

DEPARTMENT: County Counsel BY: Jeffrey G. Green PHONE: 966-3222

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

Pass and adopt this Resolution authorizing the Chairman to sign an order of the Board to reject Claim No. C95-12 for \$480,000 plus interest. Claimant is requesting a refund of taxes for the 1991/92 fiscal year despite the fact that the Assessment Appeals Board upheld the Assessor's value in June 1993. Based on this information, Counsel does not believe that a refund is warranted and, therefore, the County does not have any liability in this matter.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board usually follows Counsel's recommendation in matters of this nature.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Claim would automatically be denied if no action is taken.

COSTS: (X) Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve for Contingencies, if approved: \$ _____

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

Claim No. C95-12.
Notice of Rejection

CLERK'S USE ONLY:

Res. No.: 15-507 Ord. No. _____

Vote - Ayes: 3 Noes: _____

Absent: Stewart Abstained: _____

Approved _____ () Denied _____

() Minute Order Attached () No Action Necessary

NOT VOTING: Reilly

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

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

Comment: _____

A.O. Initials: *ML*

1 JEFFREY G. GREEN
2 County Counsel
3 P. O. Box 189
4 5100 Bullion St.
5 Mariposa, CA 95338

6 BEFORE THE BOARD OF SUPERVISORS

7 OF

8 MARIPOSA COUNTY, STATE OF CALIFORNIA

9 In the Matter of:)
10 CLAIM FOR DAMAGES PURSUANT)
11 TO GOVERNMENT CODE § 911.6)
12 Claim No. C95-12)

13 Yosemite Concession Services Corporation
14 c/o Richard J. Ayoob, Esq.
15 AJALAT, POLLEY & AYOOB
16 643 South Olive Street, Suite 200
17 Los Angeles, CA 90014-1685

18 having filed with this Board on July 21, 1995 a claim for damages in the amount of
19 \$ 480,000 ;
20 plus interest

21 NOW, THEREFORE, it is ordered by the Board of Supervisors that the claim is
22 hereby REJECTED.

23 The foregoing order was passed by the following vote of the Board:

24 AYES: BALMAIN, PARKER, TABER
25 NOES: NONE
26 ABSENT: STEWART
27 ABSTAINED: NONE
28 NOT VOTING: REILLY

Dated this 28th day of November, 1995.

29 Garry R. Parker
30 GARRY R. PARKER, Chairman
31 Board of Supervisors

32 ATTEST:

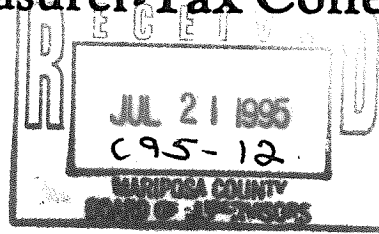
33 Margie Williams
34 MARGIE WILLIAMS, Clerk of the Board



County of Mariposa

Office of Treasurer-Tax Collector

Telephone:
Treasurer-Tax Collector (209) 966-2621
Data Processing (209) 742-6022



Don Z. Phillips
Treasurer-Tax Collector
Hall of Records
P. O. Box 36
Mariposa, CA 95338

REFUND CLAIM

(Applicant must fill in the necessary information.)

Name of applicant: Yosemite Concession Services Corporation (Yosemite Park & Curry Co.) (successor in interest to)

Address of applicant*: c/o Mr. Michael Welch, P.O. Box 578, Yosemite, CA 95389

Assessor's Parcel Number: 27-000230-00 (see attached tax bill, Exhibit B)

Tax payment was made on: September 27, 1991, ~~date~~ October 30, 1992, and April 1, 1993

In accordance with the provisions of Chapter 5, Article 1, of the California Revenue and Taxation Code

(commencing with Section 5096), I am/we are filing this claim with the Mariposa County

Board of Supervisors and ask that a refund of taxes for fiscal year(s) 1991-92 in the

amount of \$ 480,000.00 ** be made in accordance with this application.

**plus interest

I/we claim that the whole assessment/part of the assessment for the year(s) as shown above is/are void for the following reasons:

The taxpayer specifically incorporates by reference all grounds heretofore raised and the evidence submitted in Application Nos. 92-4, SB813-62 and SB813-63, heard before the County of Mariposa Assessment Appeals Board on May 3, 1993, including but not limited to the fact that the assessment (1) under the income approach does not reflect appropriate deductions for expenses incurred by the government landlord or for a reasonable profit to the operator, (2) includes the value of improvements beyond the reasonably anticipated term of the possessory interest, and (3) is unconstitutional under the Supremacy Clause of the United States Constitution and Articles XIII and XIII A of the California Constitution. See attached Exhibit A.

I certify, or declare, under penalty of perjury, that the foregoing is true and correct.
Yosemite Concession Services Corporation

June 6, 19 95

By: [Signature]

Please return to the address above.

