

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

DATE: 1-2-90
AGENDA ITEM NO.: RP-7

DEPARTMENT: County Counsel BY: Jeffrey G. Green PHONE: 966-3828

RECOMMENDED ACTION AND JUSTIFICATION:

Pass and adopt this resolution, together with Exhibit "A" entitled "APPEALS PROCEDURE" attached hereto and incorporated herein by this reference, which hereby supersedes and rescinds Resolution No. 85-222 in its entirety.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Resolution No. 85-222 was passed in 1985. The Board has directed County Counsel to revise these procedures to accommodate present needs.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Resolution No. 85-222 would remain in effect.

COSTS: Not Applicable
A. Budgeted current FY \$ _____
B. Total anticipated costs \$ _____
C. Required Add'l funding \$ _____
D. Source: _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:
Exhibit "A"

SOURCE: () 4/5ths Vote Required
A. Internal transfers \$ _____
B. Unanticipated revenues \$ _____
C. Reserve for contingency \$ _____
D. Description: _____
Balance in Reserve for Contingencies, if approved: \$ _____

CLERK'S USE ONLY:
Res. No.: 90-6
Ord. No.: _____
Vote - Ayes: 4 Noes: _____
Absent: None Abstained: _____
 Approved () Denied
() Minute Order Attached

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 of Supervisors
County of Mariposa, State of CA
By: _____
Deputy

Comment: _____
A.O. Initials: [Signature]

APPEALS PROCEDURE

APPLICABILITY OF APPEALS PROCEDURE

These *Procedures*, or the applicable portions, shall apply to all findings or decisions of any County official wherein an appeal therefrom is a matter of right, and there are no other appeal procedures which have been adopted relating thereto.

I

NOTICE TO APPLICANT

Applicants and any other party or parties that have requested notification of the action, in writing, shall be notified in writing, pursuant to County policy of any findings or decision of any County official, commission, hearing officer, etc., not later than ten (10) days from date of decision or findings. A copy of these Appeals Procedure shall be included in the notice where a right of appeal exists.

II

FILING OF APPEALS

A person or persons dissatisfied with the findings or decision of any County official, commission, hearing officer, etc., wherein an appeal therefrom is a matter of right, may appeal to the Board of Supervisors (BOARD), or the Planning Commission (COMMISSION), if applicable, by filing a Notice of Appeal (APPEAL) on a form approved by County, with the Clerk of the Board or the Planning Commission Secretary, as applicable, as follows:

If the appeal is from a land division decision the APPEAL must be filed within ten (10) days from the date of the action taken by COMMISSION, or if the action is by staff or other than the COMMISSION, within ten (10) days from the date of the Notice of Findings, or within ten (10) days of the date the decision is mailed to Appellant if a decision is mailed to Appellant.

In all cases other than an appeal from a land division decision the APPEAL must be filed within twenty (20) days of written determination of the decision or order being appealed.

EXHIBIT "A"

An APPEAL (Notice of Appeal) shall be forwarded to County Counsel by the Clerk receiving the APPEAL no later than the day after the filing of the APPEAL.

If the APPEAL is not timely filed it shall not be accepted by the County for processing.

III

STATEMENT OF GROUNDS FOR APPEAL

On appeals to the BOARD if the APPEAL does not contain sufficient itemization of the basis for the appeal, then the Appellant shall be so notified by County Counsel and Appellant shall file additional written reasons for the appeal to the satisfaction of County Counsel. Any additional reasons for appeal required hereunder and any amendments or supplements to the APPEAL shall be filed no later than fifteen (15) days prior to the hearing date of the appeal.

The evidence considered at the hearing on the APPEAL shall be limited to the issues clearly identified in said written statement with amendments or supplements, filed by Appellant. Copies of the APPEAL and statement of grounds for APPEAL shall be made available to the public and all interested parties, along with copies of these rules, upon request.

