DEPARTMENT: Administration     BY: Rick Benson
PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:
Approve the response and comments of the Board of Supervisors to the 2007-2008 Mariposa County Grand Jury Final Report #1 and authorize the County Administrative Officer to sign the cover letter. The California Penal Code requires that affected Department Heads and the Board of Supervisors respond to each year’s Final Grand Jury Report within the specified time limits. The Board as governing body of the public agency must comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to the matters under its control within ninety days of when the Grand Jury submits its final report.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has responded to the Grand Jury Final Report in previous years.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Approve the draft response with revisions.

Financial Impact? ( ) Yes ( X ) No     Current FY Cost: $     Annual Recurring 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

CLERK’S USE ONLY:
Res. No. __________ Ord. No. _______
Vote - Ayes: _______ Noes: _______
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
TO: RICHARD J. BENSON, CAO
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: Approve the Response and Comments of the Board of Supervisors to the 2007-2008 Mariposa County Grand Jury Final Report No. 1 and Authorize the County Administrative Officer to Sign the Cover Letter

RESOLUTION 08-160

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on April 22, 2008

ACTION AND VOTE:

Approve the Response and Comments of the Board of Supervisors to the 2007-2008 Mariposa County Grand Jury Final Report No. 1 and Authorize the County Administrative Officer to Sign the Cover Letter (County Administrative Officer/Personnel/Risk Manager)

BOARD ACTION: Rick Benson reviewed the draft response to the Report and cover letter; and he commended Mary Hodson for her assistance with preparing the response. Discussion was held. Supervisor Bibby asked for a language change in the cover letter to include the possibility of equipment failure in regard to the tapes; and she asked that language be added to the Master Gardener section that any Brown Act violations can be reported to the District Attorney’s Office. She also initiated discussion relative to the findings for the mixed waste processing/composting project relative to travel and expenses and asked that it be clarified that the response is based on information provided by the Auditor to the County Administrative Officer. The Board concurred with the suggested language changes.

Input from the public was provided by the following:

Paul Chapman provided input on the draft response relative to the discrepancy in the tapes and he provided a copy of the minutes from the June 10, 2003 Board meeting; and he advised that the member of the public questioning and airing concerns regarding the compost project was Ruth Sellers and that she was concerned with Fred Solomon’s qualifications.

Ruth Sellers stated she is the one that submitted the information to the Grand Jury relative to the compost facility issues – she feels that she submitted a good letter to the Board and County Counsel asking legitimate questions about the compost facility and she received no response until a year later, and the next week she feels that Fred Solomon humiliated her in front of a room full of people and she does not feel that the public should be treated that way at a Board meeting. She feels that Fred called her a “liar” and referred to her as “that woman” and that was not on the tape from the June 10, 2003, meeting and she questioned that.

Witt Hawkins (member of the Grand Jury) stated he is not at liberty to respond to the draft response; but they will provide an answer in writing in their Final Report. He asked who does the County
Counsel represent, and whether he represents the County? Chair Turpin responded that County Counsel works for the Board and represents the legal oversight of the Board. Supervisor Pickard referred to a letter dated February 2, 2008, attached to the draft response that was prepared by County Counsel that addresses these questions. Discussion was held, and Rick Benson provided input on the preparation of the response being done in accordance with the Brown Act.

Supervisor Bibby extended an apology to Ruth Sellers personally and to the public in general relative to the compost issues and as a whole and she noted that there are times when people get upset when providing input to the Board. Chair Turpin noted that this Board cannot change what happened, but is responsible for conducting business today in a formal, polite manner.

Witt Hawkins continued with questions concerning County Counsel’s duties. Further discussion was held. Thomas P. Guarino, County Counsel, advised that the first letter he wrote is included in the response package and that he wrote a second letter in response to a subsequent letter that he received from the Grand Jury in which he set forth the statutory responsibilities as advisor to the Grand Jury. He advised that he is willing to answer questions on those issues at one of the Grand Jury meetings.

Ruth Sellers thanked Supervisor Bibby for her apology; and she noted that the other Supervisors that were present on June 10, 2003, did not speak up on her behalf. She advised that she has records for what she says; and she feels that she should be appreciated for her efforts. She feels that it was so determined that the compost project happen, and she feels that she was discredited because she was interested.

County Counsel responded to a question from the Board as to what is available to the Grand Jury for assistance with investigations. Supervisor Bibby suggested that if information is received about the tape discrepancy issue, that perhaps a review could be made between the tapes. Rick Benson advised that he is willing to meet with the Grand Jury and the Clerk of the Board relative to the tape issue. Supervisor Bibby assured the public that all complaints are reviewed.

(M)Pickard, (S)Bibby, Res. 08-160 was adopted approving the response and comments with the changes as discussed to the 2007-08 Grand Jury Final Report #1, along with the cover letter. Supervisor Aborn invited the Grand Jury to respond to the response. Ayes: Unanimous.

Cc: Mary Hodson, Deputy CAO
File
May 19, 2008

Honorable F. Dana Walton  
Assistant Presiding Judge of the Superior Court  
County of Mariposa  
P. O. Box 28  
Mariposa, California 95338

Dear Judge Walton:

Enclosed is the Response and Comments of the Mariposa county Board of Supervisors to the 2007-2008 Mariposa County Grand Jury Final Report #1. The Clerk of the Board of Supervisors and County Clerk will keep copies of the report, and this response and comments on file.

In the “findings” discussion and in the recommendations concerning the mixed waste processing/composting project, the Grand Jury raises a question which demands a response. It is alleged that a portion of the tapes from the June 10, 2003, Board of Supervisors meeting were either erased or are missing. The Grand Jury further states “This is definitely an incident of Incomplete Records.” Respectfully, the Mariposa County Board of Supervisors cannot let this statement stand without comment. The Board of Supervisors wishes to go on record that it has every confidence in Ms. Margie Williams, the Clerk of the Board. Ms. Williams has served the citizens of Mariposa County for over 25 years, is known for her integrity and performs her duties with utmost care and competence. Any perceived discrepancy in the tapes was most likely the result of equipment malfunction, an incorrect date or other incorrect information being provided to the Grand Jury.

We at the County appreciate the hard work and efforts of the Grand Jury in investigating complaints and realize the many hours of work this report represents.

Please accept my apologies, initially this information was provided to Judge Parrish, it is our understanding that the information should have been addressed to your attention.

Sincerely,

RICHARD J. BENSON  
County Administrative Officer

RB/mnbh  
Enclosure

cc:  Affected Departments  
Keith Williams, County Clerk  
Margie Williams, Clerk of the Board
April 22, 2008

Honorable Wayne R. Parrish
Superior Court Judge, County of Mariposa
Post Office Box 38
Mariposa, California 95338

Dear Judge Parrish:

Enclosed is the response and comments of the Mariposa County Board of Supervisors to the 2007-2008 Mariposa County Grand Jury Final Report #1. The Clerk of the Board of Supervisors and County Clerk will keep copies of the report, and this response and comments on file.

In the “findings” discussion and in the recommendations concerning the mixed waste processing/composting project, the Grand Jury raises a question which demands a response. It is alleged that a portion of the tapes from the June 10, 2003, Board of Supervisors meeting were either erased or are missing. The Grand Jury further states, “This is definitely an incident of incomplete records.” Respectfully, the Mariposa County Board of Supervisors cannot let this statement stand without comment. The Board of Supervisors wishes to go on record that it has every confidence in Ms. Margie Williams the Clerk of the Board. Ms. Williams has served the citizens of Mariposa County for over 25 years, is known for her integrity and performs her duties with utmost care and competence. Any perceived discrepancy in the tapes was most likely the result of equipment malfunction, an incorrect date or other incorrect information being provided to the Grand Jury.

We at the County appreciate the hard work and efforts of the Grand Jury in investigating complaints and realize the many hours of work this report represents.

Sincerely,

[Signature]

RICHARD J. BENSON
County Administrative Officer

RB/mbh
Enclosure

cc:  Affected Departments
Keith Williams, County Clerk
Margie Williams, Clerk of the Board
Board of Supervisors Response and Comments on the
2007-2008 Mariposa County Grand Jury Findings and Recommendations
Pertaining to the Board of Supervisors in the Grand Jury Final Report #1

Mixed Waste Processing/Composting Project
The grand jury made several findings and recommendations regarding the mixed waste processing/composting project. The Mariposa County Board of Supervisors has reviewed the response of Dana Hertfelder, Public Works Director dated March 24, 2008, and concurs with his response.

Those issues relating to the Board of Supervisors are addressed below.

Findings
1. We found that a member of the public questioning and airing their concerns to a member of the Board of Supervisors regarding this compost project was not answered until one year later.
   Without more specific information, this Board cannot comment regarding questions from a member of the public.

