

UNIFORM RULE 5

Administration of Williamson Act Contracts

I. PROCEDURE TO ESTABLISH AN AGRICULTURAL PRESERVE AND WILLIAMSON ACT CONTRACT

See Appendices 1 and 2 for the following forms: Application Form and Filing Instructions, Commercial Agriculture Determination Form, typical Williamson Act Contract, typical Compatible Use lists for agricultural contracts, and typical Joint Management Agreement. The steps below outline the process by which an application for an Agriculture Preserve and Williamson Act contract is established. Applicants need to meet with the Planning Department before submitting their application.

1. An application to enter into an Agricultural Preserve and Williamson Act contract shall be submitted to the Clerk of the Board, accompanied by the established filing fee. The application must be submitted by October 2nd in order for the contract to be processed in time for the property to be enrolled for the next tax year.
2. The Clerk of the Board shall process the request and forward the application to the Assistant Deputy Director of the Planning Department and to the Principal Appraiser in the Assessor's Office.
3. The Assessor's Office shall review the application and verify the parcel(s) or portion of parcel(s) to go under contract as to: the status of the parcel(s) as legally-created, the accuracy of the assessor parcel numbers, the acreage to be included under the contract, and the legal ownership.
4. The Planning Department, as the primary contact for the applicant, shall review the application for completeness, research existing land use and permit history, identify agricultural or open space restrictions with regard to compatible uses, verify the presence of commercial agriculture on the property and ensure the compliance of the proposed contracted land with the other preserve and contract requirements. As part of this review, the Planning Department shall coordinate with the Assessor's Office as to whether the contract is for prime or non-prime land.
5. The Planning Department shall then prepare a draft letter to the Board of Supervisors that includes the staff recommendation, copies of the parcel maps and legal description for the County Recorder's Office, the Resolution to establish the Agricultural Preserve, the Williamson Act contract, and a tentative date for action by the Board of Supervisors shall be established by the Clerk of the Board.
6. The draft package to the Board shall be sent to County Counsel, the County Administrative Office (CAO), and the County Assessor who, within a week of receiving the draft package, shall review the material and provide edits back to the Planning Department as needed.

7. Within a time frame of two to four weeks before the scheduled Board of Supervisor meeting, the Planning Department shall: 1) edit the draft package as needed, 2) finalize the Board of Supervisor hearing date with the CAO analyst and the Clerk of the Board, 3) review any changes and discuss terms of the final contract agreement with the applicant, and 4) prepare public notification for local newspapers.
8. Upon approval of the Preserve Resolution and Land Conservation (Williamson Act) contract by the Board of Supervisors, the Clerk of the Board shall obtain the Board President's signatures on the approved documents, as well as the notarized signatures of the landowner on the eight original contract agreements, and record the documents with the County Recorder's office. The Clerk shall then distribute the eight signed copies of the documents to the landowner(s), the Planning Department, the Assessor's Office, the Recorder's Office, the CAO, County Counsel, and State Department of Conservation. The Assessor's Office also receives a copy of the Board's minutes pertaining to the decision as well as the Planning Department recommendation and a copy of the recorded Preserve Resolution and contract.
9. The contract period shall commence on January 1 of the following year.

II. CONTRACT TERMINATION

The purpose of this section is to establish standards for the termination of Williamson Act contracts. The procedures developed under this Rule are in accordance with the Williamson Act, and shall be used to process all terminations. Methods for terminating Williamson Act contracts include non-renewal, cancellation, and public acquisition. Annexation of contracted land terminates the County's responsibility for overseeing the contract.

See Appendix 5 for the Non-Renewal form.

A. Non-Renewal and Partial Non-Renewal

1. Either the landowner or the County may elect in any given year to not renew the contract. Written notice of such non-renewal shall be served upon the County by the landowner by October 2nd, and upon the landowner by the County by November 2nd, or the contract shall be considered renewed.
2. Upon receipt by the owner of a notice of non-renewal from the County, the owner may make a written protest of the notice of non-renewal, and the County may, at any time prior to the renewal date, withdraw the notice of non-renewal.
3. No later than 20 days after the County receives a notice of non-renewal from a landowner, or serves a notice of non-renewal upon a landowner, or withdraws a notice of non-renewal, the Clerk of the Board shall record with the County Recorder a copy of the notice of non-renewal or notice of withdrawal of non-renewal.
4. Once a notice of non-renewal is served on a contract with 10 years remaining, the existing contract shall remain in effect for an additional 9 years before the contract

expires. Within 30 days of the expiration of the contract, the County shall deliver a notice of expiration to the Director of the State Department of Conservation.

