



COUNTY OF SONOMA

PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

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DATE: October 20th, 2009
TO: Board of Supervisors
FROM: Jennifer Barrett, Deputy Director Planning
SUBJECT: Williamson Act

Background

The California Land Conservation Act of 1965--commonly referred to as the Williamson Act--enables local governments to enter into contracts with private landowners for the purpose of restricting the land to agricultural or related open space uses. In return, landowners receive reduced property tax assessments based upon agricultural and/or open space uses as opposed to Prop 13 base year values. There are three types of contracts: Type I contracts are for prime agricultural lands with a 10-acre minimum parcel size; Type II contracts are for non-prime lands with a 40-acre minimum parcel size; and, Type II Open Space contracts are for wildlife habitat areas and also require a 40-acre minimum parcel size. The contracts are binding for a 10-year period and automatically renew annually unless either the landowner or the County timely serves a Notice of Non-renewal that would initiate a 9-year phase out of the contract. Local governments have historically received an annual subvention of a portion of the forgone property tax revenues from the state via the Open Space Subvention Act of 1971. The County receives over \$430,000 annually in subvention revenue from the state for this program. This year the County's proposed budget anticipated a 10 percent reduction in subvention payments. However, the Governor deleted the subvention payments altogether from the state budget, leaving the County with a projected shortfall of \$360,000 for this fiscal year. There is some indication at the state level that program funding may be restored in future years, depending upon an economic recovery.

The Board requested that staff provide an analysis of the impact of the state's budget cuts on the Program and provide options for the Board's consideration. The following provides an overview of the program's scope and costs and identifies policy options for the Board's consideration.

Scope and Costs of the Program

There are currently 2,599 parcels located within Agricultural Preserves under Williamson Act contracts comprising a total of 295,117 acres or approximately 31 percent of the 960,000 total acres in the County. Approximately 44,267 acres are under a Type I contract; 224,487 acres are under a Type II contract; 2,353 acres are under a Type II Open Space contract; and 24,009 acres are currently in the phase-out process.

The total Prop 13 base year values for the contracted lands are \$3.2 billion and the enrolled valuation of lands under Williamson Act is \$1.85 billion, resulting in a net decrease in valuation of \$1.3 billion. The adjusted valuation for the Williamson Act contracts results in a total tax loss of \$13.3 million for all taxing entities combined. The County's share of the property tax loss averages 27.5 percent or

approximately \$3.7 million with a state subvention for 2008 of only \$438, 178. Because the reduction in property taxes is substantially more than the subvention reimbursement, the burden of costs for this program is generally absorbed by the County. The subvention payments cover only 12% of the reduced property tax revenues. The net cost to the County for the Williamson Act program is estimated to be approximately \$3.2 million annually. In addition to the cost of foregone property tax revenues, the Assessor's Office expends an estimated \$230,000 per year in staff resources to administer the program. Without the subvention payments, the total cost to the County of the program for FY09/10 is currently estimated to be \$3.9 million.

One of the major concerns with the state's budget action is that the counties do not have the legal authority to initiate cancellation of contracts, but rather can only phase out the contracts over a 9-year period by serving the owner with a Notice of Non-Renewal. The property taxes are gradually increased over this period, such that substantial increases in property tax revenues would not be realized for several years. In addition, if the County initiates non-renewal and a protest is filed, current state law provides for a 3-year delay in the tax increase.

State Audit

The State Department of Conservation (DOC) conducts routine audits of the Williamson Act Programs in participating counties and completed an audit of Sonoma County's procedures for Agricultural Preserves in November 2005. The audit revealed several issues that require an update of the County's Rules for Administering Williamson Act contracts and changes in the County procedures and policies, as well as investigating several properties that were identified as potential breaches of Williamson Act contracts. The County has addressed all of the procedural issues and has recently completed a proposed draft of the Rules Update in coordination with a working group of agricultural industry representatives. Staff is preparing the companion zoning code amendments which is scheduled for review by the Planning Commission by the end of this year and ultimately by the Board next year. Initially following the audit, staff was concerned that the DOC was going to require extensive changes and limitations to the compatible uses that would be allowed on contracted lands. However, since the audit, the DOC has new leadership and they have worked collaboratively with staff on the revised Rules. DOC staff have completed their review of our Draft Rules and are now in agreement with the County's past practices, with some clarifications and a few minor changes to the compatible uses.

In addition to the procedural issues, the state audit also required investigation of several parcels that do not meet the minimum parcel size to qualify for a Williamson Act contract. PRMD staff has identified over 350 substandard parcels, many of which are parcels that have been resurrected through Administrative Certificates of Compliance (ACC's) after the contracts were in place. Initial research indicates that at least half of these substandard parcels are still part of a larger agricultural operation. However, once these parcels transfer ownership, the contract would be in breach and must be phased-out of the program. The County will not issue building permits (other than agricultural permit exemptions) on substandard parcels while they are under contract to avoid a material breach of the contract.

