

RESOLUTION NO. 2002-220

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING THE CANCELLATION OF CALIFORNIA LAND CONSERVATION (WILLIAMSON ACT) CONTRACT NOS. 73-AP-071 AND 73-AP-072

WHEREAS, Machado Dairy, represented by Tony Gallas and Thomas Eres (hereinafter referred to as Applicants) filed an application with the City of Elk Grove (hereinafter referred to as City) for the cancellation of California Land Conservation (Williamson Act) Contract Nos. 73-AP-071 and 73-AP-072. (Assessor's Parcel Number 132-0050-041, 132-0050-046 and 132-0050-047); and

WHEREAS, the City Council is the appropriate authority to hear and take action on this project after a recommendation by the Planning Commission; and

WHEREAS, an Initial Study was prepared for this project and a Notice of Intent to Adopt a Mitigated Negative Declaration was prepared and circulated according to the requirements of the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission considered the Applicant's request at a public hearing on November 14, 2002 and recommended City Council approval of the project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELK GROVE HEREBY RESOLVES AS FOLLOWS:

1. Approve the cancellation of California Land Conservation (Williamson Act) Contract Nos. 73-AP-071 and 73-AP-072 based on the following findings and the attached applicant's Williamson Act Cancellation justification. Exhibit A is the assessor map for the parcel and Exhibit B is applicant's Williamson Act Cancellation justification.
 - a. Finding: The proposal will not have a significant adverse impact on the environment and a Mitigated Negative Declaration has been prepared and completed in accordance with the California Environmental Quality Act (CEQA).

Evidence: An Initial Environmental Study was prepared for the proposed project and mitigation measures have been developed that will reduce potential environmental impacts to less than significant levels. On the basis of the Mitigated Negative Declaration, comments received, and the whole record, there is no substantial evidence that the project will have a significant adverse impact on the environment.

- b. **Finding:** The cancellation of California Land Conservation (Williamson Act) Contract Nos. 73-AP-071 and 73-AP-072 are in the public interest and consistent with Government Code § 51283 (a) (2).


Evidence:

- a. The Machado Dairy project site was identified within the 1993 Sacramento County General Plan as designated for low density residential development. The East Franklin Specific Plan adopted in 2000 identified the property for residential development ranging in density from 3 to 6 units per acre with a neighborhood park. The draft City of Elk Grove General Plan land use map identifies the property for low density residential development. The Williamson Act Contract cancellation on the project site would be consistent with the land use designations for the property.
- b. The East Franklin Specific Plan EIR identified that implementation of the plan, of which the Machado Dairy project is a part, would convert Farmland of Statewide Importance to suburban residential uses. The East Franklin Specific Plan EIR and statements of overriding consideration were completed for the overall East Franklin Specific Plan. Subsequently an Initial Study/Mitigated Negative Declaration was prepared that addressed the Machado Dairy project area converting from agricultural uses to urban uses as being consistent with the EIR. The Machado Dairy Williamson Act Contract cancellation will have no greater impact upon the environment as was identified within the East Franklin Specific Plan EIR and 1993 Sacramento County General Plan EIR.
- c. The City has approved residential development adjacent to the subject property immediately to the west with Quail Ridge and to the north with Schuler Ranch. The cancellation of the Machado Dairy Williamson Act contract will allow for the contiguous patterns of urban development within the East Franklin Specific Plan and the City of Elk Grove.
- d. Continuous operation and maintenance of a dairy farm on the subject property is inconsistent with the intent, scope and purposes of the East Franklin Specific Plan. The cancellation would allow for alternative uses which are consistent with applicable provisions of the City of Elk Grove East Franklin Specific Plan and Draft General Plan Land Use Map.
- e. Cancellation of the Machado Dairy Williamson Act Contract is not likely to result in the removal of adjacent lands from agricultural use. The area south of Bilby Road and Kammerer Road is outside the Elk Grove city limits and urban services boundary. This area is designated Agricultural Cropland by the Sacramento County General Plan. This area is proposed to remain agricultural land and any urban designations would require a

General Plan Amendment and zone change. Lands north of Kammerer Road and Bilby Road are designated for urban development and policy CAQ-2 anticipates the loss of agricultural productivity on lands designated for urban development and the retention of agricultural production outside the city limits.