5. Upon request of the landowner, the Board of Supervisors may authorize the landowner to serve a notice of non-renewal on a portion of the land under contract. The request shall be reviewed to determine if the portion to remain under contract complies with the program's eligibility requirements. If not, the property owner would need to decide whether to continue the entire property under the program or serve notice of non-renewal on the entire property.

See Government Code Sections 51245 and 51246.

B. Cancellation

Cancellation of a Williamson Act contract of all or part of the owner's contracted land is reserved for extraordinary situations and results in immediate termination.

1. Contracts may not be cancelled except pursuant to a request by the landowner and a finding by the Board of Supervisors that: 1) the cancellation is consistent with the purposes of the Williamson Act, as amended; or, 2) the cancellation is in the public interest. The opportunity for another use of the contracted land, or the uneconomic character of an existing agricultural use, will not be sufficient reason for cancellation of the contract. In rendering its finding, the Board shall act in its own discretion to evaluate the proposed alternative use according to existing and projected conditions within the County.
2. The finding that the cancellation is consistent with the Williamson Act requires all of the following specific findings:
 - a. The cancellation is for land on which a notice of non-renewal has been served.
 - b. The cancellation is not likely to result in the removal of adjacent lands from agricultural use.
 - c. The cancellation is for an alternative use which is consistent with the applicable provisions of the County General Plan.
 - d. The cancellation will not result in discontinuous patterns of urban development.
 - e. There is no proximate non-contracted land which is both available and suitable for the alternative use, or development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.
3. The finding that the cancellation is in the public interest requires the following specific findings:

- a. Other public concerns substantially outweigh the objectives of the Williamson Act.
 - b. There is no proximate non-contracted land which is both available and suitable for the proposed alternative use.
4. Subsequent to receipt of a written request for cancellation by the property owner, which must be accompanied by a proposal for a specified alternative use of the land, the Board of Supervisors shall hold a public hearing on such request. Notice of the public hearing shall be mailed to every owner of contracted land within one mile of the exterior boundary of the land proposed for cancellation pursuant to *Section 6061 of the Government Code*. See *Government Code Sections 51284 and 51285 for additional information*.
 5. Prior to any action by the Board of Supervisors giving tentative approval to the cancellation of any contract, the County Assessor shall determine the cancellation valuation based on the current fair market value of the land as though it were free of the contractual restrictions and certify the cancellation valuation to the Board. The Board shall determine the cancellation fee equal to 12.5 percent of the cancellation valuation. If it finds that it is in the public interest to do so, the Board, following the procedures described in Government Code Section 51283 may waive any payment or any portion of a payment by the landowner or may extend the time for making the payment. See *Government Code Sections 51283 and 51283.5 for additional information*.
 6. Upon tentative approval of a petition accompanied by a proposal for a specified alternative use of the land, the Clerk of the Board shall record in the office of the County Recorder a certificate of tentative cancellation, which shall set forth the conditions that must be satisfied before a certificate of cancellation of the contract shall be executed. See *Government Code Section 51283.4 for additional information*.
 7. When a landowner petitions the Board of Supervisors for cancellation of a contract, the Board shall notify the County Assessor as well as immediately mail a notice to the Director of the State Department of Conservation who shall then submit comments to the Board on the proposed cancellation. See *Government Code Section 51284.1 for additional information*.

C. Public Agency Acquisition

Williamson Act contracts become void for land that is acquired by a federal, state or local government agency when necessary for public uses and facilities. The Williamson Act of 1965 contains policies and restrictions to avoid public acquisition of lands in agricultural preserves, with special emphasis on restricting acquisition of land subject to Williamson Act contracts or containing prime agricultural land. State and local government agencies are required to refer proposals to acquire land in agricultural preserves to the State Department of Conservation for their review and response prior to acquisition. See *Government Code Section 51295*.

D. Annexation by City

If a city annexes land subject to a Williamson Act contract, the city succeeds to all rights, duties and powers of the county under the contract. The city may, under certain circumstances, exercise its option to not succeed to the contract. *See Government Code Section 51243.5.*

III. RESCISSION AND REPLACEMENT OF AGRICULTURAL CONTRACTS

Under certain conditions existing contracts shall be rescinded and simultaneously replaced with a new contract that would enforceably restrict the same property for an initial term at least as long as the unexpired term of the contract being so rescinded but not less than 10 years (*see Government Code Section 51254*). The intent is to ensure that there be one contract per ownership (unless the contract is under a Joint Management Agreement) and that current ownership and the correct perimeter boundary of the contracted property be reflected in the contract.

