



Williamson Act Workshop

Sacramento

California Department of Conservation
Division of Land Resource Protection

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Jacquelyn Ramsey**

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Land Resource Protection

Introduction & Overview



**The California
Land Conservation
Act of 1965**

Land Use Decisions Matter



California Sprawl



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1938



1950's



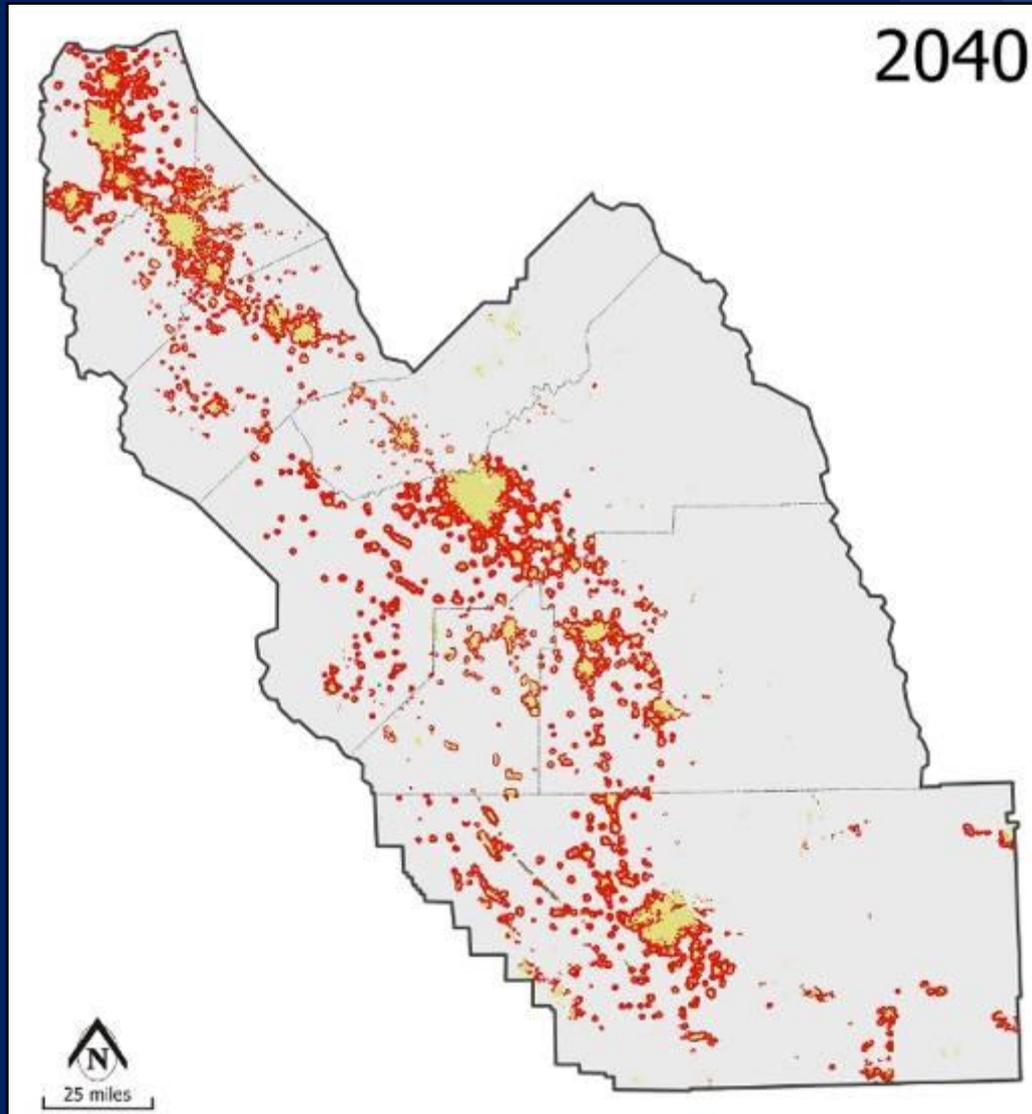
1960's



1970's



“Status Quo” Scenario
assumes development patterns of the past
60 years continue for next 40



26% reduction in farmland
and almost continuous
urbanization along Hwy. 99

One million acres of land
could be consumed for
urban use in the San
Joaquin Valley.

