



Board Agenda Item 12

DATE: July 13, 2021

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. 2592 (RLCC No. 1017)

RECOMMENDED ACTION:

- 1. Consider petition for partial Cancellation of Agricultural Land Conservation Contract No. 2592 filed by David Morrison Brinkley and Kelly Lynn Harman to remove a 1.50-acre portion of a 32.96-acre parcel from the Williamson Act contract to create a separate parcel for residential use;**
- 2. If your Board is able to make all five required Consistency Findings listed under Government Code, Section 51282(b), adopt a Resolution authorizing partial Cancellation of Agricultural Land Conservation Contract No. 2592;**
- 3. Adopt the Negative Declaration prepared to address the potential environmental impacts associated with the proposed PCOC No. 3529 to split off 1.5 acres from a 32.96-acre parcel as a homesite parcel and the cancellation of the Williamson Act contract on the 1.5-acre parcel (Initial Study No. 7940); and**
- 4. 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.**

This item comes to your Board with a recommendation for denial of the cancellation petition by the Agricultural Land Conservation Committee (ALCC) based on its inability to make required Finding No. 3 listed under Government Code, Section 51282(b).

The subject parcel is located on the north side of Shain Avenue between Evans Avenue and Fairfax Avenue, approximately two and a half miles southeast of the nearest city limits of the City of Dos Palos (15976 Evans Avenue) (APN 001-280-14). This item pertains to a location in District 1.

This Petition for partial Cancellation was filed in conjunction with Pre-Application for Certificate of Compliance (PCOC) Application No. 3529, which proposes to create a 1.50-acre homesite parcel from an existing 32.96-acre parcel located in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. The subject parcel is currently planted as a vineyard.

The County's Williamson Act Guidelines require parcels to have at least 20 acres of prime soil and an active agricultural operation or at least 40 acres of non-prime soil and an active agricultural operation to be eligible

to remain in the Williamson Act Program. Therefore, the proposed 1.50-acre homesite parcel will not be eligible to be enrolled in the Williamson Act Program, thus the applicants have filed a petition to remove the proposed 1.50-acre homesite parcel from the Williamson Act contract.

ALTERNATIVE ACTION:

If your Board determines that all of the required findings can be made, your Board may approve the partial cancellation of Agricultural Land Conservation Contract No. 2592, subject to the following conditions:

1. The landowners shall obtain the necessary land use approval (PCOC) to create the 1.50-acre homesite parcel.
2. The applicants shall pay the Cancellation Fee in the amount of \$6,250 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 prior to recording the PCOC to create the 1.50-acre homesite parcel. The Cancellation Fee will be forwarded to the State Department of Conservation by the County Auditor.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. The applicants paid the application fee of \$3,290 for the cost of processing the cancellation petition.

DISCUSSION:

The applicants filed this petition for partial cancellation of Agricultural Land Conservation Contract (ALCC) No. 2592 in conjunction with PCOC Application No. 3529, which proposes to create a 1.50-acre homesite parcel from an existing 32.96-acre parcel located in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. Due to proposed size of the homesite parcel at less than two acres, and parcel size limitations placed on properties served by individual septic systems through the County's adopted Local Agency Management Plan (LAMP), the property owner submitted for a Nitrogen Loading Analysis (NLA) through the Department of Public Works and Planning. The NLA for this property was approved in June of this year.

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, and Attachment D is an aerial photograph of the subject parcel including the 1.50-acre portion subject to the cancellation.

On April 7, 2021 staff presented the proposed cancellation petition to the Agricultural Land Conservation Committee (Committee). In its report to the Committee, Attachment E, staff indicated that they were unable to make Finding Nos. 2 and 3 of the five required findings and therefore, staff recommended that the Committee recommend that your Board deny the proposed cancellation petition.

The applicants' representative addressed the Committee regarding staff's inability to make Finding Nos. 2 and 3. The representative asserted that the occupant of the homesite parcel is expected to be involved with farming operation, the proposed homesite already has an existing house located thereon and no further development is being sought by the applicants, the Zoning Ordinance permits houses in agricultural areas by right, and creation of homesite parcels is allowed by the General Plan. Staff informed the Committee that the subject parcel is under Williamson Act contract and therefore, to allow the proposed 1.50-acre homesite parcel to be created as a separate parcel, the proposed homesite parcel must first be removed from the Williamson Act program. In order to approve the petition to remove the subject parcel from the Program, the decision-making body must be able to make all five consistency findings listed under Government Code, Section 51282(b).

