



PUBLIC ACQUISITION OF LAND WITHIN AGRICULTURAL PRESERVES AND/OR ENROLLED IN THE WILLIAMSON ACT:

What to include in notification packet?

The following material is provided to assist you in compiling and submitting information to the Department of Conservation (Department) when your agency plans to acquire land that is located within an agricultural preserve, or is enrolled in the Williamson Act, for public improvements. It is the Department's goal to ensure your project moves forward in a streamlined manner, by providing technical assistance toward meeting the requirements of Government Code §51291.

If you have additional questions, or suggestions for improvement of this document, please contact the Williamson Act Program at LCA@Conservation.ca.gov.

(Agency letterhead)

NOTIFICATION OF PUBLIC ACQUISITION OF WILLIAMSON ACT LAND

DATE OF NOTIFICATION

DAVID SHABAZIAN, DIRECTOR
DEPARTMENT OF CONSERVATION
C/O DIVISION OF LAND RESOURCE PROTECTION
801 K STREET, MS 14-15
SACRAMENTO, CA 95814
LCA@CONSERVATION.CA.GOV

Subject:

Dear Director Shabazian,

1. What is the total number of acres of Williamson Act contracted land and/or agricultural preserve land being considered for acquisition?

Contracted land must be located within an agricultural preserve. Some jurisdictions make the contracted land co-terminus with the agricultural preserve, so that the boundary of the preserve is the same as the contracted parcel(s). An acquisition usually will involve contracted land only, in which case, specify the number of acres under contract(s). However, if the acquisition involves agricultural preserve land not under contract, make that distinction and specify the number of acres. Identify the Assessor Parcel Number (APN) of each parcel (or portion of a parcel) to be acquired and the number of acres per parcel. A table can be included if multiple APNs are to be acquired

2. Is the land considered prime or nonprime agricultural land according to Government Code §51201(c)?

Customarily, the City or County Assessor's Office or Planning Department will have this information. If the acquisition will involve both prime and nonprime land, specify the number of acres under each designation and which APNs are included within each designation. A table can be included if multiple APNs are to be acquired.

3. What is the purpose of the acquisition?

Describe the planned public improvement - the project or reason for acquiring the property.

4. Where is the land located?

Describe the location of the property using a street address, if available, nearest roads or landmarks with approximate distance and direction from the roads or landmarks, the city, if applicable, and the county. Submit a vicinity map and a location map (see #8, below).

5. What are the characteristics of the adjacent land?

Describe the characteristics of the land adjacent to the Williamson Act/agricultural preserve property. Is the adjacent land Williamson Act contracted land, noncontract agricultural land, open-space, urban development, etc.?

6. Why was this land identified as necessary for the public improvement?

Describe the reasons for selecting this particular property. This description should be consistent with the findings indicated below. Describe the steps that will be taken or that have been taken to acquire the property by eminent domain or in lieu of eminent domain pursuant to Government Codes §7267.1, 7267.2 and 51295.

As a public agency, the Authority to acquire property through the eminent domain process should be expressed in statute. Please provide for the administrative record the relevant citations codified in statute through which your agency derives the authority to acquire property using the power of eminent domain.

7. How does this acquisition meet the findings required under Government Code §51292(a) and 51292(b)?

Describe how the findings would be met and submit any supporting documentation. A simple declarative statement that the findings have been or would be met; or repeating or paraphrasing the findings; is not sufficient. There must be an explanation or rationale in support of the findings. The descriptions above and documents submitted must be consistent with this explanation. Some points to keep in mind:

"The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve (§51292(a))."

The cost of land under contract or within an agricultural preserve is presumed to be less because of its restricted status. The explanation should make it clear whether cost was or will be a primary consideration and provide evidence in support of this.

"If the land is agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement (§51292(b))."

The second finding requires that there are "no other" locations, not under contract, that are "reasonably feasible" for the public improvement. Consideration of the area immediately adjacent to or surrounding the selected property may not be sufficient in meeting this finding. Because the area of consideration is determined by the nature of the public improvement, it may be restricted by very limited boundaries or may be open to any county or regional land. This area should be well defined and justified. In this regard, a map showing the selected property, the area of consideration, and a description of the geographic context, should be submitted. It should denote the selected property and land uses within the defined area by parcel or some other boundary. Land uses should be described in terms of agricultural, residential, commercial, industrial, vacant, etc. If the land is planned for a particular use, specify planned residential, planned commercial, etc. Local zoning designations are not sufficient unless they distinguish between current and planned use. In addition, identify land that is under Williamson Act contract or within an agricultural preserve.

Preferences generally cannot support the second finding. CEQA analysis, for example, may be expressed in terms of a preferred location and feasible alternatives. Such an analysis often does not support the finding for public acquisition because it does not speak in terms of "reasonable feasibility." The explanation should focus on the feasibility or infeasibility of other locations in comparison to the selected property. It is the responsibility of the public agency to define and support what is feasible or infeasible.

Although local zoning and general plans are important considerations in locating the public improvement, they can change and do not necessarily define feasibility or infeasibility. Moreover, the Williamson Act is the prevailing authority governing contracted land and agricultural preserves.

Many public agencies wish to avoid an acquisition by eminent domain and, therefore, seek a negotiated purchase. However, the fact that a location is not for sale or cannot be negotiated for purchase does not, in itself, make it infeasible.

