

97-12

MARIPOSA COUNTY  
BOARD OF SUPERVISORS

AGENDA  
ACTION FORM

DATE: January 14, 1997  
AGENDA ITEM NO: CA-1

HOUSING AND COMMUNITY DEVELOPMENT AGENCY

BY: James F. Evans

PHONE: 966-6121

RECOMMENDED ACTION AND JUSTIFICATION: (POLICY ITEM: YES ( ) NO (X))

Resolution Transferring funds (\$2,500) from the Recreation Services and Supplies Budget to the Facilities Maintenance Fixed Asset Budget to Purchase a Pool Cover for the EI Portal Pool. (Cost efficiencies and need).

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has authorized the purchase of covers for the Coulterville (Resolution 95-445) and Mariposa (1996/7 Budget) pools. Pool covers provide cost efficiencies in maintenance, safety, and supplies.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not purchase cover.

*****			
COSTS: ( ) Not Applicable			
A.	Budgeted	CURRENT FY	\$ 0
B.	Total anticipated costs		\$ 2,500
C.	Required add'l funding		\$
D.	Internal transfers		\$ 2,500

SPECIAL INSTRUCTIONS  
List the attachments and  
umber pages accordingly:

Resolution 95-445  
Budget Action Form

SOURCE: ( ) 4/5's vote required	
A.	Unanticipated revenues \$
B.	Reserve for Contingencies \$
C.	Source description:

Balance in Reserve for Contingencies,  
if approved: \$

CLERK'S USE ONLY:  
Resolution No.: 97-12  
Ordinance No.:  
Vote: Ayes: 5 Noes:  
Absent: Abstain:  
Approved ( ) Denied  
( ) Minute Order attached.  
( ) No Action Necessary.

ADMINISTRATIVE OFFICER'S  
RECOMMENDATION:

This item on Agenda as:  
 Recommended  
 Not recommended  
 Policy determination  
 Submitted w/ comment  
 Returned for further action  
Comment:

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

A.O. Initials: JH

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

BY: Deputy

DEPARTMENT: Public Works

Michael D. Edwards  
Public Works Director

Phone: 966-5356

RECEIVED  
OCT 13 1995  
DEPARTMENT OF PUBLIC WORKS

RECOMMENDED ACTION AND JUSTIFICATION:

(Policy Item: Yes No X)

Resolution approving the purchase of a safety pool cover for the Coulterville pool. The cost of the cover would be \$2,500. Funds are available in the Maintenance of Structures line item. The Facilities Maintenance crew would handle the installation.

The cover, once installed, would decrease the annual labor requirements required to maintain the pool by an estimated 225 person-hours per year. An excessive amount of materials are also used, such as acid wash and new paint as necessary, in addition to the cost of water to drain and refill the pool, every year. The pool cover will reduce this once-per-year effort to a once-per-several-year effort.

Use of this type of safety pool cover in other communities has lasted as long as 10 years without need for replacement. The pool cover is a mesh material which will support the weight of a small car without failing. The mesh material also allows for water to pass through while catching debris such as bottles, leaves, branches, rocks, etc. The safety cover will also prevent people from entering the pool and being subjected to risk of injury or drowning during the months when the pool is not in operation.

Public Works anticipates a similar purchase next fiscal year, assuming maintenance funds are available, for the El Portal pool.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

In the past, budget requests for additional funding have been made for pool covers. Those requests were never granted.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

No action. Excessive maintenance labor and materials requirements and winter safety concerns will continue.

COSTS: ( ) Not Applicable	
A. Budgeted current FY	\$ -0-
B. Total anticipated costs	\$ 2,500
C. Required additional funding	\$
D. Internal transfers	\$ 2,500

SOURCE: (X) 4/5th Vote Required	
A. Unanticipated revenues	\$
B. Reserve for contingencies	\$
C. Source description: a/c 001-0128-473-0413	

Balance in Reserve Contingencies, if approved: \$

SPECIAL INSTRUCTIONS:  
List the attachments and number the pages consecutively:

- Budget Action Form

CLERK'S USE ONLY

Res. No.: 95-445 Ord. No. \_\_\_\_\_ This item on agenda as:  
 Vote - Ayes: 5 Noes: \_\_\_\_\_  
 Absent: \_\_\_\_\_ Abstained: \_\_\_\_\_  
 Approved ( ) Denied ( )  
 ( ) 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

