

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

47-262
AGENDA DATE: May 27, 1997
AGENDA ITEM NO.: 15

DEPARTMENT: Planning By: Jay Pawlek, Associate Planner Phone: 966-5151

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No XXX)

The Planning Commission recommends that the Board deny appeal No. 97-3 (Conditional Use Permit No. 240, Meherana Inc., applicant), based upon the inability to make required findings No. 7 (related to general plan consistency) and No. 8 (related to the project's potential to cause environmental impacts);

Based upon the Planning Commission's recommendations and the Board's previous direction the Board should also deny the second reading of the ordinance modifying the zoning designation on APN 12-160-067 from Mountain Home to Mountain General and deny the coresponding General Plan Amendment (95-36).

BACKGROUND AND HISTORY OF BOARD ACTIONS:

See attached memorandum

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternatives - Uphold the appeal and approve the second reading of the ordinance and coresponding General Plan Amendment (95-36) modifying the zoning designation from Mountain Home to Mountain General.

COSTS: (XX) 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:

Memo to Board with Attachments

1. Appellant Information
2. Planning Commission Staff Report
3. Planning Commission Minutes March 21, 1997
4. Draft Ordinance (rezoning)
5. Draft Resolution (General Plan Amendment)

CLERK'S USE ONLY

Res. No.: 97-212 Ord. No.: 922

Vote - Ayes: _____ 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

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: Jh

MARIPOSA COUNTY RESOLUTION NO. 97- 212

A RESOLUTION APPROVING GENERAL PLAN/ZONING AMENDMENT NO. 95-36

MEHERANA INC., APPLICANT

WHEREAS, the applicant proposes an amendment to the General Plan Land Use Map and the County Zoning Map to modify the land use classification and zoning district on APN 12-160-67 from Mountain Home to Mountain General; and

WHEREAS, the Mariposa County Board of Supervisors has determined the amendment is exempt from the requirements of the California Environmental Quality Act and is recommending the filing of a Notice of Exemption; and

WHEREAS, the Mariposa County Planning Commission and Board of Supervisors have held duly noticed public hearings on the amendment in accordance with State Law and County Code.

NOW THEREFORE BE IT RESOLVED the Mariposa County Board of Supervisors finds the amendment is exempt from the California Environmental Quality Act (Class 5, Section 15305(a) CEQA Guidelines) and directs the Planning Director to file a Notice of Exemption with the County Clerk.

BE IT FURTHER RESOLVED that General Plan Amendment No. 95-36 and the amendment to the General Plan Land Use Map and the County Zoning Map as shown in Exhibit A attached hereto are hereby approved by the Board of Supervisors.

BE IT FINALLY RESOLVED that this action of the Board is based on the findings contained in the Planning Commission Staff Report which is hereby incorporated by reference.

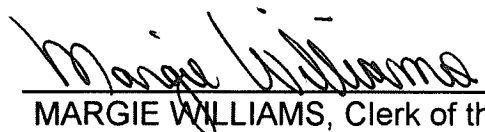
PASSED AND ADOPTED by the Mariposa County Board of Supervisors on this 27th day of May, 1997 by the following vote:

