



Agenda Item

DATE: May 25, 2004

TO: Board of Supervisors

FROM: Andrew E. Richter, Interim Director
Department of Public Works and Planning

SUBJECT: Fresno County Williamson Act Program Update and Interim Program Guidelines and Procedures

RECOMMENDED ACTION

It is recommended that your Board consider and approve a proposed phased process for modifications to update the Fresno County Williamson Act Program, adopt a resolution adopting Interim Program Guidelines and Procedures and initiating an amendment to the Fresno County Zoning Ordinance, and direct staff regarding pending applications.

The recommended action would establish and initiate a process to update and modify the County's Williamson Act Program to reflect recent amendments to statutes, establish eligibility for new and continued participation in the program, and evaluate and recommend areas within which Williamson Act Contracts may be accepted. Additionally, staff proposes adoption of Interim Program Guidelines and Procedures while staff proceeds with the update of the County's Williamson Act Program.

FISCAL IMPACTS

Fiscal impacts associated with future implementation of the Williamson Act Program Update will vary depending on final action taken by your Board. Staff will continue to conduct its analysis and present its recommendations with the appropriate fiscal analysis.

ADMINISTRATIVE OFFICE REVIEW John W. Weiser Page 1 of 6
BOARD ACTION: DATE May 25, 2004 APPROVED AS RECOMMENDED X OTHER _____



Official Action of Board of Supervisors
UNANIMOUS X ANDERSON _____ ARAMBULA _____ CASE _____ LARSON _____ WATERSTON _____

Costs associated with the preparation of this Agenda Item and staff work associated with the Williamson Act Program Update process is a net County cost.

BACKGROUND / DISCUSSION

On May 18, 2004, staff presented your Board with an overview of recently enacted legislation (Attachment "A") and identified that it would return to your Board with a recommended phased process to update and modify the County's Williamson Act Program.

Your Board received public testimony from numerous individuals expressing concern regarding limitations/penalties imposed by the recently enacted legislation. Concern was also expressed because individuals had relied on earlier information provided by County staff and now find they may not be able to carry out their plans. Your Board directed staff to return on May 25th with options and a process to address pending applications proposing to develop or divide parcels restricted under Williamson Act Contract.

As directed, staff has developed a process to address pending applications and inquires that would allow for acceptance and continued processing under current Fresno County Mapping, Zoning and Williamson Act provisions, with certain modifications.

Recommendations for Processing Pending Applications and Inquires:

CATEGORIES	RECOMMENDATION
<p>Mapping applications (Pre-Certificate of Compliance, Property Line Adjustment, Tentative Parcel Map Waivers).</p> <p>The Pre-Certificate of Compliance (PCOC) Application is primarily used with gift deed homesite proposals. Staff currently has a total of 13 applications that have either been approved but not recorded (eight), or are currently in process (five).</p> <p>The Tentative Parcel Map Waiver (TPMW) and Property Line Adjustment (PLA) Application is used for agricultural land division and adjustment proposals. Staff currently has a total of 38 applications that have been either approved and not recorded (20), or are currently in process (18).</p>	<p>Staff recommends that PCOC, PLA and TPMW Applications be processed under the County's current Mapping, Zoning and Williamson Act Provisions, subject to the following:</p> <p>Pre-Certificate of Compliance (PCOC):</p> <ol style="list-style-type: none"> 1. Parcels shall be subject to a Joint Management Agreement, and 2. Property owner shall execute a Declaration of Acknowledgment. <p>Tentative Parcel Map Waiver and Property Line Adjustment (TPMW and PLA):</p> <ol style="list-style-type: none"> 1. Statement of Intended Use, and 2. Note placed on recording instrument acknowledging limitations of Williamson Act Contract.

CATEGORIES	RECOMMENDATION
<p>Building Permit Applications proposing development on Williamson Act restricted land.</p> <p>Various Building Permit Applications are in process for residential, agricultural and accessory structures.</p>	<p>Staff recommends that Building Permit Applications be processed under the County's current Zoning and Williamson Act Provisions, subject to the following:</p> <p>Building Permit Applications:</p> <ol style="list-style-type: none"> 1. Statement of Intended Use, and 2. Property owner shall execute a Declaration of Acknowledgment.
<p>Revision to Land Conservation Contract</p> <p>The Revision to Land Conservation Contract (RLCC) is used for creation of homesite parcels. Staff currently has a total of four applications that are currently in process.</p>	<p>Staff recommends that RLCC Applications be processed under the County's current Zoning and Williamson Act Provisions, subject to the following:</p> <p>Revision to Land Conservation Contract:</p> <ol style="list-style-type: none"> 1. Statement of Intended Use, and 2. Property owner shall execute a Declaration of Acknowledgment.
<p>Inquires from the public.</p> <p>The public (actual number unknown) has inquired and been advised by staff of newly enacted legislation and applications have not been filed.</p>	<p>Staff recommends that a one-time mapping application provision for a specified period (July 15, 2004) of time be permitted.</p>

Adoption of the above will allow staff to complete processing of pending applications as well as accept new applications until July 15, 2004. After this time frame, staff will administer the County's Williamson Act program and process mapping and land use permit applications consistent with the proposed Interim Program Guidelines and Procedures as described below.

