

***Procedure for Permits on Parcels under  
Williamson Act Contracts***

**PURPOSE**

The purpose of this policy is to outline procedures for accepting and reviewing permit applications for proposed structures or uses on lands subject to a Williamson Act contract. The Williamson Act provides for reduced property taxes to owners who agree to restrict the use of the property to agricultural and compatible uses for the duration of the contract period, which is at least 10 years. State law provides substantial monetary penalties to property owners for any material breach of the contract due to construction that is not in compliance with the contract (Government Code Section 51250). These procedures are intended to ensure compliance with contract terms and avoid issuance of permits for structures or uses that could result in a violation of the contract, County-adopted Rules, or the Williamson Act.

**GENERAL**

The Board of Supervisors adopted *Rules and Regulations for Administration of Agricultural Preserves Type A-I and Type A-II* (Attachments A and B) which establish the restriction of uses on lands under a contract. Only land that has been designated within an Agricultural Preserve by the Board of Supervisors may be restricted by a Williamson Act Contract. Lands under Williamson Act contracts are identified as *Agricultural Preserves* with the contract numbers on the Assessors Parcel maps. Each contract contains a legal description of the land restricted by the contract terms. The Clerk of the Board keeps copies of all executed Williamson Act contracts. The land restricted by a Williamson Act contract may be comprised of one or many parcels. The use of one parcel under a contract may affect the allowable uses on another parcel under the same contract.

County Rules require that: ... *lands under contract shall not be used for any purpose other than agricultural or compatible use. No structures shall be erected on said lands, except such structures as may be directly related to and compatible with agricultural use, and residence buildings for such individuals as may be engaged in the operation and management of said lands and their families.* (County rules for Type I and Type II, Rule (4))

Prior to issuance of permits on lands under a Williamson Act, zoning clearance is required to verify that the use of the land and the proposed structures are in compliance with the Williamson Act. Compliance with the Williamson Act contract involves four general requirements:

- 1) The proposed use is either a qualifying open space or agricultural use or a compatible use.
- 2) The land must be devoted to a qualifying agricultural production or open space use.
- 3) The contracted land must meet the minimum size for the type of preserve.
- 4) Existing non-agricultural uses do not result in a breach of the contract.

Williamson Act contracts require that the property remain in agricultural use and comply with the contract terms through the life of the contract. Contracts are for ten-year terms, which are automatically renewed on December 31<sup>st</sup> of each year, unless a notice of non-renewal is filed. Non-renewal starts a 9-year phase out, after which the contract restrictions are lifted. Notices of non-renewal received by October 1<sup>st</sup> begin the phase-out period on January 1<sup>st</sup> of the following year.

Permits for any type of new structure, expansion of building footprint, or change in use of an existing structure on contracted land shall not be issued until the Project Review section of Permit and Resource Management Department (PRMD) determines that the contracted land is in compliance with its Williamson Act contract and that the proposed structure or use is compatible with the agricultural operation.

Construction permits on lands that are in breach of contract restrictions cannot be issued for additions, new structures or changes in use (other than agricultural permit exemptions “B-AEX” related to a qualifying agricultural use) until the breach is cured or the contract is non-renewed and has completed the entire phase-out period.

In addition to the above provisions, a *material breach* of the contract could result in a substantial monetary penalty to the property owner in an amount equal to 25 percent of the unrestricted value of the land and buildings related to the breach. State law defines a *material breach* as any commercial, industrial, or residential building constructed after January 1, 2004, that is specifically not allowed by state law, the contract, or local rules and is not related to an agricultural or compatible use, where the total area of the incompatible building or buildings exceeds 2,500 square feet .

## **AUTHORITY**

1. California Constitution, Article 13, Section 8
2. California Government code Section 51200 et.seq (California Land Conservation Act of 1965, as amended refer to: [http://www.consrv.ca.gov/DLRP/lca/lrcc/governing\\_statutes.htm](http://www.consrv.ca.gov/DLRP/lca/lrcc/governing_statutes.htm))
3. Sonoma County Rules and Regulations for Administration of Agricultural Preserves Type I and Type II ( Board of Supervisors Resolution Nos. 28630 and 28631 as amended by Resolution Nos. 89-2097, 89-2098, and 90-0782).
4. General Plan Objective AR-8.1 and Policy AR-8c

## **PROCEDURE**

- A. Building, Grading, and Septic Permits. Before initializing a building, associated grading or septic permit, the Permit Technician shall determine if the property is subject to a Williamson Act contract. In addition to the notes on the Assessor’s Parcel Maps, all parcels in

Agricultural Preserves can be identified either from the spreadsheet available at the cubicles in PRMD, or, preferably, by going to Permits Plus and checking the Geo District Lookups of the Parcel Table Screen.

