

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. C95-13 for \$583,000 plus interest. Claimant is requesting a refund of taxes for the 1992/93 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.

<p>COSTS: (X) Not Applicable</p> <p>A. Budgeted current FY \$ _____</p> <p>B. Total anticipated costs \$ _____</p> <p>C. Required additional funding \$ _____</p> <p>D. Internal transfers \$ _____</p> <p>SOURCE: () 4/5ths Vote Required</p> <p>A. Unanticipated revenues \$ _____</p> <p>B. Reserve for contingencies \$ _____</p> <p>C. Source description: _____</p> <p>Balance in Reserve for Contingencies, if approved: \$ _____</p>	<p>SPECIAL INSTRUCTIONS: List the attachments and number the pages consecutively:</p> <p>Claim No. C95-13. Notice of Rejection</p> <p>_____</p> <p>_____</p>
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CLERK'S USE ONLY: *NOT VOTING: Reilly*

Res. No.: 15-508 Ord. No. _____

Vote - Ayes: 3 Noes: _____

Absent: Stewart 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:
This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: _____

A.O. Initials: MP

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. C95-13)

13 Yosemite Concession Services Corporation
14 c/o Richard J. Ayooob, 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 \$ 583,000;
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

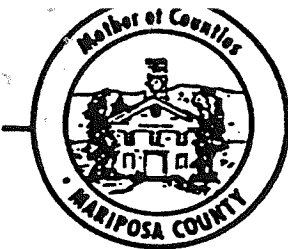
28 NOT VOTING: REILLY

Dated this 28th day of November, 1995.


GARRY R. PARKER, Chairman
Board of Supervisors

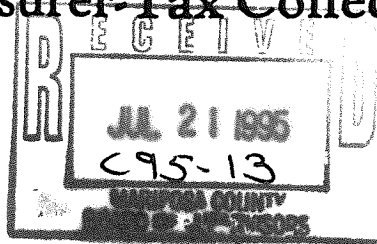
ATTEST:


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.)

(successor in interest to

Name of applicant: Yosemite Concession Services Corporation (Yosemite Park & Curry Co.)

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: August 25, 1992 ~~date(s)~~

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) 1992-93 in the

amount of \$ 583,000.00 ** 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

UNSECURED TAX BILL

FOR THE FISCAL YEAR THROUGH JULY 1, 1992 TO JUNE 30, 1993 MARIPOSA COUNTY

TAX RATE AREA	ACCOUNT NUMBER	TAX BILL NO.	TAX RATE	GROSS TAXES	NOTE	ACCOUNT NUMBER	TAX BILL NO.
51-004	27-000230-00	5201472	1.0000	642,359.77	<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>	27-000230-00	9201432
<p>ASSESSMENT INFORMATION</p> <p>LAND 23,684,000</p> <p>IMPROVEMENTS 28,721,258</p> <p>PERSONAL PROPERTY 11,830,719</p> <p>MISCELLANEOUS EXEMPTION</p> <p>GROSS ASSESS BEFORE HOMEOWNER EXEMPT 64,235,977</p> <p>STATE FINANCED HOMEOWNER EXEMPTION</p> <p>NET TAXABLE VALUE 64,235,977</p>		<p>PROPERTY LOCATION</p> <p>JSS. INT. NPS CONCESSIONS</p> <p><small>LOCALLY ASSESSED VALUES ARE DETERMINED BY THE ASSESSOR IN ACCORDANCE WITH STATE LAW.</small></p> <p>YOSEMITE PARK & CURRY CO.</p> <p>YOSEMITE PARK & CURRY CO. C/O MIKE WELCH YOSEMITE PARK & CURRY CO. YOSEMITE NATL PK, CA 95389</p> <p>IF PROPERTY HAS BEEN SOLD PLEASE FORWARD TO NEW OWNER MAKE CHECKS PAYABLE TO: DON Z. PHILLIPS MARIPOSA COUNTY TAX COLLECTOR CO. HALL OF RECORDS P.O. BOX 36 MARIPOSA, CA 95339 (209) 966-2621</p>		<p>NET TAXABLE VALUE</p> <p>GROSS 642,359.77</p> <p>EXEMPT .00</p> <p>TAX DUE 642,359.77</p>		<p>ASSESSED OWNER ON MARCH 1</p> <p>YOSEMITE PARK & CURRY CO.</p> <p>TAX RATE AREA</p> <p>51-004</p> <p>PAY THIS AMOUNT 642,359.77</p> <p>BY AUG. 31, 1992</p> <p>IF UNPAID SUBJECT TO LEGAL ACTION AND 10% PENALTY AFTER AUG. 31, 1992</p> <p>1 1/2% PENALTY ADDED ON THE 1ST OF EACH MONTH AFTER OCT. 31, 1992</p> <p>TOTAL</p> <p>RETURN THIS STUB WITH YOUR PAYMENT</p>	

UNSECURED TAX PAYMENT STUB

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 \$ 583,000
NOTICE OF REJECTION Claim No. C95-13 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. C95-13 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