RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution:
1) Denying Appeal No. 2007-195,
2) Upholding the Planning Director's Notice of Violation,
3) Upholding the Planning Director's written determination dated June 7, 2007 regarding maximum allowable sign size for the CSD and
4) Finding that a sign for the Lake Don Pedro CSD is subject to local Zoning Ordinances pursuant to relative to the provisions of Government Code Section 53091(a)
5) Finding that a sign for the Lake Don Pedro CSD is not one of the listed exemptions pursuant to the provisions of Government Code Section 53091(e)
6) Establishing the existing zoning ordinance violation be abated by removal of the sign

Further justification is provided in the Staff Report to Board of Supervisors from Mariposa Planning.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None, other than that the County has consistently complied with Zoning Ordinance sign standards for their own facilities (applied the sign standards to county projects).

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Grant the appeal and reverse the Planning Director's Notice of Violation. This would enable the sign to remain. Staff is not currently aware of any legal justification for this action.

Modify the timeframe for abatement.

Financial Impact? ( ) Yes (X) No Current FY Cost: $ 
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded
Amount in Budget: $ 
Additional Funding Needed: $ 
Source:
Internal Transfer
Unanticipated Revenue 4/5's vote
Transfer Between Funds 4/5's vote
Contingency 4/5's vote
( ) General ( ) Other

Memorandum to the Board with Attachments:
1. Vicinity Map
2. Notice of Appeal No. 2007-195
3. Government Code Section 53091 excerpt
4. Planning Director's 06/07/07 Written Determination
5. Draft Board Resolution
6. Elevation & Photo of Sign

CLERK'S USE ONLY:
Vote – Ayes: 
Nocs: 
Absent:
Approved
Minute Order Attached ( ) No Action Necessary
The foregoing instrument is a correct copy of the original on file in this office.
Date:
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California 
By: 
Deputy

COUNTY ADMINISTRATIVE OFFICER:
Requested Action Recommended
No Opinion
Comments:

CAO:

Revised Dec. 2002
STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 08-148

A resolution denying Appeal No. 2007-195 and upholding the Planning Director's actions regarding a sign for the Lake Don Pedro Community Services District

WHEREAS on the 15th day of May 2007 Building Permit No. 26623 for a 12 foot tall, 72 square foot sign for the Lake Don Pedro Community Services District (CSD) was submitted to Mariposa County for property located at 9751 Merced Falls Road in Lake Don Pedro, and

WHEREAS the CSD property is also known as Assessor Parcel Number 001-230-012; and

WHEREAS on the 7th day of June 2007 the Planning Director issued a written appealable determination to the CSD allowing a maximum of thirty two (32) square feet of signage of the subject property; and

WHEREAS the Planning Director’s June 7th 2007 determination was not appealed; and

WHEREAS the Building Permit for the sign was never issued, however the 12 foot tall, 72 square foot sign was erected on the property; and

WHEREAS following receipt of a Request for Investigation about the sign, the Planning Director issued a Notice of Violation to the CSD on the 28th day of November 2007; and

WHEREAS on the 18th day of December 2007, an appeal of the Planning Director’s Notice of Violation was received for processing and that appeal is known as Notice of Appeal No. 2007-195; and

WHEREAS the appellant is Bob Kent of the Lake Don Pedro Community Services District; and

WHEREAS following confirmation of hearing dates with the appellant, a duly noticed Board of Supervisors’ public hearing was scheduled for the 11th day of March 2008; and

WHEREAS a Staff Report addressing the Appeal No. 2007-195 was prepared pursuant to local administrative procedures; and

WHEREAS on the 11th day of March 2008 the Board of Supervisors continued the public hearing to the 18th day of March 2008 at the request of the appellant; and
WHEREAS on the 18th day of March 2008 the Board of Supervisors continued the public hearing to the 15th day of April 2008 at the request of the appellant; and

WHEREAS on the 15th day of April 2008 the Board of Supervisors did hold a public hearing on Appeal No. 2007-195 and considered all of the information in the public record, including the Staff Report packet, the Notice of Appeal, and the comments of public and the appellant.

NOW THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby deny Appeal No. 2007-195.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby uphold the Planning Director’s Notice of Violation and uphold the Planning Director’s written determination dated June 7, 2007 regarding maximum allowable sign size for the CSD.

BE IT FURTHER RESOLVED THAT the Board of Supervisors’ action on Appeal No. 2007-195 hereby incorporates the entire staff report document and packet prepared for the appeal into this resolution by reference, including the discussion of the grounds for appeal.

BE IT FURTHER RESOLVED THAT the Board of Supervisors makes the following determinations and findings in support of their action to deny Appeal No. 2007-195:

1. A sign for the Lake Don Pedro CSD is subject to local Zoning Ordinances pursuant to the provisions of Government Code Section 53091(a).

2. A sign for the Lake Don Pedro CSD is not one of the listed exemptions pursuant to the provisions of Government Code Section 53091(e).

3. Sign standards are an important implementation measure of the General Plan to protect the rural character of the county and its communities. Signs for Governmental agencies have similar impacts as signs for private development, and it is appropriate that there be consistent regulation.

BE IT FINALLY RESOLVED THAT the Board of Supervisors establishes that the zoning ordinance violation for the Lake Don Pedro CSD sign shall be abated within sixty (60) days following action on the appeal.

ON MOTION BY Supervisor Aborn, seconded by Supervisor Pickard, this resolution is duly passed and adopted this 15th day of April, 2008 by the following vote:

AYES: Aborn, Fritz, and Pickard

NOES: None
EXCUSED: Bibby

ABSTAIN: Turpin

Ltile Turpin, Chair
Mariposa County Board of Supervisors

ATTEST:

Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Thomas P. Guarino
County Counsel
Good Morning Marjorie,

There is a public hearing scheduled today at 2:00 p.m. The hearing is regarding an appeal by Robert Kent, the General Manager of LDPCSD.
I realize this is rather late to request a continuance or postponement, however, Mr. Kent is ill today. His family has the flu; he will attend if necessary, but it is possible he is at the stage where this can be passed to people he comes in contact with.
I am waiting to hear from you on this matter. Thanks.

Connie Holley
TO: KRS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: 2:00 p.m. Kris Schenk, Planning Director;
          A) PUBLIC HEARING to Consider Appeal No. 207-195, an Appeal of the Planning Director's November 28, 2007 Notice of Violation Regarding a Sign Located at 9751 Merced Falls Road, APN 001-230-012; Appellant: Bob Kent, Lake Don Pedro Community Services District

THE BOARD OF SUPERVISORS OF MARIPosa COUNTY, CALIFORNIA

ADOPTED THIS Order on March 11, 2008

ACTION AND VOTE:

2:00 p.m. Kris Schenk, Planning Director;
A) PUBLIC HEARING to Consider Appeal No. 207-195, an Appeal of the Planning Director's November 28, 2007 Notice of Violation Regarding a Sign Located at 9751 Merced Falls Road, APN 001-230-012;
Appellant: Bob Kent, Lake Don Pedro Community Services District

BOARD ACTION: Meeting was continued to March 18th, 2008 at 2:00 p.m. at the request of the Appellant.

No input was provided from the public

Cc: Thomas P. Guarino, County Counsel
File
TO: KRIS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: Chair Turpin advised that a request was received to continue the public hearing scheduled for 2:00 p.m. this date to consider Appeal No. 207-195, an appeal of the Planning Director’s November 28, 2007 Notice of Violation regarding a sign located at 9751 Merced Falls Road, APN 001-230-012; Appellant: Bob Kent, Lake Don Pedro Community Services District

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on March 18, 2008

ACTION AND VOTE:

Chair Turpin advised that a request was received to continue the public hearing scheduled for 2:00 p.m. this date to consider Appeal No. 207-195, an appeal of the Planning Director’s November 28, 2007 Notice of Violation regarding a sign located at 9751 Merced Falls Road, APN 001-230-012; Appellant: Bob Kent, Lake Don Pedro Community Services District (Continued from March 11, 2008)

BOARD ACTION: County Counsel provided input relative to continuing the hearing. (M)Aborn, (S)Pickard, the hearing was continued to April 15, 2008, at 10:00 a.m./Ayes: Unanimous.

