

SAN BENITO COUNTY PLANNING COMMISSION

January 21, 2009

Minutes

PRESENT: Machado, DeVries, Culler, Bettencourt & Scattini

ABSENT: None

STAFF: Director of Planning (DoP) Art Henriquez;
Assistant Director of Planning (ADoP) Byron Turner;
Public Works Engineer (PWE) Art Bliss;
Associate Planner (AP) Lissette Knight;
(ACC) Barbara Thompson and Clerk Janet Somavia.

Chair Machado opened the Meeting at 6:02 p.m. as he led the pledge of allegiance to the flag and reiterated the standing rules of order.

DIRECTOR'S REPORT

(DoP) Henriquez reported on recent Board of Supervisor meetings and information on the following items:

- Board of Supervisor meeting on January 13, 2009.
 - Increase of Traffic Impact Fees of \$3,453.00. This will change the fee from \$20,400 to \$23,853.
 - The Santana Ranch appeal of the Preliminary Allocations was continued to February 3, 2009.
 - Hillside Ordinance update presented. Directed Staff to come back with additional options at the next meeting.
 - Reviewed an update of the Notice of Preparation for the DMB project.

Commissioner DeVries asked if all PA's were on hold due to the appeal. DOP Henriquez stated that yes they were all on hold.

Commissioner Bettencourt asked if the Hillside Ordinance could come back to the Planning Commission. DoP Henriquez stated that it is possible.

PUBLIC COMMENT

Chair Machado opened the meeting to public comments.

Ray Pierce spoke regarding the County General Plan update. He would like to see the County start looking at green planning and encourage solar. Also, recommended was that new construction have a restriction on wood burning fireplaces.

There being no further public comment, Chair Machado closed the Public Comment.

CONSENT AGENDA

1. Acknowledge Public Hearing Notice
2. Acknowledge Certificate of Posting
3. Minutes of January 7, 2009

4. **CERTIFICATE OF COMPLIANCE NO. 07-73** REQUEST: Applicant is requesting to legalize 8 parcels. APPLICANT/OWNER: Lone Tree, LLC. LOCATION: Lone Tree Road (T12S. R7E Portion of Sections 6, 7, & 8) ZONING: Agricultural Rangeland (AR). ENVIRONMENTAL EVALUATION: Exempt. **PLANNER: *Lisette Knight*** (lknight@planning.co.san-benito.ca.us)

5. **CERTIFICATE OF COMPLIANCE NO. 07-74** REQUEST: Applicant is requesting to legalize 9 parcels. APPLICANT/OWNER: Lone Tree, LLC. LOCATION: Lone Tree Road (T12S. R7E Portion of Sections 8, 9, 10, 14, 15, 22 & 23) ZONING: Agricultural Rangeland (AR). ENVIRONMENTAL EVALUATION: Exempt. **PLANNER: *Lisette Knight*** (lknight@planning.co.san-benito.ca.us)

6. **CERTIFICATE OF COMPLIANCE NO. 07-75** REQUEST: Applicant is requesting to legalize 11 parcels. APPLICANT/OWNER: Lone Tree, LLC. LOCATION: Lone Tree Road (T12S. R7E MDM Portion of Sections 16, 17, 18, 19, 20 & 22) ZONING: Agricultural Rangeland (AR). ENVIRONMENTAL EVALUATION: Exempt. **PLANNER: *Lisette Knight*** (lknight@planning.co.san-benito.ca.us)

Commissioner Scattini moved to approved Consent Agenda Items 1 thru 6. Commissioner Bettencourt offered a second to the motion which passed unanimously.

CONDITIONS OF APPROVAL: (Items 4, 5 & 6)

1. **Recordation:** The Certificates of Compliance shall be recorded with the County Recorder. [PLANNING]
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 review and applicable proceedings. [Planning]
3. **Legal Descriptions:** Prior to recordation of the Certificate of Compliance the applicants engineer shall make correcting modifications to the legal descriptions as recommended by the County Surveyor. [Public Works]

CONTINUED ITEM ~ CONSENT

7. **USE PERMIT 384-86(A)/RECLAMATION PLAN 2005-18:** OWNER: Stevens Creek Quarry Inc. LOCATION: 1275 Anzar Road, San Juan Bautista. ZONING: R (Rural)

ADoP Byron Turner read into the record the revised Condition #24 as directed by the Commission at the previous meeting. The Condition reads as follows:

“The Applicant shall maintain annually Anzar Road, between the quarry entrance and School Road at the sole expense of the applicant and to the satisfaction of the County Engineer. Upon closure of the quarry the applicant will apply a maximum of 3.5 inches of asphalt overlay (or a maximum of 3.0 inches of overlay and petro chemical mat) to this section of Anzar Road. Maintenance is only to be related to truck damage from Stevens Creek Quarry related trucks. The applicant’s SMARA financial assurance will line item and bond for the overlay work.”