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

- Recommended
- Not Recommended
- For Policy Determination
- Submitted with Comment
- Returned for Further Action

Comment: \_\_\_\_\_

A.O. Initials: ME

BUDGET ACTION FORM

FUND	DEPT/DIV	ACCOUNT	DESCRIPTION	INCREASE	DECREASE
001	0128	473.06-87	Facilities maintenance PW	\$2,500 <sup>00</sup>	
001	0701	761.04-36	Pool Supplies		2,500 <sup>00</sup>
TOTALS				\$2,500 <sup>-</sup>	\$2,500 <sup>-</sup>

ACTION REQUESTED: (Check all that apply)

( ) Budget appropriation by Board of Supervisors (4/5ths Vote Required): Amending the total amount available in the county budget, or in any one fund of the budget, or appropriating Reserve for Contingencies;

(X) Transfer by Board of Supervisors (3/5ths Vote Required): Moving existing appropriations from one budget another, or between categories within a budget unit;

JUSTIFICATION The installation of a pool cover at the El Portal Pool will result in substantial savings in Pool supplies such as chlorine, filters, etc. as well as maintenance

DEPT HEAD SIGNATURE Jas F. [Signature]

DATE 12-19-96

APPROVED BY RES NO. 97-12

CLERK [Signature]

DATE 1-14-97

AUDITOR'S USE ONLY  
BA #

DEPARTMENT: Planning By: Sarah Williams, Planning Manager Phone: 966-5151

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes \_\_\_ No X)

Approve format and content of Mariposa County Resolution No. 96-433.

County Counsel has reviewed and approved this draft resolution.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Resolution No. 96-433 was adopted by the Board of Supervisors on October 15, 1996, at the public hearing for the Winterberg Appeal (Appeal No. 96-5). The Board acted to deny the appeal. This resolution has been prepared for Board action, to clarify the record on the Board's action on the appeal, including findings in support of their action.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

1. Modify the text within the resolution.

Negative action would mean that the Board would not adopt the resolution. The only record of the Board's action on this appeal would be the Board Minute Order and meeting tapes.

COSTS: ( X ) Not Applicable

A. Budgeted current FY \$ \_\_\_\_\_

B. Total anticipated Costs \$ \_\_\_\_\_

C. Required additional funding \$ \_\_\_\_\_

D. Internal transfers \$ \_\_\_\_\_

COSTS: ( ) 4/5th Vote Required

A. Unanticipated revenues \$ \_\_\_\_\_

B. Reserve for contingencies \$ \_\_\_\_\_

C. Source description: \_\_\_\_\_

Balance in Reserve Contingencies, If Approved:  
\$ \_\_\_\_\_

SPECIAL INSTRUCTIONS:

List the attachments and number the pages consecutively:

1. Draft Resolution No. 96-433

CLERK'S USE ONLY

Res. No.: \_\_\_\_\_ Ord. No.: \_\_\_\_\_

Vote - Ayes: 3 Noes: Balmain, Parker

Absent: \_\_\_\_\_ Abstained: \_\_\_\_\_

Approved  Denied

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

By: \_\_\_\_\_

Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted for Comment

Returned for Further Action

Comment: \_\_\_\_\_

\_\_\_\_\_

A.O. Initials: [Signature]

**MARIPOSA COUNTY RESOLUTION NO. 96-433**

**A RESOLUTION DENYING APPEAL NO. 96-5 AND  
MODIFYING THE PLANNING DIRECTOR'S USE DETERMINATION AND  
THE PLANNING COMMISSION'S ACTION ON THE APPEAL OF THE PLANNING  
DIRECTOR'S USE DETERMINATION FOR APNs 10-371-001 AND 10-371-003;  
WILLIAM WINTERBERG, APPELLANT**

**WHEREAS**, the Planning Director made a use determination relative to "grandfathered" camping rights on APNs 10-371-001 and 10-371-003 in the community of Fish Camp after a confidential complaint was received; and

**WHEREAS**, the Planning Director is the County official who is designated as the Zoning Enforcement Officer in accordance with Chapter 17.144 of the County Code and is therefore authorized to make such determinations; and

