



# DEPARTMENT OF CONSERVATION

## DIVISION OF LAND RESOURCE PROTECTION

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January 31, 2008

COPY

Honorable Grant W. Metzger, Jr., Assessor  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

Ms. Stephanie Moreno, Director  
Community Development Agency  
891 Mountain Ranch Road  
San Andreas, CA 95249

Ms. Mary Mutz, Agricultural Commissioner  
Calaveras County Environmental Management Agency  
Agriculture & Weights and Measures  
891 Mountain Ranch Road  
San Andreas, CA 95249

Dear Assessor Metzger, Ms. Moreno and Ms. Mutz:

The Department of Conservation's (Department's) Williamson Act program auditor has completed an audit of compliance by Calaveras County (County) with the Williamson Act (WA) and the Open Space Subvention Act (OSSA). He noted the following conditions during the review. These conditions have been referred to me at the Department's Division of Land Resource Protection for appropriate follow-up.

Findings in this Management letter are based on fieldwork that was done during August 2007 through November 2007. The auditor discussed these findings with County personnel on November 15, 2007, during the exit conference.

### FINDING 1

### Nonprime Acreage Claimed as Prime

#### Condition:

The County reported 16,734.48 acres of "prime" land on its Subvention Report for Fiscal Year (FY) 06/07. Most of this land was used for grazing livestock. In order for the County to claim grazing land as prime, it must meet the WA standard. Government Code Section 51201(c) requires that land support at

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least one animal unit (AU) per acre in order to qualify as "prime." None of the grazing land reported as prime meets this standard, and therefore, the County received subventions that it was not entitled too. The County did have 605.22 acres that qualified for prime based on crop production.

Fiscal year	Prime Acreage Claimed on Subvention Report	Home Site (Adjusted under Finding 3)	Prime based on Crop Production	Overstated Prime Acreage	Overpayment (\$5.00-\$1.00)	Total
06/07	16,734.48	345.71	605.22	15,783.55	\$4.00	\$63,134.20
05/06	16,730.08	352.71	605.22	15,772.15	\$4.00	\$63,088.60
04/05	16,810.46	355.70	605.22	15,849.54	\$4.00	\$63,398.16
03/04	16,585.53	356.70	605.22	15,623.61	\$4.00	\$62,494.44
02/03	16,320.93	358.70	605.22	15,357.01	\$4.00	\$61,428.04
<b>Total Overpayment</b>						<b>\$313,543.44</b>

Criteria: Section 16142 of the Government Code states that \$5 per acre is paid "for prime agricultural land as defined in Section 51201" and \$1 per acre is paid "for all land, other than prime agricultural land ..."

Government Code Section 51201 provides five criteria by which land can be identified as "prime." Specifically:

1. All land that qualifies for rating as class I or II in the Natural Resource Conservation Service (NRCS) land use capability classifications.
2. Land which qualifies for rating 80 through 100 in the Storie Index Rating.
3. Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.
4. Land planted with fruit – or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

5. Land that has returned from production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

Section 14112 (d) of the Open Space Subvention Regulations (Title 14, California Code of Regulations) states, "...When determining whether enforceably restricted land meets the definition of prime agricultural land pursuant to Government Code Section 51201 (c)(3), (4) and (5), a participating local government shall rely on information derived from the assessment for the year in which the subvention claim is made, pursuant to subdivision (a) of this section."

Recommendations: The Department recaptures \$313,543.44 for overpayment of subventions for ineligible prime land over the past five years.

**FINDING 2 Home Sites Claimed as Prime Acreage**

Conditions: According to the OSSA and the Revenue and Taxation Code, home sites are ineligible for subvention payments. The County requested and received \$5/acre for land designated as home sites.

Fiscal Year	HS Acreage Claimed As Prime (excludes Prop 13 and Nonrenewals)	Overpayment	Total
06/07	345.71	\$5.00	\$1,728.55
05/06	352.71	\$5.00	\$1,763.55
04/05	355.70	\$5.00	\$1,778.50
03/04	356.70	\$5.00	\$1,783.50
02/03	358.70	\$5.00	\$1,793.50
<b>Total Overpayment</b>			<b>\$8,847.60</b>

Criteria: Revenue and Taxation Code Section 428, states "The provisions of this article shall not apply to any residence, including any agricultural laborer housing facility as provided for in Sections 51220, 51231, 51238, and 51282.3 of the Government Code, on the land being valued or to an area of reasonable size used as a site for such a residence."