After a brief discussion among the Commission, Commissioner Machado opened the Public Hearing. There being none, Commissioner Machado closed the Public Hearing.

Commissioner Jeff Culler then moved to approve Use Permit 384-86(A) as amended per the staff report. Commissioner DeVries offered a second to the motion which passed unanimously.

DoP Henriques noted that this decision will be final after a 10 day appeal period.

PUBLIC HEARING ITEM ~ COMMISSION ACTION

8. **USE PERMIT NO. 983-07** REQUEST: Applicant is requesting the relocation and expansion of the Earthbound Farms facility through a five phase program
APPLICANT/OWNER: Natural Selection Foods/Earthbound Farms LOCATION: 1721 San Juan Highway, San Juan Bautista ZONING: Agricultural Rangeland (AP). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration. **PLANNER:** *Lisette Knight* (lknight@planning.co.san-benito.ca.us)

Commission DeVries asked to be excused from this hearing and left the assembly due to conflict of interest.

(AP) Lisette Knight presented the staff report. Use Permit 983-07 proposes to expand the current Earthbound Farms facility (currently seasonal only) to a year round facility where they can have the business opportunity to provide a variety of new products. This proposed expansion will be through a five phase construction process.

(AP) Knight presented a power point showing the Five Phases of Use Permit 983-07 including the environmental review.

A copy of this power point presentation is attached to the permanent copy on file in the Planning Department.

Background: (AP) Knight presented the previous Use Permits issued to Earth Bound Farms and how they affected the current requested Use Permit.

Staff Recommendation: That the Planning Commission certify the Mitigated Negative Declaration, adopt the Mitigation Monitoring Program and approve Use Permit No. 983-07, with the findings and conditions of approval.

After a brief discussion among the Commissioners regarding the road realignment, previous use permits and truck parking, Chair Machado then opened the Public Hearing.

Joe Torquato of Earthbound Farms – Would like to address some questions presented with this Use Permit. Earthbound Farms is committed to serving the local farms. They see the requested expansion as a conduit for the locally grown organic crops. They are one of the largest employers in the County, currently employ 1200 employees (250 of which are permanent employees). They were named Agricultural Business of the Year in 2007 by the County Chamber of Commerce. This facility also supports local business including restaurants and markets. As the nation's largest shipper and producer of organic produce EBF brings people to the County. This helps the local economy as well as bringing ag business. EBF contracts with local farms to grow 1800 land acres and 3800 crop acres. EBF produces in excess of 60 million lbs. of finished product a year to market. 95% of the produce produced is unadulterated (natural). In 2008 EBF contributed \$100,000 in building and impact fees and nearly 1 million dollars in property taxes to San Benito County. This project is important to EBF for their continued success and as well as the farming community of this County. Mr. Torquato thanked Staff for the excellent job in putting together this Use Permit. He then stated he was open to questions from the Commission.

Commissioner Scattini with expansion would there be more year round employees? EBF anticipates that over the next five years there will be a transition of 20% increase in full time employees.

Commissioner Bettencourt asked about sales tax generated in the County. Mr. Torquato did not have those figures as sales tax is typically paid at the point of use. However, as they do construction projects, these materials are taxable in this County. They are anticipating the construction costs to be around 1 million dollars which will generate sales tax.

Commissioner Bettencourt noted for the record that he and Jeff Culler met with Joe Torquato for a couple of hours. He then asked Mr. Torquato to explain the fuel cell technology that was discussed at their meeting. Mr. Torquato responded by stating that EBF is committed to supporting the environment which is demonstrated through the fact that they are an organic company. Fuel cell technology is proven and what it does is take green waste and process into methane gas. This gas is then taken, pumped into a fuel cell and produces electricity. They then can produce some of the electricity to cool their products.

Mr. Torquato then asked if he could address the question of cogeneration. Cogeneration is simply stripping a waste product from their process and reapplying it to their process. Making the product cold produces heat and that heat is discharged in other ways. One is to simply allow it to escape in the air, the other is to capture that heat and use it where appropriate; i.e., blanching food and hot water for sterilization.

