RECOMMENDED ACTION AND JUSTIFICATION:

Adopt resolution which a) grants tentative approval to the cancellation of the contract and directs staff to record appropriate notice with County Recorder, b) makes findings pursuant to State Law, c) establishes conditions to be met prior to final cancellation, and d) certifies to the County Auditor the amount of the cancellation fee that shall be paid to the County Treasurer upon cancellation.

Recommended action is based upon information contained in staff report to Board of Supervisors.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

See staff report.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternatives: Modify findings.

Negative action: Do not cancel contract. Project to construct sewage treatment plant may be delayed.
STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 06-502

A Resolution Approving Land Conservation Act Cancellation
No. 2006-268 canceling a 3.5-acre portion of Land Conservation
Act Contract No. 23; APN 001-260-033 at 2237 Ranchito Drive in
Don Pedro

WHEREAS on the 23rd day of August, 2006 a petition for cancellation of a 3.5-acre portion
of Land Conservation Act Contract No. 23 was submitted by the Mariposa County
Public Works Department on behalf of the Don Pedro Sewer Zone 1-M, a dependent
special district providing public sewage treatment services to a small portion of the
Don Pedro subdivision; and

WHEREAS the petition is submitted based upon the correspondence from the Department
of Conservation to the Mariposa County Farm Bureau dated the 8th of June 2006
which was copied to the County of Mariposa; and

WHEREAS the petition affects a portion of APN 001-260-033, a 40.01 acre parcel; and

WHEREAS the Don Pedro Sewer Zone 1-M is the landowner of record of APN 001-260-033;
and

WHEREAS the Mariposa County Board of Supervisors acts as the Board of Directors of the
Don Pedro Sewer Zone 1-M because the Don Pedro Sewer Zone 1-M is a dependent
special district; and

WHEREAS the petition was not complete as a legal description of the 3.5-acre cancellation
area was not provided; and

WHEREAS on the 19th day of September, 2006 a legal description was provided by the
Public Work Department to support the petition for cancellation; and

WHEREAS the Don Pedro Sewer Zone 1-M also owns the adjacent 38.09 acre parcel, APN
001-260-029; and

WHEREAS the project site is a part of Land Conservation Act Contract No. 23, a 10,807.81
acre contract which has had numerous certificates of compliance for historic patent
parcels issued to it. The original contract acreage is now in ownership of multiple
property owners; and

WHEREAS on the 20th day of September, 2006 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 Planning Department; and
WHEREAS on the 21st day of September, 2006 a request for determination of the current fair market value of the property was sent to the Mariposa County Assessor by the Planning Department; and

WHEREAS on the 27th day of September, 2006 the Mariposa County Assessor submitted certification to the Planning Department that the current fair market value of the subject 3.5-acres is $35,000.00; and

WHEREAS on the 27th day of September, 2006, the Mariposa County Assessor also submitted notice to the Director of the Department of Conservation and to the land owner regarding the current fair market value of the 3.5 acres; and

WHEREAS a duly noticed Board of Supervisors public hearing was scheduled for the 24th day of October 2006; 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 001-260-033. A direct mailed notice was also sent to the Director of the Department of Conservation, together with another copy of the petition for cancellation; and

WHEREAS the direct mailed notices were sent on the 5th day of October 2006; and

WHEREAS notice of the public hearing was also published in the Mariposa Gazette, a newspaper of general circulation, on the 11th day of October 2006; 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; and

WHEREAS on the 24th day of October 2006 the Board of Supervisors did hold a public hearing on Land Conservation Act Cancellation Application No. 2006-268 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 23rd day of October 2006, comments and recommendations from the Agricultural Advisory Committee, the certification from the County Assessor regarding the current fair market value of the subject 3.5 acres at $35,000.00, and public comments.

NOW THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby tentatively approve Land Conservation Act Cancellation Application No. 2006-268, approving cancellation of a 3.5-acre portion of Land Conservation Act Contract No. 23 as described in Exhibits A and B of Attachment A of this resolution.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby incorporate the entire staff report document for Land Conservation Act Cancellation No. 2006-268 into this resolution by reference.
BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby direct staff of the Planning Department to record the Certificate of Tentative Cancellation of a Portion of Land Conservation Act Contract No. 23 as contained in Attachment A of this resolution.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa hereby accepts certification from the Mariposa County Assessor that the current fair market value of the subject 3.5 acres is $35,000.00. The Board of Supervisors of the County of Mariposa certifies to the Mariposa County Auditor that, pursuant to Mariposa County Resolution No. 95-350 and the terms of Contract No. 23, the 25% cancellation fee for this action shall be $8,750.00. Pursuant to Government Code Section 51283(b), the State’s portion of the cancellation fee is 12-1/2% of the fair market value or $4,275.00. The Board of Supervisors of the County of Mariposa directs the County Treasurer to pay the State’s portion of the cancellation fee to the State Controller within 30 days following the recordation of the final certificate of cancellation.

BE IT FURTHER RESOLVED THAT the Board of Supervisors makes the following determinations and findings in support of their action to approve Land Conservation Act Cancellation No. 2006-268:

1. Cancellation of a 3.5-acres portion of Land Conservation Act Contract No. 23 as described in Land Conservation Act Cancellation Application No. 2006-268 is in the public interest. The alternative use for the 3.5-acre cancellation area is a public wastewater treatment facility to treat the influent from the Don Pedro Sewer Zone 1-M. The Don Pedro Sewer Zone 1-M is a dependent special district which serves 207 residential parcels (70 of which are developed) and 134 townhouse lots (6 of which are developed), as well as an existing recreational clubhouse facility. The special district currently maintains an existing wastewater treatment facility, which is operating under a Cease and Desist Order issued by the State of California Regional Water Quality Control Board. The existing wastewater treatment facility, constructed in the mid-1960’s, has exceeded its service life and cannot be repaired. The existing wastewater treatment facility has experienced failures, including a “spill” of untreated effluent into Browns Creek in mid-1990, resulting in the Cease and Desist Order. This project, to cancel 3.5-acres of contracted ground, will enable construction of a new sewage treatment facility, which will enable treatment of sewage to current environmental and public health standards.

The public’s interests are served by ensuring that sewage from existing residential development is properly treated and that treated effluent is properly discharged pursuant to current environmental standards and current public health standards.

The public’s interests are served by ensuring the ground water quality, surface water quality, and other environmental resources are protected.

The alternative use, a wastewater treatment plant, is not for a new residential subdivision, but is for an existing residential subdivision. There are multiple private property owners who own separate parcels within the subdivision. This
project will not provide for additional residential capacity or any additional growth potential, beyond the parcels and lots which exist today.

2. There are public concerns which substantially outweigh the objectives of the California Land Conservation Act.

Mariposa County has strong policies to preserve agricultural and open space lands and to discourage premature and unnecessary conversion of agricultural lands to urban lands. These policies are written into the Mariposa County General Plan and written into the policies implementing the Land Conservation Act in Mariposa County (Mariposa County Resolution No. 77-157).

Land Conservation Act Cancellation Application No. 2006-268 is a request which is founded on public concerns for environmental quality and public concerns for public health. The wastewater treatment plant project is a needed facility for existing residential parcels, to meet current environmental and public health standards for wastewater treatment and effluent disposal. Without the new plant, public health concerns remain at risk. The Don Pedro Sewer Zone 1-M is currently operating under a Cease and Desist Order from the California Regional Water Quality Control Board. This project will enable treatment and effluent disposal to meet current state standards.

The wastewater treatment plant project was designed to reduce the area needed for facilities, and to retain as much land as possible for continued agricultural use. Portions of the property which are not subject to the cancellation petition will remain in agricultural use.

3. There is no proximate noncontracted land which is available and suitable for the alternative use based upon the following information.

The alternative use for the 3.5-acre cancellation area is a public wastewater treatment facility to treat the influent from the Don Pedro Sewer Zone 1-M. The Don Pedro Sewer Zone 1-M is an existing special district which serves existing residential and townhouse parcels, as well as an existing recreational clubhouse facility. The special district currently maintains an existing wastewater treatment facility (located on the golf course), which is operating under a Cease and Desist Order issued by the State of California Regional Water Quality Control Board in the early 1990’s. Treated effluent from the existing facility is either stored in a pond on the golf course or is sprayed on the golf course.

When the extent of the operational deficiencies of the existing wastewater treatment facility was discovered in the early 1990’s, project engineers evaluated options for the special district. The project objective was to provide sewage treatment in accordance with all state environmental and health standards, for all existing parcels within the subdivision (special district), allowing for construction of at least one standard single family residence on each undeveloped parcel and lot.
In evaluating sites for the new treatment facility (site suitability characteristics), factors considered by the project engineers included: acreage needed for the treatment plant and for treated effluent disposal, soils, topography, proximity to existing plant and subdivision parcels (proximity to collection system), topography between existing plant/subdivision parcels and new treatment plant, parcel availability, and adjacent land uses.

Relative to proximate, non-contracted lands, project engineers found that:

a) Non-contracted land within the subdivision was not sufficient in acreage for the new treatment plant site.

b) Continued use of the existing treatment plant facility was not an option as the current facility could not be repaired and the existing site was not large enough to provide adequate storage for treated effluent. The new design required at least a 6 acre pond because effluent discharge cannot occur during a rain event.

c) Continued reliance on the golf course for discharge of treated effluent was problematic because the special district plant operators who are fully responsible for compliance with Regional Water Quality Control Board requirements for waste discharge lack of control over the discharge area. The golf course is not owned or managed by the Don Pedro Sewer Zone 1-M.

d) Non-contracted land adjacent to the subdivision in close proximity to the existing facility was not feasible for the new treatment plant site due to steep topography and existing development. Non-contracted land directly east of the golf course contained steep terrain which would require rezising and retrofitting of existing pumps and laterals within the entire sewer system which was considered infeasible. Effluent discharge in this area was also problematic based upon existing residential development.

e) Lands to the north, northwest, west, southwest, south and southeast of the 80 acres acquired are all within Williamson Act contracts.

4. The primary local permitting authority for the alternative use shall be the Mariposa County Building Department (Building Permit).

The primary state permitting authority for the alternative use shall be the California Regional Water Quality Control Board (Notice of Waste Discharge).

5. A mitigated negative declaration was adopted by the Board of Supervisors by Resolution No. 04-301 for the construction of the Don Pedro Wastewater Treatment Plant and all mitigation measures shall be implemented pursuant to the adopted mitigation monitoring and reporting plan. This mitigated negative declaration addresses the environmental impacts of this project (alternative use) and the cancellation.

BE IT FURTHER RESOLVED THAT the Board of Supervisors establishes the following conditions which shall be met prior to final cancellation of the contract:
1. The 25% cancellation fees shall be $8,750.00 which shall be paid to the Mariposa County Auditor by the landowner. These fees shall be paid within one (1) year of the date of recordation of the certificate of tentative cancellation of contract. If the fees are not paid within one (1) year, the value of the cancellation fees shall be recomputed pursuant to Government Code Section 51283.4(a).

2. Upon payment of the cancellation fees, the landowner shall provide written notice to the Mariposa County Planning Department that the fees have been paid.

3. Processing fees and all public noticing costs, as determined by the Planning Department and in accordance with the County fee schedule, shall be submitted to the Planning Department.

4. The landowner shall obtain all permits necessary for the proposed alternative use, prior to commencement of construction of the alternative use. This shall include a Building Permit from the Mariposa County Building Department and a Notice of Waste Discharge from the State of California Regional Water Quality Control Board.

BE IT FURTHER RESOLVED THAT the Board of Supervisors hereby directs the Public Works Department to seek and consider advice from the County's Agricultural Commissioner regarding the proposal to spray treated effluent on the 77-acre contracted remainder parcel and the effect this may have on the agricultural viability of this parcel.

BE IT FINALLY RESOLVED THAT the Board of Supervisors hereby directs the Chairman of the Board to execute the “Certificate of Cancellation of Contract” of a Portion of Land Conservation Act Contract No. 23 as contained in Attachment B of this resolution, upon staff’s determination that all cancellation conditions have been met.

ON MOTION BY Supervisor Turpin, seconded by Supervisor Pickard, this resolution is duly passed and adopted this 24th day of October, 2006 by the following vote:

AYES: Stetson, Turpin, Bibby, Fritz, and Pickard

NOES: None

EXCUSED: None

ABSTAIN: None

[Signature]
Lee Stetson, Chairman
Mariposa County Board of Supervisors

ATTEST:

[Signature]
MARGIE WILLIAMS
Clerk of the Board of Supervisors
APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

THOMAS P. GUARINO
County Counsel
Attachment A – Certificate of Tentative Cancellation
CERTIFICATE OF TENTATIVE CANCELLATION OF A PORTION OF CALIFORNIA LAND CONSERVATION ACT CONTRACT NO. 23

In accordance with Article 5, Chapter 7, Division 1 of Title 5 (beginning with Section 51280) of the Government Code of the State of California, the Board of Supervisors of the County of Mariposa has granted tentative approval of a petition by the County of Mariposa Public Works Department on behalf of the Don Pedro Sewer Zone 1-M, hereinafter referred to as LANDOWNER, for cancellation of a portion of California Land Conservation Act Contract No. 23 for a portion of Assessor Parcel No. 001-260-033 totaling approximately 3.5 acres.

LEGAL DESCRIPTION and MAP:

See attached Exhibit A and Exhibit B

The petition for cancellation was accompanied by a proposal for a specific alternative use of the land, which has been approved by the Mariposa County Board of Supervisors by Resolution No. 04-301 adopted by the County of Mariposa on the 22nd day of June, 2004 and by Resolution No. 06-502 adopted by the County of Mariposa on the 24th day of October, 2006.

The Board of Supervisors of the County of Mariposa will, in accordance with Government Code Section 51283.4(b), within (30) days of receipt of written notice from landowner that the conditions hereinafter set forth have been satisfied, make its determination whether or not such conditions are in fact satisfied and, if it determines that they are satisfied, will execute, by its Chairman, a Certificate of Cancellation of that portion of the Land Conservation Act Contract covering the land described above and cause the same to be recorded.