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


ROBERT C. STEWART, CHAIRMAN

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


MARGIE WILLIAMS, Clerk of the Board

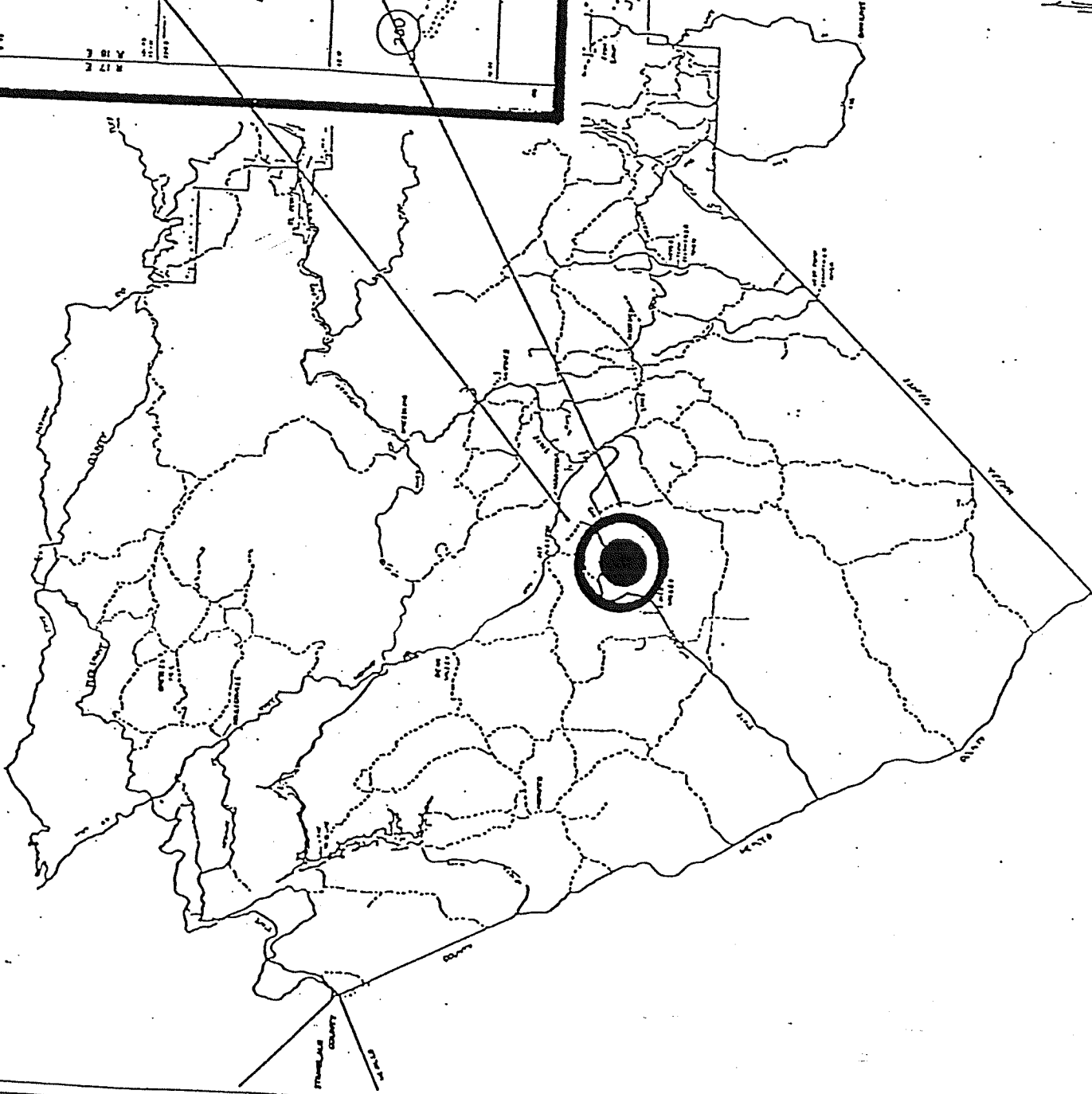
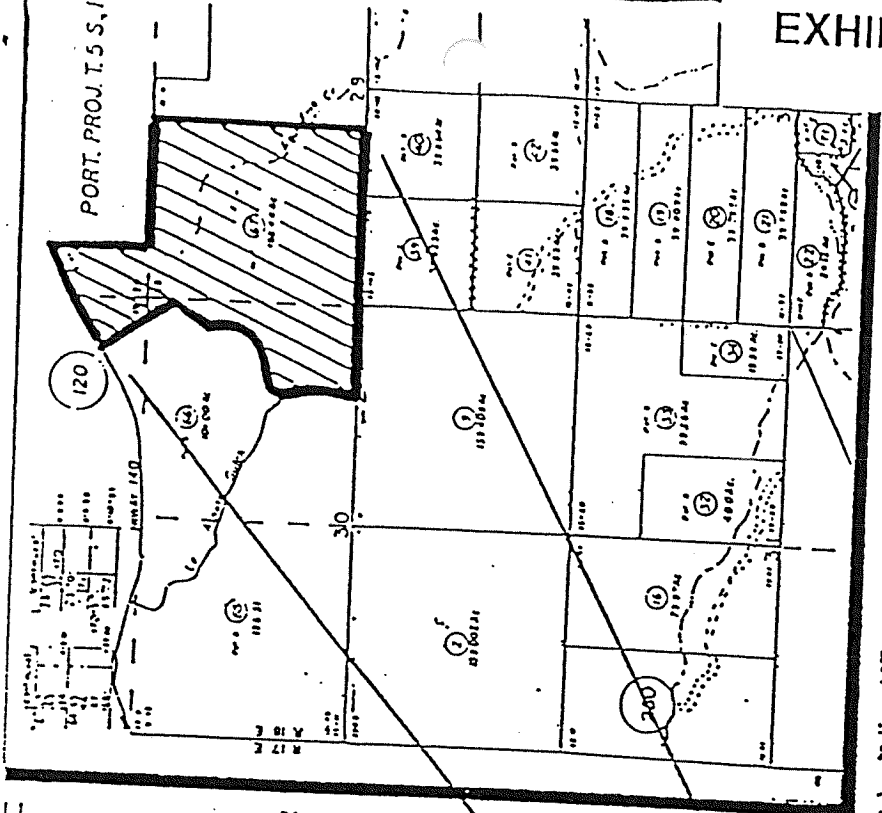

