

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
PLANNING COMMISSION

Resolution
No. 2008-31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS a Staff Report addressing the petition for cancellation, as well as the history of the project, the process for the cancellation, the Agricultural Advisory Committee's

recommendation, and the required findings was prepared pursuant to local administrative procedures; and

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

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

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

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

1. There has not been adequate information submitted by the petitioner to show that the property owner cannot afford the proximate, non-contracted land, which may be suitable for the proposed alternative use. The property owner is the contract holder and subject to the requirements of the contract and the requirements of state law. It is the property owner who must be the petitioner for the cancellation. The church is not a party to this Williamson Act Contract No. 17, and the church's financial status has no bearing on the findings necessary to support a cancellation.
2. The primary land use which is proposed for the site is a church. The Agriculture Exclusive (AE) zone lists a "church" as a conditional use. One of the programs this particular church (the Mariposa Revival Center) currently runs is the food program for the needy; however the proposed primary land use is a "church". Other programs which (some) churches often provide for their members are worship services, Bible study, prayer sessions, school programs, adult education, choir programs, weddings or facilities for gatherings, counseling or other renewal opportunities, and holiday celebrations.

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

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

3. In the *Friends of East Willets Valley v. Mendocino County* case, which has been cited by the applicant's agent as a case which can be used by the lead agency in their consideration of this proposal for cancellation, the proposed alternative use was low income housing. Federal, State and local agencies all recognize low income housing as an established public need. The Mariposa County General Plan recognizes low income housing as an established public need. However, the proposed primary alternative use for this cancellation is a "church", which is different than low income housing. The Mariposa County General Plan does not define public policies relating to protecting land for churches. Alternatively, the Mariposa County General Plan does have established policies and a high priority relating to preservation and protection of agricultural lands. A project which cancels a portion of a Williamson Act contract, to enable development of a church on agricultural land, cannot be found to be in the public's interest or consistent with General Plan policies for agricultural lands.
4. The sub-findings do not require the lead agency to just find that, "the cancellation serves a public concern" but that "other public concerns substantially outweigh the objectives of the Williamson Act law." The petition provides information about one of the church programs serving a public concern, however the information submitted does not include how a church itself, as a land use which provides many services to its members, "substantially outweighs the objectives of the Williamson Act law." The petition does not show how a church outweighs the agricultural values of the land.
5. There was information presented at the Agricultural Advisory Committee meeting about other available, already created (legal) parcels on the real estate market which are in the Mountain Home zone and not necessarily on a State Highway, some of which have infrastructure or site improvements, including an improved encroachment and/or approved percolation tests and/or a developed well and/or a graded pad.

There are many costs associated with the development of the church on the proposed undeveloped site, which are not included or presented with the petition, which should be considered. Although the site itself is "free" (to be "donated"), if the cancellation petition is approved, there will be substantial costs associated with: 1) paying the cancellation penalty fees, 2) paying the Zoning Amendment application fees, 3) paying the Land Division application fees and completing the process (including hiring a licensed surveyor to complete the map process and completing all required map conditions), 4) paying the environmental review fees for CEQA compliance and completing any required mitigation measures, 5) paying the Caltrans encroachment permit and improvement costs (including hiring a licensed civil engineer to prepare the encroachment permit improvement plans and completing those improvements along the State Highway) (which could include a turn lane), 6) drilling and developing a well,

- and 7) developing a septic disposal system on-site (including hiring an appropriately qualified professional). The petition provides no information (substantial evidence) about how these standard costs for subdivision and development compare with purchasing a “ready-to-build”, legally created parcel, which is not located on a State Highway. This information has not been presented for consideration, yet the petition uses affordability as the sole basis for the proposed justification for Sub-Finding 2.
6. In order to approve the project for a church on a 5.08 acre parcel on this site, there are other applications which are required from Mariposa County. This project should also include a) a Zoning Amendment application, to modify the zoning classification from Agriculture Exclusive (AE) to Mountain Home (MH) in order to allow a smaller minimum parcel size; b) a Land Division application, to create a separate 5.08 acre parcel as this project includes a gift of this property from the property owner to the Mariposa Revival Center; and c) a Conditional Use Permit application, because a church is a conditional use in the Mountain Home zone. Environmental review pursuant to the California Environmental Quality Act (CEQA) would be conducted on the whole of the project. These applications are discretionary applications, and an approval action by the lead agency is not guaranteed. These applications were not submitted by the petitioner, nor required to be submitted by the County. However, without the other required companion applications, processing a “portion” of the required applications could lead to a fragmented decision.
 7. A church use as proposed will increase human density, infrastructure, and activity in an established agricultural area. A church use as proposed will result in the construction of facilities and an access road, which could compromise the long term agricultural viability of the property, hinder agricultural use of the contracted land, and may serve as a precedent for future conversion applications for other contracted lands resulting in the possible loss of agricultural use on adjacent lands due to resulting non-agricultural growth and activity.
 8. The Department of Conservation does not support the cancellation petition. The Department of Conservation provides information in their July 31, 2008 correspondence which specifies why the petitioner has not substantiated the required sub-findings (1) that other public concerns substantially outweigh the objectives of the Williamson Act and (2) that there is no available and suitable proximate non-contracted land for the use proposed on the contracted land. This correspondence is incorporated herein by reference.
 9. The Mariposa County Agricultural Advisory Committee does not support the cancellation petition.
 10. The Mariposa County Agricultural Commissioner does not support the cancellation petition. The Agricultural Commissioner provides information in her July 25, 2008 correspondence which specifies her position. This correspondence is incorporated herein by reference.

11. The Mariposa County Farm Bureau does not support the cancellation petition. The Farm Bureau provides information in their July 20th, 2008 correspondence which specifies their position. This correspondence is incorporated herein by reference.
12. The California Farm Bureau Federation does not support the cancellation petition. The Farm Bureau Federation provides information in their October 2, 2008 correspondence which specifies their position. This correspondence is incorporated herein by reference.
13. The Williamson Act is a voluntary program, and non-renewal of the contract or of a portion of the contract is the preferred contract termination method.

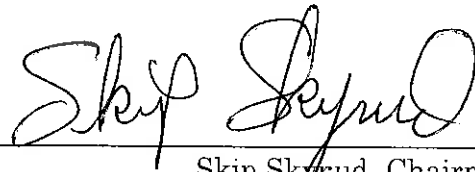
ON MOTION BY Commissioner Rudzik, seconded by Commissioner Francisco, this resolution is duly passed and adopted this 17th day of October, 2008 by the following vote:

AYES: Francisco, Skyrud, Rudzik, and DeSantis

NOES: Ross

EXCUSED: None

ABSTAIN: None



Skip Skyrud, Chairman
Mariposa County Planning Commission

ATTEST:



Judy Mueller
Secretary to the Planning Commission