*Please send copies of all correspondence to:

Richard J. Ayoob, Esq.
Ajalat, Polley & Ayoob
643 South Olive Street, Suite 200
Los Angeles, CA 90014-1685

The assessment was not made in accordance with provisions of federal and state constitutional, statutory, administrative and case law, including but not limited to Articles XIII and XIII A of the California Constitution and its implementing statutes and regulations. Assessments were not made within the appropriate statutes of limitation. Some of the statutory provisions and administrative rules applied with respect to this assessment are unconstitutional, under the federal and state constitutions. Further, some of the state constitutional provisions are unconstitutional under the federal constitution.

The assessment does not reflect the correct base year, base-year value, nor full cash value of the property. The assessment does not reflect either the lower of a proper base-year value or fair market value. There was no event allowing upward revaluation under Article XIII A since the appropriate base year. The assessment was based on mistaken facts, including but not limited to the date of valuation and the status of completion of the property.

The assessment was based upon an invalid method of valuation. The assessment is not justified by any method of valuation.

To the extent that a valid method of valuation was used, the assessment was based upon an invalid application of that method. The assessment was improperly calculated as to certain elements of value under each method of valuation (including but not limited to the purchase price, and comparable sales, the cash equivalent of the purchase price, the net income to be capitalized, the capitalization rate, the proper costs and the proper adjustments to costs) and includes non-taxable values and non-taxable property. Legal and factual mistakes were made as to the addition of costs to taxpayer's acquisition costs; the inclusion of double-taxed property; the inclusion of property not owned and/or possessed by taxpayer; the use, nature, age, obsolescence, etc. of the property; property assumed to be existing which was not existing; classification of property; the effect of enforceable restrictions; exemption of property; the inclusion of non-typical costs; and the adjustment of actual costs for economic and functional obsolescence.

Each of the grounds for protesting the taxes herein are separate. No ground nor claim of exemption or immunity nor any protest herein is to be deemed as a waiver of any other ground for protesting the taxes herein. Supplementary or clarifying information will be supplied at the request of the taxing authority. Applicant reserves the right to supplement, clarify or delete the above grounds.

EXHIBIT A

PPLEMENTAL PROPERTY TAX STATEMENT FOR THE FISCAL YEAR THROUGH JUNE 30, 1992

COURTAC NUMBER	TAX RATE AREA	PARCEL NUMBER	TAX BILL NO.	TAX RATE	GROSS TAXES
51-004	27-000230-00-02	0992087		1.000	345,279.36
ASSESSMENT INFO		PRIOR VALUE	NEW VALUE	SUPPLEMENTAL	
LAND		1,314,446	25,920,000		24,605,554
IMPROVEMENTS		20,317,617	30,240,000		9,922,383
PERSONAL PROPERTY					
MISCELLANEOUS					
EXEMPTION					
GROSS AMOUNT BEFORE					
PERSONALTY & EXEMPT					
STATE FINANCED					
HOMEOWNER EXEMPTION					
NET TAXABLE VALUE		21,632,063	56,160,000		34,527,937

2ND INSTALLMENT			1ST INSTALLMENT		
IMPORTANT INFORMATION ON THE REVERSE SIDE			IMPORTANT INFORMATION ON THE REVERSE SIDE		
ASSESSOR OWNER NAME AS OF MARCH 1			ASSESSOR OWNER NAME AS OF MARCH 1		
YOSEMITE PARK & CURRY CO.			YOSEMITE PARK & CURRY CO.		
COURTAC	TAX DEFALTED	TAX RATE AREA	COURTAC	TAX DEFALTED	TAX RATE AREA
TOTAL BOTH INSTALLMENTS		TAX BILL NO.	TOTAL BOTH INSTALLMENTS		TAX BILL NO.
345,279.36		0992087	345,279.36		0992087
SECOND INSTALLMENT			FIRST INSTALLMENT		
DUE 2-1-93	DEL 4-10-93		DUE 11-1-92	DEL 12-10-92	
TAX DUE	172,639.68		TAX DUE	172,639.68	
ADD 10% PENALTY AND \$10.00 COST AFTER			ADD 10% PENALTY AFTER		
4-10-93	172,639.68		12-10-92	172,639.68	
TOTAL	172,639.68		TOTAL	172,639.68	
BE SURE TO REPORT ANY ADDRESS CHANGE			BE SURE TO REPORT ANY ADDRESS CHANGE		
SUPPLEMENTAL TAX			SUPPLEMENTAL TAX		
RETURN THIS STUB WITH YOUR PAYMENT			RETURN THIS STUB WITH YOUR PAYMENT		
YOUR CANCELLED CHECK IS YOUR BEST RECEIPT HOWEVER IF YOU REQUIRE AN ADDITIONAL RECEIPT PLEASE RETURN THIS ENTIRE BILL FOR VALIDATION.			YOUR CANCELLED CHECK IS YOUR BEST RECEIPT HOWEVER IF YOU REQUIRE AN ADDITIONAL RECEIPT PLEASE RETURN THIS ENTIRE BILL FOR VALIDATION.		