Exemptions Under Government Code §51293

Public agencies may avoid the requirements of Government Code §51292 if the public improvement is exempt from the requirements pursuant to Government Code §51293. Several types of public improvements are identified under Government Code §51293 as exempt from the requirements to make the findings required by Government Code §51292. These exemptions are described in Attachment A. However, even if the Government Code §51293 exemptions apply, the requirement to provide notice to the Department under Government Code §51291(b) remains in place. Furthermore, Government Code §51293's exemption does not eliminate a public agency's responsibility under State policy, which is to avoid locating public improvements in agricultural preserves or upon land that is subject to a Williamson Act contract (Government Code §51290(a) and (b)), and to give consideration to the value to the

public of such land as set forth in the Williamson Act (Government Code §51290(c) Prime Farmland).

If it is determined that the public improvement is exempt under Government Code §51293, please explain the nature of the contemplated public improvement and why the improvement would be exempt from the findings stipulated in Government Code §51292 pursuant to Government Code §51293.

8. Submit a vicinity map and a location map.

Include a map of the proposed site and an area of surrounding land identified by characteristics and large enough to help clarify that no other, noncontract land is reasonably feasible for the public improvement. The vicinity map should include the entire project outline and the area of consideration (described under #7, above). The location map should include the parcel outlines, APNs, and identify which parcel(s) (or portion of parcel(s)) are being considered for the public improvement.

9. Submit a copy of the contract(s) covering the land.

Contracts are held by the landowner and local jurisdiction (city or county) with administrative authority for the agricultural preserve. The Department does not maintain individual contracts. Submit copies of the entire contract(s). If the acquisition involves preserve land not under contract, submit a copy of the Agricultural Preserve Resolution. Make sure the contract(s)/resolution is an official recorded copy that includes the date stamp from the county Assessor's Office.

10. Submit copies of all related Environmental Impact Reviews pursuant to the CEQA process.

Please submit a copy of the Title Page, Project Summary, and the Agricultural Resources sections of the CEQA document. Listing a link to the document on the Internet is also sufficient. If the project is exempt, submit the supporting document for exemption. If a document has not been completed, describe the plan for its completion.

11. Submit copies of all related Eminent Domain (or in lieu of Eminent Domain) documents pursuant to Government Code §51295.

A Williamson Act contract is an enforceable restriction pursuant to Article XIII, §8 of the California Constitution and Government Code §51252. Pursuant to Government Code section 51295, only public acquisitions made via eminent domain (or in-lieu of) will nullify a Williamson Act contract (assuming other necessary requirements are met). Unless the public acquisition is purchased via eminent domain or in-lieu of it, the use of the property will remain limited by the terms of the existing contract and the provisions of the Williamson Act.

Submit copies of any documents supporting acquisition by eminent domain, such as the Resolution of Necessity, eminent domain proceedings and copies of any other

pertinent documents. If in lieu of eminent domain, submit copies of the property appraisal and written offer and copies of any other pertinent documents. If the acquisition will not be by eminent domain or in lieu of eminent domain, describe the steps that will be taken or that have been taken and submit any supporting documents. If a document has not been completed, describe the plan for its completion.

Signature

Contact Person Title

cc: County Board of Supervisors or the local governing body (i.e. City Council) responsible for the administration of the agricultural preserve.

Note: The local governing body responsible for the administration of the agricultural preserve must also be notified. The local governing body is usually the County, but may be a City or other local agency. A copy of this notification will serve as notice to the local governing body.

Attachment A

Exemptions Under Government Code §51293:

- (a) The location or construction of improvements where the board or council administering the agricultural preserve approves or agrees to the location thereof, except when the acquiring agency and administering agency are the same entity.
- (b) The acquisition of easements within a preserve by the board or council administering the preserve.
- (c) The location or construction of any public utility improvement which has been approved by the Public Utilities Commission.
- (d) The acquisition of either (1) temporary construction easements for public utility improvements, or (2) an interest in real property for underground public utility improvements. This subdivision shall apply only where the surface of the land subject to the acquisition is returned to the condition and use that immediately predated the construction of the public improvement, and when the construction of the public utility improvement will not significantly impair agricultural use of the affected contracted parcel or parcels.
- (e) The location or construction of the following types of improvements, which are hereby determined to be compatible with or to enhance land within an agricultural preserve:
 - (1) Flood control works, including channel rectification and alteration.
 - (2) Public works required for fish and wildlife enhancement and preservation.
 - (3) Improvements for the primary benefit of the lands within the preserve.
- (f) Improvements for which the site or route has been specified by the Legislature in a manner that makes it impossible to avoid the acquisition of land under contract.
- (g) All state highways on routes as described in Sections 301 to 622, inclusive, of the Streets and Highways Code, as those sections read on October 1, 1965.
- (h) All facilities which are part of the State Water Facilities as described in subdivision (d) of Section 12934 of the Water Code, except facilities under paragraph (6) of subdivision (d) of that section.
- (i) Land upon which condemnation proceedings have been commenced prior to October 1, 1965.
- (j) The acquisition of a fee interest or conservation easement for a term of at least 10 years, in order to restrict the land to agricultural or open space uses as defined by subdivisions (b) and (o) of Government Code Section 51201.