

# County of Santa Clara

Office of the County Executive

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Approved Accepted Adopted Denied Presented

BY THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA

Phyllis A. Perez, Clerk of the Board

By Mark O. Layton  
Deputy Clerk

Date: MAY 15 2001



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May 15, 2001

To: Board of Supervisors

From: Alice E. Foster, Deputy County Executive  
Chair, Proposition 36 Steering Committee

**SUBJECT: PROPOSITION 36 IMPLEMENTATION PLAN**

## RECOMMENDED ACTION

The Proposition 36 Steering Committee recommends that the Board of Supervisors take the following actions:

1. Adopt the Resolution approving the Substance Abuse and Crime Prevention Act (Proposition 36) Implementation Plan, including the recommended \$6,741,246 FY 02 Budget, and forward it to the State Department of Alcohol and Drug Services;
2. Delegate authority to the County Executive, or his designee, to complete and submit any documents required by the Plan, subject to review by County Counsel as to form and legality;
3. Delegate authority to the County Executive, or his designee, through September 30, 2001, to execute any grant applications, contracts, or ~~agreements deemed necessary to implement the Plan which are in~~ conformance with budgetary allocations in the FY 02 Budget, subject to review by County Counsel as to form and legality; and
4. Accept the analysis of the drug testing projections and funding needs, and support a General Fund reserve in the FY 02 County Budget if other funding alternatives do not materialize.

## FISCAL IMPACT

The Substance Abuse and Crime Prevention Act 2000 provides funds to each county based on an allocation formula which considers population (50%), arrest data (25%), and treatment caseload data (25%). Eligible expenditures under Proposition 36 include funds for residential and out patient treatment, transitional housing, out of custody assessment, court processes, supervision, ancillary services, administration and some facility costs. In FY 01, the County received \$2,491,506 for planning and infrastructure development, and has appropriated \$556,849 for urgent program needs. Preliminary information from the

State indicates that the FY 02 allocation is \$4,806,589. Carry over of unexpended funds is allowed under the regulations. Therefore, the total Proposition 36 funds available in FY 02 will be \$6,741,246.

Drug testing expenditures, which are not eligible for funding under the Act, are estimated at about \$700,000 in FY 02. General Fund support may be necessary to provide this important monitoring tool, if other funding sources do not become available. The County Executive's Recommended Budget for FY 02 includes a \$1,000,000 reserve in Special Programs for Proposition 36 activities not covered by State funding. These funds are available to cover testing expenditures, if the State does not pass legislation or take other action funding drug testing, with the remaining \$300,000 retained for other unknown costs.

### **BACKGROUND AND REASONS FOR RECOMMENDATIONS**

Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, diverts non violent drug offenders from incarceration into community based substance abuse treatment programs. The purpose of the Act is to provide appropriate and effective treatment alternatives for those individuals who do not present a danger to the community, with the goals of enhancing public safety, reducing recidivism and drug-related crimes.

In order to receive Prop 36 funds, the State Department of Alcohol and Drug Programs (DADP) requires that counties develop an Implementation Plan by June 1<sup>st</sup>. The plan must be approved by the DADP within 15 days of submittal, or returned to the County for modifications. Assuming approval, the County will then receive its FY 02 allocation.

The State has notified counties that as part of its oversight of Prop 36 implementation, it will request additional documents related to actual expenditures, service delivery and client participation. Delegating authority to the County Executive, or his designee, to submit the appropriate documents will facilitate compliance with the State requirements. As part of the implementation of the Plan, the County will need to lease facilities and contract for various treatment and ancillary services. The delegation of authority to execute any grant applications, contracts or agreements necessary to implement the Plan would assist the County by assuring the prompt execution of agreements for the timely start up of services. All documents, grant applications, contract and agreements would be in conformance with the budgetary allocations for FY 02 and subject to review by County Counsel as to form and legality.

Both the Health and Hospital and the Public Safety and Justice Committees have had frequent status updates on the development of the Plan. Although the actual State required documents were not completed in time for the May 2, 2001 meeting of the Health and Hospital Committee, a comprehensive overview of the Plan was provided to the Committee. The Committee accepted the overview report of the Plan, but did not take any action due to the absence of a quorum. The Public Safety and Justice Committee reviewed the Plan at its May 10, 2001 meeting and recommended Board adoption.