1. If the property is not subject to a contract, process the permit as usual.
2. If the property is subject to a contract, look at the type of permit application.
  - a. If the application is for an Agricultural Permit Exemption B-AEX or a remodel or repair A-BLD or B-BLD permit involving no changes in use, new structures or expansion of building footprint, then the Permit Technician may process the permit as usual.
  - b. If the application is for a B-BLD or C-BLD type permit involving any change in use, new structures or any expansion of building footprint, then the Permit Technician shall:
    - (1) Tag the permit application to identify it as involving land restricted by a Williamson Act contract.
    - (2) Provide the applicant with the Williamson Act Compliance Statement form to complete (Attachment C).
    - (3) Refer the applicant to the zoning cubicle for clearance for intake, prior to initializing the permit, advising that a planning application for an Agricultural Preserve Consistency Determination may be required.

B. Planning Clearance. The cubicle planner shall review the Williamson Act Compliance Statement to determine whether or not the property currently complies with the contract restricting the land, and whether the proposed use or structure will conform to the contract by checking the following criteria:

- Is the land devoted to a qualifying open space or agricultural use?
- Is the property in breach of the Williamson Act contract due to existing incompatible uses?
- Does the parcel(s) meet the minimum acreage requirements?
- Is the proposed structure or use an agricultural or compatible use?

Every effort should be made to complete this review at the zoning cubicle. However, if the cubicle planner cannot quickly determine compliance, an Ag Preserve Consistency Determination application fee should be required and the file assigned to a project planner for further review and a written determination.

1. Determination of a Qualifying Open Space or Agricultural Use. Parcels under a Williamson Act contract must continue to be devoted to either a qualifying open space or agricultural use for the entire term of the contract, including any phase out period. This generally requires a review of the contract to determine the type of contract. The type of qualifying open space use is defined in the contract and supporting documents. The contract can be located by first locating the parcel in the Assessor's Parcel books and identifying the book and page and then entering that information in the Official Public Records search screen of the Recorder's office.
  - a. Qualifying Agricultural Production Use. All of the following elements must be satisfied to determine the land remains in a qualifying agricultural use:
    - (1) The agricultural use must involve the production of food or fiber.(Horse breeding is not a qualifying agricultural use, but may be considered a compatible use as noted in Section 2 below.)
    - (2) The property must be devoted to commercial agricultural production or an open space use as defined in the Williamson Act. If 50 percent of the net plantable or suitable grazing land area of the contracted property is in a qualifying agricultural use as defined in the County Rule (excluding open space areas), the property is presumed to be devoted to commercial agricultural production. Properties with less than 50 percent of net areas in agricultural use shall be considered in compliance if they demonstrate that the property is devoted to commercial agriculture. If staff can determine that the current agricultural use of the property is substantially the same as when the property first entered the Williamson Act contract, the property shall be presumed to be devoted to commercial agricultural use.
    - (3) Income from the agricultural commodity meets the following minimum income requirements for three of the last five years.
  - b. Qualifying Open Space Use. All of the following elements must be satisfied to determine the land remains in a qualifying open space use:
    - (1) The property must be predominantly devoted to an open space use as defined in Government Code Section 51201 (o). Open Space use is defined as *the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the solar evaporation of seawater in the course of salt production for commercial purposes, if the land is within:*
      - (1) a scenic highway corridor, as defined in subdivision (i),
      - (2) a wildlife habitat area, as defined in subdivision (j)
      - (3) a saltpond, as defined in subdivision (k)
      - (4) a managed wetland area, as defined in subdivision (l)