The conditions which must be satisfied prior to execution of a Certificate of Cancellation by the Chairman of the Board of Supervisors are as follows:

1. The 25% cancellation fees shall be $8,750.00 which shall be paid to the Mariposa County Auditor by the landowner. These fees shall be paid within one (1) year of the date of recordation of the certificate of tentative cancellation of contract. If the fees are not paid within one (1) year, the value of the cancellation fees shall be recomputed pursuant to Government Code Section 51283.4(a).
2. Upon payment of the cancellation fees, the landowner shall provide written notice to the Mariposa County Planning Department that the fees have been paid.

3. Processing fees and all public noticing costs, as determined by the Planning Department and in accordance with the County fee schedule, shall be submitted to the Planning Department.

4. The landowner shall obtain all permits necessary for the proposed alternative use, prior to commencement of construction of the alternative use. This shall include a Building Permit from the Mariposa County Building Department and a Notice of Waste Discharge from the State of California Regional Water Quality Control Board.

If the landowner has been unable to satisfy the above conditions and contingencies, they shall so notify the County of Mariposa of the particular conditions which they are unable to satisfy. Within thirty (30) days after receipt of such notice, and upon a determination that the landowner is in fact unable to satisfy such conditions, the County of Mariposa Board of Supervisors, by its Chairman, shall execute a Certificate of Withdrawal of this Certificate of Tentative Cancellation and cause such certificate to be recorded.

STATE OF CALIFORNIA )
COUNTY OF MARIPOSA  ) ss

I, Margie Williams, Clerk of the Board of Supervisors of the County of Mariposa, do hereby certify that at a regular meeting of the Board of Supervisors of the County of Mariposa, held on the 24th day of October 2006, the forgoing Certificate of Tentative Cancellation was passed and adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County of Mariposa this _____ day of ____________, 2006.

By: ___________________________ Date: _______________
EXHIBIT A

A tract of land situated in a portion of the South one-half of the North one-half (S1/2N1/2) of Section 31, Township 3 South, Range 15 East, M.D.B. & M., Mariposa County, State of California, said tract of land being more particularly described on EXHIBIT A and platted on EXHIBIT B as follows:

Commencing at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section 31, thence N83°58′32″W a distance of 761.55 feet to the POINT OF BEGINNING of the herein described tract of land; thence S89°15′01″W for 377.58 feet; thence N00°44′59″W for 340.57 feet; thence S89°15′01″W for 17.72 feet; thence N00°44′59″W for 54.91 feet; thence S89°15′01″W for 36.27 feet; thence N00°44′59″W for 69.80 feet; thence N89°15′01″E for 148.30 feet; thence N00°44′59″W for 43.90 feet; thence N89°15′01″E for 126.84 feet; thence S00°44′59″E for 80.25 feet; thence S57°03′58″W for 50.77 feet; thence S16°05′12″E for 122.78 feet; thence S80°46′53″E for 176.21 feet; thence S00°44′59″W for 253.06 feet, more or less, to the POINT OF BEGINNING.

The above described tract of land is subject to any rights-of-way or easements of record or legally acquired.

Prepared by

[Signature]
Jerome S. Freeman
L.S. No. 4079

Dated: October 16, 2006
Exhibit B – “Certificate of Cancellation”
CERTIFICATE OF CANCELLATION OF A PORTION OF AGRICULTURAL PRESERVE (LAND CONSERVATION ACT) CONTRACT NO. 23

WHEREAS, the County of Mariposa Public Works Department on behalf of the Don Pedro Sewer Zone 1-M, owner of the property described here, gave written notice of the cancellation of a portion of Land Conservation Act Contract No. 23 entered into between Mazie Woolstenhulme and Wells Woolstenhulme and the County of Mariposa; and

WHEREAS, all of the conditions as established and set forth in the Certificate of Tentative Cancellation of a Portion of California Land Conservation Act Contract No. 23 executed by the Clerk of the Board of Supervisors for the County of Mariposa and recorded on the ________ day of __________, 2006 in the Official Records of the County of Mariposa at Document No. ______________ have been met; now

THEREFORE, said portion of Land Conservation Contract No. 23 as described is herewith cancelled.

Legal Description and Map:

See attached Exhibit A and Exhibit B

LEE STETSON, Chairman
Mariposa County Board of Supervisors

Date: ______________________
State of California
County of Mariposa

On ______________________ before me, Tracy Gauthier, personally appeared
Lee Stetson, personally known to me or proved to be on the basis of satisfactory evidence,
and acknowledged to me that he executed the same in his authorized capacity, and that by
his signature on the instrument the person, or the entity upon behalf of which the person
acted, executed the instrument.

WITNESS my hand and official seal.

_________________________
Tracy Gauthier

Title of Document: Certificate of Cancellation of a Portion of Agricultural Preserve (Land
Conservation Act) Contract No. 23

Date of Document:                  No. of Pages:

Other signatures not acknowledged: None
EXHIBIT A

A tract of land situated in a portion of the South one-half of the North one-half (S1/2N1/2) of Section 31, Township 3 South, Range 15 East, M.D.B. & M., Mariposa County, State of California, said tract of land being more particularly described on EXHIBIT A and platted on EXHIBIT B as follows:

Commencing at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section 31, hence N83°58'32"W a distance of 761.55 feet to the POINT OF BEGINNING of the herein described tract of land; hence S89°15'01"W for 377.58 feet; hence N00°44'59"W for 340.57 feet; hence S 89°15'01"W for 17.72 feet; hence N00°44'59"W for 54.91 feet; hence S89°15'01"W for 36.27 feet; hence N00°44'59"W for 69.80 feet; hence N89°15'01"E for 148.30 feet; hence N00°44'59"W for 43.90 feet; hence N89°15'01"E for 126.84 feet; hence S00°44'59"E for 80.25 feet; hence S57°03'58"W for 50.77 feet; hence S16°05'12"E for 122.78 feet; hence S80°46'53"E for 176.21 feet; hence S00°44'59"W for 253.06 feet, more or less, to the POINT OF BEGINNING.

The above described tract of land is subject to any rights-of-way or easements of record or legally acquired.

Prepared by

Jerome S. Freeman
L.S. No. 4079

Dated: October 16, 2004
TO: Kрис SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board


RESOLUTION 06-502

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on October 24, 2006

ACTION AND VOTE:

Kris Schenk, Planning Director;

A) PUBLIC HEARING – Land Conservation Act Contract Cancellation Application No. 2006-268; County of Mariposa, Proponent. Request for Cancellation of a 3.5-acre Portion of a 40.01-acre Parcel within Williamson Act Contract No. 23; APN 001-260-033 Located at 2237 Ranchito Drive in Don Pedro Area.

BOARD ACTION: Supervisor Fritz commended Sarah Williams for her written staff report on this matter. Sarah Williams, Deputy Planning Director, presented the staff report; and she presented suggested revisions to the draft formal resolution. The other Board members thanked staff for their work on this project. Sarah Williams responded to questions from the Board relative to the written correspondence received; relative to the process for the cancellation of a Land Conservation Act contract; relative to protest procedures; relative to the Agricultural Advisory Committee’s review of this matter; and relative to the number of service connections that the original wastewater system was designed for versus the actual number being served. Dana Hertfelder, Public Works Director, responded to questions from the Board relative to the need for the wastewater system project; review of land in the area for the system; and relative to decommissioning the old plant when the new system is operational.

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

Calvin Gile stated he is a homeowner and is concerned with the location of the plant – he feels it should be located on the other side of the 40-acre parcel. He advised that they never received any site plans and asked that the plant be moved further west. Dana Hertfelder responded to the concerns and advised that following review of the property by the environmental consultant, the decision was made to use the proposed location; and he advised of landscaping plans to minimize the aesthetic issues.

Paul Chapman commented on the Board’s original purchase of land for this project that was under Williamson Act contract; and he stated he does not feel that the findings can be made for cancellation of the contract as there is land in the area that is not under contract. He feels the County has options to take the
golf course area under eminent domain; wait for the Land Conservation Act contract to expire and build the plant in 20 years; or drop the idea of the plant and leave things as they are.

Cathie Pierce, representing the Mariposa County Farm Bureau, commented on her visit to the property on October 12th. She advised that it was their understanding that this land would be kept in grazing; however, she did not observe any evidence of cattle being on the property since the County took ownership. She questioned why it is not being used for grazing. Supervisor Turpin noted that there were cattle on the property last year and that it is used annually for grazing. Cathie Pierce stated she feels that if the land is not going to be used for agriculture, that the contract should be cancelled for the whole parcel. She also stated she feels that there should be a complete paper trail of the history of this project in the package, including the letters from the State Department of Conservation, which help to show how we got to this point. Sarah Williams responded that the staff report was written for the cancellation issue. Cathie Pierce stated she feels that ground could have been used for this project that was not in ag preserve; and that agriculture is paying a price for the County not being on the ball. She referred to the Department of Conservation letters.

Calvin Gile advised that he saw cattle on the property this past spring; and he noted that the people living there made this choice for a wastewater treatment facility and they are paying for it.

Chris Porter, Vice-President of Deerwood Corporation, advised that this project is essential and was approved by a vote of 87%

Dennis Bunning, speaking as an individual, noted that “influent” should be used in place of “effluent” in the formal resolution where it refers to the matter coming into the system. He stated he feels this will be a substandard plant at level 2 and should be a level 3. He suggested that consideration be given to placing the plant at the existing site and using the 80-acres for getting rid of the effluent. Dana Hertfelder responded to the concerns relative to the location of the plant and the type of plant that was selected.

Cathie Pierce stated that, as a taxpayer, she feels that the entire County has paid for this ground. She noted that this cancellation was a compromise with the County, the Farm Bureau and the Department of Conservation; and they are not here in opposition to the cancellation, they are just making observations.

The public portion of the hearing was closed and the Board commenced with deliberations. Supervisor Bibby asked that Public Works and the Assessor review and monitor the status of the use of the property for compliance with the Williamson Act contract. Becky Crafts, Assistant Assessor, responded to a question from the Board as to how the $35,000 valuation of the 3.5-acres was arrived at. Dana Hertfelder responded to questions from the Board relative to the landscaping plans for the project; and long-term maintenance. Supervisor Bibby stated she feels there are many issues that still need to be addressed concerning compliance with the Williamson Act contract; operation of the facility and what will happen if the State says that the effluent can no longer be sprayed on the land in the future; and what will happen at the end of the current grazing lease. Dana Hertfelder noted that it is rare for the State to come back and modify a plant’s operation after it is permitted. Supervisor Turpin clarified that both 40-acre parcels are under non-renewals of their Williamson Act contracts.

(M) Turpin, (S) Pickard, Res. 06-502 was adopted, with the suggested revisions, granting tentative approval to the cancellation of the Land Conservation Act contract and directing staff to record appropriate notice with the County Recorder; making findings pursuant to State Law; establishing conditions to be met prior to final cancellation; and certifying to the County Auditor the amount of the cancellation fee that shall be paid to the County Treasurer upon cancellation; and direction was given for the landscaping plans to be carried out. The motion was amended, agreeable to the maker and second, to include direction for the previous letters from the Department of Conservation to be incorporated. Ayes: Unanimous. The hearing was closed.

Cc: Keith Williams, Treasurer
    Becky Crafts, Assessor
    Chris Ebie, Auditor
    Tom Guarino, County Counsel
    Dana Hertfelder, Public Works Director
    File
# Staff Report

Mariposa Planning

## BOARD OF SUPERVISORS MEETING
OF OCTOBER 24, 2006

## SUMMARY AND RECOMMENDATIONS

<table>
<thead>
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<th>Application:</th>
<th>Land Conservation Act Cancellation No. 2006-268</th>
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</thead>
<tbody>
<tr>
<td>Location:</td>
<td>The site is located at 2237 Ranchito Drive, Don Pedro; APN 001-260-033 (portion of parcel subject to request)</td>
</tr>
<tr>
<td>Proponents:</td>
<td>County of Mariposa/Public Works Department on behalf of the Don Pedro Sewer Zone 1-M (a dependent special district)</td>
</tr>
</tbody>
</table>

**Recommendation:** Staff recommends the Board of Supervisors adopt a resolution which:

a) grants tentative approval to the cancellation of the contract and directs staff to record appropriate notice with County Recorder,
b) makes findings pursuant to State Law,
c) establishes conditions to be met prior to final cancellation, and
d) certifies to the County Auditor the amount of the cancellation fee that shall be paid to the County Treasurer upon cancellation

Prepared by,

SARAH WILLIAMS
Deputy Director
Summary Description of Request

Land Conservation Act Cancellation Application No. 2006-268 proposes to cancel a 3.5 acre portion of a 40-01 acre parcel of Williamson Act Contract No. 23; APN 001-260-033 (project site parcel). The County also owns the adjacent 38.09 acre parcel, APN 001-260-029. The cancellation is proposed so that a new sewage treatment plant for the Don Pedro Sewer Zone 1-M can be constructed.

Cancellation, as requested by the applicant, results in the immediate termination of the contract. A cancellation request is subject to a rigorous review process. Findings supported by substantial evidence must be made pursuant to State law. The State Department of Conservation is a part of the process. Cancellation of a Contract is intentionally a difficult process. By law, the existence of an opportunity for another use of the property is not sufficient reason for cancellation. The uneconomic character of an existing agricultural use is also not sufficient reason to cancel a contract. The land owner must pay a cancellation fee if the process is successfully completed.

The cancellation process is different than the non-renewal process, which is a right of either party to the contract at any time. The non-renewal process is the normal way to terminate a Williamson Act Contract. Non-renewal means the contract is not renewed, and in 19 years, the property is no longer encumbered by the contract. A notice of non-renewal was recorded in 2004 for both the project site parcel, APN 001-260-033 and the adjacent county-owned parcel APN 001-260-029 at the direction of the Board of Supervisors.