The County Executive's Office, as the designated lead agency in Santa Clara County, has worked collaboratively with the Proposition 36 Steering Committee to develop the Implementation Plan (Attachment 1). The protocols, which form the basis of the plan, are submitted in draft form and will be finalized by June 30, 2001 (Attachment 2). The Prop 36 recommended FY 02 Budget is included for Board approval as Attachment 3.

### **Overview**

Proposition 36 has been called one of the most revolutionary changes in the criminal justice system's approach to drug use. The impacts on the criminal justice and substance abuse treatment systems will be significant. Fortunately, Santa Clara County has been a leader in providing treatment and court supervision to drug offenders, through its Drug Treatment Court. This successful model provided the foundation for the development of the Implementation Plan. The Plan also attempts to incorporate the valuable lessons learned from the challenges of building effective collaborations among the various stakeholders.

The Steering Committee estimates that between 500-600 defendants a month, or 6,000 to 7,000 defendants annually will be eligible for participation in Prop 36. Since many criminal justice defendants are already receiving services through the Department of Alcohol and Drug Services (DADS), the actual number of "new" clients may be around 1,700. State parolees, who are determined to be eligible for Prop 36 services, will also receive treatment and other ancillary services as part of the County's program.

The Implementation Plan is built around seven core objectives:

1. To provide for an integrated court, probation and treatment system that permits defendants to move to different treatment and supervision levels as they progress or fail in treatment;
2. To use a non-adversarial approach in which prosecution and defense counsel promote public safety while supporting participants' success in treatment;
3. To provide for a team of Judges, Probation Officers and Case Managers with training and or experience in supervising substance abusing defendants while they are under court supervision and in treatment;
4. To provide participants with access to a continuum of treatment and other rehabilitation services, based on assessments of individual needs;
5. To provide for a variety of means of monitoring participants' compliance with Court orders, treatment plans and progress toward goals;
6. To provide for meaningful collaboration among the criminal justice system, Health and Hospital System, Social Services Agency, treatment and other community service providers; and
7. To evaluate the effectiveness of the Prop 36 Implementation Plan in achieving the identified objectives.

### **Eligibility**

Proposition 36 will increase the number of defendants who receive treatment and other services instead of jail time, since first-time offenders as well as those with numerous drug possession and use convictions are potentially eligible. Given the extensive use in Santa Clara County of existing diversion programs, such as the Deferred Entry of

Judgment and the Drug Treatment Court, few people will be out of custody as a result of Proposition 36 who would otherwise be incarcerated.

Proposition 36 applies to nonviolent drug possession offenses, which include the unlawful possession, use or transportation of drugs for personal use. It is anticipated that the majority of persons eligible for Prop 36 will be those charged with being under the influence of cocaine, heroin, methamphetamine, PCP (a violation of Healthy & Safety Code section 11550, a misdemeanor) or persons charged with possessing small amounts of one of these drugs (violations of Health & Safety Code sections 11377 or 11350, both felonies or potential felonies), or possession of marijuana, a misdemeanor. Other offenses are covered under the Act including the possession of drug paraphernalia, false prescriptions, use and possession of other drugs than those identified above (Attachment 4 & 5).

Persons charged with the sale of drugs, possessions of drugs for the purpose of sale, or manufacturing drugs will be ineligible for Prop 36 services, as will those charged in the same proceeding with any other non drug related offense (ex. drunk driving and possession of small amount of cocaine). Defendants also charged with the use of a firearm are ineligible. A defendant with prior convictions for strikes (serious or violent offenses) within the last five years is also ineligible, unless he has not been convicted of a misdemeanor involving violence or a felony, other than nonviolent drug possession. For those defendants who refuse treatment, or are determined to be unamenable to all forms of treatment and a danger to others, traditional sentencing alternatives would apply.

The District Attorney has the responsibility for determining new clients' eligibility for participation in Prop 36, based on the defendant's current charges, prior criminal history and previous Prop 36 experiences. For probation violations matters where the client is on formal probation, eligibility will be determined by the Probation Department. The Public Defender and private defense counsel will be active participants in ensuring that all who are eligible have access to Prop 36 services. The Court plans to create a team consisting of the District Attorney, Public Defender, and Probation staff to provide primary support to Prop 36 defendants throughout the court processes.