A nation that destroys its soils, destroys itself.
Franklin D. Roosevelt



Land Resource Protection



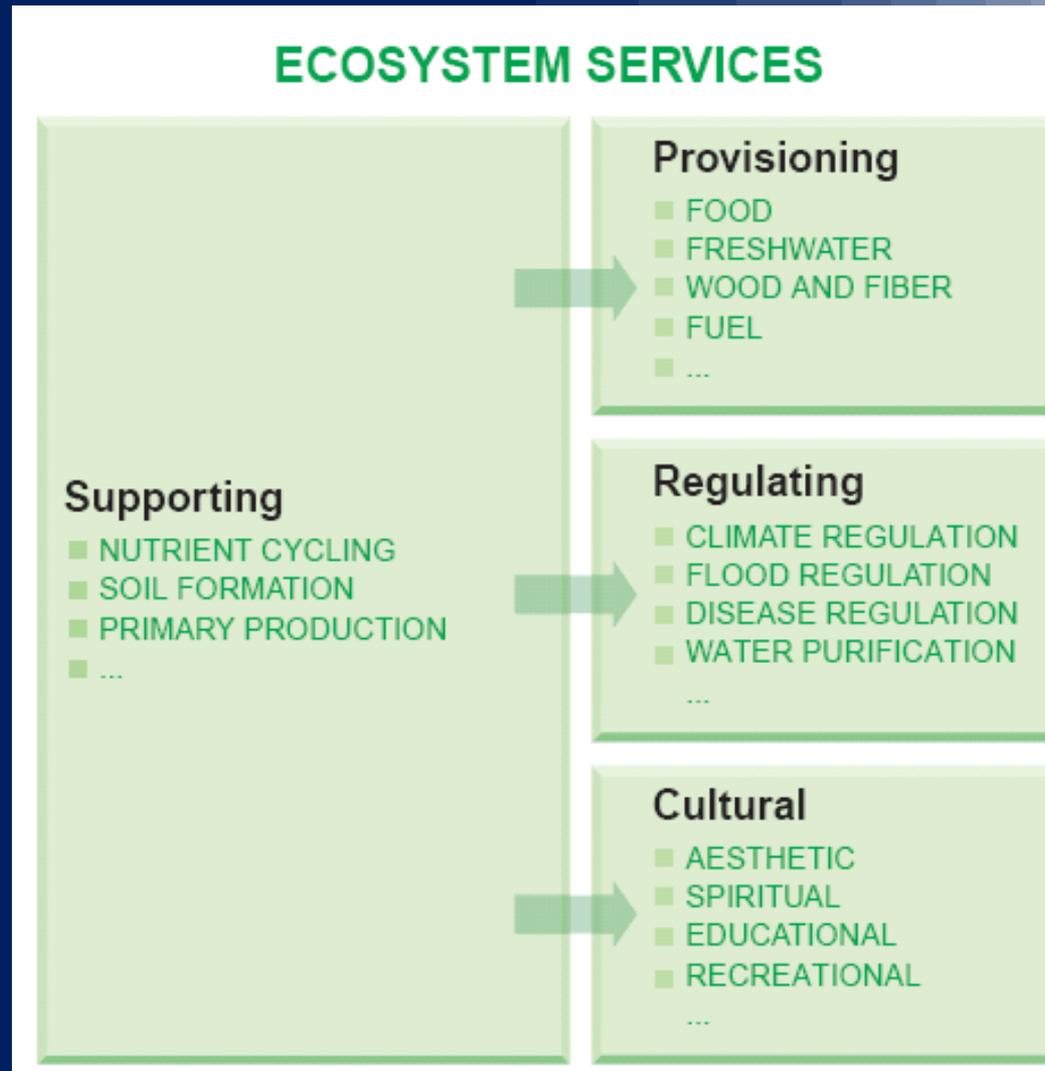
California lost 176,014 acres of farmland and grazing land between 2004 and 2006 including 81,247 prime acres.

Ecosystem Services

The benefits people obtain from ecosystems



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California leads the nation in over 80 crops and produces 60% of the fruits, nuts and vegetables by value in the nation. California has farm gate sales of \$31 billion and \$60+ in food processing



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“Compatible Uses”



Intent of the Williamson Act



- Preservation of a maximum amount of limited supply of agricultural land
- Discouragement of premature and unnecessary conversion of ag land to urban uses is in the public interest.
- Agricultural lands have important open space benefits, and should be kept in production.

