



# Board Agenda Item 9

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DATE: May 23, 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. 152 (RLCC No. 1028 - Sample Trust)

RECOMMENDED ACTION:

1. **Consider petition for partial cancellation of Agricultural Land Conservation Contract No. 152 filed by Patrick W. Sample and Georgia J. Sample family Trust to remove a 2.41-acre portion of a 42.93-acre parcel from the Williamson Act contract to allow the creation of a 2.41-acre parcel for residential use; and**
2. **If your Board is able to make all five required findings listed under Government Code, Section 51282(b), take the following actions:**
  - a. **Adopt the Negative Declaration prepared for the Initial Study 8242; and**
  - b. **Adopt Resolution authorizing partial cancellation of Agricultural Land Conservation Contract No. 152; and**
  - c. **Authorize the Chairman to sign the Certificate of Tentative Cancellation and approve recording the Certificate of Cancellation when all conditions included in the Certificate of Tentative Cancellation have been satisfied.**

**The subject parcel is located on the west side of Watts Valley Road approximately one quarter mile north of its intersection with Bull Run Lane, approximately eight miles east of the nearest city limits of the City of Clovis (18613 Watts Valley Road) (APN: 158-021-61).**

This item comes to your Board with a recommendation for denial (on a three to zero vote with one Committee Member absent and one Committee member abstained) from the Agricultural Land Conservation Committee (ALCC) based on the Committee's inability to make Finding Nos. 2, 3, and 5 of the five required findings listed under Government Code, Section 51282(b). This item pertains to a location in District 5.

This petition for partial contract cancellation was filed in conjunction with Pre-Application for Certificate of Compliance (PCOC) Application No. 3535 proposing to allow the creation of a 2.41-acre homesite parcel from a 42.93-acre parcel enrolled in the Williamson Act Program under Contract No. 152.

The subject parcel is located in the AE-40 (Exclusive Agricultural, 40-acre minimum parcel size) Zone District and is designated as Eastside Rangeland in the Sierra-North Regional Plan. Section 816.5-A.2 of the Fresno County Zoning Ordinance allows creation of homesite parcels in the AE-40 Zone District smaller than the 40-acre minimum parcel size requirement of the AE-40 Zone District, but not to exceed 2.5 acres, if

the proposed homesite parcel meets certain criteria as defined in the Zoning Ordinance.

For land that is enrolled in the Williamson Act program, the landowner is allowed to convey a portion of the land to a person related by adoption, blood, or marriage if the person is involved in the farming of the entire parcel. For land that the soil is classification as Prime, the homesite exception parcel must be 10 acres. The exception provision also requires execution of a "Declaration of Intent and Acknowledgement of Potential Consequences of Unauthorized Conveyance" and a "Joint Management Agreement" to farm the parcels together for the duration of the contract. In this case, the applicant chose not to consider a 10-acre gift-deed parcel and instead submitted a Petition to remove the proposed 2.41-acre parcel from the Williamson Act program.

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

1. The applicant shall obtain all the necessary land use approvals to create the homesite parcel.
2. The applicant shall pay the cancellation fee in the amount of \$10,000 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 the Board and recorded prior to recording the map to create the 2.41-acre parcel.

#### ALTERNATIVE ACTION:

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. 152.

#### 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:

On November 9, 2022, staff presented the proposed cancellation petition to the ALCC. In its report to the Committee (Attachment "F"), staff indicated that they were unable to make Finding Nos. 2, 3, and 5 of the five required findings listed under Government Code, Section 51282(b).

Attachment "A" is the 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 including the 2.41-acre portion subject to this cancellation petition, and Attachment "E" is the proposed PCOC map.

The applicant's representative addressed the Committee regarding staff's inability to make Finding Nos. 2, 3, and 5. The representative stated Finding Nos. 2 and 3 can be made because the agricultural use of the area is limited to livestock grazing that does not expose people to inconveniences associated with more intensive agricultural uses such as odors and the spraying of herbicides and pesticides. Regarding Finding No. 5, the applicant's representative stated that he did not notify the applicant that there is a non-contracted parcel available for sale and that the applicant must contact the real estate agent.