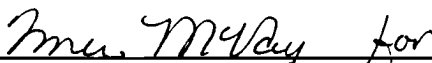
- f. The Machado Dairy Williamson Act Contract cancellation is consistent with the provisions of the Williamson Act, because a notice of non-renewal was previously approved by the Elk Grove City Council and recorded which will automatically remove the project site from the land conservation contracts in ten years.
 - g. The application for cancellation has been filed in conjunction with an appropriate rezone application and tentative map request consistent with the Specific Plan, including acceptability of a ten-acre portion of the property for an elementary school site, acceptable to the Elk Grove Unified School District.
 - h. An appropriate cancellation fee shall be determined pursuant to applicable statutes and such fee shall be payable as determined by the Sacramento County Assessor.
2. Direct staff to submit the cancellation resolution to the Sacramento County Assessor to prepare the cancellation fee for the property.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on the 18th day of December 2002.




RICK SOARES, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

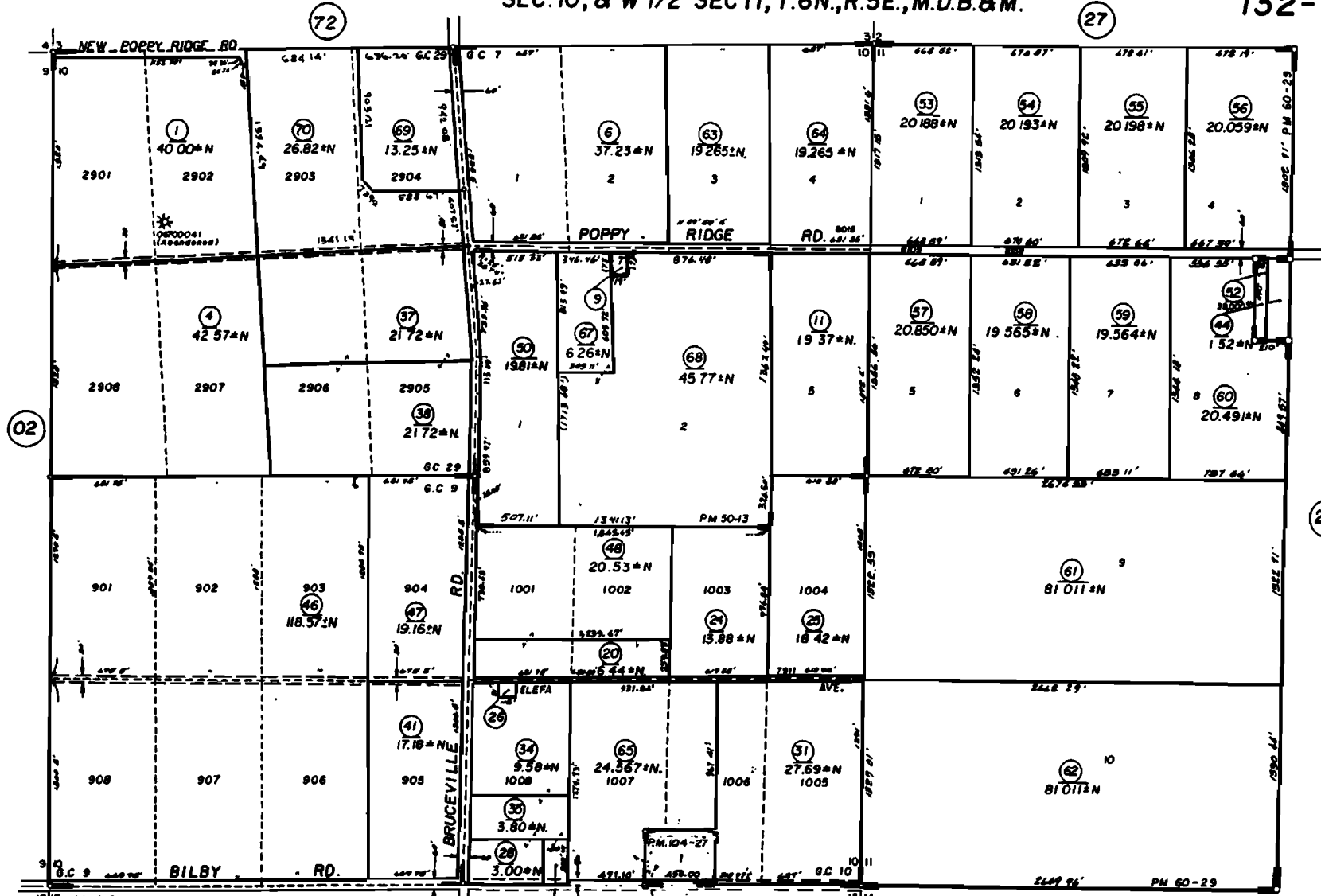


ANTHONY B. MANZANETTI,
CITY ATTORNEY

AYES: Soares, Briggs, Cooper
Scherman, Leary
NOES: None
ABSTAIN: None
ABSENT: None

SEC. 10, & W 1/2 SEC 11, T. 6N., R. 5E., M.D.B. & M.