Cc: File
TO:           KRIS SCHENK, Planning Director
FROM:        MARGIE WILLIAMS, Clerk of the Board

SUBJECT:     PUBLIC HEARING to Consider Appeal No. 207-195, an Appeal of the Planning Director’s November 28, 2007 Notice of Violation Regarding a Sign Located at 9751 Merced Falls Road, APN 001-230-012; Appellant: Bob Kent, Lake Don Pedro Community Services District Continued from March 18, 2008

RESOLUTION 08-148

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on April 15, 2008

ACTION AND VOTE:

Kris Schenk, Planning Director;
PUBLIC HEARING to Consider Appeal No. 207-195, an Appeal of the Planning Director’s November 28, 2007 Notice of Violation Regarding a Sign Located at 9751 Merced Falls Road, APN 001-230-012; Appellant: Bob Kent, Lake Don Pedro Community Services District Continued from March 18, 2008

BOARD ACTION: Sarah Williams, Deputy Planning Director, presented the staff report; and she responded to questions from the Board relative to the code sections that were referenced as to what is exempt from the local ordinances and the Building Code.

The public portion of the hearing was opened and input was provided by the following:

Bob Kent, Lake Don Pedro Community Services District (CSD) – appellant, apologized for being late. He provided input on the appeal and referred to the Notice of Violation he received from Planning and Building Departments and the Attorney General’s Opinion; and he advised that they felt that the entire parcel met the exemption versus just the facilities. He noted that the Don Pedro area falls under the jurisdiction of two counties and that they are working on having their own Community Plan, and he feels that will change the restrictions in the future. He advised that the Don Pedro Elementary School and the High School have signs that are larger. He asked that their sign be grandfathered until the Plan is adopted for the area. He responded to questions from the Board relative to the local agency issue, permit fees, and his request to continue the sign matter until the Plan is completed.

Staff responded to questions from the Board relative to Tuolumne County’s sign regulations; and relative to the sign.

Speakers in support of the appellant: none.

Bob Kent provided additional input relative to their interpretation of the regulations applying to the parcel versus the facilities. He responded to questions from the Board relative to the size of the sign and the size of the message board portion of the sign and whether a portion could be shielded to comply.

Speakers in opposition:
Paul Chapman stated he feels the Tuolumne ordinance is a separate issue from Mariposa County; he feels that this is an advertising sign and the appropriate process should be followed; and he suggested that the sign could be taken down and stored until decisions are made on the Community Plan.

Witt Hawkins stated he supports the sign and he feels that it shows the location of the facility and provides information on when the meetings are held.

Eleanor Keuning noted that if there is a higher speed limit on the road, that a larger sign would be needed for the information to be read. She finds brightly lit signs offensive in a rural area and cited the Post Office sign in Ahwahnee as an example.

Ruth Catalan stated she feels the sign is lovely, but questioned whether it is legal and in compliance with the County ordinances.

Thomas P. Guarino, County Counsel, provided input on the procedures – on June 7, 2007 a determination by the Planning Director limited the size of the sign and that was not appealed; the sign is in violation of the County’s sign ordinance as the size exceeds what is allowed under the sign ordinance; he advised that the issue is whether or not the exemption under the Government Code applies to the sign; and he referenced the Attorney General’s Opinion.

The public portion of the hearing was closed and the Board commenced with deliberations. County Counsel advised that the option is for the appellant to remove the sign or to have the sign be brought into compliance within a limited set time, such as 60 days. Staff responded to questions from the Board relative to whether the General Plan addresses sign regulations; relative to being able to have different regulations in a Town Plan than what is in the General Plan; and relative to options for the Board. (M)Aborn, (S)Pickard, Res. 08-148 was adopted denying appeal No. 2007-195 and upholding the Planning Director’s Notice of Violation; upholding the Planning Director’s written determination dated June 7, 2007 regarding the maximum allowable sign size for the CSD and finding that a sign for the Lake Don Pedro CSD is subject to local Zoning Ordinances and that it is not one of the listed exemptions pursuant to the provisions of Government Code Section 53091(e); and establishing the existing zoning ordinance violation be abated by removal of the sign within sixty (60) days or the applicant is to bring the sign into compliance within the said sixty days. Staff responded to a question from the Board relative to the size of the message portion of the sign. County Counsel clarified that the findings were included in the action. Ayes: Aborn, Fritz, Pickard; Abstained: Turpin; Excused: Bibby. The hearing was closed.

Cc: John Davis, Building Director
File
MEMORANDUM

Date: March 10, 2008

To: Board of Supervisors

From: Sarah Williams, Deputy Director

Topic: Appeal No. 2007-195; Lake Don Pedro CSD, Appellant

Attached is a letter from the appellant, requesting a one week continuance of the public hearing scheduled for Tuesday, March 11, 2008 at 2:00 p.m. (Folder 5A).

Staff recommends that the public hearing be continued to Tuesday, March 18, 2008 at 2:00 p.m. or as soon thereafter as possible. The appellant is available at this time, and there is time on the Board’s agenda.

I have also included correspondence from Clem Brown on this matter, received as a result of the notice of public hearing.

Cc: Bob Kent, Appellant
Kris Schenk, Planning Director

ATTACHMENTS

3/7/08 Request for continuance from appellant
3/4/08 Public input
March 7, 2008

ALSO VIA E-MAIL

Sarah Williams, Deputy Director
Mariposa County Planning Department
P.O. Box 2039
Mariposa, Ca. 95338-2039

RE: APPEAL NO. 2007-195

Dear Mrs. Williams,

The District received the Staff report regarding Appeal No. 2007-195 on Thursday, March 6, 2008. After reviewing the staff report, it appears that the County is relying on authority not previously cited in any correspondence. The appeal is scheduled for 2:00 p.m. March 11, 2008, as the District has not had ample time to research nor study the cited authority; I request at least a one week continuance of the hearing to do so.

Sincerely,

Bob Kent, General Manager

Cc: Thomas Guarino, County Counsel
Cc: Raymond Carlson, Griswold, LaSalle, Cobb, Dowd & Gin, LLP
Cc: Lyle Turpin, Supervisor District II
Cc: Kris Schenk, Planning Director
March 4, 2008

From:  
Clem and Mary Brown  
2826 Merced Falls Rd.  
La Grange, Calif. 93459

To:  
Mariposa Planning  
5100 Bullion St  
P.O. Box 2039  
Mariposa, Calif. 95338-2039

Regarding:  
Notice of Public Hearing on March 11, 2008 @ 2:00pm

Concerning:  
The new Sign in front of the L.D.P.C.S.D. on Merced Falls Rd.

    We request that you grant to our Water Dept a "VARIANCE" in order to keep the new sign in front of their office.

    This sign is attractive, conservative and is in very good taste, It is very similar to the new sign at Don Pedro High School which was donated by the Porters. These signs act as community designators and give a sense of recognition to our whole community.

    If the Mariposa Planning Dept orders the destruction or modification of our sign many members of our community would consider this to be an insult or an assualt against us all.

