

1 **BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO**

2 A RESOLUTION OF THE SAN BENITO COUNTY BOARD) Resolution No. 2020-_____
3 OF SUPERVISORS APPROVING A CANCELLATION)
4 REQUEST ON AN AGRICULTURAL PRESERVE UNDER)
5 THE REMAINDER OF CONTRACT NUMBER 73-38)
6 (GONZALEZ))

7 **WHEREAS**, Counties are authorized to establish agricultural preserves and to establish local
8 procedures for creating, altering and terminating agricultural preserves, under the California Land
9 Conservation Act (Cal. Government Code section 51200 et seq.); and

10 **WHEREAS**, the Board of Supervisors of the County of San Benito adopted an ordinance
11 implementing the California Land Conservation Act in the County of San Benito, now codified in the
12 San Benito County Code, title 19, chapter 19.01, article II, commencing with section 19.01.020; and

13 **WHEREAS**, once established agricultural preserves may be terminated by cancellation of the LCA
14 contract, pursuant to Government Code section 51282(a) and San Benito County Code sections
15 19.01.021(C) and 19.01.025, upon making one of the following findings:

- 16 1) Cancellation is consistent with purposes of the Williamson Act, or
17 2) Cancellation is in the public interest; and

18 **WHEREAS**, on September 27, 2019, the owner of one parcel (Assessor's Parcel No. 019-110-031),
19 comprising 11.11 acres of land in an agricultural preserve under the remainder of Contract
20 Number 73-78, submitted an application for cancellation of the remainder of Contract Number 73-38;
21 and

22 **WHEREAS**, the applicant's request for cancellation is based, in part, on the following:

- 23 1) Since he purchased the property in 1999, he was informed by various former San Benito
24 County, LAFCO and City of Hollister personnel that the filing of a notice of non-renewal
25 would not be necessary to remove his property from the Williamson Act for purposes of
26 development, because the City of Hollister had protested the execution of the contract in 1973,
27 and therefore the City would be able to exercise its right not to succeed to the contract upon
28 annexation;
29 2) Relying upon this information, the property owner applied to annex the property into the City
30 of Hollister, incurring substantial costs processing the application and related CEQA
31 documents, without filing a notice of non-renewal;
32 3) On February 16, 2016, the Hollister City Council adopted Resolution No. 2016-16 adopting a
33 Mitigated Negative Declaration for annexation and development of the property;
34 4) On March 20, 2017, the City Council adopted Resolution Nos. 2017-61 and 2017-62,
35 authorizing the Mayor to execute an annexation agreement and requesting LAFCO to initiate
36 proceedings for the annexation of the property;
37 5) At that time, it was discovered that the City's 1973 protest was inadvertently filed with the
38 County Board of Supervisors rather than LAFCO, as was then required by statute, and
39 LAFCO suspended the application to annex the property into the City of Hollister and
40 recommended the property owner seek cancellation under Government Code section 51282 at
41 this time; and

1 **WHEREAS**, the Board of Supervisors is capable of making findings under Government Code section
2 51282(a)(1) or (2); and

3 **WHEREAS**, under the finding set forth in Government Code section 51282(a)(1), that the
4 cancellation is consistent with the purpose of the Williamson Act, the Board must make the following
additional specific findings under section 51282(b):

- 5 1) That the cancellation is for land on which a notice of nonrenewal has been served pursuant to
Government Code section 51245;
- 6 2) That cancellation is not likely to result in the removal of adjacent lands from agricultural use;
- 7 3) That cancellation is for an alternative use which is consistent with the applicable provisions of
the city or county general plan;
- 8 4) That cancellation will not result in discontinuous patterns of urban development; and
- 9 5) That there is no proximate non-contracted land which is both available and suitable for the use
to which it is proposed the contracted land be put, or, that development of the contracted land
10 would provide more contiguous patterns of urban development than development of
proximate non-contracted land; and

11 **WHEREAS**, under the finding set forth in Government Code section 51282(a)(2), that the
12 cancellation is in the public interest, the Board must make the following additional specific findings
under section 51282(c):

- 13 1) That other public concerns substantially outweigh the objectives of the Williamson Act; and
- 14 2) That there is no proximate non-contracted land which is both available and suitable for the use
to which it is proposed the contracted land be put, or, that development of the contracted land
15 would provide more contiguous patterns of urban development than development of
proximate non-contracted land; and

16 **WHEREAS**, under Government Code section 51283(a) (Cancellation Fee), prior to any action by the
17 Board of Supervisors giving tentative approval of cancellation, the County Assessor shall determine
the current fair market value of the land as though it was free of the contractual restrictions of the
18 Williamson Act; and

19 **WHEREAS**, under Government Code section 51283(b), prior to giving tentative approval to the
20 cancellation of any contract, the Board of Supervisors shall determine and certify to the County
Auditor the amount of the cancellation fee, in an amount equal to twelve and one-half percent
21 (12.5%) of the cancellation valuation of the property, which the landowner shall pay to the County
Treasurer upon cancellation; and

22 **WHEREAS**, under Government Code section 51283(e), the County Treasurer will transmit the
23 cancellation fee to the State of California Controller's Office within 30 days of collection; and