Staff will also be working with County Counsel to develop the referenced Declaration of Acknowledgement and Joint Management Agreement forms that would need to be completed and executed by applicants prior to taking final action on any pending or new application.

Interim Program Guidelines and Procedures:

As noted above, the recommended action includes the adoption of Interim Program Guidelines and Procedures (Interim Guidelines) for accepting and processing land use and mapping applications for land restricted under a Williamson Act contract. Staff anticipates that a complete Williamson Act Program Guidelines and Procedures document will be adopted by your Board as a component of the Program Update.

Adoption of Interim Guidelines (Attachment "B") will provide a consistent basis for identifying applications and uses that are appropriate for processing while staff continues with the Program Update. Specifically, Interim Guidelines have been drafted to address the creation of homesite parcels, construction of primary and secondary residences, and division of land.

The proposed Interim Guidelines, as it relates to gift deed and homesite parcels, would establish 10 acres as the minimum parcel size for prime land and 40 acres as the minimum parcel size for non-prime land restricted under a Williamson Act Contract. Presently, the Fresno County Zoning Ordinance allows for the creation of homesite parcels less than the minimum acreage indicated by the District designation (20 acres, 40 acres, etc.), but not greater than 2.5 gross acres (5 gross acres in the Sierra North and Sierra South Regional Plan area designated Eastside Rangeland).

The County's Zoning Ordinance has long allowed creation of gift deed and homesite parcels between one and 2.5 acres (5 acres in Sierra North and Sierra South Regional Plans), although this is not consistent with the minimum acreage requirements identified in the Williamson Act (10 acres for prime land and 40 acres for non-prime land). Staff notes that your Board's adoption of this Interim Guideline would necessitate an amendment to the Zoning Ordinance to reflect the minimum parcel size designation for Williamson Act contract lands.

In addition, the degree of consanguinity identified in the Zoning Ordinance for creation of homesite parcels under Williamson Act Contract would also need to be modified to be consistent with State law.

While the adoption of this Interim Guideline would allow for the processing of future requests to create homesite parcels, final action by your Board could not occur until after the Zoning Ordinance is amended. Staff anticipates this process to take approximately eight to 10 weeks to process. Staff has included for your consideration and adoption a Resolution of Intention to initiate the process to amend the Zoning Ordinance.

Mapping applications for enrolled lands are affected by recent legislation and these changes are reflected in the Interim Guidelines. Subdivision of enrolled lands for residential purposes is prohibited by the Williamson Act and the Subdivision Map Act (Government Code Section 66474.4). There are also greater limitations on land use,

and minimum parcels sizes for lands to remain enrolled.

To ensure compliance with limitations on land division of enrolled lands, (1) The purpose of the land division must be clearly stated on each application and a notarized Statement of Intended Use required to be provided by the owner; and (2) The Statement of Intended Use will include language attesting to the existing and proposed commercial agricultural use and the nature of any incidental uses.

For purposes of the Program, agricultural land shall remain in parcels large enough to sustain a commercial agricultural use, and minimum parcel sizes for lands to remain enrolled are considered to be:

- 20 acres in size in the case of prime agricultural land, or
- 40 acres in size in the case of land which is not prime agricultural land.

The long-term Guidelines are anticipated to include criteria to determine "viability of commercial agricultural use" as the basis of eligibility for agricultural land, criteria for determining land to be included within preserves, Application Forms and Contract Forms that are not a part of the Interim Guidelines.

Fresno County Williamson Act Program Update:

Staff proposes a three-phase approach to update the County's Williamson Act Program. Phase I, which is addressed in the current Agenda Item includes approval of Interim Program Guidelines to address the processing of applications for homesite parcels, construction of primary and secondary residences, and the provisional acceptance of applications.

In addition, staff will be seeking your Board's input on criteria to determine viability of "commercial agricultural use" as the basis of eligibility for agricultural land, criteria for determining land to be included within preserves, and the level of stakeholder and public input required in Phase II.

Phase II would include meeting(s) with designated stakeholders and the Land Conservation Committee (LCC). Staff (in consultation with County Counsel) would work to refine criteria and procedures before convening the LCC, Farm Bureau and other interested entities. All constructive concepts and ideas resulting from those meetings will be used to develop recommendations for adoption by your Board. Staff also intends to consult with the Department of Conservation ("DOC") to ensure consistency of program operations with the DOC's interpretation and application of controlling statutes.