JEFFREY G. GREEN, County Counsel

EXHIBIT A

MARIPOSA COUNTY
ROAD SYSTEM

LOCATION MAP
GPZA 95-36
MH TO M.G
APPLICANT: MEHERANA
APN: 12-160-067

PORT. PROJ. I.S.S. I



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: ED JOHNSON, Planning & Building Director
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: APPEAL NO. 97-3, MEHERANA INC.; RES. 212 & ORD. 922

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on May 27, 1997

ACTION AND VOTE:

2:10 p.m. Board reconvened at the Senior Activity Center on Spriggs Lane Ed Johnson, Planning & Building Director;
PUBLIC HEARING to Consider Appeal No. 97-3, Meherana Inc., Appellant and the Second Reading of an Ordinance Amending the Mariposa County Zoning Map to Change the Zoning on APN 12-160-067 from Mountain Home to Mountain General and Action on General Plan/Zoning Amendment 95-36, Meherana Inc., Applicant

BOARD ACTION: Chairman Stewart explained the hearing process. Jay Pawlek provided staff report. Staff responded to questions from the Board relative to the Mountain Home and Mountain General zonings and uses allowed.

Public portion of the hearing was opened.

Input in support of the project was provided by the following:

Christine Pearson, President of Meherana, stated she lives and works in Mariposa County; her family has lived here since the 1940's and she and her husband purchased property here about 17 years ago. In the spring of 1993, they consulted with Tony Lashbrook, former Planning Director, relative to their plans for this project and the subject property. She reviewed the chronology of events that led to their choice of this parcel and noted its characteristics. They are happy with approval of 48 guests for a year-round basis and have corrected their Internet information, and she presented a map of the property and a current Web page. They support most of staff's recommendations and mitigation measures; however, there are three issues they would like to have changed: 1) they strongly object to prohibiting outdoor gatherings of over 25 people to 8:00 p.m. -- they could agree to 10:00 p.m., especially during the summer; 2) with regard to the use of sound amplification equipment outdoors, they request that they be allowed limited use of equipment so that a speaker's voice could be heard in the immediate area; and 3) they object to the mitigation measure that prohibits guests from access to all parts of the property, especially for things such as bird watching -- they could agree to having no organized activity, except in designated areas. She feels their project will have a beneficial impact on the community -- they purchase their materials locally and use local contractors

whenever possible. She feels this project will create a small amount of tourism and is the type of development that should occur in the County.

