DEPARTMENT: Planning

RECOMMENDED ACTION AND JUSTIFICATION:

The Planning Commission [and Agricultural Advisory Committee] recommend that the Board of Supervisors adopt a resolution denying Land Conservation Act Cancellation Application No. 2008-89 with findings.

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

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On April 22, 2008, the Board of Supervisors adopted Resolution No. 08-162 denying a Request for a Compatible Use Determination for these applicants on this property, to allow a church as a compatible use on LCA Contract No. 17. This Resolution also denied Conditional Use Permit No. 2007-13 for a church in the AE Zone.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

1. Amend the recommended findings.
2. Approve the Application for Cancellation. The findings in state law would have to be made.

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  
Transfer Between Funds  
Contingency  
( ) General ( ) Other  

Annual Recurring Cost: $  

Staff Report to the Board with 18 attachments  
(attachments are as listed on Page 14 of the Staff Report)  

CLERK'S USE ONLY: 
Res. No.: 08-534  
Vote – Ayes: 3  
Abs: 0  
( ) 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:  

Margaret Williams, Deputy Director
742-1215
STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 08-534

A Resolution Denying Land Conservation Act Cancellation No. 2008-89, a petition proposing to cancel a 6.97 acre portion of Land Conservation Act Contract No. 17; APN 012-180-032; in the Mariposa Area

WHEREAS on the 5th day of May, 2008 a petition for cancellation of an 8 acre portion of Land Conservation Act Contract No. 17 was submitted to the Mariposa County Planning Department by Frank and Francis Long and the Mariposa Revival Center; and

WHEREAS based on a request from Planning staff for a surveyed map, the petitioner had a Record of Survey prepared; and

WHEREAS on the 27th day of June, 2008, a Record of Survey was submitted and this information confirmed that the actual proposed cancellation area was to be 6.97 acres and not 8 acres as originally submitted; and

WHEREAS the petition affects a portion of APN 012-180-032, a 2,724± acre parcel; and

WHEREAS APN 012-180-032 is a part of Land Conservation Act Contract No. 17. There are a total of six separate Assessors parcels encumbered by Land Conservation Act Contract No. 17; and

WHEREAS Land Conservation Act Contract No. 17 encumbers a total of 3,273± acres; and

WHEREAS Frank and Francis Long are the landowners of record of APN 012-180-032; and

WHEREAS Frank and Francis Long are parties to the original Land Conservation Act Contract No. 17 with Mariposa County; and

WHEREAS on the 30th day of June, 2008 a Notice of the Petition, as well as a copy of the petition for cancellation was sent to the Director of the Department of Conservation by the Mariposa County Planning Department; and

WHEREAS on the 30th day of June, 2008 a request for determination of the current fair market value of the property was sent to the Mariposa County Assessor/Recorder by the Mariposa County Planning Department; and

WHEREAS on the 30th day of June, 2008 a notice of the project was sent to other potentially affected agencies and interested organizations by the Mariposa County Planning Department; and

WHEREAS on the 9th day of July, 2008 the Mariposa County Assessor/Recorder submitted certification to the Mariposa County Planning Department that the current fair market value of the subject 6.97 acres is $105,000.00; and
WHEREAS on the 9th day of July, 2008, the Mariposa County Assessor/Recorder also submitted notice to the Director of the Department of Conservation and to the land owner regarding the current fair market value of the 6.97 acres; and

WHEREAS a duly noticed public meeting of the Mariposa County Agricultural Advisory Committee was scheduled for the 21st day of August 2008; and

WHEREAS a Staff Report addressing the petition for cancellation, as well as the history of the project, the process for the cancellation, and the required findings was prepared pursuant to local administrative procedures for the meeting of the Agricultural Advisory Committee; and

