



Board Agenda Item 12

DATE: July 18, 2023

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Partial Cancellation of Agricultural Land Conservation Contract No. 378 (RLCC No. 1043 - Boparai Farms, a California General Partnership)

RECOMMENDED ACTION(S):

- 1. Consider petition for partial cancellation of Agricultural Land Conservation Contract No. 378 filed by Dirk Poeschel Land Development Services, Inc. on behalf of Boparai Farms, a California General Partnership, to remove a 2.51-acre (gross) portion of a 29.48-acre (gross) parcel from the Williamson Act contract to allow the 2.51 acres to be created as a separate parcel for residential use; and**
- 2. If your Board is able to make all five required Findings listed under Government Code, Section 51282(b), adopt a Resolution authorizing partial cancellation of Agricultural Land Conservation Contract No. 378; and**
- 3. Authorize the Chairman to sign the Certificate of Tentative Cancellation and approve recordation of the Certificate of Cancellation when all conditions included in the Certificate of Tentative Cancellation have been satisfied.**

The subject parcel is located on the north side of E. American Avenue between S. Locan Avenue and S. De Wolf Avenue, approximately two miles northeast of the nearest city limits of the City of Fowler (7916 E American Avenue) (APN 331- 061-67s).

This item comes to your Board with a recommendation for denial (four to zero with two Committee Members absent) from the Agricultural Land Conservation Committee (ALCC) based on its inability to make the required Finding Nos. 2 and 3 listed under Government Code, Section 51282(b). This item pertains to a location in District 1.

This petition for partial cancellation of a contract was filed in conjunction with Variance Application (VA) No. 4108 proposing to allow a 29.48-acre parcel to be divided into a 26.97-acre parcel and a 2.51-acre substandard parcel that contains a single-family residence. The subject parcel is enrolled in the Williamson Act program under Contract No. 378.

The Williamson Act Program limits the use of contracted parcels to commercial agricultural uses for production of food or fiber. Per the County's Williamson Act Guidelines, parcels are required to have at least 20 acres of prime soil and or at least 40 acres of non-prime soil to be eligible to be enrolled in the Williamson Act Program.

The proposed 2.51-acre parcel does not meet the minimum required parcel size to remain under contract.

The applicant submitted a cancellation petition for removal of the 2.51-acre parcel from the Williamson Act program for consideration by the Agricultural Land Conservation Committee and the Board of Supervisors. The subject parcel is in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District, and is designated as Agricultural in the County General Plan.

On April 27, 2023, the Planning Commission approved VA No. 4108 and associated Initial Study (IS) No. 8088 on a vote of 3 to 1 with three Commissioners absent and one Commissioner abstained. No appeal of the Planning Commission's action was filed.

Should your Board determine that all five required cancellation findings can be made, the proposed petition can be approved subject to the following conditions:

1. The applicant shall obtain the necessary land use approvals to create the proposed parcels.
2. The applicant shall pay the Cancellation Fee in the amount of \$18,750.00 as determined by the County Assessor and certified by the Board of Supervisors for issuance of a Certificate of Cancellation by the Board. The Cancellation Fee shall be paid, and a Certificate of Cancellation issued by the Board and recorded prior to recording the map to create the proposed 2.51 acre and 26.97-acre parcels. If the Cancellation Fee is not paid within one year of issuance of the Tentative Certificate of Cancellation, the Cancellation Fee must be re-computed by the Assessor's Office and re-certified by the Board of Supervisors.

ALTERNATIVE ACTION(S):

If your Board determines that any of the required findings cannot be made, your Board must deny the partial cancellation of Agricultural Land Conservation Contract No. 378.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. The applicant paid the application fee of \$3,290.00 for the cost of processing the cancellation petition.

DISCUSSION:

The proposed cancellation petition was presented to the Agricultural Land Conservation Committee on April 12, 2023. In its report to the Committee (Attachment F), staff indicated that they were unable to make Finding Nos. 2 and 3 of the five required findings listed under Government Code, Section 51282(b).

Attachment A is a location map of the subject parcel, Attachment B depicts the zoning of the subject parcel and surrounding area, Attachment C depicts the existing land use of the subject parcel and surrounding parcels, Attachment D is an aerial photograph of the subject parcel, and Attachment E is the site plan provided for VA No. 4108.

REQUIRED FINDINGS:

The proposed petition is being processed under the provisions of Government Code Sections 51282(a)(1) and 51282(b), which allows your Board to grant tentative approval for cancellation of a contract if your Board can make all of the findings listed under Government Code, Section 51282(b).

1. *That the cancellation is for land on which a Notice of Nonrenewal has been served pursuant to Section 51245 of the Government Code.*

An executed Notice of Partial Nonrenewal for Williamson Act Contract No. 378 was accepted by the County Recorder on October 25, 2022 and was assigned Document No. 2022-0131955. Said

Nonrenewal is for the proposed 2.51 acre parcel associated with this petition for partial cancellation.

Based on the above discussion, staff informed the Committee that Finding No. 1 can be made. The Committee concurred with this position.

