

ITEM # 4A

JANUARY 05, 2016

BOARD OF SUPERVISOR'S MEETING

CDRA / PLANNING

Cancellation of an Agricultural

Preserve and Williamson Act

Contract, and Minor Land Division

(PMLD 20140162) – Rickey-Reese

CORRESPONDENCE RECEIVED

PRIOR TO THE MEETING



PUBLIC INTEREST COALITION
P.O. BOX 671, LOOMIS, CA 95650



December 29, 2015

Placer County Board of Supervisors
175 Fulweiler Ave
Auburn, CA 95603

Ladies and Gentlemen:

RE: Williamson Act Cancellation Request (oppose) v Non-Renewal (support)

The California Land Conservation Act of 1965, also known as the “Williamson Act” (WA), has been a hallmark for conservation of agricultural (ag) land and open space preservation for half a century. With generous property tax relief incentives for qualified landowners, the WA is highly respected and provides important public benefits not only for food security and fiber production but also for preservation of natural resources and ecological diversity balances. “Cancellation” is reserved for very rare or emergency situations; “non-renewal” roll out is the preferred process that is called for in this situation.

With the current Rickey-Reese WA contract cancellation request, we urge the Placer County Board of Supervisors (BOS) to deny it—in part because it ignores the WA’s revered intentions, contradicts the County’s statement that cancellation can be approved only under extraordinary circumstances,¹ shortcuts the CA Department of Conservation’s (DOC) stated preference for a legitimate and specified “non-renewal” of a binding contract via the roll-out process, and is an inappropriate abuse of the WA. In a CA Supreme Court decision [cited below] the analysis stated, “In order to deny the tax benefits of the act to short term speculators and developers of urban fringe land and to insure that the constitutional requirement of an “enforceable restriction” is met, the Legislature deliberately required a long-term commitment to agriculture or other open-space use.”

The WA code (51280.1)² specifically states: “...the finding of a board or council that ‘cancellation and alternative use will not result in discontinuous patterns of urban development’ authorizes, **but does not require** [bold added], the board or council to cancel a contract if it finds that the alternative use will be rural in character and that the alternative use will result within the foreseeable future in a contiguous pattern of development within the relevant subregion. The board or council is not required to find that the alternative use will be immediately contiguous to like development....”

Therefore, there is no compelling mandate to approve the cancellation of this Rickey-Reese WA contract. To approve this cancellation compromises the integrity and intention of this most important act and relegates it to nothing more than a false-pretense tax shelter.

Cancellation Not Justified

The WA code (51282a) contains two findings, of which one must be met for a cancellation. We submit that neither is met.

¹ Placer County Code, 17.64.150 Cancellation, first paragraph.

² (CA Code Section 51280-51287), <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=51001-52000&file=51280-51287>

The first finding states that the board or council may grant tentative approval for cancellation if it finds that the cancellation is “consistent with the purposes of this chapter.” For purposes of consistency, it then lists five findings of which all must be made before the cancellation can be approved. This cancellation request is not consistent with the purposes or the intent of the WA, especially with the following unmet requirement: Item (2)—that cancellation is not likely to result in the removal of adjacent lands from agricultural use. We submit that with this cancellation, the adjacent parcels that are not in WA contracts, and even the ones that are, are highly likely to be removed from existing, ongoing ag uses. It’s a consistent pattern of development, a Domino effect that will result in future loss of ag lands and open space.

Item (5) is applicable if there is no proximate noncontracted land which is both available and suitable for the use to which the proposed contracted land is slated. The applicants may claim that there is no land available for similar development; we disagree. There may be no land on the market in the dead of winter, but there are most likely plenty of parcels of noncontracted land available both presently for “the right price” and most likely in a few months (Spring) when the real estate market usually picks up. Furthermore, the WA states that “such nonrestricted land may be a single parcel or may be a combination of contiguous or discontinuous parcels,” which increases the possibilities.

The second finding that may be made is that “the cancellation is in the public interest.” As stated in the Planning Commission’s December 10, 2015, staff report, “*The Department [CA’s Dept of Conservation] has found that cancellations are in the public interest when the parcel(s) proposed for cancellation are **not** [emphasis added] located on lands classified as Prime Farmland, Unique farmland, or Farmland of Statewide Importance, as shown on the Important Farmland Maps.*” We submit that loss, termination or reduction of ag operations and/or open space, which results in real or potential reduced food production and sustainable farming or ranching activities are not in the public interest, especially in this case with its Farmlands of Importance designations.