WHEREAS on the 21st day of August 2008 the Agricultural Advisory Committee did hold a public meeting on Land Conservation Act Cancellation Application No. 2008-89 and considered all of the information in the public record, including the Staff Report packet, comments from the Director of the Department of Conservation dated the 31st day of July 2008, comments and recommendations from the Mariposa County Farm Bureau, comments and recommendations from the California Farm Bureau Federation, comments and recommendations from the Mariposa County Agricultural Commissioner, the petition, the petitioner’s response to the Department of Conservation’s comments, and public comments; and

WHEREAS on the 21st day of August 2008 the Agricultural Advisory Committee voted unanimously to recommend that the Planning Commission recommend that the Board of Supervisors adopt a resolution denying Land Conservation Act Cancellation Application No. 2008-89 with findings; and

WHEREAS a duly noticed Planning Commission public hearing was scheduled for the 17th day of October 2008; and

WHEREAS in addition to the standard notifying required by Mariposa County Code, direct mailed notices were also sent to all owners of Land Conservation Act contracted parcels within 1 mile of the APN 012-180-032. A direct mailed notice was also sent to the Director of the Department of Conservation and other commenting agencies and organizations; and

WHEREAS the direct mailed notices were sent on the 25th day of September 2008; and

WHEREAS notices were posted at the Mariposa County Planning Department, the Mariposa County Clerk’s Office, the Mariposa County Court House, and the Mariposa County Planning Department’s website, and this posting was done on the 25th day of September 2008; and

WHEREAS notice of the Planning Commission public hearing was also published in the Mariposa Gazette, a newspaper of general circulation, on the 2nd day of October 2008; and

WHEREAS a Staff Report addressing the petition for cancellation, as well as the history of the project, the process for the cancellation, the Agricultural Advisory
Committee’s recommendation, and the required findings was prepared pursuant to local administrative procedures; and

WHEREAS on the 17th day of October 2008 the Planning Commission did hold a public hearing on Land Conservation Act Cancellation Application No. 2008-89 and considered all of the information in the public record, including the Staff Report packet, comments from the Director of the Department of Conservation dated the 31st day of July 2008, comments and recommendations from the Mariposa County Farm Bureau, comments and recommendations from the California Farm Bureau Federation, comments and recommendations from the Mariposa County Agricultural Commissioner, the petition, the petitioner’s response to the Department of Conservation’s comments, and public comments; and

WHEREAS on the 17th day of October 2008 the Planning Commission voted to recommend that the Board of Supervisors adopt a resolution denying Land Conservation Act Cancellation Application No. 2008-89 with findings; and

WHEREAS a duly noticed Board of Supervisors public hearing was scheduled for the 10th day of November 2008; and

WHEREAS in addition to the standard noticing required by Mariposa County Code, direct mailed notices were also sent to all owners of Land Conservation Act contracted parcels within 1 mile of the APN 012-180-032. A direct mailed notice was also sent to the Director of the Department of Conservation and other commenting agencies and organizations; and

WHEREAS the direct mailed notices were sent on the 17th day of October 2008; and

WHEREAS notices were posted at the Mariposa County Planning Department, the Mariposa County Clerk’s Office, the Mariposa County Court House, and the Mariposa County Planning Department’s website, and this posting was done on the 21st day of October 2008; and

WHEREAS notice of the Planning Commission public hearing was also published in the Mariposa Gazette, a newspaper of general circulation, on the 16th day of October 2008; and

WHEREAS a Staff Report addressing the petition for cancellation, as well as the history of the project, the process for the cancellation, the Agricultural Advisory Committee’s recommendation, the Planning Commission’s recommendation, and the required findings was prepared pursuant to local administrative procedures; and

WHEREAS on the 10th day of November 2008 the Board of Supervisors did hold a public hearing on Land Conservation Act Cancellation Application No. 2008-89 and considered all of the information in the public record, including the Staff Report packet, the Agricultural Advisory Committee’s recommendation, the Planning Commission’s recommendation, comments from the Director of the Department of Conservation dated the 31st day of July 2008, comments and recommendations from the Mariposa County Farm Bureau, comments and recommendations from the
California Farm Bureau Federation, comments and recommendations from the Mariposa County Agricultural Commissioner, the petition, the petitioner’s response to the Department of Conservation’s comments, and public comments.