Phase III of the update process would include returning to your Board with recommendations for modifications and expanded Williamson Act Program Guidelines.

By the conclusion of the proposed process, the County's Williamson Act Program will have been updated to reflect recent amendments to statutes, establish eligibility for new and continued participation in the program, and establish criteria to evaluate and map recommended areas within which Williamson Act Contracts may be accepted.

Preliminarily, staff has identified the following areas that will need to be addressed during the program update process as follows:

1. Updating of Resolution No. 85754 (The County's Williamson Act "Long-Form" Agreement).
2. Consideration of issues regarding the creation of "gift" and "homesite" parcels.
3. Updating of the County's agricultural preserve boundaries.
4. Reviewing mapping procedures used for processing the subdivision of parcels, specifically as it relates to property under Williamson Act contract or located in an agricultural preserve.
5. Identification of "prime agricultural land" consistent with the statutory provisions that define the term.
6. Adoption of Interim Program Guidelines to address potential future applications related to use, and the provisional acceptance of applications while staff proceeds with the program update.

A more detailed discussion of these items is attached as Attachment "C".

OTHER REVIEWING AGENCIES

The Department of Conservation is responsible for interpretation of the Williamson Act, research of related issues and policies and implementing assistance to participating local units of government. The DOC processes requests for Subvention Payments and provides comment on actions in relation to Agricultural Preserves and Contracts as required under statute.

The DOC has provided comments regarding operation of the County's Williamson Act Program, and those comments were used, in part, to form recommendations provided in conjunction with this program update.

The Land Conservation Committee (LCC) was formed by your Board to offer advice and make recommendations regarding the operation of the County's Williamson Act Program. The LCC has been informed as to the nature of the issues to be addressed in the proposed program update, and they have been consulted by staff in generating the recommendations under consideration by your Board.

Agenda Item



DATE: May 18, 2004

TO: Board of Supervisors

FROM: Andrew E. Richter, Interim Director
Department of Public Works and Planning

SUBJECT: Fresno County Williamson Act Program

RECOMMENDED ACTION

It is recommended that your Board receive a status report regarding recently enacted Williamson Act legislation and staff's progress in developing recommendations for your Board's consideration in updating the Fresno County Williamson Act Program.

The current Agenda item overviews the status of recently enacted Williamson Act legislation in preparation for a May 25, 2004 public hearing at which your Board will consider a phased process to update and modify the County's Williamson Act program to reflect recent amendments to statutes, establish eligibility for new and continued participation in the program, and evaluate and recommend areas within which Williamson Act Contracts may be accepted.

FISCAL IMPACTS

The California Land Conservation Act of 1965 is a land use regulatory tool used by Fresno County to protect agricultural and open space land from urban encroachment. Known as the Williamson Act, it established a program by which the county enters into voluntary contracts with private landowners for the purpose of protecting agricultural lands by significantly limiting further division or development of land enrolled under the Williamson Act.

In return for accepting these limitations, landowners receive the right to a valuation for property tax purposes which generally results in a lower property tax assessment.

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BOARD ACTION: DATE _____ APPROVED AS RECOMMENDED _____ OTHER _____

UNANIMOUS _____ ANDERSON _____ ARAMBULA _____ CASE _____ LARSON _____ WATERSTON _____

Under the Farmland Security Zone (FSZ) program, property tax revenues are reduced by an additional 35 percent beyond that offered under the Williamson Act. The application of these valuation methods reduces tax revenues to the County and other entities that receive property tax revenues.

Where lands are enrolled under the Williamson Act, including enrollment under FSZ, the State partially offsets the loss of property tax revenues to the County through annual distribution of subvention payments. The County is paid \$1 per acre for non-prime and \$3 per acre for prime lands. For the past fiscal year, State subvention payments to Fresno County totaled \$5,716,657.00, or approximately fifteen percent of the total of subvention payments awarded statewide.

In general, the cost to the County for participation in the Williamson Act is the differential between the Proposition 13 or market valuation and the Williamson Act valuation of the properties enrolled minus any State subvention payment received. Under Proposition 13, the assessment value of enrolled lands is generally adjusted to market value at time of transfer, so more recently transferred properties generally receive relatively greater benefits.

DISCUSSION / BACKGROUND

The County's participation in the California Land Conservation Act (Williamson Act) program is accomplished through voluntary agreements between the County and local landowners. Those agreements are subject to limitations established by the state legislature, including the requirement that cities and counties establish rules governing the administration of Agricultural Preserves within which applications for enrollment of lands by landowners may be considered.

On March 11, 2003, your Board directed staff to review current Williamson Act contracts throughout the County to determine to what extent these represented "viable agricultural lands"; to review the incidence of small parcels, including homesite parcels on contracted land; and to review lands that are under contract within the cities' spheres of influence.