“Compatible Uses” – Statutory Language



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- **Every contract shall exclude uses other than agricultural uses, and other than those compatible with agricultural uses (GC §51243 (a))**
- **Enforceability of contracts is necessary to permit preferential taxation provided under CA Constitution (GC §51243.6)**
- **Additional population -- permanent or temporary -- can hinder ag operations and must be evaluated (GC §51220.5)**

“Compatible Uses” Defined cont.



- Principles of Compatibility
(GC §51238.1)

1. Must not significantly compromise ag capability on parcel or other contracted lands
2. Must not displace or impair ag on parcel or contracted parcels *unless* related directly to production of commercial ag product – i.e. harvesting, processing, or shipping
3. Must not result in significant removal of adjacent contracted land

“Compatible Uses” – Nonprime Lands ONLY



- Conditional uses (needs a CUP) that do not meet previous sections allowed if:
 - Conditions will avoid or mitigate on- or off-site impacts to ag
 - Ag productivity and loss or displacement of ag are considered w/in CUP findings
 - Use is consistent with the purposes of the Act to preserve ag land and open-space land (as defined)
 - Use is not a residential subdivision

“Compatible” in 1994?

- Previous sections do not apply if use existed before 7/7/94 (GC §51238.3)
- Do not apply if use was allowed by contract prior to 7/7/94 and Act defined it as a compatible use at time contract was signed or amended. DOC will consult on compatibility definitions as they existed
- Uses must be listed within the contract (before 7/7/97, may refer to other documents)

How to evaluate

- Principles of Compatibility
- Purposes of the Act
- CA Constitution- “for the production of food and fiber”

– The Compatibility Continuum:

Not OK **30%** --- Use Discretion 40% --- ok 30%

Compatibility Issues

- **Residences** – Allowed if related to the commercial agricultural use of the property.
- **NO commercial ag use**
 - = **NO residence allowed**
 - “Planned” ag use does not qualify
 - Should show income or other criteria to ensure commercial ag use

Compatibility Issues cont.

- **Duck clubs-** not commercial ag, may be OK as a compatible use. Watch for clubhouses, cabins, etc.
- **Airstrips-** For ag use, not allowed for “convenience”
- **B and B’s-** New buildings related to commercial ag use?
- **Recreation-** Natural or ag state, open to the public, cost not preclude public use

Bad Outcomes

- **Material Breach** – Buildings over 2500 sq. ft., that are not related to the ag use – subject to enhanced penalties
- **Citizen suits** – any landowner within one (1) mile, or any WA contract holder in county, has standing to sue
- **Loss of subventions** – DOC must certify that requests are authorized
- **Repeal of the Act**

How to Avoid Problems

- **Ensure there is a commercial agricultural use- establish a commercial ag threshold and verify annually with a questionnaire**
- **Have an up-to-date WA ordinance that meets statutory requirements**
- **If needed, establish Open Space contracts**
- **Nonrenew parcels that do not meet requirements- too small, no ag**

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Horses on contracted land



As an Ag Use



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- The commercial breeding and training of horses (including racing and stock horses) constitutes a commercial agricultural use of property that is under a Williamson Act contract.
- The boarding of horses, or the *occasional* sale or training of horses does ***not*** constitute commercial agricultural activity, nor do riding facilities, equestrian centers, show arenas or event centers, or keeping horses or any other animals for personal use.

As a Compatible Use



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- In order for any such non-agricultural uses (above) to be “compatible” with the “agricultural use” of the property, there must be some underlying “agricultural use” presently occurring on the property. The local agency would need to make findings of compatibility.

Local Agency Discretion



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- As always, local agencies may adopt more restrictive local policies or rules, and may enter into contracts that do not allow, or limit commercial horse breeding activities or compatible activities.

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Mining on contracted land



Mining and the Williamson Act



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- Mining is permissible on contracted land if it can meet the general compatible use requirements in GC 51238.1.
- If the compatible use requirements cannot be met, a responsible Board may still approve a mining operation under GC 51238.2, provided:
 - The contractual commitment to preserve prime land or non-prime land for open space use will not be significantly impaired.
 - Permit conditions shall include compliance with the SMARA reclamation standards and applicable performance standards for prime agricultural land and other agricultural land.
 - No exception to the SMARA standards for prime or other agricultural land will be permitted.
- **SMARA performance standards for:**
 - *Prime Farmland* - Reclamation is complete when productive capability of the land equals or exceeds for two consecutive crop years, that of the pre-mining conditions or similar crop production in the area.
 - *Non-Prime Lands* - In addition to topsoil salvage, maintenance and redistribution, non-prime lands shall be reclaimed so as to be capable of sustaining economically viable production of crops commonly grown in the surrounding areas.