In the previously mentioned and cited below case, the CA Supreme Court’s narrative that denied cancellation, with regard to a “public interest” finding, it tackled that “imprecise phrase” by stating that the City [Hayward] “read into the statute a refinement that [is] neither explicit nor implicit in its provisions.” It concluded that the legislature’s intent and Gov’t Code Sec 51223 declared that agreements limiting the use of land to agriculture are in the public interest. Furthermore, it concluded (1) that the WA public interest is justified by the assurance of adequate, healthful and nutritious food; and (2) “Inasmuch as a decision that cancellation is in the public interest reflects the conclusion that continued restriction is contrary to the public interest, the criteria for originally restricting the use of the land seem equally relevant to cancellation. Thus, preservation of land in agricultural production is of paramount importance.”

Judicial concern was expressed with regard to an apparent willingness to consider the existing use unprofitable and insignificant despite the fact that it is the same use to which the land was put when the WA contract was originally signed. Contrary to applicants’ claims, surrounding suburban development does not designate or result in the subject property’s being unsuitable for ag use and economically unfeasible. But even if it was economically unfeasible, the existing WA contractual agreement has two clear statements which clearly do not support cancellation:

First: “The **uneconomic** character of the existing use may be considered **only if there is no other reasonable or comparable ag use to which the land may be put.**”

[bold added] The very fact that the property consists of “Farmland of Statewide Importance” is a strong indicator that the land would support most agricultural endeavors.

The applicants may claim a non-economic justification for cancellation, but there have been no studies--no proof, nor any substantial evidence submitted--that the subject parcel is not economically viable. In fact, the Ag Commissioner’s testimony suggests the opposite is true—that there current income-producing activities on the parcel, and that due to the soil designation high value, ag operation opportunities exist and can indeed be economically feasible—growing and/or leasing the land for other ag operations to prosper.

Second: “The existence of an **opportunity for another use...shall not be sufficient reason for cancellation...**” [bold added] The binding WA contract also unequivocally states that cancellation will **not** be requested by OWNER and will **not** be approved by COUNTY, **except** on a **clear showing**, to COUNTY’S exclusive judgment and satisfaction that there’s been a change of circumstances **beyond the control of OWNER**. [bold added] The WA ag uses should not be deemed uneconomic simply because the land may now be more valuable for development. “Therefore,” as the Supreme Court’s narrative states, “the landowner who argues that his land no longer serves the act’s purposes, because it is not valuable for agriculture, must demonstrate the changed conditions, irrespective of increased development value, that now make his agricultural operation unprofitable.” Clearly the subject property has value for agriculture.

Thus, this proposed WA cancellation meets neither of the two findings and would violate the terms of the contract. Again, regardless of the claims, the Board is not required to approve this cancellation request.

Similar Case and CA Supreme Court Decision Denying Cancellation

A landmark CA Supreme Court decision regarding a large cattle ranch that was in a WA contract and requested cancellation is remarkably similar to this R-R WA cancellation request. In *Sierra Club v. City of Hayward*, 28 Cal.3d 840³, the CA Supreme Court reversed the City of Hayward’s approval of a WA cancellation in part due to the City’s making findings that were unsupported by substantial evidence. The CA Supreme Court held that cancellation is inconsistent with the purposes of the act if the objectives to be served by cancellation should have been predicted and served by nonrenewal at an earlier time, or if such objectives can be served by nonrenewal now.

Just as important, in that case the City claimed its decision to cancel the contract was legislative in nature and “...therefore reviewable only in an ordinary mandamus action (Code Civ. Proc., § 1085), and reversible only if arbitrary, capricious, or entirely lacking in evidentiary support.” However, the CA Supreme Court disagreed. After lengthy analysis of the WA and its purposes, its compelling comments included:

Not only do existing authorities unanimously support a narrow application of the cancellation provisions, an analysis of the effect of lenient construction shows that "easily available cancellation will render the Act ineffective as a land-use control device." (Land Use Research Group, op. cit. supra, at p. 73.) The act is intended to preserve open space land. But if those with an eye toward developing such land within a few years are allowed to enroll in contracts, enjoy the tax benefits during their short holding period, then cancel

³ <http://scocal.stanford.edu/opinion/sierra-club-v-city-hayward-30603> [S.F. No. 24201. Supreme Court of California. February 9, 1981.]

and commence construction on a showing that the land is ripe for needed housing, the act would simply function as a tax shelter for real estate speculators. The Legislature's findings clearly spell out its intent, and nowhere among them appears a motivation to subsidize those who would subdivide. On the contrary, the overwhelming theme of the legislation is the need to preserve undeveloped lands in the face of development pressures.

Furthermore, apparently in response to criticism of the cancellation provisions as inviting abuse of the act (Land Use Research Group, *op. cit. supra*, at p. 73; Fellmeth, *op. cit. supra*, at pp. 41-42), in 1978 the Legislature reaffirmed its resolve to make cancellation the exception to the general rule of termination by nonrenewal. In addition to a cancellation fee, which had accompanied cancellation since the inception of the act (Gov. Code, § 51283), the Legislature imposed a further charge partially recapturing the tax benefits enjoyed by the landowner under the contract (Gov. Code, § 51283.1).

