DEPARTMENT: Planning

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution denying Appeal No. 2005-96 with findings, upholding the Planning Commission’s adoption of a negative declaration and approval of Land Division Application No. 2003-283 with findings and conditions; Kevyn Moberly, applicant; David Mecci, Caroleen Mecci, and Beverly Mecci, appellants.

Justification is provided in Memorandum to Board of Supervisors from Mariposa Planning.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors considered Appeal No. 2004-131 on August 3, 2004. Appeal No. 2004-131 was submitted by the same appellants for the same project. At the meeting on August 3, 2004, the Board of Supervisors adopted Resolution No. 2004-381, remanding the Land Division project back to the Planning Commission based upon identified noticing errors.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Grant appeal, denying land division or modifying conditions or requiring an Environmental Impact Report (EIR) for the project.

Finanical 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

CLERK’S USE ONLY:
Res. No.: Ord. No._____ 
Vote – Ayes: ___ Noes: ___
Absent: ____ Approved 
( ) Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: 
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: Deputy

COUNTY ADMINISTRATIVE OFFICER:
_____ Requested Action Recommended No Opinion

Comments:

 CAO: __________
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 APPEAL NO. 2005-96; UPHOLDING THE PLANNING COMMISSION’S ADOPTION OF A NEGATIVE DECLARATION AND APPROVAL OF LAND DIVISION APPLICATION NO. 2003-283; KEVYN MOBERLY, APPLICANT; DAVID MECCHI, CAROLEEN MECCHI, AND BEVERLY MECCHI, APPELLANTS

Resolution No. 05-246

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on June 7, 2005

ACTION AND VOTE:

Kris Schenk, Planning Director;

PUBLIC HEARING to Consider Appeal No. 2005-96, an Appeal of the Planning Commission’s Actions to Approve Land Division Application No. 2003-283. Including the Conditions and Findings, the Environmental Determination, and Procedures; David Mecchi, Caroleen Mecchi, and Beverly Mecchi, Appellants (Contact Person: Raymond Carlson). The Planning Commission Adopted Resolution No. 2005-13 on April 8, 2005, Adopting a Negative Declaration and Approving Land Division Application No. 2003-283 with Findings and Conditions; Kevyn Moberly, Applicant. Project Proposes the Division of a 22.8 plus or minus Acre Parcel into 3 Parcels and a Remainder; Site is Assessor Parcel Number (APN) 017-260-026 Located off of Worman Road

BOARD ACTION: Sarah Williams, Deputy Planning Director, presented the staff report, and she reviewed the project and the processing history. Staff responded to a question from the Board as to the location of the appellant’s property in relation to the applicant’s property. Sarah continued with the staff report and reviewed the issues that were raised in the appeal – water issues, cumulative impact issues relative to water resources and quality, transfer of water rights, timing for soils testing, potential impacts from septic system, and failure to require restrictive covenants precluding construction of secondary residences. Sarah reviewed the public hearing procedures and staff’s recommendation to deny the appeal with findings, and she advised of an alternative option for action to direct staff to return with revisions to the resolution. Staff responded to questions from the Board relative to the restriction of secondary residences, and whether that restriction would apply to the remainder parcel.

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

Kristine Howe, member of Griswold, LaSalle, Cobb, Dowd, & Gin, L.L.P. – the law firm representing the Mecchi’s in this matter, advised that the appeal was presented and is before the Board. She reviewed the highlights of what she feels are the key reasons and issues that the Board should consider when deciding this
appeal relative to water – quality and quantity and testing procedures, traffic and road considerations, and covenants, conditions, and restrictions. She responded to a question from the Board, and advised that the issue she raised relative to water availability for fire suppression was not in the appeal documents; however, she feels it relates to water quantity. Attorney Howe continued with road/traffic impact issues. She responded to a question from the Board as to where the traffic impact report issue was raised, and she advised that she believes that Mr. Mecchi discussed this in his verbal testimony before the Planning Commission. Attorney Howe expressed concern that the covenants, conditions and restrictions are not available for review and comment prior to recordation of the map. Tom Guarino, County Counsel, asked Attorney Howe to identify the evidence submitted in the record to the Planning Commission as to why this appeal should be sustained. She advised that she interprets CEQA differently – she feels that CEQA requires public disclosure on information, and that the lead agency is responsible for reviewing each issue whether or not it is an impact, and that information needs to be supplied to the public. So, she advised that she does not have any information or documentation, just questions.

