



Board Agenda Item 7

DATE: March 25, 2025

TO: Board of Supervisors

SUBMITTED BY: Oscar J. Garcia, CPA, Auditor-Controller/Treasurer-Tax Collector

SUBJECT: Hearing on Petition to Rescind March 2024 Tax Sale of APN 085-080-13

RECOMMENDED ACTION(S):

Conduct hearing on petition by Bernard J. Austin, Trustee, on behalf of California Pacific Land Trust, to rescind the County's sale of APN 085-080-13, described as "40 AC SW1/4 OF SW1/4 SEC 16 T21R17," open land located near Guijarral Hills, at the County's March 14 through 15, 2024 sale of tax-defaulted properties.

The property identified by Assessor's Parcel Number (APN) 085-080-13 (Subject Property) was sold at the County's annual sale of tax-defaulted properties on March 14 through 15, 2024 (Tax Sale). Before the Tax Sale, the Property was assessed to California Pacific Land Trust and Fernandez Elroy Trustee. (Previous Assessee). California Pacific Land Trust owned a 96% interest. The Purchaser of the Property at the Tax Sale was Gutierrez Properties LLC (Purchaser). On January 10, 2025, Bernard J. Austin (Petitioner), as Trustee of the California Pacific Land Trust, submitted a letter petitioning to rescind that sale and requesting a hearing on that petition (Petition). The recommended action allows Petitioner to present his case for rescission and gives the Purchaser an opportunity to present his objections to the petition, if any. This item pertains to a location in District 4.

Staff recommends that your Board deny the petition.

ALTERNATIVE ACTION(S):

There is no alternative action. The Petitioner has a right to a hearing before your Board on this matter, and an obligation to request such a hearing before he may file a lawsuit against the County on this matter, if he wishes to do so (Revenue and Taxation Code § 3725(a)(1)).

FISCAL IMPACT:

If your Board rescinds the sale, the County would be required to issue a refund to the Purchaser of the amount paid as the total purchase price at the Tax Sale (\$120,532.55), plus interest at the greater of 3% annually or the County pool apportioned rate from the date of the purchase of the property at the tax sale until the date of the rescission. Interest that would be due through March 25, 2025, is estimated to be \$3,734.86. If the order to rescind were to occur on a later date, the amount of interest would be higher. If your Board decides not to rescind the sale, then there would be no Net County Cost due to a refund.

DISCUSSION:

Before the Tax Sale, the ACTTC issued all legally required notices. These included sending tax bills to the Previous Assessee at the address they provided, as well as recording a Notice of Power to Sell on July 15, 2022. Additionally, a notice of the tax sale was mailed via certified mail on January 26, 2024, to the address

that was provided by the Previous Assessee.

On March 14, 2024, the Subject Property was sold at the Tax Sale, for the price of \$120,532.55, to the Purchaser.

On December 7, 2024, the County received a letter by certified mail from the Petitioner with the subject "Request for Public Records Pursuant to the California Public Records Act (Cal. Gov. Code § 6250 et seq.)." In that letter, the Petitioner requested access to and copies of the following public records pertaining to the Subject Property APN 085-080-13

- Records related to the March 2024 tax Sale of the Subject Property such as copies of any notices of delinquency sent to property owners or interested parties, records of certified mailing or other service attempts made to notify interested parties, records of returned sale notices, documents used to identify and verify interested parties for the sale, copies of any internal reports, notes, or emails discussing the tax sale of these parcels, copies of any records showing excess proceeds from the tax sale, including the total amount generated and any disbursements, records of any title reports, research, or assessments conducted in connection with the tax sale of the Subject Property.
- Any policies, procedures, or internal guidelines for conducting tax sale in Fresno County, including those in effect from January 1, 2023, to the present.
- Historical records involving the Subject Property such as any notes, charts, payments, notices, or other correspondence in the ACTTC's files referencing the subject properties from 2012 to the present.

In his PRA request, the Petitioner identified himself only as an attorney, and not as a trustee of the Previous Assessee.