The Commission then asked Mr. Torquato to address the letter from a neighbor with concerns. Mr. Torquato stated that he had an opportunity to meet with Mr. Slibsager regarding these concerns. He found some of the things brought before him enlightening and beneficial to the process. He noted:

1. Water usage would double - EBF in the last year has gone from 500,000 to 600,000 gallon a day discharger to 350,000 gallon a day discharger. We currently hold a use permit with Regional Water Quality Control Board for discharge of 500,000 gallons day. They are self regulating for this. They have systems in place that shut water off at 500,000 gallons. They report quarterly and annually to the County and RWQCB. They will expand but keep the current water use by efficiency. They have spent \$500,000 this year and \$3 million over the last two years putting in water conservation programs to reduce the usage and this will continue.

2. PG&E Substation – PG&E has approached EBF to construct a substation on their property as power for San Juan Bautista comes from the Hollister substation. This will not only serve EBF but the surrounding community. This was included in the permit in order to show transparency and allow the County’s input for this substation which typically would not happen. They will then apply any conditions to the purchase agreement with PG&E. PG&E still will need to go thru the State mandated process.

3. Aesthetics - In the last three years there has been a concerted effort to make EBF look like a professional food plant. The new buildings are aesthetically pleasing. Landscaping is limited because of food risks. FDA has stringent rules regarding nesting on the roof. Therefore perimeter landscaping seems to be very appropriate however, within the site it becomes more difficult because of the risk of food born pathogens that can be brought to the site. They are mandated by the FDA to mitigate against the potential risks. The issue of temporary spot lights was addressed in the last phase of the previous use permit. EBF has employed a light program that does get rid of this type of lighting. They have not been used on this site since the completion of this project in February and they do not see them being allowed.

4. Diesel Smoke - As they are growing and bursting at the seams they are employing 25 tractor trailers for refrigeration of product. Because of the hazard of ecoli testing storage is limited. With the completion of phase I these trucks will be eliminated.

5. Hydrology – RWQCB has issued a discharge permit. This permit comes with extensive self monitoring requirements. EBF is required to install monitoring wells both upgrade and downgrade from the existing process plant and potential spray field application areas. These monitoring wells are tested quarterly and reported to the RWQCB as well as the County. As a result of their spray fields, they have had an increase in water quality. As a note, the spray fields that were requested a year ago have now been returned to ag production.

Commissioner Scattini asked regarding the reclaimed water. Mr. Torquato noted the treatment facility takes unadulterated wash water and process to two levels. One being terserary treatment and one be Title 22. Title 22 is a product that is State regulated and takes a licensed operator to produce it. It is not potable but able to use for unrestricted use. It does not necessarily have a purple valve stigma to it but is allowed to be used for ag production, condensing towers and many processing needs. Secondly, EBF has entered into a MOU with San Benito County Water District to treat the water to Title 22 standards and re-inject back into the blue valve. EBF also has percolation ponds that can accept this water if not needed. Also, with the support of the County and RWQCB, EBF can take adjoining farms wash water through their process wash water system to create Title 22 water to put back into the system for ag and irrigation purposes. This would total about 750 acre feet of water added to SBC Water District that do not currently have at no cost the Water District.

6. Trucking – Possibly mitigating this problem with signage as it relates to truck jake breaks and things of that nature.

7. Noise - Until brought to EBF's attention, they were unaware of a humming noise that one of their pumping stations is making an obnoxious noise. EBF is currently producing sound proof enclosures to go over these pumps. It is Mr. Torquato's intention and the intention of his staff to be a good neighbor. Commissioner Bettencourt asked if they could post a no idling sign up and on hot days how they could help truckers be comfortable. The current trucks of today do not have the ability to plug in a trailer. They are diesel driven. What they can do is limit the time that these trucks are being held. Their goal is to have trucks loaded within two hours. With the new facility they can meet this goal. Currently they do not have the adequate shipping facility and are trying to load trucks and trailers out of a dysfunctional warehouse. A full time security staff can police the running of tractors, but with refrigerator trailers the best way is to mitigate hold time. Because they do not allow trucks on the property that do not have an appointment, the street parking situation has become a problem. Once again with the new facility this can be mitigated by a two hour holding time.

Commissioner Bettencourt wants to make it clear that at each one of these phases EBF has to come back to staff for further review.

Julie Morris, San Juan Bautista - Employee of EBF as well as a resident of San Juan Bautista. Wants to speak of the personality of EBF and who we are. Many of the employees are college educated that are passionate about organic food and chose to work there because it is a good company. They have interns from quality universities. Many plant employees have been with EBF for over 10 years and rely on EBF for steady employment and benefits. These employees would otherwise have to go outside the County to find work. They are a clean business and are very aware of the impact on the environment and footprint that they are leaving. The employees also support the local economy. They go to the restaurants and shop at the local market. As a neighbor the plant is visible from her house. She also complained regarding the spot lights and noted that the problem has been fixed.