There was no further public input or rebuttal. The public portion of the hearing was closed and the Board commenced with deliberations. Staff responded to questions from the Board relative to addressing the water, traffic and covenants, conditions and restriction issues that were raised. Sarah Williams referred to the information that was submitted by Dave Conway of the Health Department relative to the water issues, and advised that he was present to answer questions. Staff responded to questions from the Board relative to State law requirements for water storage for fire protection; and potential impacts on water quality for neighboring parcels from the septic system. Dave Conway/Health – Registered Environmental Health Specialist, advised that degradation of ground water is a major concern and he advised that they follow established policies and rules and regulations to insure that ground water resources are not degraded. Dave responded to questions from the Board relative to the criteria for siting septic systems on slopes and proximity of the system to the adjoining property line. Sarah continued with responding to the issues that were raised. She advised that the residency restrictions are not a County requirement, but are a part of the applicant’s proposal. She advised that the covenants, conditions, and restrictions will be reviewed by staff prior to recordation of the map. She also advised that staff has reviewed each issue under CEQA. Staff responded to a question from the Board relative to the process for referencing the covenants, conditions and restrictions language on the map. Dana Hertfelder, Public Works Director, advised that his staff met with California Department of Forestry and Fire Protection and reviewed the project site and estimate to complete the proposed road work.

(M)Stetson, (S)Fritz, Res. 05-246 was adopted denying Appeal No. 2005-96 with findings, upholding the Planning Commission’s adoption of a negative declaration and approval of Land Division Application No. 2003-283 with findings and conditions/Moberly, applicant. Tom Guarino advised that the Board could adopt the formal resolution that was included in the package unless it has other findings – no changes were made. Supervisor Fritz thanked staff for the completeness of this item. Staff responded to a question from the Board and clarified the issue relative to recordation of a restrictive covenant precluding construction of secondary residences on the parcels south to be created prior to project approval. Ayes: Unanimous. The hearing was closed.

c: File
STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 2005-246 A resolution denying Appeal No. 2005-96 and upholding the Planning Commission's actions regarding Land Division Application #2003-283, Kevyn Moberly, applicant, including adoption of a Negative Declaration and Approval of the Project with Findings and Conditions. Assessor Parcel Number 017-260-026

WHEREAS an application for Land Division Application No. 2003-283 was received on December 5, 2003 from Kevyn Moberly for a property located approximately 2,700 feet south of the intersection of Highway 49 South and Worman Road, also known as Assessor Parcel Number 017-260-026; and

WHEREAS the application proposes the division of APN 017-260-026, a 22.8± acre parcel into 3 parcels of 5.1± acres, 5.2± acres, and 5.2± acres, and a 7.3± acre remainder. Access to the project parcels and remainder is proposed from Worman Road; and

WHEREAS the proposed 3 parcels are undeveloped. The proposed remainder has an existing mobile home on it, as well as a single family residence under construction; and

WHEREAS the property owners of APN 017-260-026 are Neal Jr. and Wanda Moberly, Trustees of the Moberly Family Trust dated January 4, 1999; and

WHEREAS Neal Jr. and Wanda Moberly are the parents of applicant Kevyn Moberly. The property owners authorized their son Kevyn Moberly to act on their behalf relative to the processing of Land Division Application No. 2003-283. Kevyn Moberly is building a residential structure on the proposed remainder (Building Permit No. 04-00023241); and

