DEPARTMENT: Planning

RECOMMENDED ACTION AND JUSTIFICATION:
Adopt resolution denying Land Conservation Act Contract Cancellation Application No. 2005-160 with the recommended findings and filing a Notice of Non-renewal for the portion of Land Conservation Act Contract No. 49 that relates to the subject property.

Adopt resolution adopting a Notice of Exemption for this project and approving Land Conservation Act Contract Modification No. 2005-149.

Action is based upon the recommendations of the Planning Commission and the Agricultural Advisory Committee.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
None; Contracts No. 48 and 49 were recorded in accordance with the provisions of County Resolutions No. 77-157, implementing the Williamson Act in Mariposa County, and No. 78-16, establishing the Mariposa County Agricultural Preserve Map

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Provided in Memorandum to Board.

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

A. Memorandum to Board/B. Visher Staff Report to Planning Commission/C. Visher Notice of Exemption/D. Pearce Staff Report to Planning Commission/E. Draft County Resolutions

CLERK'S USE ONLY:
Res. No.:  Ord. No.  
Vote - Ayes:  Noes:  
Absent:
( ) Approved
( ) Minute Order Attached  ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date:
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California 
By: Deputy

COUNTY ADMINISTRATIVE OFFICER:
Requested Action Recommended
No Opinion
Comments:

Revise Dec. 2002

CAO: 

Resolution No. 05-556


WHEREAS an application for immediate cancellation of a portion of Land Conservation (“Williamson”) Act Contract No. 49 was received on August 30, 2005 from George Pearce for a property located off Allred Road in Mariposa, also known as Assessor Parcel Number 014-140-015; and

WHEREAS the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS the Planning Department prepared a report for the Agricultural Advisory Committee in accordance with the review procedures of the committee; and

WHEREAS the Agricultural Advisory Committee held a duly noticed public meeting on September 8, 2005; and

WHEREAS the Agricultural Advisory Committee did recommend that the Planning Commission should make a recommendation to the Mariposa County Board of Supervisors to deny the request for immediate contract cancellation and to file a Notice of Non-Renewal for the subject property; and

WHEREAS a duly noticed public hearing was scheduled before the Planning Commission for October 28, 2005; and

WHEREAS a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, California Environmental Quality Act, and local administrative procedures; and

WHEREAS the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, testimony presented by the public concerning the application, and the comments of the applicant; and

WHEREAS the Planning Commission of the County of Mariposa did recommend to the Mariposa County Board of Supervisors that they deny Williamson Act Contract Cancellation No. 2005-160 as recommended by staff; and

WHEREAS the Planning Commission recommendation for project denial was based upon the findings set forth in the Staff Report as presented to the Planning Commission at the public hearing of October 28, 2005; and

WHEREAS a duly noticed public hearing was scheduled for the Board of Supervisors meeting of November 15, 2005; and

WHEREAS the applicant requested that the hearing be postponed until early December; and
WHEREAS a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, California Environmental Quality Act, and local administrative procedures; and

WHEREAS the Board of Supervisors did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, testimony presented by the public concerning the application, and the comments of the applicant.

NOW THEREFORE BE IT RESOLVED THAT the Mariposa County Board of Supervisors hereby denies Land Conservation Act Contract Cancellation Application No. 2005-160; and

BE IT FURTHER RESOLVED THAT the Mariposa County Board of Supervisors approves a Notice of Non-Renewal to be filed on behalf of the County; and

BE IT FINALLY RESOLVED THAT the Mariposa County Board of Supervisors approved this project based upon the findings set forth in Exhibit A of this resolution.

THIS RESOLUTION is duly passed and adopted this December 6, 2005 by the following vote:

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

NOES: None

EXCUSED: None

ABSTAIN: None

BOB PICKARD, Chairman
Mariposa County Board of Supervisors

Attest:

MARGIE WILLIAMS
Clerk of the Board
Mariposa County Board of Supervisors

Mariposa County
Approved as to form:

THOMAS P. GUARINO
County Counsel
EXHIBIT A--FINDINGS FOR DENIAL

Findings for Denial

1. **FINDING:** Immediate cancellation of the portion of Mariposa County Land Conservation Act Contract No. 49 covering this property is *not* consistent with Government Code, Title 5, Division 1, Part 1, Chapter 7, §51200 et. seq.

   **EVIDENCE:** Based on the subfindings that must be made in order to make this finding and the County’s inability to find that the applicant’s request for cancellation meets all those requirements (contained in the body of the staff report on page 6), the County cannot find that the immediate cancellation of this partial contract is consistent with the purposes of the Land Conservation (Williamson) Act as set forth in the section of state law cited above.

2. **FINDING:** The contract cancellation is for land on which a notice of nonrenewal has been served pursuant to Section 51245. This finding must be made to support the assertion that the proposed cancellation is consistent with the Williamson Act.