Section 14113 (b) of the Open Space Subvention Regulations states, "The following types of lands shall not be entitled to payment: (1) Acreage devoted to residential use and assessed pursuant to Section 428 of the Revenue and Taxation Code."

Recommendations: The Department recaptures \$8,847.60 for overpayment of subventions for ineligible home sites over the past five years.

### **FINDING 3                    Agricultural Uses**

Conditions: In order for a landowner to enter into a WA contract, the land must be devoted to an agricultural use. Furthermore, the WA requires that a landowner use the property for an agricultural or compatible use for the duration of the WA contract. In an effort to define and validate an agricultural use, the County established an income threshold. On November 24, 1975, the Board of Supervisors (BOS) adopted County Resolution 75-489 which states that "the land shall produce from commercial agricultural production not less than an average annual gross income of \$2,000." If this income threshold is not met, the BOS has the option to disestablish the Agricultural Preserve (AP), which would automatically result in the nonrenewal of the WA contract.

Resolution 75-489 also states that, "On or before the fifteenth (15<sup>th</sup>) day of February of each calendar year, each property owner whose property is located within an agricultural preserve and subject to a Williamson Act Contract shall report the gross income derived from commercial agricultural production for the preceding year for said contract to the Calaveras County Agricultural Department." The Agricultural Department sends each landowner a questionnaire that the landowner fills out and returns. Most landowners return completed questionnaires but some do not. Not only are these landowners not in compliance with the County's resolution but the County can not validate that the landowners are using the property for a commercial agricultural use as required by the WA.

The current questionnaire does not adequately capture agricultural production. If the land is used for livestock grazing, the landowner can complete a chart that calculates "total production value." The animal's weight gain over a one-year period is determined and multiplied by the average value per

pound that would have been realized if the animal had been sold. This speculative "unrealized gain" is then reported as "gross total income derived from agricultural use of the property." However, without actually selling animals or leasing the land for livestock grazing, there is no production income. Recognizing an unrealized gain or "potential income" does not meet the WA's intent or the County's income production requirements. Each landowner should be using the land for commercial agriculture and also meet the County's minimum agricultural threshold of \$2,000. If not, they may be in breach of the WA contract.

Some landowners reported that an entire parcel or a large percentage of a parcel was devoted to "timber." Depending on the circumstances, timber may be a compatible use, an open space use or it may not be eligible at all for a WA contract and should be nonrenewed or possibly cancelled.

Simply having trees on the property does not constitute or satisfy the commercial agricultural use requirement. In 1976, the Legislature created a program specifically for timber lands. The program required that all qualifying timberland be included within specifically designated "Timber Protection Zones (TPZ)." That same year, Government Code Section 51246 was added to the WA to address TPZ land. It required that all counties and cities nonrenew land which had been rezoned to TPZ. Therefore, if the land's highest and best use is timber, it should be included in this program and not enrolled in the WA. Land that is primarily timber and not used for a commercial agricultural use should be rezoned to TPZ, which would then allow a landowner to request an immediate cancellation of their WA contract as described in Government Code Section 51282.5.

If the majority of the parcel is used for cropping or grazing, the BOS could determine that timber is compatible to the ongoing agricultural use on that parcel pursuant to the criteria outlined in Government Code Section 51231, 51238, or 51238.1. However, firewood is not a commercial agricultural product and does not satisfy the income production requirement.

In cases where there is no cropping or grazing and the timber does not qualify for the TPZ program, the County could pursue a WA Open Space Contract as described under Finding 6: Open Space Uses. If the parcel does not meet the requirements for a WA Open Space Contract, the current WA Contract should be nonrenewed.

Moreover, if a landowner is not using the property for an "agricultural use" as defined by Government Code Section 51201(b) but maintains a residence, the use may be categorized as "residential" and not compatible with the WA. If the landowner builds any additional structures, it may trigger the material breach provisions and result in substantial penalties to the landowner.

