

**CONTRA COSTA COUNTY PLANNING COMMISSION**  
**TUESDAY, SEPTEMBER 11, 2012**

**I. INTRODUCTION**

CHARLES AND LORRAINE FARR (Applicant & Owner), County File #RZ10-3216: A request to rezone three properties (Parcel A 26.14 acres, Parcel B 20.34 acres and Parcel C 25.82 acres) from A-4 Agricultural Preserve District to A-2 General Agricultural District. The subject properties are addressed 18311 Bollinger Canyon Road in the unincorporated San Ramon area. (Zoning: A-4) (General Plan Designation: Agricultural Lands) (Assessor Parcel Number: 199-030-060, 061 and 062)

**II. RECOMMENDATION**

Staff recommends that the County Planning Commission adopt a motion recommending that the Board of Supervisors do the following:

- A. FIND, for purposes of compliance with the provisions of the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, that the Initial Study prepared for the project adequately analyzes the potential environmental impacts and ADOPT the proposed Negative Declaration.
- B. ADOPT a motion to rezone the subject properties, Parcels A-C of County File #MS90-141, from A-4 Agricultural Preserve District to A-2 General Agricultural District.
- C. DIRECT Department of Conservation and Development ("Department") staff to file a Notice of Determination with the County Clerk.

**III. BACKGROUND**

This rezoning application was prompted in response to a complaint concerning several modified storage containers the applicant placed on his property without first obtaining permits, see letter from the Department dated August 18, 2010, attached Exhibit "G".

The site contains a metal fabrication shop that has been the subject of a long-standing (25+ years) code compliance investigation. In 1997, the Farr's completed a subdivision of their site into three parcels A, B and C. One of the conditions of approval of the tentative map requires that the metal fabrication shop cease business activity prior to occupancy of a new residence on parcel C; see attached Exhibit "P", condition of approval #36.

On two occasions the County's investigation has reached the Board of Supervisors, attached Exhibit "H" are the two reports to the Board. In the April 2000 report, the file records show that the metal fabrication shop was to cease and desist within sixty (60) days if the metal shop cannot be made to conform to the zoning requirements.

More recently, the Department received a complaint and started an investigation, which is on going, regarding the construction and fabrication of a bridge that provides access from parcel "B" to parcel "C".

Staff, including representatives from Grading and Building, met with the concerned neighbor and discussed the modified containers, metal fabrication business, bridge, etc. and described how the rezoning application is the first step in a path forward to effecting compliance with the zoning and building codes.

Staff believes that the status of the metal fabrication shop activity does not affect the Department's analysis of the merits of the rezoning proposal. If the rezoning application is approved and the parcels are rezoned to the A-2 District, continuance of the metal fabrication shop will require review and approval of a land use permit, §84-38.404 (13), attached Exhibit "F". At that time, there will be a comprehensive analysis of the metal fabrication shop use. Also, if the rezoning application is approved, a variance to the minimum distance to the modified storage containers is no longer applicable and issuance of building permits for these structures will be required to achieve compliance.

It should be noted that staff did not bring a land use permit application forward at this time because the A-4 District does not allow such an application to be submitted, A-4 zoning district is attached, see Exhibit "F".

#### IV. GENERAL INFORMATION

A. General Plan: Agricultural Lands (AL)

B. Zoning: A-4 Agricultural Preserve District

C. CEQA Status: A Negative Declaration was posted on March 20, 2012, and the comment period expired on April 9, 2012. However, the adjacent neighbor stated that he was not able to access the environmental document on the Department's website. Thus the Department sent him a hard copy of the document and extended the comment period an additional 20 days ending on April 30, 2012. There were a total three comments received.

E. Relevant Previously Approved Applications

- RZ75-1925: Rezone of 481 acres, including the subject properties, from A-2 and C-M to A-4.
- MS90-141: Three-lot minor subdivision creating Parcels A, B and C which are the subject properties.

F. Regulatory Programs: Parts of all three properties (the portions closest to Bollinger Canyon Road) are located within a Special Flood Zone area.

#### V. SITE/AREA DESCRIPTION

The subject site consists of three rectangular parcels (A=26.14 acres, B=20.34 acres and C=25.82 acres, see attached parcel page) located in a rural area of unincorporated San Ramon on the south side of Bollinger Canyon Road. Parcels A and C are vacant. Parcel B is developed with a single-family residence and accessory structures/buildings normally accessory to an agricultural property<sup>1</sup>. Parcels in the vicinity range in size from 1-acre to over

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<sup>1</sup> There is a shop that is a known for sheet metal fabrication located on Parcel "B" however if this rezoning application is approved then a land use permit must be obtained prior to the use being continued.

100-acres. The site is surrounded by properties zoned A-4 and A-2. Other agricultural zoning districts in the area include A-20 Exclusive Agricultural District (20 acre minimum) and A-80 Exclusive Agricultural District (80 acre minimum). The area is characterized by steep terrain and large groupings of mature trees.

## VI. PROPOSED PROJECT

The A-4 District is a unique zoning district that applies to properties covered by a Williamson Act contract. In 1975 the subject properties were part of a larger 481-acre parcel that was rezoned from A-2 to A-4 because it was under a Williamson Act contract. That larger parcel has since been subdivided; however, the zoning remained A-4. The applicant proposes to rezone the subject parcels from A-4 back to A-2 because of the contract's termination. It should be noted that vacant parcel A & C may apply at anytime for building permits to construct a single-family residence.

The A-4 zone requires a minimum parcel size of 40 acres for non-prime agricultural land, while the A-2 District requires a 5-acre minimum parcel size. The parcels are 26.14, 20.34 and 25.82 acres in area, rezoning to A-2 would rectify the non-compliance with current zoning requirements.