2. A tape by the complainant of the Board of Supervisors meeting dated 6/10/2003. The tape supplied to the Grand Jury by Mariposa County from the same date doesn’t have any portion of that conversation. This is definitely an incident of incomplete records.
   The Board of Supervisors strongly disagrees with this finding. No follow up was conducted with county staff to determine if the tape was not completely copied, or if perhaps the incorrect date was given.

3. Eight Mariposa officials traveled to Canada in October 2000 but did not document a justification for the trip, destination, analysis or conclusions in any written report, as it related to the Compost Project.
   The County Administrative Officer has provided this Board with information that Mariposa officials traveled to Canada for the purpose of investigating the potential for a compost facility and that no official written document was published as a result of this trip.

4. Discrepancies were found in the total dollar amounts for travel expenses, submitted by the eight individuals who visited Canada in October 2000.
   The County Administrative Officer after consulting with the County Auditor has informed this Board that there are no discrepancies regarding the travel expenses for the October 2000 trip. Governmental accounting regulations allow for copies of invoices (receipts) to be destroyed after five years. Receipts are not kept indefinitely and the Auditor’s office has already purged records from 2000. Differences in travel expenses do not necessarily mean there are discrepancies.
Recommendations

1. Recommendation that all Chairpersons of the Board of Supervisors take a course in ethics and how to use "point of order" to conduct meetings.
   Assembly Bill 1234 requires that certain government officials (which includes members of the Board of Supervisors) complete training in ethics every two years commencing January 1, 2007. Mariposa has complied with this requirement and affected officials will again be completing this training in 2008. Newly elected officials to the Board of Supervisors are encouraged to attend the California State Association of Counties (CSAC) training on conducting public meetings. Since 1997, all new Board members have attended this training.

2. Raise the County's policy of only $3,000 allowance for expenditures to $7,000, without going through the process of securing approval from the Board of Supervisors.
   According to current county policy, any single item over $5,000 is considered a fixed asset and must be approved by the Board of Supervisors. This threshold was recently raised from $3,000 to $5,000 in 2006. The Board may consider raising this limit upon recommendation by the County Administrative Officer and/or the Auditor. Governmental accounting standards require that all fixed assets be approved by the governing body, but that each governing body determines their fixed asset threshold appropriate to their specific circumstances. Typically a government's threshold correlates to its size.

3. Update the compost unit through a few modifications(changes at a costly, but acceptable cost, to produce saleable compost; authorize a study of such.
   Given the budget constraints of the existing Solid Waste/Recycling fund, this study is not fiscally prudent at this time. The Board may consider such a study at a later date upon the recommendation of the Public Works Director and/or the Solid Waste Committee. Any and all such improvements to the composting facility must be carefully considered since any increase in costs will be reflected in fees charged to the facility's users.

4. Pass an ordinance which states in effect that "Any county employee who travel out of state or country, to inspect, research or gather information relating to a capital expenditure, is required to submit a written report of their analysis, recommendations and conclusions."
   An ordinance is a legal document and a policy may be more appropriate for this circumstance. The Board may direct county employees traveling out of state or country to conduct research, and to submit a written document detailing the outcome of the research at the time expenditures are approved by the Board for such travel.

5. The $42,967.77 left in the Compost Project not be diverted to the General Fund. These moneys should be used to escalate the efficiency in removing plastics from the garbage or in some other way related to landfill operations.
   With the completion of the Compost Project, all operating costs are now accounted in the Solid Waste/Recycling fund, which is an enterprise fund and
should be self-sufficient. Staff is researching the possibility that any General Fund dollars contributed to this project is to be considered a loan and should be repaid. Until this issue is resolved, Administration recommended that the unused money remain in the fund.

   The Local Solid Waste Task Force is currently contemplating various recycling programs and the costs associated with implementing these programs. A mandatory recycling program will almost certainly require additional enforcement personnel and other associated costs. Additional studies are required to fully identify the implications of a mandatory recycling program.

7. Pass an ordinance prohibiting discarding garbage and waste on private property. Chapter 8.36 of the County code governs this issue.

8. All county departments owe it to the taxpayers to work as a team. The department heads, and ultimately the Board of Supervisors, should see that this does not happen again.
   The Board of Supervisors is always striving to have county government operate as a team, and appreciates the efforts and dedication of the elected and appointed department heads in directing county staff in this endeavor.

9. The Board of Supervisors should consider the feasibility of changing the landfill site sign to READ “Waste and Recycling Facility.”
   Upon consulting with the Public Works Director, the Board may consider this recommendation.

10. There should be an annual mandatory recycling seminar for all county supervisors and department heads.
    Literature is provided to each department regarding recycling. Currently individual departments already practice certain recycling – printer/fax cartridges, aluminum/plastic containers, paper, etc. Expanding these practices to all departments may be considered in the future.

Mariposa County Jail/Sheriff Department

The Mariposa County Board of Supervisors has reviewed the response of Brian Muller, County Sheriff dated January 28, 2008, and concurs with his response, noting that new funding requests will be reviewed within the constraints of funding availability.

Recommendations:
1. The Board of Supervisors definitely needs to look into other alternatives for covering inmates’ medical costs. Outside contracts with drug companies and/or doctor services would be a good start. If it is legal, they may want to consider a cap on inmate medical expenses.
California law is very clear that medical care must be provided to inmates. The Board of Supervisors takes the recommendation of the elected County Sheriff on which medical providers to use for providing such services. Currently under California law no cap can be set upon medical expenses.

2. Some of the department’s equipment (vehicles, computers, radios, etc.) is outdated and replacement should be accelerated in a short-range budget. If this is not done it will develop into a very serious problem that will rapidly deteriorate and it needs the immediate attention from the Board of Supervisors.

The Board of Supervisors relies upon the recommendation of the elected County Sheriff to request additional funding for equipment replacement. Funding for the replacement of equipment was requested and included in the adopted Fiscal Year 2007-08 Budget.

3. With the Sheriff’s budget currently being considerably in the red due to their employees’ benefits and retirement funds, we strongly recommend that the Board of Supervisors immediately review this situation and take action in aiding a solution.

The Board of Supervisors is aware of the rising costs of employee benefits and retirement costs and County Administration staff is currently working on a funding solution. Issuing bonds as a funding mechanism as been postponed and staff is now working with CalPERS on another funding solution.

4. It is recommended that the Board of Supervisors investigate and develop a method for the Sheriff Department to collect impact fees for requested services from all outside vendors and especially those that make a profit.

It is unclear to the Board of Supervisors what vendors the recommendation pertains to. Generally speaking, “impact fees” are financial contributions (i.e., money, land, etc.) imposed by communities on developers or builders to pay for capital improvements within the community which are necessary to service/accommodate the new development. Again, the Board of Supervisors relies upon the recommendation of the elected County Sheriff on imposing fees for specific services.

Master Gardeners

The Mariposa County Board of Supervisors has reviewed the response of Thomas Guarino, County Counsel dated February 5, 2008, and the response of Karen Robb, Farm Advisor dated February 7, 2008, and concurs with their respective responses.

Those issues relating to the Board of Supervisors are addressed below.

1. Also, the complainant was concerned if the Master Gardeners were in violation of the Brown Act. While the Grand Jury could not find any violation of the Master Gardeners violating the law, the Board of Supervisors recommends that future complaints involving the Brown Act be forwarded to the District Attorney as provided by California law.
2. It is recommended that when a citizen questions the legality of anything connected to the County that County Counsel research the issue and notify the complainant in writing of their findings.

County Counsel serves as the legal adviser to the Board of Supervisors, County departments, agencies and commissions. It is not the duty of County Counsel, nor is it within the resources of the County, and the office of County Counsel in particular, to provide written legal opinions to constituents. This recommendation will not be implemented.
The Honorable F. Dana Walton  
Assistant Presiding Judge of Mariposa Superior Court  
5088 Bullion Street  
Mariposa, CA 95338


Dear Honorable Judge Walton:

Following is the Public Works Department’s response to the 2007-2008 Mariposa County Grand Jury report.

Mixed Waste Processing/Composting Project

Findings

1) The Department of Public Works agrees that the public has a misconception of the operation of the compost facility and its intended purpose.

2) The Department of Public Works does not agree that the County waited until the last minute to initiate this project to help meet the California State 50 percent reduction mandate. Work on complying with the mandated 50 percent reduction was initiated in the early 1990’s by the County.

3) The Department of Public Works agrees that County officials traveled to Canada to visit the Herhof compost facility prior to entering into a contract for the construction of the facility.

4) The Department of Public Works agrees that as of December 15, 2007, Mariposa County had not met the California State Mandate of 50% reduction of solid waste.

