a stream, creek, river or within 50 feet of a wetland or a body of water." The applicant shall maintain a boundary for which the two aforementioned restrictions are met and the boundaries shall be called out on the improvement plans for this project. In addition, the previously described boundaries shall be considered non-developable for which no structures of any type shall be erected and a fence shall be maintained to ensure boundary protection. Applicant/owner shall also ensure the riparian buffer is vegetated with native plants to absorb and filter storm water runoff.
- 29. Landscaping:** The applicant shall submit a detailed landscaping plan for the project site. This plan will be required to be reviewed by both the Planning Department and the Agricultural Department in order to ensure the use will be fully screened and to ensure that the landscaping will in no way have an adverse effect on neighboring properties in regards to native and/or non native species migrating onto the adjacent properties. This plan shall

including a planting plan, describing all proposed planting type, size, age, and gallon unit. In addition, a maintenance plan shall be required. This maintenance plan shall fully describe maintenance procedures, including replacement procedures for failing trees/plants, for the duration of the proposed use.

Landscaping shall be compatible with local vegetation and ground forms. Indigenous plants and grasses shall be used where appropriate and possible as a means of reestablishing the natural landscape. The proposed native grass ground cover shall at all times be maintained and watered in order to reduce the potential for fire. Maintenance shall include irrigation, aeration, and mowing. The maintenance shall be to the satisfaction of both the Planning Department and County Fire. If at any time the project site has been determined by Staff or the County Fire Department to be out of compliance with this condition, the use shall be halted until such time as the ground cover meets the satisfaction of the aforementioned Departments.

The property owner/ applicant shall be prohibited from using invasive, non-native plant species for landscaping; as such species could spread into the riparian woodland. Plant species prohibited from use on the site are those species identified by the California Invasive Plant Council, including all broom (i.e. French broom, Spanish broom, and Scotch broom), all non-native thistles, periwinkle, German ivy, English ivy, Algerian ivy, acacia, eucalyptus, Monterey pine, cotoneaster, and pyracantha.

Site planning shall be reviewed by Planning staff to insure a reasonable and attractive appearance from the highway concurrent with a harmonious relationship with the existing landscape. Development which may be determined not to be in harmonious relationship with the existing landscape shall be screened from view through planting or other forms of visual buffers. Building height and setbacks shall be regulated to protect the field of vision in the scenic corridor. Building heights shall not exceed and setback requirements shall not be less than those of the basic zoning district.

#1 The applicant/owner shall provide closely spaced trees for visual screening such as heavy tree planting along the east boundary of the property.

#2 Watering of all landscape located on the project site shall be provided by the onsite well.
[Planning, Agricultural Department]

30. Turf Ground Cover: Full ground coverage must be established prior to the start of the new year flea market season. Yearly inspections shall be conducted by Planning Staff as necessary to ensure full turf ground cover through out the project site. A site visit fee shall be charged to the applicant in order to cover the cost of the inspection.

The applicant/owner shall provide written documentation describing that the proposed turf filtration system will adequately treat or control the urban pollutants associated with the project. *Dust control plan is subject to intermittent inspections by Planning and Building and/or Public Works.*

- 31. Dust Control Plan:** Other than the proposed roads through the vendor and parking area, the applicant/owner shall maintain the entire area encompassed by the use with native grasses. This ground cover shall be maintained such that no fugitive dust shall be created due to pedestrian or vehicular traffic. If at any time ground cover is not in sufficient quantity or health to ensure fugitive dust control, the applicant/ owner shall halt all operations on the site until ground cover is once again established and maintained. In addition, the applicant/owner shall apply turf stabilizer throughout the parking and vendor area as needed to control any potential fugitive dust. Finally, prior to the opening of the business, the applicant shall develop and submit a dust control plan to the Planning Department for review and approval. [MBAPCD]
- 32. Subdivision Map Act:** At no time shall the current or future property owner(s) lease a portion of the property for the purpose described in Use Permit UP 1006-08 unless the property owner has applied for and received approval from the County to subdivide that portion of the property. This condition shall not prohibit the property owner from leasing the entire property for the purposes described in Use Permit 1006-08.[Planning]
- 33. California Regional Water Quality Control Board (CRWQCB) :** Site preparation activities associated with the proposed use may require coverage under the Statewide National Pollution Discharge Elimination System General Construction Permit. The permit regulates stormwater discharges associated with construction activities resulting in land disturbance equal to or greater than one acre, or which are part of a larger plan of common development. The permit also requires the project sponsor to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) to mitigate construction impacts. The SWPPP must be consistent with the terms of the State General Construction Permit, with policies and recommendations of the local authority, and with recommendations of the Water Board. The applicant/owner shall be required to submit evidence to the Planning Department stating that all CRWQCB requirements have been met.[CRWQCB]
- 34. Sales Tax Revenue:** San Benito County shall benefit from all sales tax generated as a result of this operation.
- 35. Landscape Maintenance:** The proposed native grass ground cover shall at all times be maintained and watered in order to reduce the potential for fire. Maintenance shall include irrigation, aeration, and mowing. The maintenance shall be to the satisfaction of both the Planning Department and County Fire. If at any time the project site has been determined by Staff or the County Fire Department to be out of compliance with this condition, the use shall be halted until such time as the ground cover meets the satisfaction of the aforementioned Departments.
- 36. Turf Filtration:** The applicant/owner shall provide written documentation describing that the proposed turf filtration system will adequately treat or control the urban pollutants associated with the project.
- 37. Waste Water Disposal:** The owner/applicant shall provide a signed contract of the waste water disposal company that will provide and service the portable/chemical toilets and hand

