RESOLUTION - ACTION REQUESTED 2012-571

MEETING: November 20, 2012

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director


RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution approving Land Conservation Act Application No. 2010-104 with findings, finding that it is exempt from environmental review, approving the creation of a new Agricultural Preserve and execution of a new Land Conservation (Williamson) Act contract with MJ Oaks, LLC for a 250 acre parcel (excluding a 2-3 acre area) located at an unassigned address off of Lake McClure Road near Lake McSwain; APN 007-070-007.

Justification is provided in the Staff Report.

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

BACKGROUND AND HISTORY OF BOARD ACTIONS:

No actions have been taken by the Board on the subject property.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Deny creation of the Agricultural Preserve; modify conditions of the Agricultural Preserve.

Contract must be executed and recorded prior to 5:00 p.m. on Monday, December 31, 2012 in order for tax advantages to be effective for the 2013 tax year.

FINANCIAL IMPACT:
None

ATTACHMENTS:
Staff Report (PDF)
Attachment 1 Resolution 10-150 (PDF)
Attachment 2 Vicinity Map (PDF)
Resolution - Action Requested 2012-571

Attachment 3 Site Plan Submitted by Applicant (PDF)
Attachment 4 Draft AAC Meeting Minutes (PDF)
Attachment 5 Draft PC Meeting Minutes (PDF)
Attachment 6 Draft Resolution (PDF)
Attachment 7 Draft Notice of Exemption (PDF)
Attachment 8 Draft Contract (PDF)
Memo from Planning regarding tax loss for county (PDF)

CAO RECOMMENDATION
Requested Action Recommended

[Signature]
Rick Benson, County Administrator/Officer

RESULT: ADOPTED [UNANIMOUS]
MOVER: Lyle Turpin, District II Supervisor
SECONDER: Lee Stetson, District I Supervisor
AYES: Stetson, Turpin, Bibby, Cann, Allen
Resolution
No. 2012-571  A resolution approving Land Conservation Act Contract Application

WHEREAS an application for a new Land Conservation (Williamson) Act Contract was received
on August 3, 2012 from Michael Smith, president of MJ Oaks, LLC for a property located
at an unassigned address off of Lake McClure Road in Snelling, also known as Assessor
Parcel Number 007-070-007; and

WHEREAS the property has been used for agricultural purposes for a minimum of three years;
and

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

WHEREAS a project review was scheduled for the duly noticed Agricultural Advisory Committee
meeting of September 20, 2012; and

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

WHEREAS the Agricultural Advisory Committee did hold their meeting 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 their own knowledge of county-
wide agricultural operations; and

WHEREAS based on the requirements of Resolution 10-150 the Agricultural Advisory
Committee recommended that the Planning Commission recommend that the Board of
Supervisors establish a new Agricultural Preserve on the subject property and enter into a
new Land Conservation Act Contract with the applicant; and

WHEREAS a duly noticed Planning Commission public hearing for the project was scheduled
for the 19th day of October 2012; and

WHEREAS due to uncontrollable and unforeseen circumstances, the Planning Commission
meeting for the 19th day of October 2012 did not have a quorum of members in attendance
and pursuant to Resolution No. 82-18, this public hearing item was continued by the
Chairman of the Planning Commission to the next regularly scheduled Planning
Commission meeting on the 2nd day of November 2012; and

WHEREAS the Planning Commission did hold a public hearing on the continued 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 find this project is exempt from the provisions of the California Environmental Quality Act; and

WHEREAS the Planning Commission of the County of Mariposa did recommend to the Mariposa County Board of Supervisors that they approve Land Conservation Act Contract Application No. 2012-125; and

WHEREAS the Planning Commission recommendation for project approval was based upon the findings set forth in the Staff Report as presented to the Planning Commission at the continued public hearing of November 2nd, 2012; and

WHEREAS a duly noticed public hearing was scheduled for the Board of Supervisors meeting of November 20th, 2012; 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 was prepared pursuant to the California Government Code, Mariposa County Code, 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, the proposed Notice of Exemption, 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 finds this project is exempt from the provisions of the California Environmental Quality Act.

BE IT FURTHER RESOLVED THAT the Mariposa County Board of Supervisors approves Land Conservation Act Contract Application No. 2012-125, establishing an agricultural preserve and approving a Land Conservation Act Contract for the project site.

BE IT FURTHER RESOLVED THAT the Mariposa County Board of Supervisors approves this project based upon the findings and conditions set forth in Exhibit 1 of this resolution.

BE IT FURTHER RESOLVED THAT the Mariposa County Board of Supervisors approves this project for the property as set forth in the legal description contained within Exhibit 2 of this resolution.