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#### **Assessment and Orientation**

Upon conviction, all clients, including eligible parolees, will receive an assessment which will be provided collaboratively by DADS and Probation staff. The purpose of both the orientation and assessment is to ensure that clients have access to the most appropriate treatment, and that appropriate levels of supervision and monitoring are maintained to support the client's rehabilitation and ensure public safety.

The assessment processes will use standardized clinical and public safety tools to identify the severity of the client's substance abuse, other psychological, medical, vocational and social needs, as well as the appropriate level of supervision and monitoring necessary. The level of supervision is determined by a Risk/Need evaluation instrument based upon a National Institute of Corrections' program. The DADS assessment will result in a recommendation for placement based on the American Society of Addiction Medicine Patient Placement Criteria. The assessment will be available to the Court within 2 weeks

of conviction for clients out of custody; assessments for in custody clients will be completed within 1 week.

Probation and DAD assessment staff will be co-located in a centrally located facility; assessments in north and south county will be provided in existing County facilities near the San Martin and Palo Alto court facilities. Potential space near the Sunnyvale court facility is under consideration. General Services Administration staff are in active lease negotiations for a suitable assessment site located near the Court Annex on Terraine Street in San Jose. This site is expected to be available for use on or near July 1<sup>st</sup>. Should negotiations fail, alternative sites have been identified and will be explored.

Client orientation will include a review of the law, the difficulties of overcoming serious substance abuse, benefits of participation and completion of treatment and an overview of support services available in the community. The orientation will provide a "near immediate" in-person introduction to the realities and benefits of treatment and other supportive services. Orientations sessions will be conducted frequently, including in the evenings and on Saturday mornings, at conveniently located sites. Clients who violate the conditions of their probation (VOP) and are in custody will also receive an orientation.

The proposed budget allocates \$522,000 for assessment which funds 3 positions in DADS and 6 positions in Probation. This portion of the allocation was approved by the Board of Supervisors on April 10, 2001 as part of the Urgent Needs Request. DADS may also use existing assessment resources as needed, including its Jail Assessment Coordinator.

### **Treatment**

At the conclusion of the assessment process, DADS will develop a treatment recommendation and schedule an intake appointment for the client with a treatment program. Although the client may in fact begin treatment prior to Sentencing, the treatment plan is considered an interim plan, subject to Court review and approval. Within thirty days, the treatment provider is to provide the Court with a recommended plan.

Because of a client's specific needs and motivational level, treatment plan components vary and will require ongoing adjustments. Treatment modifications will proceed based upon clinical necessity without formal Court review, although the provider is required to provide notice to the Court. The provider will also be required to furnish progress reports, which the Court will use proactively to monitor the client's participation and compliance with the conditions of probation.

The Prop 36 treatment continuum consists of differing levels of treatment intensities and modalities. Clients are expected to use as many of the modalities as necessary for their successful recovery. The modalities include:

- Psychoeducation only - a new treatment level for clients with no history of addiction or criminality, consisting of 24 hours of psychoeducation classes;

- Standard Outpatient - for clients without a history of serious recent substance abuse and/or criminality, consisting of group and individual counseling, 12 Step (or other support) meetings and random drug testing;
- Enhanced Outpatient - a new treatment level, for those clients with more serious abuse histories, consisting of case management, relapse prevention, individual and group counseling, support meetings, plus ancillary services;
- Outpatient/Enhanced Outpatient Plus Transitional Housing (THU) - provides a clean and sober living environment for 2-3 months for those clients with serious abuse problems who currently live in unstable or unsafe housing;
- Residential - serves addicted clients who are unable to maintain abstinence; if necessary detoxification will occur prior to beginning treatment;
- Methadone Modality - narcotic replacement therapy which provides effective outcomes for heroin addicts;
- Perinatal Modalities - pregnant and parenting women will receive specialized services including intensive medical support, child development assessments, parenting classes in addition to the appropriate services for their level of addiction.

