

COUNTY PLANNING COMMISSION  
TUESDAY, DECEMBER 2, 2008, 7:00 P.M.

I. INTRODUCTION

CHRISTIAN THEDE (Applicant & Owner), County File #RZ08-3204: A request to rezone a 34.17-acre parcel from A-4 Agricultural Preserve District to A-2 General Agricultural District. The subject property is addressed 109 Rancho De La Rosa Road near the Alhambra Valley Area. (Zoning: A-4) (ZA: J-10) (CT: 3560.02) (GP: AL) (APN: 365-040-017)

II. RECOMMENDATION

- A. For purposes of compliance with the provisions of the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, find that the Initial Study prepared for the project adequately analyzes the potential environmental impacts and adopt the proposed Negative Declaration.
- B. Adopt a motion recommending that the Board of Supervisors adopt a motion to rezone the subject property, Parcel C of County File #MS33-86, from A-4 Agricultural Preserve District to A-20 Exclusive Agricultural District.

III. GENERAL INFORMATION

- A. General Plan: Agricultural Lands (AL)
- B. Zoning: Agricultural Preserve (A-4)
- C. Lot Legality: The subject property is Parcel C of County File #MS33-86.
- D. CEQA Status: A Negative Declaration was posted July 3, 2008. The comment period expired July 23, 2008. No comments have been received which dispute the adequacy of the Negative Declaration.
- E. Previous Applications
  - 1. LP07-2057: Application for the construction of a single-family residence and residential second unit. This application was withdrawn and replaced by the current rezone application.
  - 2. MS33-86: Approved 4-lot minor subdivision.

#### F. Regulatory Programs

1. Active Fault Zone: The subject property is not located within an active fault zone.
2. Flood Hazard Area: The subject property is not located within a flood zone.
3. 60-dBA Noise Control Zone: The subject property is not located within a 60-dBA noise contour zone.

#### IV. SITE/AREA DESCRIPTION

The City of Martinez boundary is approximately 2 miles east of the subject property, and the City of Richmond boundary is approximately 4 miles west. The undeveloped 34.17-acre property is located in the rural Martinez/Briones Hills area. The subject site is also near the Alhambra Valley area. The three remaining parcels from the same subdivision border the north, south, and west sides of the property, are rectangular, and range in size from 19.95 to 34.59 acres. The east side of the property is bordered by an unrelated 83.24-acre parcel. The nearest residential community is approximately 0.75 miles (3,960 feet) east of the subject property in the vicinity of Alhambra Valley Road. A great deal of land in the area is zoned A-4, including the land abutting all four sides of the property. The A-2 zone is also prevalent among properties in the vicinity.

The subject property is vacant and contains rolling hills, large groves of trees, and rocky terrain. Access to the property is limited to an unpaved private easement (Rancho De La Rosa Road). A small portion of the site just adjacent to the access easement is relatively flat, and is the only apparently suitable building site.

#### V. BACKGROUND

In August 2007 the applicant applied for approval of a land use permit (County File #LP072057) to construct a single-family residence. Staff initiated the review process and ultimately recommended that the applicant withdraw the land use permit application and instead file an application to rezone the property to A-2. There were three reasons for this: (1) that the property is no longer covered by a Williamson Act contract; (2) that a single-family residence is a permitted use in the A-2 zone; and (3) that the property was zoned A-2 prior to being zoned A-4. On March 14, 2008, the applicant applied for a rezone from A-4 to A-2.

During the course of the application process, staff determined that it may be more appropriate to rezone the property to A-20 Exclusive Agricultural District. The applicant was informed on July 8, 2008 that a recommendation for a rezone to A-20 instead of A-2 was a possibility.

This item was originally scheduled for hearing before the County Planning Commission on August 26, 2008. On August 20 the applicant submitted a letter requesting a continuance of the hearing so that a rebuttal to staff's A-20 recommendation could be prepared; the applicant

requested by phone that the hearing be continued to October 28, 2008. Due to miscommunication between the applicant and staff, the October 28 hearing had to be continued to November 18. On November 12 staff met with the applicant to discuss the recommendation. At the meeting the applicant modified the application to request a rezone to A-3 Heavy Agricultural District and requested that the November 18 hearing be continued to December 2. On November 17 staff received an e-mail request from the applicant asking for an A-2/A-20 combination rezone to be considered in addition to the A-3 proposal.

## VI. PROPOSED PROJECT

The applicant requests approval of a rezone of the 34.17-acre parcel from A-4 to either A-3 or a combination of A-2 and A-20. The applicant has indicated that his immediate plans for the property include construction of a single-family residence and residential second unit and establishment of an olive orchard. Long-term plans may include subdivision into up to three lots and construction of additional single-family residences for family members.