Mark Tognazzini, Hollister - If you look at this in the big picture this project does everything that the County wants. It works to preserve agriculture. Since EBF has been in business, 1500 acres of agriculture has been converted to organic. This has a large environmental impact as they use organic pesticides not synthetic. This should be put into the equation of the project. There are pesticides used in organic farming, but they are organic in nature and must come off an approved list in order to be certified organic. These 1500 acres are all over the County not just in the San Juan Valley.

Gerald Slibsager, San Juan Bautista - Some of these things have been addressed by Mr. Torquato during his presentation. He has further comments.

Noise - Currently, during the processing season, noise from EBF reverberates throughout the northern San Juan Valley. He would like to see increased sound suppression at this plant. Also, many trucks are using engine compression instead of brakes when slowing down to enter the plant. He would like to see a "No Jake Brakes" sign posted on the highway near the plant entrance. EBF security should monitor this and take appropriate action.

Air Quality - When trucks are parked at the EBF plant many of them are letting their engines idle for long periods of time. This creates noise and diesel smoke. This is hazardous to the employees and the people living in the surrounding areas. The point is, this is against California State Law. The Air

Toxic Control Measure limits trucks, when parked, to run their engines for only 5 minutes. There are some exceptions to this such as cold weather or hot weather.

Aesthetics - At present, EBF facility looks so industrial in a farming area. A great amount of fast growing tall trees should be planted to hide the buildings as much as possible. Mr. Torquato mentioned that this could be done around the perimeter and that would be a great benefit to neighbors and the public when driving by.

Lighting - The lighting at EBF looks like a small city at night. Many lights are down facing, but when you look across the valley you do see a lot of light. There are many windows with no curtains on them and there is glare into the offsite areas. I would hope that this could be reduced to even more than the present level.

Truck Parking – The Higgins Associates Engineering report states that the proposed 100+ truck parking lot will not have a security checkpoint. This means it will be completely unregulated and it will therefore be open to any trucks or other vehicles that want to enter whether going to EBF or not. It would be public truck stop. EBF must have control of this and be responsible for what happens in this parking area just as it does for its employee parking lot.

San Justo Road – The proposed San Justo Road realignment will have a very large negative effect on me as my house is directly in line with the proposed highway were it will stop. At night the headlights would shine directly at my house. The noise level would also be very high as vehicles would be stopping and starting. At present traffic noise is not too bad on the highway. I think that this relocation of San Justo Road is a bad idea. It would create two new 90 degree turns as seen on the map. The present intersection of San Justo Road and San Juan Highway is not any worse than using an on ramp to enter freeway. San Justo Road should be retained in its present form.

Commissioner Scattini directed a question to Mr. Torquato. It was his understanding that there would be security guards checking these trucks. The purpose of creating a lot without security check is keeping a back up off the highway. Traffic is then impacted when you have employees coming to work. Mr. Torquato noted the intention is to create a lot that trucks can enter directly off the road without stopping. Under no terms do we mean that the parking lot is unsecured. EBF spends \$250,000 a year on employee security. He agrees with Mr. Silbsager completely that you cannot leave the parking lot unsecured. This means that there would be roving security checks around the parking lot. The intention of this is to get the trucks off the road and the highway. There would absolutely be security present.

Commissioner Bettencourt asked if Homeland Security had some say in the design of the truck parking lot. Mr. Torquato explained that EBF is under a mandate to control the access to a food plant. The reason we want unsecured trucks off our lot is because truck drivers could end up entering the plant and could do things to compromise the food safety component of your plant. EBF has done a number of things in the last year to mitigate that access. The warehouse has access platforms that are no longer accessible to our plant and things like that. The intention is to bring these trucks into our site, but not let them have free reign. This also pertains to the employee parking area. This is going to be a challenge, but we are working on mitigate that problem to make sure that trucks in that site do belong there. EBF's main concern is to get them in and get them out as quickly as possible.

Commissioner Jeff Culler requested a copy of Mr. Silbsager's concerns. He will give them the Clerk. Commissioner Bettencourt questioned Mr. Silbsager on the location of his property. It was pointed out to the Commissioner on the map. Commissioner Bettencourt then asked if Mr. Silbsager would

be open to a row of trees planted along the proposed intersection. Mr. Slibsager indicated that that would then take up some of his property as well as cause some problems with the land that he has leased to Pride of San Juan.