NOW THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby adopt a resolution denying Land Conservation Act Cancellation Application No. 2008-89, a petition to cancel a 6.97-acre portion of Land Conservation Act Contract No. 17 based on the inability to make the findings required by State Law for the cancellation established by Government Code 51282. The Board of Supervisors considered Government Code Section 51220 through 51222, the purpose of the Williamson Act in their action to recommend denial.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby incorporate the entire staff report document and package for Land Conservation Act Cancellation No. 2008-89 into this resolution by reference.

BE IT FINALLY RESOLVED THAT the Board of Supervisors makes the following determinations and findings in support of their action to deny Land Conservation Act Cancellation No. 2008-89:

1. There has not been adequate information submitted by the petitioner to show that the property owner cannot afford the proximate, non-contracted land, which may be suitable for the proposed alternative use. The property owner is the contract holder and subject to the requirements of the contract and the requirements of state law. It is the property owner who must be the petitioner for the cancellation. The church is not a party to this Williamson Act Contract No. 17, and the church’s financial status has no bearing on the findings necessary to support a cancellation.

2. The primary land use which is proposed for the site is a church. The Agriculture Exclusive (AE) zone lists a “church” as a conditional use. One of the programs this particular church (the Mariposa Revival Center) currently runs is the food program for the needy; however the proposed primary land use is a “church”. Other programs which (some) churches often provide for their members are worship services, Bible study, prayer sessions, school programs, adult education, choir programs, weddings or facilities for gatherings, counseling or other renewal opportunities, and holiday celebrations.

Mariposa County makes a distinction between a land use (a church, which is the listed conditional use in the AE zone), and a program which is run by a particular religious organization.

The permit which would ultimately entitle the project is a Conditional Use Permit for a “church”, which is the conditionally permitted “land use”. Mariposa County does not have land use authority over “programs” operated by a church once it is entitled.

3. In the Friends of East Willits Valley v. Mendocino County case, which has been cited by the applicant’s agent as a case which can be used by the lead agency in
their consideration of this proposal for cancellation, the proposed alternative use was low income housing. Federal, State and local agencies all recognize low income housing as an established public need. The Mariposa County General Plan recognizes low income housing as an established public need. However, the proposed primary alternative use for this cancellation is a “church”, which is different than low income housing. The Mariposa County General Plan does not define public policies relating to protecting land for churches. Alternatively, the Mariposa County General Plan does have established policies and a high priority relating to preservation and protection of agricultural lands. A project which cancels a portion of a Williamson Act contract, to enable development of a church on agricultural land, cannot be found to be in the public’s interest or consistent with General Plan policies for agricultural lands.

4. The sub-findings do not require the lead agency to just find that, “the cancellation serves a public concern” but that “other public concerns substantially outweigh the objectives of the Williamson Act law.” The petition provides information about one of the church programs serving a public concern, however the information submitted does not include how a church itself, as a land use which provides many services to its members, “substantially outweighs the objectives of the Williamson Act law.” The petition does not show how a church outweighs the agricultural values of the land.

5. There was information presented at the Agricultural Advisory Committee meeting about other available, already created (legal) parcels on the real estate market which are in the Mountain Home zone and not necessarily on a State Highway, some of which have infrastructure or site improvements, including an improved encroachment and/or approved percolation tests and/or a developed well and/or a graded pad.

