



# Board Agenda Item 16

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DATE: November 7, 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(S):

1. **Consider petition for partial cancellation of Agricultural Land Conservation Contract No. 152 filed by Dale G. Mell on behalf of 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 homesite exception 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 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 was originally presented to your Board on May 23, 2023. At that hearing, your Board on a vote of 4 to 1 continued the item to be heard within 30 days as the applicant's representative or the applicant were not present to provide information as to how Findings Nos. 2, 3, and 5 of the five required cancellation Findings could be made. During the hearing, Staff did clarify that the applicant's representative has been informed of the May 23, 2023, hearing and according to the applicant's representative, he will be in attendance.

This item was placed on the June 20, 2023, Board agenda. A day prior to the hearing, the applicant contacted the Office of Supervisor District No. 5 and requested that the item be continued to a date uncertain due to the applicant being unable to attend the hearing because of an accident. Following the request, the item was continued to a date uncertain. On August 24, 2023, the applicant's representative contacted Department staff and requested that the item be place on the Board Agenda for consideration.

This item comes to your Board with a recommendation for denial 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 exception 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 exception 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 exception parcel meets certain criteria as defined in the Zoning Ordinance, which are if the lot is intended for use by a person related to the owner by adoption, blood, or marriage within the second degree of consanguinity, and involved in the farming operation.

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, or blood if the person is involved in the farming of the entire parcel. For land that the soil is classified as non-Prime, the parcel size must be a minimum of 80-acres and the homesite exception parcel must be 40 acres. Due to the soil quality and the parcel size, the provision would not work in this case.

Should your Board determine that all five required cancellation findings can be made. Your Board can approve the proposed cancellation petition 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. 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 concurs that 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 applicants paid the application fee of \$3,290 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 Findings 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 that 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 that your Board deny the proposed petition based on the Committee's inability to make Findings 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(b), which allows your Board to grant tentative approval for cancellation of a contract if your Board can make all of the five 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.

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 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 contains soil that is classified as non-prime according to the National Resources Conservation Services, and been 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 are designated and zoned for agricultural uses including farming, grazing, 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 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 parcels.

Additionally, allowing cancellation of the Williamson Act contract for creation of the proposed homesite parcel may set a precedent for creation of 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 is likely to 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. 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 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.

As noted, the intent and size of the proposed parcel meets the homesite exception provisions of the General Plan and Zoning Ordinance and if the site were not under Williamson Act contract, this proposal would be processed solely by a mapping application.

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's representative instructing the representative 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's representative instructing to remind the representative that he must contact the listing real estate agent to discuss purchasing the approximately 2.5-acre non-contracted parcel for the alternative use. No contact was made with the real estate agent to discuss acquiring the available non-contracted parcel for the alternative 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 If the cancellation petition meets the required findings listed under Government Code Section 51282(b). 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 on the inability to make required Finding Nos. 2, 3, and 5 listed under Government Code, Section 51282(b).

ENVIORNMENTAL 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" along with the draft Negative Declaration.

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.

REFERENCE MATERIAL:

BAI #5, June 20, 2023  
BAI #9, May 23, 2023

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