IV

HEARING DATE: NOTICE

On an appeal from a subdivision decision the Clerk of the Board shall set a hearing date, which hearing date shall be set not more than thirty (30) days from the date of filing of the APPEAL, unless extended by the BOARD with the consent of applicant.

In all cases other than an appeal from a subdivision decision the hearing shall be set not more than fifty (50) days from the date of filing of the APPEAL, unless extended by the BOARD or COMMISSION with the consent of Appellant or applicant, as necessary.

In no event shall a hearing be set for a time later than ninety (90) days from the date the APPEAL is filed.

Hearing dates for appeals shall be set by the Clerk of the Board or the Planning Commission Secretary to conform to the time frames contained herein.

All appeal hearings on land use matters shall be noticed pursuant

to County policy relative to public hearings.

V

STAFF REPORTS

Written staff reports shall be submitted for inclusion in the BOARD or COMMISSION agenda at least five (5) working days prior to the scheduled hearing, and shall be available to all interested parties from the Clerk of the Board or Planning Commission Secretary. Parties who are not principals in the appeal shall pay the County established rate for copies of the Staff Report.

VI

LETTERS AND STATEMENTS

The BOARD or COMMISSION may receive written statements and letters concerning the appeal at any time prior to commencement of deliberation by the BOARD or COMMISSION, after which no such written evidence will be received into the record. The issues considered shall nevertheless be limited as set forth in Section III above, unless a majority of the BOARD or COMMISSION votes to expand the hearing beyond the issues previously raised. If the written material exceeds ten (10) pages in length then the person submitting the material shall submit eleven (11) copies.

VII

RULES

Rule 1: Copies of Rules

Copies of this Resolution and any amendments hereto shall be made available to the general public and any interested principal parties prior to and during any APPEAL hearing. A copy of this *Appeals Procedure* shall accompany all decisions required to be mailed pursuant to Section I above.

Rule 2: Identification of Witnesses

A. All persons wishing to speak at the hearing must approach the microphone and state their name and address.

B. The following person or persons shall be prohibited from testifying before the BOARD in favor of or against any

position of appeal to the BOARD.

1. Members of a BOARD appointed committee or commission which rendered the decision being appealed.

2. Any County employee or BOARD appointed hearing officer which rendered the decision being appealed. These provisions shall not prohibit County staff from testifying in a case where a County official's decision is appealed directly to the BOARD.

Rule 3: Questions

Any BOARD or COMMISSION member may direct questions through the Chairman to staff and witnesses at any time during the hearing or deliberations. During the deliberation portion of the meeting, answers shall be limited to the specific question only.

Rule 4: Cross-examination

The opportunity to ask questions of persons testifying at the hearing shall be at the discretion of the Chairman. Questions for this purpose shall be directed to the Chairman, identifying the witness from whom an answer is sought. Persons present who have not previously testified shall not be questioned except by the BOARD or COMMISSION.

Rule 5: Continuance of Hearing

All or any portion of the hearing may be continued to a time, date and place certain without further formal notice, provided the continuance is announced to all persons present at the hearing, and is noticed in the BOARD or COMMISSION agenda for the date which the continued hearing will be heard.

Rule 6: Eligibility to Vote

BOARD or COMMISSION members not present during the entire testimony portion of the hearing, or who have not listened to the tapes of the entire testimony, shall not be eligible to vote on the decision. In the event that less than three (3) BOARD or COMMISSION members eligible to vote are present during the testimony portion of the hearing, the Chairman shall continue the hearing until such time as at least three (3) eligible Supervisors or Commissioners are present to hear testimony.

Rule 7: Variance from Rules

These rules and procedures may be varied by a majority vote of the BOARD or COMMISSION.

Rule 8: Record

A record, by tape or otherwise, shall be made of each hearing on appeals processed pursuant to this *Appeals Procedure*. Persons desiring copies of the record may purchase tape copies from the Clerk of the Board or Secretary of the Commission upon reasonable notice, or may arrange for a Certified Court Reporter to be present at their own expense.