Jack Caraco, acupuncturist, stated he lives on the property as a caretaker and stressed that this project is not a campground; there are designated sleeping areas and a common cooking area; no animals or pets will be allowed to be brought in by guests; and he feels this project should be an asset.

Adrienne Jonson, Adrienne's, advised that their business has suffered greatly by the closure of Highway 140; feels this project will assist with increasing tourism, even during the closures of the Highway; this is a peaceful group compared to the recent MMA Rally group; however, these events all help the businesses.

Evie Lindemann, Los Banos, advised that she has three generations of farming family in the valley; she supports this project; she feel the land has been over-grazed and over-graded and the soil is poor in many areas, and they are working to improve its condition and to prevent erosion.

Paul Skok, neighbors the project, stated he feels this organization could offer camping for under-privileged kids and other community services for the kids; they are good neighbors and take care of the land; and the people who visit would be kind and contribute to the businesses in town.

Georgene Tarbox stated she supports this project; feels its assists with providing an employment and economic base for the County; feels people fear change; feels this project will give back to the community; stated the previous speaker was her husband and they are trying to buy property neighboring the project; her husband works at the Hospital and provides community service at events in the first aide field; she works for the State in the field of employment and understands the need for having jobs and the problems as a result of the flood in the County and they are trying to work with welfare reform; they want to give back to the community; they are coming here because of this project; she is concerned with maintaining a rural environment and she does not feel they are proposing an over-usage of the property; we need to plan and be prepared for future growth that is going to occur; she referenced a letter from John Phipps that was submitted relative to this project; and she noted that with the Park shutdowns and impacts on businesses, we need another source of tourism that is not dependent on the Park and Meherana will support a small part of this.

Bob Coulumbe stated he has lived here for 17 years with his family and they are active in the Lutheran Church; with the restriction of 48 guests, there will not be hoards of people -- this number of people would only half fill their Church; he does not feel that this project is an impact, and he feels that it will be a good asset to the County.

Barry Brouillette made the following points: 1) he felt that planning should be a predictable process and this is a situation where an applicant has worked for two years and conditions are very strict; it is the first use permit process that he is aware of where an applicant agreed to be inspected for compliance annually; 2) with regards to land values/open space, this is a volunteer down-zoning in terms of use of the land and environmental impacts, and from a tax point -- a decrease in economic value; 3) this is a broadening of our economic base and will bring in bed tax whether Highway 140 and Yosemite National Park is open or closed -- it is not Yosemite driven; and 4) these applicants can do this project anyway without going through this process; but by going through this process, they are creating a covenant with the community and are being more restricted than anyone on a five-acre parcel; and he urged the Board to approve this project.

Mike Cummingforth stated he has worked at Fresno County Health Department for 19 years as a public health nurse and purchased property in the last three years in the County; he presented a map showing work on this property for fire prevention and safety; stated he understands the neighbors concerns for fire safety and no open fires will be permitted.

Lowell Young, speaking for himself, advised that the four people he spoke with on the Economic Development Committee support this project; he learned about this project from neighbors and their concern was fire and water and sewer -- an engineered system will handle sewer needs, water should not be a concern as it runs in stratas, and fire concerns are being taken care of with their safety plan. This project has two full time jobs associated with it and many of the people who visit stay in our hotels and eat in our restaurants; and he feels this project fits the slogan of "bring your bucks and go home." This project is not dependent on Yosemite and he feels it is a good project.

Mik Hamilton stated he and his family has come up for the last four years and stayed in hotels and attended meetings on this project; he feels this project promotes the environment and keeps a lower level of impact on the property versus Mountain Home use which would increase fire danger, traffic and use of water; and he feels this development will have a much less impact on the environment than a subdivided residential use. He referenced Resolution No. 80-31 which authorized development of a warehouse and storage units in the area in 1980. He stated their counsel has advised them they can go forward with the appeal and then pursue whatever legal means are available. He feels they have been honest about their plans for the project and they feel like trespassers on their own property.