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

Commissioner Bettencourt asked if it would be possible to post “No Jake Break” signs along the highway. Possibly as far back as Anzar High School area. (PWE) Art Bliss suggested that as we get to the stage of improvement plans for each phase that there could be modification to the proposed design upon review. As to the proposal of “No Jake Break” signs they should also be more localized because of the immediate deceleration at the entrance to the plant. Commissioner Scattini stated that you cannot tell a truck driver that he cannot use his “jake break”. That is a safety issue. DoP Henriques suggested that EBF could discuss this with the drivers and use as an advisory. Commissioner Machado then stated that the Commission could set a condition that EBF have signs as they leave the property regarding the use of “jake breaks” and idling on the property.

Commissioner Bettencourt then asked if that could be added to the conditions. ACC Barbara Thompson then asked regarding the time for idling. It was stated that the State law is five minutes. Commissioner Culler then stated that he felt that the cooling trailers are most likely exempt from this law. At this point there was a great deal of discussion among the Commission regarding the wording and time limits on the condition for signage on the property.

Mr. Toquato then asked if he could come forward and clarify this issue. Chair Machado answered in the affirmative. Mr. Toquato stated that there is clear differential between tractor trailers and refrigerated trailers. Refrigerator trailers are exempt from the State regulations regarding tractor trailers not to idle. Mitigations regarding the tractor trailers not to idle can completely be supported by EBF. Limiting the refrigerator trailers from idling they could not support because of the loss of product. Commissioner Bettencourt then asked for clarification regarding the tractor and trailer. The tractor can be regulated on time of idle; the refrigerated trailer is exempt as it then becomes a piece of equipment. EBF does require pre-cooling, however most trailers will stay running while on site. So the answer again comes back to get them on and off site within the two hours. Most trailers run 24 hours a day in this Country.

Mr. Gerald Slibsager then stated that what Mr. Toquato stated was correct. He had a conversation with the Monterey Bay Air Pollution Control Board and they said that refrigerated trailers are exempt as are trucks in extreme weather conditions. But in general, the tractor cannot idle for more than 5 minutes. The MBAPCB can issue citations with a fine of \$180. Any amount of reduction of diesel smoke would be helpful to him.

Chair Machado asked regarding the mitigation of landscaping. (PWE) Bliss then again stated that as these phases come on line improvement plans can be addressed at the staff level.

Commissioner Bettencourt made a motion to certify the Mitigated Negative Declaration, adopt the Mitigation Monitoring Program and Approve Use Permit No. 983-07 with the following findings, corrected conditions of approval and addition of Condition #39.

Condition #37 will add the word *screening*: The sentence will then read “Perimeter landscaping shall include a screening plan”.

Condition #39 - See Conditions of Approval.

Commissioner Scattini offered a second to the motion which passed with a 4-0 vote. Commissioner DeVries recused himself.

DoP Henriques stated that this decision will become final unless appealed within 10 days.

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 Use Permit and any applicable proceedings. San Benito County reserves the right to prepare its own defense. [Planning]
- 2. Conformity to Plan:** The development and use of the site shall conform substantially to the proposed site plan and Conditions of Approval as approved by the Planning Commission. Any increase, change, or modification in the nature or intensity of the land use on the site shall be subject to further Planning Commission review and approval. [Planning]
- 3. Compliance Documentation:** The applicant shall submit a summary response in writing to these Conditions of Approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]
- 4. Notice of Determination (Fish & Game Fees):** The applicant/owner shall file the Notice of Determination, provided by the County Planning Department, with the County Clerk within five (5) days of approval for each project that requires a Negative Declaration. 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]
- 5. 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. [Mitigation Measure #19]

Public Works Conditions:

6. **Drainage and Erosion Plan:** As per County Code Section 7A-9.b, and as part of the submission of engineered improvement plans for this project, the applicant shall comply with the County Drainage Standards and shall submit the overall drainage scheme of the project. Included in this will be drainage calculations and construction details for either a retention or detention pond(s) for the impermeable surfaces created as part of this project.
7. **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.
8. **Parking Lot:** Low Impact Development (LID) design techniques for the proposed parking lot expansion shall be used. LID for the parking lot expansion or equivalent methods are necessary to mitigate stormwater runoff pollution and stream erosion and sedimentation impacts that result from significantly increased downstream flows due to introduced impermeable surfaces. [RWQCB]
9. **Re-alignment of San Justo Road:** Prior to issuance of any Phase 3 permits the owner/applicant shall show proposed new property/boundary lines (for both the Earthbound Farms property and San Benito County property which is in the Right of Way) showing configuration of the property before and after the re-alignment, and identify by means of square footage or acreage the lot difference between the two scenarios (existing vs. proposed alternate 2) to enable proper review and judgement by the County of the proposal.

