



# Board Agenda Item 8

DATE: November 28, 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.  
1090 (RLCC No. 1033 - Rosemarie and Phil Braun)

RECOMMENDED ACTION(S):

1. **Consider petition for partial cancellation of Agricultural Land Conservation Contract No. 1090 filed by Dale G. Mell & Associates on behalf of Rosemarie and Phil Braun, to remove a 2.36-acre portion of a 29.94-acre parcel from the Williamson Act contract to allow the 2.36 acres to be created as a separate parcel for residential use through a Variance Application (VA) to waive the minimum parcel size and Mapping application; 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 7949; and**
  - b) **Adopt Resolution authorizing partial cancellation of Agricultural Land Conservation Contract No. 1090; 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 at the northeast corner of E. American Avenue and S. Navelencia Avenue, approximately four miles west of the nearest boundary limits of the City of Orange Cove (22756 E. American) (APN 185-161-47).**

This item comes to your Board with a recommendation for denial from the Agricultural Land Conservation Committee (ALCC) based on ALCC's 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 4.

This petition for partial cancellation of a contract was filed in conjunction with (VA) No. 4099 proposing to allow a 29.94-acre parcel to be divided into a 27.58-acre parcel and a 2.36-acre substandard parcel that contains a single-family residence. The subject parcel is enrolled in the Williamson Act program under Contract No. 1090. The property owners have stated in the application materials submitted for VA No. 4099 that it is their intent to create a separate, legal 2.36-acre parcel which contains the exiting homesite to permit them to continue to live on their property. The balance of the property is currently planted in orchards. No action has been taken on VA No. 4099. Should your Board approve this cancellation request, the VA No. 4099 will be brought before the Fresno County Planning Commission for consideration.

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 2.36-acre parcel does not meet the minimum required parcel size to remain under contract. The applicant submitted a cancellation petition for removal of the 2.36-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.

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 \$15,625.00 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 2.36-acre and 27.58-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. 1090.

#### 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 ALCC on September 13, 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. 4099.

#### 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. 1090 was accepted by the County Recorder on September 8, 2022 and was assigned Document No. 2022-0112772. Said Nonrenewal is for the proposed 2.36-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 29.94-acre subject parcel contains a combination of Prime and Non-Prime soil according to the National Resources Conservation Service and has been utilized as a citrus orchard. 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.

Areas outside of the County's unincorporated communities that are designated as Agricultural with Zoning Classification of Exclusive Agricultural are areas that are intended to be 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.

Goal LU-A of the County General Plan is to promote the long-term conservation of productive and potentially- productive agricultural lands and to accommodate agricultural-support services and agriculturally related activities that support the viability of agriculture and further the County's economic development goals.

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 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 2.36-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 subject parcel is located at the northeast corner of East American Avenue and South Navelencia Avenue, approximately four miles west of the nearest boundary limits of the City of Orange Cove. The proposal to create a substandard 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.*

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 RECOMENDATION:

As stated above, at the September 13, 2023 meeting, the Committee received staff's presentation and testimony from the applicant's representative and after deliberation, recommended that your Board deny the proposed petition based on the inability to make the required Finding Nos. 2, and 3 listed under Government Code, Section 51282(b).

ENVIRONMENTAL DETERMINATION:

Initial Study (IS) No. 7949 prepared for VA No. 4099 addresses potential environmental impacts associated with the cancellation of the contract. The IS was completed and was circulated for agency review on June 14, 2023 and is included in the agenda packet as attachment "G" along with the draft Negative Declaration.

PUBLIC HEARING NOTICE:

Williamson Act contracted landowners 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 - G  
On file with Clerk - Resolution

On file with Clerk - Certificate of Tentative Cancellation

CAO ANALYST:

Salvador Espino