



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 5/8/2018
Agenda Placement: 10B

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: Donald Barrella, Planner III - 707-299-1338

SUBJECT: California Land Conservation Act (aka Williamson Act) Program Workshop

RECOMMENDATION

Director of Planning, Building and Environmental Services and Assessor-Recorder-County Clerk request the following actions:

1. Receive the presentation regarding the California Land Conservation Act (CLCA) also known as the Williamson Act Program, including its administration, enforcement, policy, and tax assessment and revenue implications;
2. Provide direction as to whether staff should take one or more of the following actions:
 - a. Amend the Local Rules and/or Contract forms for Type A and/or Type H Williamson Act Agricultural Preserves and Agricultural Preserve contracts to address the issues raised by the elimination of Rule 13 in 2001; and
 - b. Investigate and take action regarding contracts that are not in compliance with current minimum requirements or contract terms.

EXECUTIVE SUMMARY

Napa County's commitment to the preservation of agriculture is evident through the variety and breadth of local programs enacted over the past 50 years. These include implementation of the County's historic Agricultural Preserve (AP) Zoning District in 1968 (Ordinance No. 274), Measure A in 1980 (which limits the number of residential building permits issued annually in the unincorporated area), Measures J and P enacted in 1990 and 2008 respectively (which prohibit any land use change or intensification of non-agricultural land uses in agricultural zoning without prior voter approval), the Winery Definition Ordinance enacted in 1990 which strictly limits wineries and their accessory uses, the Right-to-Farm Ordinance also adopted in 1990, and adoption of the General Plan in 2008. It is also evident in the County's participation in the California Land Conservation Act of 1965 (CLCA), commonly referred to as the Williamson Act. Given the 50th anniversary of the Agricultural Preserve Zoning District

this year, staff is providing this overview of the CLCA for the Board's consideration and to receive direction of any changes in the administration of the CLCA that should be considered.

The primary intent of the CLCA program is to preserve the limited supply of agricultural land in the state by discouraging premature and unnecessary conversion to urban uses. The CLCA allows local jurisdictions to enter into contracts with landowners for the purpose of preserving agriculture. The County is able to limit the types of activities allowed on parcels covered by the contract, to agriculture and other uses deemed compatible with agriculture, for a rolling 10-year period. In return, property owners receive a reduction in property taxes depending on whether they are assessed at the lower of their factored Proposition 13 base year value or the restricted CLCA value.

PROCEDURAL REQUIREMENTS

1. Staff report.
2. Public comments.
3. Discussion and possible direction to staff.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

For the past half-century, Napa County has been in the forefront of agricultural preservation, both in California and in the nation. As a result of strong policies and consistent leadership, unincorporated Napa County is one of the few jurisdictions that has withstood intense economic pressure and remained almost exclusively agricultural, despite being located within one of the largest metropolitan areas in the United States. In the past, the cities and county have jointly worked to support this vision. The County has generally foregone new sales and transient occupancy tax opportunities, and has instead focused urban development into the five cities. In return, most of the cities have adopted Urban Limit Lines and have historically minimized annexations. Voters in both the cities and the county have voted on several proposals subject to Measure J (a 1990 voter-sponsored initiative that prohibits any land use change or intensification of non-agricultural land uses in agricultural zoning without prior voter approval), and in 2008 further extended those provisions to 2058 through Measure P.

As noted in the Visit Napa Valley surveys of people visiting Napa, the two main reasons for their travels are the wine-tasting and scenery, both of which are the responsibility of the County. It is this reason why the issue of the protection of farmland is so important. Agricultural preservation allows for the maintenance of a rural lifestyle for many, and allows us to continue our historical communities and traditions, but most importantly is that agriculture serves as the economic backbone for the nearly 40,000 families who live and work within Napa County. The California Land Conservation Act (CLCA) of 1965, commonly referred to as the Williamson Act, is one program within the array of policies used by the County to manage the unincorporated area for the greatest good.

