

County of Santa Clara
Department of Planning and Development
Planning Office

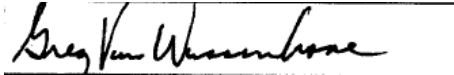


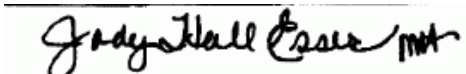
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Prepared by: Dana Peak
Special Programs/Program Manager
Kevin O'Day
Deputy Agricultural Commissioner
Reviewed by: Michael Lopez
Planning Manager

DATE: March 19, 2009

TO: Supervisor Donald F. Gage, Chairperson
Supervisor Liz Kniss, Vice Chair
Housing, Land Use, Environment, & Transportation Committee (HLUET)

FROM: 
Greg Van Wassenhove
Director of Agriculture and Environmental Management


Jody Hall Esser
Director of Planning and Development

SUBJECT: Williamson Act Guideline Revisions

RECOMMENDED ACTION

Consider recommendations from the Department of Planning and Development and the Department of Agriculture and Environmental Management relating to Williamson Act Guideline revisions and forward to the Board of Supervisors with a favorable

recommendation.

Possible action:

- a. Accept staff report-back and recommendations
- b. Approve and adopt revised "Guideline for Commercial Agricultural Use" and "Guideline for Compatible Use Development on Restricted Lands".

REASONS FOR RECOMMENDATION

Staff recommends the Board of Supervisors consider revisions to the Williamson Act guidelines to address two issues:

1. Clarify the relationship between land coverage, farm revenue and farm history on contracted parcels.
2. Establish an accommodation for land that is unavailable for agricultural use due to regulatory restrictions, such as a mandatory "buffer zone" along riparian corridors.

The proposed revisions directly relate to the "Guideline for Commercial Agricultural Use" (Attachment 1). However, because agricultural use requirements are included in the "Guideline for Compatible Use Development on Restricted Lands" (Attachment 2), both documents are recommended for revision.

Issue #1 -- Land Coverage, Farm Revenue and Farm History

The "Guideline for Commercial Agricultural Use" (Guideline) establishes criteria for evaluating whether land is devoted to the commercial production of agricultural commodities. These evaluation criteria include a land coverage percentage, agricultural income and farm history.

On September 11, 2008, the Williamson Act Compatible Use Determination Appeal Review Committee convened to consider the appeal of a staff-level determination proposing development on a restricted parcel. The appellant asserted that, due to the grammatical construction of text, the Guideline only requires 60% of the property currently be in use for commercial agricultural production. The appellant asserted that the Guideline does not require that 60% of the land be in commercial agricultural production for three of the past five years as interpreted by staff.

The Appeal Review Committee found that the spirit and intent of the Guideline, as adopted, is to ensure that Williamson Act contracted lands are devoted to commercial agricultural production. Furthermore, the intent of the Guideline is to require a history of land being devoted to commercial agricultural production when compatible use development is proposed. The Appeal Review Committee also found that while staff's interpretation of the Guideline is reasonable and consistent with the intent of the Guideline, the Williamson Act, and the County's Williamson Act program, it is possible for someone to read the Guideline and to come to an alternate conclusion due to the punctuation and grammatical construction of the conditions for commercial agriculture, and therefore upheld the appeal.

The Appeal Review Committee directed staff to seek confirmation from the Board of Supervisors on the intent of the Guideline relating to the substantiation of commercial agricultural production on parcels restricted by Williamson Act contracts. Specifically, clarifying the relationship between land coverage percentages, farm revenue and the three to five year history of farm use will provide future certainty for members of the public on how to comply with the County's Williamson Act program when proposing compatible use development.

Example of issue:

An individual owns 10 acres of non-prime land that is restricted by a Williamson Act contract. In each of the past five years, the owner earned \$2,000 from wine grapes planted on one acre, or 10%, of the parcel. The remainder of the land was not used for commercial agriculture.

The owner decides to construct a house and a secondary dwelling on the property and applies for a compatible use determination. For sub-standard parcels, the Williamson Act guidelines describe a land coverage requirement of 75% and gross annual farm income of \$2,000 in three of the past five years. In order to meet the land coverage requirement, the owner plants hay on 6.5 acres and immediately files an application for development. While 75% of the parcel is currently farmed, there has not been a history of the parcel being devoted to commercial agricultural production because for the past five years only 10% of the parcel was farmed.

In order to clarify this requirement for the public and affirm the connection between land coverage, revenue and the agricultural history of a parcel, staff recommends the Board consider the following revisions (**in bold**) to the "Guideline for Commercial Agricultural Use" and reflect similar revisions in the "Guideline for Compatible Use Development on

Restricted Lands":

"(Page 2) ... To be considered as "devoted to the commercial production of agricultural commodities," the contracted parcel(s) must meet at least one of the following conditions:

- 1) The property is at least 10 acres of prime land, at least 60% of the property is being used for commercial ~~agriculture, and~~ **agriculture and** the owner substantiates revenue from commercial agriculture on **at least 60% of the property in 3 of the past 5 years** using federal income tax documents filed in ~~3 of the past 5~~ **those** years; or,
- 2) The property is at least 40 acres of non-prime land, at least 60% of the property is being used for commercial ~~agriculture, and~~ **agriculture and** the owner substantiates revenue from commercial agriculture on **at least 60% of the property in 3 of the past 5 years** using federal income tax documents filed in ~~3 of the past 5~~ **those** years; or,
- 3) The property is less than 10 acres of prime land, at least 75% of the property is being used for commercial ~~agriculture, and~~ **agriculture and the owner substantiates that** the property generated at least \$3,500 in annual revenue from ~~sales of agricultural commodities~~ **commercial agriculture on at least 75% of the property in 3 of the past 5 years using federal income tax documents filed** in ~~3 of the past 5~~ **those** years; or,
- 4) The property is less than 40 acres of non-prime land, at least 75% of the property is being used for commercial ~~agriculture, and~~ **agriculture and the owner substantiates that** the property generated at least \$2,000 in annual revenue from ~~sales of agricultural commodities~~ **commercial agriculture on at least 75% of the property in 3 of the past 5 years using federal income tax documents filed** in ~~3 of the past 5~~ **those** years; or, ...".