The conditions under which the Planning Department would undertake the rescission of an existing contract with the replacement of a new contract are as follows:

1. Individual replacement contracts for landowners who are under shared contracts with other landowners but who are not under a Joint Management Agreement shall be processed at the time of an application for a use permit, development permit, Site Development Review, or subdivision (see Uniform Rule 1, Section II, D. 3).
2. A replacement contract shall be processed for a landowner under a joint contract and Joint Management Agreement who wishes to operate independently and who submits documentation demonstrating to the Planning Department that his or her property can by itself function as a viable commercial agricultural unit. In this case, the Commercial Agriculture Determination Form will have to be completed (see Appendix 1).
3. Replacement contracts shall be processed for a boundary adjustment that proposes to change the outer perimeter of the contracted land. The replacement contract or contracts shall be approved prior to, and recorded simultaneously with, the parcel map or final map.

If the boundary adjustment does not result in an exterior boundary change, as may occur under two adjoining parcels under one contract, it shall be recommended but not required that the contract be rescinded and re-entered to reflect the new boundaries of each parcel.

4. If a property or a portion of a property under contract is sold or the ownership otherwise transferred, the contract shall be rescinded and new contracts reentered to reflect the boundaries of each contract and the new ownership. Each new contract must meet the contract requirements of these Uniform Rules.

5. A property owner under contract may acquire adjacent parcels of any size to enlarge the acreage of the land under contract by amending the existing agricultural preserve and contract through rescission and re-entering.
6. Williamson Act contracts may also be rescinded and replaced with an Agricultural Conservation Easement Agreement (see below under Section IV.) or an Open Space Easement Agreement (see below under Section V.).

IV. BRIDGING TO AN AGRICULTURAL CONSERVATION EASEMENT AGREEMENT

See Government Code Section 51256.

V. BRIDGING TO AN OPEN SPACE EASEMENT AGREEMENT

The Williamson Act allows the exchange of any of the three kinds of Williamson Act contracts (Agricultural, Open Space, or Recreational) for an open space easement agreement pursuant to the Open Space Easement Act of 1974 (*see Government Code Sections 51255 and 51070-51097*). This process would be undertaken as a rescission and replacement process similar to that described in Section III above.

Under the Open Space Easement Act of 1974, land use requirements are more lenient than those required under the Williamson Act: “open space” is defined more broadly than the narrow definition used for a Williamson Act Open Space contract; public access is not required as it is under a Recreational contract; and, commercial agricultural use is not required as it is under an Agricultural contract. Nevertheless, the use or development of the land under an Open Space Easement Agreement must be consistent with the Principles of Compatibility of the Williamson Act, or be of benefit to the open-space use of the land. Use of the land must also be consistent with the specific restrictions of the easement.

A. Definition of Open Space

The land to be restricted by the easement shall be essentially unimproved and in its natural state. Open space land that is subject to an Alameda County Open Space Easement agreement is any parcel or area of land devoted to an open space use defined under *Government Code Section 65560* as any of the following:

1. Open space for the preservation of natural resources, including but not limited to, the preservation of plant and animal life, including habitat.
2. Open space used for the managed production of resources including but not limited to, forest lands, rangeland, and agricultural lands.
3. Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value.

4. Open space for public health and safety, including but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, floodplains, watersheds, areas presenting high fire risks, areas required for the protection of water quality, and water reservoirs, and areas required for the protection and enhancement of air quality.
5. Open space for the protection of Native American historical, cultural and sacred sites.

B. Easement Duration

The easement agreement shall restrict the same property in perpetuity or for a restricted period of time but not less than 10 years. As with a contract under the Williamson Act, a year shall be added automatically to the initial term unless a notice of non-renewal is given by either the landowner or the County at least 90 days prior to the annual renewal date. All other non-renewal procedures will follow those outlined in Section II. A. of this Rule.

C. General

1. A landowner and the County may upon their mutual agreement rescind a Williamson Act contract in order to simultaneously enter into an Open Space Easement Agreement notwithstanding the prior serving of a notice of non-renewal.
2. If the property under the easement is to be transferred to another party, the land owner shall provide the following disclosure to the transferee: "The real property that is the subject of this transaction is subject to an open space easement agreement pursuant to the Open Space Easement Act of 1974, *Government Code Section 51070 et seq.*, which requires that the land be devoted to open space and imposes restrictions on the use and development of the land." This disclosure must be signed by the transferee prior to completing the transfer.
3. The landowner may petition for abandonment of the agreement as provided for under *Government Code Sections 51093 and 51094*.
4. The land under the open space easement shall be assessed pursuant to *Section 423 of the Revenue and Taxation Code*.
5. Boundary line adjustments and the division of land under an Open Space Easement Agreement shall be governed by the provisions under Rule 1, Sections E. and F.