PROPERTY LOCATED: ...

DATE OF CHANGE IN OWNERSHIP OR NEW CONSTRUCTION OCCURED: 06-30-91 ✓

DATE OF ASSESSOR'S NOTICE: 07-21-92

POSS. INT. NPS CONCESSIONS

BEFORE CALLING THE TAX COLLECTOR PLEASE READ THE BACK SIDE OF THIS BILL

IT IS IMPORTANT THAT YOU READ THIS ENTIRE STATEMENT BEFORE PAYING THIS TAX.

YOSEMITE PARK & CURRY CO.
C/O MIKE WELCH
YOSEMITE PARK & CURRY CO.
YOSEMITE NATL PK, CA 95389

MAKE CHECKS PAYABLE TO:

DON Z. PHILLIPS, TAX COLLECTOR
P.O. BOX 36
MARIPOSA, CA 95338
(209) 966-2621

2 SECOND INSTALLMENT
ADD 10% PENALTY AND \$10.00 COST AFTER 172,639.68

1 FIRST INSTALLMENT
ADD 10% PENALTY AFTER 172,639.68

7/1/91 - 6/30/92

UNSECURED TAX BILLS		FOR THE FISCAL YEAR THROUGH				NOTE
TAX RATE AREA	ACCOUNT NUMBER	TAX BILL NO.	TAX RATE	GROSS TAXES		
51-004	27-000230-00	9101604	.0100	335,926.26	<p>Before calling the Tax Collector, please read the important information on the reverse side of this bill.</p> <p>Please write the ACCOUNT NUMBER on your check, enclose the PAYMENT STUB, and mail them PRIOR to the delinquent date shown.</p> <p><small>YOUR CANCELLED CHECK IS YOUR BEST RECEIPT. HOWEVER, IF YOU REQUIRE AN ADDITIONAL RECEIPT PLEASE RETURN THIS ENTIRE BILL FOR VALIDATION.</small></p>	
ASSESSMENT INFORMATION		FULL VALUE				
		1,314,446				
PERSONAL PROPERTY		21,570,511				
CASUALTY EXEMPTION		10,707,669				
UNFINISHED HOMEOWNER & EXEMPT		33,592,626				
FINANCED HOMEOWNER EXEMPTION						
TAXABLE VALUE		33,592,626				
PROPERTY LOCATION						
SS. INT. NPS CONCESSIONS						
<p>LOCALLY ASSESSED VALUES ARE DETERMINED BY THE ASSESSOR IN ACCORDANCE WITH STATE LAW.</p> <p>ASSESSED OWNER MARCH 1991</p> <p>SEMITE PARK & CURRY CO.</p> <p>SEMITE PARK & CURRY CO.</p> <p>PO MIKE WELCH</p> <p>SEMITE PARK & CURRY CO.</p> <p>SEMITE NATL. PK., CA. 95389.</p> <p>PROPERTY HAS BEEN SOLD PLEASE FORWARD TO NEW OWNER</p> <p>MAKE CHECKS PAYABLE TO:</p> <p>DON Z. PHILLIPS MARIPOSA COUNTY TAX COLLECTOR O. HALL OF RECORDS P.O. BOX 36 MARIPOSA, CA 95338 5097 844-3451</p>						
DUE DATE			GROSS	335,926.26		
			EXEMPT	.00		
NOV 30, 1991			TAX DUE	335,926.26		

TO: Yosemite Concession Services Corporation
c/o Richard J. Ayoob, Esq.
AJALAT, POLLEY & AYOOB
643 South Olive Street, Suite 200
Los Angeles, CA 90014-1685

RE: CLAIM FOR DAMAGES AMOUNT OF CLAIM \$ 480,000
NOTICE OF REJECTION Claim No. C95-12 plus interest

NOTICE IS HEREBY GIVEN that the claim which you presented to the Board of Supervisors of Mariposa County on July 21, 1995 was rejected by action of the Board on November 28, 1995.

WARNING

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim." (See Government Code Section 945.6)

"NOTE: This six-month filing period applies only to State Court actions. If your action is based on federal law and/or you intend to file it in Federal Court, a shorter or longer period within which to file the action may apply."

"You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

JEFFREY G. GREEN
Mariposa County Counsel

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF MARIPOSA:

I am a citizen of the United States and a resident of the County aforesaid. I am over the age of eighteen years and not a party to the within entitled action; my business address is 5100 Bullion Street (P. O. Box 189), Mariposa, CA 95338. On December 5, 1995 I served the within Notice of Rejection of Claim No. C95-12 on the claimant in said action by placing a true copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing a copy into an inter-office delivery receptacle located in Counsel's office:

Yosemite Concession Services Corporation
c/o Richard J. Ayoob, Esq.
AJALAT, POLLEY & AYOOB
643 South Olive Street, Suite 200
Los Angeles, CA 90014-1685

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on December 5, 1995 at Mariposa, California.



Sandra V. Adams