## VII. STAFF ANALYSIS/DISCUSSION

### A. Appropriateness of Rezoning

#### *Existing Zoning Conditions*

County File #RZ72-1707 was approved to rezone the approximately 121-acre mother parcel of the subject property from A-2 to A-4 in preparation of the property entering into a Williamson Act contract. A Williamson Act contract is a contract entered into between a property owner and the County wherein the owner agrees to utilize the land for those uses specified in the contract and in return the County taxes the property at a lower rate. The A-4 zone is compatible with lands that are under a Williamson Act contract because it specifies that all uses agreed to in the contract are permitted uses. The property came out of its Williamson Act contract in 1995. With the property out of contract, the A-4 zoning designation is unnecessary and inappropriate. There is no question that the property should be rezoned to an alternate agricultural zoning district.

#### *History of Rezoning in the Briones Hills Area*

It is typical for properties to rezone from A-2 to A-4 in preparation for entering into a Williamson Act contract. A significant amount of acreage in the Briones Hills area was zoned A-4 for this reason. Though several of the contracts have either expired or were never executed, a significant amount of acreage remains zoned A-4.

Several rezoning applications have been processed in the Briones Hills area over the last three decades. Table 1 gives brief descriptions of the most recent rezone applications for the area, all of which that were approved occurred within 2.5 miles of the subject property.

Table 1: Recent Rezones in the Briones Hills Area

County File	Request	Final Action
RZ05-3169	Rezone 20.89 acres from A-4 to A-20	Approved 4/11/2006
RZ00-3096	Rezone 10.4 acres from A-4 to A-2	Approved 12/19/2006
RZ90-2910	Rezone 41.48 acres from A-4 to R-40	Denied 10/6/1992
RZ84-2612	Rezone 25.049 acres from A-4 to A-2 & R-40	Approved 10/9/1984
RZ80-2432	Rezone 86.7 acres from A-2 to A-20	Approved 8/19/1980

Three of the approved rezones were up-zones, as the R-40, A-2 and A-20 zones offer significant advantages over the A-4 zone. The rezone from A-2 to A-20 was a down-zone and is an “apples to oranges” comparison because the zoning did not go from A-4.

Staff has determined that the two rezones approved in 2006 are the most relevant to evaluating the proposed rezone, primarily due to the fact that the policies and practices in place at the time those rezones were processed are essentially the same as they are today. County File #RZ00-3096 was approved in connection with a minor subdivision, County File #MS05-0050. The project resulted in a 2-lot subdivision with a 139-acre remainder parcel. The two new parcels totaled approximately 10.4 acres (one 5.4-acre parcel and one 5.0-acre parcel). The only appropriate zone for the subdivided 10.4 acres was A-2. The 139-acre remainder parcel was preserved under the A-4 zone. The property that was the subject of these applications was already developed with three houses. The rezone and subdivision appear to have been reactions to existing development, not precursors to future development.

County File #RZ05-3169 was approved on Parcel A of a minor subdivision, County File #MS010020, which was approved on March 8, 2004. This subdivision created two parcels (20.89-acre Parcel A and 20.45-acre Parcel B) and a 69.13-acre remainder. The entire property was zoned A-4. At the time the subdivision was deemed complete, the minimum parcel size required in the A-4 zone was 20 acres, hence the 20+ acre sizes of Parcels A and B (the minimum parcel size has since been changed to either 10 acres or 40 acres depending on the quality of a site’s soils). The property appears to have been vacant prior to subdivision, except for several old sheds or outbuildings on what is now Parcel B. After the subdivision was completed, the owners of Parcel A applied to rezone the property from A-4 to A-20 prior to constructing a single-family residence. This example appears to be the most “apples to apples” comparison to the proposed project.

#### *Comparison of Proposed Zoning Designations*

The applicant has requested that the property be rezoned to either A-3 or a combination of A-2 and A-20. The uses allowed both by right and with a land use permit in these three zones are substantially similar. Major differences between the three are the minimum area and dimension requirements, as shown in Table 2.

Table 2: Comparison of Minimum Area and Dimension Requirements for Proposed Zoning Designations

	Area	Average Width	Depth
A-2 General Agricultural District	5 acres	250 feet	200 feet
A-3 Heavy Agricultural District	10 acres	140 feet	None
A-20 Exclusive Agricultural District	20 acres	250 feet	300 feet

Under the A-4 zoning the 34.17-acre property is required to be at least 40 acres due to the soil types present. Thus, rezoning to any of the three proposed zones would constitute an up-zone and would correct the property's existing inconsistency with zoning standards.

The applicant has stated several possible goals for short- and long-term site development. Table 3 compares the non-agricultural goals in relation to each of the proposed zones.

Table 3: Comparison of Existing and Proposed Zoning Designations as they Relate to Applicant's Stated Goals for the Property

Zoning Designations	Zoning Designation Provides Ability to:		
	Establish a Single-Family Residence with Second Unit*	Establish a Second Single-Family Residence	Subdivide into up to 3 Lots**
A-2 General Agricultural District	Yes	Possibly; requires approval of a land use permit.	Possibly
A-3 Heavy Agricultural District	Yes	Possibly; requires approval of a land use permit.	Possibly
A-4 Agricultural Preserve District	Possibly; requires approval of a land use permit unless allowed by the terms of a Williamson Act contract	Possibly; requires approval of a land use permit.	No
A-20 Exclusive Agricultural District	Yes	Possibly; requires approval of a land use permit.	No

A-2 / A-20 combination	Yes	Possibly; requires approval of a land use permit.	Possibly
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\* The A-3 District lists the "Residence of the owner, owners, lessee, or lessor of the land on which the use is conducted" as a permitted use, whereas the A-2 and A-20 districts list "A detached single-family dwelling on each parcel and the accessory structures and uses normally auxiliary to it" as a permitted use. In the context of the project described by the applicant, it appears that this difference is irrelevant.

