

## **Williamson Act Frequently Asked Questions**

- 1. I have owned my property for 50 years and have never had agriculture on my property. My contract was for open space. Why is the County now making me do agriculture? Doesn't the Williamson Act also allow open space?***

The Williamson Act does allow contracted lands to be used for agriculture, open space and/or recreation. However, the terms “open space use” and “recreational use” are very narrowly defined. “Open Space” only applies to land within designated scenic highway corridors, a designated wildlife habitat area, a saltpond, managed wetland area, or submerged area. (See Government Code § 51201(o).) “Recreational use” is defined as “use of the land in its agricultural or natural state by the public. The Williamson Act allows the exchange of a Williamson Act contract for an open space easement pursuant to the Open Space Easement Act of 1974. (Government Code § 51255). The term “open space” is defined much more broadly under this other law. One of the proposals under consideration by the Board of Supervisors is to allow property owners of parcels at least 5 acres in size to exchange their Williamson Act contract for an open space easement. The property owner would need to submit an application and the Board would need to make certain property-specific findings before authorizing the exchange. (See proposed *Guideline for Policies Concerning the Exchange of An Existing Williamson Act Contract for an Open Space Easement.*)

- 2. I am holding my property for future agricultural use. Why doesn't this comply with the contract?***

While holding a portion of the property open for future agricultural use may be a “compatible” use, it does not qualify as an “agricultural use,” which state law defines as “use of the land for the purpose of producing an agricultural commodity for commercial purposes.” (Government Code § 51201(b).) The proposed *Guideline for Commercial Agricultural Use* recognizes that crop lands temporarily fallowed or grazing lands temporarily unused through rotational grazing may be considered to be in agricultural production if the owner demonstrates that this practice is a typical and appropriate agricultural management strategy.

- 3. Why is the County “changing” my contract after all of these years? Can the County do this?***

The proposed changes to the way the County administers its Williamson Act program, including the proposed Guidelines, does not alter the existing contracts. It is an attempt to implement the existing contract language and to bring the County’s Williamson Act program into compliance with state law. For example, most of the existing contracts provide that the property is “devoted to agricultural use” and that “the highest and best

use for the property during the term of this contract, or any renewal thereof, shall be for agricultural purposes.”

The existing contracts also state that they are entered into pursuant to the Williamson Act and are subject to all of the Act’s provisions. State law requires property under contract to be “devoted to agricultural use.” (Government Code § 51242.) The statute defines “agricultural use” as “use of the land for the purpose of producing an agricultural commodity for commercial purposes.” (Government Code § 51201(b)).

**4. *What is the difference between contract non-renewal and contract cancellation?***

State law (Land Conservation Act of 1965 (“Williamson Act”), Government Code § 51200 et seq.) sets forth two methods to terminate Williamson Act contracts: nonrenewal and cancellation.

Nonrenewal is the State-preferred method of contract termination. The landowner or County provides the other party with a notice of nonrenewal. The notice of nonrenewal is recorded with the County Clerk-Recorder, and stops the automatic addition of one more year to the contract each year. As of the next January 1<sup>st</sup>, there will be 9 years remaining on the contract. During the nonrenewal period, all of the contract restrictions remain in place. The property tax assessment benefit from the Williamson Act contract will be phased out during the nonrenewal period and return to the unrestricted value (the lower of current fair market value or Prop. 13 value).

Cancellation is a second method of contract termination, but one disfavored by the State. It results in the immediate termination of the contract. Before approving a cancellation, the County Board of Supervisors must certain findings required by state law (see Government Code Section 51282). The State Department of Conservation must also be notified of applications to cancel contracts and may submit comments to the County. The landowner must also pay a cancellation fee equal to 12.5% of the unrestricted fair market value of the property (Government Code Section 51283(b)).

**5. *For small parcels, is some type of “amnesty” possible to immediately end the contract without waiting nine years (contract non-renewal) or paying a penalty fee (contract cancellation)?***

Existing state law does not contain a provision for “amnesty.” Nonrenewal and cancellation are the only methods for terminating a Williamson Act contract.

6. ***My Williamson Act contract does not specifically state a cancellation fee amount. What is the authority for imposing a fee? What is the fee to cancel a Williamson Act contract? Why is it so high?***

The Williamson Act contracts expressly state that they are entered into pursuant to the California Land Conservation Act of 1965 (aka Williamson Act) and are subject to all provisions of that Act. The Act has always required a cancellation fee and specified the formula used to calculate it. (See Government Code Section 51283.) See also answer to question 8, below.