California Land Conservation (Williamson) Act

The California Land Conservation Act or Williamson Act was passed to preserve agricultural and open space lands by discouraging premature and unnecessary conversion to urban uses. Private landowners voluntarily restrict their land to agricultural uses under a 20-year rolling term contract with Mariposa County. In return, restricted parcels are assessed for property tax purposes at a significantly reduced rate, rather than at their potential market value. Because the contracts are “rolling terms”, there are always 20 years remaining in a contract (unless the contract is non-renewed).

Parcel History

The project site is part of Land Conservation Act Contract No. 23, a 10,807.81 acre contract which has had numerous certificates of compliance for historic patent parcels issued to it. The original contract acreage is now in ownership of multiple property owners. The project site parcel is 40.01 acres. The cancellation will reduce the contracted land size of this parcel to 10,633.31 acres (a previous cancellation for 160 acres of this contract was approved for Dale Hoagland in 1985).
Alternative Use

The petition for cancellation is made so that the 3.5 acres can be used for the construction and operation of a public wastewater treatment facility designed to treat the effluent from the Don Pedro Sewer Zone 1-M. The Don Pedro Sewer Zone 1-M is an existing dependent special district which encompasses 207 existing residential parcels surrounding the golf course, 134 townhome lots, as well as the golf course clubhouse facility. The existing residential parcels and the golf course were created during the mid-1960s. The townhome lots were created in the late 1980s. The original subdivider sold all of the parcels and townhome lots. Many of the existing residential parcels and townhome lots remain undeveloped, though the property owners are each entitled to build at least one single family residence on their parcels. Of the 207 existing residential parcels, 70 are developed and 137 are undeveloped. Of the 134 townhome lots, 6 are developed and 128 are undeveloped.

The existing sewage treatment plant serving these parcels has experienced operational problems which is a result of the plant exceeding its service life. The current plant has been operating is under a Cease and Desist Order from the Regional Water Quality Control Board since the early 1990s. The Public Works Department has been working on a permanent “fix” for the inadequate sewage treatment plant for the special district for a number of years. The proposed new treatment plant has been designed to handle only the existing established parcels and lots within the sewer zone and will not provide for any new residential parcels or lots.

The current sewage treatment plant is located on a small portion of the existing golf course. Treated effluent is either sprayed onto the golf course or it is stored on-site in a pond until soil conditions are appropriate for discharge onto the golf course. Years ago, upon discovery of the severe limitations of the current sewage treatment plant (including a “spill” of untreated effluent), past Public Works staff spent considerable time researching options for either fixing the current plant or constructing an entirely new plant on an alternate site. As a result of staff’s research, it was determined that there was a need to acquire Williamson Act contracted land for construction and operation of the new sewage treatment plant and disposal of effluent. Ultimately, 80 acres of Williamson Act contracted land immediately adjacent to the subdivision and golf course was purchased through negotiated contracts. Because purchase was negotiated (the properties were not acquired through eminent domain), the Williamson Act contract remained in place on the properties.

In selecting the site for the new treatment facilities, the factors considered by the project engineers included: level of sewage treatment and type of effluent discharge, acreage needed for the treatment plant and discharge, soils on-site, topography on-site, proximity to existing plant and subdivision parcels (especially proximity to collection system so only minor amendments to the collection system would be necessary), topography between existing plant/subdivision parcels and new treatment plant, parcel availability, and adjacent land uses.

The Public Works Department found that:
1. Non-contracted land within the subdivision was not sufficient in acreage for the new treatment plant site.

2. Continued reliance on the golf course for disposal of treated effluent was problematic because the special district plant operators who are fully responsible for compliance with Regional Water Quality Control requirements for waste discharge lack of control over the discharge area. For years (at least 10) during the mid-1990's and early 2000's, the golf course had been in receivership, as the previous owners went bankrupt. During this period, it was not possible to know who would own the golf course and how the course would be managed. During this period, the golf course had been allowed to die and dry out, which affected the ability of the ground to “receive” the treated effluent (hydraulic coefficient of soil affected). It was determined that the only acceptable alternative was to acquire property so that the special district would have complete control over the effluent discharge.

3. Continued use of the existing treatment facility was not an option as the current facility could not be repaired and the existing site was not large enough to provide adequate storage. The new design required at least a 6 acre pond because effluent discharge cannot occur during rain event.

4. Non-contracted land adjacent to the subdivision in close proximity to the existing facility was not feasible for the new treatment plant site due to steep topography and existing development. Non-contracted land directly east of the golf course contained steep terrain which would require resizing and retrofitting of existing pumps and laterals within the entire sewer system which was considered infeasible. Disposal in this area was also problematic based upon existing residential development.

Lands to the north, northwest, west, southwest, south and southeast of the 80 acres acquired are all within Williamson Act contracts.

There were issues associated with the process through which the Public Works Department acquired this property. The acquisition of the properties is not the subject of this report.

The new sewage treatment plant will enable effluent from existing residential parcels and townhouse lots and the golf course club house development to be treated in accordance with current environmental and public health and safety standards. Currently, as previously stated, the existing facility is under a Cease and Desist Order from the State of California Regional Water Quality Control Board. The failure of the existing sewer plant poses potentially significant health and safety concerns for both the residents of Don Pedro and surrounding properties, as well as the environment, including ground water quality.

The actual treatment plant, the parking area, and the effluent storage pond will be located on the portion of the property for which the cancellation is requested. These improvements are not agricultural production uses or compatible uses as determined by the Department of Conservation. The remaining portions of the parcel and the adjacent county-owned parcel will be utilized for disposal of treated effluent through spray irrigation. The remaining acreage will be leased back to the previous property owner for cattle grazing. Cattle grazing
is an agricultural production use and is in compliance with applicable Williamson Act contract requirements.

Past Related Actions

On July 6, 2004, the Board of Supervisors adopted Resolution No. 04-314 finding that the proposed Don Pedro Wastewater Treatment Plant on Williamson Act Contracted Lands is a compatible Use in a Land Conservation Act Contract pursuant to Exhibit A of Mariposa County Resolution No. 77-157. Although work on the project (including environmental review, design and engineering, funding, bidding, and issuance of contract documents) progressed as a result of this resolution, the Department of Conservation does not support this finding and it cannot be used for construction and operation of the wastewater treatment plan. Consequently, the cancellation petition is being processed.

Resolution No. 04-314 also directed staff to file the notice of non-renewal for the two project parcels, which was recorded.

Procedural Requirements

The following procedural requirements are provided, as these requirements are established by state law. Although staff processed another petition for cancellation last year, it was denied by the Board of Supervisors because the findings were not able to be made for the project. There hasn’t been a cancellation approved in Mariposa County since 1985.

Step 1: Landowner submits request or petition for cancellation for any contract or any part of the subject land, together with alternative use for cancellation area. The petition must list the governmental agencies known by the landowner to have permit authority related to the proposed alternative use.

Step 2: Staff immediately mails a notice to the Director of the Department of Conservation regarding the petition for cancellation. The notice includes a copy of the petition, a copy of the contract, a general description of the land to be cancelled, and the deadline for submitting comments. The commenting deadline shall be no less than 30 days prior to the public hearing date scheduled for action on the petition.

Step 3: County Assessor determines the current fair market value of the land as though it were free of the contractual restriction.

Step 4: County Assessor sends notice to the land owner and to the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction. This correspondence contains notice that the parties can request all information relevant to the valuation.

Step 5: County Assessor certifies to the Board of Supervisors the cancellation valuation of the land for the purpose of determining the cancellation fee.
Step 6: Staff schedules and notices a public hearing on the cancellation. In addition to the standard public hearing noticing required by County Code, state law requires mailed notice to every owner of Williamson Act contracted land within one mile of the exterior boundary of the land upon which the contract is proposed to be cancelled. State law also requires a mailed notice of the hearing and a copy of the petition for cancellation to be mailed to the Director of the Department of Conservation at least 10 working days prior to the hearing. A one-time newspaper notice of the public hearing is also required by state law.

Step 7: Board of Supervisors conducts noticed public hearing on cancellation. Board considers comments received from the Department of Conservation (if submitted) and:

a) granting tentative approval to the cancellation of the contract and directing staff to record "certificate of tentative cancellation" with County Recorder,
b) making findings pursuant to State Law,
c) establishing conditions to be met prior to final cancellation (which are listed in the recorded "certificate of tentative cancellation"), and
d) certifying to the County Auditor the amount of the cancellation fee that shall be paid to the County Treasurer upon cancellation.

Step 8: Within 30 days following action by the Board of Supervisors to approve a tentative cancellation of the contract, the County shall publish a notice of its decision, including the date, time and place of the public hearing, a general explanation of the decision, the findings made pursuant to state law, and a general description in text or by diagram of the land under contract, as a display advertisement of at least one-eighth page in at least one newspaper of general circulation in the county.

Step 9: Within 30 days following action by the Board of Supervisors to approve a tentative cancellation of the contract, the County shall deliver a copy of the published notice of the decision described above, to the Director of the Department of Conservation.

Step 10: Landowner pays cancellation fees to County Treasurer within one year of recordation of the "certificate of tentative cancellation", and meets any other conditions listed in the "certificate of tentative cancellation".

Step 11: Landowner notifies Board of Supervisors that all conditions listed in the "certificate of tentative cancellation" have been met.

Step 12: Within 30 days of receipt of notification from landowner, and upon determining that all cancellation conditions have been met, the Board of Supervisors shall execute and record a "certificate of cancellation of contract". Direction to the Chairman of the Board for this action is included in the draft resolution, as another public hearing is not required by state law for this action. Upon staff determination that the conditions have been met, the Chairman of the Board will be authorized to execute
the "certificate of cancellation of contract" and staff will have authorization to record
the document.

Step 13: The Board of Supervisors shall send a copy of the recorded "certificate of
cancellation of contract" to the Department of Conservation.

Step 14: Within 30 days of the execution of a "certificate of cancellation of contract" by
the Board of Supervisors, the County Treasurer shall transmit the state-mandated
cancellation fees to the State Controller for deposit in the General Fund.

All required steps through number 6 above have been completed for this petition for
cancellation.

There are also provisions in the state law for waiver of the cancellation fees, and for disputes
over the cancellation fees. Information is not provided in this staff report, as it is not relevant
to this request.

Agricultural Advisory Committee

On October 5, 2006, the Agricultural Advisory Committee reviewed the request for
cancellation. Although the committee's recommendation years ago was to file the notice of
non-renewal and wait out the non-renewal period, the committee discussed the matter again
at their recent meeting. The Agricultural Advisory Committee voted unanimously to support
the action to cancel the contract if the Board of Supervisors is able to make the required
findings. The Agricultural Advisory Committee recommended that the Board of Supervisors
review the findings carefully. Finally, the Agricultural Advisory Committee emphasized the
importance of discussing and evaluating all available options for county projects in the future,
prior to acquisition of contracted land.

Department of Conservation

The Department of Conservation is a State Agency which performs primarily educational and
resource functions to the local agencies which are empowered to interpret and implement the
California Land Conservation Act in their jurisdictions. However, with cancellations, the
Department of Conservation has a direct review responsibility. State law establishes notice
requirements to Department of Conservation for petitions for cancellation.

The Department of Conservation has been sent proper notice of this petition pursuant to state
law. As of the date of preparation of this staff report packet, comments regarding this Land
Conservation Act Cancellation No. 2006-268 from the Director of the Department of
Conservation have not been received.

Should staff receive comments prior to the public hearing, they will be provided to the Board
of Supervisors for consideration prior to action.
Findings Required by State Law

Primary Finding

Pursuant to state law, the Board of Supervisors may grant tentative approval for cancellation of a contract only if it makes one of the following primary findings:

(1) That the cancellation is consistent with the purposes of this chapter; OR
(2) That cancellation is in the public interest.

The applicant submits that this cancellation is in the public interest.

Sub-Findings to Primary Finding

State law provides that cancellation of a contract shall be in the public interest (primary finding) only if the council or board makes the BOTH of the following sub-findings:

(1) that other public concerns substantially outweigh the objectives of this chapter; AND
(2) that there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

"Proximate, noncontracted land" means land not restricted by contract, which is sufficiently close to land which is restricted by contract that it can serve as a practical alternative for the use which is proposed for the restricted land.

"Suitable" for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels.

In considering a petition, the Board of Supervisors must also consider that the uneconomic character of an existing agricultural use shall not by itself be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

Cancellation Fee

State law establishes the cancellation fee at an amount equal to 12-1/2% of the cancellation valuation of the property.

In Mariposa County, pursuant to Resolution No. 95-350 and contract terms, the fee is an amount equal to 25% of the cancellation valuation of the property.
The Assessor has determined that the current fair market value for the subject 3.5 acres is $35,000.00.

The total 25% cancellation penalty is $8,750.00. The state's portion of the penalty (12-12%) is $4,375.00.

**Recommended Findings**

Staff recommends the Board of Supervisors make the following findings:

1. Cancellation of a 3.5-acres portion of Land Conservation Act Contract No. 23 as described in Land Conservation Act Cancellation Application No. 2006-268 is in the public interest. The alternative use for the 3.5-acre cancellation area is a public wastewater treatment facility to treat the effluent from the Don Pedro Sewer Zone 1-M. The Don Pedro Sewer Zone 1-M is a dependent special district which serves 207 residential parcels (70 of which are developed) and 134 townhouse lots (6 of which are developed), as well as an existing recreational clubhouse facility. The special district currently maintains an existing wastewater treatment facility, which is operating under a Cease and Desist Order issued by the State of California Regional Water Quality Control Board. The existing wastewater treatment facility, constructed in the mid-1960's, has exceeded its service life and cannot be repaired. The existing wastewater treatment facility has experienced failures, including a "spill" of untreated effluent into Browns Creek in the mid-1990's, resulting in the Cease and Desist Order. This project, to cancel 3.5-acres of contracted ground, will enable construction of a new sewage treatment facility, which will enable treatment of sewage to current environmental and public health standards.

The public's interests are served by ensuring that sewage from existing residential development is properly treated and that treated effluent is properly discharged pursuant to current environmental standards and current public health standards.