## VII. STAFF ANALYSIS/DISCUSSION

### A. Appropriateness of Rezone

#### *Existing Zoning Conditions*

County File #RZ-1925 was approved in 1975 to rezone approximately 481-acres of land that included these three parcels from A-2 and C-M<sup>2</sup> to A-4 entering them 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 February 2006. With the properties out of contract, the A-4 zoning designation is unnecessary and inappropriate.

#### *Background on Rezoning in the Bollinger Canyon Area*

It is typical for properties to rezone from A-2 to A-4 before entering into a Williamson Act contract. A significant amount of acreage in the unincorporated San Ramon 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.

#### *Comparison of Existing and Proposed Zoning Designations*

The uses allowed both by right and with a land use permit in the A-2 and A-4 zones are similar. The A-2 District does allow for establishment of some more-intense agricultural uses, such as granaries, dehydration plants, fruit and vegetable packing plants, and the like. However, physical limitations such as steep slopes, limited access, lack of utility

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<sup>2</sup> Controlled Manufacturing (C-M)

connections, and scarcity of suitable building locations make the property an unlikely candidate for establishment of these types of land uses. It should be noted that these physical limitations also make the properties a poor candidate for additional subdivisions.

Under the A-4 zoning the three properties are required to be at least 40 acres due to the non-prime soil types that are present. This has since changed and the minimum area requirement was 20 acres when the property was rezoned to A-4 in 1975. The A-2 District requires a minimum parcel size of five acres. Therefore, approval of the rezone would correct the property's existing inconsistency with zoning standards.

## **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 zoning designation is consistent with the AL designation in terms of density as well as general uses allowed.

This land use designation includes most of the privately owned rural lands in the County, excluding private lands that are composed of prime soils or lands that are located in or near the Delta. Most of these lands are in hilly portions of the County and are used for grazing livestock, or dry grain farming. The purpose of the Agricultural Lands designation is to preserve and protect lands capable of and generally used for the production of food, fiber, and plant materials. The title is intended to be descriptive of the predominant land-extensive agricultural uses that take place in these areas, but the land use title or description shall not be used to exclude or limit other types of agricultural, open space or non-urban uses. The maximum allowable density in this category is one dwelling unit per 5 acres. The uses that are allowed in the Agricultural Lands designation include all land-dependent and non-land dependent agricultural production and related activities. In addition, the following uses may be allowed by issuance of a land use permit, which shall include conditions of approval that mitigate the impacts of the use upon nearby agricultural operations through the establishment of buffer areas and other techniques:

- facilities for processing agricultural products produced in the County such as dairies, rendering plants, and feed mills;
- commercial agricultural support services which are ancillary to the agricultural use of a parcel, such as veterinarians, feed stores, and equipment repair and welding; and
- small-scale visitor serving uses including small tasting rooms, stands for the sale of products grown or processed on the property, guest or "dude" ranches, horse training and boarding ranches, improved campgrounds, and "bed and breakfast" inns of five or fewer bedrooms which are on lots of 20 acres or more, extensive recreational facilities and private retreats.

### *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 may be established; 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 redesignate 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 and the proposed zoning designation is consistent with the intent and purpose of the ULL because it is 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). The proposed zoning designation is consistent with the intent and purpose of the 65/35 Standard because it is agricultural.

#### *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). The Conservation Element does not specifically favor one agricultural zoning district over another. Rezoning the property from A-4 to A-2 would in no way threaten agricultural resources or hinder agricultural production.

#### C. Response to Comments on the Initial Study and Negative Declaration

The Department received a total of three letters from the Notice of Public Review for the proposed negative declaration. The comment letters were authored by Mr. Warholc, Ms. Karl and the City of San Ramon.

Both comments from Ms. Karl and the City did not challenge the adequacy of the environmental document. Ms. Karl supports the project and the City's comments note that property is located outside of the City's jurisdiction. However, the City requests that any future development of the properties meet the established pre-zone criterion of a 5 acre minimum per dwelling unit. This request is consistent with the A-2 zoning district.

Mr. Warholc's letter states that the project must be denied at this time on the grounds of illegal structures, metal fabrication business, and an unpermitted bridge and that the project be put on hold until all major issues and major code violations are resolved.

The applicant, in part, has submitted this rezoning application to remedy violations to the zoning and building code for the modified storage containers as outlined in the August

18, 2010, letter from the Department. Again, if the rezoning is approved, the metal fabrication business will require the Farr's to apply, obtain and comply with the provisions of a land use permit under the A-2 zoning district, §84-38.404 (13) which includes compliance with CEQA.

For the reasons stated in the initial study, the rezoning of these properties from A-4, Agricultural Preserve to A-2 General Agriculture does not have the potential to create adverse impacts to the environment. Staff finds that the project complies with the requirements of CEQA.

## 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 unnecessary and inappropriately limits development. Therefore, staff recommends that the County Planning Commission adopt a motion recommending that the Board of Supervisors adopt the Negative Declaration for the project and approve County File #RZ10-3216 to rezone the subject property from A-4 Agricultural Preserve District to A-2 General Agricultural District.

### Exhibits

- A. Findings & Conditions of Approval
- B. Findings Map
- C. Initial Study and Negative Declaration
- D. Public Comments on Negative Declaration and Initial Study
- E. Maps
- F. A-2 Zoning District and A-4 Zoning District
- G. Letter from the Department dated August 18, 2010
- H. Reports to the Board of Supervisors dated April 25, 2000, and July 20, 1999
- I. Excerpt of Minor Subdivision Permit, MS90-141, Condition of Approval #36