The Term "Agricultural Preserve"

The term "Agricultural Preserve" appears in both local zoning as well as the CLCA and has a different meaning depending on the context it is used. The Napa County Agricultural Preserve (AP) Zoning District was implemented in 1968, and established agriculture as the highest and best use for lands primarily located within the Napa Valley. It increased the minimum parcel size for subdividing land within the AP District from 1-acre to 20-acres. In 1997 the minimum parcel size within the AP District was increased again to 40-acres. Initially the AP zoning district included approximately 23,000-acres. Today the AP Zoning District contains approximately 32,000-acres and includes lands within the Napa Valley, Wooden Valley and Gordon Valley.

A CLCA preserve refers to specific parcels where Williamson Act contracts are allowed. Before the County can enter into a contract with a property owner, the Board must first establish a CLCA preserve (as opposed to the zoning Agricultural Preserve) to define the geographic area within which the County is willing to enter into a contract with the property owner. Napa County has designed its rules to require that each property subject to contract constitutes its own CLCA preserve. Whether or not a parcel is eligible for a contract and associated CLCA preserve depends on its size and agricultural use as determined by the Planning Building Environmental Services (PBES) Department in cooperation with the Agricultural Commissioner. Under Government Code 51230, land within a designated CLCA preserve that is not otherwise agricultural land, shall be restricted by zoning including appropriate minimum parcel size.

CLCA Overview:

The CLCA enables local governments to enter into voluntary contracts with private landowners for the purpose of restricting specific parcels of land to agricultural, open space, or recreational use. In return, landowners receive reduced property tax assessments based on the restricted uses rather than full market value. Local governments were partially reimbursed for the associated tax losses via an annual subvention payment provided for in the Open Space Subvention Act (OSSA) until 2009, when the State eliminated subvention funding for the CLCA.

Agricultural use is defined as the commercial production of agricultural commodities, which in general includes fruits, vegetables, grains, legumes, animal feed, seed crops, bio-fuel and oilseed crops, nursery stock, trees for lumber products, sod, livestock, poultry, horses for commercial sale, and other commodities accepted by local jurisdictions based on the recommendation of the Agricultural Commissioner. "Prime agricultural" means land that either:

1. Qualifies for rating as Class I or II in the Natural Resource Conservation Service (NRCS) Land use Capability Classifications; or Class III, if producing no less than \$200 an acre in annual gross income for three of the last five years;
2. Qualifies for rating 80 through 100 in the Storie Index Rating, a widely known and accepted method of rating soils for land use and productivity in California;
3. Supports livestock in the production of food or fiber and which has an annual carrying capacity of at least one animal per acre, as defined by the United States Department of Agriculture;
4. Planted with fruit or nut-bearing trees, vines, bushes, or crops with a non-bearing period of less than five years and which will return during the bearing period no less than \$200 per acre annual gross income; or
5. Other lands producing unprocessed agricultural plant products with an annual gross value of not less than \$200 per acre for three of the last five years.

In all cases, prime land must be irrigated to support agriculture on the premises. "Non-prime agricultural" lands are those lands that do not meet the definition of prime agricultural lands and are generally used for grazing and dry farming.

A Williamson Act contract is an enforceable contractual restriction. Failure to meet the terms and conditions will result in breach of contract. In the case of breach, the local jurisdiction may seek a court injunction to enforce the terms of the contract. The contract and associated CLCA preserve are governed by rules that specify the uses allowed. Generally, any commercial agricultural use will be permitted within a CLCA preserve. In addition, local jurisdictions have the flexibility to identify and permit other activities they deem compatible with agricultural use. Contracts have an initial term of 10 years, run with the land, and are binding on all successors. Unless a non-renewal is filed, the term automatically extends for an additional year each January 1. Thus a contract signed in 1969 still has a 10 year term as of January 1, 2017. Non-renewal can be initiated by either the land owner or the County. When a notice of non-renewal is served and recorded, the annual tax assessment gradually increases over nine years (unless the property owner protests a county-initiated non-renewal, in which case the increase in taxes takes place over the last five years of the non-renewal period), at which time the contract expires. Currently there are approximately 1,241-acres within the county that are in non-renewal. For examples of why non-renewal was pursued see the 'Program Compliance and Enforcement' section below.

Contracts can also be prematurely cancelled either by the landowner or the local jurisdiction. A landowner can petition the local jurisdiction to cancel a contract. The landowner must pay a cancellation fee equal to 12.5% of the unrestricted fair market value of the property. Remedies for material breach of contract may include penalties of 25% of the value of the affected land and 25% of the value of any improvements built in violation of the law, local regulations, or the contract.

