



Board Agenda Item 6

DATE: August 22, 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. 2568 (RLCC No. 1044 - Jesus and Maria Leon)

RECOMMENDED ACTION(S):

1. **Consider petition for partial cancellation of Agricultural Land Conservation Contract No. 2568 filed by Dirk Poeschel Land Development Services, Inc. on behalf of Maria and Jesus Leon, to remove a 2.01-acre portion of a 20.00-acre (gross) parcel from the Williamson Act contract to allow the creation of a 2.01-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 8326; and**
 - b. **Adopt Resolution authorizing partial cancellation of Agricultural Land Conservation Contract No. 2568; 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 at the southeast corner of S. Fowler Avenue and E. Rose Avenue, approximately three miles west of the nearest boundary limits of the City of Selma (11610 S. Fowler Avenue) (APN 385-031-29).

This item comes to your Board with a recommendation for denial (four to one with one Committee Member absent) from the Agricultural Land Conservation Committee (ALCC) based on its inability to make the required Finding No. 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 Pre-Application for Certificate of Compliance (PCOC) Application No. 3540 proposing to allow the creation of a 2.01-acre homesite exception parcel from a 20.00-acre parcel enrolled in the Williamson Act Program under Contract No. 2568.

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 and an active farming or a qualified agricultural use to be eligible to be enrolled in the Williamson Act Program.

The subject parcel is located in the AE 20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District and is designated as Agricultural in the Fresno County General Plan. Section 816.5 A.2 of the Fresno County Zoning Ordinance states that a homesite exception parcels less than the minimum acreage indicated by the district acreage designation, but not greater than 2.5 gross acres may be permitted in the Exclusive Agricultural Zone District, if the proposed parcel meets certain criteria as defined in the Zoning Ordinance.

One of the criteria is that the parcel is intended as a conveyance or devise exclusively for use by a person related to the owner by adoption, blood, or marriage within the second degree of consanguinity and only for persons involved in the farming operation; the existing lot before division contains a minimum of twenty (20) gross acres; there is only one (1) lot per related person, or per related married couple, and there is no more than one lot per each twenty (20) gross acres. Since homesite exception parcels of 2.5 acres or less is created as a separate parcel, it does not meet the minimum parcel size to remain enrolled in the Williamson Act program.

For land that is enrolled in the Williamson Act program, the landowner may convey a portion of the land as a homesite exception (gift-deed) to a person meeting the criteria above. For land that has soil classified as Prime, the gift-deed parcel must be 10 acres and for soil classified as non-Prime soil, the parcel must be 40 acres. This gift-deed provision on contracted land requires execution of a "Declaration of Intent and Acknowledgement of Potential Consequences of Unauthorized Conveyance" and a "Joint Management Agreement" to farm the parcels as one unit 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 2.01-acre parcel from the Williamson Act program.

Should your Board determine that all five required cancellation findings listed under Government Code, Section 51282(b) 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 2.01-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 determines that any of the required findings cannot be made, your Board must deny the partial cancellation of Agricultural Land Conservation Contract No. 2568.

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 Agricultural Land Conservation Committee on June 14, 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 PCOC No. 3540.

REQUIRED FINDINGS:

The proposed petition is being processed under the provisions of Government Code Section 51282(b), which allows your Board to grant tentative approval for cancellation of a contract if your Board can make 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. 2568 was accepted by the County Recorder on January 13, 2023 and was assigned Document No. 2023-0003401. Said Nonrenewal is for the 20-acre parcel which includes the 2.01-acre parcel subject to this petition for partial cancellation as the balance of the subject parcel does not meet the minimum 20-acre parcel size to remain under the Williamson Act contract.

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 20.00-acre subject parcel contains soil that is classified as Prime according to the National Resources Conservation Service. The subject parcel has been utilized as a vineyard. 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.

Areas outside of the County's unincorporated communities that are designated as Agricultural with Zoning Classification of Exclusive Agricultural are areas that are utilized for farming and other agriculturally related uses such as dairies, feedlots, and poultry facilities that 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 could 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 could 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. 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. The Agricultural 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 2.01-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.

It should be noted that the homesite exception proposal meets the General Plan intent to provide homesites for relatives of the farming family. However, in this case, it is the 10-acre Williamson Act minimum requirement for this homesite exception parcel which poses the issue.

4. *That the cancellation will not result in discontinuous patterns of urban development.*

The existing 20.00-acre parcel is located approximately three miles west of the nearest limits of the City of Selma in the unincorporated area of Fresno County. The proposal to create a homesite exception 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 of approximately the same size as the proposed substandard parcel located within a five-mile radius of the subject parcel and utilized online tools to determine whether the parcels are for sale. In this case, none of the approximately same size parcels within a five-mile radius 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 RECOMMENDATION:

As stated above, at the June 14, 2023 meeting, the Committee received staff's presentation and testimony from the applicants' representative and after deliberation, the ALCC on a vote of four to one 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). The no vote was from a Committee member who believed both Finding Nos. 2 and 3 could not be made.

ENVIRONMENTAL DETERMINATION:

Initial Study (IS) No. 8326 prepared for PCOC Application No. 3540 addresses potential environmental impacts associated with the creation of the homesite exception including cancellation of the contract. The IS was completed and was circulated for agency review on May 8, 2023 and is included in the agenda packet as Attachment "G" with a copy of the Draft Negative Declaration.

PUBLIC HEARING NOTICE:

Landowners subject to a Williamson Act contract within a 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