Staff was asked to return to the Board with its findings along with options for the Board to consider in addressing possible revisions to the County's program guidelines to ensure the most effective use of the Williamson Act program given the costs to the County. While staff was working to respond to your Board's directives, the Legislature adopted significant new legislation necessitating further program review.

To ensure a comprehensive response, staff reviewed comments offered by the Department of Conservation, together with statutes and recent legislation, along with a review of the practices and procedures of other counties participating in the Williamson Act.

Recently Enacted Williamson Act Legislation

Through laws enacted over the last several sessions, the State Legislature has attempted to further define and better defend the land use planning aspects of the program by more clearly limiting use and division of enrolled lands to those related to commercial agriculture.

The most notable of these was the Legislature's enactment of Assembly Bill 1492 (AB 1492) in the most recently completed session, which established significant penalties under the Government Code for landowners who do not comply with the provisions of their Williamson Act contract, as referenced above.

Also, the passage of Senate Bill 985 in 1999 and its amendment of Government Code Section 66474.4 (State Subdivision Map Act), the ability to approve the subdivision of enrolled lands is limited to divisions consistent with the statutory and contractual restrictions on the land. In general, subdivision is limited (with certain specified exceptions) to those cases in which the parcels will remain large enough to sustain agricultural use, and which will not result in residential development beyond that which is merely incidental to the primary use of the land for commercial agriculture. Under the newly enacted "Material Breach" provisions of AB 1492, a failure to comply may now result in the levying of enhanced penalties.

If the State determines that the administering agency has failed to enforce the provisions of AB 1492 in the manner required, the State may proceed to enforce these provisions. Moreover, a local agency's eligibility for receipt of the full amount of its subvention funding for its program may be jeopardized to the extent the California Department of Conservation determines that a county's rules or other aspects of its administration of the Williamson Act are not in compliance with statutes.

Like Fresno County, many counties across the state are working to bring their processes into compliance with these recent legal developments.

Fresno County Williamson Act Program Update

A fundamental goal of the Fresno County General Plan is preservation of prime agricultural lands and the conservation of productive and potentially productive agricultural lands. The General Plan indicates that the County will "promote the long-term conservation of productive and potentially productive lands" (Goal LU-A) and "consider the use of programs that improve the competitive capabilities of farms and ranches (to ensure) the long-term conservation of viable agricultural operations" (Policy LU-A:16).

Consistent with the County's General Plan policies, applications are accepted annually on Agricultural Land Conservation Contracts and Farmland Security Zone (FSZ) Agreements. Current acreage enrolled in Fresno County under the Williamson Act is approximately 1.5 million acres. This includes more acres of Prime Agricultural Land than any other County in the State, in furtherance of the County's General Plan policies to conserve agricultural land and promote orderly growth.

Where program benefits flow to landowners engaged in commercial agricultural production, the Williamson Act serves the General Plan and furthers the interests of the County in protecting those lands from encroachment. Where those same benefits flow to "hobby farms" or other non-commercial agricultural uses, they may actually speed consumption and conversion of agricultural land to non-agricultural uses.

With more than 8,150 contracts in force, restricting use and division under the provisions of the Williamson Act on over 1.5 million acres, any action to update the Williamson Act Program in Fresno County is necessarily complex. To minimize inconvenience to those currently enrolled and allow the processing of land use and land division applications, staff plans to implement a phased approach in updating its program requirements for your Board's review of recommended actions and available alternatives that will be presented to your Board at its hearing of May 25, 2004.

Staff anticipates that the update and modification of the Fresno County Williamson Act Program will be a phased and multi-hearing process. The work elements associated with the update process includes adopting a updated Williamson Act Contract, Interim Program Guidelines, developing criteria for evaluating eligibility for participation in the program, developing criteria for determining lands to be included in Agricultural Preserves, engaging stakeholder input and developing and adopting updated and modified Williamson Act Program Guidelines.

OTHER REVIEWING AGENCIES

The Department of Conservation is responsible for interpretation of the Williamson Act, research of related issues and policies and implementing assistance to participating local units of government. The Department processes requests for Subvention Payments and provides comment on actions in relation to Agricultural Preserves and Contracts as required under statute.

The Department has provided comment regarding operation of the County's Williamson Act Program, and those comments inform the products and recommendations provided in conjunction with this program update.

The Land Conservation Committee (LCC) was formed by your Board to offer advice and make recommendations regarding the operation of the County's Williamson Act Program. Staff has provided briefings to the LCC regarding the issues to be addressed in the proposed program update, and the role of the LCC in the update process will be further defined by your Board in an upcoming hearing.