WHEREAS the property owners stated they submitted the land division application so they can give the remainder to their son, Kevyn Moberly and one parcel to their daughter. They are creating two additional parcels for possible future sale; and

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

WHEREAS based upon the narrow county maintained road issue, on the 26th day of February, 2004, the applicant submitted his written request to have his project put on hold pending county discussion of the matter; and
WHEREAS narrow county maintained roads are those roads which are maintained by the county, which are not improved to provide a full 18 feet of width for travel purposes; and

WHEREAS the project site is served by Worman Road which is a narrow county maintained road; and

WHEREAS the County Subdivision Ordinance does not require improvements to any county maintained road for minor subdivisions (tentative parcel maps); and

WHEREAS the Board of Supervisors did not initiate a countywide program to address the narrow county maintained road issue and consequently, land division projects accessed by narrow county maintained roads have to be considered on a case by case basis; and

WHEREAS the Planning Commission has acted on other land division projects served by narrow county maintained roads. The Planning Commission has only approved those projects where improvements will be made to the narrow county maintained roads and the California Department of Forestry and Fire Protection (CDF) finds those improvements will ensure safe and adequate access to the project parcels during an emergency event; and

WHEREAS on the 30th day of April, 2004, the applicant stated his intent to make improvements to Worman Road as part of his project, and to work with affected public agencies to determine the level of improvements necessary to ensure safe and adequate access to the project parcels during an emergency event; and

WHEREAS following meetings with both the Public Works Department and CDF, the applicant submitted a written proposal on the 17th day of June, 2004 describing the road improvements he proposed to incorporate into his Land Division Application No. 2003-283 and this proposal included the following:

“To the extent allowed by the existing right of way or access easements, a pullout and shoulder work will be provided along Worman Road between Shanney Creek Road to and including road segments within the project site. Work will be done in accordance with existing standards established by the County Improvement Standards and the State Fire Safe Standards. Recently, the county has improved the road whereby some of the improvements proposed below may have already been completed by the county. If this is the case, then the applicant proposes to complete the remaining items.

The pull-out and shoulder work shall include the following (to be prioritized by CDF). Mile 0.0 is at intersection of Highway 49 South and Worman Road:

- Shoulder improvements on south side (0.28 mi.)
- Shoulder improvements on both sides of the road (0.5 mi.)
- Shoulder improvements on south side (0.7 mi.)
- Shoulder improvements on south side (0.8 mi.)
• Shoulder improvements needed to bring road to 18-feet wide (0.9 mi.)
• Shoulder improvement needed to bring road to 18-feet wide (0.95 mi.)
• Improve a pull-out (1.05 mi.)

The proposal includes the option of the applicant doing the work through the encroachment permit process, or having the work done by the Public Works Department and paying the county for the actual cost of the work and materials. The applicant proposes to fund total costs for pull-out and shoulder work in an amount not to exceed $5,000; and

WHEREAS a duly noticed Planning Commission public hearing was scheduled for the 18th day of June 2004; and

WHEREAS the Planning Department prepared environmental documents in accordance with the California Environmental Quality Act and local administrative procedures; and

WHEREAS a Staff Report and Initial Study were 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 Land Division Application No. 2004-283 on the 18th day of June 2004 and considered all of the information in the public record, including the Initial Study and Staff Report, testimony presented by the public concerning the application, and the comments of the applicant, and

WHEREAS on the 18th day of June 2004 the Planning Commission adopted Resolution No. 2004-27, adopting a Negative Declaration and approving Land Division Application No. 2004-283 with findings and conditions; and

WHEREAS the Notice of Determination was filed with the County Clerk on the 22nd day of June, 2004; and

WHEREAS the Department of Fish and Game filing fees for the Negative Declaration were paid to the County Clerk on the 22nd day of June, 2004; and

WHEREAS on the 8th day of July, 2004, an appeal of the Planning Commission’s actions was received and that appeal is known as Appeal No. 2004-131; and

