



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
Planning and Building



**Date:** October 29, 2014  
**Board Meeting Date:** December 9, 2014  
**Special Notice / Hearing:** 10-Day Notice  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Steve Monowitz, Acting Community Development Director

**Subject:** Public hearing to consider California Land Conservation Act (Williamson Act)  
Contract Notice of Non-Renewal appeals

County File Numbers: PLN 2011-00316 (Frigstad)  
PLN 2011-00330 (Katzenstein)  
PLN 2011-00335 (McConnell)  
PLN 2011-00338 (Gossett)  
PLN 2011-00339 (Fogarty)  
PLN 2011-00341 (Dempsey)  
PLN 2011-00342 (Cook and Ostby/Burke)  
PLN 2011-00343 (Marco)  
PLN 2011-00344 (Farrell)  
PLN 2011-00345 (Bordi)  
PLN 2011-00346 (National Audubon Society)

**RECOMMENDATION:**

Adopt Resolutions:

- A) Denying certain appeals to the 2011 County-initiated Williamson Act Notice of Non-Renewal thereby resuming the full effects of the recorded non-renewal until contract expiration on December 31, 2020 for the specified parcels.

085-170-230	081-320-060	080-350-060	080-350-470
080-350-480	078-190-100	078-200-080	078-200-030
080-390-090	080-390-070	078-130-200	048-350-010
078-190-020			

- B) Upholding certain appeals to the 2011 County-initiated Notice of Non-Renewal of certain Williamson Act contracts; authorizing the Planning and Building Department to record a Withdrawal of Notice of Non-Renewal and retaining the specified parcels under Williamson Act contracts.

078-210-030	078-200-100	087-180-150
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**BACKGROUND:**

In 2011, the Board of Supervisors authorized the Planning and Building Department (Department) to record a California Land Conservation Contract (Williamson Act) Notice of Non-Renewal for 128 contracted parcels. The parcels were identified as non-compliant based on a review of zoning criteria and landowners' responses to Planning and Building Department and Assessor's Office Agricultural Questionnaires. The Notice of Non-Renewal was recorded on September 23, 2011 (effective January 1, 2012).

Pursuant to the California Land Conservation Act of 1965, a property owner may file a written protest (appeal) of a County-initiated Notice of Non-Renewal. In filing a written protest, a landowner has up to three years to substantiate compliance with the County's Williamson Act Program (Program) in order for the parcel to remain under contract. If evidence of compliance is submitted, the County may withdraw the Notice of Non-Renewal thereby retaining the contract. Otherwise, the Board may deny the appeal which will result in lifting of the property tax stay and continuing the nine-year non-renewal phase out until contract expiration on December 31, 2020. Of the 128 contracted parcels, 16 parcels have been appealed by 11 landowners for a total of 11 appeals filed.

In 2013, the Board of Supervisors adopted the Williamson Act Uniform Rules and Procedures. The Program identifies minimum eligibility criteria (e.g., land use designation, income requirements, etc.) for contracts, exceptions for certain criteria and limitations of compatible uses (non-agricultural uses) as they relate to agricultural uses on the property. Through this Program, the Agricultural Advisory Committee (AAC) and Agricultural Commissioner, in certain circumstances, are charged with reviewing contract Program compliance and exception requests for recommendation to the Board of Supervisors.

On September 8, 2014, the AAC held a public meeting to review each of the 11 appeals for a recommendation to the Board of Supervisors. Seven of the 11 appeals are recommended by the Department, the AAC, and the Agricultural Commissioner for denial based on Program non-compliance.

The remaining four appeals were continued by the AAC and considered at its October 14, 2014 public meeting which resulted in a recommendation to uphold the appeals. Of the four appeals, staff recommends denial of two appeals.

Staff recommends nine appeals be denied (contract non-renewal) and two appeals upheld (contract continuance).

Resolution of the appeals must occur prior to December 31, 2014; the end of the three-year appeal process as allowed under State law for such contracts. Should the deadline pass without decision, a landowner may file a writ to compel the Board to take action.