7. ***Doesn't State law allow the County to cancel a Williamson Act contract at no cost? Can the County waive the cancellation fee?***

The Williamson Act (Government Code Section 51283(c)) contains an extremely narrow exception which, according to Steve Oliva, the California Department of Conservation attorney, has only been met once before in the entire history of the Williamson Act and is "spectacularly unlikely" to be met again. The waiver also requires Department of Conservation approval.

According to Mr. Oliva, the one-time a waiver was granted involved a lender's foreclosure on a large chunk of farmland. The lender agreed to take only the homesite portion of the land, thereby allowing the rest of the property to remain in active commercial agricultural production and furthering the Act's purposes. The contract was cancelled on the homesite portion and the fee waived pursuant to Section 51283(c).

8. ***What is the legal authority to base the cancellation fee on "current market value" of the land as though it was free of contractual restriction?***

The attached two documents contain information relating to the property value upon which Williamson Act cancellation fees are based: (1) current Government Code Section 51283, and (2) a California Attorney General opinion discussing this issue. Government Code Section 51283 requires the fee to be equal to 12.5% of the "cancellation value" of the property. The cancellation value is the "current fair market value of the land as though it were free of the contractual restriction."

The Attorney General opinion contains the old language of Section 51283. It also provides a history of this issue. Apparently, when first enacted, the Williamson Act required the cancellation fee to be based on the "full cash value" of the property. As the Attorney General opinion describes, at that time "full cash value" was commonly understood to mean "fair market value." When Prop. 13 was enacted and assessed values were pegged to their 1975 values, this created an ambiguity in the statute. The Legislature resolved this ambiguity in 1987 when it amended Section 51283 to base the cancellation valuation on the "current fair market value of the land."



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9. ***The terms “incidental” and “compatible” are not defined in the law that established the Williamson Act. How can the County make up administrative rules which are not consistent with the law?***

Several provisions of the Williamson Act address “compatible use.” For example, “compatible use” is defined in Government Code Section 51201(e); Section 51231 provides the right of the County to enumerate those uses and Section 51238.1 lists the principles of compatibility such uses must adhere to.

The County first adopted an ordinance establishing a compatible use list for properties covered by Williamson Act contracts on November 20, 1967 and has amended this ordinance on several occasions. One of the compatible uses on the County’s original (1967) compatible use list was “single family dwellings incidental to the agricultural use of the land.” This “incidental to” language remains in the County’s compatible use list. (See Ordinance Code § C13-8.)

There is a California Attorney General Opinion (62 Ops.Atty.Gen. 233 (1979)) addressing the County’s “incidental to” requirement. It states: “[A] single-family residence must be ‘incidental to’ the agricultural use of the land, and that contemplates the production of agricultural commodities for commercial purposes. If the primary use of the land is not agricultural use, the construction of a single-family home would, in our opinion, violate the contract.”

The California Department of Conservation has also opined that residential development on contracted lands must be “incidental to” an existing commercial agricultural use on the property: “Any development on property subject to a Williamson Act contract must be incidental to the primary use of the land for agricultural purposes and in compliance with local uniform rules or ordinances.” The Department of Conservation has defined “incidental to” as follows: “*A use is incidental when it is required for or is part of the agricultural use. Compatible uses on Williamson Act lands are defined in Government Code Section 51201(e). Additionally, each participating local government is required to adopt rules consistent with the principles of compatibility found in Government Codes Sections 51231, 51238 and 51238.1.*” (Frequently Asked Questions, AB 1492 (Laird, Chapter 694).)

**10. Residential development on parcels under a Williamson Act contract must be incidental to the agricultural use of the property. What does “incidental to the agricultural use of the property” mean?**

Determining whether a proposed residential development is “incidental to” the agricultural use on the property involves several factors, which include the following:

- a) The owner must first demonstrate that there is an existing commercial agricultural use on the property. (See proposed *Guideline for Commercial Agricultural Use*);
- b) The owner must demonstrate that the proposed development satisfies the compatibility principles in the Williamson Act (Government Code Section 51238.1), County Ordinance Code (§ C13-8(a)). (See proposed *Guideline for Compatible Use Development on Restricted Lands*);
- c) The proposed development must be compatible with and not substantially interfere with the existing agricultural use on that particular property or any other property under Williamson Act contract;
- d) The development must not significantly displace or impair current or reasonably foreseeable agricultural operations on the property or any other property under Williamson Act contract;
- e) The remaining portion of the property must be able to sustain the agricultural use; and
- f) The commercial agricultural use must also continue to be the primary use of the land.