M. Hamilton, a high school English teacher and writer, presented a list of twelve reasons why he feels the appeal should be upheld.

3:18 p.m. Recess

3:33 p.m. Persons speaking in opposition to the project:

Frank Long, resident and rancher at 4333 Old Highway, stated he is opposed to the appeal and urged the Board to uphold the decision of the Planning Commission; he feels he has heard very little of substance in what has been presented and the Board should not be threatened; he stated his family owned this property for many years and grazed cattle at a reduced level because it had been overgrazed then and the land began to heal; in the last ten years, it has not been grazed; it has not been overgrazed since the 1950's -- still the damage shows; and he stated the property is a gravelly soil and cannot stand the type of use proposed by the applicants -- it naturally erodes. He further stated that the property was originally zoned Agricultural Exclusive and then changed to Mountain Home and he feels this change was a political payoff by the supervisor of the district at the time to the real estate industry who supported him. He feels a negative declaration is improper for this project -- it does not present overwhelming public interest to grant this permit; it would require a General Plan Amendment and that is not to be taken lightly; there has to be an overriding public interest; and he stated he is not in support of a lot of residential development on this land either. He does not recall Commissioner Radanovich saying they should move the project to Madera; what he heard was that this type of project has never been successful in the foothills, but has been successful closer to Forest Service land in the higher elevations with a cooler climate; he heard him say that it is the right project, but in the wrong place and he also offered to help him find the proper place. He is opposed to the appeal.

Dennis Schoedl presented a map of surrounding properties with property owners opposed to the project marked in red, and advised that the neighboring properties marked in gray are associated with Meherana; stated he opposes this project and feels trespass will be a problem and noted that the top strand of the fence is barbless so people can go over it; he feels the fire hazard is extreme; is concerned with noise impacts; stated he feels there is no indication that the ground water will handle filling a 20,000 gallon storage tank and wells in the area are low-producing; stated he owns the property on the Southeast corner by his mother's parcel; access has blind spots when entering and exiting from the Highway; and he does not feel this a good area for this project.

Rinate Schoedl, mother to Dennis Schoedl and neighboring property owner, stated she feels all of these people would be good neighbors with one at a time; she is concerned with having groups and with fire and water impacts; when the project began, they talked about having up to 500 guests and now the numbers are lower, but she feels this is still a lot of people; she purchased her property in 1989 and likes the natural setting and plans to retire in this year and possibly build on her property; she expressed concern with solid waste and possible impacts to Agua Fria Creek which is nearby; and she noted that there have been over 50 people who are concerned and have sent letters regarding this project.

Dottie Mack, neighbor and property owner for 33 years, stated she opposes the appeal; when Meherana bought this property, it was not zoned or physically suited for this project; expressed concern with fire danger; she feels a campground would lower property values in the neighborhood as she does not feel anyone would want to be a neighbor to camping; and she feels the local residents should not have to defend their right to enjoyment of a rural lifestyle.

Elna Philbert, resident and property owner since 1975 and a local Realtor, stated she objects to the project because of its erosion of property rights of neighboring owners; they purchased their property in good faith knowing their permitted uses and she feels this is an attack on the General Plan; this change could open the door to unlimited challenges of the General Plan in the future; and she does not feel this is the appropriate land use zoning for this project and opposes the project.

Roger Conley, resident for 17 years and lives just over the mountain from this project, stated he is strongly against this project; he is concerned with fire danger and impacts to the water and the Highway intersection safety issues; at the first meeting they heard a lot about their worshipping and feels they would be here recruiting membership, and he disagrees with that.

Tom Canton, resident since 1978 in the area, stated he feels that if you have property, you should be able to walk on it; he does not feel the uses match the property; he noted that notice would be given for inspections of the project and asked who would inspect when they are in violation and who would handle punishment for any violations; and stated he agrees with Commissioner Radanovich that this is the wrong location for this project.