Report Prepared By: Melissa Ross, Senior Planner, Telephone 650/599-1559

Property details of the appeals recommended for denial:

File Number: PLN 2011-00316	
Owner	David Frigstad
Location	La Honda
APN	085-170-230
Parcel Size	91.21 acres
Existing Zoning	RM (Resource Management)
General Plan Designation	Open Space
Prime Soils	5.18 acres

File Number: PLN 2011-00330	
Owner	David Katzenstein
Location	3540 La Honda Road, La Honda
APN	081-320-060
Parcel Size	23.08 acres
Existing Zoning	PAD (Planned Agricultural District)
General Plan Designation	Agriculture
Prime Soils	0 acres

File Number: PLN 2011-00335	
Owner	Harden McConnell
Location	8901 Alpine Road, La Honda
APNs	080-350-060, -470, and -480
Parcel Size	25.15 acres, 30 acres, 146.34 acres, respectively
Existing Zoning	RM (Resource Management)
General Plan Designation	Open Space
Prime Soils	0 acres

File Number: PLN 2011-00339	
Owner	Patrick and Yee Yie Fogarty
Location	Langley Hill Road, Rural Midcoast
APNs	078-190-100, 078-200-080, and 078-200-030
Parcel Size	2.85 acres, 17.6 acres, 3.11 acres, respectively
Existing Zoning	RM (Resource Management)
General Plan Designation	Open Space
Prime Soils	0 acres

File Number: PLN 2011-00343	
Owner	Keith Marco
Location	61 Castanea Ridge Road, La Honda
APN	080-390-090
Parcel Size	44.57 acres
Existing Zoning	RM (Resource Management )
General Plan Designation	Public Recreation
Prime Soils	0 acres

File Number: PLN 2011-00344	
Owner	Melissa Farrell
Location	71 Castanea Ridge Road, La Honda
APN	080-390-070
Parcel Size	36.45 acres
Existing Zoning	RM (Resource Management)
General Plan Designation	Public Recreation
Prime Soils	0 acres

File Number: PLN 2011-00345	
Owner	Louis Bordi
Location	140 Old La Honda Road, La Honda
APN	078-130-200
Parcel Size	45.50 acres
Existing Zoning	RM (Resource Management)
General Plan Designation	Open Space
Prime Soils	0 acres

File Number: PLN 2011-00338	
Owner	Gilbert Gossett
Location	Digges Canyon Road, Rural Midcoast
APN	048-350-010
Parcel Size	26.18 acres
Existing Zoning	PAD (Planned Agricultural District)
General Plan Designation	Agriculture
Prime Soils	11.17 acres

File Number: PLN 2011-00346	
Owner	National Audubon Society
Location	South Skyline
APN	078-190-020
Parcel Size	180.66 acres
Existing Zoning	RM (Resource Management)
General Plan Designation	Open Space
Prime Soils	0 acres

Property details of the appeals recommended to retain a contract:

File Number: PLN 2011-00341	
Owner	Patrick and Kathleen Dempsey
Location	10 Langley Hill Road, Woodside
APNs	078-210-030 and 078-200-100
Parcel Size	20 acres, 59.29 acres, respectively
Existing Zoning	RM (Resource Management)
General Plan Designation	Open Space
Prime Soils	0 acres

File Number: PLN 2011-00342	
Owner	Scott Cook and Helen Signe Ostby
Location	Pomponio Creek Road, Rural Midcoast
APN	087-180-150
Parcel Size	105.16 acres
Existing Zoning	PAD (Planned Agricultural District)
General Plan Designation	Agriculture
Prime Soils	35.15 acres

Environmental Evaluation: Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3); no potential for causing a significant effect on the environment, therefore, not subject to CEQA.

Chronology:

<u>Date</u>	<u>Action</u>
Annually (February-March)	- Assessor's Office Agricultural Questionnaire mailings.
September 23, 2011	- Board of Supervisors Williamson Act Notice of Non-Renewal of 128 non-compliant parcels recorded.
November 2011	- Landowners Notice of Non-Renewal appeals received; commencement of three-year appeal period January 1, 2012.
October 22, 2013	- Board of Supervisors adopts the Williamson Act Updated Program.
August 2014	- Department review of appeals. Compliance review letters mailed to landowners requesting additional information and informing of future AAC and Board of Supervisors hearings.