WHEREAS the appellants were David Mecchi, Caroleen Mecchi, and Beverly Mecchi, and the contact person was attorney Raymond L. Carlson from Griswold, LaSalle, Cobb, Down & Gin LLP; and

WHEREAS a duly noticed Board of Supervisors’ public hearing for Appeal No. 2004-131 was scheduled for the 3rd day of August 2004; and
WHEREAS the Planning Department prepared a staff packet for the appeal public hearing in accordance with local administrative procedures; and

WHEREAS the staff packet included all of the information considered by the Planning Commission, prior to action on the project, as well as the Notice of Appeal and a staff analysis of appeal issues; and

WHEREAS the Board of Supervisors did hold a public hearing on Appeal No. 2004-131 on the 3rd day of August, 2004 and considered all of the information in the public record, including the staff packet for the appeal public hearing, testimony presented by the public and appellants concerning the application, the comments of the applicant, the comments of the appellants' attorney, and the comments of the applicant's attorney; and

WHEREAS on the 3rd day of August, 2004 the Board of Supervisors adopted Mariposa County Resolution No. 04-381, remanding Land Division Application No. 2003-283 for further consideration to the Planning Commission because staff pointed out that the notice requirements of the County Code with respect to posting of the notice in three community places was not met for the Planning Commission's public hearing; and

WHEREAS a duly and properly noticed Planning Commission public hearing for reconsideration of Land Division Application No. 2003-283 was scheduled for the 17th day of December 2004; and

WHEREAS a new Staff Report and Initial Study were prepared for the December 17, 2004 public hearing pursuant to the California Government Code, Mariposa County Code, California Environmental Quality Act, and local administrative procedures; and

WHEREAS on the 17th day of December 2004, the Planning Commission continued the public hearing to the 4th day of February 2005. The purpose of the continuance was to give staff and the applicant time to review significant new information submitted by Raymond L. Carlson; and

WHEREAS on the 4th day of February, 2005, the Planning Commission continued the public hearing to the 4th day of March 2005. The continuance was requested by the applicant's attorney, John O. Jamison, to ensure adequate time to submit additional information to support the recommended project action; and

WHEREAS between the 17th day of December 2004 and the 4th day of March 2005 the applicant made some written amendments to the project; and

WHEREAS the first written amendment specified that the applicant's project description was revised to include a limitation on future residential development on each parcel to one single family residence per parcel. The applicant proposed to record covenants, conditions and restrictions (CC&Rs) with the recorded map, to implement the amendment; and

WHEREAS the second written amendment was a result of the applicant's submittal of information to show that there is surface water available to serve the project parcels.
Consequently, the source of the water for future residential development is not limited to ground water; and

WHEREAS the third written amendment specified that the applicant’s project description was revised to include a provision that the ownership of water rights under License 5315 (Permit No. 16336, State Water Resources Control Board, Division of Water Rights) would be transferred to the new owners of the property at the time any of the individual parcels are transferred; and

WHEREAS between the 17th day of December 2004 and the 4th day of March 2005, additional new information was submitted by the applicant and gathered by County of Mariposa staff, to address some of the concerns raised by the public through the public review process; and

WHEREAS the new information included correspondence dated January 31, 2005 from County Health Department employee and Registered Environmental Health Specialist David L. Conway to Sarah Williams. The correspondence described Conway’s findings, following a review of permit file information for all parcels within a ½ mile radius of the project site. Conway reviewed septic system permit files and well permit files; and

WHEREAS the new information included evidence that the property owners have a State- appropriation for water from two off-site springs, as well as pre-1914 water rights to surface water from nearby drainages. Although there are two wells on the project site, the current residential development on-site utilizes spring water; and

WHEREAS the new information included correspondence dated February 25, 2005 from County Planning Department Deputy Director Sarah Williams to the Planning Commission. The correspondence summarized the information submitted on surface water available to the project site. The correspondence also summarized the County’s Subdivision Ordinance provisions for proof of water for residential development; and