The public's interests are served by ensuring the ground water quality, surface water quality, and other environmental resources are protected.

The alternative use, a wastewater treatment plant, is not for a new residential subdivision, but is for an existing residential subdivision. There are multiple private property owners who own separate parcels within the subdivision. This project will not provide for additional residential capacity or any additional growth potential, beyond the parcels and lots which exist today.

2. There are public concerns which substantially outweigh the objectives of the California Land Conservation Act.

Mariposa County has strong policies to preserve agricultural and open space lands and to discourage premature and unnecessary conversion of agricultural lands to urban lands. These policies are written into the Mariposa County General Plan and
written into the policies implementing the Land Conservation Act in Mariposa County (Mariposa County Resolution No. 77-157).

Land Conservation ActCancellation Application No. 2006-268 is a request which is founded on public concerns for environmental quality and public concerns for public health. The wastewater treatment plant project is a needed facility for existing residential parcels, to meet current environmental and public health standards for wastewater treatment and effluent disposal. Without the new plant, public health concerns remain at risk. The Don Pedro Sewer Zone 1-M is currently operating under a Cease and Desist Order from the California Regional Water Quality Control Board. This project will enable treatment and effluent disposal to meet current state standards.

The wastewater treatment plant project was designed to reduce the area needed for facilities, and to retain as much land as possible for continued agricultural use. Portions of the property which are not subject to the cancellation petition will remain in agricultural use.

3. There is no proximate noncontracted land which is available and suitable for the alternative use based upon the following information.

The alternative use for the 3.5-acre cancellation area is a public wastewater treatment facility to treat the effluent from the Don Pedro Sewer Zone 1-M. The Don Pedro Sewer Zone 1-M is an existing special district which serves existing residential and townhouse parcels, as well as an existing recreational clubhouse facility. The special district currently maintains an existing wastewater treatment facility (located on the golf course), which is operating under a Cease and Desist Order issued by the State of California Regional Water Quality Control Board in the early 1990’s. Treated effluent from the existing facility is either stored in a pond on the golf course or is sprayed on the golf course.

When the extent of the operational deficiencies of the existing wastewater treatment facility were discovered in the early 1990’s, project engineers evaluated options for the special district. The project objective was to provide sewage treatment in accordance with all state environmental and health standards, for all existing parcels within the subdivision (special district), allowing for construction of at least one standard single family residence on each undeveloped parcel and lot.

In evaluating sites for the new treatment facility (site suitability characteristics), factors considered by the project engineers included: acreage needed for the treatment plant and for treated effluent disposal, soils, topography, proximity to existing plant and subdivision parcels (proximity to collection system), topography between existing plant/subdivision parcels and new treatment plant, parcel availability, and adjacent land uses.

Relative to proximate, non-contracted lands, project engineers found that:
a) Non-contracted land within the subdivision was not sufficient in acreage for the new treatment plant site.
b) Continued use of the existing treatment plant facility was not an option as the current facility could not be repaired and the existing site was not large enough to provide adequate storage for treated effluent. The new design required at least a 6 acre pond because effluent discharge cannot occur during a rain event.
c) Continued reliance on the golf course for discharge of treated effluent was problematic because the special district plant operators who are fully responsible for compliance with Regional Water Quality Control Board requirements for waste discharge lack of control over the discharge area. The golf course is not owned or managed by the Don Pedro Sewer Zone 1-M.
d) Non-contracted land adjacent to the subdivision in close proximity to the existing facility was not feasible for the new treatment plant site due to steep topography and existing development. Non-contracted land directly east of the golf course contained steep terrain which would require resizing and retrofitting of existing pumps and laterals within the entire sewer system which was considered infeasible. Effluent discharge in this area was also problematic based upon existing residential development.
e) Lands to the north, northwest, west, southwest, south and southeast of the 80 acres acquired are all within Williamson Act contracts.

4. The primary local permitting authority for the alternative use shall be the Mariposa County Building Department (Building Permit).

The primary state permitting authority for the alternative use shall be the California Regional Water Quality Control Board (Notice of Waste Discharge).

5. A mitigated negative declaration was adopted by the Board of Supervisors by Resolution No. 04-301 for the construction of the Don Pedro Wastewater Treatment Plant and all mitigation measures shall be implemented pursuant to the adopted mitigation monitoring and reporting plan. This mitigated negative declaration addresses the environmental impacts of this project (alternative use) and the cancellation.

**Recommended Conditions**

Staff recommends the following conditions:

1. The 25% cancellation fees shall be $8,750.00 which shall be paid to the Mariposa County Auditor by the landowner. These fees shall be paid within one (1) year of the date of recordation of the certificate of tentative cancellation of contract.

2. Upon payment of the cancellation fees, the landowner shall provide written notice to the Mariposa County Planning Department that the fees have been paid.
3. Processing fees and all public noticing costs, as determined by the Planning Department and in accordance with the County fee schedule, shall be submitted to the Planning Department.

4. The landowner shall obtain all permits necessary for the proposed alternative use, prior to commencement of construction of the alternative use. This shall include a Building Permit from the Mariposa County Building Department and a Notice of Waste Discharge from the State of California Regional Water Quality Control Board.

**Conclusion and Staff Recommendation**

Staff recommends that the Board of Supervisors adopt a resolution:


2) Directing staff to record a “Certificate of Tentative Cancellation” with the County Recorder.

3) Making findings pursuant to State Law, that the cancellation is in the public interest. Text of recommended findings is included in this staff report and in the draft resolution.

4) Certifying to the County Auditor that the amount of the 25% cancellation fee to be paid to the County Treasurer upon cancellation is $8,750.00.

**Attachments**

1. Vicinity Map and diagrams
2. Draft Resolution including Draft Certificate of Tentative Cancellation and Certificate of Cancellation
3. Correspondence from Assessor
4. Petition for Cancellation
5. State Law excerpts
ATTACHMENT TO STAFF REPORT
PROJECT VICINITY MAP

LCA CANCELLATION #2006-268

APPLICANT: PUBLIC WORKS DEPARTMENT
APNs: 001-260-033 & 001-260-029
2237 RANCHITO DR. & 2165 RANCHITO DR.

MARIPOSA COUNTY PLANNING
5100 Bullion Street
P. O. Box 2039
Mariposa, CA 95338
209-966-5151
COUNTY PARCEL: APN 001-260-033 & LCA LANDS
STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
BOARD OF SUPERVISORS  

Resolution No. 06-__  

A Resolution Approving Land Conservation Act Cancellation No. 2006-268 canceling a 3.5-acre portion of Land Conservation Act Contract No. 23; APN 001-260-033 at 2237 Ranchito Drive in Don Pedro  

WHEREAS on the 23rd day of August, 2006 a petition for cancellation of a 3.5-acre portion of Land Conservation Act Contract No. 23 was submitted by the Mariposa County Public Works Department on behalf of the Don Pedro Sewer Zone 1-M, a dependent special district providing public sewage treatment services to a small portion of the Don Pedro subdivision; and  

WHEREAS the petition affects a portion of APN 001-260-033, a 40.01 acre parcel; and  

WHEREAS the Don Pedro Sewer Zone 1-M is the landowner of record of APN 001-260-033; and  

WHEREAS the Mariposa County Board of Supervisors acts as the Board of Directors of the Don Pedro Sewer Zone 1-M because the Don Pedro Sewer Zone 1-M is a dependent special district; and  

WHEREAS the petition was not complete as a legal description of the 3.5-acre cancellation area was not provided; and  

WHEREAS on the 19th day of September, 2006 a legal description was provided by the Public Work Department to support the petition for cancellation; and  

WHEREAS the Don Pedro Sewer Zone 1-M also owns the adjacent 38.09 acre parcel, APN 001-260-029; and  

WHEREAS the project site is a part of Land Conservation Act Contract No. 23, a 10,807.81 acre contract which has had numerous certificates of compliance for historic patent parcels issued to it. The original contract acreage is now in ownership of multiple property owners; and  

WHEREAS on the 20th day of September, 2006 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 Planning Department; and  

WHEREAS on the 21st day of September, 2006 a request for determination of the current fair market value of the property was sent to the Mariposa County Assessor by the Planning Department; and
WHEREAS on the 27th day of September, 2006 the Mariposa County Assessor submitted certification to the Planning Department that the current fair market value of the subject 3.5-acres is $35,000.00; and

WHEREAS on the 27th day of September, 2006, the Mariposa County Assessor also submitted notice to the Director of the Department of Conservation and to the land owner regarding the current fair market value of the 3.5 acres; and

WHEREAS a duly noticed Board of Supervisors public hearing was scheduled for the 24th day of October 2006; 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 001-260-033. A direct mailed notice was also sent to the Director of the Department of Conservation, together with another copy of the petition for cancellation; and

WHEREAS the direct mailed notices were sent on the 5th day of October 2006; and

WHEREAS notice of the public hearing was also published in the Mariposa Gazette, a newspaper of general circulation, on the 11th day of October 2006; 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; and

WHEREAS on the 24th day of October 2006 the Board of Supervisors did hold a public hearing on Land Conservation Act Cancellation Application No. 2006-268 and considered all of the information in the public record, including the Staff Report packet, comments from the Director of the Department of Conservation, comments and recommendations from the Agricultural Advisory Committee, the certification from the County Assessor regarding the current fair market value of the subject 3.5 acres at $35,000.00, and public comments.

NOW THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby tentatively approve Land Conservation Act Cancellation Application No. 2006-268, approving cancellation of a 3.5-acre portion of Land Conservation Act Contract No. 23 as described in Exhibits A and B of Attachment A of this resolution.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby incorporate the entire staff report document for Land Conservation Act Cancellation No. 2006-268 into this resolution by reference.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby direct staff of the Planning Department to record the Certificate of Tentative Cancellation of a Portion of Land Conservation Act Contract No. 23 as contained in Attachment A of this resolution.
BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa hereby accepts certification from the Mariposa County Assessor that the current fair market value of the subject 3.5 acres is $35,000.00. The Board of Supervisors of the County of Mariposa certifies to the Mariposa County Auditor that, pursuant to Mariposa County Resolution No. 95-350 and the terms of Contract No. 23, the 25% cancellation fee for this action shall be $8,750.00. Pursuant to Government Code Section 51283(b), the State’s portion of the cancellation fee is 12-1/2% of the fair market value or $4,275.00. The Board of Supervisors of the County of Mariposa directs the County Auditor to pay the cancellation fee to the County Treasurer within 30 following the recordation of the final cancellation.

BE IT FURTHER RESOLVED THAT the Board of Supervisors makes the following determinations and findings in support of their action to approve Land Conservation Act Cancellation No. 2006-268:

1. Cancellation of a 3.5-acres portion of Land Conservation Act Contract No. 23 as described in Land Conservation Act Cancellation Application No. 2006-268 is in the public interest. The alternative use for the 3.5-acre cancellation area is a public wastewater treatment facility to treat the effluent from the Don Pedro Sewer Zone 1-M. The Don Pedro Sewer Zone 1-M is a dependent special district which serves 207 residential parcels (70 of which are developed) and 134 townhouse lots (6 of which are developed), as well as an existing recreational clubhouse facility. The special district currently maintains an existing wastewater treatment facility, which is operating under a Cease and Desist Order issued by the State of California Regional Water Quality Control Board. The existing wastewater treatment facility, constructed in the mid-1960's, has exceeded its service life and cannot be repaired. The existing wastewater treatment facility has experienced failures, including a “spill” of untreated effluent into Browns Creek in the mid-1990's, resulting in the Cease and Desist Order. This project, to cancel 3.5-acres of contracted ground, will enable construction of a new sewage treatment facility, which will enable treatment of sewage to current environmental and public health standards.

The public’s interests are served by ensuring that sewage from existing residential development is properly treated and that treated effluent is properly discharged pursuant to current environmental standards and current public health standards.

The public’s interests are served by ensuring the ground water quality, surface water quality, and other environmental resources are protected.

The alternative use, a wastewater treatment plant, is not for a new residential subdivision, but is for an existing residential subdivision. There are multiple private property owners who own separate parcels within the subdivision. This project will not provide for additional residential capacity or any additional growth potential, beyond the parcels and lots which exist today.

2. There are public concerns which substantially outweigh the objectives of the California Land Conservation Act.
Mariposa County has strong policies to preserve agricultural and open space lands and to discourage premature and unnecessary conversion of agricultural lands to urban lands. These policies are written into the Mariposa County General Plan and written into the policies implementing the Land Conservation Act in Mariposa County (Mariposa County Resolution No. 77-157).

Land Conservation Act Cancellation Application No. 2006-268 is a request which is founded on public concerns for environmental quality and public concerns for public health. The wastewater treatment plant project is a needed facility for existing residential parcels, to meet current environmental and public health standards for wastewater treatment and effluent disposal. Without the new plant, public health concerns remain at risk. The Don Pedro Sewer Zone 1-M is currently operating under a Cease and Desist Order from the California Regional Water Quality Control Board. This project will enable treatment and effluent disposal to meet current state standards.

The wastewater treatment plant project was designed to reduce the area needed for facilities, and to retain as much land as possible for continued agricultural use. Portions of the property which are not subject to the cancellation petition will remain in agricultural use.

3. There is no proximate noncontracted land which is available and suitable for the alternative use based upon the following information.

The alternative use for the 3.5-acre cancellation area is a public wastewater treatment facility to treat the effluent from the Don Pedro Sewer Zone 1-M. The Don Pedro Sewer Zone 1-M is an existing special district which serves existing residential and townhouse parcels, as well as an existing recreational clubhouse facility. The special district currently maintains an existing wastewater treatment facility (located on the golf course), which is operating under a Cease and Desist Order issued by the State of California Regional Water Quality Control Board in the early 1990’s. Treated effluent from the existing facility is either stored in a pond on the golf course or is sprayed on the golf course.

When the extent of the operational deficiencies of the existing wastewater treatment facility were discovered in the early 1990’s, project engineers evaluated options for the special district. The project objective was to provide sewage treatment in accordance with all state environmental and health standards, for all existing parcels within the subdivision (special district), allowing for construction of at least one standard single family residence on each undeveloped parcel and lot.