5) The Department of Public Works agrees that the information provided to the County by a consultant regarding mixture levels of debris, garbage, plastics, metals, greens, etc was proven to be inaccurate.

6) The Department of Public Works does not agree that consultant fees of 14.02 percent far exceed the normal rate of a project the size and of the compost facility. The consultant fees covered not only the cost of engineering design and construction management, but also cost for project planning, review and selection of available technologies to help meet the state mandated diversion rate, and environmental review and development of the plans and specification.
7) The Department of Public Works partially disagrees that the layout of the receiving/scales station, recycling area and solid waste entrance could have been engineered more effectively. The layout design was engineered within the existing physical constraints of the space available at the landfill. Specifically, these improvements could not be placed on top of buried waste in the landfill.

8) The Department of Public Works does not agree that there are territorial issues between the Mariposa County Road Division and the Solid Waste Division. Both divisions are part of the Department of Public Works and report to the Director. These two divisions do have different responsibilities and priorities.

9) Public Works agrees that the compost facility was touted to extend the life of the landfill 20-30 years from the year 2000. Currently, the remaining life of the landfill is projected at approximately 15 years.

10) The Delaware North Corporation contract with the County of Mariposa fixed their disposal fee at $64.00 through September 30, 2003. The contract then allowed for annual increases based on the Consumer Price Index (CPI) through September 30, 2008. Public Works believes that all contracts should include a clause that allows the County to pass on any fee increases to contracts with other agencies and organizations.

11) The Department of Public Works disagrees that the Compost project was poorly managed from its inception in 2006. The Compost Facility was a very complicated project that required years of planning and engineering. While it is easy to second guess past decisions, Public Works believes that this project was developed and implemented in a professional manner consistent with County policies and procedures. However, current Public Works’ goal is to operate the Compost Facility as efficiently as possible as part of the County’s overall solid waste program.

**Recommendations**

The Department of Public Works has hired a part-time Office Technician to assist in improving and expanding recycling opportunities and programs within the County of Mariposa. This position is responsible for preparing articles for local newspapers, flyers and handouts explaining the benefits of recycling and encouraging individuals to recycle. This position is also responsible for working with local schools to encourage educational programs espousing the benefits and need for recycling. The Department of Public Works will continue to work with local schools to provide opportunities for field trips and tours of the Mariposa Solid Waste and Composting Facility.

The County gate attendants are trained to calculate disposal quantities on a consistent basis. In addition, a new scale was installed in 2006 allowing for all loads to be accurately weighed.

The County of Mariposa does hold consultants responsible for the accuracy of their work. The consultant who prepared the waste characterization study followed the appropriate protocols and procedures when conducting the study. The issue with the waste characterization is not its inaccuracy, but that the municipal solid waste stream into landfill has change substantially since the waste characterization was completed.

The Department of Public Works would like to see the $3,000 purchased order limit increase to at least $5,000 to account cost increases since the limit was originally established by the Board.

The Mariposa County Department of Public Works Road Division and Solid Waste Division do work as a team. While these divisions have different responsibilities and priorities, they both are managed by the director of Public Works who’s responsible for ensuring that all divisions of the Public Works Department work as a team to complete the objectives and goals of the Department. The Department of
Public Works also works closely with Cal Fire and the California Department of Corrections crews who regularly assist the Department in brush, tree and weed removal at County facilities.

The Compost Facility was designed to produce material for use as alternative daily cover for the landfill. The Department of Public Works believes that it would be prudent to resolve some of the issues regarding the efficient processing of waste material through the facility before making costly modifications to produce a saleable compost material. In addition, a thorough evaluation of benefits and liabilities of producing saleable compost material should be completed prior to developing plans to modify the facility.

The Department of Public Works is constantly striving to answer all citizen requests as promptly as possible.

The Department of Public Works will recommend that all contracts have a clause allowing the County pass-through any cost increases to the hauler.

The Local Task Force will be reviewing various programs to encourage recycling including the possibility of some form of mandatory recycling.

Chapter 8.36, *Solid Waste Disposal* establishes regulations governing the disposal of solid waste. This section of the County Code states “It shall be unlawful for any person to dispose of garbage or refuse except in (1) an authorized solid waste container; (2) appropriate and serviced storage containers; or (3) in other areas designated for disposal of solid waste.” Occupants of large tracts of land such as ranches are allowed to dispose of waste generated on their property in a manner approved by the health department.

The Department of Public Works is evaluating a number of recycling options including a commingling recycling program. This department believes that acceptance of commingling recyclables may encourage more residents of Mariposa County to recycle.

The Department of Public Works has developed short and long range plans for waste disposal in Mariposa County. The department has retained a consultant to assist with the state mandated five year permit review process.

The Department of Public Works will consider the feasibility of changing the landfill site sign to “Waste and Recycling Center”.

The Department of Public Works appreciates the opportunity to respond to the 2007-2008 Grand Jury report. The department agrees with the findings and recommendations of the Grand Jury that pertain to Public Works. If any additional information or clarification is required, please do not hesitate to contact me.

Sincerely,

Dana S. Hertfelder, PE
Public Works Director

cc: Rick Benson, CAO
    Board of Supervisors
    Tom Guarino, County Counsel
January 28, 2008

Mariposa County Superior Court
Honorable F. Dana Walton
Assistant Presiding Judge of the Superior Court
P.O. Box 28
Mariposa, CA 95338

Re: Response to Mariposa County 2007-2008 Grand Jury Final Report #1

I am in receipt of the 2007-2008 Mariposa County Grand Jury Final Report #1. Pursuant to Penal Code 933.05(b) this shall serve as a response to the Grand Jury’s recommendations regarding the Adult Detention Facility and the Animal Control Facility.

Having reviewed the findings, recommendations and conclusions of the 2007-2008 Final Report #1, I wish to express my concurrence with the Grand Jury’s findings and recommendations.

The escalating cost of providing medical services to inmates is an industry wide concern. Alternatives are being explored at both the local and State level, however the state mandates placed upon correctional facilities greatly limits the number of viable options that are available to local detention facilities. Facility staff and medical personnel will continue to make every effort to reduce costs wherever possible, while still meeting the standards of care required under Title 15.

The facilities and equipment utilized by the Sheriff’s Office are in use twenty-four hours a day, seven days a week. Because of this continual usage, the usable life span of the facilities and equipment is shorter than what would normally be expected. A great deal of time and effort are expended by sheriff’s office staff to ensure that existing equipment is well cared for and properly
maintained. Despite our best efforts to extend the usability of equipment and facilities, we acknowledge the need for replacement and/or repair of several items, especially within the correctional facility. The cost for replacement and/or repair of these items will be substantial but necessary. I join the members of the Grand Jury in urging the Board of Supervisors to provide funding for the replacement of equipment that is essential for the safe operation of the correctional facility.

I would like to thank the Grand Jury members for their recognition of the needs within the Animal Control Division. With the Animal Control staff handling over 2,170 calls for service in 2007, the demand for services often exceeds the ability of staff to meet those needs. Although the current State and local budgetary outlook is bleak, I will be asking the county for a Kennel Technician position in next year's budget. The addition of one full time Kennel Technician would greatly enhance the ability of the Animal Control Division to keep pace with current call loads and would allow the Animal Control Officers to remain on patrol full time.

Finally, I wish to express my appreciation to the Grand Jury members for their willingness to serve our community in such a vital advisory role. Their sacrifice of time and self is recognized and valued by all of us.

Respectfully Submitted,

Brian E. Muller, Sheriff/Coroner/Public Administrator
February 5, 2008

Honorable F. Dana Walton
Mariposa County Superior Court
P.O. Box 28
Mariposa, CA 95338

Re: Interim Response/Comment to Grand Jury, Final Report #1

Dear Judge Walton:

I have in hand and have reviewed the 2007-2008 Mariposa County Grand Jury Final Report #1. It is my understanding that this report has been submitted to me for comment pursuant to Penal Code section 933 (a). It is also my understanding from reviewing the Foreperson’s cover letter to you that there are “two specific reports that need immediate attention to those areas addressed”. In reviewing the report there is one request for an investigation by my office within 30 days. I have also copied the Grand Jury with this response as they asked for a direct response from me. Accordingly, I am providing this interim response to address certain concerns and restrictions on the Office of County Counsel with respect to the requested activity. Additionally, pursuant to Penal Code section 933 (a), it is respectfully requested that the Foreperson or his designee clarify the second report that needs immediate attention if it is an activity or recommendation for the Office of County Counsel.2

Authority of County Counsel

While I am pleased that the Grand Jury has expressed the confidence and trust in the Office of County Counsel to conduct an investigation in such a matter, it is my concern that I am without authority to conduct such an investigation. In part, this is due to the statutory provisions governing whom the County Counsel serves and in what capacity and limitations on investigatory powers for the type of investigation requested.