Criteria:

Government Code Section 51242 states that "no city or county may contract with respect to land pursuant to this chapter unless the land:

- (a) Is devoted to agricultural use.
- (b) Is located within an area designated by a city or county as an agricultural preserve."

Government Code Section 51243(a) states that every contract "shall provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract."

Section 51201(b) defines "Agricultural Use" as "the land for the purpose of producing an agricultural commodity for commercial purposes."

Government Code Section 51246(b) required that "No city or county shall enter into a new contract or shall renew an existing contract on or after February 28, 1977, with respect to timberland zone as timberland production. The city or county shall serve a notice of its intent not to renew the contract as provided in this section."

Government Code Section 51103 states "It is the intent of the Legislature to implement the policies of this chapter by including all qualifying timberland in timberland production zones."

Government Code Section 51104(e) states that "Timber means trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, on privately or publicly owned land, including Christmas trees, but does not mean nursery stock."

- Recommendations:
- A) The County should revise its existing annual questionnaire to capture current commercial agricultural production income. The questionnaire should provide the County with sufficient information to substantiate that the landowner is using the property for a commercial agricultural use and also meets the County's \$2,000 income threshold requirement.
  - B) If the landowner is not using the property in compliance with the WA or not meeting the County income requirements, the County should consider nonrenewal.
  - C) The County should review all WA parcels that include land described or designated as "timber" to determine if those lands qualify as a compatible use under the existing WA contract or meet the requirements for an Open Space WA Contract. If neither, the County should nonrenew the WA Contract. Some of the land may qualify as TPZ and be better suited for that program.
  - D) The County should establish procedures for ensuring landowners provide the information requested by the County. Landowners who fail to respond and return the questionnaire within the established time period should be considered for nonrenewal or other available remedies.

#### **FINDING 4**

#### **Substandard Parcels**

**Condition:**

According to the County's records, numerous contracted parcels are substandard in size. The FY 06/07 Subvention Report included almost 400 parcels below the WA's 40-acre minimum parcel size for non-prime land. In most cases, multiple parcels make up a contract but in a few situations the subminimum parcel appears not to be part of a larger contract. Landowners that build on substandard parcels could be subject to a breach of contract or to the material breach provision, since these parcels are by legislative definition below the level of agricultural viability, and in many cases no agricultural use exists on the property.

Criteria: Section 51222 of the Government Code states 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 agricultural uses permitted under the contracts. For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is:

1. At least 10 acres in size in the case of prime agricultural land, or
2. At least 40 acres in size in the case of land which is not prime agricultural land."

Recommendations: A) Substandard parcels should be nonrenewed. The County should develop, in conjunction with the county agricultural commissioner and the Department, criteria for minimum viable agricultural parcels, taking into account the acreage actually planted or grazed, and clearly delineating the specific soil, water, and climate characteristics that allow a parcel smaller than the legislatively-determined parcel sizes to be commercially viable.

B) Provide the Department with the following information:

- 1) Evidence that the County reviewed all substandard parcels to determine that they are commercially viable as agricultural parcels.
- 2) If the County does not initiate nonrenewal, it must document the criteria used to justify that the parcels below the statutory minimums are commercially viable. The documentation should include evidence that the County developed specific criteria as described under Recommendation A and how this parcel meets those requirements.

## **FINDING 5**

### **Compatible Uses**

Condition: Compatible uses are set forth in the County's Agricultural Preserve (AP) zone district regulations. The County establishes each AP in accordance with County Resolution 75-489, which also identifies the compatible uses in Exhibit B. Not all uses included in the AP District are included in Exhibit B. The County could on a case-by-case basis issue a landowner a permit for any of the uses authorized within the AP District.



Although many of these uses are compatible with the WA, other "uses" are not compatible or are so broadly stated that the "uses" may not conform to the principles of compatibility. Although the County has discretion in determining what constitutes a compatible use for WA contracts, approved uses must be consistent with the principles of compatibility. Furthermore, the County must consider Section 51220.5 when approving a compatible use.

Some of the "uses" identified in both the AP Zoning Regulations and Exhibit B of County Resolution 75-489 are vague and require more specificity or are inconsistent and should not be listed as a compatible use.