**WHEREAS**, Section 17.08.080 of the County Zoning Ordinance states that, "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"; and

**WHEREAS**, the use determination was made after a lengthy investigation by Planning staff involving the property owner Mr. Bill Winterberg (hereinafter referred to as property owner), friends and family of the property owner, County and State records, and longtime community residents; and

**WHEREAS**, this use determination was made on February 29, 1996 and allowed the property owner limited camping rights on his property; and

**WHEREAS**, on March 20, 1996, the property owner appealed the Planning Director's use determination to the Planning Commission in accordance with County Appeals Procedures; and

**WHEREAS**, the Planning Commission is authorized to hear appeals of determinations made by the Planning Director; and

**WHEREAS**, the Planning Commission conducted a noticed public hearing on the appeal (Appeal No. 96-2) on June 7, 1996 in accordance with State Law and County Code, and considered all public input, both written and verbal, delivered to the Commission; and

**WHEREAS**, the Planning Commission acted to deny the appeal and uphold the Planning Director's use determination with some minor modifications to the original Planning Director's determination relative to the terms of the allowable "grandfathered" camping rights; and

**WHEREAS**, on June 21, 1996, the property owner and Mr. John O. Jamison, Attorney at Law, appealed the Planning Commission's action on the appeal to the Board of Supervisors in accordance with County Appeals Procedures; and

**WHEREAS**, the Board of Supervisors is authorized to hear appeals of determinations made by the Planning Commission; and

**WHEREAS**, the Board of Supervisors conducted a noticed public hearing on the appeal (Appeal No. 96-5) on August 18, 1996 continued to October 15, 1996 in accordance with State Law and County Code and considered all public input, both written and verbal, delivered to the Board.

**NOW THEREFORE BE IT RESOLVED**, the Board of Supervisors hereby denies Appeal No. 96-5 and determines that there are no "grandfathered" camping rights on APNs 10-371-001 and 10-371-003.

**BE IT FURTHER RESOLVED**, the Board of Supervisor's action is based upon the following findings:

1. The Fish Camp Town Planning Area Specific Plan was adopted in 1983 and regulates current land uses. The current land use classifications for APNs 10-371-001 and 10-371-003 (single family residential-1 acre and multi-family residential respectively) do not allow camping or campground uses. In accordance with applicable specific plan standards, the only way that camping or campground uses could be legally operated today, is if the camping or campground uses complied with the non-conforming use provisions of the specific plan. The plan defines a non-conforming use as a legally established use, which was in existence at the time of the adoption of the plan.
2. Prior to adoption of the Fish Camp Town Planning Area Specific Plan, land uses throughout the County, including APNs 10-371-001 and 10-371-003 were regulated by Mariposa County Ordinance No. 345. Ordinance No. 345 became effective on October 28, 1971, and allowed camping or campground uses subject to a use permit. Because there is no use permit in County files for camping or campground uses on APNs 10-371-001 and/or 10-371-003, the only way that camping or campground uses could be legally operated on the subject parcels today, is if the camping or campground uses were legally established prior to the adoption of Ordinance 345.

3. The property owner alleged that camping activities involving as many as 200 people occurred on APN 10-371-001 prior to the effective date of Mariposa County Ordinance No. 345. Information submitted by the property owner regarding this claim included letters from the Mariposa County Planning Department, a letter from the National Forest Service, a permit to construct two private disposal systems issued by the State Department of Housing and Community Development dated August 2, 1968, declarations from friends and family members regarding their recollections of use of the property and time of bridge construction, photographs and a video tape of use of the site, and receipts for purchases of building and construction materials for the septic system and bridge.
4. The property owner alleged that camping activities occurred on APN 10-371-003 by the previous property owner Mr. Crowell. Evidence submitted regarding this claim included an Assessor's Appraisal Sheet, and photographs of Mr. Crowell and his family and friends at this property.
5. The information submitted by the property owner and the testimony presented for consideration at the public hearings does not constitute conclusive evidence to substantiate that camping uses or supporting facilities were legally established prior to October 28, 1971 in accordance with the following:
  - Letters from the Planning Department describe the applicable requirements for camping uses and establishment of non-conforming uses. The letters request additional information from the property owner, and do not specify that there are legal, non-conforming or grandfathered camping uses on APN 10-371-001.
  - Based upon the size, terrain, vegetation and proximity of APN 10-371-001 to Big Creek, the 2.37 acre parcel is not physically capable of supporting the property owner's alleged number of campers on-site (including camper accommodations such as trailers or tents, and travel vehicles).
  - The letter from the United States Forest Service does not establish that Mr. Winterberg has a legal camping use on APN 10-371-001.
  - Although there was a "Permit to Construct" issued for the septic system, there is no conclusive evidence that the installation of the septic system (which is primarily located on APN 10-371-001) was ever inspected and approved by the State Department of Housing and Community Development. The property owner submitted a business card of a Housing and Community Development employee and although the back of the card had an "ok to complete" written on it with a signature on it, there is nothing on the card to tie it to the actual permit to construct the septic system on APN 10-371-001. Additionally, the card does not establish that a final inspection or approval was ever conducted for the septic system installation.
  - Based upon standard engineering and Health Code criteria, the size of the septic system (primarily located on APN 10-371-001) is not capable of serving the property owner's alleged number of campers on-site.