There are many costs associated with the development of the church on the proposed undeveloped site, which are not included or presented with the petition, which should be considered. Although the site itself is “free” (to be “donated”), if the cancellation petition is approved, there will be substantial costs associated with: 1) paying the cancellation penalty fees, 2) paying the Zoning Amendment application fees, 3) paying the Land Division application fees and completing the process (including hiring a licensed surveyor to complete the map process and completing all required map conditions), 4) paying the environmental review fees for CEQA compliance and completing any required mitigation measures, 5) paying the Caltrans encroachment permit and improvement costs (including hiring a licensed civil engineer to prepare the encroachment permit improvement plans and completing those improvements along the State Highway) (which could include a turn lane), 6) drilling and developing a well, and 7) developing a septic disposal system on-site (including hiring an appropriately qualified professional). The petition provides no information (substantial evidence) about how these standard costs for subdivision and development compare with purchasing a “ready-to-build”, legally created parcel, which is not located on a State Highway. This information has not been presented for consideration, yet the petition uses affordability as the sole basis for the proposed justification for Sub-Finding 2.
6. In order to approve the project for a church on a 5.08 acre parcel on this site, there are other applications which are required from Mariposa County. This project should also include a) a Zoning Amendment application, to modify the zoning classification from Agriculture Exclusive (AE) to Mountain Home (MH) in order to allow a smaller minimum parcel size; b) a Land Division application, to create a separate 5.08 acre parcel as this project includes a gift of this property from the property owner to the Mariposa Revival Center; and c) a Conditional Use Permit application, because a church is a conditional use in the Mountain Home zone. Environmental review pursuant to the California Environmental Quality Act (CEQA) would be conducted on the whole of the project. These applications are discretionary applications, and an approval action by the lead agency is not guaranteed. These applications were not submitted by the petitioner, nor required to be submitted by the County. However, without the other required companion applications, processing a “portion” of the required applications could lead to a fragmented decision.

7. A church use as proposed will increase human density, infrastructure, and activity in an established agricultural area. A church use as proposed will result in the construction of facilities and an access road, which could compromise the long term agricultural viability of the property, hinder agricultural use of the contracted land, and may serve as a precedent for future conversion applications for other contracted lands resulting in the possible loss of agricultural use on adjacent lands due to resulting non-agricultural growth and activity.

8. The Department of Conservation does not support the cancellation petition. The Department of Conservation provides information in their July 31, 2008 correspondence which specifies why the petitioner has not substantiated the required sub-findings (1) that other public concerns substantially outweigh the objectives of the Williamson Act and (2) that there is no available and suitable proximate non-contracted land for the use proposed on the contracted land. This correspondence is incorporated herein by reference.

9. The Mariposa County Agricultural Advisory Committee does not support the cancellation petition.

10. The Mariposa County Agricultural Commissioner does not support the cancellation petition. The Agricultural Commissioner provides information in her July 25, 2008 correspondence which specifies her position. This correspondence is incorporated herein by reference.

11. The Mariposa County Farm Bureau does not support the cancellation petition. The Farm Bureau provides information in their July 20th, 2008 correspondence which specifies their position. This correspondence is incorporated herein by reference.

12. The California Farm Bureau Federation does not support the cancellation petition. The Farm Bureau Federation provides information in their October 2, 2008 correspondence which specifies their position. This correspondence is incorporated herein by reference.
13. The Mariposa County Planning Commission does not support the cancellation petition.

14. The Williamson Act is a voluntary program, and non-renewal of the contract or of a portion of the contract is the preferred contract termination method.