Sincerely

Clem Brown
BOARD OF SUPERVISORS MEETING
of March 11, 2008

SUMMARY AND RECOMMENDATIONS

Case: APPEAL NO. 2007-195

Case Name: Appeal of Planning Director's Notice of Violation regarding a 72 square foot display sign for Lake Don Pedro Community Services District

Location: The site is located at 9715 Merced Falls Road, Lake Don Pedro; APN 001-230-012

Appellant: Robert Kent, Lake Don Pedro Community Services District (CSD)

Recommendation: Staff recommends the Board of Supervisors adopt a resolution with findings, denying the appeal, upholding the Planning Director's Notice of Violation, and requiring the display sign to be removed

Prepared by,

SARAH WILLIAMS
Deputy Director
Appeal Description Summary

On May 15, 2007, the Lake Don Pedro CSD submitted Building Permit No. 26623 for a 12 foot tall, 72 square foot sign/message board for the Lake Don Pedro CSD. The project site is APN 001-230-012, a 3.97 acre parcel located at 9751 Merced Falls Road.

June 7, 2007, the Planning Director issued a written appealable determination to Bob Kent of the Lake Don Pedro CSD allowing a maximum of thirty two (32) square feet of signage on the subject property. This determination was not appealed.

The Building Permit was never issued, however the 12 foot tall, 72 square foot sign/message board was erected on the property.

Following receipt of a Request for Investigation about the sign, a Notice of Violation was sent to the Lake Don Pedro CSD on November 28, 2007 by the Planning Director.

On December 19, 2007, Appeal No. 2007-195 was received from Bob Kent of the Lake Don Pedro CSD. The appellant states that the Lake Don Pedro Community Service District is exempt from local County Codes based on Government Code Section 53091 (d) and (e) which states in part:

(d) Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency.

(e) Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are ....

The appellant states that “water storage, water treatment and the transmission of water all occur on the property, APN 001-230-012”. The appellant states that the “CSD is a local agency, formed pursuant to the Local Agency Formation Commission”.

This staff report reviews the appellant's ground for appeal, and provides the basis for staff's recommended action on the appeal.

Grounds for Appeal and Appeal Procedures

Submittal and processing of appeals is governed by Mariposa County Resolution No. 92-525, as amended, date 2/14/95.

The focal point of the appeal is the “Statement of Grounds” (also referred to as “grounds for appeal”), which is the appellant’s statement of the reasons why the decision or determination is being appealed. The statement of grounds is the appellant’s description of why they believe the decision or determination was inappropriately decided. The statement of grounds must
include information or documentation which supports their position. Staff analyzes the statement of grounds in the appeal staff report.

Other processing provisions contained within this resolution include:

1. An appeal shall be limited to those issues clearly raised by any interested party through the public review and/or hearing process for the finding or decision being appealed, or to new information which was not and could not have been available at the time the finding or decision was made.

2. Evidence considered at the hearing on the appeal shall be limited to the issues clearly identified in the Notice of Appeal, with amendments or supplements as permitted.

Discussion of Grounds for Appeal Issues

Appeal Issue – The appellant states that, “On the property, APN: 001·230·012, water storage, water treatment & the transmission of water all occur.” The appellant states that, “We are a local agency, formed pursuant to the Local Agency Formation Commission (LAFCO).”

Staff Discussion

Based on other correspondence from the appellant, this statement is in reference to State Law, Government Code Section 53091 which addresses applicability of building and zoning ordinances to local agencies. The Lake Don Pedro CSD is a “local agency”, and they clearly have water storage, treatment and transmission facilities on the subject parcel.

Section 53091(a) of Government Code reads:

(a) Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.

Section 53091 (d) of Government Code reads:

(d) Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency.

Section 53091 (e) of Government Code reads:

(e) Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are subject to Section 12808.5 of the Public Utilities Code, or electrical substations in an electrical transmission system that receives electricity at less than 100,000 volts.
The appeal is about the listed exemptions in subsection (e) and whether or not they would apply to a sign for the Lake Don Pedro CSD. Section 53091(e) exempts specific facilities from regulation by zoning. Those are facilities for the:

1. Production of water,
2. Generation of water,
3. Storage of water,
4. Treatment of water,
5. Transmission of water,
6. Production of electrical energy,
7. Generation of electrical energy, and
8. Electrical substations when electricity is less than 100,000 volts

Staff’s literal interpretation is that a sign is not any of the exempted facilities listed above. A sign is not production or generation or storage or treatment or water. A sign is not production or generation or electrical energy, nor is it a substation. Staff’s interpretation is that a sign for a local agency would be subject to applicable zoning regulation pursuant to Section 53091(a) of Government Code.

This interpretation is consistent with California Attorney General’s Opinion No. 94-902 and the City of LaFayette v. East Bay Municipal Utility District appellate court case.

Consequently, relative to the provisions of Government Code Section 53091, staff recommends that the Board of Supervisors find that a sign for the Lake Don Pedro CSD is subject to local Zoning Ordinances pursuant to Subsection (a). Staff recommends that the Board of Supervisors find that a sign for the Lake Don Pedro CSD is not one of the listed exemptions pursuant to Subsection (e). Staff recommends that the Board of Supervisors uphold the Planning Director’s determination dated June 7, 2007 regarding maximum allowable sign size for the CSD. Finally, Staff recommends that the Board of Supervisors establish that the existing zoning ordinance violation be abated by removal of the sign.

Consequences of Action

When presented with the building permit project for the sign for Lake Don Pedro CSD, the Planning Director tried to work with the applicant to provide a reasonable solution for the display. The Planning Director made a written determination which allowed for 32 square feet of signage, which is the amount of sign area allowed for a neighborhood commercial use throughout Mariposa County. The Planning Director considered the neighborhood within which the CSD is located. The Planning Director considered the sign standards established throughout Mariposa County. There are no community areas where signs greater than 64 square feet are allowed (in the Mariposa Town, outside of the Historic District, a maximum of 64 square feet of sign area is allowed when the advertising signage is constructed of natural materials and a maximum of 32 square feet of sign area is allowed when constructed of plastic). Note that sign standards are adopted for Mariposa County as an important implementation measure of the General Plan to protect the rural character of the county and our communities.
Unfortunately, the CSD had purchased the sign prior to researching zoning standards and prior to obtaining a permit. Unfortunately, the CSD erected the sign without a permit and after being informed in writing by the Planning Director that the maximum sign allowance was 32 square feet. Staff acknowledges that these circumstances make it particularly difficult for the Board of Supervisors to adopt the recommended action and abatement to remove the sign because costs of have been expended.

The appellant will ask the Board of Supervisors to grant the appeal and allow the sign.

- Should the Board of Supervisors change the Planning Director’s written determination because the applicant purchased the sign and erected it without the required permit?
- Should the Board of Supervisors change the Zoning Ordinance standards because the applicant purchased the sign and erected it without the required permits?
- Should Government Agencies be exempt from Zoning Ordinance sign standards applied to private development?
- Should any of this happen before a future Don Pedro Community Advisory Committee has had a chance to establish the sign standards they believe are appropriate for their community?

This is the effect of the appellant’s request.

Additional History Information

(Staff Note: This information is provided for historical perspective only and is not identified in the Notice of Appeal.)

The Lake Don Pedro CSD submitted their Building Permit application for the sign together with a project for a 1.7 million gallon bolted steel water tank. Both the sign and the tank were proposed to be located on APN 001-230-012, the District’s 3.97 acre parcel.

The steel water tank is a large structure, with a radius at a bit more than 51 feet and a diameter of a bit more than 102 feet.

Planning’s initial response to the sign portion of the permit was the Planning Director’s written determination to Bob Kent dated June 7, 2007.

Planning’s response to the steel tank portion of the permit was that it was a “structure” and that it would need to meet property line setbacks of 25 feet or 10% of the lot width/depth.