The suggested revisions do not change Conditions #5, #6, or #7 of the Guideline. The proposed revisions to the "Guidelines for Commercial Agricultural Use" and the "Guideline for Compatible Use Development on Restricted Lands" are shown as Attachment 3 and Attachment 4.

Issue #2 -- Land Unavailable for Agriculture Due to Government-Imposed Restrictions

At its November 4, 2008 meeting, the Board directed staff to develop proposed language for the Williamson Act guidelines that would provide accommodation for land unavailable for

agricultural use due to regulatory restrictions, for report-back to the full Board.

The proposed revisions amend the "Guideline for Commercial Agricultural Use" (Attachment 1) and the "Guideline for Compatible Use Development on Restricted Lands" (Attachment 2). These guidelines describe evaluation criteria relevant to proposed development and to farming enterprises, including farm history, agricultural income, land coverage.

Parcels enrolled in the Williamson Act must be “devoted” to a commercial agricultural use. Land coverage is a critical element in making this determination. The current method of analysis for land coverage measures the area planted in crops or grazed by livestock.

The guideline contains minimum land coverage percentages for the farmed areas which vary depending upon parcel size and crop value -- 50% of the parcel for high value crops such as vineyards and orchards, 60% of the parcel for standard-sized parcels, and 75% of the parcel for substandard parcels (parcels below the minimum sizes state law presumes necessary to support agriculture – 10 acres for prime land, 40 acres for non-prime land).

The guideline currently provides relief to property owners where the presence of natural land features, such as streams or rock outcroppings, precludes agricultural use of significant portions of the property. However, the existing exclusion does not expressly provide similar relief for situations relating to legal restrictions on land use. Regulatory or judicial mandates could conceivably prohibit the agricultural use of portions of properties enrolled in the Williamson Act, such as mandatory "buffer zones" along riparian corridors.

Staff anticipates that the need to consider exclusions due to regulatory prohibitions or judicial mandates will be infrequent.

Staff recommends the Board consider the following revision (**in bold**) to Footnote #2 of the "Guideline for Commercial Agricultural Use":

“The Agricultural Commissioner shall consider exceptions to the land coverage standards stated in #1 - #4 when there are natural land features present, such as streams and rock outcroppings, which the owner demonstrates are not conducive to the commercial agricultural uses appropriate for the property **or where government-imposed restrictions prohibit use of portions of the land for agricultural purposes. Agriculture must be the primary use of the land; if** more than 50% of the property is not conducive to

commercial agricultural uses which are appropriate for the property, the property may be subject to nonrenewal.”

The proposed revision to the guidelines are shown as Attachment 3 and Attachment 4.

BACKGROUND

The Land Conservation Act, better known as the Williamson Act, creates an arrangement whereby private landowners contract with counties to voluntarily restrict land to agricultural uses. In exchange for lower property taxes, landowners forego the possibility of converting their property into non-agricultural uses during the term of the contract. A Williamson Act contract runs with the land and obligates the property owner, and any successors of interest, to the contract's enforceable restrictions.

Beginning in 2004, staff actively worked with stakeholders, the general public, and state and local agencies to develop guidelines and policies revising the County's administration of the Williamson Act program to meet County goals and policies and to assure consistency with state statute.

In March 2006, the Board of Supervisors adopted five guidelines relating to the administration of Williamson Act contracts in unincorporated Santa Clara County, including the "Guideline for Commercial Agricultural Use" and the "Guideline for Compatible Use Development on Restricted Lands". These guidelines describe evaluation criteria relevant to proposed development and to farming enterprises, including farm history, agricultural income, land coverage.

In November 2008, the Board of Supervisors approved staff recommendations to continue current methods of analysis relating to measuring land coverage and to continue existing allowances for natural land features and for temporary fallow periods.

CONSEQUENCES OF NEGATIVE ACTION

Land Coverage, Farm Revenue and Farm History

The relationship between the land coverage standards and agricultural revenue in the Williamson Act guidelines will not be amended and, due to its punctuation and grammatical construction, could provide future uncertainty to landowners and the public.

Land Unavailable for Agriculture Due to Government-Imposed Restrictions

The land coverage standards in the Williamson Act guidelines will not be amended to accommodate land unavailable for agricultural use due to regulatory prohibitions, such as mandatory "buffer zones" along riparian corridors.

ATTACHMENTS

- Attachment 1 -- Guideline for Commercial Agricultural Use
- Attachment 2 -- Guideline for Compatible Use Development on Restricted Lands
- Attachment 3 -- Revised Guideline for Commercial Agricultural Use (proposed)
- Attachment 4 -- Revised Guideline for Compatible Use Development on Restricted Lands (proposed)