132-05



H.J. Goethe Colony No. 7 R.M. Bk. 5 Pg. 17
 H.J. Goethe Colony No. 9 R.M. Bk. 5 Pg. 18
 H.J. Goethe Colony No. 10 R.M. Bk. 5 Pg. 22
 H.J. Goethe Colony No. 29 R.M. Bk. 5 Pg. 51

Assessor's Map Bk. 132 Pg. 05
 County of Sacramento, Calif.

MAR 05 2002

EXHIBIT A

EG-01-237 MACHADO DAIRY
WILLIAMSON ACT CANCELLATION

INTRODUCTION

Petitioner/applicant is the owner of the Machado Dairy located within the East Franklin Specific Plan at the northwest corner of Bruceville Road and Bilby Road in the City of Elk Grove. The site is currently surrounded by residential development planned or currently underway except to the south which is outside the boundaries of the City. Cancellation of the Land Conservation (Williamson) Act Contracts covering the Dairy is an integral part of a development package to implement the East Franklin Specific Plan. The Elk Grove Planning Commission is requested to review the cancellation request and make an affirmative recommendation to the Elk Grove City Council to formally cancel the Contracts.

REQUEST

Pursuant to California Government Code Section 5182, and Section (6) of the Contracts, request is hereby made by the owner of the Machado Dairy, to cancel Land Conservation (Williamson) Act Contracts 73-AP-071 and 73-AP-072, dated February 28, 1973, situated within the City of Elk Grove.

BACKGROUND

Approximately twenty-nine years ago the owners of the Machado Dairy entered into two Williamson Act contracts with the County of Sacramento for the initial term of twenty years. Upon the expiration of the initial twenty year term the Contracts became subject to automatic renewal, which essentially renews the contract term for nine years unless a notice of non-renewal is filed with the City. Currently there is a Notice of Non-renewal filed with the City which, in the absence of cancellation, will terminate the Contracts in 2012.

Prior to the formation of the City of Elk Grove, in the late 1990's, the County of Sacramento commenced the process of review and evaluation of the proposed East Franklin Specific Plan. The Plan included the Machado Dairy, which is located at the southeastern portion of the Plan area.

As an integral part of the County review process a comprehensive three volume Environmental Impact Report (EIR) was prepared. The purpose of the overall project was to provide a conceptual framework and policy direction for the urbanization of approximately 2,475 acres including Machado Dairy. The project consisted of a General Plan amendment, a Community Plan amendment, a Specific Plan and a number of separate rezone and vesting tentative subdivision maps.

The EIR specifically addressed agricultural land issues and noted that approval of the project would result in the loss of approximately 1,675 ± acres of farmland. Additionally, the report noted there would be an “incompatible land use interface...between the proposed residential uses and existing agricultural operations, dairies in particular.” Specifically the report stated that nuisance odors and flies, potential restrictives on aerial agricultural spraying would be just some of the incompatible issues impacting residential development near to an operating dairy.

At the time of the EIR there were a total of fourteen parcels of land covered by five Williamson Act Contracts in the Specific Plan area, eleven parcels and four contracts of which were in the final states of expiration. Only the three parcels of Machado Dairy land contained in two Contracts remained in the Specific Plan area.

On May 31, 2000, the Sacramento County Board of Supervisors certified the EIR and adopted the East Franklin Specific Plan Ordinance.

On July 1, 2000, the City of Elk Grove was formed and included within the City boundaries the East Franklin Specific Plan which included virtually all of the Machado Dairy. Upon its creation the City of Elk Grove became the successor to Sacramento County as relates to the Machado Dairy Williamson Act Contracts.