Sections 51238.1 – 51238.3 require that the County review each parcel independently to determine if the use is compatible with that parcel. The following uses should be revised or eliminated to ensure that the County's uses are consistent with the WA.

#### One-family Dwelling

All residential structures, including Single Family Residences for the landowner or family members, must be related and, in the case of subdivision, incidental to a commercial AG operation. This restriction applies to any contract or all contiguous property subject to a contract or contracts owned by the same landowner or landowners.

#### Accessory Buildings

All structures must be related to a commercial agricultural use on the parcel. This also applies to guest houses. Converting an existing structure is usually compatible. However, developing a new structure for this purpose is not compatible. In fact, building a new home and converting the old structure to a guest house, or accessory building, could trigger the material breach provisions.

#### Uses clearly incidental and secondary to the primary Agricultural use of the premises.

This item is vague, creates confusion and should, therefore, be removed.

Private aircraft landing facilities which are incidental to the agricultural uses of the premises.

These may be compatible if used for crop dusting or other agricultural purposes, but the same flight strip used for non-agricultural purposes may not be compatible.

Veterinary Services

Services must be clearly related to the types of animals used for producing an agricultural commodity. It should be used for large farm animals – pigs, sheep and cattle. The facility should not normally be used for small animals such as dogs or cats. In addition, the farm animals treated at the facility should predominantly come from the county and adjacent counties.

Roads, streets, highways, railroads and other surface vehicle transportation facilities.

Typically streets, highways and railroads for public use are not compatible. In most cases, the land used for this purpose would be acquired by a governmental entity. The WA requires that when it appears that WA land may be required by a public agency for a public use, the agency must notify the Department and local governing body (Government Code Section 51291(b)). Specific findings must be made (Government Code Section 51292), and the property must be acquired in accordance with eminent domain law or in lieu of eminent domain in order to void the contract (Government Code Section 51295).

Dog Kennel

Compatible uses should be related to the production of commercial agricultural commodities on the land. Therefore, the dogs should be used for an agricultural purpose, such as herding cattle or sheep.

Removal of gravel, clay and sand or other materials.

Government Code Section 51238.2 addresses proposed mineral extraction on contracted land that cannot meet the conditions of Government Code Section 51238.; it would allow a responsible board or council, on a case-by-case basis, to approve mineral extraction if: (1) the underlying contractual commitment to preserve the prime or nonprime agricultural land has not been significantly impaired and (2) the mining operation is in compliance with the reclamation standards adopted by the Mining and Geology Board pursuant to Section 2773 of the Public Resource Code.

Riding Academy, stables and horse boarding facilities.

Buildings for horses associated with an agricultural operation, such as ranching, are compatible but commercial horse boarding facilities and riding academies are not.

Winery

Although winery operations are compatible in many circumstances, not all structures associated with the operation are compatible. For example, visitor centers, large offices, restaurants, event areas and extensive parking facilities are likely not compatible.

Recently, a large ranch consisting of more than 40 parcels was sold. The ranch contains a paved airstrip, three residential structures, multiple cabins, four horse paddocks, a rodeo arena with grandstands and other accessory buildings. Some of the buildings as well as the airstrip appear to be incompatible with the WA. Since the structures were built prior to 2004, the material breach provisions were not triggered. However, some of the structures may still have been a breach of the WA contract when they were built. In either case, any future development could be problematic since the contract already contains multiple residences and other accessory structures. The Assessor's Office has allocated about 15 acres of the ranch to home sites. According to Section 51245, the landowner could request a partial nonrenewal for those areas dedicated to home sites. All provisions of the WA contract remain in force during the nonrenewal period, including those pertaining to material breach. After the nine year nonrenewal period has passed, the landowner will be able to build and develop on the non-contracted portion in accordance with local laws and regulations. If the landowner chooses not to use this partial nonrenewal option, the possibility of triggering the material breach provisions remains high. The landowner is currently leasing the land for cattle grazing. However, according to the income production questionnaire submitted by the landowner in 2006, the vast majority of the income was derived from forestry products, which as discussed under Finding 3: Agricultural Uses does not qualify as "production income." Therefore it appears as though the primary use of the land is not agricultural. This also increases the likelihood that any additional structures could trigger the material breach provisions since there appears to be limited commercial agriculture. This contract may be better suited for a WA Open

Space contract or the TPZ program pursuant to Finding 3: Agricultural Uses. As discussed under Finding 6: Open Space Use, the primary purpose of open space is to preserve and protect the beauty and characteristics of the land. The County should review this contract to determine if it is better suited for a WA Open Space Contract.