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Lot Line Adjustment On Contracted Land



Question #1

- Is a map required by the Subdivision Map Act? (GC §66412(d))
 - If YES (Subdivision)
 - Follow Government Code §66474.4
 - If NO (Lot Line Adjustment)
 - Follow Government Code §51257

Lot Line Adjustments GC§51257



Lot Line Adjustments allowed to proceed without filing a tentative map, parcel map, or final map ONLY when the following conditions are met:

- 1. The lot line adjustment is between four or fewer existing adjoining parcels.**
- 2. The land taken from one parcel is added to an adjoining parcel.**

Lot Line Adjustments GC§51257



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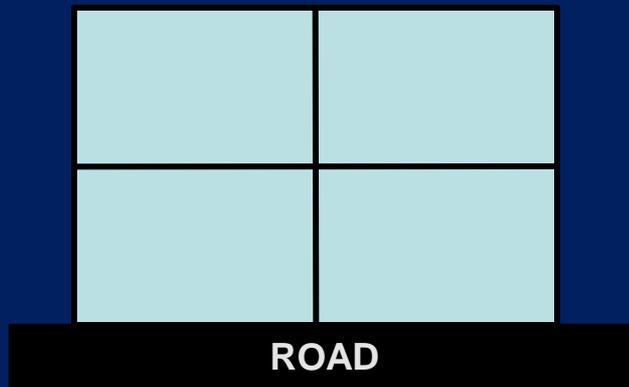
- 3. At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.**
- 4. The adjusted parcels must conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances**
- 5. The adjustment shall be reflected in a deed, which shall be recorded.**

Lot Line Adjustments

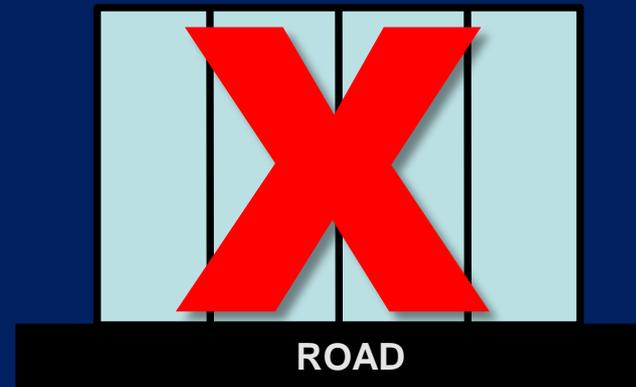
GC§51257

6. The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.
7. The lot line adjustment does not result in a greater number of developable parcels, or an adjusted lot that is inconsistent with the general plan.