There were a series of e-mail communications with Bob Kent, because the site plan proposed the steel tank to be located within 8 feet of the property line. Mr. Kent initially requested an interpretation of the Zoning Ordinance setback provisions relative to the tank, to allow the tank to stay within 8 feet of the property line. When staff did not support this interpretation, a revised site plan was submitted on June 25th 2007, and water tank was separated from the
sign for the building permit. Planning signed off on the Building Permit authorization on June 25th 2007 for the water tank, based on the revised site plan.

On June 26th, 2007 Mr. Kent raised the issue of Government Sections 53091 (d) and (e), and the applicability of Building and Zoning Codes. Mr. Kent raised this issue because he stated would prefer to site the water tank in the original location, 10 feet from the rear and side property lines. Mr. Kent specifically requested a legal review of this matter by County Counsel.

Planning forwarded the information, noting that the matter had gone from a simple Zoning Ordinance setback question to a Building Code matter. Planning stated that Mr. Kent needed to communicate directly with John Davis of the Building Department to verify if a Building Permit is required for the project. Planning noted that, when a Building Permit is submitted, the routine procedure is that it is routed through the Planning Department for review for Zoning compliance. When a Building Permit is not required, then there is obviously no review by Planning for Zoning compliance (for a permitted use). Planning noted that the determination about a Building Permit requirement is not a Planning Department determination.

Following this communication, Planning contacted Mark Rowney of MPUD (the Mariposa Public Utility District), because MPUD's work would be similar to the CSD's. Rowney stated that:

1. He usually works directly with John Davis to determine which parts of an MPUD project necessitate a permit from the Building Department.
2. His understanding is that neither a water transmission line nor a water storage tank is covered by the Building Code.
3. Technically, a water transmission line and a water storage tank should have permits from the State Department of Health Services (Public Drinking Water Division). Their permit requires construction in accordance with AWWA Standards. Construction requires that the local agency hire an appropriately certified inspector, who would have to certify that construction and installation met the AWWA standards. This would include details such as (but not limited to) steel fabrication and paint certification.
4. A water transmission line and a water storage tank would be subject to CEQA (the California Environmental Quality Act).
5. The last project MPUD did for a water tank and water transmission line was Hospital Road and MPUD did not get a building permit for the tank or the line. They processed the project with a Negative Declaration for their CEQA document.
6. If a water line project included a structure (such as a pump station) then that structure would require a building permit because it would have an "occupancy".
7. If a project included a power panel, then that panel would require an electrical permit (blue tag).

In November of 2007, Mr. Kent noted in correspondence to the Building Department, regarding a complaint about the sign, that he has not received any comment from county
counsel as to the applicability of these government codes as they relate to the Lake Don Pedro Community Services District. Mr. Kent states that his logical conclusion is that the District is exempt from building and zoning ordinances as the property in question stores, treats and transmits water for consumption by their customers.

The Mariposa County Building Department is processing a refund for the Lake Don Pedro CSD's permit for the water storage tank, as this is exempt from a Building Permit pursuant to Section 53091 (d) of Government Code. However, the Building Department is not processing a refund for the sign.

Conclusion and Staff Recommendation

Recommended Action: Staff recommends that the Board of Supervisors adopt a resolution:

1) Denying Appeal No. 2007-195 and upholding the Planning Director's Notice of Violation
2) Finding that a sign for the Lake Don Pedro CSD is subject to local Zoning Ordinances pursuant to relative to the provisions of Government Code Section 53091(a)
3) Finding that a sign for the Lake Don Pedro CSD is not one of the listed exemptions pursuant to the provisions of Government Code Section 53091(e)
4) Upholding the Planning Director's written determination dated June 7, 2007 regarding maximum allowable sign size for the CSD and
5) Establishing the existing zoning ordinance violation be abated by removal of the sign within sixty (60) days.

Attachments

1. Vicinity Map
2. Notice of Appeal No. 2007-195
3. Government Code Section 53091 excerpt
4. Planning Director's 06/07/07 Written Determination
5. Draft Board Resolution
6. Elevation & Photo of Sign
Attachment 1
Attachment 2
MARIPOSA PLANNING
NOTICE OF APPEAL

APPELLANT / CONTACT PERSON

NAME: ROBERT KENT

MAILING ADDRESS: 9751 MERCED FALLS RD, LA GRANGE, CA 95329

DAY TELEPHONE NUMBER: (209) 852-2331

☐ Check this box if the appeal form is being filed by additional appellants. Attach list with name, address, and signatures of appellants. You may designate two persons on the list to receive copies of all correspondence and staff reports related to the appeal. The list must contain a statement which states the person signing the list has reviewed the Notice of Appeal form.

☒ Check this box if appellant is also the application or permit applicant for the finding or decision being appealed.

APPEAL BODY

Decision, finding, or determination is being appealed to

☐ PLANNING COMMISSION (Submit appeal form to Planning Director)

☒ BOARD OF SUPERVISORS (Submit appeal form to Clerk of the Board of Supervisors)

DECISION BODY

Decision, finding, or determination being appealed was made by

☐ PLANNING DIRECTOR

☒ PLANNING COMMISSION: MACIE L. MYOVICH

☒ OTHER COUNTY COMMISSION OR BODY: BUILDING DEPARTMENT, JACK WINTERS

(Name)

DECISION, FINDING, OR DETERMINATION BEING APPEALED (Attach copy of
decision/findings)

APPLICATION NUMBER OR TYPE OF
PERMIT #26622

OTHER (Specify)

SPECIFIC CONDITIONS, FINDINGS, AND/OR PORTIONS OF DECISION OR
DETERMINATION BEING APPEALED

1. NOTICE OF VIOLATION, DTD 11-27-2007, FROM THE PLANNING DEPARTMENT.
The Planning Department's finding that G.C. 53091 (d) & (e) does not apply to
APN: 001-230-012.

The Building Department's finding that G.C. 53090 (a), the District is not a
Local Agency.

STATEMENT OF GROUNDS OF APPEAL

(If additional space is needed, attach additional sheets to Notice of Appeal form. The
grounds of appeal must clearly state those issues or portions of the finding, decision, or
determination being appealed. The Board of Supervisors or Planning Commission will
consider only those issues which are raised in the appeal form.)

1. ON THE PROPERTY, APN: 001-230-012, WATER STORAGE, WATER TREATMENT & THE
TRANSMISSION OF WATER ALL OCCUR.

2. WE ARE A LOCAL AGENCY, FORMED PURSUANT TO THE LOCAL AGENCY FORMATION
COMMISSION (LAFCO).
Check this box if you request the right to submit additional reasons for appeal and amendments or supplements to the appeal. This additional information must be submitted no later than twenty five (25) calendar days prior to the hearing date of the appeal.

[Signature]

SIGNATURE OF APPELLANT

[Date]

DECEMBER 17, 2007
NOTICE OF VIOLATION

RE: Sign Violation located at Lake Don Pedro Community Services District Office, 9751 Merced Falls Road, La Grange, CA 95329, APN: 001-230-012

Dear Mr. Kent,

The Mariposa County Board of Supervisors enacts many regulations associated with zoning in order to protect the public health, safety, and general welfare. You may not be aware, but activities occurring on your property are violations of the Mariposa County Code. The County has found that there is a Non Compliant Sign located on your property. This is a violation of Mariposa County Code 17.76.020. A copy of this Code is attached. This letter is a formal Notice of Violation. It tells you that the County is starting a formal process to resolve this violation. This letter creates a right for you to appeal. It was filed only after serving you with a Notice of Intent To File A Zoning Violation. This notice was mailed to you on October 9, 2007.

On June 7, 2007 you were sent a letter from Sarah Williams, Deputy Director of the Mariposa County Planning Department limiting your sign to a maximum of 32 square feet. That letter stated that an appeal could be filed with either the Planning Commission or Board of Supervisors. The opportunity for appeal was not exercised by you.