Shirley Pealatore stated her mother owns property neighboring the project; the property is located in a ravine surrounded by hills; she expressed concern with fire danger in the summer season, even a small fire can be dangerous; she feels other phases of the project will increase the number of guests and she feels this is the wrong location for this project; installation of signs does not mean that people will obey them; expressed concern with sewage containment with Agua Fria Creek nearby; and she stated she feels this is a cult.

Chairman Stewart requested that the religious aspects of the project not be addressed, and that the speakers stay with the facts.

Shirley Pealatore continued with stating that she feels this project will lower property values and she agrees with Commissioner Radanovich's comments relative to the project.

Dorina McComb stated she owns property in the area and referred to a pamphlet advertising the Meherana retreat and stated she feels that the people they do business with belong to their group; when she was invited over to see the property and she asked about the source of their food, she was advised that they have a garden and shop in Merced at Costco, etc.; she stated they have already built a cabin and did not need a permit to build it, but it is cute; they have changed their Internet information concerning the retreat; she is concerned with fire danger and does not want a campground. The pamphlet was entered into the record.

Margaret Carter expressed concern with campfires and winds in the area; stated she felt residential use should be encouraged to build the tax base; she does not feel

that guests will be as careful with conserving water as residents would be; she expressed concern with sewer impact and Highway 140 traffic impacts; stated she feels the County should be kept beautiful and noted John C. Fremont's comments about the beauty of the County when he purchased his tract of land.

Larry Gonzales, owns property near Dials Rock Shop, cited differences between city and country people such as people in the city being able to flick their cigarette ashes out the window without thinking, and expressed concern that the guests may not be cognizant of the fire danger here; he noted the creeks are dry and only fed by rainwater runoff, but cut a path for fire; expressed concern with winds and fire danger; asked where the water will be obtained to fill a 20,000 gallon storage tank; he does not feel the present well could supply enough water for a family of six; he does not know of any testing for impacts on water in the area; he cited laws and regulations for organized camping with regards to water requirements; with regards to noise impacts, he noted that if it is your type of noise, it is music, otherwise it is noise; he does not feel the people will respect fences; asked how solid waste disposal will be handled and other impacts such as flies; and urged the Board to support the Planning Commission's decision.

Annie Countz stated she lives on the other side of Guadalupe Grade; she searched for four years to find this property and her criteria was peace and quiet; on a quiet night, the sound really travels and she feels this project would create a noise impact; and she expressed concern with fire danger and stated she is opposed to this project.

Larry Mack, property owner in the area for 33 years, stated the property is zoned Mountain Home and he does not feel this is an allowed use in this zone; he referenced a book he has which defines a campground; cited the following pages and questions in the staff report: page 13/map -- asked about the approved industrial site in the area; page 16/Mountain General -- feels it should state Mountain Home; page 33/Mountain General -- feels it should reflect 40 acres; and page 42/discussion of mitigation for wastewater disposal -- it is not addressed in the report where indicated. He requested that the letters submitted be given the same consideration as the oral testimony; he reviewed impacts addressed in the initial study; he presented a copy of County Code section 17.112.040 and cited sections where he does not feel the projects meets the criteria; and he presented information on an analysis of letters that were presented relative to this project in support and in opposition to the project; and requested that the appeal be denied and the Planning Commission's decision be upheld. On behalf of his son-in-law, he noted that the property that was purchased for this project is not suited and appropriately zoned and the neighbors should not have to suffer the impacts of this project; he feels that when the UC Merced campus is built, this property would make a good residential site; he feels the change from 240 to 48 people is an attempt to get a foot in the door; and he agrees with Commissioner Radanovich that this is a bad location for a campground.

Mark Schricher stated his request is the same as previously presented to deny the rezoning; he purchased property knowing the area was zoned Mountain Home; and he stated it was previously noted that this project was on shaky ground and the applicants still proceeded and now have threatened with a lawsuit if it is not approved.