Also see answers to question 9.

**11. Horses should qualify as a commercial agricultural use as they support hay producers. Why are horses excluded?**

The treatment of horse-related uses in the proposed *Guideline for Commercial Agricultural Use* is consistent with State law and policy interpretations and specific direction to the County from the California Department of Conservation.

Land enrolled in a Williamson Act contract is restricted to agricultural uses. An “agricultural use” means use of land for the purpose of producing an agricultural commodity for commercial purposes (Government Code Section 51201(b)). An agricultural commodity means any and all plant and animal products produced in this state for commercial purposes (Government Code Section 51201(a)).

In a letter to the County dated March 29, 2005 (see attachment), the California Department of Conservation advised that, in limited circumstances, horse breeding operations could be allowed by the County, but that stabling, boarding and training uses are not consistent with the intent of the Williamson Act regarding what constitutes a commercial agricultural use.



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**12. *Is a property owner in compliance with the Williamson Act if a “compatible use” on the property happens to generate more income than the primary agricultural use?***

As explained in the proposed *Guideline for Commercial Agricultural Use*, income may be earned from a compatible use, but will not be used to verify the presence of commercial agriculture (the primary use) and qualify the property for initial or continued participation in the Williamson Act. If the primary use of the property is the production of agricultural commodities and that commercial agricultural operation has been documented and verified by the County Agricultural Commissioner, an allowable compatible use may be established as long as commercial agriculture remains the primary use of the land and the scale of the compatible use maintains an appropriate proportional relationship to the agricultural operation. The income generated by the “compatible use” is not capped or restricted to a particular amount.

**13. *I own a 26-acre parcel of non-prime land. I have some agriculture on the property (hay), but do not generate \$2,000 in annual revenue. I want to build a house for myself and a guest house for agricultural workers. How can I do this?***

This property is substandard in size (less than 40 acres of non-prime land), so the County will be sending you a notice of nonrenewal. During the contract nonrenewal period, you must still comply with the contract. If you want to build a house on your property, you may either increase the amount of, or modify the type of, the agriculture on the property to meet the criteria for substandard parcels in the proposed *Guideline for Commercial Agricultural Use*. Once you have demonstrated a 3-year history of compliance, you may apply for development of compatible uses not to exceed 10% of the land in question. (See proposed *Guideline for Compatible Use Development on Restricted Lands*.) You may also qualify for an Open Space Easement. If the Board of Supervisors approves the transfer of your Williamson Act contract for an Open Space Easement, you would be allowed to develop compatible uses on the property not to exceed 5% of the land in question. (See proposed *Guideline for Policies Concerning the Exchange of An Existing Williamson Act Contract for an Open Space Easement*.)

**14. *I own a 2-acre parcel of prime land with an existing house, garage, and related facilities. There is no agriculture on my property. How will I be affected by the County’s new Williamson Act policies?***

This property is substandard in size (less than 10 acres prime), so the County will be sending you a notice of nonrenewal. During the contract nonrenewal period, you must still comply with all of the development restrictions in the contract; therefore no

additional development would be allowed during the nonrenewal period. Based on the final draft Guidelines proposed, the property in question is too small to qualify for an Open Space Easement transfer.

- 15. *I own a 6-acre parcel of prime land. There is an existing house, garage, and related facilities covering 8% of the property. There is no agriculture on my property. I want to build a second dwelling on the property. How will I be affected by the County's new Williamson Act policies?***

This property is substandard in size (less than 10 acres prime), so the County will be sending you a notice of nonrenewal. During the contract nonrenewal period, you must comply with all of the development restrictions in the contract, so no additional development would be allowed during the nonrenewal period. Although the parcel exceeds the 5-acre minimum for potential transfer to an Open Space Easement, the existing development on the property exceeds 5%; therefore, the property would not qualify for an Open Space Easement transfer.

- 16. *I own an 11-acre parcel of prime land with 4 acres planted in wine grapes that generate \$11,000/year in revenue. My existing compatible use development (house, garage, horse stable) exceeds 10%. How will I be affected by the County's new Williamson Act policies?***

This property is standard in size (at least 10 acres prime) and meets the “high income” commercial agriculture criteria. Although the compatible use development exceeds 10% and the agricultural coverage does not meet the 50% minimum for compatible use development, because the development existed prior to the County’s Williamson Act program revisions, the County will not nonrenew the contract or otherwise take any enforcement action. While you will not be required to remove any existing development, no additional development will be allowed until the contract is terminated. You may file for nonrenewal at any time.