You were also notified by the Mariposa County Building Department on October 16, 2007 that a permit had been applied for, but never approved or issued for the sign.

After reviewing and discussing your letter of October 19, 2007 with Mariposa County Counsel it has been determined that the California Government Code Sections 53091 (d) and (e) cited in your letter are not applicable in this case. The cited codes apply to the “production, generation, storage, treatment, or transmission of water”, none of which occur on the parcel cited in this Notice of Violation.

In order to bring this parcel into compliance, the sign must be removed no later than 30 days from the date of this letter.
We recognize that a violation like this may occur because you were unaware of the County’s regulations. For this reason, we ask you to contact the Planning Department as soon as possible and no later than December 17, 2007, or 20 days from the receipt of this notice, whichever timeframe is longer. It is imperative that you call to discuss resolving the violation. We need to ensure that you are in compliance within 30 days of the date of this letter.

The Planning Department conducts an investigation, and while this letter reports the results of that investigation to you, you have the right to appeal our findings to either the Planning Commission or the Board of Supervisors.

(1) You may appeal your belief that the Planning Department has improperly interpreted the attached code section and ask the Planning Commission or Board of Supervisors to overturn our findings.

(2) You may agree that there is a violation, but you believe the remedy we ask of you is inappropriate. You may appeal our proposed remedy to the Planning Commission or the Board of Supervisors to ask them to modify or propose a different remedy.

(3) You may agree with what we propose to resolve the violation, but you do not believe we are being fair with the deadline proposed. You may appeal our proposed deadline to the Planning Commission or the Board of Supervisors and propose a different timeline.

(4) You have the right to appeal all three of the above to the Planning Commission or the Board of Supervisors.

(5) If you appeal to the Planning Commission as per any of the above, you also have the right to appeal the Planning Commission’s decision to the Board of Supervisors. Once the Board of Supervisors takes action, the only appeal is with the Mariposa County Superior Court.

You must exercise this right to appeal within 20 calendar days of the date this letter was delivered to you. Because we sent this letter via both certified mail and Priority Mail with a “proof of delivery,” the 20 days begins on the day the US Postal Service delivered the Priority Mail letter. It is important to act as soon as possible and contact the Planning Department. A copy of the requirements for filing an appeal of a staff decision is attached. Failure to act within this timeline results in losing ability to appeal this matter for a hearing before the Planning Commission or Board of Supervisors.

If you are not sure which of what you want to do, please call immediately to explore the options you have. If you disagree with anything in this letter, appealing the decision to the Planning Commission or Board of Supervisors is probably your best option. There is no charge to file this appeal. Someone in the Planning Department will be happy to help you in preparing the necessary forms and/or letter.

Failure to appeal this matter or failure to reach a resolution may result in legal action being filed against you in either civil or criminal court. If this matter goes to court, a fine of not more than $100 may be imposed for each violation. Every day your property continues to be out of compliance is considered a separate violation and a separate violation may be imposed.

The Board of Supervisors has directed that the Planning Departments goal is to work to resolve this matter with you. This letter is based on our best research and investigation. There may be alternatives to accomplishing your objectives without violating the Zoning Code. We look forward to working with you to resolve this matter fairly and equitably. I have been assigned to work with you on this matter. Please call me at 209-742-1217 or by e-mail at mmyovich@mariposacounty.org.

Cordially,

Mach L. Myovich
Code Compliance Technician

CRRR and Priority Mail
Lake Don Pedro Community Services District
9751 Merced Falls Road
La Grange, CA 95329

RE: Complaint 07-216, approval for permit 26622.

Mr. Kent:

The Building Department received your letter, dated November 21, 2007, concerning the issue of the sign installed at the water district. In this letter you referenced section 53091 (d) & (e) of the Government Code, as the reason for not obtaining the proper permits for said sign. If you read section 53090 (a) of that same Government Code, you will notice that they give a definition of the term "local agency". After reading this, you will realize that the Lake Don Pedro Community Services District does not meet the requirements as stated in this section, of being a "local agency". Therefore, you will still be required to meet all of the conditions of the Building Department’s original letter as authorized by section 101.3 of the California Building Code. The Planning Department and County Council agree with this decision.

There is also the issue of the permit for the 1.7 million gallon water tank and the permit for the metal building over the flocc basin. These two permits have been issued, however no inspections have been called for and it is our understanding that the work for both permits may have been completed. I am sure you will agree that this is not a satisfactory situation.

Please contact the Building Department by December 15, 2007 with your intentions to resolve these issues.

Sincerely,

Jack Winters
Building Department

JW:dw
5. J. As used in this article:

(a) "Local agency" means an agency of the state for the local performance of governmental or proprietary function within limited boundaries. "Local agency" does not include the state, a city, a county, a rapid transit district, or a rail transit district whose board of directors is appointed by public bodies or officers or elected from election districts within the area comprising the district, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code.

(b) "Building ordinances" means ordinances of a county or city regulating building and construction and removal of buildings, including ordinances relating to the matters set forth in Section 53060 and similar matters, and including ordinances relating to building permits and building inspection.

53091. (a) Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.

(b) On projects for which state school building aid is requested by a local agency for construction of school facilities, the county or city planning commission in which the local agency is located shall consider in its review for approval information relating to attendance area enrollment, adequacy of the site upon which the construction is proposed, safety features of the site and proposed construction, and present and future land utilization, and report to the State Allocation Board. If the local agency is situated in more than one city or county or partly in a city and partly in a county, the local agency shall comply with the ordinances of each county or city with respect to the territory of the local agency that is situated in the particular county or city, and the ordinances of a county or city shall not be applied to any portion of the territory of the local agency that is situated outside the boundaries of the county or city. Notwithstanding the preceding provisions of this section, this section does not require a school district or the state when acting under the State Contract Act (Article 1 (commencing with Section 10100) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code) to comply with the building ordinances of a county or city.

(c) Each local agency required to comply with building ordinances and zoning ordinances pursuant to this section and each school district whose school buildings are inspected by a county or city pursuant to Section 53062 shall be subject to the applicable ordinances of a county or city requiring the payment of fees, but the amount of those fees charged to a local agency or school district shall not exceed the amount charged under the ordinance to nongovernmental agencies for the same services or permits.

(d) Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency.

(e) Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are
December 10, 2007

Mariposa County Planning
Mach L. Myovich
5100 Bullion St.
P.O. Box 2039
Mariposa, Ca. 95338-2039

Mariposa County Building Department
Jack Winters
5100 Bullion St.
P.O. Box 1268
Mariposa, Ca. 95338

RE: NOTICE OF VIOLATION
RE: COMPLAINT 07-216, APPROVAL FOR PERMIT 26622

Dear Mr. Myovich and Mr. Winters,

This letter will serve as notification that the District intends to appeal this matter directly to the Board of Supervisors.

Mr. Winters, regarding your letter of November 30, 2007, you stated that the district does not meet the definition of a “Local Agency” as defined in section 53090. Community Services Districts are the epitome of a “Local Agency” as defined in section 53090. The District is not the state, a city, a county nor is the District a rapid transit district or a rail transit district. We are an independent special district, formed by the Local Agency Formation Commission, LAFCo, which performs the proprietary function of providing water within a limited boundary. The governing board is not appointed by another public body but elected by large by the residents of the District.