1 Penal Code section 933 (a) provides in part, “a final report may be submitted for comment to responsible officers, agencies, or departments,...”
2 Penal Code section 933 (a) also provides in part, “For 45 days after the end of the term, but more person and his or her designee shall, upon reasonable notice, be available to clarify the recommendations of the report.”
Pursuant to the Government Code, County Counsel serves as the legal adviser to the Board of Supervisors. County Counsel also serves as legal adviser to various County departments, agencies and commissions, as well as special districts and advisory agencies of the County. The office is also responsible for the daily transactional work in support of County departments, as well as the processing of contracts, agreements and other Board items requiring legal review. In addition, the Mariposa County Code identifies when the County Counsel may act as an investigator. While County Counsel does serve as a legal adviser to the Grand Jury I have been unable to locate any authority or practice by which the County Counsel would serve as an investigator for the Grand Jury. It is also my thought that because the Government Code and the County Code both describe the scope of duties of the County Counsel and specifically reference investigations of this nature as being done for the Board of Supervisors that it would not be legally appropriate for me to conduct such an investigation.

**Scope of Investigation**

Respectfully, given the scope of what is requested and the type of information that would have to be obtained and concern it would violate the Penal Code provisions regarding evidence provided to the Grand Jury it does not appear that the investigation as a practical matter could be done within existing statutory constraints and secrecy concerns.

The specific request of the Grand Jury is, "In regards to the missing data from the June 10, 2003 tapes, we recommend that the County Counsel investigate and report to the Superior Court and Grand Jury their findings within 30 days".

It is unclear from the request whether the Grand Jury desires an inquiry into "whether there was an intent to delete portions of the tapes, or to look into whether there was in fact missing data. In any event, such an investigation requires speaking to the same witnesses, reviewing the Grand Jury evidence in the form of the tape obtained from a Grand Jury witness, and interviewing various current and former Board of Supervisors members and County employees. The scope of this investigation raises several legal issues, including those of Grand Jury confidentiality and secrecy and my statutory obligations to serve as counsel to the Board of Supervisors as set forth above. With respect to the Board of Supervisors is my thought that it is

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3 Government code section 26526.

4 These departments, agencies and commissions include but are not limited to The Planning Department, Public Works, Sheriff Department, County Assessor, County Auditor, County Building Department, and Planning Department, County Probation, County Human Services, Service As Counsel to the Public Guardian and Public Conservator, County Fire Department, the Planning Commission, County Water Agency, Several Special Districts Including Yosemite West Maintenance District, Vehicle Parking District Number One, Don Pedro 1 M, Countywide Service Area #1, and Various JPA’S Such As YARTS, Area 12 Agency on Aging, and Special Commissions and Agencies Such As First Five of Mariposa County and Mountain Valley EMS.

5 Mariposa County Code Section 2.12.040 which states in part, "act as investigator in difficult cases for the board". County Counsel does regularly conduct as necessary investigations in connection with litigation matters, risk management and personnel matters and other legal matters within the scope of job duties. However, these investigations are not for third parties.
a conflict of interest for me to investigate conduct with respect to the Board or the Board's Clerk.\(^6\)

The case of *Daily Journal Corporation v. the Superior Court of Orange County* is instructive in reviewing the limitations on the disclosure of evidence and witness testimony obtained by a grand jury.\(^7\) While in the context of a criminal proceeding the reasoning is instructive, and I believe applicable to the current matter. As the Supreme Court stated in part:

"...a superior court may order public sessions of the grand jury when it involves matters affecting the public welfare. Otherwise, grand jury proceedings are conducted in secrecy. (Pen. Code, § 915 [grand jury "shall retire to a private room" to conduct inquiry into offenses].) Unless requested by the grand jury, "the judge of the court . . . shall not be present during the sessions of the grand jury." (Id., § 934.) Apart from necessary and authorized appearances, as specified by statute, no person is permitted to be present during criminal sessions of the grand jury except the members and witnesses actually under examination. (Id., § 939.) Deliberations of the grand jury are completely private; no person other than the grand jurors themselves may be present during "the expression of the opinions of the grand jurors, or the giving of their votes" on any criminal matter before them. (Ibid.)

Grand jurors must take an oath that they "will not disclose any evidence brought before the grand jury, nor anything which [they] or any other grand juror may say, nor the manner in which [they] or any other grand juror may have voted on any matter before the grand jury." (Pen. Code, § 911.) A grand juror who willfully discloses the fact of an information or indictment before the defendant has been arrested is guilty of a misdemeanor. (Id., § 924.) Unless required by the court, grand jurors are not permitted to disclose any evidence adduced before the grand jury or anything said by a member of the grand jury. (Id., § 924.1, subd. (a).) Moreover, each grand juror "shall keep secret" the deliberations and voting of the grand jury. (Id., [*1123] § 924.2.) A grand juror may not be questioned about any deliberations or vote relative to a matter pending before the grand jury, "except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors." (Id., § 924.3.)"\(^8\)

It would appear that such confidentiality and secrecy provisions would be equally applicable to an investigation such as that suggested here. Therefore, it is my thought that the Grand Jury would likely be prohibited from disclosing the tape obtained from a witness. The tape at issue would be essential to determine what if any information was missing. In addition, the witness testimony with respect to the tape, when it was recorded, how it was recorded, if it included portions of the Board session that was during a recess or adjournment would all be essential to any investigation. This would also involve speaking with witnesses for whom I

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\(^6\) Well-known standards of professional conduct, ethics and requirements of professional responsibility, prohibit an attorney from acting adverse to his client. Government Code 26526.

\(^7\) *Daily Journal Corporation v. the Superior Court of Orange County.* (1999) 20 Cal.4th 1117.

\(^8\) *Daily Journal Corporation v. the Superior Court of Orange County.* (1999) 20 Cal.4th 1117, 1122-1123.
provide legal advice in other areas and work with regularly and therefore would likely constitute a conflict for which I would excuse myself from participation in the investigation. ⁹

Accordingly, it is my conclusion that the Penal Code provisions with respect to grand jury evidence and witness testimony would make it difficult if not impossible to complete such an investigation. Therefore pursuant to Penal Code Section 933.05 (a) (2) and (4), County Counsel respectfully disagrees with the recommendation and is unable to undertake the recommended investigation for the Grand Jury and report the results thereof to the Grand Jury and Superior Court.

**Master Gardener Issue**

It is unclear from the referral in the report whether this is one of the two issues for which immediate action is considered necessary. If it is then the response below sets forth the reasons why the recommendation would not be appropriate. I would of course be amenable receiving any clarification of the recommendation under Penal Code section 933 (a).

The specific request is that when any citizen questions the legality of anything with respect to the County that a written opinion be issued to a third party. This request would be in conflict with the job duties of County Counsel as described above. County Counsel serves the Board of Supervisors and County departments and accordingly would be prohibited from undertaking to do legal work for the general public especially in light of the fact that such legal work may involve matters which would create a liability for the County. If as suggested such reports were prepared and everything was legal and the citizen was so informed, this would leave open a clear indication that if such a response was not provided that an illegal act may have occurred exposing the County to litigation, which could result in significant expenditures of County funds, which would otherwise be available for conducting the business of the County. Additionally, issues raised by the public often involve matters which are protected by privacy laws, rules of confidentiality, collective bargaining issues, negotiations and other matters, the disclosure of which would be illegal as a matter of law or seriously harm the ability of the County to negotiate in the public's best interest.

Certainly, when matters come to the attention of County Counsel that create a risk for the County or indicate that the County is not acting in an appropriate manner efforts should be undertaken by the appropriate authority to discontinue the inappropriate activity or undertake corrections which put the activity on a legal footing. Independently, except for matters involving the day-to-day operations of the County Counsel's Department, the authority to change County policy, resolutions, ordinances or other such actions rest with the Board of Supervisors and accordingly, County Counsel could not simply "fix it". Please be re-assured that when matters

⁹ And additional difficulty in any such investigation, would be my personal knowledge of the Clerk of the Board for whom I hold the highest regard and respect for her professionalism and integrity. I have to work with this person on a daily basis and do not feel that I would be the appropriate person to investigate her activities, which is a clear implication of the investigation demanded.
are brought to my attention that a process or procedure of the County needs to be revised to remain in compliance with the law it is taken seriously.

