



Board Agenda Item 15

DATE: May 9, 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. 1152 (RLCC No. 1042 - Hewitson, Limited Partnership)

RECOMMENDED ACTION:

1. **Consider petition for partial cancellation of Agricultural Land Conservation Contract No. 1042 filed by Quad Knopf, Inc. on behalf of Hewitson, Limited Partnership, to remove a 40.00-acre parcel from the Williamson Act contract to establish a solar electrical generation facility; and**
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. 1042; and**
3. **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.**

The subject parcel is located on the north side of Manning Avenue, between Interstate 5 and Fairfax Avenue, approximately thirteen miles southwest of the nearest city limits of the City of Mendota (APNs 027- 121-15s).

This item comes to your Board with a unanimous recommendation for denial (four to zero with two Committee Members absent) from the Agricultural Land Conservation Committee (ALCC) based on its inability to make required Finding No. 3 listed under Government Code, Section 51282(b). This item pertains to a location in District 1.

This petition for partial contract cancellation was filed in conjunction with Unclassified Conditional Use Permit (UCUP) No. 3742 proposing to allow development of the subject 40.00-acre parcel for a photovoltaic solar electrical generation facility. Approval of the subsequent Conditional Use Permit application is required to establish the solar facility. The subject 40.00-acre parcel is located within the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District, is designated as Agriculture in the County General Plan and is enrolled in the Williamson Act Program under Contract No. 1152. The existing 40.00-acre parcel has not been farmed for more than ten years.

On March 23, 2023, after considering staff's presentation and public testimony, the Planning Commission approved UCUP No. 3742 and associated Initial Study (IS) No. 8320 on a unanimous vote of 6 to 0 with two Commissioners absent. No appeal of the Planning Commission's action was filed.

The Williamson Act Program limits land uses on contracted parcels to commercial agricultural operations,

compatible uses adopted by the Board of Supervisors, and certain qualified open space uses. The proposed solar facility is not a permitted or a compatible use on land enrolled in the Williamson Act program in Fresno County. Therefore, the applicant has submitted a petition to remove the 40.00-acre project site from the Williamson Act program through the cancellation process.

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 the necessary land use approvals to establish a solar electrical generation facility.
2. The applicant shall pay the Cancellation Fee in the amount of \$43,750.00 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 prior to approving the Conditional Use Permit to establish the proposed solar generation facility. 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:

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. 1152.

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 March 8, 2023, staff presented the proposed cancellation petition to the Agricultural Land Conservation Committee. In its report to the Committee (Attachment F), staff indicated that they were unable to make Findings No. 2 and No. 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 from UCUP No. 3742.

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.*

On January 31, 2023, an executed Notice of Partial Nonrenewal for Williamson Act Contract No. 1152 was accepted by the County Recorder for the 40.00 acres of land petitioned to be removed from the contract through RLCC No. 1042.

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 soil of the 40.00-acre parcel is classified as "Grade 2- Good" according to the NRCS and is therefore, meets the definition of "Prime Agricultural Land" under Government Code Section 51201(c) (1).

According to the written response to the five required Cancellation Findings provided by the landowner's representative, no water service has been established with the Westlands Water District for the subject 40-acre parcel. However, according to a letter provided by the Westlands Water District, the subject parcel is eligible to receive water from the district's agricultural water service contract.

The subject 40-acre parcel has soil that is qualified as "Prime" and is eligible to receive irrigation water from the Westlands agricultural water service contract and therefore, the subject parcel is capable of being actively farmed, similar to the surrounding parcels. According to Government Code Section 51282(d), lack of landowner's interest in utilizing the subject for agricultural use is not a sufficient reason for cancellation of the contract on a parcel.

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 subject parcel is designated as Agricultural in the County General Plan and is zoned AE-20 Zone District. 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 Agricultural and Land Use Element of the County General Plan promotes 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.12 states that in adopting land use policies, regulations and programs, the County shall seek to protect agricultural activities from encroachment of incompatible land uses.

Development of the subject parcel into a photovoltaic solar electrical generation facility would allow encroachment of a non-agricultural use into an area designated and zoned for intensive farming and other agricultural related uses.

General Plan Policy LU-A.16 promotes the use of agricultural land preservation programs such as land trusts; conservation easements; Williamson Act contracts; the California Farmland Conservancy Program Fund; transfer of development rights, etc. to improve the competitive capabilities of farms and ranches, thereby ensuring long-term conservation of viable agricultural operations.

The proposed petition is to remove a 40-acre parcel of land that has been enrolled in the Williamson Act since 1970 from the program to develop the parcel into a photovoltaic solar generation facility. The 40-acre site has Prime soil and has irrigation water available to it to farm the land.

Per Government Code Section 51282(d)., lack of landowner's interest in utilizing the subject parcel

for agricultural use is not a sufficient reason for cancellation of the contract on a parcel of land. If the landowner is not interested in farming the subject parcel, the parcel could be sold to an individual who is willing to farm the land.

Based on the above discussion, staff informed the Committee that the proposal to create a 40-acre parcel for a solar generation facility in an area of the County designated as Agricultural is not consistent with General Plan Policies LU-A.12, and LU-A.16 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 40.00-acre parcel is located approximately thirteen miles southwest of the nearest city limits of the City of Mendota. The proposed petition to remove the subject 40-acre parcel from the Williamson Act contract to develop the site into a photovoltaic solar electrical generation facility will not result in 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.

Staff generated a list of non-contracted parcels approximately two 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 40.00-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 PUBLIC MEETING:

The ALCC reviews petitions for cancellation of Williamson Act Contracts and provides recommendations to your Board. As stated above, at the March 8, 2023 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 required Finding No. 3 listed under Government Code, Section 51282(b).

ENVIRONMENTAL DETERMINATION:

The Planning Commission at its March 23, 2023, public hearing considered UCUP No. 3742 and its associated Initial Study (IS) Application No. 8230. For the UCUP to be implemented a series of project mitigation measures and conditions of approval must be met, including preparation of a reclamation plan agreement with adequate financial securities which will be brought to your Board later for consideration.

PUBLIC HEARING NOTICE:

Landowners subject to a Williamson Act Land Conservation Contract 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 - F

On file with Clerk - Resolution

On file with Clerk - Certificate of Tentative Cancellation

CAO ANALYST:

Salvador Espino