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Judge OKs Fox Hills building on protected ag land

Plans to add 185 acres to the project can go forward, unless the farm bureau appeals.

By CORINNE REILLY

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A developer's plan to build low-density housing on a swath of state-protected farmland near Los Banos can move forward, a Merced County judge has decided.

Two years ago, the county approved plans for a 2,600-home addition to the Fox Hills development, just southwest of Los Banos.

To OK those plans, the county had to cancel a state Williamson Act contract that should have prohibited developing a small portion of the land where Fox Hills hopes to build -- a 185-acre parcel -- until 2016.

That move prompted the California Farm Bureau Federation to sue the county early last year. The Farm Bureau argued that the county's approval of the Fox Hills expansion violated the Williamson Act, a state program that protects millions of acres of farmland across California.

In a ruling filed late last week, a Merced County judge rejected the Farm Bureau's argument. Instead, Superior Court Judge Ronald Hansen said in a 10-page decision that the county acted legally when it cleared the 185 acres for development.

The Farm Bureau is considering appealing the ruling, an attorney for the group said Monday.

"It's a really big disappointment to us," attorney Chris Scheuring said. "We still feel very strongly that the cancellation was improper. ... We're definitely going to take a hard look at appealing."

Barring an appeal, Hansen's decision means that Fox Hills can move forward with its plans for the expansion, slated to surround a previously approved 400-acre Fox Hills phase that already broke ground.

If it's built out as envisioned, Fox Hills would cover some 1,250 acres and house more than 7,000 people. The development has been billed as a retirement community comprised of low-density homes and a golf course.

"The county is very pleased with the court's ruling, which wholly upheld the county's administrative process and the board's decisions relating to the Fox Hills development," said county spokesman Mark Hendrickson in a prepared statement. "As the county is committed to following the processes and procedures outlined by law, this ruling fully validates the actions we've taken."

No one from Fox Hills, based in Redwood City, could be reached for comment Monday.

The Williamson Act, passed in 1965, gives farmland owners property-tax discounts in exchange for agreeing to keep their land in agricultural production for at least 10 years. The state compensates the county for the tax losses.

The Fox Hills decision marked the first time Merced County approved canceling a state preservation contract since it began participating in the Williamson Act in 2000.

Attorneys for the Farm Bureau said when they filed the suit that the county's endorsement of Fox Hills set a dangerous precedent that could undermine the act, celebrated by farmland preservationists for its success.

In court papers, the Farm Bureau argued that the county failed to prove its decision met the stiff requirements to legally cancel a Williamson Act contract.

Among other criteria, the county had to show that removing the land from preservation won't cause leap-frog development or trigger the development of other preserved land. The county also had to show that no other nearby, unpreserved land could be used instead.

In his ruling, Hansen disagreed with the Farm Bureau, saying the county adequately proved that it met the necessary cancellation criteria.

If the Farm Bureau's lawsuit had been successful, it would have reversed the county's decision to remove the 185 acres from preservation. That would have delayed Fox Hills from expanding until the parcel's Williamson Act contract expired in 2015.

Fox Hills is one of four large housing developments in the works on the county's Westside, though none is close to fruition. Two have been approved by the Board of Supervisors. Two are still under review.

In total, those projects would add about 80,000 people over the next 30 years to the region just west of Los Banos, now home to a few thousand.

More than 450,000 acres are under Williamson Act contracts in Merced County. Of California's 29 million acres of farm and ranch land, about 17 million are contracted for preservation under the act, according to the Department of Conservation.

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