In evaluating sites for the new treatment facility (site suitability characteristics), factors considered by the project engineers included: acreage needed for the treatment plant and for treated effluent disposal, soils, topography, proximity to existing plant and subdivision parcels (proximity to collection system), topography between existing plant/subdivision parcels and new treatment plant, parcel availability, and adjacent land uses.
Relative to proximate, non-contracted lands, project engineers found that:

a) Non-contracted land within the subdivision was not sufficient in acreage for the new treatment plant site.

b) Continued use of the existing treatment plant facility was not an option as the current facility could not be repaired and the existing site was not large enough to provide adequate storage for treated effluent. The new design required at least a 6 acre pond because effluent discharge cannot occur during a rain event.

c) Continued reliance on the golf course for discharge of treated effluent was problematic because the special district plant operators who are fully responsible for compliance with Regional Water Quality Control Board requirements for waste discharge lack of control over the discharge area. The golf course is not owned or managed by the Don Pedro Sewer Zone 1-M.

d) Non-contracted land adjacent to the subdivision in close proximity to the existing facility was not feasible for the new treatment plant site due to steep topography and existing development. Non-contracted land directly east of the golf course contained steep terrain which would require resizing and retrofitting of existing pumps and laterals within the entire sewer system which was considered infeasible. Effluent discharge in this area was also problematic based upon existing residential development.

e) Lands to the north, northwest, west, southwest, south and southeast of the 80 acres acquired are all within Williamson Act contracts.

4. The primary local permitting authority for the alternative use shall be the Mariposa County Building Department (Building Permit).

The primary state permitting authority for the alternative use shall be the California Regional Water Quality Control Board (Notice of Waste Discharge).

5. A mitigated negative declaration was adopted by the Board of Supervisors by Resolution No. 04-301 for the construction of the Don Pedro Wastewater Treatment Plant and all mitigation measures shall be implemented pursuant to the adopted mitigation monitoring and reporting plan. This mitigated negative declaration addresses the environmental impacts of this project (alternative use) and the cancellation.

BE IT FURTHER RESOLVED THAT the Board of Supervisors establishes the following conditions which shall be met prior to final cancellation of the contract:

1. The 25% cancellation fees shall be $8,750.00 which shall be paid to the Mariposa County Auditor by the landowner. These fees shall be paid within one (1) year of the date of recordation of the certificate of tentative cancellation of contract.

2. Upon payment of the cancellation fees, the landowner shall provide written notice to the Mariposa County Planning Department that the fees have been paid.

3. Processing fees and all public noticing costs, as determined by the Planning Department and in accordance with the County fee schedule, shall be submitted to the Planning Department.
4. The landowner shall obtain all permits necessary for the proposed alternative use, prior to commencement of construction of the alternative use. This shall include a Building Permit from the Mariposa County Building Department and a Notice of Waste Discharge from the State of California Regional Water Quality Control Board.

BE IT FINALLY RESOLVED THAT the Board of Supervisors hereby directs the Chairman of the Board to execute the “Certificate of Cancellation of Contract” of a Portion of Land Conservation Act Contract No. 23 as contained in Attachment B of this resolution, upon staff’s determination that all cancellation conditions have been met.

ON MOTION BY Supervisor _________, seconded by Supervisor _________, this resolution is duly passed and adopted this ___ day of October, 2006 by the following vote:

AYES:

NOES:

EXCUSED:

ABSTAIN:

________________________________________
Lee Stetson, Chairman
Mariposa County Board of Supervisors

ATTEST:

________________________________________
MARGIE WILLIAMS
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

________________________________________
THOMAS P. GUARINO
County Counsel
Attachment A – Certificate of Tentative Cancellation
CERTIFICATE OF TENTATIVE CANCELLATION OF A PORTION OF CALIFORNIA LAND CONSERVATION ACT CONTRACT NO. 23

In accordance with Article 5, Chapter 7, Division 1 of Title 5 (beginning with Section 51280) of the Government Code of the State of California, the Board of Supervisors of the County of Mariposa has granted tentative approval of a petition by the County of Mariposa Public Works Department on behalf of the Don Pedro Sewer Zone 1-M, hereinafter referred to as LANDOWNER, for cancellation of a portion of California Land Conservation Act Contract No. 23 for a portion of Assessor Parcel No. 001-260-033 totaling approximately 3.5 acres.

LEGAL DESCRIPTION and MAP:

See attached Exhibit A and Exhibit B

The petition for cancellation was accompanied by a proposal for a specific alternative use of the land, which has been approved by the Mariposa County Board of Supervisors by Resolution No. 04-301 adopted by the County of Mariposa on the 22nd day of June, 2004 and by Resolution No. 06-____ adopted by the County of Mariposa on the 24th day of October, 2006.

The Board of Supervisors of the County of Mariposa will, in accordance with Government Code Section 51283.4(b), within (30) days of receipt of written notice from landowner that the conditions hereinafter set forth have been satisfied, make its determination whether or not such conditions are in fact satisfied and, if it determines that they are satisfied, will execute, by its Chairman, a Certificate of Cancellation of that portion of the Land Conservation Act Contract covering the land described above and cause the same to be recorded.

The conditions which must be satisfied prior to execution of a Certificate of Cancellation by the Chairman of the Board of Supervisors are as follows:

1. The 25% cancellation fees shall be $8,750.00 which shall be paid to the Mariposa County Auditor by the landowner. These fees shall be paid within one (1) year of the date of recordation of the certificate of tentative cancellation of contract.
2. Upon payment of the cancellation fees, the landowner shall provide written notice to the Mariposa County Planning Department that the fees have been paid.
3. Processing fees and all public noticing costs, as determined by the Planning Department and in accordance with the County fee schedule, shall be submitted to the Planning Department.

4. The landowner shall obtain all permits necessary for the proposed alternative use, prior to commencement of construction of the alternative use. This shall include a Building Permit from the Mariposa County Building Department and a Notice of Waste Discharge from the State of California Regional Water Quality Control Board.

If the landowner has been unable to satisfy the above conditions and contingencies, they shall so notify the County of Mariposa of the particular conditions which they are unable to satisfy. Within thirty (30) days after receipt of such notice, and upon a determination that the landowner is in fact unable to satisfy such conditions, the County of Mariposa Board of Supervisors, by its Chairman, shall execute a Certificate of Withdrawal of this Certificate of Tentative Cancellation and cause such certificate to be recorded.

STATE OF CALIFORNIA                     )
COUNTY OF MARIPOSA                   ) ss

I, Margie Williams, Clerk of the Board of Supervisors of the County of Mariposa, do hereby certify that at a regular meeting of the Board of Supervisors of the County of Mariposa, held on the 24th day of October 2006, the forgoing Certificate of Tentative Cancellation was passed and adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

IN WITNESS HEREOF, I have hereunto set my hand and affixed the official seal of the County of Mariposa this _____ day of __________, 2006.

By: ____________________________                Date: ______________

27
A tract of land situated in a portion of the South one-half of the North one-half (S1/2N1/2) of Section 31, Township 3 South, Range 15 East, M.D.B. & M., Mariposa County, State of California, said tract of land being more particularly described on EXHIBIT A and platted on EXHIBIT B as follows:

Commencing at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section 31., thence N83°58'32"W a distance of 761.55 feet to the POINT OF BEGINNING of the herein described tract of land; thence S89°15'01"W for 377.58 feet; thence N00°44'59"W for 340.57 feet; thence S89°15'01"W for 17.72 feet; thence N00°44'59"W for 54.91 feet; thence S89°15'01"W for 36.27 feet; thence N00°44'59"W for 69.80 feet; thence N89°15'01"E for 148.30 feet; thence N00°44'59"W for 43.90 feet; thence N89°15'01"E for 126.84 feet; thence S00°44'59"E for 80.25 feet; thence S57°03'58"W for 50.77 feet; thence S16°05'12"E for 122.78 feet; thence S80°46'53"E for 176.21 feet; thence S00°44'59"W for 253.06 feet, more or less, to the POINT OF BEGINNING.

The above described tract of land is subject to any rights-of-way or easements of record or legally acquired.

Prepared by

[Signature]
Jerome S. Freeman
L.S. No. 4079

Dated: October 16, 2006
Exhibit B – “Certificate of Cancellation”
CERTIFICATE OF CANCELLATION OF A PORTION OF AGRICULTURAL PRESERVE (LAND CONSERVATION ACT) CONTRACT NO. 23

WHEREAS, the County of Mariposa Public Works Department on behalf of the Don Pedro Sewer Zone 1-M, owner of the property described here, gave written notice of the cancellation of a portion of Land Conservation Act Contract No. 23 entered into between Mazie Woolstenhulme and Wells Woolstenhulme and the County of Mariposa; and

WHEREAS, all of the conditions as established and set forth in the Certificate of Tentative Cancellation of a Portion of California Land Conservation Act Contract No. 23 executed by the Clerk of the Board of Supervisors for the County of Mariposa and recorded on the __________ day of __________, 2006 in the Official Records of the County of Mariposa at Document No. _______________ have been met; now

THEREFORE, said portion of Land Conservation Contract No. 23 as described is herewith cancelled.

Legal Description and Map:

See attached Exhibit A and Exhibit B

LEE STETSON, Chairman
Mariposa County Board of Supervisors

Date: _____________________
State of California
County of Mariposa

On __________________________ before me, Tracy Gauthier, personally appeared
Lee Stetson, personally known to me or proved to be on the basis of satisfactory evidence,
and acknowledged to me that he executed the same in his authorized capacity, and that by
his signature on the instrument the person, or the entity upon behalf of which the person
acted, executed the instrument.

WITNESS my hand and official seal.

______________________________
Tracy Gauthier

Title of Document: Certificate of Cancellation of a Portion of Agricultural Preserve (Land
Conservation Act) Contract No. 23

Date of Document: No. of Pages:

Other signatures not acknowledged: None
A tract of land situated in a portion of the South one-half of the North one-half (S1/2N1/2) of Section 31, Township 3 South, Range 15 East. M.D.B. & M., Mariposa County, State of California, said tract of land being more particularly described on EXHIBIT A and platted on EXHIBIT B as follows:

Commencing at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section 31, thence N83°58'32"W a distance of 761.55 feet to the POINT OF BEGINNING of the herein described tract of land; thence S89°15'01"W for 377.58 feet; thence N00°44'59"W for 340.57 feet; thence S 89°15'01"W for 17.72 feet; thence N00°44'59"W for 54.91 feet; thence S89°15'01"W for 36.27 feet; thence N00°44'59"W for 69.80 feet; thence N89°15'01"E for 148.30 feet; thence N00°44'59"W for 43.90 feet; thence N89°15'01"E for 126.84 feet; thence S00°44'59"E for 80.25 feet; thence S57°03'58"W for 50.77 feet; thence S16°05'12"E for 122.78 feet; thence S80°46'53"E for 176.21 feet; thence S00°44'59"W for 253.06 feet, more or less, to the POINT OF BEGINNING.

The above described tract of land is subject to any rights-of-way or easements of record or legally acquired.

Prepared by

Jerome S. Freeman
L.S. No. 4079

Dated: October 16, 2006
Lake Don Pedro Waste Water Treatment Plant (WWTP) Plat of facility layout

Situated in a portion of the North half of Section 31 T.3 S., R. 15 E., M.D.B.&M.

MARIPOSA COUNTY CALIFORNIA
October 2006 SCALE: 1"=400'

WWTP Lay out Data

<table>
<thead>
<tr>
<th>Course</th>
<th>Bearing</th>
<th>Distance</th>
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<tbody>
<tr>
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<td>377.58'</td>
</tr>
<tr>
<td>2</td>
<td>N 00°44'59&quot; W</td>
<td>340.57'</td>
</tr>
<tr>
<td>3</td>
<td>S 89°15'01&quot; W</td>
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<tr>
<td>7</td>
<td>N 89°15'01&quot; E</td>
<td>148.30'</td>
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<td>8</td>
<td>N 00°44'59&quot; W</td>
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<tr>
<td>9</td>
<td>N 89°15'01&quot; E</td>
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<td>12</td>
<td>S 16°05'12&quot; E</td>
<td>122.78'</td>
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<td>S 80°46'53&quot; E</td>
<td>176.21'</td>
</tr>
<tr>
<td>14</td>
<td>S 00°44'59&quot; W</td>
<td>253.06'</td>
</tr>
</tbody>
</table>

S.E. CORNER OF S.W. QUARTER OF N.E. QUARTER OF SECTION 31 T.3 S., R. 15 E., M.D.B.&M.

LAKE DON PEDRO PROPOSED WWTP SITE

Drawing by: R. ROBINSON

Project No: 91.05

County of Mariposa
Department of Public Works

Page: 2 of 2

Approved By: J.S. A.

Date: 10/16/06
Assessor-Recorder

September 27, 2006

Mariposa County Planning Department
P.O. Box 2039
Mariposa, CA 95338

RE: Request for Williamson Act cancellation fair market value determination

Per request of September 21, 2006 and per Government Code Section 51283, please find below the estimate of current fair market value for the subject property, being identified as a portion of Contract No. 23, APN 001-260-033.

Current Fair Market Estimate for 3.5 acres, **$35,000.**

The Assessor per Government Code Section 51283 is required to notify the Department of Conservation and the landowner of the cancellation value at the time value is certified to the Board or Council.

In addition, Government Code Section 51283 requires the Assessor to advise the landowner and the Department of Conservation of the opportunity to request a formal review by the Assessor and Section 51203 provides that the request must be filed within 45 days of notices.

Within 45 days of receiving the Assessor’s notice pursuant to Subdivision (a) of Section 51283 or 51283.4, if the Department of Conservation or the landowner believes that the current fair market valuation certified pursuant to Subdivision (b) of Section 51283 or 51283.4 is not accurate, the department or the landowner may request a formal review from the county assessor in the county considering the petition to cancel the contract. The department or landowner shall submit to the assessor and the party the reasons for believing the valuation is not accurate. The assessor may recover his or her reasonable costs of the formal review from the party requesting the review, and may provide an estimate of costs to the requesting party.