Rule 9: Decision

A decision shall be rendered by the BOARD or COMMISSION in the form of a resolution at the conclusion of the deliberation phase.

Rule 10: Findings of Fact

Findings of Fact shall be prepared in all cases where the appealed decision is reversed, and in other cases when a request is received prior to the close of the hearing by a legally interested party. The Findings shall be incorporated in the decision resolution. Findings will be prepared by staff at the direction of the BOARD or COMMISSION.

Rule 11: Rehearing

The BOARD or COMMISSION may, at its sole discretion, rehear a matter if written application is made within fifteen (15) days of the final decision, and the BOARD or COMMISSION finds that substantial new evidence exists which was not available at the previous appeal hearing. A four-fifths (4/5ths) vote shall be required to obtain a rehearing.

Rule 12: Judicial Review

The time within which judicial review of any final decision of the BOARD or COMMISSION must be sought is ninety (90) days from the date of such final decision pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 66499.37, or such other time as required by State Statute in the event of amendment or repeal of the above-cited Statutes.

VIII

CONDUCT OF HEARING

No. 1: Opening of Meeting

The Chairman shall open the meeting and state the purpose and

procedures to be followed. All questions and/or presentations shall be directed to the BOARD or COMMISSION through the Chairman. Any BOARD or COMMISSION member may direct questions to staff and witnesses at any time during the hearing or deliberation process.

No. 2: Staff Presentation

- A. Present Staff report.
 - 1. Oral.
 - 2. Documentary evidence copies for BOARD or COMMISSION if not previously provided. (Copies to Appellant)
 - 3. Staff's report shall contain a recitation of the facts regarding the history of the matter and the decision rendered. Staff may provide a recommendation to the BOARD or COMMISSION.
- B. Questions by BOARD or COMMISSION to staff.

No. 3: Appellant's Presentation

- A. Appellant makes its presentation and presents evidence.
 - 1. Questions by BOARD or COMMISSION.
- B. Other speakers in support of Appellant's position.

No. 4: Opponent's Presentation

- A. Opponents present evidence against issue.
 - 1. Questions by BOARD or COMMISSION.
- B. Other speakers in opposition of Appellant's position.

No. 5: Rebuttal by Appellant

- A. Appellant responds to issues raised by Opponents. No new issues are to be raised by Appellant.
 - 1. Questions by BOARD or COMMISSION.

No. 6: Any Clarification Needed by BOARD or COMMISSION

- A. Staff response to issues raised during public process.
- B. BOARD or COMMISSION members questions either staff,

Appellant or Opponents to clarify any areas of concern, etc.

C. If new evidence is submitted, BOARD or COMMISSION will give all parties an opportunity to respond.

No. 7. Staff Procedural Questions

A. Possible procedural issues raised by staff to presentations.

1. Has evidence been submitted which requires additional staff research or information, or additional comment or testimony from Appellant and/or Opponents.

2. If no additional research or information required, staff reports as to mandatory findings required, procedures, alternative actions, etc.

No. 8. Close Public Portion of Hearing

A. Deliberation - no further input from general public. Staff may provide information regarding mandated procedures only.

1. If BOARD or COMMISSION has additional questions, which call for new evidentiary testimony or documents and new evidence is taken the testimony portion of the meeting shall be reopened, and Appellant and general public shall be allowed to address new evidence.

2. Close public portion of hearing.

B. Continued deliberation.

C. If decision cannot be reached, hearing continued to date and time certain for further deliberation and decision.

D. Decision.

1. Resolution proposed by BOARD or COMMISSION.

a. Motion should contain facts and evidence which was adduced at the hearing to support action, or should direct staff to prepare draft resolution for review and action by BOARD or COMMISSION at a continued meeting of BOARD or COMMISSION, which shall be at a date and time certain.

b. A decision shall be rendered by the BOARD or COMMISSION in the form of a resolution at the conclusion of the deliberation phase.