24 **WHEREAS**, under Government Code section 51283.4(a), if the Board of Supervisors approves the
25 cancellation request, the Board shall specify all appropriate conditions and contingencies that must
be satisfied in order for the certificate of cancellation to be recorded, including the condition that the
26 cancellation fee be paid in full within one year from the date that the certificate of tentative
cancellation is recorded, which may be extended by the Board subject to a reevaluation to update
27 the cancellation fee, and a requirement that the landowner obtain all permits necessary to commence
the project; and

1 **WHEREAS**, if the Board of Supervisors approves the cancellation request, the Board's approval
2 shall constitute the approval of a project under the California Environmental Quality Act (CEQA)
because it will facilitate implementation of a residential subdivision; and

3 **WHEREAS**, the City of Hollister, as lead agency under CEQA regarding the application to annex
4 and develop the subject property, prepared and adopted a Mitigated Negative Declaration, pursuant
5 to Hollister City Council Resolution No. 2016-16; and

6 **WHEREAS**, the Board of Supervisors, as a responsible agency under CEQA, has reviewed and
7 considered the information contained in the Mitigated Negative Declaration for the annexation and
development of the subject property; and

8 **WHEREAS**, the State of California, Department of Conservation reviewed the application for
9 cancellation and information submitted by the San Benito County Assessor's Office and provided
no objections to the Board of Supervisors' approval of the cancellation request; and

10 **WHEREAS**, the San Benito County Agricultural Preserve Advisory Committee considered the
11 cancellation request and found that the request meets the requirements of Government Code section
12 51282(a)(1) and (2) and recommended that the Board of Supervisors approve the cancellation
request based on the required findings; and

13 **WHEREAS**, the entire administrative record, including but not limited to the application materials
14 regarding the cancellation request for the remainder of Contract Number 73-38, the Department of
15 Conservation providing no objection to the cancellation request, and the Agricultural Preserve
16 Advisory Committee's recommendation, were forwarded to the Clerk of the Board of Supervisors,
and the cancellation request was set for a public hearing pursuant to Government Code section
51284; and

17 **WHEREAS**, the Board of Supervisors held a duly noticed public hearing to consider the
18 cancellation request regarding the remainder of Contract Number 73-38; and

19 **WHEREAS**, at the public hearing, the Board of Supervisors heard and received all oral and written
20 testimony and evidence that was made, presented, or filed, and all persons present at the hearing
21 were given ample opportunity to hear and be heard with respect to any matter related to the
cancellation request; and

22 **WHEREAS**, at the conclusion of public testimony, the Board closed the public hearing, deliberated
23 and considered the merits of the cancellation request.

24 **NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of San
25 Benito that, based on the entire record of proceedings before it, the Board hereby finds and
26 determines that cancellation of the remainder of Contract Number 73-38 is appropriate under
Government Code section 51282(a)(1) and (2).

1 **BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that it
2 hereby finds and determines that the cancellation of the remainder of Contract Number 73-38 is
3 consistent with the purposes of the Williamson Act, based on the following findings, as set forth in
4 Government Code section 51282(a)(1) and (b):

- 5 1) The cancellation is for land on which a notice of nonrenewal has been served pursuant to
6 Government Code section 51245, in that the applicant filed and recorded a notice of
7 nonrenewal on November 4, 2019 (Recorder's Document No. 2019-0010773);
- 8 2) Cancellation is not likely to result in the removal of adjacent lands from agricultural use, in
9 that the subject property lies immediately between Hollister's City Limits and its Sphere of
10 Influence and cancellation of the contract is not likely to result in the removal of adjacent
11 lands from agricultural use, because (i) adjacent lands to the west and north are outside the
12 City's Sphere of influence and thus not likely to be developed without a general plan
13 amendment, and (ii) adjacent lands to the east and south have already been annexed and
14 removed from agricultural use for development;
- 15 3) Cancellation is for an alternative use which is consistent with the applicable provisions of the
16 city or county general plan, in that the City of Hollister's General Plan depicts the subject
17 property as "Medium Density Residential" and the County of San Benito's General Plan
18 designates it as "Residential Mixed", and the intended development of the property shall be
19 residential housing of a density that is consistent with both general plans;
- 20 4) Cancellation will not result in discontinuous patterns of urban development, in that the general
21 plans for the City of Hollister and County of San Benito have already made this finding,
22 serving as the blueprints for how the City and County will grow and develop in a logical,
23 continuous pattern, designating the subject property as "Medium Density Residential" and
24 "Residential Mixed", respectively, as well as being within the City of Hollister's "Priority
25 Infill Area" within its Land Use and Community Design Element, and adjacent lands to the
26 east and south have already been removed from agricultural use for development, so
27 cancellation of the contract will facilitate a natural, continuous pattern of urban development
28 consistent with the pattern of urban development set forth in the City of Hollister's General
Plan; and
- 5) There is no proximate non-contracted land which is both available and suitable for the use to
which it is proposed the contracted land be put, or, that development of the contracted land
would provide more contiguous patterns of urban development than development of
proximate non-contracted land, because the property along the eastern border of the subject
property is currently undergoing development as a single-family residential subdivision
("Mirabella II") after undergoing the initial CEQA and annexation processes in conjunction
with the subject property, and so the Mirabella II subdivision was entirely designed with the
expectation that development of the subject property would commence concurrently or follow
in short order, the location and sizing of Mirabella II's park amenities, sewer lift station, and
street stubs all contemplate expansion westward with the development of the subject property,
in conjunction with traffic calming measures being installed on Buena Vista Road, sidewalks
and bike paths are being constructed as part of the Mirabella II project to allow for safe
pedestrian and bicycle traffic to Calaveras Elementary School from the subject property,
development of the subject property would flow naturally from development of the Mirabella
II project, and there is no proximate non-contracted land which is available and suitable for the
development of this residential density which would provide more contiguous patterns of
urban development in the area.