2. *That the cancellation is not likely to result in the removal of adjacent lands from agricultural use.*

The soil of the 29.48-acre subject parcel is classified as Prime farmland according to the National Resource Conservation Service. The current landowner acquired the subject parcel in 2009 and the parcel is currently planted in almond trees. The subject parcel and the surrounding parcels are designated as Agricultural in the County General Plan, are zoned AE-20 (Exclusive Agricultural, 20-acre minimum parcel size), and are being actively farmed except for an adjoining parcel to the east of the subject parcel.

Areas outside of the County's unincorporated communities that are designated as Agricultural with Zoning Classification of Exclusive Agricultural are areas that are utilized for farming and other agriculturally related uses such as dairies, feedlots, and poultry facilities that the nature of the use would create dust, odor, and flies and therefore, require location in a sparsely populated areas of the County found in rural areas.

Substandard parcels that are created for residential use in areas of the County zoned and designated for agricultural uses will eventually be sold and occupied by persons who are not involved with agricultural operations and therefore, are not tolerant of the inconveniences associated with the agricultural operations. This will create incompatibility between the agricultural and residential use of land located in proximity of each other and may eventually result in the removal of adjacent lands from agricultural operation due to complaints from non-farmers residing on substandard residential parcels.

Based on the above discussion, staff informed the Committee that the proposed cancellation may result in the removal of adjacent lands from agricultural use and therefore, Finding No. 2 cannot be made. The Committee concurred with this position.

3. *That the cancellation is for an alternative use that is consistent with the provisions of the County General Plan.*

The subject parcel is designated as Agricultural in the County General Plan and is zoned AE-20. The Agricultural and Land Use Element of the County General Plan sets goals and policies promoting long term conservation of productive agricultural lands. General Plan Policy LU A.1 states that the County shall maintain agriculturally designated areas for agricultural use and shall direct urban growth to cities and unincorporated communities. General Plan Policy LU A.6 states that the County shall maintain twenty (20) acres as the minimum permitted parcel size in areas designated as Agricultural. General Plan Policy LU A.7 states that the County shall generally deny requests to create parcels less than the minimum size specified in Policy LU A.6 based on concerns that such parcels would be less viable economic farming units and the resultant increase in residential density would increase the potential for conflict with normal agricultural practices on adjacent parcels. General Plan Policy LU A.12 requires protection of agricultural activities from encroachment of incompatible uses. General Plan Policy LU A.13 states that the County shall protect agricultural operations from conflicts with non agricultural uses and protection of agricultural activities from encroachment of incompatible uses.

Based on the above discussion, staff informed the Committee that the proposal to create a 2.51 acre substandard parcel in an area of the County designated as Agricultural is not consistent with General Plan Policies LU A.1, LU A.6, LU A.7, LU A.12, and LU A.13 and therefore, Finding No. 3 cannot be made. The Committee concurred with this position.

4. *That the cancellation will not result in discontinuous patterns of urban development.*

The existing 29.48-acre parcel is located approximately two miles northeast of the nearest city limits of the City of Fowler in the unincorporated area of Fresno County. The proposed 2.51-acre parcel in and of itself does not result in a discontinuous pattern of urban development.

Based on the above discussion, staff informed the Committee that Finding No. 4 can be made. The Committee concurred with this position.

5. *That there is no proximate non-contracted land that is both available and suitable for the use to which it is proposed that the contracted land be put, or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.*

County staff generated a list of non-contracted parcels approximately 2.5 acres in size located within a five-mile radius of the existing parcel and utilized online tools to determine whether the parcels are for sale. In this case, none of the approximately 2.5-acre parcels were for sale.

Based on staff's research, none of the non-contracted parcels of similar size were available for the alternative use and therefore, staff informed the Committee that Finding No. 5 can be made. The Committee concurred with this position.

AGRICULTURAL LAND CONSERVATION COMMITTEE RECOMMENDATION:

As stated above, at the April 12, 2023 meeting, the committee received staff's presentation and testimony from the applicants' representative and after considering the matter, the ALCC recommended that your Board deny the proposed petition based on the inability to make required Finding Nos. 2, and 3 listed under Government Code, Section 51282(b).

ENVIRONMENTAL DETERMINATION:

Initial Study (IS) Application No. 8088 was prepared for VA No. 4108 to address the potential environmental impacts associated with the proposed VA application to allow creation of a substandard 2.51-acre parcel and removal of the substandard parcel from the Williamson Act contract. The IS concluded that creation of the proposed 2.51-acre parcel will not result in a significant impact on the environment.

PUBLIC HEARING NOTICE:

Landowners subject to a Williamson Act Land Conservation Contract within one mile of the subject parcel were provided notice of both the ALCC meeting and today's hearing per Government Code Section 51284. The notice was also published in the Fresno Business Journal, which is a newspaper of general circulation.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - F
On file with Clerk - Resolution
On file with Clerk - Certificate of Tentative Cancellation

CAO ANALYST:

Salvador Espino