BEFORE

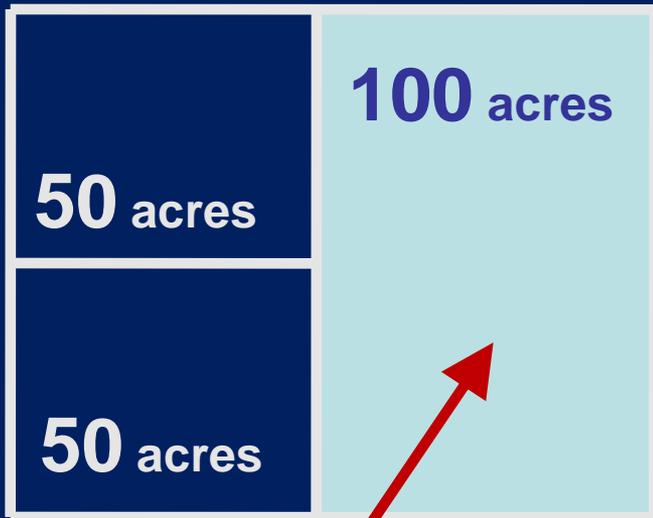


AFTER



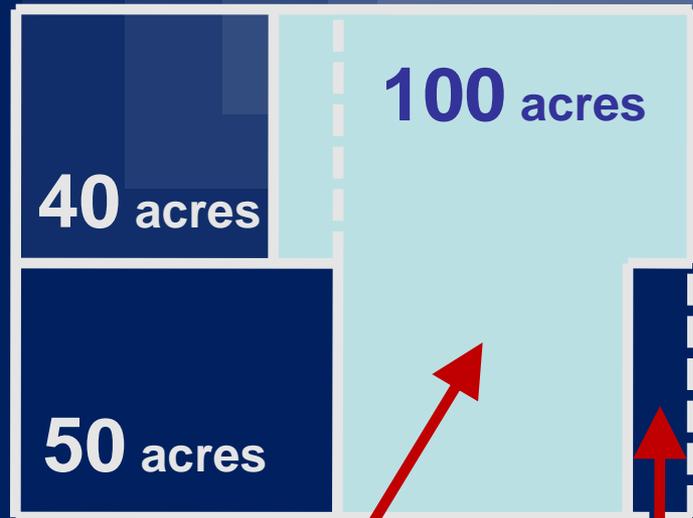
Lot Line Adjustment Example #1

BEFORE



Contracted

AFTER



Contracted

10 acres

- **NEW contract or contracts REQUIRED** if exterior boundary changes

Things to Remember



- **The Board or Council is required to make the previous seven (7) findings when:**
 - 1. Lot Line Adjustment is done pursuant to Government Code § 66412(d).**
 - No maps required under Subdivision Map Act
 - 2. The land is under Williamson Act Contract.**

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Subdivision On Contracted Land



Subdivisions of Land Under Contract



- A subdivision may occur on lands under contract only when all of the following are met:
 1. The parcel is being divided for purposes directly related to the agricultural use of the land.
 2. Structures built on newly created parcels must be directly related to agricultural pursuits on the property.

Subdivisions of Land Under Contract cont...



3. The Board must make a finding that the subdivision will not result in residential development of the resulting parcels, except where residential use will be incidental to the commercial agricultural use of the land.

4. The newly created parcels must each be large enough to sustain their agricultural use.
 - 10 acres for prime land
 - 40 acres for non-prime land

Subdivisions of Land Under Contract cont...



- Exception {§66474.4(c)(1)} Parcels may be subdivided smaller than the presumed minimum if the Board or Council finds:
 - Sustainable Agriculture
 - The parcels can sustain an agricultural use permitted under the contract or easement.
 - or
 - Joint Management
 - The parcels are subject to a written agreement for joint family management (GC §51230.1) and they total at least the presumed minimum size.

Exceptions

- Homesite Exception : Parcel sizes may be smaller than the presumed minimum size if the 5 requirements are met (§66474.4(c)(2))
- Exceptions to subdividing land under contract {§66474.4(e)}
 - Non-Renewal
 - Only three (3) years are remaining on the contract.
 - Proper Annexation
 - LAFCO has approved annexation of land to a city, and the city will not succeed to the contract because of a proper protest.
 - Tentative Cancellation
 - Board or Council has granted tentative approval for cancellation of the contract.

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Contract Termination



Nonrenewal

GC 51245



- Recommended method of termination
- Nine-year nonrenewal path
- Taxes gradually increase each year
- Either landowner OR County may initiate nonrenewal

Cancellation

GC 51280



- Reserved for “extraordinary situations”
– per Supreme Court
- Initiated by landowner ONLY
- Results in immediate termination

Lax cancellation procedures defeat the intent of the Legislature to reduce the taxes on agricultural land in return for long-term binding commitments

Cancellation Required Findings

GC §51282



1. Cancellation is consistent with the purposes of the Williamson Act

and/or*

2. Cancellation is in the Public Interest

- * **Check the contract or county ordinance**
 - some older contracts require both findings

Cancellation:

(1) Consistency Findings:

- 1) Notice of nonrenewal filed
- 2) Not likely to result in removal of adjacent land from agricultural use
- 3) Alternative use is consistent with applicable General Plan
- 4) Will not result in discontinuous urban development
- 5) No proximate noncontracted land both available and suitable



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Cancellation:

(2) Public Interest Findings:

- 1) Other public interest concerns substantially outweigh objectives of the Act
- 2) No proximate noncontracted land both available and suitable

Cancellation:

Points to remember:



- Substantial supporting evidence should support the findings
- Uneconomic agricultural return is not a sufficient reason to cancel
- Prior to taking action, Board/Council must consider Department of Conservation's comments
- Cancellation Fee = $12\frac{1}{2}\%$ of Fair Market Value
- NO contracting landowner has any reasonable expectation that their contract is immediately terminable

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Cancellation Valuation Formal Review



CANCELLATION VALUATION - FORMAL REVIEW OF ASSESSOR'S DETERMINATION OF VALUATION



Sections 51283 and 51283.4 allow the Department or the landowner to request the county assessor to formally review the assessor's initial valuation of the land proposed to be cancelled.