Sincerely,

Becky Crafts
Assistant Assessor-Recorder

RECEIVED
SEP 9 7 2006
Mariposa County Planning Dept.

Mariposa County Hall of Records P.O. Box 35, Mariposa, CA 95338
Department of Conservation
Dennis J. O’Bryant
801 K Street
Sacramento, CA 95814

RE: Request for Williamson Act cancellation fair market value determination

Per Government Code Section 51283, please find below the estimate of current fair market value for the subject property, being identified as a portion of Contract No. 23, APN 001-260-033.

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Sincerely,

Becky Crafts
Assistant Assessor-Recorder

cc. Mariposa County Board of Supervisors

Mariposa County Hall of Records
ATTACHMENT TO STAFF REPORT
TO: Kris Schenk, Planning Director

FROM: Dana S. Hertfelder, Director

SUBJECT: Williamson Act Land Removal

In accordance with Section 51282 of the California Government Code, the Department of Public Works is requesting that approximately three and one-half (3.5) acres of Assessors Parcel Number 001-260-0145, shown on the attached figure, be removed from the Williamson Act. The Department of Public Works believes that this request complies with the requirements of Section 51282 of the California Government Code. Current public concerns substantially outweigh the objectives of Chapter 7, Agricultural Lands of the Government Code. Specifically, the Don Pedro Sewer Zone 1-M is currently operating under a Cease and Desist order from the California Water Quality Control Board, the failure of the existing sewer plant poses health and safety concerns for the residents of Don Pedro and the surrounding environment. In addition, there are no proximate noncontracted lands available and suitable for construction of the proposed sewer treatment and disposal facility. Attached, is a copy of the Board of Supervisors findings in accordance with Section 512292(b) of the California Government Code and a letter from the State of California Department of Conservation concurring with this finding.

The three and one-half (3.5) acres will be used for the construction and operation of a wastewater treatment facility designed to treat the effluent from the Don Pedro Sewer Zone 1-M. The wastewater is designed to handle the existing established lots within the sewer zone and will not provide for any new residential development. Mariposa County Building Department will be the permitting authority for this project.

Should you have any questions or comments regarding this matter please do not hesitate to contact me.
June 21, 2004

VIA FACSIMILE (209) 966-2828
Mr. James J. Petropulos, Director
Mariposa County Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

Subject: Acquisition of Land Enrolled in a Williamson Act Contract
(Contract #23, APN 001-260-015, 016), Mariposa County
Department of Public Works

Dear Mr. Petropulos:

Thank you for your May 27, 2004 letter, providing additional information in notifying the Department of Conservation (Department) of the Mariposa County Department of Public Works’ (County) acquisition of 80± acres of nonprime land enforceably restricted by a Williamson Act contract. The purpose of the acquisition is to construct a wastewater treatment plant for the Lake Don Pedro subdivision to replace the current, inadequate facility. The Department requested additional information in order to determine whether the finding in Government Code §51292(b) can be made. We also requested information related to acquisition of the property to void the contract pursuant to Government Code §51295, the need for 80 acres and copies of the project’s CEQA review.

Previously, the County stated that noncontracted land within the subdivision is not sufficient in acreage for the new plant site. Noncontracted land adjacent to the subdivision in close proximity to the existing facility is not feasible due to steep topography.

As requested, this letter explains the need for the amount of acreage being acquired. A transmission line will be required from the existing facility directly west to the new site, a distance of approximately 1200 feet. Although most of the existing facility will be abandoned, sewer and pumping connections will be maintained. The new site will contain a treatment element on two acres, a storage pond on six acres and a disposal area of 46 acres. Including required setbacks from the surrounding property lines and public ways, the total acreage required approximates 80 acres.
As documented previously, lands northwest, west and south of the acquisition site are under Williamson Act contracts. As requested, the letter encloses a topographic layer on top of the project and subdivision area showing an existing golf course north, northeast and east of the acquisition site. Beyond the golf course in these directions are steep terrain and residential development. In phone conversation, it was clarified that noncontracted land directly east of the golf course, but not depicted in the topographic layer, contains the same steep terrain and residential development. Although this eastern location may be proximate, locating in the steep terrain would require resizing and retrofitting existing pumps and laterals, as well as the entire sewer system, and the County considers this infeasible. Disposal in this area may also be problematic.

The above explanation and accompanying documentation appears to support making the finding in Government Code §51292(b) that there is no other noncontracted land reasonably feasible for the new wastewater treatment facility.

Regarding acquisition by eminent domain or in lieu of eminent domain to void the subject contract, the letter states that the County, although authorized to acquire property by eminent domain, may also acquire property by negotiated purchase, as was the case for the subject acquisition. In this case, an appraisal was conducted, and the intent to acquire was noticed and posted as required.

The Department does not provide counsel regarding eminent domain law but encourages the County to obtain legal counsel for this purpose. Assuming other necessary requirements are met, acquisition of Williamson Act land must meet requirements of eminent domain law for acquisition by eminent domain or in lieu of eminent domain (e.g., Code of Civil Procedure section 1230.010 et seq. and Government Code §7260 et seq.) in order to void the contract pursuant to Government Code §51295. If the acquisition does not void the contract, the County’s uses of the contracted property will be affected and limited by the terms of the contract and provisions of the Act.

Although acquisition of contracted land in lieu of eminent domain may include a negotiated purchase, other requirements of eminent domain law may apply. Sections 7267.1 and 7267.2, for example, require an appraisal and offer based on that appraisal prior to negotiations. In addition, requirements for acquisition by eminent domain or in lieu of eminent domain to void the contract must be viewed in light of the Williamson Act. Again, we encourage the County to consult with eminent domain counsel to ensure that its acquisition will void the contract and permit project development.

Finally, the letter encloses a copy of the County’s proposed Negative Declaration for the impending acquisition of the approximately 40-acre parcel that will be used as a
Mr. James J. Petropoulos  
June 21, 2004  
Page 3 of 3

disposal field. Continued cattle grazing on the parcel is a requirement of the purchase agreement, although it is conditioned on its compatibility with the disposal spray irrigation. The letter does not address CEQA review for the project’s adjacent contracted 40-acre parcel purchased in 1998. The County has stated that the design of the facility is not complete, and additional CEQA review will occur in the future.

Please be advised that, pursuant to Government Code §51291(d), the Department must be notified of any proposed, significant changes to the project. The Department must also be notified within 10 days when the property is actually acquired (Government Code §51291(c)). If the District determines not to locate the proposed public improvement on the subject property, before returning the land to private ownership, it must notify the Department, and the land must be reenrolled in a new contract or encumbered by an enforceable restriction at least as restrictive as that provided by the Williamson Act (Government Code §51295). If you have any questions, please contact Bob Blanford, Research Analyst, at (916) 327-2145.

Sincerely,

[Signature]

Dennis J. O’Bryant  
Acting Assistant Director

cc: The Honorable Robert Lowrimore  
Mariposa County Assessor  
P.O. Box 35  
Mariposa, CA 95338-0035

Board of Supervisors  
Mariposa County  
P.O. Box 784  
Mariposa, CA 95338
COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222
GARRY R. PARKER, CHAIR
DOUG BALMAIN, VICE-CHAIR
LEE STETSON
BOB PICKARD
JANET BIBBY
DISTRICT IV
DISTRICT II
DISTRICT I
DISTRICT V
DISTRICT III

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: JIM PETROPULOS, Public Works Director
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: PUBLIC HEARING RELATIVE TO THE ADOPTION OF A NEGATIVE DECLARATION, AUTHORIZING PURCHASE OF REAL PROPERTY, AND AUTHORIZING LOCATION OF A PUBLIC IMPROVEMENT ON WILLIAMSON ACT CONTRACTED LAND
Resolution No. 04-301

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA.

ADOPTED THIS Order on June 22, 2004

ACTION AND VOTE:

11:02 a.m. Dana Hertfelder, Assistant Public Works Director, appeared on behalf of Jim Petropulos, Public Works Director;
PUBLIC HEARING Relative for Approval of a Resolution Adopting a Negative Declaration for County Acquisition of Property on Ranchito Drive, County of Mariposa for Future Use and Development of a Wastewater Treatment Facility to Serve Sewer Zone I; Authorizing Acquisition of APN 001-260-16 in the Amount of $202,500, Paying Broker's Commission of $22,500, and Usual and Customary Closing Costs Estimated at $2,200; Authorizing County Administrative Officer to Execute all Documents Associated with the Purchase; Authorizing Location of the Public Improvement, the Don Pedro Wastewater Treatment Facility on Williamson Act Contracted Land, APN 001-260-15 and 001-260-16, Pursuant to Findings Under Section 51292 of the Government Code
BOARD ACTION: Fred Solomon, Project Consultant, presented the staff report, and he advised that the recommended actions today do not implement the project itself. He noted that findings are included in the staff report to justify the purchase price of the parcel and for the proposed location of the wastewater treatment facility on parcels which are located on Williamson Act contracted land; and he advised of correspondence that was received. He advised of the concerns expressed in the correspondence received from the Farm Bureau and of his response and of correspondence received from the Department of Conservation.

The public portion of the hearing was opened and input was provided by the following:
John Gamper, representing California Farm Bureau Federated on behalf of the Mariposa County Farm Bureau, expressed concern with protection of the Williamson Act contracted lands. He cited code
sections relative to eminent domain in relation to Williamson Act contracts and the acquisition of land and commented on the required findings. He asked how the previously acquired 40-acre parcel will be used and whether the use would be compatible with Williamson Act. He also expressed concerns with the appraisal and the comparables that were used. He stated he would like to see Williamson Act contracted land protected so that it can't be parcelled into smaller lots that could become home sites. Supervisor Bibby asked how he would deal with historical parcels that are split off. John advised that he supports only allowing one residential building permit per Williamson Act contract.

Kevin Gile stated he is a resident of the area and expressed concern with the notification process. He advised that they were notified of two meetings that were held last year, but were not notified of this hearing. He asked that all of the owners be notified in the future. He noted that the recommended action would spend funds to acquire land that will need to be paid by a future assessment. He asked what would happen to the land if the assessment ballot vote doesn't pass.

Cathie Pierce-Ragghianti, cattle rancher and Farm Bureau Director and taxpayer, said she is not sure how the action to purchase the first 40-acre parcel got by without their knowing. She expressed concern with the appraisal on the property and the comparables that were used. She suggested that another appraisal be obtained from someone who is familiar with agriculture land. She stated that if this is taken out of the Williamson Act contract, she would like to see some way to replace it with another parcel. She stated she disagrees with the negotiations that allow the property owner to lease-back the land for pasture for the cattle for ten years at no cost. She noted that spraying the water on the land will result in permanent pasture and that brings a high rent in the valley. She requested that the Farm Bureau be advised of any future changes that are proposed for Williamson Act contracted lands. She also stated that their office did not receive the response from Fred Solomon to their correspondence. Fred Solomon advised that he personally hand-delivered the response to the Farm Bureau Office.

Paul Chapman expressed concern with the preservation of agricultural land; and he protested the purchase of this land at such an exorbitant price. He stated he feels it will be the non-resident developer that will get the most use out of it. He questioned why the "defunct golf course" area isn't being used for the project. He asked who has paid the penalties for the splitting of the original parcel. He stated he hopes the Board will use land that is not in the Williamson Act for this project.

The public portion of the hearing was closed and the Board commenced with deliberations. Sarah Williams, Intern Planning Director, asked for a recess. Chairman Parker provided a reminder that the Board is in the deliberation phase of the hearing and is unable to discuss this matter outside of the hearing.

11:42 a.m. Recess

11:56 a.m. Tom Guarino, County Counsel, addressed the following issues that were raised:
- issue of Government Code Section 51295 relative to eminent domain. He advised that the Board did not initiate eminent domain proceedings.
- concerns relative to the appraisal and acreage of 39 to 40 acres and whether a single-family dwelling could be constructed. He advised that the Contract permits compatible use and the appraiser took that and the single-family dwelling issue into consideration. He advised that it was found out later that the 39 acres was increased to 40 by a lot line adjustment. He noted that the appraisal was done by a licensed appraiser and the questions were previously raised and the appraisal was not changed.
- Pulling the land from the Williamson Act Contract to construct the wastewater treatment facility. He advised that if the land is not used for the facility, it would still be subject to the Williamson Act. He advised that the recommended action today proceeds with allowing a public facility on the land. He noted that the Board has the authority to determine what the compatible uses are for the land. When it is determined where to locate the facility, another action will need to be taken to determine the compatible use, i.e., public wastewater treatment facility.
- Use of the land for grazing purposes. He advised that this use was found to be compatible by the State, and was previously negotiated with the seller. Completion of these actions will occur with the action to come back relative to determining compatible use.

Tom Guarino responded to questions from the Board relative to his review of the Willits vs. Mendocino case that was referred to: relative to the lot line adjustment; and relative to the Land Conservation District. Tom also advised that he has not issued any written opinions on GC 51295 for the public or otherwise.
Dana Hertfelder responded to questions from the Board relative to timeframes for the process; notification to the property owners; request for consideration of use of the golf course for the project; and relative to the Proposition 218 assessment process. Staff also responded to questions from the Board relative to the Cease and Desist Order that the State issued for this area and relative to the amount of land that would actually be used for the project and the portion that would remain for grazing. The hearing was continued for a lunch break, and Chairman Parker again reminded everyone that the Board is in the deliberation phase of the hearing and is unable to discuss the matter outside of the hearing process.

12:19 p.m. Lunch

1:36 p.m. The Board continued with deliberations. Tom Guarino provided information on his review of the Willits vs. Mendocino case and the eminent domain issue. He advised that the Board is not looking at a cancellation of the Williamson Act contract, and that would require a noticed, public hearing. The Board is going through the process for the wastewater treatment facility. He stated he feels that this type of purchase is permitted; and that the Board’s action is less than that taken by Mendocino County. He suggested that direction be given to staff to bring back a resolution with findings that the use of the land for the wastewater treatment facility is compatible with the current contract.