After considering staff's presentation and public testimony, the Committee recommended on a three to zero vote (with one Committee Member absent and one Committee member abstained) that your Board deny the proposed petition based on the Committee's inability to make Finding Nos. 2, 3, and 5 of the five required findings listed under Government Code, Section 51282(b).

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. 152 was accepted by the County Recorder on November 24, 2021 and was assigned Document No. 2021-0194870. Said Nonrenewal is for the proposed 2.41-acre homesite 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 existing 42.93-acre parcel contains soil that is classified as non-prime on the California Department of Conservation Important Farmland Map, is designated as Eastside Rangeland in the Sierra-North Regional Plan, and is zoned AE-40 (Exclusive Agricultural, 40-acre minimum parcel size). The subject parcel has been in the family since the 1940s and is utilized for livestock grazing. Surrounding parcels to the north, south, east, and west are also utilized for livestock grazing.

Areas outside of the County's unincorporated communities that are designated as Agricultural with Zoning Classification of Exclusive Agricultural are areas that are suitable for grazing, farming, and other agriculturally related uses such as dairies, feedlots, and poultry facilities that would create dust, odor, and flies and therefore, require location in a sparsely populated areas of the County found in rural areas. It is very likely that substandard parcels created for residential use in areas of the County zoned and designated for agricultural uses to 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

Additionally, allowing cancellation of the Williamson Act contract for creation of the proposed homesite parcel may set a precedent for other landowners to create similar residential parcels in the area, which would compound the incompatibility between agricultural and residential land uses in an area of the County zoned and designated for agricultural use.

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 existing 42.93-acre parcel is designated as Eastside Rangeland in the Sierra-North Regional Plan and is zoned AE-40 (Exclusive Agricultural, 40-acre minimum parcel size). According to Sierra-North Regional Plan Policy 402-01:1.00.b, Eastside Rangeland shall mean land designated for grazing and other agricultural operations, wildlife habitat, various non-intensive recreational activities, and other appropriate open space functions. Further, Section 402-01 of the Sierra-North Regional Plan states that the Land Use Element of the Sierra-North Regional Plan is consistent with the Land

Use Element of the County General Plan and therefore, is subject to Countywide goals, objectives, criteria, and standards.

The Agriculture 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 2.41-acre homesite 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 42.93-acre parcel is located in an unincorporated area of Fresno County approximately eight miles east of the City of Clovis. The proposal to create a 2.41-acre homesite parcel in and of itself does not constitute a pattern of discontinuous 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.*

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, one of the approximately 2.5-acre non-contracted parcels was for sale.

On September 7, 2022, staff sent an email to the applicant instructing them to contact the listing real estate agent to discuss purchasing the approximately 2.5-acre non-contracted parcel for the alternative use.

On September 27, 2022, staff sent a second email to the applicant instructing them to contact the listing real estate agent to discuss purchasing the approximately 2.5-acre non-contracted parcel for the alternative use. The applicant did not make contact with the agent to discuss acquiring the available non-concentrated parcel for residential use.

Due to a comparable non-contracted parcel being available in the vicinity of the proposed homesite parcel and the applicant not pursuing the possibility of utilizing the comparable non-contracted parcel for the alternative use, staff informed the Committee that Finding No. 5 cannot be made. The Committee concurred with this position.

AGRICULTURAL LAND CONSERVATION COMMITTEE PUBLIC MEETING:

The ALCC reviews petitions for cancellation of Williamson Act Contracts and provides recommendations to your Board. As stated above, at the November 9, 2022, 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 the required Finding Nos. 2, 3, and 5 listed under Government Code, Section 51282(b).

ENVIRONMENTAL DETERMINATION:

Initial Study (IS) No. 8242 prepared for PCOC Application No. 3535 addresses potential environmental impacts associated with the cancellation of the contract. The IS was completed and was circulated for agency review on June 24, 2022, and is included in the agenda packet as attachment "G".

PUBLIC HEARING NOTICE:

Landowners subject to a Williamson Act Land Conservation Contract within one mile of the subject parcel were provided notice of 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 - G

On file with Clerk - Resolution

On file with Clerk - Certificate of Tentative Cancellation

CAO ANALYST:

Salvador Espino