It is anticipated that there will be Prop 36 eligible clients who will be dual diagnosed with both substance abuse issues and mental illness. These clients will receive psychological examinations to determine their mental health needs, and will be referred for psychiatric and medication services in conjunction with other treatment services. These clients may participate in the Mental Health Court.

The Steering Committee estimates that the majority of Prop 36 clients will require outpatient treatment and approximately 18 % will require residential treatment and another 10-15% will need transitional housing units. Requests for Proposals have been issued for an immediate expansion of treatment capacity, following the Board of Supervisor's approval of the Proposition 36 Urgent Needs Request at its April 10, 2001 meeting.

The proposed budget allocates \$3,336,661 for treatment and ancillary services, which consists of 454 outpatient slots, 52 residential treatment beds, 68 THUs, \$150,000 for dual diagnosis services, and \$150,000 for additional services such as literacy and vocational training and family counseling. In addition, \$693,000 is allocated for administrative support.

### **Supervision and Monitoring**

Upon sentencing, clients will be assigned a Probation Officer. Based upon the assessment's determination of the appropriate level of supervision, a client may be assigned to one of the following levels:

- Banked Caseload - no direct supervision, monitor for compliance issues only
- Regular Supervision - staff to client ratio of 1:175
- Prop 36 - staff client ratio of 1:100
- Drug Treatment Court - staff to client ratio of 1:60

The Court Order will include the client's participation in the identified treatment program as well as any ancillary services. Probation will monitor compliance with Court orders

and treatment program directives and provide the Court with appropriate information, reports and recommendations. Drug testing will be conducted according to the Court's directives and based on individual client's needs. Violations of probation for substance abuse only will be calendared in the designated Prop 36 courts.

**CASE MANAGERS** are a new resource which will be employed to help Prop 36 clients maintain appropriate participation in treatment and ancillary services, as well as compliance with the conditions of probation. Those clients needing direct case management will be assigned a Case Manager based on the assessment, or reassessment, following Court reviews. The Case Manager will provide more intensive support to those clients who are at greater risk of relapse or non compliance, or need greater assistance with basic life skills. The Case Manager will function as a "coach" for the client, will be available at night and on the weekend, and will maintain frequent contact with the client to help resolve crises and avoid relapse. The Case Manager will also be assigned to a courtroom for up to two days per week to assist the Judge in Court reviews and facilitate communication between the providers, Probation and the Court.

The proposed budget includes \$609,585 to fund 8 Probation positions and \$500,000 to fund 8 Case Managers.

#### **Court Process**

The Court has submitted a proposed process which is currently under review. According to the proposal, the Superior Court will use a court supervision model for all Prop 36 cases. Cases will be consolidated on specialized Prop 36 calendars at the Superior Court Annex (Terraine), as well as the Hall of Justice and outlying facilities. The Court will designate a team of judges with specialized training and/or experience in supervising substance abuse defendants for Prop 36 cases. The Court recognizes that no single treatment is appropriate for all defendants. Sentencing orders will be based on the assessment of the individual's level of addiction and level of need of supervision. The frequency of Court reviews will be determined based on each individual's assessment and progress. The review process will also function as an opportunity to make modifications that support a defendant's successful completion of treatment. Timely and thorough progress reports from treatment providers will be an essential component of the review. When a defendant requires more intensive supervision, modification may include participation in Drug Treatment Court.

Violations of Probation will be heard on these same specialized Proposition 36 calendars, and by the same team of Judges, if the violation does not disqualify the defendant from Proposition 36 participation. Should a defendant receive a third violation, traditional sentencing alternatives would apply. However, it is important to note that Judges retain their discretion at all hearings, and, further that although they may determine that a defendant is no longer eligible for Proposition 36 treatment after a third violation, the Judge may modify Probation and continue the defendant in other (non-Prop 36 funded) treatment, including custody treatment (Attachment 6).

Although the District Attorney and Public Defender are integral participants in Proposition 36, neither Office requested additional resources at this time. The actual

impact of Proposition 36 on their staff along with other program needs will be reviewed as implementation progresses.

The Presiding Judge has approved \$30,000 in FY 01 for training needs, as a demonstration of the commitment of the Superior Court to the success of the program. The proposed Proposition 36 budget for FY02 includes \$30,000 to continue the training of key stakeholders in the criminal justice and treatment systems.