(M)Balmain, (S)Pickard, Res. 04-301 was adopted adopting a Negative Declaration for County acquisition of property on Ranchito Drive, County of Mariposa for future use and development of a wastewater treatment facility to serve Sewer Zone 1; authorizing acquisition of APN 001-260-16 in the amount of $202,500, paying Broker’s commission of $22,500, and usual and customary closing costs estimated at $2,200; authorizing County Administrative Officer to execute all documents associated with the purchase; authorizing location of the public improvement, the Don Pedro Wastewater Treatment Facility on Williamson Act contracted land. APN 001-260-15 and 001-260-16, pursuant to findings under Section 51292 of the Government Code; and direction was given for staff to bring back a resolution with findings that the use of the land for the wastewater treatment facility is compatible with the current contract. Chairman Parker requested that all of the property owners receive notification of actions for this project in the future versus just those in the 600-foot area. Ayes: Unanimous. The hearing was closed.

cc: Mary Hodson, Deputy County Administrative Officer
    Tom Guarno, County Counsel
    Sarah Williams, Interim Planning Director
    Charles Mosher, Health Officer
    File
MARIPOSA COUNTY
BOARD OF SUPERVISORS

RESOLUTION NO. 04-301

A RESOLUTION ADOPTING A NEGATIVE DECLARATION, AUTHORIZING THE PURCHASE OF REAL PROPERTY, AND AUTHORIZING LOCATION OF A PUBLIC IMPROVEMENT ON WILLIAMSON ACT CONTRACTED LAND

WHEREAS, the County of Mariposa, has been issued a Cease and Desist Order by the California Regional Water Quality Control Board related to the operation of the Don Pedro wastewater treatment plant; and,

WHEREAS, the Mariposa County Board of Supervisors will construct a new wastewater treatment plant to serve residents of Sewer Zone 1; and,

WHEREAS, the County of Mariposa has determined the need to acquire additional acreage to supplement the acquisition of APN 001-260-15; and

WHEREAS, the Board of Supervisors has negotiated an agreement for the acquisition of APN 001-260-16; and,

WHEREAS, the Board of Supervisors finds that purchase of the property for an amount $2,500 in excess of the appraised Fair Market Value of $200,000 is justified to retain control of effluent disposal, to avoid costly transmission of effluent to an alternative disposal area, to reduce the cost of providing a tertiary level of treatment of waste, and to assure County control of access for the purpose of future maintenance of the facility; and

WHEREAS, the Board of Supervisors finds that the location of a public improvement, the proposed Don Pedro Wastewater Treatment Facility, on APN 001-260-15 and APN 001-260-16, which parcels are located on Williamson Act contracted land, is justified pursuant to Government Code Section 51292 in that:

a) The location of the acquisition parcels is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve. Land was investigated for purchase in and around Sewer Zone 1. The decision to acquire the subject parcels is based on proximity to the existing waste collection system, the suitability of the topography of the property for the proposed treatment facility, property with the acreage needed for the development of the proposed treatment facility, land uses which would be compatible with the proposed treatment facility, and a location which would result in an economically viable treatment facility construction cost. Therefore, the fact that the land is in an agricultural preserve was not a consideration for acquisition at a lower cost.

b) There is no land within the Lake Don Pedro Subdivision or adjacent to the Subdivision, in reasonable proximity to the existing waste collection system for Sewer Zone 1 and outside the agricultural preserve, on which it is feasible to locate the public improvement. Only the parcel acquired and the parcel to be acquired meet...
constraints dictated by topography, size, land use compatibility, and proximity to the existing wastewater collection system; and,

WHEREAS, the staff of the California Regional Water Quality Control Board has advised the County that the conduct of cattle grazing on the land on which the effluent is disposed is a beneficial use; and, the acquisition agreement allows the use of the land for cattle grazing for a period of 10 years; and,

WHEREAS, replacement of the existing wastewater treatment plant will have a beneficial impact on the ground water within the agricultural preserve.

NOW THEREFORE, BE IT RESOLVED that the Mariposa Board of Supervisors takes the following actions:

1. Adopts a Negative Declaration for the purchase of APN 001-260-16
2. Authorizes the purchase of APN 001-260-16 from Mr. and Mrs. T. Erickson in the amount of $202,500, payment of the Real Estate Brokers Commission of $22,500, and payment of the usual and customary closing costs estimated at $2,200.
3. Authorizes the location of a public improvement, the Don Pedro Wastewater Treatment Facility on Williamson Act contracted land.

PASSED AND ADOPTED by the Mariposa County Board of Supervisors this 22nd day of June, 2004, by the following vote:

AYES: STETSON, BALMAIN, BIBBY, PARKER, PICKARD
NOES: NONE
ABSENT: NONE
ABSTAINED: NONE

GARRY R. PARKER, Chair
Mariposa County Board of Supervisors

ATTEST:

MARGIE WILLIAMS, Clerk of Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

THOMAS P. GUARINO, County Counsel
CONDUCT A PUBLIC HEARING AND APPROVE A RESOLUTION ADOPTING A NEGATIVE DECLARATION FOR COUNTY ACQUISITION OF PROPERTY ON RANCHITO DRIVE, COUNTY OF MARIPOSA FOR FUTURE USE AND DEVELOPMENT OF A WASTEWATER TREATMENT FACILITY TO SERVE SEWER ZONE I (THE INITIAL STUDY WAS WRITTEN TO ADDRESS POTENTIAL IMPACTS OF PURCHASING APN 01-260-16); AUTHORIZING ACQUISITION OF APN 001-260-16 IN THE AMOUNT OF $202,500, PAY BROKER'S COMMISSION OF $22,500 AND USUAL AND CUSTOMARY CLOSING COSTS ESTIMATED AT $2,200; AUTHORIZE COUNTY ADMINISTRATIVE OFFICER TO EXECUTE ALL DOCUMENTS ASSOCIATED WITH THE PURCHASE; AUTHORIZING LOCATION OF THE PUBLIC IMPROVEMENT, THE DON PEDRO WASTEWATER TREATMENT FACILITY ON WILLIAMSON ACT CONTRACTED LAND, APN'S 001-260-15 AND 001-260-16, PURSUANT TO FINDINGS UNDER SECTION 51292 OF THE GOVERNMENT CODE.

The environmental review document only addresses the potential impacts of the County's purchase of real property, as detailed design work has not been started. The actual design, development and construction of the wastewater treatment facility will undergo more site-specific and project-specific environmental review in the future if property is purchased. The County will need to undergo additional public hearings for this environmental review and needed land use and zoning changes in the future. The adoption of a Negative Declaration does not commit the Board to purchase the specified parcel. APN 001-260-16 is directly adjacent to the County-owned parcel APN 001-260-15 and is needed acreage to provide for a complete treatment, storage and disposal facility at one location and will result in complete control of the disposal of treated effluent at the least cost to property owners served by the facility as explained in the May 20, 2004 memorandum from Fred Solomon attached hereto.

The parcel previously acquired by the County and the parcel to be acquired, are contracted land under the Williamson Act. To utilize the land for the public improvement of a wastewater treatment facility requires notification of the State Department of Conservation which, under Government Code Section 51291 has 30 days to comment on the proposed use, and the making of certain findings under Section 51292 of the Code. The notification and findings were transmitted to the Department of Conservation on April 20, 2004 and written response was received from the Department of Conservation on May 20, 2004. A report dated May 20, 2004 from Fred Solomon outlines the findings required under Section 51292 of the Government Code as well as additional findings which are applicable to this project. A copy of the County's response to the Department of Conservation's letter, dated May 26, 2004 is attached.

Notice of the public hearing was published in the May 26 edition of the Gazette newspaper, was posted at the County Courthouse, the Planning website, at the Lake Don Pedro Market and with the County Clerk, was mailed to all property owners within 600 feet of the property to be acquired, and sent to the Department of Conservation and the Agricultural Advisory Committee.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
None, relative to the environmental determination and location of a public improvement on Williamson Act contracted land. The Board, on February 17, 2004, authorized application for a loan from the United States Department of Agriculture; authorized a contract for the design of the facility on February 24, 2004 and on April 6, 2004; and authorized a contract for environmental services and a cultural resources study.
ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Alternatives include seeking other property to dispose of treated effluent from the wastewater treatment facility to be located on an adjacent property owned by the County. The consequences of this action are the potential loss of effluent disposal control, additional costs to property owners for increased level of treatment of effluent, and additional costs for transmission of effluent to existing sewer lines.

Financial Impact? ( ) Yes (X) No
Recurring Cost: $ __________
Budgeted in Current FY? ( ) Yes (X) No ( ) Partially Funded
Amount in Budget: $1,266,738
Additional Funding Needed: $ __________
Source: ( ) General ( ) Other

(X) No Current FY Cost: $ __________ Annual

List Attachments, number pages consecutively
1. Initial Study & Negative Declaration
2. May 20, 2004 memo from Fred Solomon
3. Appraisal Report
4. Acquisition Agreement dated March 3, 2004
5. Letter to State Department of Conservation dated April 20, 2004
8. Response to Department of Conservation dated May 26, 2004

CLERK'S USE ONLY:
Res. No.: 04-301 Ord. No. _____
Vote – Ayes: ___ Noes: _____
Approved: ___ Absent: ___
( ) 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: __________
ATTACHMENT TO STAFF REPORT
GOVERNMENT CODE
SECTION 51280-51287

51280. It is hereby declared that the purpose of this article is to provide relief from the provisions of contracts entered into pursuant to this chapter under the circumstances and conditions provided herein.

51280.1. As used in this chapter, the finding of a board or council that "cancellation and alternative use will not result in discontiguous patterns of urban development" authorizes, but does not require, the board or council to cancel a contract if it finds that the alternative use will be rural in character and that the alternative use will result within the foreseeable future in a contiguous pattern of development within the relevant subregion. The board or council is not required to find that the alternative use will be immediately contiguous to like development. In rendering its finding, the board or council acts in its own discretion to evaluate the proposed alternative use according to existing and projected conditions within its local jurisdiction.

The provisions of this section shall apply only to those proceedings for the cancellation of contracts which were initiated pursuant to Section 51282.1, and, consistent with the provisions of Section 9 of Chapter 1095 of the Statutes of 1981, shall apply to the same extent as the provisions of Section 51282.1, notwithstanding their repeal.

51281. A contract may not be canceled except pursuant to a request by the landowner, and as provided in this article.

51281.1. The board or council may require the payment of a reasonable application fee to be made at the time a petition for cancellation is filed.

51282. (a) The landowner may petition the board or council for cancellation of any contract as to all or any part of the subject land. The board or council may grant tentative approval for cancellation of a contract only if it makes one of the following findings:
   (1) That the cancellation is consistent with the purposes of this chapter; or
   (2) That cancellation is in the public interest.

(b) For purposes of paragraph (1) of subdivision (a) cancellation of a contract shall be consistent with the purposes of this chapter only if the board or council makes all of the following findings:
   (1) That the cancellation is for land on which a notice of nonrenewal has been served pursuant to Section 51245.
   (2) That cancellation is not likely to result in the removal of adjacent lands from agricultural use.
   (3) That cancellation is for an alternative use which is consistent with the applicable provisions of the city or county
general plan.

(4) That cancellation will not result in discontiguous patterns of urban development.

(5) That there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels.

(c) For purposes of paragraph (2) of subdivision (a) cancellation of a contract shall be in the public interest only if the council or board makes the following findings: (1) that other public concerns substantially outweigh the objectives of this chapter; and (2) that there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels.

(d) For purposes of subdivision (a), the uneconomic character of an existing agricultural use shall not by itself be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(e) The landowner's petition shall be accompanied by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use, and the provisions and requirements of Section 51283.4 shall be fully applicable thereto. The level of specificity required in a proposal for a specified alternate use shall be determined by the board or council as that necessary to permit them to make the findings required.

(f) In approving a cancellation pursuant to this section, the board or council shall not be required to make any findings other than or in addition to those expressly set forth in this section, and, where applicable, in Section 21081 of the Public Resources Code.

51282.3. (a) The landowner may petition the board or council, pursuant to Section 51282, for cancellation of any contract or of any
portion of a contract if the board or council has determined that agricultural laborer housing is not a compatible use on the contracted lands. The petition, and any subsequent cancellation based thereon, shall (1) particularly describe the acreage to be subject to cancellation; (2) stipulate that the purpose of the cancellation is to allow the land to be used exclusively for agricultural laborer housing facilities; (3) demonstrate that the contracted lands, or portion thereof, for which cancellation is being sought are reasonably necessary for the development and siting of agricultural laborer housing; and (4) certify that the contracted lands, or portion thereof, for which cancellation is being sought, shall not be converted to any other alternative use within the first 10 years immediately following the cancellation.

The petition shall be deemed to be a petition for cancellation for a specified alternative use of the land. The petition shall be acted upon by the board or council in the manner prescribed in Section 51283.4. However, the provisions of Section 51283 pertaining to the payment of cancellation fees shall not be imposed except as provided in subdivision (b).

(b) If the owner of real property is issued a certificate of cancellation of contract based on subdivision (a), there shall be executed and recorded concurrently with the recording of the certificate of cancellation of contract, a lien in favor of the county, city or city and county in the amount of the fees which would otherwise have been imposed pursuant to Section 51283. Those amounts shall bear interest at the rate of 10 percent per annum. The lien shall particularly describe the real property subject to the lien, shall be recorded in the county where the real property subject to the lien is located, and shall be indexed by the recorder in the grantor index to the name of the owner of the real property and in the grantee index in the name of the county or city or city and county. From the date of recording, the lien shall have the force, effect and priority of a judgment lien. The board or council shall execute and record a release of lien if, after a period of 10 years from the date of the recording of the certificate of cancellation of contract, the real property subject to the lien has not been converted to a use other than agricultural laborer housing. In the event the real property subject to the lien has been converted to a use other than agricultural laborer housing, or the construction of agricultural laborer housing has not commenced within a period of one year from the date of recording of the certificate of cancellation of contract, then the lien shall only be released upon payment of the fees and interest for which the lien has been imposed. Where construction commences after the one-year period, the amount of the interest shall only be for that period from one year following the date of the recording of the certificate of cancellation of contract until the actual commencement of construction.