Much of the work of a county counsel or any attorney is considered privileged as a matter of law. The holder of this privilege is the County in the form of the Board of Supervisors. This is of course well-known to the Court and no disrespect is intended by mentioning this basis for not putting into effect the suggested recommendation. Rather, the intention is to clearly identify for the record why County Counsel is prohibited by law from complying with the disclosure requested in the recommendation. Therefore, when County Counsel does not directly respond to a member of the public with respect to a legal issue raised it is not an intention to be discourteous, rather it is because a response from the attorney for the County would be inappropriate at the time. It is a specific statutory obligation under the rules of professional conduct for an attorney to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client". Business and Professions Code Section 6068 (c).

Therefore, pursuant to Penal Code section 953.05 subsections (a),(2) and (4) County Counsel respectfully disagrees with the requested action and for the reasons stated above will be unable as a matter of law to implement the request.

Consultant Issue

At page 2 of the report, there is a reference to information from a consultant and absence of information regarding a legal action. Based upon the report, it appears each matter occurred

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10 This privilege (Evidence Code 954) is well recognized in several areas and is expressly acknowledged in the Brown Act in the Public Records Act as an exception to public disclosure of information, in two statutes specifically addressing public access to information. See Government Code Sections 54956.9 and 6254. See Also Roberts v City of Palmdale (1993) 5 Cal.4th 363. The unanimous Supreme Court reversed the judgment of the Court of Appeal. Holding "that the Public Records Act (Gov. Code, § 6250 et seq.) did not require public disclosure of the letter from the city attorney distributed to members of the city council, expressing the legal opinion of the city attorney regarding a matter pending before the council, since the letter was privileged under the attorney-client privilege. It also held that the transmission of the written legal opinion was not a meeting within the terms of the Brown Act (Gov. Code, § 54950, et seq.). It further held that a 1987 amendment to § 54956.9 of the Brown Act was not intended to abrogate the attorney-client privilege as it applies to the communication of written legal advice by a city attorney to the individual members of a city council," and "The Public Records Act (Gov. Code, § 6250 et seq.) did not require disclosure of a letter a city attorney prepared for the city council, in which the attorney expressed legal opinions concerning a resident's pending appeal of a parcel map. Although the letter was a "public record" within the meaning of the act, it was a confidential communication within the attorney-client privilege. Further, Gov. Code, § 6254, subd. (b), which exempts from disclosure records pertaining to pending litigation until the litigation is terminated, does not operate to limit the scope of the attorney-client privilege to matters pertaining to pending litigation. This subdivision pertains to all public records, but does not address the privilege. Gov. Code, § 6254, subd. (k), expressly exempts from disclosure matters privileged under the Evidence Code. This includes the attorney-client privilege. Thus, the city could assert the privilege without the necessity of alleging that the letter was a document pertaining to pending litigation."
in 2003 or earlier. These issues predate my tenure as County Counsel and therefore I am unable to comment with respect to what County Counsel at the time may have reviewed or considered. In any event, as noted above, such report would have likely been subject to the attorney-client privilege and not disclosable.

It does not appear that this matter was part of a recommendation for any action. Usually, when such issues arise, the department, which is involved in administering the contract, will make a referral to County Counsel for legal review. If it involves a matter for which an action should be initiated an appropriate referral to the Board of Supervisors, usually in the context of a closed session, will be undertaken to determine if the Board of Supervisors feels it is in the best interest of the County to initiate such an action. It is entirely likely any such legal analysis of a potential litigation matter would not be in records provided to anyone but the Board of Supervisors, the client; as such a report would be confidential under the attorney/client privilege.

I simply mention this matter in an abundance of caution due to the lack of certainty with respect to the other "report" that needed "immediate" action.

**Interim Response Comment**

Because of the short time in which action was requested this interim response and comment has been provided so that the Grand Jury will have an opportunity to consider if they want to undertake any other efforts with respect to its own investigations in this matter. As I indicated to the Grand Jury in writing before the current session and as I have with each Grand Jury, County Counsel stands ready to assist the Grand Jury with any legal questions they may have and would respectfully call to the attention of the Grand Jury its obligation to meet with any subject of an investigation and obligation to provide an affected agency a copy of the Grand Jury report relating to that person or entity a minimum of two days prior to its public release. Penal Code Sections 933 (e) and (f).

Respectfully submitted,

[Signature]

Thomas P. Guarino
County Counsel

TPG/rs

cc: Board of Supervisors
   Rick Benson, County Administrative Officer
   Dana Hertfelder, Public Works Director
   Marvin Wells, Grand Jury Foreperson
   [Margie Williams, Clerk of the Board]
February 7, 2008

The Honorable F. Dana Walton
Assistant Presiding Judge of the Superior Court
5088 Bullion Street
Post Office Box 28
Mariposa, CA 95338

Sir:

I agree with the findings of the 2007-2008 Grand Jury Final Report #1 regarding the Master Gardener Program for Mariposa County.

Sincerely,

Karen L. Robb, Ph.D.
County Director/Farm Advisor

C: Mariposa County Board of Supervisors
  Lyle Turpin, Chair, District 2
  Brad Aborn, District 1
  Janet Bibby, District 3
  Dianne Fritz, District 4
  Bob Pickard, District 5
Mixed Waste Processing/Composting Project

On July 10, 2007 the Grand Jury received a complaint regarding the Mariposa County Compost Facility. Accompanying the complaint were many documents, thus giving the Grand Jury enough information to warrant an investigation. We spent approximately 257 man hours researching over 12,000 pages of data, interviewing five individuals under oath, visiting the Compost Facility, talking to citizens, and conducting many committee and full quorum meetings.

Findings:

It is apparent that the public has a misconception of what the operation was actually purchased and set up to produce.

It is evident that the county waited until the last minute to initiate this project to help meet the California state mandate of a 50% reduction in all solid waste by the year of 2000. Since they were unable to meet the mandate, the county had to get many extensions from the state and therefore were not up and operating their compost facility until July 2006.

We found that a member of the public questioning and airing their concerns to a member of the Board of Supervisors regarding this compost project was not answered until one year later.

A tape provided by the complainant of the Board of Supervisors meeting dated 6/10/2003 indicates that another incident happened when a concerned Mariposa citizen was verbally lashed out at by one of the major consultants ($170,413.24 in fees) regarding their concerns about the Compost Project. Portions of this tape were erased or missing for whatever reason. The tape supplied to the Grand Jury by Mariposa County from the same date (6/10/2003) doesn't have any portion of that conversation. This is definitely an incident of incomplete records.

Eight Mariposa officials traveled to Canada in October 2000 but did not document a justification for the trip, their destination, analysis or conclusions in any written report, as it related to the Compost Project. If reports were submitted, we found no such data in records provided to us from the Mariposa County documents, for periods 1992 through 2006. This is also the case for a trip made to Germany, which was reportedly for compost facility review in that country. The compost system that Mariposa County purchased from ECS, (Engineered Compost Systems), came from the state of Washington, not from Canada or Germany. Yellowstone has the only other compost facility similar to the one Mariposa County purchased, yet only one representative from Mariposa traveled to Yellowstone to tour that facility.

Discrepancies were found in the total dollar amounts for travel expenses, submitted by the eight individuals who visited Canada in October 2000. The variation ranged from
$346.06 to $2,008.62. Records showed only total dollar amounts, without receipts, thus not documenting charges to the taxpayers of Mariposa County.

As of December 15, 2007 Mariposa County still has not met the California State Mandate of 50% reduction of solid waste to the landfill, nor odor control on a consistent basis.

Examination of the dollars used in the Compost Project revealed that consultant fees of 14.02% of budget, far exceed the normal rate of such a project this size, (amount was $1,171,734.44). See attached graph explaining percentage of costs.

Information provided to the county by a specific consultant regarding mixture levels of debris, garbage, plastics, metals, greens, etc., needed to produce compost, has proven to be inaccurate. This created one of the major problems with the compost operation. No place in the records could we find where the Mariposa County Counsel attempted to pursue legal action against this consultant for this misleading information. This imbalance in materials is the major cause of inadequate and improper compost mixtures. Most companies are bonded for reasons such as this.

It is our observation that the layout of the receiving/scales station, recycling area, and solid waste entrance could have been engineered more efficiently. A better design would allow both public and waste-hauling users to access the facility without congestion.

During our investigation, we sensed competitive territorial issues between the Mariposa County Road Department and the Solid Waste Site Department. This rift only adds another layer of difficulty to the Compost Project.

The Compost Project was touted to extend the life of the landfill for 20-30 years starting the year 2000. Our investigation indicates that it would last only 10+ years from the ending of 2007, under present conditions.

It should be noted that negotiations with several independents contracted from 3-5 years to use the landfill have ended up causing the Mariposa taxpayers subsidizing uncharged expenses toward the end of their contracts.

It is evident that the Compost Project was poorly managed from its inception to 2006. However, it should be noted that only a few of the personnel who were involved in putting together and finalizing this compost project are still on the Mariposa County payroll.