Criteria:

Section 51201 (e) defines "Compatible Use" "...is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open space use of land within the preserve and subject to contract."

Section 51220.5 states, "...For this reason, cities and counties shall determine the types of uses to be deemed 'compatible uses' in a manner which recognizes that a permanent or temporary population increase often hinders or impairs agricultural operations."

Section 51238.1 (a) states, "Uses approved on contracted lands shall be consistent with all of the following principles of compatibility:

- (1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.
- (2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.
- (3) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.

Section 51245 states, "Every contract shall do both of the following:

- (a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract."

Section 51235 states, "...Upon request by the owner, the board or council may authorize a landowner to serve a notice of nonrenewal on a portion of the land under a contract."

- Recommendations:
- A) Allow landowners to serve a Notice of Nonrenewal on a portion of land. This option should be considered for those parcels where there are structures that are non-compatible and should never have been allowed on WA contracted land. For example, this may be an appropriate remedy for the landowner who has an airfield, multiple residential structures, and other accessory buildings on contracted land.
  - B) Update the County's compatible uses to ensure compliance with the Williamson Act. County staff should consult with the Department program and legal staff when writing the new language.

#### **FINDING 6**

#### **Open Space Use**

Condition:

There were some questionnaires where the landowner reported that the land was vacant or consisted primarily of timber. For parcels where the landowner is not using the property for an agricultural use but the land has value because of its wooded or wildlife attributes, a WA Open Space Contract may be an option. Government Code Section 51205 allows the County to contract with a landowner for the purpose of restricting the land to recreational or open space use as defined in Section 51201 (n) or (o). If the landowner meets the requirements, the County could rescind the current contract and enter into a new WA Open Space Contract.

Open Space Use requires that the land be used in such a manner as to preserve its natural characteristics, beauty, or openness for the benefit of the public. The land must remain undeveloped and meet the requirements of Section 51201. Open Space WA contracts should ensure that the landowner maintains the land in its natural state, which would preclude a landowner from building any structure unless it was necessary for the preservation of the open-space land and is related to the principal purpose of the contract. If the undeveloped land does not qualify for an Open Space WA Contract, it should be nonrenewed.

Criteria: Government Code Section 51201(b) defines Agricultural Use "as land, including but not limited to greenhouses, for the purpose of producing an agricultural commodity for commercial purposes."

Government Code Section 51201 (e) defines "'Compatible Use' is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open space use of land within the preserve and subject to contract."

Government Code Section 51205 (n) defines "Recreational use" as "the use of land in its agricultural or natural state by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public. Any ancillary structures necessary for a recreational use shall comply with the provisions of Section 51238.1."

Government Code Section 51205 (o) defines "Open-space use" 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)<sup>1</sup>.

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<sup>1</sup> (i) A "scenic highway corridor" is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which has been officially designated by the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway

- (2) A wildlife habitat area, as defined in subdivision (j).<sup>2</sup>
- (3) A saltpond, as defined in subdivision (k).<sup>3</sup>
- (4) A managed wetland area, as defined in subdivision (l).<sup>4</sup>
- (5) A submerged area, as defined in subdivision (m).<sup>5</sup>

Government Code Section 51205 states, "Notwithstanding any provisions of this chapter to the contrary, land devoted to recreational use, or land within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area may be included within a agricultural preserve pursuant to this chapter. When such land is included within an agricultural preserve, the city or county within which it is situated may contract with the owner for the purpose of restricting the land to recreational or open space use and uses compatible therewith in the same manner as provided in this chapter for land devoted to agricultural use. For purposes of this section, where the term 'agricultural' land is used in this chapter, it shall be deemed to include land devoted to recreational use and land within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area, and where the term 'agricultural use' is used in this chapter, it shall be deemed to include recreational and open space use."