*(5) a submerged area, as defined in subdivision (m)*

- (2) There are no minimum income requirements for lands under an open space contract; however, the contract often includes conditions for maintaining the property in conformance with a habitat management plan. The property owner must verify that they have continued to maintain the property in conformance with the contract.
- c. Potential Breach and Remedies When a Qualifying Agricultural Production Use is not present. If there is insufficient or no qualifying agricultural use or the residential development does not conform to the contract requirements, then the contract is potentially in breach. The planner shall make a note in Permits Plus in the L/H/N screen for the parcel of a potential breach and the reason. The cubicle planner should review the potential remedies and options for the applicant listed below and provide a written copy of the initial determination in the 3-part NCR form PJR-044 (entitled Zoning Requirements for Building/Grading Permits). Options to remedy the breach include any one of the following methods:
- (1) File an application for an Ag Preserve Consistency Determination with a proposal to bring the property into compliance using form PJR-001. The application shall include:
    - (a) Landowners Statement of Compliance with the Williamson Act (PJR-049) and filing fee.
    - (b) Proposal Statement to bring the property into compliance.
    - (c) Proof of commercial agricultural use, (i.e. purchase of agricultural commodity, signed farm lease agreement, etc.).
    - (d) Projections of income for five years.
    - (e) Identification of all land restricted under the contract.
    - (f) Site plan showing all structures and current and proposed uses with approximate dimensions and square footage of each building or use area.
    - (g) Any other information necessary or helpful to the determination.
  - (2) File an application to convert the contract (or portion thereof) from an agricultural contract to a Type II Open Space Contract if the property qualifies as suitable habitat for wildlife use or other open space use noted in item 1b i above. Application requires a report and recommendation from a qualified biologist and approval of the State Department of Fish and Game. The Board of Supervisors must approve the rescission of the existing contract and simultaneous execution of a new Type II Open Space Contract over the same property. (Government Code Section 51254)
  - (3) File an application to rescind the contract and simultaneously replace with an

Open Space Easement (Government Code Section 51255) over the same property. The terms of the Williamson Act contract remain in effect for the entire term of the Open Space Easement, which must be not less than 10 years. The Board of Supervisors must make certain findings pursuant to the Open Space Easement Act (Government Code Section 51084) before accepting the grant of an open space easement. Note that land that is presently in breach of a Williamson Act contract may not qualify for an Open Space Easement.

- (4) File a notice of non-renewal. The terms of the Williamson Act contract remain in effect for the entire 9-year phase out period. Only agricultural permit exemptions B-AEX, A-BLD, or B-BLD permits involving no changes in use, no new structures or expansion of square footage can be permitted for contracts that remain in breach during the phase-out period.
2. Other Agricultural and Compatible Uses

- a. Determination of Agricultural and/or Compatible Use. Only *permitted agricultural and compatible uses* as listed in the County Rules are allowed on contracted lands - if allowed by the underlying zoning and subject to any use permit, if required. Existing uses and structures which were legally established under permit and where no change in use occurred shall be deemed compatible with no further review. If the proposed use or structure is a *permitted agricultural use* then no further review is required under this sub-section.

Residential dwelling units are considered a *permitted agricultural use* under the County Rules only when occupied by either the owner, farm family member, agricultural employee, farmworkers or other persons engaged in the agricultural operation (i.e. caretaker or ranch manager). Second units, income rentals or vacation rentals are not permitted on contracted lands.

- b. Criteria for Determining Compatible Use. Compatible uses must be directly related and incidental to the primary agricultural use of the land. The following Guidelines should be used to make an initial determination whether the proposed use or structure is a compatible use in compliance with the Williamson Act contract. If the proposed use or structure clearly does not meet the criteria listed below, then the permit cannot be issued.
  - (1) The use or structure is listed as a compatible use in the County's Rules or meets the principles of compatibility in state law.
  - (2) The use or structure conforms with the County's General Plan and zoning, including obtaining a use permit, if applicable.
  - (3) The use or structure will not significantly displace land in existing or reasonably foreseeable agricultural production or cause significant loss of prime agricultural

soils. An exception to this standard may be approved if the use is related directly to the production of commercial agricultural products (harvesting, processing or shipping). (Government Code Section 51238.1(a) (2)).