Attachment "B"

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA

IN THE MATTER OF FRESNO COUNTY)
WILLIAMSON ACT PROGRAM)

RESOLUTION ADOPTING
INTERIM GUIDELINES AND
PROCEDURES FOR WILLIAMSON
ACT PROGRAM UPDATE

WHEREAS, on May 25, 2004, the Board of Supervisors approved a phased process for modifications to update the Fresno County Williamson Act Program, and

WHEREAS, during the preparation of the Williamson Act Program Update it is anticipated that applications will be submitted to establish uses and or divide land restricted under a Williamson Act Agreement that could affect the Williamson Act Program Update; and

WHEREAS, this Board has determined that the potential impacts from such applications would be reduced if a procedure is adopted to provide a consistent basis for accepting and processing land uses and mapping applications for land restricted under a Williamson Act Agreement.

NOW, THEREFORE, BE RESOLVED that the Board of Supervisors hereby adopts the attached Interim Guidelines and Procedures, attached as Exhibit "A" during the Williamson Act Program Update.

BE IT FURTHER RESOLVED that the procedures shall be of no further force and effect upon adoption of the Williamson Act Program Update by the Fresno County Board of Supervisors.

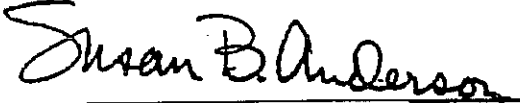
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2 *THE FOREGOING was PASSED and ADOPTED by the Fresno County Board*
3 *of Supervisors this 25th day of May 2004, by the following vote, to-wit:*
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6 AYES: Supervisors Larson, Waterston, Case, Arambula, Anderson
7 NOES: None
8 ABSENT: None
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12 CHAIRMAN, Board of Supervisors

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15 *ATTEST:*

16 *BERNICE E. SEIDEL, Clerk*
17 *Board of Supervisors*

18
19 By 
20 Deputy Clerk

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22
23
24
25 *File 18357*

26 *Agenda Item 19*

27 *Resolutions 04-268*
28

COUNTY OF FRESNO

**INTERIM PROGRAM GUIDELINES
AND
PROCEDURES**

**CALIFORNIA LAND CONSERVATION
("WILLIAMSON") ACT OF 1965
INCLUDING
FARMLAND SECURITY ZONES**

FRESNO COUNTY DEPARTMENT OF PUBLIC WORKS AND PLANNING
DEVELOPMENT SERVICES DIVISION
2220 Tulare Street, 6th Floor
Fresno, CA 93721

PURPOSE OF INTERIM GUIDELINES AND APPLICABILITY

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 specific parcels of land to agricultural or related open space use. In return, landowners receive property tax assessments which are much lower than normal because they are based upon farming and open space uses as opposed to full market value.

Recent legislation (Assembly Bill 1492, Government Code Section 51250) was enacted on January 1, 2004, that seeks to deter incompatible development on Williamson Act contracted lands. Assembly Bill 1492 creates serious penalties for "material breaches" of a Williamson Act contract -- up to 25% of unrestricted land value plus 25% of the value of incompatible improvements. As a result, California counties implementing the Williamson Act, including Fresno County, are evaluating their current guidelines and procedures to ensure compliance with State law.

These Interim Guidelines advise the public and reflect the direction given by the Fresno County Board of Supervisors as it relates to how Fresno County will process applications from the effective date of these Interim Guidelines until the Fresno County Board of Supervisors revises and enacts Updated Program Guidelines and Procedures for administration of the Land Conservation Act of 1965 (Williamson Act) including Farmland Security Zones. These Interim Guidelines were approved on May 25, 2004, as reflected in the resolution attached to the Interim Guidelines. A copy of the Board Agenda Items and related attachments providing information to the Board are available upon request.

A. MINIMUM PARCEL SIZE (AREA):

Parcels proposed for enrollment or creation must be in parcels large enough to support commercial agriculture as determined by the Board of Supervisors and consistent with the limitations of the Williamson Act Contract and applicable statutes.

For purposes of this program, including the interim period in which the County's Williamson Act Program is being updated, agricultural land shall be presumed to be in parcels large enough to sustain a commercial agricultural use if the gross acreage of each parcel proposed for enrollment or creation is at least:

- (1) 20 acres in size in the case of prime agricultural land, or
- (2) 40 acres in size in the case of land which is not prime agricultural land.

The classification of the land as prime or non-prime shall be based upon a review of records maintained by the Fresno County Assessor, and / or upon the Assessor's determination should records be unclear or unavailable.

Except to the extent that any legislative relief may be available, minimum parcel size standards are strictly applied to parcels proposed for enrollment. To provide equitable relief where such relief is consistent with statutes, and where strict application of

minimum parcel size limitations would unfairly limit enrollment, Fresno County determines minimum parcel size limitations to be satisfied where a parcel is determined to be:

- (1) An aliquot parcel according to the Official United States Government Township Map, or
- (2) 20 gross acres of Prime land, and an action other than a voluntary alienation, including eminent domain or an action in lieu of eminent domain, has reduced the area of the parcel to less than 20 gross acres, but not less than 17.5 gross acres.