- 17. *I own an 80-acre parcel of non-prime land with very steep slopes and rugged terrain. It is not farmable. There is no development, but I would like to build a house. How will I be affected by the County's new Williamson Act policies?***

The property is standard in size (at least 40 acres non-prime), so it will not be part of the County’s initial nonrenewal process. However, the County intends to audit all parcels for contract compliance at least once every 3 years. If the property does not meet the proposed *Guideline for Commercial Agricultural Use* when it is audited, the County will nonrenew the contract. No development will be allowed while the Williamson Act contract is in effect unless the property is brought into compliance with the proposed *Guideline for Commercial Agricultural Use*. You could also apply for an Open Space Easement transfer. If the Board approves the transfer, you could build a house on the property so long as it complies with all of the development restrictions in the Easement.



- 18. *I own a 100-acre parcel of non-prime land. I live on the property, but lease the land for \$200/year to a local cattleman who runs cattle on my property and other property in the area. How will I be affected by the County's new Williamson Act policies?***

The property is standard in size (at least 40 acres non-prime), so will not be part of the County's initial nonrenewal process. However, the County intends to audit all parcels for contract compliance at least once every 3 years. If, during the audit, the County determines that the property complies with the proposed *Guideline for Commercial Agricultural Use*, the property will be allowed to remain under contract. For standard parcels, at least 60% of the property must be in agricultural use. If your property is fenced and at least 60% of the land is available for cattle grazing, it will comply. There is no required minimum income for standard parcels. It should be noted that development on the parcel is restricted to uses that are compatible with the agricultural use on the property and, under the proposed *Guideline for Compatible Use Development on Restricted Lands*, is limited to a maximum of 10% of the property, not to exceed 5 acres.

- 19. *I own a 35-acre parcel of non-prime land. I live on the property, but lease the land for \$200/year to a local cattleman who grazes cattle on my property and other properties in the area. How will I be affected by the County's new Williamson Act policies?***

The property is substandard in size (less than 40 acres non-prime), so you will receive a notice of nonrenewal. The agricultural use on your property does not meet the \$2,000/year minimum income for substandard, nonprime land. You may be able to enter into a Joint Management Agreement with the owners of other properties involved in the grazing operation run by the cattleman who leases your land. (See Attachment to proposed *Guideline for Procedures for County Non-Renewal of Williamson Act-Contracted Parcels Substandard in Size*.) If the joint operation meets the minimum income threshold of \$2,000 and at least 75% of your property is used for grazing, the County will withdraw the notice of nonrenewal.

It should also be noted that requests for compatible use development on Williamson Act parcels are restricted to a maximum of 10% of the property (not to exceed 5 acres). The owner must also demonstrate that the proposed development is incidental to the agricultural use on the particular parcel on which development is proposed.

You could also apply for an Open Space Easement transfer. (See *proposed Guideline for Policies Concerning the Exchange of An Existing Williamson Act Contract for an Open Space Easement*.)



**20. *If I transfer into an open space easement, will my taxes be the same as under the Williamson Act?***

No.

**21. *How will my property be valued for tax purposes if I transfer into an open space easement?***

The assessed value will be the lower of the following:

- a) The base year value established as of the last change in ownership of the property prior to the transfer into an open space easement plus the annual inflation factor (not to exceed 2% per year) as required by Proposition 13. This is called the factored base year value.
- b) The market value as of the January 1 lien date following the date the property was encumbered with the open space easement.

**22. *How will the Assessor determine the market value of the property as of the January 1 lien date if I transfer into an open space easement?***

After the Open Space Easement document is recorded, the Assessor will perform an appraisal to estimate how much the property would sell for if offered for sale in the open market place. The Assessor will consider the property as encumbered by the terms of the open space easement and the number of years remaining on the open space easement term. The appraisal will be as of January 1 following the date of recordation.

**23. *How can I find out ahead of time how much my tax assessment will be if my request to transfer into an open space easement is approved by the Board of Supervisors?***

The Assessor's office can provide property owners with their factored base year value.

The Assessor does not provide estimates of assessed value prior to a transaction. Property owners are encouraged to talk to a real estate sales professional or independent fee appraiser to arrive at an estimate of the price the owner could expect to receive if the property was offered for sale, with the open-space easement in place, as of January 1 following the date entered into the easement.

**24. *Will my value increase in future years?***

The Assessor will make the same analysis noted above as of January 1 each year that the property is in the open space easement.

FAQ Rev. 2/17