

DEPARTMENT: County Counsel BY: Steven W. Dahlem PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Resolution authorizing the Board of Supervisors to grant back the 1.26 acre property (APN 012-160-083) gifted to the County by Frank and Frances Long for the development of a fire station for the Bridgeport area and direct staff to record a Certificate of Compliance for this parcel together with the adjacent legal parcel (APN 012-180-032 and APN 012-180-026); and direct staff to prepare a legal description for the Certificate of Compliance document.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Mr. and Mrs. Long generously gifted to Mariposa County 1.26 acres of land for the development of a fire station for the Bridgeport area. Unfortunately, it was determined that the site had unsuitable soil for compaction, no adequate area on the site for septic disposal and concerns over the location of the encroachment. Please see attached memo from Sarah Williams, Deputy Planning Director, for a complete account of this gift.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? () Yes (x) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		
Source:		Memo from Sarah Williams, Deputy Planning Director
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.: 11-479 Ord. No. _____
 Vote - Ayes: 4 Noes: _____
 Absent: _____
 Approved _____
 () Minute Order Attached () No Action Necessary

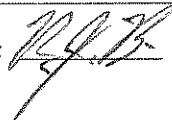
COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
 Comments: _____

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

CAO: 



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April 20, 2011

TO: Board of Supervisors

FROM: Sarah Williams, Deputy Planning Director *SW*

RE: Recommendations for APN 012-160-083; 1.26 Acres Gifted to Mariposa County

Proposal: Staff recommends that the Board of Supervisors grant or quit claim APN 012-160-083 (1.26 acres) back to Frank and Frances Long, the property owners of the adjacent property and the original property owners who gifted the 1.26 acre property to Mariposa County.

Staff recommends that the Board of Supervisors give direction to staff to record a Certificate of Compliance for this APN together with the adjacent legal parcel (APN 012-180-032 and APN 012-180-026) (two APNs together). A legal description will need to be prepared for the Certificate of Compliance document.

Justification for this recommendation is contained within this memorandum.

Location: This APN is located on the easterly side of Yaqui Gulch Road, south of the intersection of Guadalupe Creek Road and Yaqui Gulch Road.

Parcel Creation: This 1.26 acre APN was technically "created" by the recordation of a grant deed to Mariposa County, pursuant to Section 66426.5 of Government Code. The grant deed was recorded as Document No. 974642 on November 3, 1997. The grant deed included an easement for ingress, egress, construction and maintenance of an access road for the exclusive use and benefit of the property and the tracts of land contiguous to the easement. The recorded document also included a letter from Frank and Frances Long "confirming a verbal commitment."

The creation of the parcel did not go through the Subdivision Map Act process; however it was shown on the parcel map for Land Division No. 1457. According to the County Surveyor at that time, "the filing of the parcel map recording the surveyed 1.37 acres would be the appropriate method to describe the area to be deeded to the County." (At the point, the gift was to be slightly larger.)

On Sheet 3 of Parcel Map Book 27 Page 20, recorded on September 5, 1997 for Frank and Frances Long it states:

"Note! 1.26± acres reserved Mariposa County
Conveyance of Land to a public entity is not considered a division of land, Section 66426.5"

Section 66426.5 of the Subdivision Map Act reads:

66426.5. Any conveyance of land to a governmental agency, public entity, public utility or subsidiary of a public utility for conveyance to that public utility for rights-of-way shall not be considered a division of land for purposes of computing the number of parcels (emphasis added). For purposes of this section, any conveyance of land to a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

According to "Curtin's California Land Use and Planning Law"¹, "the exemption [Government Code Section 66426.5], is only from a parcel map requirement" "Even though a map may not be required, dedications and improvements may still be required. The legislative history of the Map Act makes it clear that the intent was only to exempt the mapping requirement and not place the transfer outside the Map Act entirely."

Reason for Gift: Frank and Frances Long gifted the 1.26 acres to Mariposa County for use for development of a fire station for the Bridgeport area. There is information in Planning's file about Mr. Long's request that the county: 1) pave the access apron on the parcel as it would be used for two homes on his property; 2) gravel the access road for the elimination of dust from the access apron to the fire station; and 3) provide a simple cattle fence to protect the site from the Long Ranch cattle.

A site plan was prepared Public Works engineering staff for the site to show location of the fire station, encroachment, parking, well and septic disposal. The preliminary design for the fire station showed a 3-bay structure with a training room, kitchen and restrooms. The site plan showed parking for 4 vehicles.