**Recommendations:**

It is necessary that the Mariposa County Supervisors, top managers, and supervisors work as a team. We strongly recommend that they all consider following these suggestions in a reasonable and timely manner and display their sincerity by way of communications to the Mariposa taxpayers that this project can and will work properly and efficiently.
Publicize in local newspapers/letters/flyers that the Compost Facility is required by the State of California, to reduce the solid waste to the landfill by 50% and that it has not yet been accomplished. Explain to the public that you need their support and ask them to help accomplish this sooner than later. Also emphasize to the public that this compost unit was not purchased for the sole purpose of converting solid waste into saleable compost, but rather for the purpose of providing amendment compost for the daily cover of the landfill.

Start an educational program with the school system for students, informing them of the necessity of recycling and proper disposal of household waste using video as well as assembly programs. Designate certain days in each month for scheduled tours for the schools to visit the Compost Site.

Standardize the charges at the Landfill by training the employees in a consistent manner. This will generate more revenue.

The Grand Jury was unable to determine whether there was intent to delete portions of the 6/10/2003 Board of Supervisors meeting tape, if it was a recording problem, or if the dates on the tapes were mislabeled. Regardless of the reason, the records are incomplete. The leadership of the Board of Supervisors, during both of the above mentioned meetings, was lacking in professionalism. For the chairperson to lash out and allow someone from the audience to do the same to a concerned citizen, whether they are right or wrong, is inappropriate. We recommend from this point on that all chairpersons of the Board of Supervisors take a course in ethics and how to use “point of order” to conduct meetings. In regards to the missing data from the 6/10/2003 tapes, we recommend that the County Counsel investigate and report to the Superior Court and Grand Jury their findings within 30 days.

Hold consultants responsible for inaccurate information in their data regarding capital expenditure projects. Be overly thorough with researching their credentials and references before contracting with them.

Raise the county’s policy of only $3,000 allowance for expenditures to $7,000, without going through the process of securing approval from the Board of Supervisors. Immediate expenditures by the Operations Foreman are necessary in order to keep things operating efficiently. Hold those individuals responsible, but also put your trust in their decision-making.

Increase the number of employees to the manufactures recommendations to improve efficiency and sorting ability with the compost operation.

Set up a partnership with the Mariposa County Fire Dept., California Dept. of Forestry (Dept. of Corrections), Mariposa County Road Dept., and the Mariposa County Landfill to work as a team. Do this to aid and help the property owners clearing around their homes/buildings for fire protection, clearing of Mariposa county Roadways, and use of the brush/wood chips for needed material in aiding proper compost. Set up a program
which is encouraging, affordable and supportive to the citizens. Aid the Fire Department in fire protection and help out the C.D.F. Corrections Project.

From all indications the present compost unit could be updated through a few modifications/changes at a costly, but acceptable cost, to produce saleable compost. We therefore recommend that the County Board of Supervisors authorize a study of such. If feasible, start the procedure to complete the project by 2010. We have reason to believe that you will have no choice in the matter because we anticipate the state will be mandating 75% reduction in solid waste at all landfill sites by then. Set a goal to be ahead of this issue and let not the public be disappointed again.

Be responsive in answering all citizens who question capital expenditures, either in writing or verbally. It is very important that they know and understand the facts. The unknown creates doubt and mistrust.

Pass an ordinance (if not already on the books) which states in effect that “Any county employee who travels outside of state or country, to inspect, research or gather information relating to a capital expenditure, is required to submit a written report of their analysis, recommendations and conclusions”.

All contract negotiations with independents, (haulers, Yosemite National Park, etc.), which use the landfill should have clauses with automatic adjustable charges to prevent any costs to the taxpayers.

We suggest that the $42,967.77 left in the Compost Project not be diverted to the General Fund. These moneys should be used to escalate the efficiency in removing plastics from the garbage or in some other way related to the landfill operations.

We suggest the county pass an ordinance requiring a mandatory recycling program beginning July 1, 2008. Publicize that in all probability the State of California will likely mandate a 75% waste reduction in all landfills in the near future. The cost to the taxpayers will increase significantly if the county has to purchase additional land for a new landfill.

Pass an ordinance prohibiting discarding garbage and waste on private property. This practice causes public health concerns, odors, rodents, and an unsightly terrain for neighboring homes. Penalty would result in substantial fines.

All county departments owe it to the taxpayers to work as a team. The department heads, and ultimately the Board of Supervisors, should see that this does not happen again. It adds to the concerns regarding the Compost Project, and increases public skepticism.

We recommend that the waste site set up a commingling system for the public for their recyclables. This way commingling bins could be shipped out eliminating a lot of confusion and labor costs.
The landfill and recycling Operations Foreman should have a short and long range plan in place for upgrading all segments of the landfill operation. This would need to be approved by the Public Works Department. In return, the Public Works Department would see it that funds, equipment, and manpower are provided in meeting these goals.

The Board of Supervisors should consider the feasibility in changing the landfill site sign to READ “Waste and Recycling Facility”. This minor change would eliminate any confusion about the word “compost”.

There should be an annual mandatory recycling seminar for all county supervisors and department heads. A “Recycling Day” could be held for all county offices. On this day, employees could bring their personal recycling to bins. Both bins and educational literature would be distributed to raise awareness.

Educating the public and providing them with incentives will be key to the success of the extremely necessary recycling project.

Compliments:

Mariposa County now has a landfill and recycling Operations Foreman who is concerned, competent, and very knowledgeable in overseeing and running the Compost Facility.

The problems of excessive odors and gaseous smells have been somewhat reduced in the past 6 months. However there is still a lot that can be done, but it will take more devoted time in analyzing and finding the cause and resolving the issue. From all indications, no landfill can completely reduce odors to zero, but they can be reduced to an approved level.

We are encouraged to see that the county has formed a Task Force and Blue Ribbon Citizens Committee to study, research, and work as a team to recommend solutions in resolving the undesirables at the waste site and compost facility. Hopefully they will put a lot of immediate emphasis on how to accomplish the required State Mandate of 50% solid waste reduction as well as odor control.

We are pleased to report that all of the county employees who we requested information of were very polite, courteous, and cooperative in supplying us with available records for our review.

The booklet titled, The Mariposa County Waste Reduction and Recycling Guide, is an excellent publication and should continue to be used to educate the public.

It is evident that the leadership of the Board of Supervisors has put significant effort into seeing that progress was made in the past six months of 2007, with regard to the Compost Project.
Mariposa County Jail / Sheriff Department

On September 17, 2007, a grand jury committee visited the Mariposa County Jail. We were fortunate to have two (2) members of the Sheriff Department management staff provide the tour. They were very receptive in giving the committee a tour of the jail and answered all of our concerns.

Findings:

The jail was designed to house 58 inmates, however during our visit we learned that the staff had installed overflow beds which placed the actual capacity at 61 inmates.

The jail can grant a 5-day release only on specific crimes if capacity is extremely overcrowded.

One of the major contributors of crimes committed in Mariposa is drugs and alcohol related.

The cost of health care and prescriptions for the inmates are extremely high. However, they sometimes can be reimbursed from an individual's private insurance, but that percentage is very low. In some incidents, an inmate with severe mental health issues will be transported to a mental hospital. This 'free' health care and prescription medications uses up a very large portion of the Sheriff Department's annual budget.

The inmates are provided with a variety of activities: Playing cards, watching television, reading (library), and milling around in a fenced area outdoors from some of the cell blocks.

There are specific areas for female inmates, mental health issues, sex offenders, very aggressive and combative inmates.

The jail has a very controlled medical room where medication is strictly monitored and dispensed.

They also have an impressive array of jail clothing and shoes, a restraining and a drunk-tank cell.

The visiting area is equipped with glass partitions and two-way telephones for communications and security.

Another one of the department's major expenses this year was a new 35-pound capacity clothes washer at a cost of $11,000.

The jail is well secured. An individual has to go through a series of locked doors to get into an enclosed command center.
The department's current staffing includes 24 deputies and 6 sergeants. They are currently running the department with a shortage of two personnel. Turnover is high due to the stressful work and many of the applicants do not pass the entrance exam.

It is unfortunate, but the animal control unit does not have enough resources to oversee that department like the Sheriff would prefer. That unit only has 3 animal control officers.

**Recommendations:**

The Board of Supervisors definitely needs to look into other alternatives for covering inmates' medical costs. Outside contracts with drug companies and/or doctor services would be a good start. If it is legal, they may want to consider a cap on inmate medical expenses.

Some of the department's equipment (vehicles, computers, radios, etc.) is outdated and replacement should be accelerated in a short-range budget. If this is not done it will develop into a very serious problem that will rapidly deteriorate and it needs immediate attention from the Board of Supervisors. In addition to all of this, the jail is over capacity most of the time.