Section 51203 provides the exclusive administrative procedure for appealing a cancellation valuation.

1. The request for formal review must be submitted within 45 days of receiving the assessor's initial valuation.
2. The party seeking formal review must submit the reasons for believing that the formal review is not accurate.
3. Either party may submit additional information to the assessor regarding the valuation. The information must be submitted within 30 days that the parties receive notice from the assessor that a formal review is being undertaken.

VALUATION CRITERIA



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In determining the current fair market value of the land, and therefore the cancellation fee, the assessor's valuation shall be based upon the proposed use of the land, and the value of the land if as if it were free of the contractual restriction, and as if the landowner has received all permits and entitlements for the proposed use.

1. Any valuation must be consistent with accepted principles for assessment. The county *Assessor's Handbook* provides formulas and guidance regarding valuation of the land.
2. Upon completion of the formal review, the assessor shall either revise the valuation or determine that the initial valuation was accurate.
3. The assessor must include a "brief narrative" of the consideration information that was properly provided to the assessor by the parties.
4. The assessor shall give no consideration to information not properly served on the other parties.
5. The assessor shall provide a brief narrative explaining any denial of a formal review.

ALTERNATIVE TO FORMAL REVIEW



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- In lieu of formal review, the Department and landowner may agree to an alternative cancellation valuation and communicate that valuation to the city or county, which shall use that valuation serve as the cancellation valuation.
- The landowner or the Department must seek formal review of the assessor's valuation to preserve their right to challenge the valuation in court.

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Public Acquisition Notice



What is Public Acquisition? (PA)



- Acquisition of land located in an “agricultural preserve”.
- by a “public agency” or “person” (GC section 51291, subd. (a)).
- for a “public improvement” as defined by GC Section 51290.5 (which includes interests in real property).

Some Examples of Public Improvements:

- **Wastewater Treatment Plants**
- **Schools**
- **Highways**
- **Repairs to:**
 - **Bridges**
 - **Roads**
 - **Levees**

When Notice is Required:

- Whenever it appears that land within an agricultural preserve may be required by a public agency or person for a public use, the public agency or person shall advise the Director of Conservation and the local governing body responsible for the administration of the preserve of its intention to consider the location of a public improvement within the preserve (Government Code § 51291 (b)).

What Notice is not:



- **Public Acquisition Notice Must be provided separately from CEQA environmental notice.**
- **CEQA Notice \neq WA Pub. Acq. Notice**

What are the Legal Requirements for Notice?

The requirement to notice occurs three times in Williamson Act statute.

First Notice: A Public Agency must notify:

- DO C's Director , and
- The local jurisdiction administering the agricultural preserve (City/County)

when the Public Agency has the intention to acquire land in an agricultural preserve for a public purpose (GC §51291(b))

FIRST NOTICE prior to acquisition should include:



- 1. The public agency's explanation of [its] preliminary consideration of findings (GC §51292 (a) & (b));**
- 2. A description of the agricultural preserve land the public agency intends to acquire for the improvement ;**
- 3. A copy of any Williamson Act contract which pertains to the subject land (GC §51291(b)).**

Acquisition of Williamson Act Land



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- The Department must be notified in advance of any proposed public acquisition (Government Code §51290 - 51292), and specific findings must be made by the public agency.
- The public agency must consider the Department's comments in response to the first notice prior to taking action on the acquisition.
- The property must be acquired by eminent domain or in lieu of eminent domain in order to void the contract (§51295).

SECOND NOTICE should include:



- **After acquisition (escrow has closed), the public entity shall notify the Director of Conservation within 10 working days (GC 51291 (c));**
 - 1. The notice shall include a general explanation of the decision and the findings made pursuant to Section 51292.**
 - 2. A general description, in text or by diagram, of the agricultural preserve land acquired (a vicinity map is good);**
 - 3. And, a copy of any applicable WA contract(s).**

THIRD NOTICE (if needed):



1. **If there is a significant change in the public improvement, the Public Agency must provide notice to the Department and the local jurisdiction (GC 51291(d));**

OR

2. **If the Public Agency decides not to acquire the property and/or decides to return the property to private ownership;**