ON MOTION BY Supervisor Bibby, seconded by Supervisor Aborn, this resolution is duly passed and adopted this 10th day of November, 2008 by the following vote:

AYES: Aborn, Bibby, and Pickard

NOES: Turpin and Fritz

EXCUSED: None

ABSTAIN: None

Lyle Turpin, Chairman
Mariposa County Board of Supervisors

Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:

Jeffrey G. Green
Interim County Counsel
TO: KRS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board


RESOLUTION 08-534

THE BOARD OF SUPERVISORS OF MARIPosa COUNTY, CALIFORNIA

ADOPTED THIS Order on November 10, 2008

ACTION AND VOTE:

10:34 a.m. Kris Schenk, Planning Director;
PUBLIC HEARING to Consider Adoption of a Resolution Taking Final Action on Land Conservation Act Cancellation No. 2008-89; a Proposed Cancellation of a 6.97 Acre Portion of Mariposa County Land Conservation Act (Williamson Act) Contract No. 17, a 3,280+/- Acre Contract. Request is Made so that the Canceled Acreage Can be Used for Construction and Operation of a 1,600 Square Foot Church/Multi-Purpose Facility and Appurtenant Facilities (Alternative Use). The Project Site is Located off of Highway 140 in Mariposa, Just West of the Spring Hill High School, APN 012-180-032, Applicant: Mariposa Revival Center, Inc. / Henry Falany. Property Owner: Frank and Francis Long.

BOARD ACTION: Chair Turpin advised of the public hearing process. Sarah Williams, Deputy Planning Director, presented the staff report; and she responded to questions from the Board relative to the eight acres referred to in the Petition for Partial Cancellation of Mariposa County Williamson Act Contract Number 17 and the 6.97-acres referred to in the staff report; relative to the food distribution program at Mariposa Park; and clarifying that all of the information that has been received for this project is included in the package.

Jeff Green, Interim County Counsel, responded to a question from the Board relative to clarifying the process for the other permits and applications that are required if the cancellation is tentatively approved. Staff responded to questions from the Board relative to clarifying the acreage for the project site and for the road to access the site; and relative to provisions for circulation of the cattle.

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

Applicant’s Presentation:
Dave Breemer, agent for the petitioners, thanked Sarah Williams for her work on this project; and he advised that they are trying to build a church on the Long’s property and that the Longs are willing to lease property to the church for a dollar a year. They need to remove the acreage for this project from the Williamson Act contract; and he noted that this process was first suggested by the Department of Land Conservation (DOC). He referred to the necessary findings and he noted that the proposed use is for a particular church; and he advised the term “available” for noncontracted land is not defined and he referred to the Friends of East Willets Valley v. Mendocino County case. He advised of the church’s food distribution program and noted that it was bigger and better when they had a permanent building. He stated there is a desperate need for people in the County to have food and he referred to a University survey that found that over 7,000 people in Mariposa are food insecure. He advised that a primary mission of the church is to feed the poor and he feels that meets the public concern finding. He advised of his search for available land in the area; advised that they do not have any funds to purchase land and no one else has offered to donate land; and he addressed the findings made by the Planning Commission. He responded to questions from the Board relative to circulation for the cattle and agreed with the circulation need and advised that this could be addressed in the Conditional Use Permit (CUP) process; clarified the relationship between the landowners and the Mariposa Revival Center and the lease for the CUP process; relative to the primary function of the church and its financial status; efforts on locating an alternative site for the church and whether the landowners have any other parcel(s) that would be an option for this use; relative to locating a site for storage of the food; and relative to the Encroachment Permit process with CalTrans to access the site.

Speakers in Support of the Applicant:

Kay Mickel advised that she is a retired real estate broker and has been fighting cancer for the last two years and this has changed her priorities. She commented on information she received as a new real estate agent about how many cows could be placed on a five-acre parcel. She referred to agriculture and noted that if the food does not have an opportunity to get to the people who need it, we have broken the chain.

Opponents’ Presentation:

Cathie Pierce, immediate Past President of the Mariposa County Farm Bureau, referred to the input and the issue with the cancellation of the Williamson Act contract for the wastewater treatment plant in Don Pedro; and she noted that was a health and safety issue for the people. She referred to the cattle circulation/trap issue and problems that she has seen. She suggested that if storage is the issue for the food, that a storage unit be rented or that they ask for a donation for that. She feels that the landowner has other land that could be donated; and she advised that the Planning Commissioner for District III reviewed the land and perhaps could provide input. She suggested that there are other locations in the County where people may be willing to donate land that is not under Williamson Act contract or a Land Conservation Easement. She referred to the 1999 lease between the Longs and Falany and advised that there was an opportunity to leave the requested acreage out of the easement. She questioned why we are going through this process, as they have stated that they have no money to do anything right now.