After considering staff's presentation and public testimony, the Committee recommended on a unanimous vote (4 to 0 with two Committee Members absent) that your Board deny the proposed petition based on the inability to make required Finding No. 3 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. 2592 was accepted by the County Recorder on January 26, 2021 and was assigned Document No. 2021-0011919. This Nonrenewal is for the proposed 1.50-acre homesite parcel associated with the Petition for Partial Cancellation of the contract on the homesite parcel.

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 County's Williamson Act Guidelines require parcels to have at least 20 acres of prime soil and an active agricultural operation or at least 40 acres of non-prime soil and an active agricultural operation to be eligible to remain in the Williamson Act Program.

The existing 32.96-acre parcel contains soils classified as Prime Farmland and Farmland of Statewide Importance on the California Department of Conservation Important Farmland Map. The current property owners acquired the existing 32.96-acre parcel in 2019 and have utilized the parcel as a vineyard. Additionally, neighboring parcels are designated as Agricultural in the County General Plan, are zoned AE-20 (Exclusive Agricultural, 20-acre minimum parcel size), and are actively farmed.

With respect to Finding No. 2, the existing house was permitted on the subject contracted parcel for the occupancy of the property owner who farms the land. The petition proposes to remove a 1.50-acre portion of the 32.96-acre parcel from the Williamson Act program to separate the house from the rest of the 32.96-acre parcel through a mapping application. Substandard parcels that are created for residential uses will eventually be occupied by persons who are not involved with agricultural operations. As such, non-farmers who will reside on such parcels are not tolerant of the inconveniences that are associated with agricultural uses that are allowed in areas of the County that are zoned and designated for active agricultural uses such as dust, application of pesticides and herbicides, odor and flies generated by animal confinement facilities such as dairies, feedlots, poultry operations, and other similar uses that by the nature of the operation require a location in a sparsely populated area found in agricultural areas of the County.

The proposed residential parcel may result in the removal of adjacent lands from agricultural operations due to restrictions placed on agricultural uses resulting from incompatibility between agricultural and residential uses.

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. Although staff could not make this Finding, the Committee was able to make Finding No. 2.

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

The existing 32.96-acre parcel is designated as Agricultural in the County General Plan and is zoned AE-20 (Exclusive Agricultural, 20-acre minimum parcel size). The Agriculture and Land Use Element of the 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 Agriculture. 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.

Based on the above discussion, staff informed the Committee that the proposed alternative use is not consistent with County General Plan policies, particularly policy LU-A.12 which requires protection of agricultural activities from the encroachment of incompatible uses and policy LU-A.13 which states that the County shall protect agricultural operations from conflicts with non-agricultural uses 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.*

Considering that the proposal entails creation of a single residential parcel in conjunction with the subject property being located approximately two and a half miles southeast of the nearest city limits of the City of Dos Palos, it does not appear that the proposed alternative use represents 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.*

Finding No. 5 requires search for non-contracted parcels that are available and suitable to accommodate the proposed alternative use. If there are comparable size parcels identified to accommodate the proposed alternative use, the applicant must address why none of the parcels are available and suitable to accommodate the proposed alternative use.

Staff generated a map and list of non-contracted parcels approximately 1.50 acres in size located within a five-mile radius of the existing parcel and sent letters to the owners of these non-contracted parcels requesting that said owners notify staff if their parcels are for sale. Staff was not contacted by any of the landowners within the five-mile radius of the subject parcel about the availability of their parcels for the proposed use.

Based on the above discussion, staff informed the Committee that Finding No. 5 can be made. The Committee concurred with this position.

AGRICULTURAL LAND CONSERVATION COMMITTEE PUBLIC MEETING:

The Committee reviews petitions for cancellation of Williamson Act Contracts and provides recommendations to your Board. As stated above, at its April 7, 2021 meeting, the Committee received staff's presentation and testimony from the applicants' representative and after considering the matter, the Committee recommended on a unanimous vote of four to zero that your Board deny the proposed petition based on the inability to make required Finding No. 3 listed under Government Code, Section 51282(b).

ENVIRONMENTAL DETERMINATION:

Initial Study (IS) No. 7940 was prepared for PCOC No. 3529 to address the potential environmental impacts associated with the cancellation of the Williamson Act contract on the proposed 1.5-acre residential parcel and concluded that creation of the proposed homesite parcel in and of itself will not result in a significant impact on the environment. IS No. 7940 was circulated through the State Clearinghouse on June 4, 2021, for the required 30-day review period. During that period, no significant comments were received. A copy of IS No. 7940 is attached as Attachment F. The Negative Declaration prepared for the IS is attached as Attachment G.

PUBLIC HEARING NOTICE:

The State of California Department of Conservation (DOC) and all landowners within one quarter mile of the subject property were provided notice of today's hearing, and the notice was also published.

ATTACHMENTS INCLUDED AND/OR ON FILE:

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

CAO ANALYST:

Ron Alexander