### **Evaluation**

The Steering Committee proposes a comprehensive process and outcome evaluation of Prop 36 implementation that meets the following goals:

1. Documentation of the impact of Proposition 36 on the criminal justice and treatment systems (number of participants, treatment modalities, in custody time, recidivism, Pleas vs. Trials, crime rate, length of abstinence, medical history, etc.);
2. Documentation of the effectiveness of Prop 36 as it relates to client recovery and system response;
3. Documentation of a comprehensive Prop 36 client profile; and
4. Improved access to information for the identification of future policy direction and research issues.

The County's evaluation design is intended to avoid duplication of client data entry and provide appropriate access to Proposition 36 data elements across agencies. The County's evaluation process will be compatible with the State's criteria, which is still in development. As the evaluation design is developed, additional technical resources from universities and the federal government may be identified as potential partners in the evaluation efforts.

The proposed budget includes \$480,000 for evaluation, which funds software and programming costs, data entry positions, and an analysis component.

### **Drug Testing**

The Court, Probation, and treatment providers use drug testing as a means of monitoring a client's success in abstaining from drug use. The frequency of testing may be based on the clinical needs of the client or scheduled on a fixed or random basis, depending on the severity of abuse, progress in treatment and relapse potential. Positive tests will trigger a review of the treatment plan and may result in revisions to the plan and/or referral to a different modality. The Steering Committee recommends that drug testing be a component of the Implementation Plan for Prop 36 and available for all appropriate clients.

The Drug Testing Protocol presents a plan which identifies start up testing resources that can be expanded as Prop 36 clients increase. Estimates are based on the assumption of twice a month testing for each client (which allows the flexibility to require more frequent testing of some clients, and less frequent or random testing of others). Resources build on the potential expanded capacity of existing sites as well as the excess capacity of a provider. Should these not be sufficient, additional locations will be identified. Cost estimates include collection expenses, primarily staff necessary to



maintain Chain of Custody procedures, analysis and facility modification costs. The Steering Committee proposes consideration of \$708,694 for drug testing.

Although drug testing costs are recoverable as part of a client's probation fee, revenue estimates are extremely low, given the financial circumstances of most of the client population. The legislature is currently considering Senator Burton's bill (SB223) which would provide funding for drug testing. Without new State funds, expansion of drug testing capacity will be a General Fund expense. The County Executive's Recommended Budget for FY 02 includes a \$1,000,000 reserve in Special Programs for Proposition 36 activities not covered by State funding. These funds are available to cover testing expenditures, should the State not pass legislation or take other action to fund drug testing, with the remaining \$300,000 retained for other unknown costs.

### **Conclusion**

The Prop 36 Implementation Plan FY 02 Budget of \$6,741,246 allocates 8% for assessment, 67% for treatment and other services, 9 % for supervision, and 16% for administrative activities such as evaluation and facility costs. The FY 02 Budget uses FY01 excess funds for both one-time as well as on going expenditures. Should carry over balances not be available in subsequent years, reductions will be required.

As with any new initiative, assumptions are made independent of actual experience. The Prop 36 "unknowns" are many -- number of participants, actual treatment needs, intensity of supervision required, number of Court reviews, etc. Given that changes in these assumptions are inevitable, the Implementation Plan will be closely monitored and appropriate budget modifications made as necessary.

The Steering Committee members are to be commended for their thoughtful dedication to the development of the Proposition 36 Implementation Plan. (Attachment 7)

As collaborative partners in this challenging initiative, each member has demonstrated an overwhelming commitment to the success of Prop 36. The Plan could not have been developed without the excellent support of many other staff whose keen professional insights led to creative solutions to long standing issues. Their contribution to this effort has been invaluable.

### **CONSEQUENCES OF NEGATIVE ACTION**

The County will be unable to meet its legal obligation to implement the Substance Abuse and Crime Prevention Act and will not receive its FY 2002 funding allocation for implementation.