On December 20, 2024, the ACTTC responded by letter and provided the public records requested for the Subject Property. The ACTTC explained in the letter that 085-080-13-02 represents a segregated bill for the Subject Property, in which separate owners of the Subject Property receive separate bills for their portions of ownership.

On January 10, 2025, the Petitioner submitted a petition to Fresno County Board of Supervisor with the subject "Petition to the County of Fresno Board of Supervisors to Rescind the Sale of A Tax Deed Pursuant to Revenue and Taxation Code §3731." In summary, the Petition alleges:

- That the Previous Assessee's property, consisting of a 96% undivided interest in the Subject Property, was stripped away without advance warning or opportunity for redemption.
- That the Petitioner recorded a Notice of Pending Action (Lis Pendens) on April 20, 2013 serving as constructive notice to any interested party that title to the Subject Property was subject to dispute and that Previous Assessee's claims were actively being litigated.
- That the Previous Assessee did not receive any prior notice of the tax delinquency or the upcoming Tax Sale, but only learned of it afterward.
- That the Previous Assessee was not properly notified because the address County mailed the notice to is no longer in use.
- That after the certified mail to the Previous Assessee with notice of the Tax Sale was returned, the County should have performed a search to determine the Petitioner's current address.
- That the Petitioner, who identifies himself as trustee and counsel of the Previous Assessee, had previously paid taxes on the Subject Property, before the default, and the County was therefore

obligated to search out the Petitioner's business address, for example through the California State Bar website.

- That the Previous Assessee's due process rights demand direct notice to owners of property subject to a tax sale.
- That the County failed to search out the Petitioner's contact information from public directories based on his previous payment history for the Subject Property, and his capacity in relation to the Previous Assessee, as its trustee and legal counsel, which he alleges the County should have known .

The Petition requests a hearing under Revenue and Taxation Code section 3731. That section provides for a hearing before your Board on a request to rescind the sale of tax-defaulted property.

After receiving the Petition, the ACTTC gave notice of the hearing to the Purchaser as required by law (Revenue and Taxation Code § 3731(b)). The notice was sent on January 24, 2025. With that notice, the ACTTC informed both the Petitioner and the Purchaser that, if they had any written materials, such as evidentiary documentation, written legal arguments, presentation slides, or the like, that they wished to present to your Board at the hearing, they must submit those materials to the ACTTC no later than three weeks before the hearing, which was March 25, 2025.

During the hearing, the ACTTC intends to present evidence that:

- In 2010, the Previous Assessee received title to the Subject Property by a set of Quitclaim Deeds (recorded as document numbers 2010-0156106, 2010-0168890, and 2010-0168891), all of which stated that tax statements were to be mailed to the Previous Assessee, California Pacific Land Trust, at 2730 Gateway Oak Dr. Suite 100, Sacramento, CA 95833. That is the address that went on the tax roll. The Petitioner Mr. Austin is not named anywhere in those documents, as trustee, attorney, or otherwise .
- In 2013, the Petitioner as attorney for the Previous Assessee, recorded a Notice of Pending Action (recorded document number 2013-0062566), also known as a "Lis Pendens." The Notice of Pending Action puts the world on constructive notice that there is a pending lawsuit in which a real property claim is alleged. It does not prohibit sales or transfers of the property. Further, California Revenue and Taxation Code Section 4807 provides that "no injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected." That means a Notice of Pending Action cannot stop a sale of tax-defaulted property.
- On June 28, 2013, the Fresno County Superior Court entered a "Stipulated Order Adjudicating Property Interests" for the Subject Property, which confirmed the Previous Assessee's interest in the Subject Property. The Petitioner is listed in the caption of that document, and signed that document as the attorney for the Previous Assessee. Two years later, on June 30, 2015, the Petitioner recorded that document (recorded document number 2015-0083463). In both the caption on the 2013 order and the cover page for the 2015, the Petitioner listed his address as 2064 South Willow Ave. #7, Fresno, CA 93727. Nothing in that document states any other addresses for the Previous Assessee and nothing in that document purported to change the mailing address for the Previous Assessee. Further, nothing in that document identifies the Petitioner as the trustee of the Previous Assessee.
- On August 19, 2013, the Fresno County Superior Court entered a "Stipulated Final Judgment of Partition Adjudication Property Interests in Parcel Number 085-080-13 and Order of Sale." The Petitioner's name is listed in the caption of that document, and the petitioner signed that document, but the Petitioner *did not record that document* until more than a decade later, on April 8, 2024 (recorded document number 2024-0032048), as discussed below. Also, as with the order recorded in 2015, nothing in that document identifies the Petitioner as the trustee of the Previous Assessee.
- For the tax years 2016-2017 through 2022-23, the property tax bills for the Subject Property continued to