- (4) The use or structure is clearly incidental to the land's primary agricultural use with a combined area of all existing and proposed compatible use(s) including structures, required parking and landscaping generally comprising no more than 15 percent of the contracted lands or no more than 5 acres (whichever is less). Agricultural processing and production facilities, farmworker housing, ponds and water detention facilities are considered agricultural uses and shall be excluded from this computation. Uses which occupy a greater area may be considered with a use permit by the decision-making body, provided that criteria 1 through 3 above are met and the proposed use is consistent with the principles of compatibility in Government Code Section 51238.1 -51238.3 and Section 51220.5, and other factors (e.g., dedication of conservation easements) ensure that the land will remain in agricultural or open space use.
- c. **Potential Breach and Remedies for Incompatible Use.** If the property contains any existing illegal uses or structures which are neither an agricultural nor a compatible use, then there is a potential breach of contract and the planner shall make a note in Permits Plus of a potential breach and the reason. The cubicle planner should review the potential remedies and options listed below for the applicant and provide a written copy of the initial determination in the 3-part NCR form PJR-044 (entitled Zoning Requirements for Building/Grading Permits).
- (1) File an application for an Ag Preserve Consistency Determination with a proposal to bring the property into conformance with the contract using form PJR-001. Applications shall include:
    - (a) Landowners Statement of Compliance with the Williamson Act (PJR-049) and filing fee.
    - (b) Proposal Statement to bring the property into compliance.
    - (c) Use permit or application for any compatible uses, if required.
    - (d) Site plan showing all structures and current uses with approximate dimensions and square footage of each building and use area.
    - (e) Identification of all land restricted under the contract.
    - (f) Any other information necessary or helpful to the determination..
  - (2) File a notice of non-renewal. Note that the terms of the Williamson Act contract remain in effect for the entire 9-year phase out period. Only agricultural permit exemptions B-AEX, A-BLD or B-BLD permits involving no changes in use, no new structures or expansion of square footage can be permitted for contracts that are in breach.

3. Minimum Parcel Size

- a. Types of Contracts. Under the County Rules, each parcel under a Type I contract must be at least 10 acres and each parcel under a Type II contract must be at least 40 acres. In some cases, multiple parcels may be restricted under the same contract.
- b. Determining the Type of Contract. The type of contract can be determined from the Permits Plus *Geo District Lookups* screen, the Assessor's Parcel Map notes on the preserve parcel, or from the list prepared by PRMD's DIS-GIS staff which is in a binder at the cubicle. The first digit of the preserve number indicates the type of contract, i.e. contract 2-411 is a Type II, and contract 1-508 is a Type I.
- c. Determining the Size of the Parcel. The determination of parcel size should be based upon the size of the legal parcel, not necessarily the size shown on the Assessor's parcel map. The planner should also consult the list of substandard parcels under Williamson Act contracts identified as part of the Department of Conservation Audit available on the shared drive under (S:/PROJ\_REVIEW/Ag Preserve Processing/Substandard Parcels.xls).
- d. Limited Exception for Undersized Parcels. If the undersized parcel is part of a multi-parcel contract where all parcels under contract are under the same ownership or agricultural operation which collectively meet the minimum parcel size, then a permit may be issued, provided that the owner records a covenant prohibiting the sale of the subject parcel(s) for the duration of the contract term and all other requirements for permit issuance are met.
- e. Potential Breach and Remedies for Undersized Parcels. If the parcel does not meet the minimum parcel size, then only agricultural permit exemptions (B-AEX), A-BLD or B-BLD permits involving no changes in use, no new structures or expansion of square footage can be permitted on the undersized parcels until the contract is non-renewed and phased-out or the non-conforming parcels are made conforming by one of the remedies listed below.

If the parcel does not meet the minimum acreage required for the type of contract, and is not part of a larger agricultural operation, then the contract is in potential breach and the planner shall make a note in Permits Plus (L/H/N of the parcel screen) of a potential breach and the reason. The cubicle planner should review the potential remedies and options for the applicant noted below and provide a written copy of the initial determination in the 3-part NCR form PJR-044 (Zoning Requirements for Building/Grading Permits) and the Notice of Substandard Parcel Size (Attachment C)

- (1) File a Lot Line Adjustment or Voluntary Merger with adjacent land to meet the minimum requirements, if possible. An application to rescind and replace the



Williamson Act contract may also be required.