John Weech, Associate Counsel for the California Farm Bureau Federation, provided input on the project and advised that he previously submitted two letters; and he briefly discussed the East Willets Valley case that was mentioned earlier. He provided input on the lease proposal and finances.

Paul Chapman stated he feels that there is plenty of property to buy and that the landowner should have funding available as he received money from entering into the preserves – he does not feel that it is a matter that he can’t afford it, but that he will not. He does not feel that the church should be put on Williamson Act contracted land.

Cathi Boze, Agricultural Commissioner, stated she supports agriculture; and she referred to the State’s proposal to eliminate the subvention funding and stated the purpose of the Williamson Act contract is to preserve farm land. She feels the DOC’s enforcement of contracts should be followed and that a non-renewal would be preferred. She suggested that the food distribution program may be better in other locations; and she commented that there are parcels in the area that she feels would be suitable. She does not want to see any loss of agricultural land, and she feels the Williamson Act should be protected as stated in the letter she submitted; and she asked that the proposed cancellation be denied.

General Comments:

Eleanor Keuning noted that there are other food distribution programs in the County. She referred to the proposed location and stated she feels that part of their reason for wanting to
build there is the location as it is at the top of the mountain; and she is concerned about access from Highway 140. She referred to Mr. Long’s previous offer to donate land for a fire station and questioned if that parcel is still available.

Dennis Bunning, member of the Agricultural Advisory Committee, advised that he found seven parcels when he searched for property in the area that ranged in price from $70,000 to $143,000. He referred to the State law requirements and Long’s responsibilities.

Rebuttal by the Applicant:

Dave Bremer stated the Williamson Act allows for a cancellation process and he referred to the two findings that are necessary; and he noted that Mariposa County is the lead agency and not the DOC. He noted the Mariposa Revival Center provided assistance to the victims of the Telegraph Fire and not the DOC. He advised that the Longs do not have any other available land. He did his search for “proximate” noncontracted land to the site that is available as required by the Act versus what was done by others. He provided input on their need for a central location for the food distribution and storage. He noted that the bottom line is that there is a need for food and he referred to the UCLA study that found that 7,000 people do not have enough food in the County; and he feels that meets the finding for the cancellation of the Williamson Act contract for the requested acreage. He responded to questions from the Board relative to the proposed lease between the Longs and the Mariposa Revival Center and being able to provide assurance that something else wouldn’t be done in the future by conditioning this in the CUP; and relative to being able to meet the timelines and getting the rest of the required permits and applications completed.

The public portion of the hearing was closed and the Board commenced with deliberations. Staff responded to questions from the Board relative to the original Land Conservation Act contract and whether there have been any other cancellation applications and whether more would be anticipated if this were approved. Becky Crafts, Assessor/Recorder, responded to questions from the Board relative to the status of property and improvement tax assessments if this project goes forward. Staff responded to questions from the Board as to whether the ridgetop design standards would apply to this project; relative to the timelines that would be given to meeting the additional requirements for this project; whether this would be a sub-sized parcel under the General Plan in the Agricultural Exclusive Zone and the relative to the zoning amendment requirements in the process and the findings that would need to be made. (M)Bibby, (S)Aborn, Res. 08-534 was adopted denying Land Conservation Act Cancellation Application No. 2008-09 with the findings as stated in the staff report/Ayes: Aborn, Bibby, Pickard; Noes: Turpin, Fritz. The hearing was closed.

Cc: Cathi Boze, Agricultural Commissioner
   Becky Crafts, Assessor/Recorder
   File