- Portions of the septic system are constructed off-site, on United States Forest Service land. No evidence was presented that a permit has ever been issued for this use on U.S. Forest Service land.
- There is evidence that the bridge providing year-round vehicular access to APN 10-371-001 was not in place in September, 1970. There is evidence that the bridge seems to be in place in June, 1971. There was no specific evidence submitted relative to usage from June to October, 1971, and five months usage is not sufficient to establish an annual, seasonal camping use.
- There was no evidence submitted that the bridge was ever properly permitted or approved, and a portion of the bridge is constructed off-site, on United States Forest Service land. There was no evidence presented that a permit has ever been issued for this use on U.S. Forest Service land.
- The receipts for purchase of materials for the septic system and bridge only establish what materials were purchased and when. These receipts do not establish when or where the construction of the facilities actually occurred or that the construction of the facilities was completed legally (in accordance with a permit, including the final sign-off of the permit).
- The Assessor's Appraisal Sheet, signed in April, 1971, describes the existing facilities on APN 10-371-003. The appraisal is for "salvage value" only. The appraisal sheet does not establish that the facilities were ever used for organized camping purposes on this parcel.
- Based upon the time that APN 10-371-003 was acquired by Mr. Winterberg, testimony from the grandson of the previous property owner Mr. Crowell, and the photographs submitted by Mr. Winterberg, there is no evidence to support that the use of this parcel prior to the effective date of Ordinance No. 345 was for anything other than private, family use.

**BE IT FINALLY RESOLVED**, the Board of Supervisor's action on Appeal No. 96-5 allows the following uses on APN 10-371-001:

- Residential uses and those applicable uses listed in the Single Family Residential - One Acre Land Use Classification of the Fish Camp Town Planning Area Specific Plan, and relevant sections of Title 17 that apply to all other similarly zoned properties. These uses must comply with all applicable Building, Health and Zoning Code regulations, and all Specific Plan regulations.

The Board of Supervisor's action on Appeal No. 96-5 allows the following uses on APN 10-371-003:

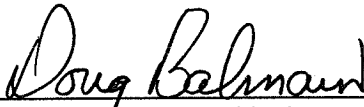
- Residential uses and those applicable uses listed in the Multi-Family Residential Land Use Classification of the Fish Camp Town Planning Area Specific Plan, and relevant sections of Title 17 that apply to all other similarly zoned properties.



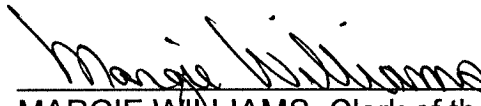
These uses must comply with all applicable Building, Health and Zoning Code regulations, and all Specific Plan regulations.

**PASSED AND ADOPTED** by the Mariposa County Board of Supervisors on this 15th day of October, 1996 by the following vote:

AYES:	Pickard, Reilly, Stewart
NOES:	Balmain, Parker
ABSTAINED:	None
EXCUSED:	None

  
\_\_\_\_\_  
DOUG BALMAIN, Chairman  
Mariposa County Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
MARGIE WILLIAMS, Clerk of the Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

  
\_\_\_\_\_  
JEFFREY G. GREEN, County Counsel