BE IT FINALLY RESOLVED THAT the Mariposa County Board of Supervisors hereby directs the Chairman of the Board to execute the Land Conservation Act Contract for this property.

ON MOTION BY Supervisor , seconded by Supervisor , this resolution is duly passed and adopted this 20th day of November 2012 by the following vote:

AYES: STETSON, TURPIN, BIBBY, CANN, ALLEN
NOES: NONE
EXCUSED: NONE
ABSTAIN: NONE
JANET BIBBY, Chairman
Mariposa County Board of Supervisors

Attest:

MARGIE WILLIAMS
Clerk of the Board
Mariposa County Board of Supervisors

Mariposa County
Approved as to form:

STEVEN W. DAHLEM
County Counsel
EXHIBIT A

A tract of land situated in a portion of Sections 35 and 36, Township 4 South, Range 15 East, M.D.B. & M., Mariposa County, State of California, said tract of land being described as follows:

All that certain real property conveyed to MJ Oaks, LLC, a Utah Limited Liability Company, by Grant Deed recorded August 17, 2011 as Document No. 20113024 in the Official Records of Mariposa County, said certain real property being described therein as follows:

The northerly 250 acres of Section 35 and 36, Township 4 South, Range 15 East, M.D.B. & M., lying Easterly of the West one-half of the West one-half of said Section 35, and Westerly of the Westerly line of the Merced Irrigation District property line, also being the Westerly right of way line of the Yosemite Valley Railroad property now abandoned.
Together with a 40 foot right of way for ingress, egress and public utility purposes over and across the remaining lands of the Grantor.

EXCEPTING THEREFROM a 1.00 acre portion of said certain real property, said 1.00 acre portion being more particularly described as follows:
Commencing at the southwest corner of said northerly 250 acres, said southwest corner being further delineated on that certain map entitled Record of Survey for Edward Branco filed November 18, 1975 in Volume 9 of Maps at page 47 (now filed in Book of Maps at Page 1910), Mariposa County Records; thence N87°06'33"E, along the southerly line of said northerly 250 acres, a distance of 1008.00 feet to the POINT OF BEGINNING of the herein described 1.00 acre portion of said certain real property; thence, leaving the southerly line of said northerly 250 acres, N02°53'27"W for 208.72 feet; thence N87°06'33"E for 208.72 feet; thence S02°53'27"E for 208.72 feet to a point on the southerly line of said northerly 250 acres; thence S87°06'33"W, along the southerly line of said northerly 250 acres, for 208.72 feet to the POINT OF BEGINNING.

The above-described tract of land is subject to any liens, encumbrances, covenants, restrictions and rights-of-way or easements of record or legally acquired.

Prepared by:

[Signature]
Richard A. Seaman, LS 5339

[Date]
MARIPOSA COUNTY
NOTICE OF EXEMPTION

TO: County Clerk, County of Mariposa
    P.O. Box 247
    Mariposa, CA 95338
FROM: Mariposa County
      Planning Department
      P.O. Box 2039
      Mariposa, CA 95338


Project Address: Unassigned Lake McClure Road, near Lake McSwain, in Mariposa County

Project Parcels: APN 007-070-007

Description of Project: Land Conservation Act (Williamson Act) Contract Application No. 2012-125; MJ Oaks, LLC, Applicant; Michael Smith, Agent. Proposes to place a 250 acre parcel with an unassigned address in the Lake McSwain area; APN 007-070-007 under a Williamson Act Contract. Property is under the land use classification of Ag Working Landscape and is zoned Agricultural Exclusive. Applicants have requested to hold out of contract 2-3 acres and have indicated this area on a copy of the Assessors Parcel map. Agricultural activity on this property will continue to be cattle grazing as evidenced by the LCA questionnaire that the property owner has completed.

Name of Public Agency Approving Project: Mariposa County Board of Supervisors

Name of Person (Applicant) Carrying Out Project: MJ Oaks, LLC (Michael Smith, president)

Exempt Status: Categorical Exemption, Class 17; Section 15317, CEQA Guidelines


Lead Agency Contact Person: Alvaro Arias, Associate Planner

Phone Number: (209) 742-1218

Mariposa County Planning Department by: [Signature]

Date: 11/20/12

Revision date: April 7, 2004
MEMORANDUM

Date: November 19, 2012
To: Board of Supervisors
From: Alvaro Arias, Associate Planner
Re: Land Conservation Act Contract Application No. 2012-125 Tax Loss to County
Board Agenda Item L. 1. for November 20, 2012

Based on several Board inquiries with regards to the loss of tax revenue by placing this parcel under contract, staff has consulted with the Assessor’s Office and prepared the following estimate:

Based on the county wide tax rate, the taxes for this parcel would be $2,700 this year if not encumbered by a LCA Contract.