- Recommendations: A) Review all parcels without an "agricultural use" to determine if the parcel meets the WA definition for "recreational use" (Section 51201(n)) or for "Open Space use" (Section 51201(o)) and is, therefore, eligible for a WA Recreation

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has been officially designated by the Department of Transportation as an official county scenic highway.

<sup>2</sup> (j) A "wildlife habitat area" is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of great importance for the protection or enhancement of the wildlife resources of the state.

<sup>3</sup> (k) A "saltpond" is an area which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, has been used for the solar evaporation of seawater in the course of salt production for commercial purposes.

<sup>4</sup> (l) A "managed wetland area" is an area, which may be an area diked off from the ocean or any bay, river or stream to which water is occasionally admitted, and which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, was used and maintained as a waterfowl hunting preserve or game refuge or for agricultural purposes.

<sup>5</sup> (m) A "submerged area" is any land determined by the board or council to be submerged or subject to tidal action and found by the board or council to be of great value to the state as open space.

Contract or a WA Open Space Contract. Contact the Department for guidance and assistance for this type of contract.

- B) If a parcel cannot meet these requirements, the contract should be nonrenewed.

## **FINDING 7**

### **Subdividing of Parcels and the Subdivision Map Act (SMA)**

#### **Condition:**

Over the years, WA parcels have been divided, created, or recognized by grant deed, Certificates of Compliance or parcel maps. In many cases, the resultant parcels were then sold to new owners.

In 1975, the BOS passed County Resolution No. 75-489 which established the uniform rules for administering an AG Preserve. Article 10, Rule 4 addressed the issue of dividing the subject property. It states the following:

Property under contract shall not be divided into parcels less than fifty (50) acres, except as a result of court decree or the intestate or testamentary disposition of land. In the event the subject property is divided, the owner or successors thereof, as the case may be, agree as a condition of such division to execute a contract or contracts so that at all times the subject property is restricted by a contract or contracts identical to the contract covering the subject property at the time of such division and the County, any other political entity, or any court having jurisdiction and making an order of division of the subject property shall as a condition of the division require the execution of the contracts.

- A. The parcels created by such division shall meet the requirements of Article 6 of this Resolution and the provisions of Ordinance No. 767 (An Ordinance Establishing an Agricultural Preserve District Zone.) to remain under contract and/or in an agricultural preserve.

This requires a landowner who divides their property to execute a new contract. Furthermore, it appears that any new parcel, including those where a parcel transfers ownership, would require each new parcel owner to independently qualify for their own contract by meeting the County's minimum parcel sizes and the production income threshold. If the new owner did not meet the



requirements, the BOS has the authority to issue a notice of nonrenewal. WA contracts have included this restriction since the resolution was passed in 1975. However, over the years, WA contracts have been revised incorporating language that is even more restrictive. Current contracts require that a landowner submit a proposed division to the County for its approval as a condition for the approval. In 2006, the County added the following language to clarify a landowner's responsibility when transferring property under a WA contract. It states, "For existing parcels which are 50 acres or larger, the sale or transfer of title shall be treated as a division of the land as provided in paragraph 10 of this Contract and shall conform in all respects to the requirements of that paragraph." Paragraph 10 restates Article 10, Rule 4 of County Resolution No. 75-489 which was previously discussed.

In some cases, landowners divided their contracts using grant deeds. For example, one large contract was divided numerous times with grant deeds and at least one Lot Line Adjustment (LLA). Today, there are five landowners all under the same contract. Some of the landowners are engaged in commercial agriculture while others are not. It appears that County Resolution No. 75-489, which requires that a landowner execute a new contract whenever the land subject to the contract is divided, was not followed.

There were at least two cases where landowners subdivided land by parcel map. In both cases, there was no evidence that the BOS made the necessary findings as required by Government Code Section 66474.4 (a).

#### Situation 1

The original landowner entered into a WA contract in 1970 and nonrenewed (NR) the contract about twenty years later in 1997. While under NR, the parcels were purchased.