The City of Elk Grove adopted the East Franklin Specific Plan as a part of its land use general plan. Currently the Specific Plan is well into its implementation in accordance with City Council approval of a number of subdivision projects. Consequently, it is clear that the public interest and public policy of the City is to carry out the development of the Specific Plan in accordance with City approval of appropriate rezoning and subdivisions.

Virtually all of the infrastructure for the development of the East Franklin Specific Plan has been designed and constructed or is in the process of construction, including water, sewer, storm drainage, gas, electricity, therefore, cancellation of the Contracts and approval of the rezone and tentative subdivision map will not require new infrastructure requirements.

Development immediately adjacent along the northern boundary of the Machado Dairy Project is currently under development for uses consistent with the East Franklin Specific Plan.

Immediately to the east of the Machado Dairy, along Bruceville Road is the proposed Laguna Ridge Specific Plan which is planned to be presented to the City within approximately six months, and will present additional urban development as contracted with agricultural uses.

Current review of City General Plan policies relating to the conservation of land for agriculture, as a component of the economic base of the City, reveals that loss of agricultural productivity is an accepted consequence of the development of the City of Elk Grove. Additionally the City’s land use concept for the planning area outside the 2002 City limits anticipates the retention of significant areas of agricultural production outside the current City limits.

The alternative plan for the use of the land and to the operation of the Machado Dairy under the Williamson Act is a proposed rezone and tentative subdivision map application submitted in conjunction with this Petition to cancel the Williamson Act contracts. The rezone and tentative subdivision map applications are scheduled to be heard and processed in combination with this Petition.

RATIONALE

In part, the rationale for cancellation of the Williamson Act Contracts, at this time, is the fact of the adoption of the East Franklin Specific Plan by the County of Sacramento after a full, complete and comprehensive environmental review and the subsequent adoption of the Specific Plan by the City of Elk Grove, setting forth the public interest and public policy for the eventual development of the lands within the Specific Plan area.

The Specific Plan provides a well planned contiguous pattern for urban development, specifically including acreage designated for neighborhood parks and elementary schools in addition to family residences.

Clearly implementation of the Plan through City approvals for the development of subdivisions within this Plan has already commenced, and thereby sets forth, in a graphic and unequivocal way, not only the public interest and public policy to complete the Specific Plan, including the conversion of the Machado Dairy to urban use, but also has helped set the pace of development.

Cancellation of the Williamson Act Contract at this time, in conjunction with approval of the rezone and tentative subdivision map application, will provide a well timed and more contiguous pattern of urban development than would development of proximate non-contracted land outside the Specific Plan. In fact, for the most part such proximate non-contracted land would be outside the City boundaries and outside the jurisdiction of the City Council. Consequently, cancellation of the Contracts will not result in discontinuous patterns of urban development.

It is also clear that the planned alternative uses of the Machado Dairy set forth in the rezone and tentative subdivision map application are consistent with the City General Plan and such cancellation of the Williamson Act contracts will not result in removal of adjacent lands from agricultural use, because the land virtually abuts the City boundary with the County.

As the City of Elk Grove continues to grow and development within the East Franklin Specific Plan continues to take place, such path and pace of development makes clear the notion of operating a full dairy complex is completely inconsistent with any proximity to housing, schools and neighborhood park development. Specifically, odors, flies, agricultural spraying and noises would be a source of aggravation and complaints from residents.

Simply put, by the passage of time, development and governmental land use decisions, the Machado Dairy is sufficiently enveloped and encroached upon so as to no longer afford it a reasonable and compatible existence within the East Franklin Specific Plan as an operating dairy.

Consequently, the owners of the Machado Dairy are left with no realistic recourse except to petition the City of Elk Grove to cancel the Williamson Act Contract forthwith.

ENVIRONMENTAL

The Final EIR adopted by the Sacramento County Board of Supervisors for the East Franklin Specific Plan fully evaluated the substantial and significant impacts to agriculture generated by adoption of the Plan and identified specific mitigation measures for the inevitable loss of agricultural land. The EIR identified that the East Franklin Specific Plan contained 1,675 acres of farmland of statewide importance, 700 acres of farmland of local importance and 100 acres of lesser quality soils.