Parcels which do not meet adopted minimum size standards may be merged or otherwise pledged jointly to ensure that no substandard parcel receives program benefits and that lands jointly pledged under contract are not subsequently transferred whereby substandard parcels joined under contract are held in separate ownership.

B. DIVISION OF LAND RESTRICTED UNDER WILLIAMSON ACT:

General:

The Legislature has declared that it is in the public interest for local officials and landowners to retain agricultural lands which are subject to contracts entered into pursuant to this act in parcels large enough to sustain commercial agricultural uses.

Under State law, a landowner's right to subdivide lands subject to the restrictions of a Williamson Act Contract is subject to the Williamson Act and the Williamson Act's protection of enrolled lands. Subdivision of enrolled lands for residential purposes is strictly limited by both the Williamson Act and by the Subdivision Map Act.

When any proposal for mapping of contracted land is considered, the purpose of the land division must be clearly stated in the proposal. A notarized Statement of Intended Use shall be provided by the owner/applicant and be signed under penalty of perjury. This statement shall include language attesting to the existing or proposed commercial agricultural use, and also include the owner's determination as to the incidental nature of any residential improvement to a commercial agricultural use.

The factual specificity of any required statement shall be that specificity necessary to allow staff to determine that the division will not result in a residential or other use not incidental to a commercial agricultural use of the enrolled land.

1. Agricultural Homesite Exception (Gift Deed) Parcels:

The acceptance, processing and approval of proposed agricultural homesite exception (gift deed) parcels, on or before July 15, 2004, shall be processed under the County's current Mapping, Zoning and Williamson Act Provisions, subject to the following:

- (a) Parcels shall be subject to a Joint Management Agreement, and
 - (b) The applicant executes a declaration, under penalty of perjury, acknowledging that:
 - (1) Both parcels are, and for the duration of the Williamson Act contract shall continue to be used for agricultural purposes permitted under the contract; and
 - (2) Any residential structure subsequently proposed for construction on the gift parcel must be incidental to the agricultural use of that parcel, and approval of a building permit may be subject to guidelines to be established and employed in that determination; and
 - (3) Even if the County subsequently approves a building permit for any proposed residential structure exceeding 2,500 square feet, on the basis that it is incidental to the agricultural use, the applicants nevertheless may be subject to substantial penalties if the approval is thereafter challenged and found invalid or void. Notwithstanding such prior County approval, if it is thereafter determined the structure is not incidental to agricultural use, or otherwise constitutes a material breach of contract, the applicants may be subject to the penalties provided in Government Code Section 51250. The specified penalty is 25% of the value of the land and 25% of the value of the improvements constituting the material breach.
 - (c) Submittal and approval of the appropriate mapping and Williamson Act Revision to Contract Applications.
2. The acceptance, processing and approval of proposed agricultural homesite exception (gift deed) parcels, on or after July 16, 2004, shall be subject to the following requirements.

Prime Land:

- (a) Each parcel is at least 10 acres, and the total of the two parcels is at least 20 acres; and
- (b) The parcels are subject to a Joint Management Agreement; and
- (c) The applicant executes a declaration, under penalty of perjury, acknowledging that:

- (1) Both parcels are, and for the duration of the Williamson Act contract shall continue to be used for agricultural purposes permitted under the contract; and
 - (2) Any residential structure subsequently proposed for construction on the gift parcel must be incidental to the agricultural use of that parcel, and approval of a building permit may be subject to guidelines to be established and employed in that determination; and
 - (3) Even if the County subsequently approves a building permit for any proposed residential structure exceeding 2,500 square feet, on the basis that it is incidental to the agricultural use, the applicants nevertheless may be subject to substantial penalties if the approval is thereafter challenged and found invalid or void. Notwithstanding such prior County approval, if it is thereafter determined the structure is not incidental to agricultural use, or otherwise constitutes a material breach of contract, the applicants may be subject to the penalties provided in Government Code Section 51250. The specified penalty is 25% of the value of the land and 25% of the value of the improvements constituting the material breach.
- (d) Submittal and approval of the appropriate mapping and Williamson Act Revision to Contract Applications.

3. Non-Prime Land:

- (a) Each parcel is at least 40 acres, and the total of the two parcels is at least 80 acres; and
- (b) The parcels are subject to a Joint Management Agreement; and
- (c) The applicant executes a declaration, under penalty of perjury, acknowledging that:
 - (1) Both parcels are, and for the duration of the Williamson Act contract shall continue to be used for agricultural purposes permitted under the contract; and
 - (2) Any residential structure subsequently proposed for construction on the gift parcel must be incidental to the agricultural use of that parcel, and approval of a building permit may be subject to guidelines to be established and employed in that determination; and

(3) Even if the County subsequently approves a building permit for any proposed residential structure exceeding 2,500 square feet, on the basis that it is incidental to the agricultural use, the applicants nevertheless may be subject to substantial penalties if the approval is thereafter challenged and found invalid or void. Notwithstanding such prior County approval, if it is thereafter determined the structure is not incidental to agricultural use, or otherwise constitutes a material breach of contract, the applicants may be subject to the penalties provided in Government Code Section 51250. The specified penalty is 25% of the value of the land and 25% of the value of the improvements constituting the material breach.