Planning Conditions:

10. **Exterior Lighting:** A note shall be placed on all construction, grading or improvement plans that states: "All exterior lighting for new development shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. All fixtures shall comply with County Ordinance 748. Prior to the issuance of a building permit, the applicant shall submit to the Building and Planning Department an exterior lighting plan which shall indicate the location, type, and wattage of all proposed lighting fixtures and include catalog sheets for each fixture. [Planning] [Mitigation Measure #3]
11. **Visual Screening:** For all EBF building facilities on site that exceed 30 feet in height where mechanical devices are the cause of the height increase the applicant shall ensure that these mechanical devices are screened/camouflaged. The applicant shall also ensure that all mechanical devices on the roof and the buildings exteriors are non-reflective with an earth tone pallet to reduce any visual impact and glare that would be caused by the new buildings or devices. [Mitigation Measure #1]
12. **Mitigation Monitoring:** Prior to issuance of a building permit, the applicant/owner, County Counsel and the Planning Director shall agree to and sign the Mitigation Monitoring Program form(s).
13. **Building Envelope:** All development proposed for both the EBF expansion shall only be located on parcels 012-020-010, 012-020-015 & 012-020-016. [Mitigation Measure 4]
14. **Air Quality:** The contractor(s) shall require water trucks to operate in conjunction with grading equipment and the application of water shall be made as frequently as is necessary to control dust at a minimum of three times a day. If the dust is not adequately controlled through the application of water, all grading activities will be suspended and an hourly watering schedule

- and/or maximum limit on the daily number of cubic yards to be graded will be imposed prior to the resumption of grading. [Planning, Building, Public Works] [Mitigation Measure 5]
- 15. Soil Transport:** All truck beds hauling soil on or off site shall be covered to protect the loss of loose soil material. All stockpiled soil shall also be covered. Permanent site surface design shall not promote airborne dust. [Mitigation Measure 6]
 - 16. Vehicle Speed:** Vehicle speeds shall be reduced to 25mph on unpaved construction areas to reduce the increase in dust emissions. [Mitigation Measure 7]
 - 17. Ammonia Diffusion:** Any potential ammonia release shall be mitigated through the use of ammonia diffusion vessels in the water. [Mitigation Measure 8]
 - 18. Storage:** Additional cooler space shall be provided to eliminate the need for diesel operated refrigerated trailer storage. [Mitigation Measure 9]
 - 19. Noise Barriers:** During construction temporary noise barriers will be used when necessary to reduce noise levels caused by construction. [Mitigation Measure 20]
 - 20. Noise Reduction:** Setbacks, open space separation, site layout and shielding of activities away from neighbors will be utilized during the construction phases of this project. [Mitigation Measure 21]
 - 21. Construction Schedule:** A construction schedule shall be developed where construction activities with increased decibel levels will occur on the same day if possible to reduce the number of heightened noise construction days. Waste dumps that are used during construction shall also be strategically placed to be utilized as temporary noise barriers. [Mitigation Measure 22]
 - 22. Equipment Noise Reduction:** Ensure construction equipment has the appropriate mufflers to reduce frequency of sound on diesel engines and compressed air machinery. [Mitigation Measure 23]
 - 23. Materials used to Decrease Noise Impacts:** During construction electric motors vs. compressed motors shall be used when necessary. Plastic liners, shields, and dampening plates shall also be used when available. [Mitigation Measure 24]
 - 24. Scope of Work:** EBF shall provide a scope of work, days and hours of operation and timeframe for projects that will have a greater impact on the community to the public for noticing. [Mitigation Measure 25]
 - 25. Archeological:** 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 for an archeological site is discovered, all further excavation and disturbances within 200 feet of the discovery shall cease and desist. If human and/or questionable remains have been discovered, the sheriff/coroner shall be notified immediately pursuant to County Ordinance 610. A note to this effect shall be placed on all construction, grading, or other improvement plans. [Mitigation Measure #10]
 - 26. Archeological Training:** Prior to initiation of construction or ground disturbing activities, all construction personnel will receive environmental training. [Mitigation Measure 11]
 - 27. Human Remains Discovery:** If buried human remains are encountered during construction the following measures will take place:
 1. Work within a 200 foot radius of the discovery will halt.
 2. A certified archaeologist and the County Coroner will be notified.
 3. If the remains are determined to be Native American then the Native American Heritage Commission (NAHC) will be notified within 24 hours as required by Public Resources Code 5097. The NAHC will notify the designated and most

likely descendants who will provide recommendations for the treatment of the remains within 24 hours. The NAHC will mediate any disputes regarding treatment of remains. [Mitigation Measure 13]

28. Cultural Materials Discovery: If buried cultural materials, including prehistoric and historic resources are discovered in the project area the following measures will take place:

