



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEB SITE conservation.ca.gov

June 8, 2005

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NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT.

Ms. Carly Aubrey, Planner III
County of Napa
Office of Conservation, Development and Planning
1195 Third Street, Suite 210
Napa, CA 94559

RE: Partial Cancellation of Land Conservation (Williamson Act) Contract, APN 039-190-048, Landowner, William Hill Napa Inc.

Dear Ms. Aubrey:

Thank you for submitting the notice to the Department of Conservation (Department) as required by Government Code section 51284.1 for the above referenced matter.

The alternative use identified in the cancellation petition involves the separation of a 1-acre home site from the approximate 13 prime agricultural acres under contract. The parcel proposed for cancellation is located at 1152 Hardman Avenue in Napa County.

Cancellation Findings

Government Code Section 51282 states that tentative approval for cancellation may be granted only if the board makes one of the following findings: 1) cancellation is **consistent** with purposes of the Williamson Act or 2) cancellation is in the **public interest**. The Department has reviewed the petition and information provided and offers the following comments.

Cancellation is Consistent with the Purposes of the Williamson Act

The petition proposes to cancel that portion of the contract based upon a consistency finding. For the cancellation to be consistent with purposes of the Williamson Act, the Napa County Board of Supervisors (Board) must make findings with respect to all of the following: 1) a notice of nonrenewal has been served, 2) removal of adjacent land from agricultural use is unlikely, 3) the alternative use is consistent with the County General Plan, 4) discontinuous patterns of urban development will not result, and 5)

that there is no proximate noncontracted land which is available and suitable for the use proposed on the contracted land or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

William Hill Napa, Inc. served a notice of nonrenewal for APN 039-190-048 to Napa County.

It appears unlikely that the separation of the existing home site parcel would result in the removal of adjacent lands from agricultural use. It also appears the cancellation request is consistent with the County's General Plan. The existing home site parcel is not urban development as long as no further development on the proposed parcel takes place now or in the future. As long as this home site does not itself constitute or generate on this or other agricultural preserve land such urban development, and the public interest is clearly defined in the record, contiguity, the availability of proximate noncontracted land, and the inducement of growth do not appear to be issues for this proposed cancellation.

Cancellation is in the Public Interest

For the cancellation to be in the public interest, the Council must make findings with respect to all of the following: (1) other public concerns substantially outweigh the objectives of the Williamson Act and (2) that there is no proximate noncontracted land which is available and suitable for the use proposed on the contracted land or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land. Our comments have already addressed the second finding required under public interest finding above.

The Supreme Court of the State of California held that "any decision to cancel land preservation contracts must analyze the interest of the public as a whole in the value of land for open space and agricultural use" (Sierra Club v. City of Hayward (1981), 28 Cal. 3d 840, 856).

Nonrenewal

The California Supreme Court has opined that it is inconsistent with the purposes of the Williamson Act to allow abrupt cancellation if nonrenewal would accomplish the same objective. Therefore, there must be substantial evidence that awaiting the normal termination of the contract would fail to serve the purpose that purports to justify cancellation. (Sierra Club v. City of Hayward (1981), 28 Cal. 3d 855).

Lot Line Adjustments

The petition indicates that the Applicant intends to merge APN's 039-190-048 and the adjacent contracted parcel, 039-190-049 into one parcel and one contract. We suggest this be accomplished through the rescission/reentry process pursuant to Government

Code section 51254, rather than amending the contracts. Since a home already exists on the parcel, further subdivision of the parcel for homesites should be limited in order to ensure that the land remains economically viable for agricultural production. As an example, Sutter County has a special restriction in contracts that require "when a portion of land under contract is transferred to a new owner, and a single-family dwelling already exists on the land covered by the original contract, no new dwellings shall be developed on the transferred land"...We recommend that Napa County consider including this restriction in contracts in order to prevent further homesite subdivision of contracted land upon transfer or sale.

Additionally, we noted that the Napa County Public Works Department notified the Applicant by letter dated January 14, 2005, that decisions regarding lot line adjustment applications are ministerial in the County of Napa. Government Code section 51257 contains the provisions for a lot line adjustment for lands subject to a Williamson Act contract. The lot line adjustment provisions are meant only to adjust boundary lines and not to exchange entire parcels or lots, split larger parcels into multiple smaller parcels or rearrange existing parcels of record to make them more developable. Under section 51257, the board or council is required to make the following specific findings to approve a lot line adjustment:

1. The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.
2. There is no net decrease in the amount of acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding is satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.
3. At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.
4. After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.
5. The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.
6. The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.
7. The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.

Lastly, legislation effective January 1, 2005, requires the county assessor to send notice to the Department and landowner of the current fair market value of the land and of the

Ms. Carly Aubrey, Planner III

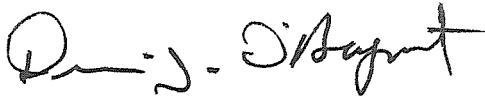
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opportunity to request a formal review from the assessor prior to any action giving tentative approval to the cancellation of any contract. (SB 1820, Machado, Chapter 794, Statutes of 2004 (Section 51283(a)).

Thank you for the opportunity to provide comments on the proposed cancellation. Please provide our office with a copy of the Notice of the Public Hearing on this matter ten (10) working days before the hearing and a copy of the published notice of the Board's decision within 30 days of the tentative cancellation pursuant to section 51284. If you have any questions concerning our comments, please contact Adele Lagomarsino, Program Analyst at (916) 445-9411.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis J. O'Bryant". The signature is written in a cursive, somewhat stylized font.

Dennis J. O'Bryant
Acting Assistant Director