51282.5. The owner of any land which has been zoned as a timberland production pursuant to Section 51112 or 51113, and that zoning has been recorded as provided in Section 51117, may petition the board or council for cancellation of any contract as to all or part of the land. Upon petition, the board or council shall approve the cancellation of the contract.

The provisions of Section 51283 shall not apply to any cancellation under this section, and no cancellation fee shall be imposed.
51283.  (a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee. At the same time, the assessor shall send a notice to the landowner and the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction and advise the parties, that upon their request, the assessor shall provide all information relevant to the valuation, excluding third-party information. If any information is confidential or otherwise protected from release, the department and the landowner shall hold it as confidential and return or destroy any protected information upon termination of all actions relating to valuation or cancellation of the contract on the property. The notice shall also advise the landowner and the department of the opportunity to request formal review from the assessor.

(b) Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee that the landowner shall pay the county treasurer upon cancellation. That fee shall be an amount equal to 121/2 percent of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so, the board or council may waive any payment or any portion of a payment by the landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been canceled, if all of the following occur:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner.

(2) The board or council has determined that it is in the best interests of the program to conserve agricultural land use that the payment be either deferred or is not required.

(3) The waiver or extension of time is approved by the Secretary of the Resources Agency. The secretary shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the board or council is consistent with the policies of this chapter and that the board or council complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the board or council, the evidence in the record of the board or council, and any other evidence the secretary may receive concerning the cancellation, waiver, or extension of time.

(d) The first two million five hundred thirty-six thousand dollars ($2,536,000) of revenue paid to the Controller pursuant to subdivision (e) in the 2004-05 fiscal year, and any other amount as approved in the final Budget Act for each fiscal year thereafter, shall be deposited in the Soil Conservation Fund, which is continued in existence. The money in the fund is available, when appropriated by the Legislature, for the support of all of the following:

(1) The cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 65570.
(2) The soil conservation program identified in Section 614 of the Public Resources Code.

(3) Program support costs of this chapter as administered by the Department of Conservation.

(4) Program support costs incurred by the Department of Conservation in administering the open-space subvention program
        (Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2).

(e) When cancellation fees required by this section are collected, they shall be transmitted by the county treasurer to the Controller and deposited in the General Fund, except as provided in subdivision (d) of this section and subdivision (b) of Section 51203. The funds collected by the county treasurer with respect to each cancellation of a contract shall be transmitted to the Controller within 30 days of the execution of a certificate of cancellation of contract by the board or council, as specified in subdivision (b) of Section 51283.4.

(f) It is the intent of the Legislature that fees paid to cancel a contract do not constitute taxes but are payments that, when made, provide a private benefit that tends to increase the value of the property.

51283.4. (a) Upon tentative approval of a petition accompanied by a proposal for a specified alternative use of the land, the clerk of the board or council shall record in the office of the county recorder of the county in which is located the land as to which the contract is applicable a certificate of tentative cancellation, which shall set forth the name of the landowner requesting the cancellation, the fact that a certificate of cancellation of contract will be issued and recorded at the time that specified conditions and contingencies are satisfied, a description of the conditions and contingencies which must be satisfied, and a legal description of the property. Conditions to be satisfied shall include payment in full of the amount of the fee computed under the provisions of Section 51283, together with a statement that unless the fee is paid, or a certificate of cancellation of contract is issued within one year from the date of the recording of the certificate of tentative cancellation, the fee shall be recomputed as of the date of notice described in subdivision (b) or the date the landowner requests a recomputation. A landowner may request a recomputation when he or she believes that he or she will be able to satisfy the conditions and contingencies of the certificate of cancellation within 180 days. The board or council shall request the assessor to recompute the cancellation valuation. The assessor shall recompute the valuation, certify it to the board or council, and provide notice to the Department of Conservation and landowner as provided in subdivision (a) of Section 51283, and the board or council shall certify the fee to the county auditor. Any provisions related to the waiver of the fee or portion thereof shall be treated in the manner provided for in the certificate of tentative cancellation. Contingencies to be satisfied shall include a requirement that the landowner obtain all permits necessary to commence the project. The board or council may, at the request of the landowner, amend a tentatively approved specified alternative use if it finds that the amendment is consistent with the findings made pursuant to subdivision (a) of Section 51282.

(b) The landowner shall notify the board or council when he or she has satisfied the conditions and contingencies enumerated in the certificate of tentative cancellation. Within 30 days of receipt of
the notice, and upon a determination that the conditions and
contingencies have been satisfied, the board or council shall execute
a certificate of cancellation of contract, cause the certificate to
be recorded, and send a copy to the Director of Conservation.

(c) If the landowner has been unable to satisfy the conditions and
contingencies enumerated in the certificate of tentative
cancellation, the landowner shall notify the board or council of the
particular conditions or contingencies he or she is unable to
satisfy. Within 30 days of receipt of the notice, and upon a
determination that the landowner is unable to satisfy the conditions
and contingencies listed, the board or council shall execute a
certificate of withdrawal of tentative approval of a cancellation of
contract and cause the same to be recorded. However, the landowner
shall not be entitled to the refund of any cancellation fee paid.

51283.5. (a) The Legislature finds and declares that cancellation
fees should be calculated in a timely manner and disputes over
cancellation fees should be resolved before a city or county approves
a tentative cancellation. However, the city or county may approve a
tentative cancellation notwithstanding an assessor's formal review or
judicial challenge to the cancellation value or fee.

(b) If the valuation changes after the approval of a tentative
cancellation, the certificate of tentative cancellation shall be
amended to reflect the correct valuation and cancellation fee.

(c) If the landowner wishes to pay a cancellation fee when a
formal review has been requested, he or she may pay the fee required
in the current certificate of cancellation and provide security
determined to be adequate by the Department of Conservation for 20
percent of the cancellation fee based on the assessor's valuation.
The board or council shall hold the security and release it
immediately upon full payment of the cancellation fee determined
pursuant to Section 51203.

(d) The city or county may approve a final cancellation
notwithstanding a pending formal review or judicial challenge to the
cancellation valuation or fee. The certificate of final cancellation
shall include the following statements:

(1) That formal review or judicial challenge of the cancellation
valuation or fee is pending.

(2) That the fee may be adjusted, based upon the outcome of the
review or challenge.

(3) The identity of the party who will be responsible for paying
any additional fee or will receive any refund.

(4) The form and amount of security provided by the landowner or
other responsible party and approved by the Department of
Conservation.

(e) Upon resolution, the landowner or the party identified in the
certificate shall either pay the balance owed to the county
treasurer, or receive from the county treasurer or the controller any
amount of overpayment, and shall also be entitled to the immediate
release of any security.

(f) (1) If a party does not receive the notice required pursuant
to Section 51203, 51283, 51283.4, or 51284, a judicial challenge to
the cancellation valuation may be filed within three years of the
latest of the applicable following events:

(A) The board or council certification of the fee pursuant to
subdivision (b) of Section 51283, or for fees recomputed pursuant to
Section 51283.4, the execution of a certificate of cancellation under
that section.

http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=51001-52000&file=... 10/16/2006
(B) The date of the assessor's determination pursuant to paragraph (3) of subdivision (b) of Section 51203.

(C) The service of notice to the Director of Conservation of the board or council's recorded certificate of final cancellation.

(2) If a party did receive the required notice pursuant to Section 51203, 51283, 51283.4, or 51284, a judicial challenge to the cancellation valuation may be filed only after the party has exhausted his or her administrative remedies through the formal review process specified in Section 51203, and only within 180 days of the latest of the applicable following events:

(A) The board or council certification of the fee pursuant to subdivision (b) of Section 51283 or for fees recomputed pursuant to Section 51283.4, the execution of a certificate of cancellation under that section.

(B) The date of the assessor's determination pursuant to paragraph (3) of subdivision (b) of Section 51203.

(C) The service of notice to the Director of Conservation or the board or council's recorded certificate of final cancellation.

51284. No contract may be canceled until after the city or county has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be published pursuant to Section 6061 and shall be mailed to every owner of land under contract, any portion of which is situated within one mile of the exterior boundary of the land upon which the contract is proposed to be canceled. In addition, at least 10 working days prior to the hearing, a notice of the hearing and a copy of the landowner's petition shall be mailed to the Director of Conservation. Within 30 days of the tentative cancellation of the contract, the city or county shall publish a notice of its decision, including the date, time, and place of the public hearing, a general explanation of the decision, the findings made pursuant to Section 51282, and a general description, in text or by diagram, of the land under contract, as a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the city or county. In addition, within 30 days of the tentative cancellation of the contract, the city or county shall deliver a copy of the published notice of the decision, as described above, to the Director of Conservation. The publication shall be for informational purposes only, and shall create no right, standing, or duty that would otherwise not exist with regard to the cancellation proceedings.

51284.1. (a) When a landowner petitions a board or council for the tentative cancellation of a contract and when the board or council accepts the application as complete pursuant to Section 65943, the board or council shall immediately mail a notice to the Director of Conservation. The notice shall include all of the following:

(1) A copy of the petition.

(2) A copy of the contract.

(3) A general description, in text or by diagram, of the land that is the subject of the proposed cancellation.

(4) The deadline for submitting comments regarding the proposed cancellation. That deadline shall be consistent with the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7), but in no case less than 30 days prior to the scheduled action by the board or council.
(b) The board or council shall send that information to the assessor that is necessary to describe the land subject to the proposed cancellation. The information shall include the name and address of the landowner petitioning the cancellation.

(c) The Director of Conservation shall review the proposed cancellation and submit comments to the board or council by the deadline specified in paragraph (4) of subdivision (a). Any comments submitted shall advise the board or council of the findings required by Section 51282 with respect to the proposed cancellation.

(d) Prior to acting on the proposed cancellation, the board or council shall consider the comments by the Director of Conservation, if submitted.

(e) The board or council may include the cancellation valuation, if available, of the land as part of the completed petition sent to the director.

51285. The owner of any property located in the county or city in which the agricultural preserve is situated may protest such cancellation to the city or county conducting the hearing.

51286. (a) Any action or proceeding which, on the grounds of alleged noncompliance with the requirements of this chapter, seeks to attack, review, set aside, void, or annul a decision of a board of supervisors or a city council to cancel a contract shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) The action or proceeding shall be commenced within 180 days from the date of the council or board order acting on a petition for cancellation filed under this chapter.

51287. The city or county may impose a fee pursuant to Chapter 8 (commencing with Section 66016) of Division 1 of Title 7 for recovery of costs under this article. The fee shall not exceed an amount necessary to recover the reasonable cost of services provided by the city or county under this article.
CERTIFICATE OF CANCELLATION OF A PORTION OF AGRICULTURAL PRESERVE (LAND CONSERVATION ACT) CONTRACT NO. 23

WHEREAS, the County of Mariposa Public Works Department on behalf of the Don Pedro Sewer Zone 1-M, owner of the property described here, gave written notice of the cancellation of a portion of Land Conservation Act Contract No. 23 entered into between Mazie Woolstenhulme and Wells Woolstenhulme and the County of Mariposa; and

WHEREAS, all of the conditions as established and set forth in the Certificate of Tentative Cancellation of a Portion of California Land Conservation Act Contract No. 23 executed by the Clerk of the Board of Supervisors for the County of Mariposa and recorded on the 25th day of October, 2006 in the Official Records of the County of Mariposa at Document No. 2066374 have been met; now

THEREFORE, said portion of Land Conservation Contract No. 23 as described is herewith cancelled.

Legal Description and Map:

See attached Exhibit A and Exhibit B

JANET BIBBY, Chair
Mariposa County Board of Supervisors

Date: 4-17-07


25% cancellation fees of $8,750 have been paid pursuant to conditions established in Certificate of Tentative Cancellation, recorded as Document No. 2066374, Mariposa County Official Records.
State of California  
County of Mariposa

On April 17, 2007, before me, Tracy Gauthier, personally appeared  
Janet Bibby, personally known to me or proved to be on the basis of satisfactory evidence,  
and acknowledged to me that she executed the same in her authorized capacity, and that by  
her signature on the instrument the person, or the entity upon behalf of which the person  
acted, executed the instrument.

WITNESS my hand and official seal.

Tracy Gauthier

Title of Document: Certificate of Cancellation of a Portion of Agricultural Preserve (Land  
Conservation Act) Contract No. 23

Date of Document: 4-17-07  
No. of Pages: 3

Other signatures not acknowledged: None
EXHIBIT A

A tract of land situated in a portion of the South one-half of the North one-half (S1/2N1/2) of Section 31, Township 3 South, Range 15 East, M.D.B. & M., Mariposa County, State of California, said tract of land being more particularly described on EXHIBIT A and platted on EXHIBIT B as follows:

Commencing at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section 31, thence N83°58'32"W a distance of 761.55 feet to the POINT OF BEGINNING of the herein described tract of land; thence S89°15'01"W for 377.58 feet; thence N00°44'59"W for 340.57 feet; thence S 89°15'01"W for 17.72 feet; thence N00°44'59"W for 54.91 feet; thence S89°15'01"W for 36.27 feet; thence N00°44'59"W for 69.80 feet; thence N89°15'01"E for 148.30 feet; thence N00°44'59"W for 43.90 feet; thence N89°15'01"E for 126.84 feet; thence S00°44'59"E for 80.25 feet; thence S57°03'58"W for 50.77 feet; thence S16°05'12"E for 122.78 feet; thence S80°46'53"E for 176.21 feet; thence S00°44'59"W for 253.06 feet, more or less, to the POINT OF BEGINNING.

The above described tract of land is subject to any rights-of-way or easements of record or legally acquired.

Prepared by

[Signature]

Jerome S. Freeman
L.S. No. 4079

Dated: October 14, 2004
LAKE DON PEDRO PROPOSED WWTP SITE