The challenge for staff in addressing substandard parcels has been that the County does not have the authority to partially non-renew the contracts - only the property owner has that right under state law. Since many of the substandard parcels were originally part of a larger agricultural operation under contract, if the County initiated non-renewal of the contract, all of the parcels originally included in the contract would be phased out, which would affect parcels that still qualify for the program. Staff has been working with property owners to evaluate various options to bring the properties into compliance such as adjusting lot lines/parcel sizes, merging parcels, converting the Type of contract to one with a smaller

minimum parcel size or partially non-renewing the contracts before they are transferred. In this process, staff has identified several parcels that have already transferred ownership and no longer qualify for the Williamson Act contract and should be phased out. The problem with those transferred parcels is that the contract includes other parcels owned by others that still qualify. Several other counties have simply initiated non-renewal of contracts with substandard parcels and required the property owners to reapply for new contracts on qualifying lands. This could be a policy option for the Board which would not only address the substandard parcel issue, but would also ease the impact of the loss of subventions by phasing-out the tax benefits on non-qualifying parcels.

Although staff's approach has been to investigate each substandard parcel and work with property owners to bring the property into compliance and remain in the Ag Preserve whenever possible, this approach is very time-consuming and is estimated to take hundreds of staff hours over several years to resolve. Initiating non-renewal of the substandard parcels would likely encourage the property owners to come in and resolve the contract issues to retain any tax benefits on qualifying lands. However, if owners decide not to execute a new contract for qualifying lands, this approach would result in phasing out the Williamson Act contracts on some properties that remain in compliance. To address this issue, staff has been working with DOC staff to suggest legislative changes that would give counties the authority to partially non-renew the contracts. This would enable the County to file non-renewal on only those substandard parcels without affecting the balance of the land under contract.

General Plan Policies

The Sonoma County General Plan includes several major policy goals, objectives and policies that also serve to protect agricultural lands, including Objective AR-8.1 "Continue participation in the Williamson Act and Farmland Security Act programs." The protection of agricultural lands has been such an important policy emphasis in the County that an entire Element of the General Plan is devoted to Agricultural Resources. The General Plan recognizes that policies are needed to create and support incentive programs to stabilize the farmer's economic situation and maintain the land in agriculture. The General Plan also includes a policy establishing minimum parcel sizes for lands within the program. The resurrection of ACC parcels often violates the allowable densities in the Land Use Element, but in the case of agricultural preserves, also violates the General Plan Agricultural Element policy related to minimum parcel sizes for lands under contract.

Policy Options

The following outlines some policy options for the Board's consideration.

Continue Business as Usual – The Board may choose to continue with the County's Williamson Act Program and absorb the cost of the lost subvention revenue, as well as any additional costs associated with new contracts in future budget years.

Defer New Contracts - The Board may defer consideration of any new contracts until the state funding is restored. This would prevent any additional cost burden to the County's General Fund, but would not address the existing \$360,000 budget gap created by the loss of state funds this fiscal year. As noted above the state subventions cover only 12 percent of the cost to the County of each new contract entered into by the Board. While the cost of each contract can vary substantially due to Prop 13 valuations, a recent contract approved by the Board was estimated to reduce the annual taxes for the property owner by \$15,000 which reduced County revenues by an estimated \$4,125 annually for which the state would reimburse \$488. There are currently five applications pending for new contracts. The Board may

choose to continue processing of the pending contracts, but not allow new applications, or may direct staff to delay processing of all applications until the funding is restored or new funding sources are identified. Replacement contracts for properties currently in the program would still be permitted, allowing property owners to transfer, adjust parcel sizes or subdivide and still remain in the Ag Preserve if they meet the qualifications, as there would be little to no tax or revenue consequences to those actions.

Non-Renewal of Substandard Parcels - The Board may direct staff to initiate non-renewal of all substandard parcels, which would reduce the cost of the program to the County over time and bring the contracted lands into compliance with the County Rules, General Plan policies and the State requirements. Alternatively, the Board may direct staff to phase-out only those contracts where the substandard parcel has transferred ownership. In order to initiate phase-out in 2010 the Notices of Non-Renewal would need to be approved by the Board and served on the land owners no later than November 2, 2009. Given the large number of substandard parcels (350 Type II and 70 Type I parcels) it is not possible for staff to meet this deadline this year.

Conversion to County-Sponsored Program - One option that staff evaluated is to convert the state Williamson Act program to a locally sponsored program. A County sponsored program could potentially increase the valuations and the resultant tax revenues over time, while potentially reducing the tax benefits to property owners.

The Williamson Act is authorized by the California Constitution. Once a Williamson Act contract is recorded for a qualifying property, the Assessor values the property in a special way utilizing a capitalized income approach to valuation. The law is set up so that the owner's taxes are based on the Williamson Act valuation, the Proposition 13 valuation, or 75% of the Proposition 13 valuation, whichever is less. In practice, the Williamson Act value is typically the lowest value, and taxes are based on that. Under state law, no other type of restriction on property permits the Assessor to value property using the capitalized income approach. When a property is restricted pursuant to a government-imposed restriction other than a Williamson Act contract, such as zoning or a conservation easement, the Assessor values the property pursuant to Proposition 13, taking into account the affect of such restriction on the fair market value of the property. Because of the method used to value land under the Williamson Act, state law does not permit a County program that results in the same valuations or tax benefits as the Williamson Act, even if the restrictions remain equal.