As for the issue regarding the permits and inspections for both the 1.7 million gallon tank and the building over the floc basin, neither of which have been completed at this time. The excavation and forming for the building foundation has not commenced. These permits were pulled prior to the District becoming aware of government code exempting the District from building and zoning ordinances. Because the District is exempt, the permits and inspections are now moot. As previously stated the District will be seeking reimbursement of fees that have been paid in association with these permits.
Mr. Myovich in your “Notice of Violation” dated November 27, 2007 you stated that after discussion with County Counsel, Government Code Section 53091 (d) and (e) are not applicable in this case as the “production, generation, storage, treatment, or transmission of water” do not occur on the parcel cited in the “Notice of Violation”. You provided a picture of the sign in your previous correspondence. If one had journeyed to the northern end of the parcel, they would have noticed the 600,000-gallon raw water STORAGE POND. The water in the pond is delivered from the District’s intake facility located on Lake McClure. Once the water is delivered, it proceeds through the treatment process. The TREATMENT plant, which has a capacity of 2-million gallons per day, is located just south of the pond. This process begins in the clarification basin where chemicals are introduced. After the water has been gone through the flocculation/sedimentation stage, it proceeds through two 8’ x 40’ dual media pressure filters. After the filtering process, the water is then injected with chlorine and spends ±30 minute in the chlorine contact tanks prior to TRANSMISSION into the 86-miles of distribution piping, and seven treated water storage tanks, which have a combined capacity of storing 4.7-million gallons.

Attached please find the legal description of parcel 001-230-212 and an aerial image, note that the parcel is 3.97 acres in size. The sign in question is located near the east border and about midway from north to south. With the exception of the 86-miles of piping and the seven-treated storage tanks, all the above listed facilities are located on the parcel cited in your “Notice of Violation”. I have indicated the locations on the enclosed aerial photo.

Sincerely,

Bob Kent,
General Manager,
Lake Don Pedro C.S.D.

Cc: John E. Davis, Director of Building Department
Kris Schenk, Planning Director
Lyle Turpin, Supervisor District II
Ray Carlson, Griswold, LaSalle, Dowd Cobb and Gin LLP
Schedule C

Legal Description

All that real property situated in the State of California, County of Mariposa and described as follows:

PARCEL ONE: (APN: 019-020-0030)

LOT 52 AS SHOWN ON THAT CERTAIN MAP ENTITLED "LAKE DON PEDRO UNIT NO. 1-M", WHICH MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON MAY 20, 1966 IN BOOK OF MAPS AT PAGE 1658.

PARCEL TWO: (APN: 020-250-0020)

LOTS 459 TO 460 AS SHOWN ON THAT CERTAIN MAP ENTITLED "LAKE DON PEDRO UNIT NO. 2-M", WHICH MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON SEPTEMBER 8, 1969 IN BOOK OF MAPS AT PAGE 1678.

PARCEL THREE: (APN: 021-090-0120)

LOT 1169 AS SHOWN ON THAT CERTAIN MAP ENTITLED "LAKE DON PEDRO UNIT NO. 3-M", WHICH MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON NOVEMBER 4, 1969 IN BOOK 1 OF MAPS AT PAGE 1653.

PARCEL FOUR: (APN: 001-230-0120)

ALL THOSE PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 15 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

PARCEL A: BEGINNING AT A RAILROAD SPIKE SET AT THE POINT OF INTERSECTION OF THE CENTERLINE OF MERCEDES FALLS ROAD, A COUNTY ROAD, WITH THE MARIPOSA COUNTY LINE, AS SAID COUNTY ROAD AND MARIPOSA COUNTY LINE ARE SHOWN AND DESIGNATED ON THE OFFICIAL "PLAT OF SURVEY FOR W.K. MOORE", RECORDED IN THE OFFICE OF THE RECORDER OF TUOLUMNE COUNTY, CALIFORNIA, RECORDED AUGUST 9, 1950, IN BOOK 10 OF MAPS, PAGE 69; THEN FROM SAID POINT OF BEGINNING ALONG THE EASTERLY LINE OF SAID "W.K. MOORE" SURVEY THE FOLLOWING TWO (2) BEARINGS AND DISTANCES: (1) SOUTH 06° 28' 10" WEST 342.36 FEET; THENCE LEAVING SAID EASTERLY LINE, NORTH 88° 51' 50" WEST 319.81 FEET; THENCE NORTH 01° 28' 10" EAST 350.02 FEET TO A 3/4" REBAR TAGGED "L.S. 3110" SET AT AN ANGLE POINT IN THE SOUTHERLY LINE OF LOT 156, AS SAID LOT IS SHOWN AND DESIGNATED ON THE OFFICIAL PLAT OF "LAKE DON PEDRO SUBDIVISION UNIT NO. 2", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF TUOLUMNE COUNTY, CALIFORNIA, IN VOLUME 3 OF SUBDIVISIONS AT PAGE 741; THENCE ALONG THE MARIPOSA COUNTY LINE AND THE SOUTHERLY LINE OF SAID "LAKE DON PEDRO SUBDIVISION UNIT NO. 2", NORTH 40° 46' 21" EAST 410.94 FEET TO THE POINT OF BEGINNING.

PARCEL B: BEGINNING AT A POINT FROM WHICH A RAILROAD SPIKE SET AT THE POINT OF
INTERSECTION OF THE CENTERLINE OF MERGED FALLS ROAD, A COUNTY ROAD, WITH THE MARIPOSA COUNTY LINE AS SAID COUNTY ROAD AND MARIPOSA COUNTY LINE ARE SHOWN AND SO DESIGNATED ON THE OFFICIAL "PLAT OF SURVEY FOR W.K. MOORE", RECORDED IN THE OFFICE OF THE RECORDER OF TUOLUMNE COUNTY, CALIFORNIA, ON AUGUST 9, 1890, IN BOOK 10 OF MAPS, PAGE 69 BEARS THE FOLLOWING THREE(3) BEARINGS AND DISTANCES: (1) SOUTH 66° 31' 50" EAST 318.91 FEET, (2) NORTH 01° 26' 10" EAST 342.36 FEET, AND (3) NORTH 08° 36' 13" WEST 340.90 FEET DISTANT; THENCE FROM SAID POINT OF BEGINNING, NORTH 01° 26' 10" EAST 360.02 FEET TO A 3/4 INCH REBAR TAGGED L.S. 3110 SET AT AN ANGLE POINT ON THE MARIPOSA COUNTY LINE AND THE MOST SOUTHERLY ANGLE POINT IN THE SOUTHERLY LINE OF LOT 156, AS SAID LOT IS SHOWN AND SO DESIGNATED ON THE OFFICIAL PLAT OF "LAKE DON PEDRO SUBDIVISION UNIT NO. 2", FILED FOR RECORDED IN THE OFFICE OF THE RECORDER OF TUOLUMNE COUNTY, CALIFORNIA, IN VOLUME 3 OF SUBDIVISIONS AT PAGE 75-113; THENCE ALONG THE MARIPOSA COUNTY LINE AND THE SOUTHERLY LINE OF SAID "LAKE DON PEDRO SUBDIVISION UNIT NO. 2", NORTH 66° 28' 02" WEST 21.69 FEET; THENCE LEAVING SAID MARIPOSA COUNTY LINE AND SOUTHERLY LINE OF THE "LAKE DON PEDRO SUBDIVISION UNIT NO. 2", SOUTH 01° 26' 10" WEST 368.20 FEET; THENCE SOUTH 88° 51' 50" EAST 20.00 FEET TO THE POINT OF BEGINNING.
Attachment 3
53090. As used in this article:
(a) "Local agency" means an agency of the state for the local performance of governmental or proprietary function within limited boundaries. "Local agency" does not include the state, a city, a county, a rapid transit district, or a rail transit district whose board of directors is appointed by public bodies or officers or elected from election districts within the area comprising the district, or a district organized pursuant to Part 6 (commencing with Section 27000) of Division 16 of the Streets and Highways Code.
(b) "Building ordinances" means ordinances of a county or city regulating building and construction and removal of buildings, including ordinances relating to the matters set forth in Section 38660 and similar matters, and including ordinances relating to building permits and building inspection.