3. **If the Public Agency decides not to use the land for the public improvement the land must be placed under a contract that is as restrictive as the one it was under before acquisition occurred (GC 51295).**

All Required Notices should be sent to:



- BRIDGETT LUTHER, DIRECTOR
- DEPARTMENT OF CONSERVATION
- DIVISION OF LAND RESOURCE PROTECTION
- 801 K STREET, MS 18-01
- SACRAMENTO, CA 95814-3528

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Eminent Domain



Intent to Exercise Power

- The public agency must demonstrate its actual intent to exercise its power of eminent domain, if necessary, for this mechanism to apply.
- Accordingly, it is important some clear demonstration of intent to exercise the power exists, such as an offer letter consistent with Government Code section 7267.2, or an analysis substantially consistent with Code of Civil Procedure section 1245.230 (pertaining to Resolutions of Necessity).

“*Willing Seller*”



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The concept that a “*willing seller*” has conveyed title to property “in lieu of eminent domain” is inherently inconsistent.

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CEQA & Mitigation Measures



CEQA



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- **Use Appendix G of the CEQA guidelines to determine impacts to agricultural lands.**
- **The lack of current or past agriculture use of the land DOES NOT signify a low agricultural value. Agricultural land is rated according to soil quality and irrigation status. Vacant land still has the potential to be farmed. Once it is developed, that potential is lost.**

Mitigation Measures



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- We recommend a 1:1 ratio be used to mitigate direct losses of agricultural land. If the project includes growth inducing or cumulative impacts, or if a Williamson Act contract is terminated, this ratio should be increased.
- The DOC has a report consisting of approximately 30 mitigation tools that can be requested via phone or email from the Division of Land Resource Protection.

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Open Space Contracts



Establishing Open Space Contracts

- In order to establish open space contracts, the County must first amend its rules or ordinances to provide for agricultural preserves to include land contracted for open space uses AND to include requirements and conditions for direct open space uses OR uses compatible with open space uses.
- An open space contract may include agricultural uses, but its underlying purpose is to protect the non-agricultural “open space” value of the land.



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Open Space Contracts (cont.)

- **Open space contracted land may not compromise, displace, impair or result in the removal of agricultural or open space uses on adjacent contracted land. (GC 51238.1(a)).**
- **Open space uses contracted on non-prime agricultural land have more latitude for compatibility under GC 51238.1(b) and (c).**
- **The local rules can be more restrictive than State statutes.**
- **Open space contracts retain their Williamson Act benefits for subvention and tax purposes.**
- **Open space contracts allow a broader range of uses and structures than lands under Williamson Act contracts and, as a result, can help landowners avoid material breaches.**

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AUDITS



Background



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- **Audits previously conducted by the Dept of Finance are now completed by Williamson Act staff.**
- **Recently audited counties include Sutter, Amador, and Marin with Napa just under way.**
- **Good administration and fiduciary responsibility ensure the continuance of the Act.**

Audits: Purpose and Process



- **Verify that subventions are for ag purposes**
- **Ensure compliance with Government code sections 51200-51297.4, 16140-16154, 66474.4 and Revenue & Tax Code 421-430.5**
- **Research findings from satellite photography**
- **Recommendations for Program improvement**
- **Assessors Office: review Subvention Reports; examine WA folders; check accuracy of database for land classifications, etc.**
- **Planning Department: review county procedures for new Contracts, non-renewals, and cancellations. Ensure compliance with zoning. Review database for potential material breaches and proper permitting.**

Audits: Common Issues



- **Substandard parcels**
- **Restrictive Easements (OS/WA Contract)**
- **Non-compatible structures**
- **Public Acquisitions**
- **Annexations**
- **Amended Contracts**
- **Non-Ag activity**

Audits: Common Recommendations

- **Ensure trained, knowledgeable staff**
- **Better coordination between planning department, assessor's office, public works, LAFCO, etc.**
- **Clearly identify WA parcels:**
 - Parcel maps
 - Permitting requests
 - Subdivision or LLA requests
 - Citing of specific ag activity

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Geographic Information Systems Reporting



An aerial photograph of a golf course. The course is green and features several holes, sand traps, and trees. A central building, likely a clubhouse, is highlighted with a yellow rectangle. The entire golf course area is outlined with a yellow border. Surrounding the course are various land parcels, some of which are also outlined in yellow. The surrounding area includes residential neighborhoods with houses and streets, as well as agricultural fields. The text "Golf Course Under Williamson Act Prime contract" is overlaid on the left side of the image.