1. Work in the immediate area (and a 200 foot radius, Ord.610) of the find will be halted.
2. A certified archaeologist will be notified.
3. A certified archaeologist will identify the find, and then make the necessary plans for treatment of the find.
4. A certified archaeologist will evaluate the find and if it is found to be of “significance” per CEQA, appropriate mitigation measures shall be determined.
5. These above measure shall also coordinate with the measures set for in Ordinance 610 for San Benito County. [Mitigation Measure 12]

29. Safety Precautions: The permittee shall take all appropriate and necessary precautions to protect adjacent public and private property from drainage that may result from the grading operations. [Planning and Building]

30. Consistency Measures: Consistency with previous mitigation measures and/or conditions of approval (UP 779-99, UP 779-99A, GR 99-190 & UP 969-07) for the project site shall be required for project approval. [Planning]

31. Approval Placement on Plans: The conditions of approval shall be placed on any Building Permits that are submitted to the Building department to minimize impacts from construction. [Planning, Building]

32. Stormwater Prevention: All project site design will include pre-evaluation and design of a stormwater retention and mitigation to ensure that there are zero drainage impacts. This onsite stormwater retention will be handled through a network of onsite pumps and retention ponds prior to a metered release into a stream or river. [Mitigation Measure 17]

33. Plan for Potentially Polluted Storm water: Visual inspections will be conducted before the onset of the wet season and monthly thereafter to confirm the following:

- a. The areas identified as not having potential for polluted runoff have in fact remained in that condition.
- b. The revamped facility drainage system, including pumps, is in proper working order to assure that runoff from potentially polluted areas goes to the process waste system.
- c. All onsite receptors will have installed oil filters and maintained monthly by qualified maintenance personnel [Mitigation Measure 18]

County Fire:

34. Fire: The project shall meet the standards set forth in the latest adopted editions of the 2007 California Fire Code, San Benito County Ordinances 822 and 823, Public Resources Codes 4290 and 4291 and all other related codes as they apply to a project of this type and size. [County Fire Department]

Regional Water Quality Control Board:

35. RWQCB Approval: Prior to obtaining a building permit for each phase of construction the owner/applicant shall submit to the Regional Water Quality Control Board a “Notice of Intent” associated with construction activity (including clearing, grading, and disturbances to the ground) for projects impacting 1 acre or greater. The applicant will

need to develop and implement a Storm Water Pollution Prevention Plan listing Best Management Practices.

Monterey Bay Unified Air Pollution Control District:

36. MBUAPCD Approval: Prior to obtaining a building permit for each phase of construction, the owner/applicant shall submit to the planning department a detailed description of what will occur in the submitted phase as well as data that compares the baseline air quality impacts to the proposed increased impacts. URBEMIS (Urban Emissions, evaluates the emissions increase) shall be used to estimate the air quality impacts of construction and operations in this submitted evaluation. This submittal will be sent to the Monterey Bay Unified Air Pollution Control District where they will review the submitted materials and provide comments and/or additional conditions of approval which shall be followed and met prior to construction of the submitted phase.

San Benito County Water District:

37. Irrigation & Landscaping Plan: As part of the building permit submittal for each phase and in order to prevent a cumulative impact to the water supply, an update “Irrigation and Landscaping Plan” shall be required for any new landscaped area(s). The Plan shall demonstrate the project’s compliance with the County’s Water Conservation Ordinance including, but not limited to, the use of drought tolerant plantings. Any proposed reuse/recycling of treated wastewater for irrigation shall be incorporated into this plan. These submittals shall occur at each phase where landscaping is to be added and include a perimeter landscaping/screening plan.

38. Blue Valve: Prior to obtaining a building permit, the owner/applicant shall provide the following to Planning Staff:

- a. Written documentation from the SBCWD shall be obtained to confirm that the property owner has worked in cooperation with the SBCWD to meet any service agreement alterations and/or requirements for extension and/or modification of the San Felipe infrastructure.

Additional Conditions:

39. Signage: Prior to commencement of Phase 3, the applicant/owner shall ensure the following signage is placed on the grounds:

- a. No “Jake Brake” signs to be placed at the trucking entrance/exit and will notate that this is only for tractor trucks and not refrigerated trailer trucks. This sign shall be pre-reviewed by the Public Works Department prior to installation.
- b. A sign shall be placed and visible within the designated truck parking area that states “no idling for more than 5 minutes, consistent with CA State Code.” This sign shall be pre-reviewed by the Public Works Department prior to installation.
[Planning & Public Works]

Commissioner Dan DeVries returned to the assembly at 7:50 p.m.