### **STEPS FOLLOWING APPROVAL**

Upon approval of the resolution adopting the Implementation Plan and the budget, the appropriate documents will be submitted to the State by the June 1, 2001 deadline. The State has 15 days in which to review and approve the Plan or return it for modifications. Assuming approval by the State, staff will submit all of the Prop 36 identified positions, expenditures and revenues for Board action as part of the final FY 02 Budget adoption. The implementation protocols will be finalized by June 30, 2001 and disseminated to the appropriate parties. The Steering Committee will meet quarterly, or more frequently as necessary, to monitor the implementation and provide continued guidance on policy and

operational issues. Ongoing oversight of the Implementation Plan will be provided by the Office of the County Executive, as the Lead Agency for Proposition 36.

Attachments (7)

Cc:

The Honorable Richard Turrone, Presiding Judge, Superior Court

Richard Wittenberg, County Executive

Prop 36 Steering Committee

RESOLUTION OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA  
AUTHORIZING

THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000  
COUNTY PLAN AND FUNDING REQUEST FOR FISCAL YEAR 2001-2002  
AND DELEGATING AUTHORITY TO THE COUNTY EXECUTIVE TO  
EXECUTE CONTRACTS NECESSARY TO IMPLEMENT THE COUNTY PLAN

WHEREAS, the Substance Abuse and Crime Prevention Act of 2000 ("SACPA") became effective January 1, 2001, and must be implemented by July 1, 2001; and

WHEREAS, the State Department of Alcohol and Drug Services is responsible for annual allocations of the funds available to counties pursuant SACPA; and

WHEREAS, the California Code of Regulations, Title 9, Section 9515 requires counties to submit a plan for services to the State Department of Alcohol and Drug Services on or before June 1, 2001 in order to receive the Fiscal Year 2001-2002 allocation of SACPA funds; and

WHEREAS, the California Code of Regulations, Title 9, Section 9515 requires that said plan be approved by either the Board of Supervisors or the county lead agency pursuant to a delegation of authority; and

WHEREAS, the Health and Hospital Committee, the Public Safety Committee, and the Board of Supervisors have reviewed the plan components recommended by the Proposition 36 Steering Committee and the County Executive; and

WHEREAS, the County must lease space and contract with service providers in order to implement the plan; and

WHEREAS, the Board of Supervisors may delegate contracting authority to County officials, and has done so from time to time as deemed necessary and in the interests of the County; and

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WHEREAS, delegating authority to the County Executive, or his designee, through September 30, 2001, to execute any grant applications, contracts, or agreements deemed necessary to implement the plan, which are in conformance with budgetary allocations in the FY 2002 Budget, would assist the County by assuring a prompt execution of agreements and a timely start-up of services.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Santa Clara:

1. That the Board of Supervisors hereby approves the county plan, completed pursuant to California Code of Regulations, Title 9, Section 9515; and
2. The County Executive, or his designee, is authorized to complete the plan documentation and submit it on behalf of the Board of Supervisors pursuant to California Code of Regulations, Title 9, Section 9515, by the June 1, 2001 deadline; and
3. The County Executive, or his designee, is delegated authority through September 30, 2001, to execute any grant applications, contracts, or agreements deemed necessary to implement the Plan which are in conformance with budgetary allocations in the FY 2002 Budget, subject to review by County Counsel as to form and legality; and
4. The County of Santa Clara shall comply with the provisions of SACPA and the California Code of Regulations, Division 4, Chapter 2.5; and

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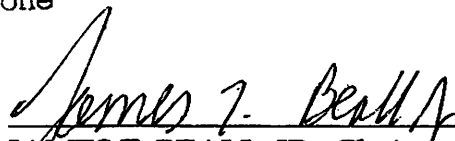
5. The County of Santa Clara has established and maintains a trust fund, and assures that the County of Santa Clara shall deposit all funds received into that trust fund.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on MAY 15 2001 by the following vote:

AYES: Supervisors ALVARADO, BEALL, GAGE, KNISS, MCHUGH

NOES: Supervisors None

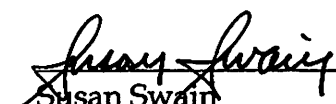
ABSENT: Supervisors None

  
JAMES T. BEALL, JR., Chairperson  
Board of Supervisors

ATTEST: PHYLLIS PEREZ, Clerk  
Board of Supervisors

  
Phyllis Perez

APPROVED AS TO FORM AND LEGALITY:

 5/8/2001  
Susan Swain  
Deputy County Counsel