With the Sheriff's budget currently being considerably in the red due to their employees' benefits and retirement funds, we strongly recommend that the Board of Supervisors immediately review this situation and take action in aiding a solution. A good start would be for them to call CalPERS (Employer Contract Center, 1-888-225-7377) for possible direction and assistance.

It is recommended that the Board of Supervisors investigate and develop a method for the Sheriff Department to collect impact fees for requested services from all outside vendors and especially those that make a profit.

It is essential that the Sheriff Department's 2008 budget include at least two more animal control officers and new equipment for the facility.

**Conclusion:**

The Sheriff Department is managed very well overall even though tremendous constraints have been placed on the Department with all of the expenses just mentioned.

The committee was treated with the greatest respect, and the Sheriff Department's staff was very professional, answering all of our questions.
**Master Gardeners**

On September 6, 2007 the Grand Jury received a complaint from a Mariposa citizen questioning whether Mariposa County’s contribution to the Master Gardeners funding was illegal. Also, the complainant was concerned if the Master Gardeners were in violation of the Brown Act.

In our investigation, we could not find any violation of the Master Gardeners violating the law. The program was designed throughout the counties in the state of California in conjunction with the University of California and the U.S.D.A. In regards to there being a violation of the Brown Act, they are not, as it is applicable only to elected officials and advisory committees.

We however do recommend that from this point forward when a citizen questions the legality of anything connected to the County that County Counsel research the issue and notify the complainant in writing of their findings. If something is wrong, fix it through the Board of Supervisors. On the other hand if all is legal, have the courtesy of notifying them. In either case the concerned citizen has the right of knowing the answer in hard copy. After all, it is called being honest and up front with your employers.
Public Works Complaint

On June 4, 2007 the Grand Jury received a complaint regarding the brushing techniques used by the Public Works Department. Because it was too close to the end of the term for the 2006-2007 Grand Jury, it rolled over to the 2007-2008 Grand Jury. The 2007-2008 Grand Jury reviewed the complaint and found that the Supervisor of that District had already addressed the issue and resolved it. Therefore, the 2007-2008 Grand Jury deemed that no further action was required.

Sheriff’s Deputy Complaint

On June 4, 2007 the Grand Jury received two similar complaints, regarding a Mariposa County Sheriff deputy going to a place of employment in order to question a person who was on probation. Again, since it was received at the close of the 2006-2007 Grand Jury term, it was held over for review by the 2007-2008 Grand Jury. The 2007-2008 Grand Jury determined not to act on it. It was discovered that the deputy under review had resigned and was no longer with the Mariposa County Sheriff Department.

Mariposa Planning Department

On November 13, 2007 the Grand Jury received a complaint directed at the Mariposa Planning Department. Due to the complainant not giving their name, address, telephone number, and not signing their complaint form as is required, we had no option but deem that no action be taken.
Folder     Time     Description

9:00 a.m. Meeting Called to Order at the Mariposa County Courthouse by Vice-Chairman Parker. Supervisors Stetson and Bibby were present.

(M)Stetson, (S)Bibby, the meeting was adjourned to the Mariposa County Government Center (Government Code Section 54955), Board Chambers, at 5100 Bullion Street to Convene at 9:15 a.m./Ayes: Stetson, Bibby, Parker; Excused: Balmain, Pickard.

9:21 a.m. The Board reconvened at the Mariposa County Government Center with all members present.

Pledge of Allegiance

Introductions – Chairman Pickard recognized the presence of Patti Reilly, former Supervisor for District I.

Bob Pickard, Board of Supervisors, Chairman;
Presentation of a Resolution and Tile Plaque Recognizing Gary Colliver for his Services as Planning Commissioner; Presentation of a Resolution from the Planning Commission; and Presentation from Planning Staff (Planning Director)

BOARD ACTION: (M)Stetson, (S)Bibby, Res. 03-204 was adopted and presented to Gary Colliver, along with a tile plaque/Ayes: Unanimous. Susan Crain, Chair of the Planning Commission, gave a presentation to Gary on behalf of the Commission. Eric Toll, Planning Director, gave a presentation to Gary on behalf of staff. Patti Reilly commended Gary for his service as a Commissioner.

Public Presentations: For Non-Timed Agenda Items and for Items Not on the Agenda
- Fred Solomon read his letter into the record as a response to comments made by Ruth Sellers at the June 3rd meeting concerning the issuance of a Request for Proposal for a composting system.
- Becky Crafts, representing Mariposa Mountain Riders, thanked the Board and County staff for its continuous support of the annual historic Wagon Train event, and she invited the Board members to attend.
- Edward Mee, a Wawona resident, advised of a recent clean-up event held in Wawona, and he thanked the County for its support.
- Mike Bird stated he intends to speak on the item relative to the Declaration he served on the Board when that matter is addressed.
- Frank Long, representing the Historical Sites and Records Preservation Commission, asked the Board to reconsider the issue relative to moving the Parish Hall from the Methodist Church property. He advised that the Commission would like to see the building moved to the Womack property on Jessie Street and become a part of the Mariposa Creek Parkway project, and they would like to see the County assist with funding. They would also like to keep a brick fireplace and the entrance steps with the structure. Frank also provided input on the composting project, and he stated he feels that other options for disposal of solid waste in the County should be considered. He stated he does not feel that the composting project will work for the long-term.
Board Information
- Supervisor Balmain gave his weekly status report on the Airport improvement project. He advised that there is still a problem with the voice-activated runway lights, so they are being left on at night. He stated he would confer with County Counsel and Public Works to try to resolve this matter.
- Supervisor Bibby advised that the Catheys Valley Town Planning Area Planning Advisory Committee is scheduled to meet this evening at 7:00 p.m. at the McCay Hall and she encouraged the public to attend.
- Supervisor Pickard advised that a District V meeting has been scheduled for this evening at the Lushmeadows Fire Station to discuss the General Plan Update.

Approval of Minutes 5-20-03, Regular Meeting
**BOARD ACTION:** Approved.

Chairman Pickard reviewed the scheduling of agenda items, including the items listed on the addendum to the agenda.

Approval of the Consent Agenda (See End of the Minutes)
**BOARD ACTION:** (M)Stetson, (S)Bibby, all items were approved/Ayes: Unanimous.

10:00 a.m. Recess

10:21 a.m. Eric Toll, Planning Director;
Board Direction on the Use of Specific Plans in the General Plan Update, in particular, the Wawona Specific Plan with Discussion of Specific Plans for Mariposa, Coulterville and Fish Camp
**BOARD ACTION:** Discussion was held with Eric Toll relative to consideration of area plans versus specific plans and the advantages and disadvantages, particularly for Wawona.
- Gary Ingram, Yosemite National Park, read a letter from Mike Tollefson, Superintendent, relative to the Wawona Specific Plan.
- Discussion was held. Board members pointed out typographical errors and corrections that they would like to see made to the draft of the Wawona Specific Plan with the proposed amendments.
- Edward Mee stated the Wawona Town Planning Advisory Committee is extremely concerned with the possibility of replacing the Wawona Specific Plan with an area plan, and he advised of their efforts to update the Specific Plan. He stated the Specific Plan is an important document for their community.
- Gene Spindler, President of Wawona Area Property Owners Association and Wawona Town Planning Advisory Committee, advised that they want to retain the Wawona Specific Plan.
- Don Davidson commented on the Fish Camp Specific Plan, and he urged the Board to proceed with caution when considering changing Specific Plans. He noted that the 35-foot height limit is only relevant to Specific Plans.
- Dick Kunstman provided input on government processes, and he cited differences that he sees between Specific Plans and area plans.
- Edward Mee noted that the Advisory Committee adopted a motion to ask the Board to direct that a legally defensible plan for Wawona's Specific Plan be prepared.
Following further discussion, (M)Parker, (S)Stetson, direction was given to staff and the Wawona Town Planning Advisory Committee to continue to do the necessary updates to the Wawona Specific Plan in concurrence with the National Park Service/Ayes: Unanimous.

CLOSED SESSION: Conference with Legal Counsel Relative to Anticipated Litigation for a Case Pursuant to Subdivision (c) of Government Code section 54956.9 (County Counsel)
**BOARD ACTION:** (M)Parker, (S)Bibby, the closed session was held following a short recess/Ayes: Unanimous.
12:21 p.m. The Board reconvened in open session. Chairman Pickard advised that the Board would recess for lunch and reconvene at 1:30 p.m.

12:22 p.m. Lunch

1:39 p.m. The Board reconvened. Chairman Pickard announced that direction was given to staff as a result of the closed session.