- September 8, 2014 - AAC public meeting. Seven recommended for denial by AAC. Four appeals continued.
- September 10-11, 2014 - Department letters to landowners indicating AAC recommendations on appeals and requesting additional information.
- October 14, 2014 - AAC public meeting to hear four appeals continued from September 8, 2014 public meeting.
- December 9, 2014 - Board of Supervisors public hearing.
- December 31, 2014 - End of three-year appeal period.

## **DISCUSSION:**

### **A. KEY ISSUES**

#### **1. California Land Conservation Act of 1965**

The California Land Conservation Act, known as the Williamson Act, allows the County to enter into agreements with landowners whereby land is restricted to agricultural and compatible uses in exchange for reduced property taxes for the life of the contract. The contract is a ten-year, annually self-renewing contract encumbering the land.

#### **2. County Williamson Act Program**

The adopted Program requires contracted lands to be dedicated to commercial agriculture, commercial grazing or commercial horse breeding in addition to requiring other contract eligibility criteria including General Plan and Zoning land use designations, minimum parcel size, income requirements for commercial agriculture, land utilization requirement for commercial grazing and a minimum annual broodmare requirement for commercial horse breeding. Further, the Program identifies compatible uses on contracted lands as those uses allowed by the underlying zoning district, subject to zoning permits where applicable, and restricts the amount of compatible uses to ensure qualifying agriculture remains the primary use on contracted lands.

#### **3. Department Review of the Appealed Parcels**

The Department has reviewed the Assessor's Office Agricultural Questionnaires for the 2013 and 2014 mailing years, General Plan and Zoning designations, mapped prime soils and parcel size for Program compliance among other criteria for the eleven appeals. A letter was

prepared and mailed on August 4, 2014 to the landowners evaluating overall Program compliance and requesting supplemental information (e.g., grazing lease agreements, income documentation) for review by staff, the Agricultural Advisory Committee, and the Agricultural Commissioner. Supplemental information was requested for purposes of completing the required compliance review in addition to providing an opportunity for landowners to request minimum eligibility requirement exceptions as allowed under the Program. Seven of the 11 landowners did not respond to the letters. Information received from four landowners was included in the staff report prepared for the September 8, 2014 Agricultural Advisory Committee meeting and provided to the Agricultural Commissioner in Section A.4 below.

4. Agricultural Advisory Committee and Agricultural Commissioner Review

Through the Program, the AAC is charged with reviewing contract compliance, compatible use determinations, and minimum eligibility exception requests. Additionally, exception requests and commercial grazing land utilization requirements are reviewed by the Agricultural Commissioner.

a. September 8, 2014 AAC Public Meeting

In presenting each appeal before the September 8, 2014 AAC public meeting at which the Agricultural Commissioner was present, Department staff discussed contract compliance and identified: (1) where landowners had responded to the request for required supplemental information, (2) where landowners had not responded, (3) where parcels did not meet the minimum eligibility requirements to qualify for a contract, and (4) where exception requests were received.

Upon considering each of the 11 appeals, the AAC made a recommendation to deny seven appeals based on the following: (1) landowners were unresponsive to the Department's request for required supplemental information, (2) information submitted was not found to support a viable commercial agricultural operation, or (3) the parcels did not meet the required General Plan land use designation of Open Space or Agriculture in order to qualify for a contract and to which no exception is provided for under the Program. The Agricultural Commissioner concurred with the recommendation. Staff concurs with both the AAC and Agricultural Commissioner in denying the appeals.

No landowners were present at the September 8, 2014 public meeting.

Four appeals were continued to provide the landowners a second opportunity to submit the required supplemental information and to provide an opportunity for the Agricultural Commissioner, at his request, to research agricultural operations with one landowner.

Subsequent to the September 8, 2014 meeting, staff sent letters to the landowners with the AAC's recommendation and provided an additional opportunity to submit documentation for consideration by the AAC at its next meeting for the items continued. And, in cases where a denial was recommended by the AAC, staff sent letters providing an opportunity to submit documents for consideration by the Board; documents from one landowner were received and are discussed in Section A.4.c, below.

b. October 14, 2014 AAC Public Meeting

During its October 14, 2014 public meeting, the AAC reviewed and considered supplemental documents supplied by the landowners and Agricultural Commissioner, evidence provided by staff and testimony from three of the four landowners present at the meeting.