In 2002, the new landowner submitted an application for a parcel map, which was subsequently approved. The original parcel was divided into two 60-acre parcels (APN 050-052-043 and 044) and a 120-acre remainder parcel (APN 050-052-042). That same year, the County allowed the landowner to rescind the portion of the original contract that pertained to the two 60-acre parcels.

Each of the 60-acre parcels received a WA contract. The remaining portion of the original WA contract expired as scheduled in 2006.

Beginning in 2001, neighbors began contacting the County complaining that the landowner was building a golf course on APN 050-052-042, which was under NR. About two years later, the landowner requested a zone change and the addition of "golf course" to the list of Conditional Uses authorized within the AP zoning district. Golf Courses are not compatible with the WA. About eight years ago, the Legislature made changes to the WA that clarified that golf courses were not a compatible use and should not be allowed on contracted land. A breach of contract may have occurred since a golf course appears to have been partially or completely built on contracted land before the contract expired in 2006.

#### Situation 2

In 2000, a large ranch was subdivided using Certificates of Compliance. Later that year, the landowner submitted a LLA application to reconfigure the parcels "to fit the existing use of the property." Three years later the BOS allowed a portion of the contract to be rescinded in order to allow the new owners to enter into their own WA contract. The remaining 101.22 acres remained under the original WA contract. In 2003, the land was again divided but this time by parcel map. APN 053-007-018 was divided into APN 053-007-025 (50.61 acres) and APN 053-007-026 (50.61 acres). In both cases, the landowners built residential structures, which have been identified as potential material breaches under Finding 10.

The WA and the SMA make it clear that divisions of land subject to contract must not be approved if the division is for residential development. Also, the Attorney General has been consistent in stating that parcels cannot be subdivided for the purpose of creating parcels that are primarily for residential purposes. In fact, the Attorney General's office has twice opined that residential development of contracted lands is prohibited by the Williamson Act (See, 62 Ops. Att'y Gen 233 (1979); 54 Ops. Att'y Gen. 90 (1971)).

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. (62 Ops. Att'y Gen 233, 241)

The legislature adopted these opinions as declaratory of existing law (SB 985, stats 1999).

**Criteria:**

Government Code Section 66474.4 (a) states, "The legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it finds that either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land, and if the legislative body finds that the land is subject to any of the following:

- (1) A contract entered into pursuant to the California Land Conservation Act of 1965." (Williamson Act).

**Recommendations:**

- A) Develop a process to ensure that the BOS reviews each subdivision application affecting contracted land. The County's procedures must comply with Government Code Section 66474.4 (a) of the SMA. The County's WA contract records should contain documentation which clearly demonstrates that the BOS reviewed the application and reached a decision. If the subdivision was approved, the County's WA contract records must contain written evidence that the BOS determined that the applicant met the required findings.
- B) Determine how many contracted parcels were subdivided over the past six years. Compile a list of parcels including those listed above. Determine what actions need to be taken to remedy these violations. Provide the Department with the list and what remedies are proposed for each parcel identified.

**FINDING 8**

**Lot Line Adjustments**

**Condition:**

Over the years, the County has approved LLAs without meeting the requirements of Government Code Section 51257(a) which requires that the BOS make seven (7) specific findings. In many cases, there was no evidence that the findings were made and that the BOS approved the LLAs, as required by statute.

However in some cases, the BOS simply listed the seven findings and approved the LLA. It is important that the record contain evidence that clearly shows that the BOS reviewed each finding and discussed the issue. It should also be apparent that the finding was either met or not met based on the facts and circumstances as it pertains to the specific LLA under review. The following LLAs were identified as having occurred over the past six years: BLA 03-15, BLA 04-25, BLA 04-34 and BLA 05-78.

Criteria:

Government Code Section 51257 (a) states, "To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and notwithstanding any other provision of this chapter, the parties may mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided the board or council finds all the following:

- (1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contracts, but for not less than 10 years.
- (2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.
- (3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.
- (4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.
- (5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.
- (6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.
- (7) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan."