Bob Pickard, Board of Supervisors, Chairman;
Discussion, Direction to Staff, and Possible Action Regarding: 1) The Declaration Served on the Board of Supervisors by Michael Bird on May 27, 2003, Regarding the Validity of County Ordinance No. 986; and 2) County Ordinance No. 986, which Changes the Regular Meeting Place of the Board of Supervisors from the County Courthouse to the County Government Center.

BOARD ACTION: Input from the public was provided by the following:

- Mike Bird read his letter into the record advising that he does not feel that Ordinance No. 986, which changes the location of the Board’s meetings from the Courthouse to the Government Center, was properly adopted. Therefore, he feels the Ordinance is void and needs to be rescinded this date and redone. Without taking that action, he feels that future meetings will not be valid.

Discussion was held. Mr. Bird wished to speak again on two different occasions during the Board’s discussion, and the Chairman did not recognize him. Supervisor Pickard stated he feels that the Board has followed the proper process in adopting Ordinance 986 to change the location of the Board’s regular meetings from the Courthouse to the Government Center. Supervisor Parker stated he does not believe that there has been any violation of Government Code Section 54955.

(M)Parker, (S)Balmain, to direct the initiation of declaratory relief against Michael Bird for his allegations, and request that the Court render a decision. Further discussion was held. Supervisor Stetson stated he agrees with the requested action; however, he is not willing to go to that level at this time. Supervisor Bibby stated she feels the text error in the County Code has been corrected, and that the Board should reaffirm its position versus seeking declaratory relief. The motion failed by the following vote: Ayes: Balmain, Parker; Noes: Stetson, Bibby, Pickard.

(M)Bibby, (S)Stetson, Res. 03-210 was adopted directing staff to respond to Michael Bird’s Declaration in writing by reaffirming the Board’s position that the text error has been corrected to move the Board’s meetings from the Courthouse to the Government Center/Ayes: Stetson, Bibby, Pickard; Noes: Balmain, Parker.

Jim Petropulos, Public Works Director;
Authorize the Public Works Director to Sign and Submit a Loan Application in the Amount of $2.7 Million to the United States Department of Agriculture, Rural Development and Sign the Letter of Conditions and Associated Loan Application Documents for the Yosemite West Wastewater Treatment Facility Improvements Project

BOARD ACTION: Following discussion, (M)Stetson, (S)Parker, Res. 03-211 was adopted/Ayes: Unanimous.

2:06 pm. LOCAL TRANSPORTATION COMMISSION
Jim Petropulos, Public Works Director;
Adopt the 2003-2004 Transportation Planning Overall Work Program (OWP) and Authorize the Executive Director of the Local Transportation Commission (LTC) to Sign the Overall Work Program Agreement and the Transportation Planning Process Certification, which are both Required by Caltrans

COMMISSION ACTION: Discussion was held with Jim Petropulos and Annette Clark/Associate Transportation Planner. Commissioner Balmain requested that the Work Program include something to abate the air quality and safety issues associated with dirt roads. He also asked why Native American groups were singled out in the work element for public participation and outreach and not other groups. Kathleen McElhinney/CalTrans, advised that she will review this matter. Supervisor Balmain also requested that the Lake Don Pedro trail system be included in the Work Program.
(M) Pickard, (S) Stetson, LTC Res. 03-1 was adopted approving the recommended actions, with the amendments as requested/Ayes: Unanimous.

2:20 p.m. Discussion and Provide Direction to Staff Relative to Conducting a Recruitment for the Position of County Counsel (County Administrative Officer)  
**BOARD ACTION:** Discussion was held. (M) Parker, (S) Stetson, the County Administrative Officer’s recommendation was approved for recruitment. Supervisor Bibby suggested that consideration also be given to contacting the following relative to recruitment: State Bar Association, California Lawyers Association, District Attorney Offices, and if there is a Federal association that would be appropriate. Ayes: Unanimous.

Jeff Green, County Counsel;  
Waive First Reading and Introduce an Ordinance Superseding Ordinance No. 988, Amending the Contract with the California Public Employees’ Retirement System (CalPERS) Board of Administration to Provide 3% @ 50 Safety Retirement for Probation Officers and Includes the Certification of Employee Election and Authorize the Chairman to Sign the Contract Amendment (Personnel)  
**BOARD ACTION:** Following discussion, (M) Parker, (S) Balmain, first reading was waived and the Ordinance was introduced superseding Ordinance No. 988/Ayes: Unanimous.

2:24 p.m. Recess

2:42 p.m. Eric Toll, Planning Director; and Jim Petropulos, Public Works Director;  
Board Action to (1) Certify an Environmental Impact Report (EIR); (2) Adopt Findings and Approve a Mitigation Monitoring Program for the Composting Facility Application for a United States Department of Agriculture (USDA) Rural Utilities Loan and (3) Authorize the Director of Public Works to Proceed with the Loan Application  
**BOARD ACTION:** Eric Toll reviewed the staff report. John Larson/URS Corporation, described the project and highlights of the major points from the environmental review process, and the composition of the final EIR. Supervisor Bibby advised of a letter that was received from Ken Gosting. Discussion was held. Input from the public was provided by the following:
- Ruth Sellers stated she feels that this EIR is predicated on the Herhof project and the Board terminated the contract with Herhof and issued a Request for Proposal. She stated she feels this process violates CEQA.
- Bart Brown, on behalf of MERG, read a statement and provided a list of what they feel are shortcomings in the EIR in responding to the comments that were provided. He advised that MERG is concerned with the environmental issues and the EIR, and they have concerns and questions relative to the costs, tipping fees and hauling costs, and timeframes and costs to develop the existing facility. He stated they feel the recently appointed Task Force should review this matter before proceeding with the Request for Proposal. He also stated he has been told by people in Yosemite that more separation of the solid waste could occur in the Park, as well as some composting of the green waste.
- Trudy Williams, on behalf of MERG, presented photos showing samples of recycling containers that could be used in the County. She asked that a community effort like this be adopted.
- Ruth Sellers asked if the County takes credit for recycling that is done in the Park, and she was advised that it does.
- Mike Bird read his letter relative to concerns with the EIR, including lack of information on emissions of pollutants and the amount of decomposition that will be achieved. He expressed concern with the proposal. Eric Toll advised that the public comment period has closed for the EIR. The Board allowed Mr. Bird to finish reading his letter.

Discussion was held. Supervisor Balmain expressed concern with restricting the project to the use of pneumatic nailers, etc., during the construction phase; and he asked that this restriction be removed. The Board concurred with removing this restriction. Further discussion was held relative to this process and the final project that is selected. Eric Toll explained that there is a time element involved.
with the USDA loan; and he advised that the certified EIR could be attached to the Request for Proposal and would allow an opportunity for vendors to address the areas of impacts and controversy issues that have been identified. Eric stated he reviewed the list of concerns submitted by MERG relative to the final EIR, and he advised that five or six items were related to the EIR and he feels those items have been addressed in the record adequately.

(M)Balmain, (S)Parker, Res. 03-212 was adopted approving the recommended actions, as amended. Supervisor Parker noted that the County will continue to look at recycling efforts such as the ideas submitted by Trudy Williams. Ayes: Unanimous.

CONSENT AGENDA:

CA-1 Approve a Certificate Recognizing and Congratulating Lloyd and Elizabeth Graham on Their 75th Wedding Anniversary (Chairman Pickard)

CA-2 Approve Budget Action Transferring Funds within the Tourism & Economic Development Budget to Cover Unanticipated Expenses ($2,253) (Visitor’s Bureau); Res. 03-205

CA-3 Reappoint Loretta Milne to the Sequoia Area VIII Board (Human Services)

CA-4 Adopt a Resolution Amending the Building Advisory and Appeals Board to Add an At-Large Member (Building); Res. 03-206

CA-5 Authorize the Extension of the 2002/2003 District Attorney Statutory Rape Vertical Prosecution Grant from an End Date of June 30, 2003, to an End Date of October 31, 2003, Allowing the Grant to Expend Unused Funds (District Attorney); Res. 03-207

CA-6 Adopt a Resolution Authorizing the Acceptance of the Office of Criminal Justice Planning Statutory Rape Vertical Prosecution Grant for Fiscal Year 2003/2004 in the Amount of $46,750 (District Attorney); Res. 03-208

CA-7 Approve Budget Action Transferring Funds within the Planning Department Budget Unit to Cover Greater than Normal Planning Commission and Copier Expenditures ($4,500) (Planning Director); Res. 03-209

3:37 p.m. Adjournment in memory of Frank Palmer, Thaddeus G. Simeral, Byron “Buzz” Works, Lucille M. Buzzini, and Jack Troyer.

Respectfully submitted,

Margie Williams
Clerk of the Board