Of the four appeals, staff disagrees with the AAC and Agricultural Commissioner on the recommendation to uphold two appeals and retain the parcels under contract. Details of the two appeals are discussed below.

(1) PLN 2011-00338 (Gossett)  
Appealed APN: 048-350-010

At the request of the Agricultural Commissioner, the item was continued to the October 14, 2014 public meeting to provide the Agricultural Commissioner an opportunity to discuss with the landowner the ongoing commercial agricultural operations on the two contiguous parcels under contract; one of which has been non-renewed for insufficient commercial agriculture and is the subject of the appeal. Under the Program, commercial crop operations must meet minimum income requirements in addition to parcel size, zoning and land use designation.

The landowner has indicated that the 26.18-acre upper parcel (contract non-renewed and appealed) is planted with 1/3 acre of English Holly and recently planted with fir and redwood trees for future timber harvesting. Though not a qualifying agricultural use under the Program, timber harvesting is a compatible use under the Program. The parcel is developed with one barn.



English Holly production includes 785 sprigs sold during the holiday season at certified farmers' markets.

The 15.53-acre contiguous lower parcel (active contract) is planted with a 4.55-acre apple orchard and 5 acres of row crops. Development includes a single-family residence, cabin, and agricultural support buildings. All agricultural commodities are sold at certified farmers' markets; the landowner is registered with the State as an organic producer.

Since 2013 sales of the agricultural commodities had fallen short of the \$20,000 minimum income requirement (calculated at \$10,000 per parcel under contract), as indicated on the Assessor's Office Questionnaires, an exception to the minimum income requirement was requested by the landowner.

### *Recommendations*

The AAC and Agricultural Commissioner recommend that the upper parcel remain under contract for the following reasons: the Agricultural Commissioner has discussed the 2014 sales with the landowner and concluded that sales indicate the minimum income requirement is being met, to preserve the integrity of the original contract, to prevent subdivision and development of the appealed parcel, and to prevent the additional tax burden of exiting the contract from forcing the landowners to sell the parcel.

Staff recommends that the appealed parcel be removed from the contract since the primary use of the upper parcel is not commercial agriculture but rather unused land and that the lower property, which is primarily used for agricultural purposes and to which the commercial sales are attributed, be granted an exception to the minimum income and parcel size requirements and a Determination of Compatibility be issued in order to remain under contract because the parcel is highly productive and that maintaining the land in agricultural production has a significant public benefit. Staff bases its recommendation on the landowner's documentation that 1/3 acre (14,374 sq. ft. of 26.18 acres) of the upper parcel is the only portion of the appealed parcel producing an agricultural commodity and that the majority of production and income derived from the sale of agricultural commodities is produced by the lower parcel. Areas of the upper parcel are not conducive to agricultural operations given the hilly terrain (up to 50% slope) with the remaining flat land bisected by Aponolio Creek.

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Subdivision of parcels on rural lands must meet density credit requirements; a cursory density analysis has been completed and has resulted in one density credit (rounded up) which would not permit subdivision of this property. Permitted uses and development of the parcel are subject to the provisions and protections outlined in the Planned Agricultural District, General Plan and Local Coastal Program for prime soils, sensitive habitats, riparian corridors and buffer zones, and visual quality. Thus, any development on this parcel must meet the stringent requirements of the adopted regulations.

- (2) PLN 2011-00346 (National Audubon Society)  
Appealed APN: 078-190-020

The AAC continued the item to October 14, 2014 to provide an additional opportunity for the National Audubon Society to submit the required documentation. After multiple attempts by staff and the Agricultural Commissioner to contact the landowner, the requested information was submitted on October 22, 2014. A representative for the National Audubon Society was present at the October 14, 2014 public meeting.

Twelve parcels totaling 1,038.24 acres are under contract; one parcel (180.66 acres) has been non-renewed for insufficient agriculture and is the subject of the appeal. Under the Program, commercial grazing operations must meet a 75% land utilization requirement in addition to parcel size, zoning and land use designation.

During the October 14, 2014 public meeting, the landowner had indicated that seven heads of cattle graze the 1,038.24-acre contracted area and that approximately 25% of the appealed parcel is grazed. Supplemental documents indicate that area fencing and water are provided throughout the contracted area, which is a requirement for grazing.