WHEREAS the new information included correspondence dated January 24, 2005 from Registered Civil Engineer 31487, Lyle D. Brewer to John Jamison, regarding his measurements of actual flow from the larger of the two off-site springs; and

WHEREAS the new information included a list of past projects, current future projects and probable future projects off of Worman Road; and

WHEREAS the Planning Commission did hold a public hearing on the 4th day of March 2005 and considered all of the information in the public record, including the Staff memorandum to the Planning Commission dated February 25, 2005, the Initial Study and Staff Report prepared for the Planning Commission meeting of December 17, 2004, testimony presented by the public concerning the application, the comments of the applicant, the comments of agents, and all written correspondence; and

WHEREAS following the staff presentation and public input, the Planning Commission closed the public portion of the public hearing, deliberated, and acted to direct staff to bring back a resolution for project action. The Planning Commission directed staff to prepare a
resolution for action to adopt a negative declaration and approve the project with findings and conditions; and

WHEREAS the Planning Commission continued the public hearing to Friday, April 8, 2005 at 9:00 a.m. or as soon thereafter as possible in order to give staff adequate time to prepare the draft resolution; and

WHEREAS on the 8th day of April 2005 the Planning Commission reopened the public portion of the public hearing as requested by the appellants in order to give the appellants an opportunity to address the Commission regarding the draft resolution; and

WHEREAS on the 8th day of April 2005 the Planning Commission adopted Resolution No. 2005-13, adopting a Negative Declaration and approving Land Division Application No. 2003-283 as modified by the applicant with findings and conditions; and

WHEREAS the Negative Declaration was filed with the County Clerk on the 8th day of April, 2005 and the Notice of Determination was filed with the County Clerk on the 28th day of April, 2005; and

WHEREAS on the 28th day of April, 2005, an appeal of the Planning Commission's actions was received and that appeal is known as Appeal No. 2005-96; and

WHEREAS the appellants were David Mecchi, Caroleen Mecchi, and Beverly Mecchi, and the contact person was attorney Raymond L. Carlson from Griswold, LaSalle, Cobb, Down & Gin LLP; and

WHEREAS on the 2nd day of May, 2005 the appellants were notified that the appeal was incomplete for processing and that additional information to substantiate the grounds for appeal was required; and

WHEREAS on the 9th day of May, 2005 the appellants submitted additional information for Appeal No. 2005-96; and

WHEREAS on the 11th day of May, 2005 the appellants were notified that the appeal was complete for processing for some appeal items as of the 9th day of May, 2005 and that there remained insufficient grounds for appeal for some items; and

WHEREAS on the 16th day of May, 2005, the appellants were notified that the date for the public hearing on Appeal No. 2005-96 was scheduled for Tuesday, June 7th, 2005 in accordance with the Mariposa County Appeals Procedures, Resolution No. 92-525 as amended, dated 2/14/95; and

WHEREAS on the 16th day of May, 2005, the appellants were notified that 5:00 p.m. on May 18th, 2005 was the final deadline for submittal of any additional information to supplement the appeal in accordance with the Mariposa County Appeals Procedures, Resolution No. 92-525 as amended, dated 2/14/95; and
WHEREAS a duly noticed Board of Supervisors' public hearing for Appeal No. 2004-131 was scheduled for the 7th day June 2005; and

WHEREAS the Planning Department prepared a staff packet for the appeal public hearing in accordance with local administrative procedures; and

WHEREAS the staff packet included a staff analysis of the Appeal Issues, the Notice of Appeal, the supplemental information to the Notice of Appeal, the Planning Commission minutes, the Mariposa County Appeals Procedures, all of the information considered by the Planning Commission since the Board of Supervisors' action to remand the project back to the Planning Commission, and the draft resolution; and

WHEREAS the Board of Supervisors did hold a public hearing on Appeal No. 2005-96 on the 7th day of June, 2005 and considered all of the information in the public record, including the staff packet for the appeal public hearing, testimony presented by the public and appellants concerning the application, the comments of the applicant, the comments of the appellant's attorney, and the comments of the applicant's attorney.