(d) Submittal and approval of the appropriate mapping and Williamson Act Revision to Contract Applications.

Mapping Applications:

To ensure compliance with the Williamson Act's limitations, the recording instrument shall include a note regarding use limitations during the term of the Williamson Act Contract. The recording instrument note will provide constructive notice as to limitations on the use and further division of the mapped lands.

Since parcels substandard as to size cannot be created during the term of a Williamson Act Contract, the Variance Application process shall therefore not be available to address issues related to parcel size. Landowners are instead encouraged to merge substandard parcels to create parcels for enrollment consistent with program standards.

C. USE OF THE LAND RESTRICTED UNDER WILLIAMSON ACT CONTRACT:

Pursuant to the Williamson Act, the use of enrolled lands and improvements shall be limited to commercial agriculture or uses determined to be compatible or incidental to commercial agriculture.

When any proposal for development of contracted land is considered, the purpose of the use must be clearly stated in the proposal. A notarized Statement of Intended Use shall be provided by the owner/applicant and be signed under penalty of perjury. This statement shall include language attesting to the existing or proposed commercial agricultural use, and also include the owner's determination as to the incidental nature of any residential improvement to a commercial agricultural use.

The factual specificity of any required statement shall be that specificity necessary to allow staff to determine that the use will not result in a residential or other use not incidental to a commercial agricultural use of the enrolled land.

Homesite Provisions:

Any homesite (primary or secondary) established on contracted lands must be agricultural housing or housing that is determined to be incidental to a commercial agricultural use. All housing units established on contracted lands shall be occupied by persons engaged in the commercial agricultural operation (owner, operator, farm worker, caretaker), except that immediate family members of the person engaged in the operation may also reside on said parcel.

D. APPEAL:

Staff determinations under the above Interim Guidelines and Procedures may be appealed to the Land Conservation Committee and Board of Supervisors.

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ATTACHMENT "C"

WILLIAMSON ACT PROGRAM UPDATE ANALYSIS OF ISSUES, OPTIONS AND IMPLICATIONS

The following addresses analysis conducted by staff and provides a discussion of the issues, options and implications. Update and implementation of the County's Williamson Act Program will be conducted using a phased approach.

1. Update Williamson Act "Long-Form" Agreement

Issues: The current contract language is over 30 years old and is in need of revision.

Options: Staff will ultimately recommend adoption of an updated Agreement that eliminates outdated references and incorporates all findings currently required under statute.

Implications: Adopting a new "Long-Form Agreement" will result in consistency between the contract language and the procedures applicable under current law and practice. Using an interim and a long-term process will demonstrate the County's commitment to a proactive approach in addressing perceived deficiencies and improving program administration generally.

2. Residential Uses in Agricultural Zones that do not require land division

Issues: Use of an enrolled parcel is restricted to agriculture and other uses determined by the local governing body to be "compatible" with agriculture. Such "compatible" uses must be consistent with the "principles of compatibility" enumerated by statute, and may "not include a residential subdivision."

With the enactment of AB 1492, any development (including residential) on contracted land must be incidental to a commercial agricultural use. As a result, residences are a concern to the extent the structures cannot reasonably be viewed as "incidental" to the commercial agricultural use of the restricted lands on which they are located. This concern is magnified where additional housing units are created, since the effect of AB 1492 is that all residential uses (considered alone or jointly) must remain "incidental" to the commercial agricultural use. Ways of increasing the number of residences in agricultural areas that do not require land division include:

- "By-right" – one residence per 20 acres currently allowed "by-right"
- Secondary housing uses – through use of County Director Review and Approval Application process

- Financing Parcels – in event of bankruptcy, could be sold as a separate parcel (requiring mapping approval)

Options: Staff anticipates recommending adoption of Administrative Procedures and Guidelines for the County's Williamson Act program. The procedures would require that any mapping application or other discretionary permit, or any "by-right" use wherein a structure or land use is proposed to be established, expanded or rebuilt on enrolled lands will be subject to a determination that the action will not result in any incompatible use, or any development that cannot reasonably be viewed as incidental to a commercial agricultural use.

Implications: Providing a current and sufficiently comprehensive set of procedures and guidelines will better inform the public and assist in directing staff's ongoing administration of the County's Williamson Act program.

3. Update the County's Agricultural Preserve Boundaries

Issues: Under Williamson Act provisions, lands within preserve boundaries must be restricted by zoning (including appropriate minimum parcel sizes "consistent with" Williamson Act requirements) so as not to be incompatible with the agricultural use of contracted land and meet the State's required minimum preserve size of 100 acres.