wash units. Please include the number of portable/chemical toilets and hand wash units that will be available (based on peak business hours). Note, the waste water disposal company must be permitted by the Division of Environmental Health.

- 38. Food Sales:** All businesses that intend to sell foods, beverages or consumable items shall be required to have temporary food facilities permits issued by the Division of Environmental Health.
- 39. Event Organizer Application:** The owner shall complete the Event Organizer application and pay all fees related to the Division of Environmental Health.
- 40. Temporary Food Facilities:** Temporary food facilities that operate at a swap meet are limited to only prepackaged non-potentially hazardous food and whole uncut produce. And shall meet the applicable requirements in Chapters 1 to 8, inclusive, and Chapter 13 of the California Retail Food Code, unless specifically exempted from any of these provisions.
- 41. Road Construction:** Applicant shall show on the improvement plans sufficient detail or proposed construction to clearly demonstrate how the site will be prepared to be able to handle the anticipated traffic volume and potential dust control.
- 42. Fire Vehicle Access:** The Department of Public Works will require Improvement Plans reflect Fire Department's vehicle access requirements and sufficient detail as to how irrigation and dust control measures will be accomplished.
- 43. Exiting Buildings:** All buildings located on the property shall be inspected by the County Building Department prior to the opening of business.
- 44. Signs:** *Signs shall be posted that the area and persons are subject to law enforcement monitoring.*
- 45.** *All items for sale shall be publicly displayed.*
- 46.** *All vendors shall have a valid Identification/Tax Identification and applicant shall be responsible for checking that Tax Identification.*
- 47.** *Leases with vendors shall contain a clause that they may be terminated by the owner for cause.*
- 48.** *Applicant shall comply with all laws, including but not limited to laws pertaining to wells and water.*
- 49.** *Applicant shall pay for costs of non-parking signage along frontage road.*
- 50.** *All trash shall be disposed of without delay by Applicant.*

INFORMATIONAL – NON-ACTION ITEM

- 8.** Ethics in Public Service - **Mandatory Training** May 20, 2009 1:00 PM to 4:00 PM (required training **for all** elected officials, Department Heads and **members** of Boards and **Commissions** per AB 1234)

****AGENDA NOTIFICATION OF ALL COMMISSIONERS ATTENDING***

Dop Henriques informed the Commission that this is not optional training and is mandatory and required by State Law. He strongly recommends that you attend.

Commissioner Machado reported that you can take this course on line and the State requires only two hours online. County Counsel concurred that there is an online course.

DISCUSSION ITEMS

- 9.** Consider cancellation of regular meeting scheduled for May 20, 2009
(Commissioners attending mandatory training, staff attending out of town conference)

After a brief discussion and ADoP Turner assuring the Commission that there was nothing continued for the May 20th Commission Commissioner DeVries moved to cancel the May 20, 2009 regular scheduled meeting. With a second by Commissioner Scattini the Motion carried with a **4-0 Vote**. Commissioner Culler absent.

- 10.** Commissioner Announcements/Reports/Discussions

Commissioner DeVries stated that what happened tonight was awesome. He then commended Staff for a great job.

ADJOURNMENT

On a motion by Commissioner Scattini, seconded by Commissioner Machado, the motion to adjourn was approved with a **4-0 vote**. Commissioner Culler absent. Chair Bettencourt adjourned to the next Regular Meeting of June 3, 2009 at 6:00 p.m. Adjournment at 8:50 p.m.

Minutes prepared by:
Janet Somavia
Planning Commission Clerk

ATTEST:
Art Henriques
Director of Planning