NOW THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby deny Appeal No. 2005-96.

BE IT THEREFORE FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby uphold the Planning Commission's actions regarding Land Division Application No. 2003-283, including the adoption of a negative declaration and the approval of the project as amended by the applicant with findings and conditions.

BE IT THEREFORE FINALLY RESOLVED THAT the denial of Appeal No. 2005-96 is based upon the findings set forth in Exhibit 1.

ON MOTION BY Supervisor Stetson, seconded by Supervisor Fritz, this resolution is duly passed and adopted this 7th day of June, 2005 by the following vote:

AYES: STETSON, TURPIN, BIBBY, FRITZ, PICKARD
NOES: NONE
EXCUSED: NONE
ABSTAIN: NONE

BOB PICKARD, Chairman  
Mariposa County Board of Supervisors

MARGIE WILLIAMS, Clerk of the Board
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

[Signature]

THOMAS P. GUARINO, County Counsel
Exhibit 1 – Findings

Pursuant to the Mariposa County Appeals Procedure, Resolution No. 92-525 as amended, dated 2/14/95, and pursuant to consideration of the whole of the public record regarding the project, the following findings are made to support the action to deny Appeal No. 2005-96. Reference to Appeal Issue numbers and discussion of Appeal Issue numbers is from the Memorandum to the Board of Supervisors from Mariposa Planning dated 5/27/05 where is incorporated herein by reference:

1. Adequate grounds for appeal were not submitted for Appeal Issues No. 1, No. 2, No. 3, No. 4, and No. 8 pursuant to Mariposa County Appeals Procedure, Resolution No. 92-525 as amended, date 2/14/95. Section III of the Appeals Procedure requires the appellant to “clearly and concisely state the reason or reasons why the decision, determination, or finding is being appealed and why the appellant does not agree with the decision, determination or finding by the county body or official.”

2. Appeal Issues No. 5, No. 6, No. 7, No. 19 and No. 27 cannot be appealed pursuant to Section III of the Mariposa County Appeals Procedure, Resolution No. 92-525 as amended, date 2/14/95. These issues were never raised by any interested party through the public review and/or hearing process. Section III of the Appeals Procedure states, “An appeal shall be limited to those issues clearly raised by any interested party through the public review and/or hearing process for the finding or decision being appealed or to new information which was not and could not have been available at the time the finding or decision was made. An appeal, or portions thereof, that identifies issues in the statement of grounds which were not raised through the public review and/or hearing process or contains information which was or could have been available at the time the finding or decision was made shall not be accepted and shall not be considered by the Board of Supervisors…”

3. The letter dated June 7, 2004 to the Planning Commission from the Mecchi Family was not submitted for the Planning Commission public hearing on December 17, 2004, March 4, 2005 and April 8, 2005. The letter dated July 7, 2004 to The Board of Supervisors from Raymond L. Carlson was not submitted for the Planning Commission public hearing on December 17, 2004, March 4, 2005 and April 8, 2005. These two correspondences cannot be appealed pursuant to Section III of the Mariposa County Appeals Procedures, Resolution No. 92-525 as amended, date 2/14/95. These issues were never raised by any interested party through the public review and/or hearing process following Board action on Appeal No. 2004-131 to remand the project back to the Planning Commission. Section III of the Appeals Procedure states, “An appeal shall be limited to those issues clearly raised by any interested party through the public review and/or hearing process for the finding or decision being appealed or to new information which was not and could not have been available at the time the finding or decision was made. An appeal, or portions thereof, that identifies issues in the statement of grounds which were not raised through the public review and/or hearing process or contains information which was or could have been available at the time the finding or decision was made shall not be accepted and shall not be considered by the Board of Supervisors…”
was made shall not be accepted and shall not be considered by the Board of Supervisors..."