D. Required Easement Findings

Approval of the open space easement agreement shall require approval by the Board of Supervisors once a report on the proposal has been received by the Board from the Planning Department according to the process outlined in *Government Code Section 51085*. The Board shall not approve the agreement if a likely material breach of contract has been discovered

(*Government Code Section 51223*). Prior to approval, the Board shall find by resolution that preservation of the land in an open space easement is:

1. Consistent with the Alameda County General Plan.
2. Of sufficient size to provide the open-space benefits for which the land is being restricted (*Government Code Section 51223*), with a minimum of 10 acres.
3. In the best interest of Alameda County because of one or more of the following:
 - a. the land is essentially unimproved and, if retained in its natural state, has either scenic value to the public, is valuable as a watershed or wildlife preserve, and the easement contains appropriate restrictions to ensure this;
 - b. the land will either add to the amenities of living in neighboring urbanized areas or will help preserve the rural character of the area in which the land is located; and/or,
 - c. the public interest will otherwise be served consistent with the Open Space Easement Act of 1974.

See Government Code Section 51084.

E. Development Restrictions

Prior to the rescission and replacement of a Williamson Act contract for an Open Space Easement Agreement, any existing development on the contracted property that is not consistent with the following provisions must first be removed from the land. Existing non-conforming structures may also require removal in order to be eligible for an Open Space Easement Agreement if they interfere with the open space character of the land to be placed under the Agreement. See Rule 2 Section E.2. for a definition of existing non-conforming structures.

1. New development on land under an Open Space Easement Agreement shall be prohibited unless the use complies with the Williamson Act Principles of Compatibility or is of benefit to the open space use of the land (*Government Code Section 51223*).
2. Unless otherwise restricted due to the unique open space characteristics of the land, new uses allowed on open space easements shall be the same as those allowed under a Williamson Act Contract for Agriculture (see Uniform Rule 2: Compatible Uses) with the following exceptions:
 - a. A single-family residence shall be allowed on each buildable parcel under the Open Space Easement Agreement and need not be occupied by the owner or his family (modifies Rule 2, II. A. 1. and 2.).

- b. Separate development envelopes for preparation and processing facilities and any of their related uses are not allowed; any such facilities are to be confined to the 2-acre building envelope (modifies Rule 2, II, B.1, 2, and 3).
- c. Flight strip and helipad are not allowed (modifies Rule 2, Section II.B.6).
- d. Commercial Composting Facilities and Land Reclamation Fill are not allowed (modifies Rule 2, II.D).
- e. Commercial Solar Panels are not allowed (modifies Rule 2, II.E.3).
- f. Oil and Gas Drilling Production Facilities are not allowed (modifies Rule 2, II.F).

F. Compatible Use Determination

Landowners that have transitioned from a Williamson Act contract to an Open Space Easement Agreement shall be subject to a Compatible Use Determination process when applying for a development permit, use permit, Site Development Review, or renewal of a conditional use permit. The compatible use determination shall require that the proposed use or development be consistent with the requirements of this section; in all other respects, the compatible use determination process shall be the same as described in Uniform Rule 2, III. See Appendix 3.

VI. MATERIAL BREECHEES OF CONTRACT

The County will fulfill its enforcement responsibilities for material breach of contracts as defined in the Williamson Act pursuant to *Government Code Section 51250*.

Under *Government Code Section 51250 (a)*, a breach is material if, on a parcel under contract, both of the following conditions are met: 1) a commercial, industrial, or residential building is constructed that is not related to an agricultural use or compatible use as allowed by the Williamson Act and these Uniform Rules; and, 2) the total area of all the building or buildings likely causing the breach exceeds 2,500 square feet.

If it is determined that a material breach has occurred, the landowner shall be required to pay a monetary penalty of 25 percent of the unrestricted fair market value of the land rendered incompatible by the breach, plus 25 percent of the value of the incompatible building and any related improvements on the contracted land.

V. MONITORING AND ENFORCEMENT

Williamson Act contracts are binding agreements between landowners and the County. In exchange for reduced property tax assessment, landowners must remain in compliance during the entire life of the contract, even after non-renewal has been initiated. If, at any time, the County finds that the terms of a contract, including the requirements set forth in these Rules and the

Williamson Act, are no longer being met, the County shall provide the landowner with notice of the contract violation and 90 days to remedy the violation. If the violation persists, the matter shall be brought to the Planning Director for a determination on how to proceed. Options for addressing unresolved violations include recommendation to the Board of Supervisors for the immediate issuance of a Notice of Non-renewal or, for those contracts already in non-renewal, court action.

County-initiated non-renewal procedures shall also result from the landowner's failure to respond to the yearly questionnaire (Annual Declaration of Commercial Agricultural Use) within the time period allotted and after two reminder notices. The questionnaire is intended to determine on-going compliance with the terms of the contract. The questionnaire may be found in Appendix 7 of this document.