¹ 2001 Edition; by Daniel J. Curtin, Jr. and Cecily T. Talbert, McCutchen, Doyle, Brown & Enersen, LLP

Issues with Site: Based on the site plan and input from Health Department staff, it was determined that there was not adequate area on the 1.26 acre site for septic disposal (due to on-site soils, an on-site drainage and required setbacks). Frank and Frances Long offered to grant an easement to Mariposa County for leach lines on the adjacent (parent) parcel, adjacent to an existing septic system that serves two mobile homes. Frank and Frances Long also stated their agreement to cooperate with Mariposa County to develop an agreement with regard to maintenance of the septic system that would serve the fire station and both mobile homes (presumably a shared system). The off-site septic system was never completed.

Other issues of concern identified by a past-Public Works Director in a 2001 memo included the characteristics of the on-site soil (existing soil “appears to be unconsolidated mine tailings which would require reworking to obtain suitable compaction”); site elevation relative to Yaqui Gulch Road (necessitates “fill material for sloping driveway”); and location of encroachment on curve on Yaqui Gulch Road (sight distance problems for oncoming traffic).

Issues with Process: The site is in the AE zone, which establishes a minimum parcel size of 160 acres for new parcels. Although staff was certainly aware of the “gift” when it was first being proposed by Mr. and Mrs. Long, staff is unaware of an exemption for minimum parcel size when parcels are created for “gifts to the government”. Staff is also not sure that Section 66426.5 of the Subdivision Map Act was correctly applied to this project.

The property is in a Land Conservation Act Contract, which establishes that land must be used for commercial agricultural purposes. This is in exchange for a tax reduction. There is a process established by state law when a governmental entity is considering acquisition of Land Conservation Act contracted land for a public project. The required process involves notifying the Department of Conservation and examining other available properties for the public project which are not under a LCA Contract. Mariposa County did not follow the process identified in state law when it accepted the 1.26 acres from Frank and Frances Long. The LCA Contract establishes agricultural production and compatible uses which are allowed on LCA Contracted land. A fire station is not an allowed agricultural production or compatible use and would not be allowed to be constructed as long as the LCA contract was in effect.

(Mariposa County had to address these exact same issues for the Lake Don Pedro sewage treatment plant. See Government Code Sections 51290, 51291 and 51292 for required process.)

Conclusion: In conclusion, staff's recommendation to grant the property back to Frank and Frances Long and record a Certificate of Compliance is based on the following:

1. The land was granted to Mariposa County for the purpose of developing a fire station.
2. The 1.26 acre site was not adequate in size for a fire station and necessary infrastructure.
3. The 1.26 acre parcel does not comply with the minimum parcel size for the AE zone, which is 160 acres.
4. The 1.26 acre parcel is not large enough for a viable commercial agricultural operation pursuant to the Land Conservation Act (LCA) contract which encumbers the property.
5. The required processes to address the Land Conservation Act (LCA) contract (Williamson Act) were not followed by Mariposa County.
6. The property is still encumbered by a Land Conservation Act (Williamson Act) Contract.
7. The 1.26 acre site has not had a Certificate of Compliance recorded on it.
8. There is question as to whether proper procedures were followed for acceptance of the property in 1997 in that there was reference to the Public Works Director accepting the property on behalf of the County pursuant to authority provided by Mariposa County Resolution No. 85-249 which is general authority to accept right of way.
9. The creation of the APN did not go through a Subdivision Map Act process.

Alternatives: If the Board of Supervisors only takes action to grant the 1.26 acres back to Frank and Frances Long, and does not take action to record the Certificate of Compliance for the 1.26 acres together with the adjacent legal parcel the effect will be that Frank and Francis Long will own the 1.26 acre APN. The APN was created by recordation of a grant deed for purpose of development of a fire station by a public entity pursuant to Government Code Section 66426.5. The fire station cannot be constructed on the site based on physical limitations of the site as well as limitations of the LCA contract which is in effect on the site (and another parcel has been acquired by the county for the fire station project). The APN does not conform to the minimum parcel size established by the AE zone (Mariposa County Code). The APN is under a Williamson Act Contract and is not large enough to comply with contract requirements to produce commercial agriculture. It is not large enough for issuance of a residential building permit (due to LCA contract provisions). Based on the size of the APN, the state law would not allow processing of a lot line adjustment to make the parcel large enough for commercial agriculture or issuance of a residential building permit [Government Code Section 51257(a)(7)].