Since the grazing operation has fallen short of the required 75% land utilization requirement (48% of the contracted area is grazed; 25% of the appealed parcel), the landowner has requested an exception to the minimum land utilization requirement.

### *Recommendations*

The AAC and Agricultural Commissioner have recommended the appealed parcel remain under contract because the current grazing presents a viable commercial operation and that an exception to the 75% land utilization requirement be granted because the parcels are otherwise compliant with the Program, as identified in the submitted documents. And, that a Determination of Compatibility may be issued for the adjacent contracted parcel 078-160-030 because development is present on this parcel and is compliant with the compatibility criteria. A Determination of Compatibility is not required for the remaining parcels under contract because all other uses, excepting grazing, are agriculturally related.

Staff, however, recommends that the appealed parcel be removed from the contract because staff finds the current grazing operation consisting of seven heads of cattle not to be highly productive given the acreage of land available (for comparison, other lands of 150 usable grazing acres can accommodate 20 heads of cattle on a rotating basis). The landowner has identified 531 usable acres for grazing, which, given the comparison, would amount to approximately 70 heads of cattle on a rotational grazing operation. Provided the number of cattle increases, a new contract may be recorded to include the non-renewed parcel with the existing contracted parcels that will be reviewed for compliance in the coming year.

#### c. Subsequent Compliance Review

During its compliance review of the appeals, staff identified two parcels where land use designations are not compliant with the adopted Program requirements. One landowner, Mr. Marco (PLN 2011-00343; APN 080-390-090), has submitted documentation for consideration on this matter.

Basic Program provisions require land to be designated either "Agriculture" or "Open Space." The landowner's parcel is designated "Public Recreation" and thus does not qualify for a contract under the adopted Program. The Skyline Area General Plan Amendment of 1983 changed the land use designation of this parcel, among others, from Open Space to Public Recreation to which the current Program excludes the latter designation from qualifying for a contract.

There is no provision under the Program to allow Public Recreation designated lands to enter into contract; therefore, staff recommends denial of the appeal.

5. Recommendation

Each appeal has undergone a Program compliance review by the Department based on Assessor's Office Questionnaire responses, property details, supplemental documentation, and discussions with landowners.

Based on this information, staff recommends that the Board deny the nine appeals thereby lifting the property tax stay and continuing the contract non-renewal phase out until contract expiration on December 31, 2020 and uphold two appeals thereby retaining the contracts on those parcels.

Staff recommends retaining contracts for two landowners because each landowner has demonstrated basic contract eligibility (e.g., land use designation and zoning) and have met the required Determination of Compatibility calculation and criteria, where applicable. Further, a determination that the land is highly productive and that maintaining the land in agricultural production has a significant public benefit was made, as required to grant an exception to the minimum income requirement for crops for the lands included in File Number PLN 2011-00341 (Dempsey). For File Number PLN 2011-00342 (Cook and Signe Ostby), the landowners have demonstrated a viable rotating commercial grazing operation through the submittal of tenant lease agreements and site plan identifying the required fencing, water and parcel acreage grazed.

Department staff will coordinate with the Assessor's Office to ensure resolution of the appeals.

If a landowner is able to achieve Program compliance during the non-renewal phase out period or after contract expiration, he/she may request a new contract subject to Program compliance, review and recommendation to the Board by the Department, Agricultural Advisory Committee, and Agricultural Commissioner.

B. ENVIRONMENTAL REVIEW

The project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), Section 15061(b)(3); no potential for causing a significant effect on the environment, therefore, not subject to CEQA.

C. REVIEWING AGENCIES

County Counsel

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County Counsel has reviewed and approved the Resolutions as to form.

Approval of the Amended California Land Conservation Contract contributes to the 2025 Shared Vision outcome of a Livable Community by assuring that the use of the land encumbered by Williamson Act contracts comply with County and State requirements.

**FISCAL IMPACT:**

Costs associated with Program management include staff time, which over time, will be offset by the increase in property tax revenues resulting from reassessment of parcels exiting the Williamson Act Program.

**ATTACHMENTS:**

- A. Location Map
- B. Agricultural Advisory Committee Staff Report (September 8, 2014)
- C. Agricultural Advisory Committee Staff Report (October 14, 2014)
- D. Landowner Documents (Marco)
- E. Landowner Documents (National Audubon Society)