be mailed to the Previous Assessee at the address shown on the tax roll for the assessee of the Subject Property, which was 2730 Gateway Oaks Dr. # 100 Sacramento CA 95833, as stated in the 2010 Quitclaim Deed.

- Neither the Previous Assessee nor the Petitioner filed an address change for the Previous Assessee with the Assessor's office after the 2010 Quitclaim Deeds.
- On January 25, 2016, the Petitioner made a payment to redeem the Subject Property from going to the March 2017 tax sale, the address provided at the time was 2064 S Willow Ave # 7 Fresno CA 93727, the same address shown on the 2015 recorded document.
- In December 2016 and April 2017, the Previous Assessee failed to pay the property taxes on the Subject Property, which means the Subject Property became tax-defaulted after June 30, 2017.
- On January 26, 2024, Notice of Tax Sale was mailed to the Previous Assessee at the address shown on the tax roll for the assessee of the Subject Property, which was still 2730 Gateway Oaks Dr. # 100 Sacramento CA 95833, as well as other addresses obtained from County title search process, which included the address 2064 S Willow Ave 7 Fresno CA 93727, which was identified as the Petitioner's address on the recorded Stipulated Final Judgment of Partition (recorded document number 2015-0083463). That is also the address that was provided with the 2016 payment by the Petitioner, as stated above.
- After the initial party of interest notice was sent out in January 2024, the Tax Collector continued to do skip tracing, including for the Previous Assessee.
- On April 8, 2024, several weeks *after* the Tax Sale, the Petitioner finally recorded (as recorded document number 2024-0032048) the Stipulated Judgment that the Fresno County Superior Court had entered in 2013, over a decade earlier. On the 2024 recording cover page for that document, the Petitioner listed a new address for himself: PO Box 1619, Crestline, CA 92325. That was the first recorded document relating to the Subject Property showing that address. By that time, however, the Tax Sale had already occurred, so it was too late to send notice of the Tax Sale to that address.
- On January 8, 2025, almost 10 months after the Tax Sale, the Petitioner also recorded an Amended Judgment of Partition and Order of Sale (APN 085-080-13) was recorded (document number 2025-0001836). On its recording cover page, that document also stated the address for the Petitioner at PO Box 1619 Crestline CA 92325. That is the first recorded document establishing that Charmla K. Capanaro was a 4% owner of the Subject Property. But because this document was not recorded until many months after the Tax Sale deed was recorded, Charmla K. Capanaro was not a party of interest that would be required to receive notice prior to the Tax Sale. So it is not true that the Tax Sale is impaired because this person did not receive notice.
- California Revenue and Taxation Code 3701 states that the "tax collector shall make a reasonable effort to obtain the name and last known mailing address of parties of interest." In addition, that the "validity of any sale under this chapter shall not be affected if the tax collector's reasonable effort fails to disclose the name and last known mailing address of parties of interest or if a party of interest does not receive the mailed notice." The ACTTC intends to show that a reasonable effort was made to skip trace address information for parties of interest-which includes lienholders and titleholders of record, as shown in recorded documents, but does not include attorneys or other representatives of such persons-for the tax sale notices that were returned.
- When the Previous Assessee failed to pay the property taxes on the Subject Property by June 30, 2017, the ACTTC followed statutory requirements to send the Previous Assessee the annual delinquency notice, courtesy impending power to sell notice, impending power to sell notice and party of interest notice. The ACTTC recorded the Notice of Power to Sell on July 15, 2022, which put the world on notice that the Subject Property was at risk of being sold by the ACTTC. Before the tax sale, on January 31,

2024, the ACTTC also published the tax sale parcel in Business Journal.