1 **BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that it
2 hereby finds and determines that the cancellation of the remainder of Contract Number 73-38 is in
3 the public interest, based on the following findings, as set forth in Government Code section
4 51282(a)(2) and (c):

- 5 1) Other public concerns substantially outweigh the objectives of the Williamson Act, because,
6 according to the forthcoming California Bill SB 330 (the "Housing Crisis Act of 2019"),
7 California has accumulated an unmet housing backlog of nearly 2,000,000 units and would
8 need to provide for at least 180,000 new units annually to keep pace with growth through
9 2025, SB 330 is based on the premise that much of the housing needed has already been
10 planned for by local communities, it simply needs to be developed, and the objectives of the
11 Williamson Act are substantially outweighed by this public concern for housing, and the
12 development of housing in Hollister is necessary for the economic and social well-being of the
13 community and is necessary to implement the housing policies of the City's and County's
14 general plans; and
- 15 2) There is no proximate non-contracted land which is both available and suitable for the use to
16 which it is proposed and contracted land be put, or, that development of the contracted land
17 would provide more contiguous patterns of urban development than development of
18 proximate non-contracted land, because the property along the eastern border of the subject
19 property is currently undergoing development as a single-family residential subdivision
20 ("Mirabella II") after undergoing the initial CEQA and annexation processes in conjunction
21 with the subject property, and so the Mirabella II subdivision was entirely designed with the
22 expectation that development of the subject property would commence concurrently or follow
23 in short order, the location and sizing of Mirabella II's park amenities, sewer lift station, and
24 street stubs all contemplate expansion westward with the development of the subject property,
25 in conjunction with traffic calming measures being installed on Buena Vista Road, sidewalks
26 and bike paths are being constructed as part of the Mirabella II project to allow for safe
27 pedestrian and bicycle traffic to Calaveras Elementary School from the subject property,
28 development of the subject property would flow naturally from development of the Mirabella
II project, and there is no proximate non-contracted land which is available and suitable for the
development of this residential density which would provide more contiguous patterns of
urban development in the area.

20 **BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that it
21 hereby certifies that it has reviewed and considered the information contained in the Mitigated
22 Negative Declaration for the annexation and development of the subject property, adopted by the
Hollister City Council, as lead agency, pursuant to City Council Resolution No. 2016-16.

23 **BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that it
24 hereby finds and determines that approving the cancellation request for the remainder of Contract
25 Number 73-38 is supported by the findings set forth above, and that the findings are supported by
26 substantial evidence in the record, and are consistent with the Agricultural Preserve Advisory
27 Committee's recommendation.

28 **BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that it
hereby finds and determines that the San Benito County Assessor has certified the amount of the
cancellation fee of \$216,875, in an amount equal to twelve and one-half percent (12.5%) of the
cancellation valuation of the property, and the Board of Supervisors hereby certifies to the San
Benito County Auditor the amount of the cancellation fee of \$216,875, in an amount equal to
twelve and one-half percent (12.5%) of the cancellation valuation of the property.

1 **BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that it
2 hereby grants approval of the cancellation request on the following conditions of approval:

- 3 1) The landowner shall make payment in full of the amount of the cancellation fee (\$216,875)
4 computed under Government Code section 51283; and
5 2) The landowner will initiate the annexation process with the City of Hollister to develop the
6 land for the needed residential units.

7 **BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that it
8 hereby authorizes and directs the Clerk of the Board of Supervisors to record with the San Benito
9 County Recorder, a certificate of tentative cancellation, meeting the requirements set forth in
10 Government Code section 51283.4.

11 **PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN**
12 **BENITO THIS 18th DAY OF FEBRUARY, 2020 BY THE FOLLOWING VOTE:**

13 Ayes: Supervisor(s):
14 Noes: Supervisor(s):
15 Absent: Supervisor(s):
16 Abstain: Supervisor(s):

17 By: _____
18 Jaime De La Cruz, Chair

19 **ATTEST:**
20 Janet Slibsager, Clerk of the Board

21 **APPROVED AS TO LEGAL FORM:**
22 San Benito County Counsel's Office

23 By: _____

24 By: Shirley L. Murphy
25 Shirley L. Murphy, Deputy County Counsel

26 Date: _____

27 Date: Feb. 12, 2020