Dick Kunstman, property owner in the County for 32 years and a permanent resident for 16 years, stated he does not know enough about the project, mitigation measures, legal and environmental aspects to take a position on whether or not he agrees with it; and he questioned the Board's appeal procedures and whether this appeal meets the criteria established by recent revisions as the appeal doesn't have anything to do with procedural issues.

Jay Pawlek, Associate Planner, advised of the receipt of a telephone call from Margie Miller of Catheys Valley expressing her dissatisfaction with the project.

Comments of a general nature:

Patty Olgetree, nearby property owner, stated she has lived here for 16 years and supports this project being nearby.

Jim Hockley stated he owns property in the County and he feels these are some of the quietist and gentleness people; this is better than a rifle range project and asked if anything can be done with regards to the proposed rifle range (another project recently proposed in the County).

Rebuttal:

Christine Pearson stated they do not mean to be threatening in any way; after the Planning Commission decision, they spoke with counsel to see if there is any legal way within the County's parameters that they could proceed with the development; the requested permit is not for a campground, it is for a 48 person occupancy guest ranch retreat; and she feels this land is appropriate for this project and they are happy with it. She reiterated that they are committed to fire safety issues -- they have worked closely with California Division of Forestry to make sure it remains fire safe. This development will keep a large parcel of land intact and it will be improved and benefit surrounding property. In the future, many of the surrounding properties could be developed into five acre parcels. She feels a small guest ranch is a very compatible, permitted use with the surrounding properties and noted the area contains mixed zoning. She feels all mitigation measures fully address all concerns. Affects on the environment have been mitigated and they have changed many things to work with the Planning staff. She thanked Planning staff for their assistance with guiding them through this project.

Staff wind-up:

Ed Johnson responded that with regards to the appeal issue raised by Dick Kunstman, the appeal meets the criteria and does not have to be based on whether a procedure has been violated -- anyone can appeal anything as long as there is a reason. Staff feels this is a project that could be controlled and be compatible with the community with the conditions being imposed; and he advised that this is the final hearing on this application whether it is approved or denied.

Staff responded to questions from the Board relative to the applicant's ability to expand their use in the future; number of residences allowed under current zoning with individual water and sewer systems versus a community system; difference between a guest ranch and a campground; requirements for water, solid waste disposal, sewage disposal, lighting and sound for the project; fire restrictions; and restrictions for outdoor gatherings.

Public portion of the hearing was closed and Board commenced with deliberations. Staff responded to additional questions from the Board relative to encroachment requirements. (M)Parker, (S)Balmain, Res. 97-212 adopted upholding the appeal for Conditional Use Permit No. 240 based on recommended conditions and mitigation measures, with conditions as outlined in the Conditional Use Permit; approval of General Plan/Zoning Amendment No. 95-36; second reading was waived and Ordinance No. 922 adopted modifying the zoning designation on APN 12-160-067 from Mountain Home to Mountain General; and adopting a negative declaration with mitigation measures as recommended by staff, with the additional mitigation measure that no camp fires of any type be authorized during fire season and only in designated areas out of fire season. Following further deliberation, motion was amended, agreeable with maker and second, to modify condition No. 5/use of an outdoor sound system to not exceed 40 decibels at 50 feet from the source of the broadcast, and with the condition that a sound system not be used after 10:00 p.m.; condition No. 6/gathering of people is modified from 8 p.m. to 10:00 p.m.; and condition No. 7/modified to not restrict individual walking access to the property, but maintain the recommended restrictions for groups with regards to the outer edges of the property. Ayes: Reilly, Balmain, Parker, Pickard; Noes: Stewart. Following further discussion, (M)Pickard, (S)Balmain, previous motion was amended to approve camp fires under fire safe conditions and with an approved permit from California

Division of Forestry and with mitigation measures set forth for monitoring conditions and permits and as approved by California Division of Forestry/Ayes: Reilly, Balmain, Pickard; Noes: Stewart, Parker. Hearing was closed.

cc: File