Of particular note in the evaluation process are the following points relevant to this Petition:

- “Fields around and surrounding the dairy are used to grow feed for dairy stock. These fields are routinely sprayed by air which will conflict with urban users as will odor emanating from the dairy. The Operation involves substantial on-site capital improvements that cannot be feasibly relocated. Therefore, impacts to existing agricultural uses are deemed significant and unavoidable.” [East Franklin Specific Plan, EIR, Vol. 3, P 4 – 25.] [Emphasis added.]
- “Agricultural Operations: Potential land use compatibility impacts with hddover agricultural uses located within the Plan area are significant and unavoidable.” [P. 4 – 26]
- “Land Use Summary: An incompatible land use interface will occur between the proposed residential uses and existing agricultural operations, dairies in particular. Nuisance odors, flies from nearby long term operations could impact new residents. In addition, it is possible that the proximity of residences to an operating dairy could restrict the aerial agricultural spraying which is routinely used at this location. Therefore, impacts to existing agricultural uses are deemed significant and unavoidable. [P. 17 – 1]. [Emphasis added.]
- “The project impacts pertaining to loss of productive soils, intensive agricultural operations (i.e. dairies), and general agricultural resources are considered to be significant and unavoidable. These impacts are due to direct loss of productive agricultural land and the potential indirect loss of agricultural land through disruption or curtailing of established agricultural practice due to nuisance concerns.” [P. 17 – 3] [Emphasis added.]

It is clear from the environmental assessments that once the East Franklin Specific Plan was adopted by the County of Sacramento and incorporated into the City of Elk Grove, the fate of the Machado Dairy was sealed and it would only be a matter of time before the dairy

operations would be encroached upon and ultimately terminated. That time has come and the time for cancellation is now.

Finally, contained in the Final EIR are prescribed mitigation measures for the loss of agricultural lands, including the lands that make up the Machado Dairy.

DETERMINATIONS

Government Code Section 51282 empowers the City of Elk Grove to grant tentative approval for the cancellation of the two Williamson Act Contracts covering the Machado Dairy, if the City Council finds that the cancellation is in the public interest.

To support a finding of public interest, the Council must also find that “other public concern substantially outweigh the objectives of” the Williamson Act; and that “development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.”

The existence of the East Franklin Specific Plan and the pace and path of approved development within the Plan area are the best evidence of the public interest and policy for carefully planned urban growth within the City of Elk Grove.

The location of the Machado Dairy is at the southeast corner of the East Franklin Specific Plan and adjacent to residential development already under way. The approval of cancellation of the Williamson Act Contracts in combination with approval of the rezone and tentative subdivision map applications will complete the contemplated build-out of the Specific Plan in the location of the Machado Dairy with a more contiguous pattern of growth than development of proximate non-contracted land outside the East Franklin Specific Plan.

Government Code Section 51282 also provides for cancellation of the Williamson Act Contract if the City Council finds that cancellation is consistent with the purposes of the Williamson Act. Such purposes are set forth in Government Code Section 51220. To be consistent with the purposes of the Act the Council must also find that:

1. A notice of non-renewal has been filed. Notice has been filed with the City.
2. Cancellation will not result in removal of adjacent lands from agricultural use. The Machado Dairy is within the East Franklin Specific Plan which is well underway in its pace to full build-out. No agricultural land within the Plan or within the City will be taken out of agricultural use.
3. The alternative use is consistent with the City General Plan. The development of the Machado Dairy in conformance with the rezone and tentative subdivision map application is consistent with the City General Plan.

4. Cancellation will not result in discontinuous patterns of urban development The East Franklin Specific Plan assures cancellation will not result in discontinuous patterns of urban development.
5. Development of the Contract land would provide more contiguous patterns of urban development than development of proximate non-contracted land. The Machado Dairy development will provide more contiguous patterns of urban development, as set forth in the East Franklin Specific Plan, than development of proximate non contracted land.

Government Code Section 51284.1 provides, in part, that the State Director of Conservation shall review proposed cancellations and submit comments to the Council. The comments are advisory to the council and set forth the Directors view on the findings required to be made by Government Code Section 51282 with respect to the proposed cancellation. Prior to the Council taking action on the cancellation must consider the comments by the Director.

On August 22, 2002, the Director provided comments that questioned whether or not the statutory findings could be made to support cancellation of the Contract. Subsequent consultation with the Department provided them with significant and substantial material and information regarding the adoption of the East Franklin Specific Plan, including an extensive evaluation of the impacts to agricultural operations, including specifically the Machado Dairy. Additionally, recent aerial photographs were provided to depict the pace and direction of growth within the Plan area up to and adjacent to the Machado Dairy, creating incompatibility between dairy operations and residential development.