4. Issues No. 21, No. 22, No. 23, No. 24, No. 25, and No. 26 are procedural issues and cannot be appealed pursuant to the Mariposa County Appeals Procedure, Resolution No. 92-525 as amended, date 2/14/95. Mariposa County followed the procedures established by their own policy document, Resolution No. 92-525 as amended, date 2/14/95 in review the Notice of Appeal, providing additional time to submit justification for the grounds for appeal, processing Appeal No. 05-96, scheduling the public hearing date, and establishing a deadline for submittal of additional information in support of the grounds for appeal.

5. There is substantial evidence in the record that the project has sufficient water supplies from either ground water or entitled surface water, and that no new or expanded entitlements are needed for the project. The evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. The County has not been presented with any information or evidence to refute the evidence in the record regarding surface and subsurface water supplies. A fair argument has not been made by the appellants regarding the availability of water supplies.

Finally, there is no county ordinance, county policy, state law or state policy which requires an applicant for a tentative parcel map in the rural parts of the county to establish the specific water source(s) to be used to supply a sufficient reliable water supply for the proposed parcels or to specify the physical means by which the water would be made available to the proposed parcels, including the two upslope Parcels 1 and 2.

6. There is substantial evidence in the record to support the finding that the project will not have cumulatively considerable impacts, including impacts on water resources and water quality. The evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. The evidence includes reliance upon existing county codes and policies and inspection procedures, adopted for the purpose of protecting surface and subsurface water resources and water quality. The County has not been presented with any information or evidence to refute the evidence in the record regarding water resources or water quality impacts. A fair argument has not been made by the appellants regarding the water resources or water quality impacts or the cumulative impacts.

7. There are provisions in the applicant’s amended project description to address the appellant’s concern regarding the partial assignment of post-1914 water rights. These are included in Resolution No. 2005-13, page 11, item C as follows:

C. “The project includes a provision that ownership of water rights under License 5315 (Permit No. 16336) will be transferred to the new owners of the project parcels, at the time any of the individual parcels are transferred.
Because property transfer cannot occur prior to map recordation, a notice shall be recorded concurrently with the parcel map and referenced on the parcel map advising future owners of this project provision. This notice shall serve as constructive notice to future owners regarding transfer of water rights. The format of the notice shall be in accordance with requirements established by the County Surveyor."

This provision in the Resolution responds to the applicant’s proposal. There is no county ordinance, county policy, state law or state policy which requires an applicant for a tentative parcel map in the rural parts of the county to establish the specific water source(s) to be used to supply a sufficient reliable water supply for the proposed parcels.

8. The project site parcel is owned by Neal Jr. & Wanda Moberly, Trustees. According to correspondence from the State Water Resources Control Board, water rights license 5315 (application 16336) is in the names of the property owners.

The applicant for the land division project is Kevyn Moberly, son of Neal Jr. and Wanda Moberly. The property owners have authorized their son to act on their behalf relative to the processing of the application.

Kevyn Moberly is building a home for his family, on the proposed Remainder of the project. The property owners stated they are doing the land division project so they can give one property to their son and one property to their daughter. The property owners are creating two additional parcels as well for possible future sale.

The applicants included in their project description a provision to transfer the water rights at the time grant deeds are recorded.

This issue is addressed on page 11 of the Planning Commission’s Resolution No. 2005-13, item C:

C. The project includes a provision that ownership of water rights under License 5315 (Permit No. 16336) will be transferred to the new owners of the project parcels, at the time any of the individual parcels are transferred.

Because property transfer cannot occur prior to map recordation, a notice shall be recorded concurrently with the parcel map and referenced on the parcel map advising future owners of this project provision. This notice shall serve as constructive notice to future owners regarding transfer of water rights. The format of the notice shall be in accordance with requirements established by the County Surveyor.