\*\* For the purposes of this table, the possibility to subdivide is based solely on the minimum acreage requirements for the various zones. Other issues, such as access, slopes, water availability, etc. were not considered.

All of the applicant's stated goals for the property may be realized through rezoning to A-2, A-3, A-20, or A-2/A-20 except for possible future subdivision. Subdivision cannot occur if the property is zoned A-20. It should be noted that the physical characteristics of the site, including but not limited to steep slopes and lack of suitable building sites, make it an unlikely candidate for subdivision.

#### B. General Plan Consistency

##### *Land Use Element - Land Use Designation*

The Land Use Element of the General Plan designates the subject property as Agricultural Lands (AL). The AL designation allows for a wide range of agricultural uses and limits density to a maximum of 1 unit per 5 acres. The A-2, A-3, and A-20 zoning designations are all consistent with the AL designation in terms of density as well as general uses allowed.

##### *Land Use Element - Briones Hills Agricultural Preservation Area*

The subject property is within the Briones Hills Agricultural Preservation Area. In the 1980s a voluntary agreement was formed between several adjacent cities and the County for the purpose of protecting the area's open space and agricultural value. The participating cities agreed not to annex any of the lands within the 64-square mile area for the purposes of allowing urban development.

The various proposed zoning designations provide potential for different intensities of development. The A-2 zone provides for the most intense development while the A-20 designation provides for the least intense development. The A-3 and A-2/A-20 options provide for different degrees in between. Because the A-20 designation provides for the least intense development, it goes furthest towards protecting the integrity of the Briones Hills compact.

### *Land Use Element - Urban Limit Line*

The purpose of the ULL is twofold: (1) to ensure preservation of identified non-urban agricultural, open space and other areas by establishing a line beyond which no urban land uses can be designated during the term of the General Plan; and (2) facilitate the enforcement of the 65/35 Land Preservation Standard (Land Use Element page 3-8). To this end, the General Plan does not allow properties outside the ULL to obtain General Plan Amendments that would re-designate them for an urban land use. In addition, properties outside the ULL may be subject to various agricultural and open space preservation measures. These measures could include, but would not necessarily be limited to:

1. Permitting owners of large acre parcels to subdivide and allow only a one-acre building envelope (building site).
2. Encouraging the dedication of open space and agricultural conservation easements.
3. Implementing a transfer of development rights (TDR) program.

The subject property is located outside the ULL. All of the proposed zoning designations are consistent with the intent and purpose of the ULL because they are all agricultural (non-urban).

### *Land Use Element - 65/35 Land Preservation Standard*

The 65/35 Land Preservation Standard limits urban development to no more than 35 percent of the land in the County, and requires the remaining 65 percent of all land be preserved for agriculture, open space, wetlands, parks and other non-urban uses (Land Use Element page 3-11). All of the proposed zoning designations are consistent with the intent and purpose of the 65/35 Standard because they are all agricultural.

### *Land Use Element – Policies for Residential Uses*

The Land Use Element contains several policies related solely to residential land uses (Land Use Element page 3-31). One of these, Policy 3-29, is especially relevant to the proposed project because it states that the density of conventional residential construction shall generally decrease as natural slope increases. The A-2, A-3, A-2/A-20 options have the potential to increase residential density on a lot with steep slopes. Thus, the A-20 option appears to be the one most consistent with this policy of the General Plan.

### *Conservation Element - Agricultural Resources*

The Conservation Element of the General Plan includes goals and policies related to protection of agricultural resources and encouragement of agricultural production. The subject property is located in an agriculturally important area (Conservation Element Figure 8-2). It is generally recognized that smaller parcels are not as agriculturally viable

as larger parcels. For this reason, the A-20 designation goes furthest towards implementing the policies and achieving the goals of the General Plan related to agriculture because it ensures that the property will remain at least 20 acres.

#### VIII. CONCLUSION

The subject property was at one time zoned A-2 but was rezoned to A-4 when it entered into a Williamson Act contract. With the Williamson Act contract expired, the current zoning is both unnecessary and inappropriate. Of all the rezoning options under consideration, the option to rezone the entire site to A-20 appears to be the most appropriate for three reasons. First, it is the most consistent with the various goals and policies of the General Plan. Second, a similar rezone from A-4 to A-20 occurred in the vicinity in 2006, so precedent exists. Third, the applicant would still be able to achieve most of his goals for development of the property. Therefore, staff recommends the County Planning Commission adopt a motion recommending that the Board of Supervisors adopt the Negative Declaration for the project and approve County File #RZ083204 to rezone the subject property from A-4 Agricultural Preserve District to A-20 Exclusive Agricultural District.

WJN 11/26/08