53091. (a) Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.
(b) On projects for which state school building aid is requested by a local agency for construction of school facilities, the county or city planning commission in which the local agency is located shall consider in its review for approval information relating to attendance area enrollment, adequacy of the site upon which the construction is proposed, safety features of the site and proposed construction, and present and future land utilization, and report thereon to the State Allocation Board. If the local agency is situated in more than one city or county or partly in a city and partly in a county, the local agency shall comply with the ordinances of each county or city with respect to the territory of the local agency that is situated in the particular county or city, and the ordinances of a county or city shall not be applied to any portion of the territory of the local agency that is situated outside the boundaries of the county or city. Notwithstanding the preceding provisions of this section, this section does not require a school district or the state when acting under the State Contract Act (Article 1 (commencing with Section 10100) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code) to comply with the building ordinances of a county or city.
(c) Each local agency required to comply with building ordinances and zoning ordinances pursuant to this section and each school district whose school buildings are inspected by a county or city pursuant to Section 53092 shall be subject to the applicable ordinances of a county or city requiring the payment of fees, but the amount of those fees charged to a local agency or school district shall not exceed the amount charged under the ordinance to nongovernmental agencies for the same services or permits.
(d) Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, reclamation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency.
(e) Zoning ordinances of a county or city shall not apply to the
Location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are subject to Section 12808.5 of the Public Utilities Code, or electrical substations in an electrical transmission system that receives electricity at less than 100,000 volts. Zoning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency, if the zoning ordinances make provision for those facilities.

53092. The State Director of Public Works, upon recommendation of the Division of Architecture, may delegate to any county or city all or part of the powers and duties of the Division of Architecture relating to the inspection of construction of school buildings of school districts within the county or city if, as determined by the Division of Architecture, the county or city has an adequate building inspection program. No delegation under this section shall become effective without the consent of the legislative body of the county or city to which the delegation is made.

53094. (a) Notwithstanding any other provision of this article, this article does not require a school district to comply with the zoning ordinances of a county or city unless the zoning ordinance makes provision for the location of public schools and unless the city or county has adopted a general plan.

(b) Notwithstanding subdivision (a), the governing board of a school district, that has complied with the requirements of Section 65352.2 of this code and Section 21151.2 of the Public Resources Code, by a vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district. The governing board of the school district may not take this action when the proposed use of the property by the school district is for nonclassroom facilities, including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings.

(c) The governing board of the school district shall, within 10 days, notify the city or county concerned of any action taken pursuant to subdivision (b). If the governing board has taken such an action, the city or county may commence an action in the superior court of the county whose zoning ordinance is involved or in which is situated the city whose zoning ordinance is involved, seeking a review of the action of the governing board of the school district to determine whether it was arbitrary and capricious. The city or county shall cause a copy of the complaint to be served on the board. If the court determines that the action was arbitrary and capricious, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by the school district.

53095. The provisions of this article shall prevail over Sections 17215 and 81035 of the Education Code and over Section 65402 of the Government Code.
Attachment 4
June 7, 2007

Lake Don Pedro Community Services District
Bob Kent
9751 Merced Falls Road
Le Grange, CA 95229

RE: Building Permit Application No. 26623 for Sign; APN 001-230-012 in Don Pedro

Dear Bob,

Thank you for submitting your planning approval form for a message board for the Lake Don Pedro Community Services District in the Lake Don Pedro subdivision. The proposed message board is a 12 foot high sign which is 72 square feet in size. The sign is to be located on APN 001-230-012, a 3.97 acre parcel located at 9751 Merced Falls Road. You, Planning Director Kris Schenk and I have discussed this proposal in the past.

The Planning Director has considered the following information and has made a determination for signage for this parcel:

1. There are no specific sign standards for a community services district facility in the Don Pedro planning area or in the Rural Residential zoning designation.
2. Section 17.108.190, County Code allows 16 square feet of sign area for all parcels of land throughout the county. This is a standard which is established as appropriate for residential parcels.
3. The proposed project for a sign for the CSD, and the CSD facilities, are not residential development in terms of use and scale.
4. The proposed project is similar in use and scale to a neighborhood commercial use. The project provides a service (a public service) to the local residential community which is the purpose of the neighborhood commercial zone.
5. Section 17.76.020.D County Code establishes sign standards for the Neighborhood Commercial Zone.
6. It is appropriate to apply the standards established by Section 17.76.020.D County Code (for the Neighborhood Commercial zone) to facilities such as yours in the Rural Residential zone, which is also in the Don Pedro planning area.

Based upon this series of findings and determinations, your maximum sign square footage is based upon the linear footage of the parcel on this the facility is located. Based on your parcel configuration, your facilities would be permitted a maximum total of 32 square feet of sign...
area on-site. This is the maximum square footage of signage allowed by the Neighborhood Commercial Zone.

This action by the Planning Director can be appealed to the Planning Commission or the Board of Supervisors by any interested person within twenty (20) calendar days of the date of this letter (by 5:00 p.m. on Thursday, June 27, 2007). If you intend to appeal this determination, you must submit your Notice of Appeal form prior to the end of the appeal period. Appeals information and a Notice of Appeal form are enclosed for your review.

I am not aware of any State or County code or policy which would enable us to waive the zoning ordinance standards for your facilities, even if they are for public use. The sign standards which are adopted for Mariposa County are, in general, intended to protect the rural character of the county and our communities. Note that there are no community areas in the county where signs greater than 64 square feet are allowed (in the Mariposa Town Planning Area Design Review District, a maximum of 64 square feet of advertising signage is allowed when the sign is constructed of natural materials).

You may either provide me with an updated project plan which shows that the message board can meet these standards, or provide me with additional information the Planning Director may consider relative to the applicability of state or county codes or policies to CSD projects.

I will hold your permit approval form until this issue is addressed. I can be reached at 742-1215 or by e-mail at swilliams@mariposacounty.org should you have questions for me. Kris Schenk’s phone is 742-1216 and his e-mail is kschenk@mariposacounty.org

Sincerely,

Sarah Williams
Deputy Director

Cc: Kris Schenk, Planning Director
Building Department
Attachment 5
STATE OF CALIFORNIA
COUNTY OF MARIPosa
BOARD OF SUPERVISORS

Resolution
No. 08-__

A resolution denying Appeal No. 2007-195 and upholding the Planning Director's actions regarding a sign for the Lake Don Pedro Community Services District.

WHEREAS on the 15th day of May 2007 Building Permit No. 26623 for a 12 foot tall, 72 square foot sign for the Lake Don Pedro Community Services District (CSD) was submitted to Mariposa County for property located at 9751 Merced Falls Road in Lake Don Pedro, and

WHEREAS the CSD property is also known as Assessor Parcel Number 001-230-012; and

WHEREAS on the 7th day of June 2007 the Planning Director issued a written appealable determination to the CSD allowing a maximum of thirty two (32) square feet of signage of the subject property; and

WHEREAS the Planning Director's June 7th 2007 determination was not appealed; and

WHEREAS the Building Permit for the sign was never issued, however the 12 foot tall, 72 square foot sign was erected on the property; and

WHEREAS following receipt of a Request for Investigation about the sign, the Planning Director issued a Notice of Violation to the CSD on the 28th day of November 2007; and

WHEREAS on the 18th day of December 2007, an appeal of the Planning Director's Notice of Violation was received for processing and that appeal is known as Notice of Appeal No. 2007-195; and

WHEREAS the appellant is Bob Kent of the Lake Don Pedro Community Services District; and

WHEREAS following confirmation of hearing dates with the appellant, a duly noticed Board of Supervisors' public hearing was scheduled for the 11th day of March 2008; and

WHEREAS a Staff Report addressing the Appeal No. 2007-195 was prepared pursuant to local administrative procedures; and

WHEREAS on the 11th day of March 2008 the Board of Supervisors did hold a public hearing on Appeal No. 2007-195 and considered all of the information in the public record, including the Staff Report packet, the Notice of Appeal, and the comments of public and the appellant.
NOW THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby deny Appeal No. 2007-195.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby uphold the Planning Director's Notice of Violation and uphold the Planning Director's written determination dated June 7, 2007 regarding maximum allowable sign size for the CSD.