**Golf Course
Under
Williamson Act Prime contract**

Tracking the Contracts
One parcel at a time

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Material Breach



MATERIAL BREACH

GC § 51250



- Commercial, Industrial, Residential Buildings
- Not allowed by this chapter or contract, local uniform rules or ordinances consistent with the provisions of this chapter
- Not related to an agricultural or compatible use
- Constructed after January 1, 2004

PENALTIES



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- Require elimination of the material breach
- Assess a monetary penalty of:
 - 25% of the unrestricted fair market value of the land rendered incompatible by the material breach
 - AND
 - 25% of the value of the breaching building and any related improvements on the contracted land
- If landowner refuses to eliminate the breach according to an order, the city or county may eliminate the breach as a public nuisance
- If a breach investigation is started, the land is not eligible for cancellation
- The penalty may be reduced by up to one-half if equitable and statutory considerations in section 51250(j) & (k) are satisfied

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Recent Legislative Changes to the Williamson Act



AGRICULTURAL COMMODITY



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- Biofuels are now agricultural commodities.
(amended G.C. 51201(a))

AB 2921: MATERIAL BREACHES



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- **Requires material breach investigation to be completed before the subject property can be cancelled.**
- **Allow either the landowner or the Department to object to a local government's initial determination that there may, or may not, be a possible material breach. (new G.C. § 51250(e))**
- **Requires the city or county to base its decision as to whether a material breach exists on substantial evidence in the record. (new G.C. § 51250(h))**

AB 2921: MATERIAL BREACHES (cont)



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- **Permits the Department to extend the time deadlines specified in the material breach process. (new G.C. § 51250(u))**
- **Specifies that structures built pursuant to a building permit issued before January 1, 2004 is not a material breach. (new G.C. § 51250(s)(1)(A))**
- **Permit negotiations between the parties to resolve a potential material breach when caused by extenuating circumstances. (new G.C. § 51250(v))**



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OPEN SPACE USES

- **Any development on land to be restricted by an open space easement or contract pursuant to GC § 51255 must be compatible with or consist of, cause, facilitate or benefit either agriculture or open-space uses.**
- **(new G.C. § 51223(b))**
- **Open space contracts / easements shall not permit new development for at least the period of time the contract is in effect or the remaining time of the original contract. (new G.C. § 51223(c))**



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OPEN SPACE USES (cont)

- **“Development” is defined as the construction of buildings that are unrelated to the open space use or substantially impair the open space use. (new G.C. § 51201(p))**
- **The parcel or parcels are large enough to provide open space benefits. (new G.C. § 51223(a))**
- **Land enrolled in the Federal Conservation Reserve Program or Conservation Reserve Enhancement Program are Open Space Uses. NEW! (A.B. 2921)**

LOT LINE ADJUSTMENTS



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- AB 1441 extended the sunset date for Section 51257 (the Lot Line Adjustment Statute) to January 1, 2011.

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Open Space Subvention Act



Open Space Subvention Program



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- The Open Space Subvention Act (OSSA) was enacted on January 1, 1972, to provide for the partial replacement of local property tax revenue foregone as a result of participation in the California Land Conservation (Williamson) Act and other enforceable open space restriction programs (Government Code §16140 et seq.).

Open Space Subvention Program (cont)



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- Participating local governments receive annual payment on the basis of the quantity (number of acres), quality (soil type and agricultural productivity), and, for Farmland Security Zone contracts, location (proximity to a city) of land enrolled under eligible enforceable open space restrictions.

Open Space Subvention Program



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- Amendments to the Budget Act of 2009 have reduced the Williamson Act Subvention payments budget to \$1,000. From this \$1,000 budget, participating counties will receive proportional payments based on their requested subvention amounts.
- Despite this cut to the subvention payments, the Department of Conservation's Williamson Act Program is still in place and Williamson Act contracts will remain unaffected.

Open Space Subvention Program-Data Needed



Counties should fill out and submit an Open Space Subvention Application. The information found on the applications are needed for the upcoming 2010 Williamson Act Status Report. The application can be downloaded from the Department of Conservation's website at:

<http://www.conservation.ca.gov/dlrp/lca/oss/Pages/Index.aspx>

**Does this landowner really
need a tax break?**



For More Information:



Williamson Act Program

(916) 324-0850

dlrp@conservation.ca.gov

www.conservation.ca.gov/dlrp/lca