9. The County has adopted procedures, standards and policies for soils testing for future installation of septic systems. The testing will occur prior to map recordation.
These procedures, standards and policies are uniformly applied throughout the county, and have been successful in determining the adequacy of soils on-site for future installation of septic systems on parcels.

In February 2005, a Registered Environmental Health Specialist, David L. Conway reviewed:

- information available for the project site and surrounding properties relative to soil conditions,
- septic system permit information for the existing septic systems on-site,
- file information showing evidence of septic system failures on surrounding properties within ½ mile of the project site.

Based upon this review by professional Health Department staff, there is no information to show that this site and area are peculiar. There is no information to show that the uniformly applied procedures, standards and policies will be unsuccessful in mitigating potential environmental effects of new septic systems on the project parcels.

There is substantial evidence in the record to support the finding that future development of septic disposal systems on the project parcels will not have potentially significant impacts, including impacts on water resources. The evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. The evidence includes reliance upon existing county codes and policies and inspection procedures, adopted for the purpose of protecting surface and subsurface water resources. The County has not been presented with any information or evidence to refute the evidence in the record regarding potential water resources impacts. A fair argument has not been made by the appellants regarding the potential for water resources impacts. The appellant has not provided any specific information regarding their water resources.

10. The appellant's concerns regarding recordation of restrictive covenants for precluding construction of secondary residences on the project parcels are addressed in Mariposa County Planning Commission Resolution No. 2005-13 on page 10, item B:

B. The project includes a limitation on new residential development. Parcels will be limited to one single family residence per parcel. Covenants, conditions and restrictions (CC&Rs) will be developed and recorded concurrently with the map and referenced on the map. The format of the reference language shall be in accordance with requirements established by the County Surveyor.

This proposal shall be met prior to recordation of the parcel map. CC&Rs shall be submitted to the Planning Director for review and approval, prior to map recordation.

The recordation of the restrictive covenant will be required prior to the recordation of the map – when the "impact" occurs.
From: Sarah Williams
Date: 06/28/05 14:07:37
To: 'Rachel Petty'
Cc: Margie Williams
Subject: RE: Resolution for Mecchi

Rachel,

I received my copy from Margie yesterday. Unfortunately, the page numbers in the header are screwed up. I can only guess that, if your computers didn’t have the font we used or if more margins were added, then the layout changed, and the numbering got off.

Anyway, considering the attorneys who are involved, it would be best if the document was amended so the page numbering is correct.

Could you get the document amended and signed please? I know that Bob Pickard is leaving on vacation, so if you could get his BP before he leaves today, that would get the attorney to stop inquiring about the resolution... Of course, Tom and Margie also need to sign it too.

Thanks!!

Sarah

-----Original Message-----
From: Rachel Petty [mailto:rpetty@mariposacounty.org]
Sent: Tuesday, June 28, 2005 9:45 AM
To: swilliams@mariposacounty.org
Cc: mwilliams@mariposacounty.org
Subject: Re: FW: Resolution

Sarah:

Margie sent me a copy of her e-mail to you that she had a copy of the Resolution for you and I had previously provided your office with a copy.

Please let me know if you were not able to get it and I will make sure that you receive a copy.

Rachel

-----Original Message-----

From: Sarah Williams
Date: 06/27/05 11:16:16
To: Margie Williams; 'Rachel Petty'
Cc: 'Thomas Guarino'
Subject: FW: Resolution

Margie or Rachel,

Has the Board’s resolution on the Mecchi appeal been executed? If so, I need to get Raymond Carlson
his copy.

Sarah

-----Original Message-----
From: Raymond Carlson [mailto:carlson@griswoldlasalle.com]
Sent: Wednesday, June 22, 2005 4:21 PM
To: Sarah Williams
Subject: Resolution

Sara---

We have yet to receive the Board resolution from the appeal hearing.

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