- Recommendations:
- A) Develop a process to ensure that the BOS reviews each LLA affecting contracted land. The County's procedures must comply with Government Code Section 51257. The County's WA contract records should contain documentation which clearly demonstrates that the BOS reviewed the application and reached a decision. If the LLA was approved, the County's WA contract records must contain written evidence that the BOS determined that the applicant met the required findings.
  - B) Determine how many contracted parcels received LLA for the past six years. Compile a list of parcels including those listed above. Determine what actions need to be taken to remedy these violations. Provide the Department with the list and what remedies are proposed for each parcel identified.

**FINDING 9                      Contract Amendments**

Conditions:                      The County allows WA contracts to be amended. However, the WA does not allow amendments except for those allowed under Government Code Section 51253. Instead of amending a WA contract, the County must rescind the existing contract in order to enter into a new contract as described in Government Code Section 51254.

Criteria:                              Section 51254 states, "Notwithstanding any other provision of this chapter, the parties may upon their mutual agreement rescind a contract in order to simultaneously to enter into a new contract pursuant to this chapter, which new contract 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. Such action may be taken notwithstanding the prior serving of a notice of nonrenewal relative to the former contract."

Recommendations:              Revise current procedures to no longer allow WA contracts to be amended except for those allowed under Government Code Section 51253. The existing WA contract should be rescinded and a new contract signed.

**FINDING 10                      Material Breach**

Condition:                              The audit identified four parcels on which structures had been built after January 1, 2004, and there was no evidence of an agricultural use at the time the structure was built. In order to

demonstrate a commercial agricultural use, the County requires that land produce at least an average annual gross income of \$2,000 from commercial agricultural production over a three year period. There was insufficient evidence to demonstrate that the landowner met this requirement at the time the structure was built.

**Criteria:**

Section 51250 of the General Code states that "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 allowed by this chapter or the contract, local uniform rules or ordinances consistent with the provisions of this chapter, and that is not related to an agricultural use or compatible use.
- (2) The total area of all of the building or buildings likely causing the breach exceeds 2,500 square feet for either of the following:
  - (A) All property subject to any contract or all contiguous property subject to a contract or contracts owned by the same landowner or landowners on January 1, 2004.
  - (B) All property subject to a contract entered into after January 1, 2004, covering property not subject to a contract on January 1, 2004."

"For purposes of this subdivision any additional parcels not specified in the legal description that accompanied the contract, as it existed prior to January 1, 2003, including any parcel created or recognized within an existing contract by subdivision, deed, partition, or pursuant to Section 66499.35, by certificate of compliance, shall not increase the limitation of this subdivision."

**Recommendation:** Investigate and determine if a material breach occurred on the following four parcels. Conduct the investigation as required by Section 51250 of the Government Code.

Assessor Parcel Numbers (APN)

053-007-025, 053-007-026, 050-017-021 and 036-002-025

Honorable Grant W. Metzger, Jr., Assessor  
Ms. Stephanie Moreno, Director  
Ms. Mary Mutz, Agricultural Commissioner  
January 31, 2008  
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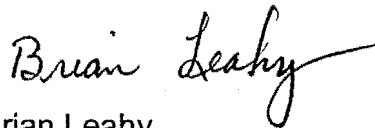
Please respond to the above findings within 20 working days of your receipt of this letter. This response should include the status of corrective action planned or taken on the findings and recommendations and should be addressed to:

Dennis J. O'Bryant  
Williamson Act Program Manager  
Department of Conservation  
Division of Land Resource Protection  
801 K Street, MS 18-01  
Sacramento, CA 95814

One of the Department's principal responsibilities arising out of the audit process is ensuring that the County tracks and addresses the various audit findings. Therefore, the County must enumerate those specific actions taken in response to each of the audit findings, and provide the Department with documentation that the recommendations have been implemented. The Department will consider all findings as "open" until it has received documentation showing that the recommendations were implemented.

We appreciate the County's cooperation and assistance. If you have any questions, regarding this letter, please contact Dennis O'Bryant at (916) 324-0850.

Sincerely,



Brian Leahy  
Assistant Director  
Department of Conservation  
Division of Land Resource Protection

cc: Board of Supervisors  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

Mr. Bob Lawton, County Administrative Officer  
Calaveras County Administrative Offices  
891 Mountain Ranch Road  
San Andreas, CA 95249