In short, we harbor no doubt that the Legislature intended cancellation to be approved only in the most extraordinary circumstances.

In fact, the statute is justified in part by a concern for "the agricultural economy of the state ... [and] for the assurance of adequate, healthful and nutritious food for future residents of this state and nation." (Italics added; Gov. Code, § 51220, subd. (a).) Moreover, the determination of public interest was originally to be made by the State Director of Agriculture. (Former Gov. Code, § 51282, repealed and reenacted 1969.) Because the state's economic participation in the contract scheme was reduced in 1969 and because at that time there was no evidence that local agencies were permitting unwarranted cancellations, the responsibility for judging the public interest and protecting the purposes of the act was transferred to the local agencies. (Prelim. Rep. of Joint Com. on Open Space Land (1969) p. 15, Appen. to Sen. J. (1969 Reg. Sess.)) [fn. 8](#) The shift evidenced not an abandonment of the concern for the interests of the public at large, but a belief that local decision-makers could adequately protect those interests without state oversight. Any decision to cancel land preservation contracts must therefore analyze the interest of the public as a whole in the value of the land for open space and agricultural use. Of course, the interests of the local and regional communities are also important, but no decision regarding the public interest can be based exclusively on their parochialism. [28 Cal.3d 857]

R-R WA Non-Renewal "Roll Out" Is Not a Hardship

Because the owners of the R-R WA contracted property filed for non-renewal in September of 2013, the non-renewal roll-out countdown has already started (on Jan 1, 2014, nine years remained; today, lightly less than seven years remain). Additionally, the Rickey-Reese (R-R) proposed land split/development plans may be submitted to the County for approval two years before the roll-out time period is completed. Thus, the plans and CEQA documents may be submitted for County approval in slightly less than five years and should be put on hold until that time, rather than abandon not just a valid, binding contract, but also the integrity of the intentions of the WA itself. Any discussion of the merits of the proposed parcel split/development, its Mitigated Neg Dec (MND), subsequent parcel values (or lack thereof), should be considered irrelevant in the WA contract "cancellation" discussion.

To approve this cancellation is to condone end runs around valid WA contract stipulations and to approve a MND that is premature. Such an egregious cancellation approval mocks the WA and severely compromise its integrity and intention to preserve agricultural (ag) lands and operations. In Placer County at least, if approved, the WA will

be perceived as little more than a mere holding pattern--a “mark-time” tax haven. To protect and preserve viable ag lands and open space in WA contracts, a continuation of the non-renewable “roll out” period must be upheld.

We disagree with County staff’s conclusions in apparent support of cancellation.

1--*The surrounding properties have already been developed.* “Already been developed” does not negate or void binding WA contract stipulations. Surrounding land use observations are irrelevant to the WA cancellation issue. It may be a meritorious statement in a discussion to approve, or not, a land split/development plan with an MND in the future when its time has come but should have no bearing in a WA cancellation. In fact, the argument can be made that protecting viable ag lands (food security, etc) and operations in exactly this type of scenario is why the WA was established and reason to not cancel. Property tax relief are the incentives used to maintain the ag operations or open space in areas where property taxes increase due to development might encourage unnecessary or sprawling development; it’s why a ten-year non-renewal roll out is emphasized both in the WA and in individual contracts.

2—*The proposed [new] development is consistent with County Community plans and zoning.* Again, this is a *non-sequitur*—a meaningless distraction to the WA cancellation issue. It doesn’t matter how/when/why the zoning, plans, development, etc., have changed—the WA contract remains valid for as long as the owners wish (with a few exceptions, such as emergencies, eminent domain, noncompliance, etc.). The very fact that there are other ag operations in the immediate vicinity negates this argument for cancellation.

The applicant’s claim implies that cancellation is supported by the fifth finding—that there will not be a discontinuous pattern of urban development. This observation neglects the fact that the subject parcel is surrounded on three sides by ag lands and operations, and that the new project proposal will create additional buildings, roads, fences, sound walls, etc., where currently there are none of these elements.

Last, there has never been a completed Williamson Act cancellation in Placer County. Reference has been made to one that was not completed years ago, which indicates how inappropriate, rare, and unwarranted this cancellation request is. We urge that the cancellation request be denied, that the preferred non-renewal “roll out” process be required, and that the proposed project itself follow proper approval processes at such time that it is legally allowed.

Thank you for considering our views,



Marilyn Jasper,
Co-Chair, Sierra Club Placer Group
Chair, Public Interest Coalition