BE IT FURTHER RESOLVED THAT the Board of Supervisors' action on Appeal No. 2007-195 hereby incorporates the entire staff report document and packet prepared for the appeal into this resolution by reference, including the discussion of the grounds for appeal.

BE IT FURTHER RESOLVED THAT the Board of Supervisors makes the following determinations and findings in support of their action to deny Appeal No. 2007-195:

1. A sign for the Lake Don Pedro CSD is subject to local Zoning Ordinances pursuant to the provisions of Government Code Section 53091(a).

2. A sign for the Lake Don Pedro CSD is not one of the listed exemptions pursuant to the provisions of Government Code Section 53091(e).

3. Sign standards are an important implementation measure of the General Plan to protect the rural character of the county and its communities. Signs for Governmental agencies have similar impacts as signs for private development, and it is appropriate that there be consistent regulation.

BE IT FINALLY RESOLVED THAT the Board of Supervisors establishes that the zoning ordinance violation for the Lake Don Pedro CSD sign shall be abated by removal of the sign within sixty (60) days following action on the appeal.

ON MOTION BY Supervisor _______, seconded by Supervisor ________, this resolution is duly passed and adopted this 11th day of March, 2008 by the following vote:

AYES:  

NOES:  

EXCUSED:  

ABSTAIN:  

---

Lyle Turpin, Chair  
Mariposa County Board of Supervisors
ATTEST:

______________________________
MARGIE WILLIAMS
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:

______________________________
THOMAS P. GUARINO
County Counsel

DRAFT
Attachment 6
Lake Don Pedro
Community Services District

Lifetime Warranty
Vandal Resistant
Graffiti Resistant
Quality Since 1968

5'6" Woman

Announcer 6'12"
Cabinet Size: 6'x12'

Stewart Signs
1-800-237-3028
MEMORANDUM

Date: March 10, 2008
To: Board of Supervisors
From: Sarah Williams, Deputy Director

Topic: Appeal No. 2007-195; Lake Don Pedro CSD, Appellant

Attached is a letter from the appellant, requesting a one week continuance of the public hearing scheduled for Tuesday, March 11, 2008 at 2:00 p.m. (Folder 5A).

Staff recommends that the public hearing be continued to Tuesday, March 18, 2008 at 2:00 p.m. or as soon thereafter as possible. The appellant is available at this time, and there is time on the Board’s agenda.

I have also included correspondence from Clem Brown on this matter, received as a result of the notice of public hearing.

Cc: Bob Kent, Appellant
Kris Schenk, Planning Director

ATTACHMENTS

3/7/08 Request for continuance from appellant
3/4/08 Public input

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.
March 7, 2008

ALSO VIA E-MAIL

Sarah Williams, Deputy Director
Mariposa County Planning Department
P.O. Box 2039
Mariposa, Ca. 95338-2039

RE: APPEAL NO. 2007-195

Dear Mrs. Williams,

The District received the Staff report regarding Appeal No. 2007-195 on Thursday, March 6, 2008. After reviewing the staff report, it appears that the County is relying on authority not previously cited in any correspondence. The appeal is scheduled for 2:00 p.m. March 11, 2008, as the District has not had ample time to research nor study the cited authority; I request at least a one week continuance of the hearing to do so.

Sincerely,

Bob Kent, General Manager

Cc: Thomas Guarino, County Counsel
Cc: Raymond Carlson, Griswold, LaSalle, Cobb, Dowd & Gin, LLP
Cc: Lyle Turpin, Supervisor District II
Cc: Kris Schenk, Planning Director
Good Morning Marjorie,

There is a public hearing scheduled today at 2:00 p.m. The hearing is regarding an appeal by Robert Kent, the General Manager of LDPCSD. I realize this is rather late to request a continuance or postponement, however, Mr. Kent is ill today. His family has the flu; he will attend if necessary, but it is possible he is at the stage where this can be passed to people he comes in contact with.

I am waiting to hear from you on this matter. Thanks.

Connie Holley
March 4, 2008

From:
Clem and Mary Brown
2826 Merced Falls Rd.
La Grange, Calif. 93459

To:
Mariposa Planning
5100 Bullion St
P.O. Box 2039
Mariposa, Calif. 95338-2039

Regarding:
Notice of Public Hearing on March 11, 2008 @ 2:00pm

Concerning:
The new Sign in front of the L.D.P.C.S.D. on Merced Falls Rd.

We request that you grant to our Water Dept a "VARIANCE" in order to keep the new sign in front of their office.

This sign is attractive, conservative and is in very good taste. It is very similar to the new sign at Don Pedro High School which was donated by the Porters. These signs act as community designators and give a sense of recognition to our whole community.

If the Mariposa Planning Dept orders the destruction or modification of our sign many members of our community would consider this to be an insult or an assault against us all.

Sincerely

[Signature]

Clem Brown
NOTICE REGARDING A PUBLIC HEARING

Project: Appeal No. 2007-195
Appellant’s name: Robert Kent, Lake Don Pedro Community Service District
Property location: 9715 Merced Falls Road, La Grange; APN 001-230-012

On November 28, 2007, a Notice of Violation was sent to the Lake Don Pedro Community Services District. This was sent following receipt of a complaint about a sign located on the property at 9751 Merced Falls Rd, APN 001-230-012. Upon investigation, the County determined that the sign was in violation of a Planning Director determination made regarding maximum sign size standards allowed for the parcel based upon an interpretation pursuant to Mariposa County Code.

The Appellant, Bob Kent General Manager states that the Lake Don Pedro Community Service District is exempt from local County Codes based on Government Code Section 53091 (d) and (e) which states in part:

(d) Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency.
(e) Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are....

The Appellant is appealing the Planning Directors’ Notice of Violation determination that the recently installed sign does not comply with his June 7, 2007 determination allowing a maximum of 32 square feet of signage on-site (this June 7, 2007 determination was not appealed).

This matter requires a public hearing, and on Tuesday, March 11, 2008 the Mariposa County Board of Supervisors will consider the above appeal.

Hearing Time: 2:00 p.m. or as soon thereafter as possible.
Hearing Location: Mariposa County Government Center (upper floor)
5100 Bullion Street, Mariposa California

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.
You are receiving this notice as required by State law and County Code because (1) you own property within 600 feet of the subject property.

If you have any questions about this appeal or the information in this notice, or if you would like a copy of the staff report, please contact Sarah Williams at Mariposa Planning, (209) 742-1215. E-mail may be sent to Sarah Williams at swilliams@mariposaplanning.org

You may also write us at P.O. Box 2039 Mariposa CA 95338, or drop by the office at 5100 Bullion Street (lower floor), Mariposa to review available information.

Action: The Board of Supervisors will consider adoption of a Resolution granting or denying the appeal.

Written comments may be submitted now, and at any time during the public review period up to, and including, the public portion of the public hearing time. Comments received prior to completion of the staff report will be included and directly addressed in the Staff Report. Comments received prior to the Board of Supervisors' hearing will be copied and given to the Board.

This action of the Board of Supervisors is the final County action on this appeal. You will not receive any further notice regarding the Board’s action unless you request such information.

Please be advised that any concerns or issues relating to the appeal must be raised during the public review process described in this notice, if those issues are to be used for the basis of a future court challenge.

Sincerely,

Sarah Williams
Mariposa Planning