The County may consider transitioning properties out of the Williamson Act and inviting owners to replace the contract with a similar restriction or easement designed to preserve agricultural and open space lands in the County. The property tax ramifications of such a transition are unknown at this time; it may not provide the deep discounts to property owners that the Williamson Act currently provides. Ultimately, the taxable values would depend on the nature of the individual restriction, how restrictive it is, and whether or not it is in perpetuity, among other things. Such a transition from the Williamson Act to an alternative program could occur under a few different scenarios:

1. Phase out contracts & replace with alternative restrictions. The County could initiate non-renewal of all contracts and invite the owners to come in to execute an alternative restriction, perhaps in the form of an agricultural conservation easement. Under this scenario the non-renewed Williamson Act contracts are in full force until they are completely phased-out over nine years. However, any new restrictions, like a conservation easement placed on the property would apply concurrently. If more than one restriction is on the property at a time (i.e. contract in phase-out and new easement), then the more restrictive will govern.

2. Rescind contracts & replace with Open Space Easements. Presently, the Williamson Act permits the parties to rescind and replace the contract with either another Williamson Act contract, or with a certain type of open-space easement, *provided that the easement is consistent with the Williamson Act for the duration of the original Williamson Act contract.* (Government Code Section 51255, *emphasis added.*) Generally, this occurs upon a land owner initiated request. The open-space easement must meet the requirements of the Open-Space Easement Act of 1974, which requires that the land to be restricted is essentially unimproved. Land under Williamson Act contracts frequently contains development of some kind, and may not qualify for this type of open-space easement. However, for the existing Type II Open Space contracts, such a rescission and replacement with an open space easement could be viable. Under this scenario, the replacement of the Williamson Act contract occurs immediately, and there is no phase out. The entity holding the easement would be charged with enforcing it, and ensuring that it is consistent with the Williamson Act contract for the duration of the original contract. There are approximately 2,353 acres of land presently under an Open Space Type II Williamson Act contract (less than 1% of total contracted lands) that could potentially qualify for this option.
3. Rescind contracts & replace with alternative restriction. Presently there is no legal authority permitting the County to initiate immediate termination of Williamson Act contracts, either through cancellation or through an “easement exchange” (rescinding the contract in lieu of cancellation in exchange for other land in the county being restricted by an agricultural conservation easement.).

Similarly, there is no legal authority to permit the County (or the land owner) to initiate the rescission of a Williamson Act contract in order to simultaneously replace it with an alternative restriction, other than an open space easement (as discussed above) or another Williamson Act contract. Legislation would be required to permit the County to rescind and replace contracts with alternative restrictions. In order to pass constitutional muster, such legislation may require that the alternative restriction be consistent with the original Williamson Act contract for the duration of the original contract.

If such legislation is passed, and if the County is able to rescind Williamson Act contracts and replace them with an alternative equivalent restriction, then it would be up to the Assessor to determine the affect of such alternative restriction on the value of the property under Proposition 13. As stated earlier, there is no certainty that the alternative restriction would result in a similar tax savings as the Williamson Act provides – it could be more or less depending on the nature and extent of the restriction.

The transition from a Williamson Act program, to a similar alternative county program is not impossible, but it would certainly entail significant costs to the property owners and a substantial staff effort well beyond our current capacity. This effort would involve changing our regulatory procedures, notifying and working with property owners, conducting hearings, converting all of the existing contracts, developing, reviewing and processing new contracts or easements and developing a system for monitoring. The cost of such a transition is unknown at this time, but some of the costs might be recouped through application fees (although property owners will undoubtedly balk at these costs to transition out of a program that currently provides them with a significant tax reduction). The cost to administer such a county program is also unknown, but may be similar to the current cost of administering the County’s Williamson Act program over time. State subventions would no longer be available to the County under a locally sponsored program. The main benefit of a County-sponsored program would be the potential to increase the valuations and revenues over time and to avoid state oversight. Again, however, the magnitude of the

revenue benefit, if any, is unknown at this time and any such benefit would derive from property tax increases for affected landowners.

RECOMMENDATION: Staff recommends that the County continue to support the existing Williamson Act contracts and replacement contracts and defer entering any new contracts until the subvention revenue is restored or an alternative funding source is identified. Staff will continue to evaluate the substandard parcels and bring forward for Board approval of Notice of Non-renewal for those properties that cannot be brought into compliance. Staff further recommends that the County continue to press for legislative changes to allow the County to initiate partial non-renewals as well as limitations on the use of Certificates of Compliance on lands under Williamson Act contract.