CONCLUSION

It is clear that there is substantial factual evidence to support the requisite findings that cancellation of the Contracts is in the public interest and, in fact, is consistent with the purposes of the Williamson Act.

PROPOSED FINDINGS

1. Petitioner, as owner of the Machado Dairy, entered into valid Land Conservation (Williamson) Act Contracts Nos. 73-AP-071, dated 2-28-73, and 73-AP-072, dated 2-28-73, with the County of Sacramento.
2. The City of Elk Grove was formed on July 1, 2000 and became the successor to Sacramento County for purposes of the Petitioners' Williamson Act Contracts and is the appropriate entity to act upon this request to cancel the Contracts.
3. A Notice of Non-renewal of the Contracts is currently on file with the City of Elk Grove.
4. Section (6) of the Contracts provide for their cancellation upon petition by owner.
5. Petitioner has filed an application with the City of Elk Grove to immediately terminate the Contracts
6. Cancellation of both contracts is not inconsistent with the purposes of the Williamson Act and is in the public interest for the following reasons:
 - a. The East Franklin Specific Plan provides a comprehensive land use plan that has been fully adopted by the City of Elk Grove, and such plan has been fully reviewed by all appropriate entities for compliance with CEQA;
 - b. The CEQA EIR provided a comprehensive evaluation of the significant and substantial impacts on the future existence of the Machado Dairy as the Plan would be implemented.
 - c. The Specific Plan includes the subject property and designate the land uses as single family residences, neighborhood parks and an elementary school site thus providing an appropriate, rational and compatible plan for urban development in the Plan area:
 - d. The City has already approved residential developments in the Plan area including adjacent to the subject property;
 - e. The major infrastructure for the East Franklin Specific Plan has been identified and included as part of master plans for the East Franklin Specific Plan area.
 - f. Continuous operation and maintenance of a dairy farm on the subject property is inconsistent and incompatible with the intent, scope and purposes of the Specific Plan for residential, parks and school development;
 - g. Current review of City General Plan policies relating to the conservation of land for agriculture, as a component of the economic base of the City, reveals that loss of agricultural productivity is an accepted consequence of the development of the

City of Elk Grove. Additionally the City's land use concept for the planning area outside the 2002 City limits anticipates the retention of significant areas of agricultural production outside the current City limits.

- h. Cancellation is not likely to result in the removal of adjacent lands not in the Specific Plan from agricultural use because the subject property abuts the City boundary with the County of Sacramento;
- i. Cancellation is for alternative land uses which are consistent with applicable provisions of the City of Elk Grove general plans for the lands within the East Franklin Specific Plan as well as the current land use policy of the City;
- j. Cancellation will not result in discontinuous patterns of urban development because comprehensive and thorough planning was undertaken in the adoption of the East Franklin Specific Plan which includes the subject property;
- k. Development of the subject land would provide contiguous patterns of urban development as depicted on the City land use maps, General Plan and Specific Plan, as well as the prior approval of development projects within the Plan area;
- l. The environmental impacts of cancellation have been previously reviewed in conjunction with adoption of the Specific Plan and there are no additional environmental impacts generated by cancellations;
- m. Given the urban growth in the area at the present time, there is no other reasonable or comparable agricultural use to which the land may be put, consequently, the uneconomic character of the existing agricultural use as a fully operational dairy in light of urban encroachment, is inconsistent with the fundamental purpose of the Williamson Act;
- n. The petition for cancellation has been filed in conjunction with an appropriate rezone and tentative subdivision application as the alternative Plan for use of the property and is consistent with the Specific Plan, including a ten acre portion of the property for an elementary school site that is acceptable to the Elk Grove Unified School District;
- o. Cancellation of the Contracts at this time is more supportive of the public interest than the non-renewal process, which will terminate the Contracts in 2012, because the path and pace of development in the area has severely enveloped and encroached upon the current operation of the dairy;
- p. The public health of the residents currently scheduled for occupancy of homes within the East Franklin Specific Plan will be enhanced by the termination of dairy operations and conversion of the land use on the subject land as expeditious as possible;

- q. The development of the East Franklin Specific Plan area is incompatible with the continued agricultural uses on the subject land;
- r. An appropriate cancellation fee shall be determined pursuant to applicable statutes and such fee shall be payable as determined by the Elk Grove City Council.