DISCUSSION ITEM

9. Proposed Inclusionary Housing Ordinance Amendments and Schedule

Presented by ADoP Byron Turner: On December 16, 2008 Planning Staff made a presentation to the Board of Supervisors regarding the status of the Inclusionary Housing Ordinance. The presentation included proposed changes to the Inclusionary Housing Ordinance, as well as project timeline to implement those changes. Also included with the Staff Report is a draft ordinance implementing the changes requested by the Board. The proposed changes to the Ordinance can be summarized as follows:

1. Reducing the 30% inclusionary requirement to 20%
2. Adding flexibility to the types and location of housing permissible.
3. Changing the way in-lieu fee is calculated.
4. Collection and use of in-lieu fees.

ADoP Turner then presented the PowerPoint presentation given to the Board of Supervisors.

The PowerPoint presentation is part of the permanent copy on file at the Planning Department.

The Housing Advisory Committee which was part of the 2004 Ordinance has never been appointed by the Board of Supervisors. This is something that will be discussed at this meeting. Would this Commission be willing to serve as the Housing Advisory Committee? This Committee will not be needed in the near future because there is not a need for affordable housing at this time.

The time frame requested by the Board of Supervisors was presented as part of the Power Point.

Staff will return on March 18, 2009 with the Initial Study for Public Hearing.

There was discussion regarding how often they would need to meet and the duties of the Committee. Commissioner DeVries stated that if the meeting were once year he would be open to serving. DoP asked if twice a year or quarterly would be a problem? Twice a year yes, quarterly could be a problem. It was suggested that the Planning Commission agenda could be kept light on the meeting nights of the Housing Advisory Committee if this happens.

Commissioner Culler asked where the 20% requirement came from. ADoP stated that it was consistent with surrounding agencies.

Chair Machado then opened the discussion to Public Hearing.

Al Guerra – Ridgemark - Question of Flexibility – Single Family Dwellings versus multi uses. Will they qualify as senior units? Calculation of the In-lieu fee – Could they be closer to the time of the permit. Noted there could be years between approval and time of building permit.

Ability to sale or re-sale one of these units. The ability to build equity as you would in a similar priced home. Right now you can buy an affordable house for \$200,000 or you can buy a conventional house for the same price. Affordable housing has restrictions on building equity.

DoP Henriques tried to address these issues. The proposal is currently looking at any type of housing product. (Detached, attached, condo, apartment, etc.) The In-lieu at the time of permit can certainly be forwarded to the Board of Supervisors. Equity share is something that has been discussed. A true equity share model is currently being discussed. ADoP Turner stated that the Administrative Manual is were the equity is addressed. The Administrative Manual has actual numbers.

Sally Bettencourt, Hollister - Noted she is somewhat confused as to what the goals of the County are in this affordable housing project. Since it was adopted in 2004 she cannot see anything has come from it other than rounding up about \$300,000 into an account which is doing nothing for housing. Is the County going to become landlords? Is the County going to have to hire new management to oversee this project? Questioning rent subsidies. This was proved to be unconstitutional in the City of Fresno. Would like to have an answer as to future plans of the County are in the housing industry and why do they want to compete with the private industry.

DoP Henriques responded that the County is not contemplating managing any affordable housing. The goal here is to try to get people into houses but not become a landlord.

Al Guerra, Ridgemark - Wants to clarify one of his comments. When you start the process and you sign your conditions of approval, you commit to a given (in-lieu fee) number. Several years later that number could be up or down. He is not sure that this is fair either way.

ADoP Turner explained that with the new calculation the in-lieu fees will not fluctuate that much. They will not be connected to the market fluctuations.

Chair Machado asked regarding placing projects in the City. ADoP Turner noted we would lose credit if it was built in the City. We currently have no agreement with the City or State.

Commissioner Bettencourt stated that we have no new units with 482 lots created.

Commissioner DeVries stated that all this is a Board issue. They are letting us know about it as a courtesy. This is all policy driven as Board issues.

Commissioner Culler stated that if the Board was asking for comments his comments are that 20% sounds high and equity share makes sense. Otherwise he agrees with Commissioner DeVries that this is strictly a Board decision.

Commissioner Bettencourt stated that the County should not be in the housing business.

ADoP Turner wanted to remind the Commission that this was on its way back to the Board, but it will come back thru the Commission as well as the Environmental Document.

ADJOURNMENT

There being no Informational or Non-Action Items, Chair Machado asked for a motion of adjournment. Commissioner Bettencourt moved for adjournment. Commissioner Scattini offered a second to the motion which carried with a unanimous vote. Adjournment to February 4, 2009 at 8:45 p.m.

Minutes prepared by:

Janet Somavia

Planning Commission Clerk

Attest:

Art Henriques

Director Planning