Some of the County's preserve areas do not meet statutory criteria, due to changes in conditions and legal developments over the passage of time. The County's broad-scale preserve boundaries were adopted more than twenty years ago through Board resolution, upon public notice and hearing, as required.

Options: Existing preserve maps have been digitized and these maps have been compared to existing sphere of influence area boundaries, municipal limits and previously digitized maps of Contracted Lands. Adoption of Contracted Land boundaries as preserve boundaries will generate some number of substandard preserve areas defined as areas containing less than 100 acres.

Contracted lands which, individually or clustered, do not meet the State's 100-acre minimum may be recommended for non-renewal, or may be combined with neighboring parcels not under contract to form a preserve of at least 100 acres, that would merge lands under contract with lands not under contract.

One option to ensure that lands within Preserve boundaries are appropriately restricted to support agricultural preservation is to draw preserve boundaries coincident with the boundaries of contracted lands. This establishes a Base Map for preserves and as properties thereafter are entered under contract,

the preserve could be expanded, although a non-renewal or cancellation would not necessarily result in a diminution of the preserve boundary. Land use in the areas now restricted under contract would be maintained consistent with statutory standards for use and parcel size. Under this arrangement, application for cancellation or non-renewal would be separate from application for establishment or dis-establishment of an agricultural preserve.

Implications: Using a "footprint" approach to re-define preserve boundaries will bring the majority of land into compliance in the near future. Contracted lands which, individually or clustered, do not meet the State's 100-acre minimum could be recommended for non-renewal or combined with other lands.

4. Adjust mapping procedures for land under contract or within an agricultural preserve

Issues: Gift Deeds, Life Estates and Financing Parcels are implemented through use of County mapping procedures. There are some County mapping standards related to size of parcels and use of land that should be revised in response to legislative developments in recent years, including the recent enactment of AB 1492.

Options: In an effort to achieve prospective compliance with program requirements and practice under current law, staff will recommend implementing updated procedures for processing Mapping Applications (including Gift Deeds), to include certain mandated findings and procedures governing the subdivision of land under contract. In doing so, staff will be considering the following options:

- Size of gift parcels is established in the General Plan and Zoning Ordinance as no more than 2.5 acres for prime lands or five acres for non-prime lands. However, this local acreage limitation is not consistent with a legislatively created presumption that the minimum acreage necessary to sustain an agricultural use is 10 acres for prime land and 40 acres for non-prime land. Fresno County historically has required a minimum 20 acres for placement of prime land under contract.
- Use of Gift Parcels: Land use of enrolled parcels is restricted. Under AB 1492, a commercial, industrial or residential structure must be "incidental" to a commercially viable agricultural use. This effectively brings any residential use within the possible purview of AB 1492. Because of the requirement that the parent parcel and gift parcel be managed jointly, statutes allow a residential use that is more than merely "incidental" if considered solely with regard to the gift parcel.
- Eligibility For Receipt of a Gift Parcel: Statutes provide that only "immediate family members," as therein defined, are eligible.

- Requirement of 10 year Joint Management Agreement with Automatic Renewal: The current Declaration of Intent procedure may need to be amended to require recipient and owner to engage in a commercial farming operation under a Joint Management Agreement throughout the term (including all renewals) of the contract; and
- Land owner signs, under penalty of perjury and in recordable form, a notarized declaration acknowledging penalties for Material Breach, including a pledge to maintain use consistent with the Williamson Act during the term of the contract and all renewals. (The recorded document would provide notice to any future owner of the limitations the contract places upon the separate parcel.)

In addition to approval of Gift Deed applications, all other mapping procedures would be reviewed to assure consistency with the limitations of the Subdivision Map Act and the Williamson Act.

Implications: Policies and procedures that are adopted would require sensitivity to the needs of farming families while implementing the County General Plan. This task aims to reduce the likelihood that any subdivision of land results in separate ownership of substandard parcels devoted primarily to residential use in an agricultural district and especially agricultural lands under contract.

5. Designate "prime" or "non-prime" land agricultural land issues

Issues: Some unresolved issues exist with regard to the propriety and advisability of the County's long established practices in the designation of land (as prime or non-prime) for purposes of determining program eligibility. Statutory law requires that lands be designated on the basis of any of several specified criteria. The County historically has relied, in the designation of land for purposes of program eligibility, largely upon a Board Resolution declaring certain portions of land within defined geographical areas of the County to be "prime" or "non-prime."

Options: Staff will evaluate the designation of agricultural land ("prime" or "non-prime") for purposes of program eligibility on the basis of assessor map designations, soil classification systems or other reasonable criteria consistent with the statutory provisions.

Implications: To ensure consistency in the administration of the County's program and compatibility between eligibility designations and mapping and reporting realities.