Applying a nearby LCA parcel’s value and rental rate to the subject parcel, the taxes for this parcel would $625 if encumbered by a LCA Contract.

Using these figures, the resulting estimated tax “cost” (or lose in property taxes to the county) by putting this parcel into a LCA contract would be $2,075 the first year.
EXHIBIT 1

PROJECT FINDINGS AND CONDITIONS
FOR

FINDINGS

In accordance with Mariposa County Resolution No. 10-150 implementing the Land Conservation Act in Mariposa County and California Government Code Section 51257 (Williamson Act Law), the following findings are made:

1. **FINDING:** The project is found to support, accomplish, or have no effect on the goals, policies, and standards of the General Plan as a whole and will not obstruct the achievement of the Plan’s purpose.

   The Land Conservation Act promotes the preservation and development of agricultural lands, as encouraged by the Agricultural Element and its emphasis on preserving agricultural lands (Section 10.1.01 of The General Plan), and maintaining the rural character of the county (Section 10.1.04 of The General Plan). The Conservation and Open Space Element confirms the importance of maintaining the open space nature of the county. This project will result in the execution of a Land Conservation Act contract, which is a 20 year commitment to commercial agriculture and open space uses for the site. The preserve is consistent with the General Plan, with the recommended condition. The current and past use of the property is for agricultural purposes. This finding is made in accordance with Section 51234 of Government Code.

2. **FINDING:** The agricultural preserve will contain over 240 acres. The preserve meets the minimum size established by the Board of Supervisors for an agricultural preserve. The use of this property for cattle grazing and/or other Agricultural Production Uses or Compatible Uses as specified in the contract must be for producing an agricultural commodity for commercial purposes. The project complies with all standards of the California Land Conservation (Williamson) Act and the Mariposa County Agricultural Preserve Policy. The parcel has been used for agricultural purposes for at least three years, and the agricultural commodity has been for commercial purposes.

3. **FINDING:** This project is Categorically Exempt based on the following: Class 17; Section 15317, CEQA Guidelines
EXHIBIT 2
LEGAL DESCRIPTION

All that certain real property situated in the county of Mariposa, State of California, more particularly described as follows:

LEGAL DESCRIPTION TO BE INSERTED HERE (BEING PREPARED BY SURVEYOR AND WILL BE APPROVED BY COUNTY SURVEYOR)
BOARD OF SUPERVISORS MEETING
OF November 20, 2012

SUMMARY


Location: The contract area is located near Lake McSwain and is also
know as APN 007-070-007.

Applicant/Property Owner: MJ Oaks, LLC

Recommended Action: The Planning Commission recommends that the Board of Supervisors
approve a resolution creating a new Agricultural Preserve and
executing a new Land Conservation Act contract on the subject
property, with the recommended findings as set forth in the Staff Report

Prepared by,

Alvaro Arias
Associate Planner
Summary Description of Request

Land Conservation Act (Williamson Act) Contract Application No. 2012-125 proposes to place a parcel of 250 acres into a Land Conservation Act Contract. The applicant would like to maintain a 2 to 3 acre portion out of the contract.

The contract will encumber a portion of one Assessors parcel. The site is and has been used for cattle grazing.

The project site is in the Agriculture Exclusive Zone and the Agriculture/Working Landscape Land Use.

Parcel Legality

Staff is researching further information about the creation of this parcel and its legality. The applicant may have to apply for a Certificate of Compliance for the project parcel prior to development (issuance of any development permit). There are no other underlying historic patent parcels which need to be addressed as part of the processing of this application. The recordation of a Land Conservation Act contract will have no impact on this project parcel’s legality pursuant to the Subdivision Map Act.

Agricultural Preserve Size and Use:

Staff provides review comments pursuant to Mariposa County Resolution No. 10-150 (new policies).

Preserve Policies—The proposed agricultural preserve is 250 acres minus the portion the applicant proposes to keep out. The land proposed to be under contract is larger than 160 acres and thus consistent with the minimum size requirement of the Agricultural Preserve Policy for rangeland and pasture for livestock production and forage.

Agricultural Use -- In order to qualify for inclusion in an agricultural preserve, the Agricultural Preserve Policy requires that evidence be submitted that shows that the parcels have been used for agricultural purposes for three years and the agricultural use is and has been used for the purpose of producing an agricultural commodity for commercial uses. The subject property has been used mainly for cattle grazing. The applicant purchased the property in 2011, but has provided evidence showing that the property has been leased for cattle grazing since at least 2009. The property is currently being leased for cattle grazing.