- (2) File an application to change the contract from non-prime/Type II (40 acre min) to a prime/Type I (10 acre min) if the land meets any one of the following:
    - (a) Class I or Class II soil conservation service land use capability classification
    - (b) Storie Index Rating of 80 through 100
    - (c) Annual carrying capacity of one animal unit per acre
    - (d) Planted with fruit or nut bearing crops producing \$200/acre/year
    - (e) Produces unprocessed agricultural products valued at \$2000/acre/year
  - (3) File an application to rescind the Williamson Act contract and place an Open Space Easement over the same property for an initial term of at least 10-years pursuant to Government Code Section 51255. Note that the Open Space Easement must be consistent with the Williamson Act. Note that the terms of the Williamson Act contract remain in effect for the entire 9-year phase out period.
  - (4) File a notice of non-renewal on a multi-parcel contract and simultaneously file for a new Williamson Act contract on that portion of the contracted property that meets the minimum parcel sizes. Note that the terms of the Williamson Act contract remain in effect for the entire 9-year phase out period. Only agricultural permit exemptions (B-AEX) and permits for repairs or remodels (A-BLD or B-BLD permits) involving no changes in use, no new structures or expansion of square footage, on the undersized parcel can be permitted for contracts that remain in breach during phase-out.
  - (5) File a notice of non-renewal. Note that the terms of the Williamson Act contract remain in effect for the entire 9-year phase out period. Only agricultural permit exemptions (B-AEX) and permits for repairs or remodels (A-BLD or B-BLD permits) involving no changes in use, no new structures or expansion of square footage, on the undersized parcel can be permitted for contracts that remain in breach during phase-out.
- C. Breach of Contract. If the owner cannot or will not bring the property into conformance, then the applicant should be advised that they are in breach of contract and must phase out of the contract by filing an application for non-renewal. While the County has the authority to initiate non-renewal of a contract, it is preferable that the owner voluntarily request non-renewal. The contract terms remain in effect for the 9-year phase out period. Only agricultural permit exemptions (B-AEX), and minor repairs or remodels (A-BLD or B-BLD) permits involving no changes in use, no new structures or expansion of building footprint can be permitted on contracted lands that are in breach during the phase out period.

Construction permit applications for new structures, expansions or changes in use may be

accepted for plan check only when the parcel has entered the eighth year of the phase-out period, however, the building permits cannot be issued until phase-out is complete and the parcel is no longer in breach of contract. It should be noted that building permit applications are only good for one-year.

- D. **Concurrent Planning Application.** If the cubicle planner is not able to make an initial determination and the applicant chooses to proceed with the construction permit application at their own risk, the application can be taken in for plan check only, concurrently with a planning application and filing fee for an Ag Preserve Consistency Determination. The planner should give the applicant a signed copy of the 3-part NCR Form PJR-044 informing them in writing of the risks associated with the planning approval and explaining the potential penalties for material breach.
1. Make a copy of the building, grading, or septic permit application and put it together with the PJR-044 form. Initialize an application for an Agricultural Preserve Consistency Determination. On the Building Permit in Permits Plus, in the Approvals screen, select “Anno” on Line 20, Planning Approval, and place a *Comment* that explains the situation in both the Approvals screen and the *L/H/N* screen. Identify the file number for the consistency determination.
  2. The file shall be assigned to a project planner to make a determination whether or not the proposed structure or development is consistent with the contract, local rules, and state law. The planner should consult with County Counsel and/or PRMD management if there is any doubt about compatibility. The planner shall notify the applicant by letter of the planner’s determination, place appropriate notes in Permits Plus, and notify Plan Check or Well and Septic staff and the appropriate Permit Technician of the decision. A letter to the applicant with a determination of inconsistency should provide for an appeal to the Director, whose determination may be appealed to the Board of Supervisors.
- E. **Lot Line Adjustments/Subdivisions.** When the cubicle planner is presented an application for a lot line adjustment or subdivision on land under a Williamson Act contract, the cubicle planner shall require an application for an Ag Preserve Consistency Determination and filing fee as part of that application. A lot line adjustment involving exterior boundaries of land under a Williamson Act contract requires certain findings related to Section 51257 of the Government Code. (Refer to PRMD Policy and Procedure #8-1-6 for *Lot Line Adjustment on Williamson Act Lands*). In addition, a subdivision of land under a Williamson Act contract is subject to General Plan Policy AR-8c and requires findings under Section 66474.4 of the Subdivision Map Act (refer to PRMD Policy and Procedure #8-1-7 for *Processing Procedures for Subdivisions of Land under a Williamson Act Contract*). The determination of consistency and the procedures for making findings shall be handled by the planner to whom the project is assigned, not at the Zoning Cubicle.

**ATTACHMENTS**

- A. Rules and Regulations for Administration of Agricultural Preserves Type A-I (as amended)
- B. Rules and Regulations for Administration of Agricultural Preserves Type A-II (as amended)
- C. Notice of Substandard Parcel Size

**Note:** attachments/forms above are located in S:/Proj Review/Ag Preserves Processing folder

- D. Landowners Statement of Compliance with the Williamson Act PJR-049

s:\handouts\PJR\PJR 049 Landowners Statement of Compliance with the Williamson Act.wpd

**Approved by:**

/s/ Pete Parkinson

Pete Parkinson, Director

Lead Authors: David Hardy, Supervising Planner/Jennifer Barrett, Deputy Director

Co-Author: Traci Tesconi, Planner III

01/23/07

Intranet       Intranet and Internet