- At no time between the 2010 Quit Claim deed and the Tax Sale did the Petitioner or the Previous Assessee submit a change of address to the Assessor's office.

In essence, the Petitioner's position is that, even though neither he nor the Previous Assessee apprised the County of any change in address, the ACTTC should not just have searched for new addresses of the Previous Assessee, but also should have searched for new addresses of the Petitioner. The Petitioner's reason for this argument is that he believes the ACTTC should have known that the Petitioner was a trustee and attorney of the Previous Assessee. There are two problems with this. First, no recorded document identifies the Petitioner as the trustee of the Previous Assessee. Second, there is no requirement of the law that the ACTTC must try to find the address of an attorney or other alleged representative of a property owner.

If the ACTTC were required to seek out attorneys or other representatives of property owners, efforts to satisfy such a requirement would be cost prohibitive. Such efforts are not necessary to satisfy the requirements of due process. Property owners have an affirmative obligation to pay their property taxes and the Previous Assessee failed to satisfy that obligation here. The Previous Assessee also failed to notify the County of any change in its mailing address. The ACTTC undertook numerous forms of notice of the Tax Sale of the Subject Property but the Previous Assessee failed to redeem the Subject Property. Also, the Petitioner, who on two prior occasions had redeemed the Subject Property from tax sale, failed to do so again here.

Findings Required to Rescind the Sale of Tax-Defaulted Property

To rescind the Tax Sale of the Property, your Board must make the following findings, based on the testimony, documents, and arguments presented during the hearing:

1. The Property should not have been sold.
2. The Property has not been transferred or conveyed by the Purchaser to a "bona fide purchaser for value" since the deed to the Purchaser was recorded on April 29, 2024.
3. The Property has not become subject to a "bona fide encumbrance for value" since the deed to the Purchaser was recorded on April 29, 2024.
4. The Purchaser received notice of the hearing as required by Revenue and Taxation Code Section 3731, subdivision (b)(2)

Staff believes, and will recommend to your Board, that there is not sufficient evidence to make the first required finding. Examples of when property "should not have been sold" at a tax sale include: (1) when the property was timely redeemed, but then erroneously listed for auction and sold; (2) when the property owner filed for bankruptcy, which should have stopped the sale, but the Tax Collector proceeded to sell the property anyway; or (3) when the Tax Collector failed to give all notices required by law before the sale. In this case, the Property was not redeemed, there was no bankruptcy filing, and the Tax Collector gave all notices required by law before the sale. The Tax Collector also made reasonable efforts to find the address of the Previous Assessee. Although the Petitioner argues that the Tax Collector was *also* obligated to seek out *his* address, as the trustee and attorney for the Previous Assessee, that is not the requirement of the law.

Excess Proceeds

The Petitioner has been notified by the Notice of Tax Sale that, if the sale of the Subject Property is sold at auction, he has the right to claim excess proceeds that remain after the tax and assessment liens and costs

of sale are satisfied. There is \$112,065.81 in excess proceeds from the Tax Sale of the Property. The Petitioner submitted his claim for excess proceeds on February 2025 to Tax Collector Office prior to the April 29, 2025 filing deadline.

Under Revenue and Taxation Code section 4675, subdivision (e)(2)(A), however, because your Board has been petitioned to rescind the Tax Sale of the Property, if your Board determines that the sale should not be rescinded, then excess proceeds may not be distributed until one year after the date of that determination, and only if the Petitioner does not commence a proceeding in court to challenge the Tax Sale of the Property.

REFERENCE MATERIAL:

BAI # 22, December 12, 2023

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Petition to Request for Hearing Regarding Property Parcel No. 085-080-13
On file with Clerk - Tax Collector Documentation
Tax Collector PowerPoint Presentation

CAO ANALYST:

Paige Benavides