Multiple Parcels/Merging of Parcels -- The Agricultural Preserve Policy states that an application for multiple legal parcels that are less than the minimum size necessary, and only if contiguous, before a LCA contract is executed shall be merged, or the LCA contract shall include an express
provision that prohibits the sale of the parcels individually during the term of the LCA contract. This application is proposing to place only one property under contract that meets the minimum required size of 160 acres. There are no underlying historic patent parcels within the project site.

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 commercial 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 (approximately 75% less) 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).

The purposes and intents of the Williamson Act (what the law is intended to achieve):

- Preservation of the maximum amount of the limited supply of agricultural land is necessary.
- Discouragement of premature and unnecessary conversion of agricultural land to urban uses is in the public interest and is a benefit to the state.
- Agricultural lands have important and valuable open space aspects in an urbanizing society, and should be kept in production.

Procedural Requirements

County Code (County Law) and Agricultural Policy

A procedural requirement established by County Code relative to this petition is Section 17.08.080:

17.08.080 Burden of proof.

It shall be the burden of an applicant to provide all necessary information in support of any matter heard and decided by the planning commission or board of supervisors. Failure to provide such necessary information in support of a matter as described above shall be deemed grounds for denial of application.

In other words, the applicant's justification for entering into a contract is that which is being reviewed and considered through the review process.

California Environmental Quality Act (CEQA):
In order to approve a project, including this project, a CEQA or environmental determination would need to be made by the lead agency (the government agency which has action authority over this application). For this application, the lead agency is the Board of Supervisors.

Planning staff recommends that the Planning Commission recommend to the Board of Supervisors that a Notice of Exemption be adopted for this project based on Categorical Exemption, Class 17; Section 15317, CEQA Guidelines.

Agricultural Advisory Committee

Pursuant to Section 2.110.060.C, County Code, the Agricultural Advisory Committee:

"shall provide comment, recommendation, and advice to the Planning Commission, Board of Supervisors and its personnel on the following matters: ...C. Review and provide recommendations on applications for new Williamson Act (Land Conservation Act) contracts, applications for cancellation of Williamson Act (Land Conservation Act) contracts, and non-renewal of Williamson Act (Land Conservation Act) contracts..."

The Agricultural Advisory Committee met and discussed this project on Thursday, September 20, 2012. The Agricultural Advisory Committee voted unanimously to recommend approval of this application. A copy of the Agricultural Advisory Committee’s draft minutes are attached to this staff report.

Planning Commission

This application was heard by the Planning Commission at a noticed public hearing on Friday, November 2, 2012. The Planning Commission voted unanimously to recommend that the project be found to be exempt from environmental review (CEQA) and recommended approval of the application. A copy of the Planning Commission draft minutes is attached.

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.

The Department of Conservation has been sent a copy of this petition to enter into a contract pursuant to state law, together with the information provided by the applicant. Comments
regarding this Land Conservation Act No. 2012-125 from the Department of Conservation had not been received as of the writing of this staff report.

Recommended Findings:

In accordance with Mariposa County Resolution No. 10-150 implementing the Land Conservation Act in Mariposa County and California Government Code Section 51257 (Williamson Act Law), the following findings are made:

1. **FINDING:** The project is found to support, accomplish, or have no effect on the goals, policies, and standards of the General Plan as a whole and will not obstruct the achievement of the Plan's purpose.

   The Land Conservation Act promotes the preservation and development of agricultural lands, as encouraged by the Agricultural Element and its emphasis on preserving agricultural lands (Section 10.1.01 of The General Plan), and maintaining the rural character of the county (Section 10.1.04 of The General Plan). The Conservation and Open Space Element confirms the importance of maintaining the open space nature of the county. This project will result in the execution of a Land Conservation Act contract, which is a 20 year commitment to commercial agriculture and open space uses for the site. The preserve is consistent with the General Plan, with the recommended condition. The current and past use of the property is for agricultural purposes. This finding is made in accordance with Section 51234 of Government Code.

2. **FINDING:** The agricultural preserve will contain over 240 acres. The preserve meets the minimum size established by the Board of Supervisors for an agricultural preserve. The use of this property for cattle grazing and/or other Agricultural Production Uses or Compatible Uses as specified in the contract must be for producing an agricultural commodity for commercial purposes. The project, complies with all standards of the California Land Conservation (Williamson) Act and the Mariposa County Agricultural Preserve Policy. The parcel has been used for agricultural purposes for at least three years, and the agricultural commodity has been for commercial purposes.

3. **FINDING:** This project is Categorically Exempt based on the following: Class 17; Section 15317, CEQA Guidelines

Attachments:
1. Williamson Act Contract Policies, Resolution No. 10-150
2. Vicinity Map
3. Site Plan Submitted by Applicant
6. Draft Resolution
7. Draft Notice of Exemption
8. Draft Contract
Attachment 2
Attachment 7