   **EVIDENCE:** The applicant has not filed a notice of nonrenewal for the portion of the contract covering this property; therefore, this finding cannot be made.

3. **FINDING:** 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. This finding must be made to support the assertion that the proposed cancellation is consistent with the Williamson Act.

   **EVIDENCE:** The Department of Conservation comments included an interpretation of the term proximate as used in this section, taken from the California Supreme Court decision in the matter of *Sierra Club v. City of Hayward* (1981); “The purposes of the Williamson Act require that ‘proximate’ not be construed to unreasonably limit the search for suitable noncontracted land . . . We therefore hold that “proximate property means property close enough to the restricted parcel to serve as a practical alternative”. A real estate listing search for vacant land in Mariposa turned up 29 properties at least 30 acres in size that are available for sale. There is ample vacant land in the general area of the subject property that is available and suitable for residential development, and is zoned for that use. The development of the contracted land would be isolated and would not provide a contiguous development pattern. This finding cannot be made.

4. **FINDING:** The immediate cancellation of this contract is *not* in the public interest, because there are no other public concerns that substantially outweigh the objectives of the Williamson Act, there is proximate noncontracted land that is available and suitable for the proposed use of the subject property, and development of the subject property will provide a discontiguous development pattern.

   **EVIDENCE:** The proposed use of the property is for a private single family residence. The residential development of this property is not a public concern. The previous finding evaluated the availability of noncontracted land and the continuity of development in the area. This finding cannot be made.
Based on staff’s inability to make the required findings and the details of the applicant’s proposal, this project does not meet the requirements of state law for immediate cancellation of the Williamson Act Contract on the subject property.
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BOB PICKARD, CHAIR
LEE STETSON, VICE CHAIR
LYLE TURPIN
JANET BIBBY
DIANNE FRITZ

DISTRICT V
DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV

MARIPOSA COUNTY BOARD OF SUPERVISORS
MINUTE ORDER

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

SUBJECT: RESOLUTION DENYING LAND CONSERVATION ACT CONTRACT CANCELLATION APPLICATION NO. 2005-160, PEARCE RESOLUTION 05-556

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on

ACTION AND VOTE: December 6, 2005

11:03 a.m. Kris Schenk, Planning Director;
A) PUBLIC HEARING (Continued from November 15, 2005): Adopt a Resolution Denying Land Conservation Act Contract Cancellation Application No. 49 Relating to Subject Property Located Off of Allred Road in Mariposa, APN 014-140-015; George and Molly Pearce, Applicants

BOARD ACTION: Megan Tennermann, Associate Planner, presented the staff report, and she advised of an error in attaching the exhibits for the next public hearing to the package for this hearing. Staff responded to questions from the Board relative to the location map; the acreage under contract and the land use classification; whether a dwelling could be constructed on the small parcel; relative to the letter from Department of Conservation and whether anything has changed; relative to getting an updated legal opinion on the penalty that can be charged for cancellation of a contract; and relative to correction of the application number in the draft resolution.

John Jamison, Attorney at Law, representing the applicants, presented information on the application. He advised that a portion of the parcel is in Agricultural Preserve and they have a Certificate of Compliance and have received permits for a well and septic system. However, staff has advised them of provisions in Section 51250 of the Government Code regarding the implementation of the Williamson Act. He feels that the first portion of this section is dependent on the term of the contract and permitted use. His client wants to build a house and do horse breeding. He referred to determination by Madera and Fresno counties in these types of situations, and he stated he feels that a single-family residence is allowed. He stated he agrees with staff that the contract could not be cancelled, but he would like to see the Board direct County Counsel to review and render an opinion to staff on whether there is a restriction on the size of house that can be constructed. He again stated that he feels that the rules depend on when the contract was signed. He responded to a question from the Board regarding the letter from the Department of Conservation.

The public portion of the hearing was closed. The Board commenced with deliberations. Tom Guarino, County Counsel, advised that the action before the Board today is dealing with whether the Board can make the findings to cancel the contract; and he noted that counsel for the applicants pointed out that he does not feel that the findings can be made. He stated that he feels that the applicant can apply for a
building permit, and that Planning staff can consult with the applicant to go over the contract. He further advised that he supports the recommendation by staff, including the non-renewal of the contract. Staff responded to questions from the Board relative to the recommended action and the issue of non-renewal; the number of dwellings allowed on contracted land; and relative to the applicant’s original request for wildlife preserve use of the land. (M)Bibby, (S)Stetson, Res. 05-556 was adopted denying Land Conservation Act Contract Cancellation Application No. 2005-160 with the recommended findings; and approving the filing of a Notice of Non-renewal for the portion of Land Conservation Act Contract No. 49 that relates to the subject property. Supervisor Turpin clarified that the building permit is a separate issue, and he asked about the remaining parcels and ag operations. Ayes: Unanimous. The hearing was closed.

Cc: File