A CLCA preserve defines the boundary of an area within which a city or county will enter into Williamson Act contracts with landowners. The boundary is designated by resolution of either the Board of Supervisors (Board) or City Council (Council) having jurisdiction. Only land that is located within a CLCA preserve is eligible for a Williamson Act contract. CLCA preserves are regulated by rules and restrictions designated in the resolution to ensure that the land within the preserve is maintained for agricultural or open space use. A CLCA preserve must consist of no less than 100 acres. Although Napa County currently requires a separate CLCA preserve for each parcel under contract, older CLCA preserves may include two or more parcels and/or owners. Smaller CLCA preserves may be established if a Board or Council determines that the unique characteristic of the agricultural enterprise in the area calls for smaller agricultural units and if the establishment of the CLCA preserve is consistent with the jurisdiction's General Plan.

In 1998, the California Legislature amended the law to allow Farmland Security Zones (FSZ), which are also referred to as Super Williamson Act parcels, where, in exchange for further property tax breaks, the land is committed to agricultural use for a 20-year period. A FSZ is an area created within a CLCA preserve by a board of supervisors upon request by a landowner or group of landowners. The land restricted by an FSZ contract is valued for property assessment purposes at 65% of its Williamson Act valuation or 65% of its Proposition 13 valuation, whichever is lower. Napa County does not currently participate in the FSZ program (25 counties currently allow for FSZ contracts).

Presently, approximately 15 million acres of California's 31.4 million acres of farm and ranch lands are restricted by Williamson Act contracts. Of California's 58 counties, 53 participate in the program: county's that do not participate include Del Norte, San Francisco, Inyo and Yuba. (Alpine and Los Angeles Counties have enacted the program but have no existing Williamson Act contracts.) In January of 2011, Imperial County exited the program by filing Notices of Non-renewal on all their Williamson Act Contracts (covering over 139,000-acres) as a result of the loss of subvention payments. To date no other county has chosen to exit the program. In total approximately 492,000-acres of contracted land statewide are reported to be in non-renewal.

The CLCA in Napa County:

The County has been participating in the Williamson Act program since 1969 as a tool for promoting agricultural land preservation consistent with the County's agricultural heritage and General Plan agricultural preservation

goals and policies.

- l Goal AG/LU-1: Preserve existing agricultural land uses and planed of agriculture and related activities as the primary land use in Napa.
- l Policy AG/LU-6: The County will continue to study tax assessment policies which recognize the long-term intent of agricultural zoning and the fact that agricultural land uses require a minimum of public expenditure for protection and servicing.
- l Policy AG/LU-7: The County will research, evaluate, and pursue new approaches to ensure even stronger protections for the County's finite and irreplaceable agricultural resources. Approaches to be evaluated shall include implementation of a "Super Williamson Act" program, a conservation easement program or other permanent protections, and program promoting the economic viability of agriculture.

Currently the County offers three types of contracts, Type A, Type C, and Type H. (There are no active Type C contracts.) Type A contracts are specific to the Agricultural Preserve (AP) zoning district. Type H contracts are for agricultural land that is not zoned AP. There are currently no active Type C contracts in Napa County. There are also Type E and F contracts, which are no longer offered, but remain in effect.

To qualify for the establishment of a CLCA preserve and associated contract, a parcel must meet a minimum size requirement and contain a bona fide agricultural use (or Agricultural commodity as defined by Government Code Section 51201.a). For prime agricultural land, if a parcel is either being zoned AP or meets the definition of Prime Agricultural Land within local rules, a minimum of 10 acres is required. For non-prime agricultural land (i.e. grazing land) a minimum 40-acre parcel is required.

Applications for new enrollees into the Act are taken in during the month of September. Qualification requirements (i.e. minimum parcel size and agricultural use) are confirmed as part of the application review process. Contracts for qualifying parcels are prepared and sent to owners for signature(s). Returned contracts are set to be heard by the Board at the first meeting in December at which time preserves and contracts are authorized and approved. Approved contracts are then recorded prior to January 1 so that they are enrolled prior to the January 1 lien date.

Parcels under contract cannot be subdivided during the term of a contract except to the extent permitted by Government Code Section 51230.1 (for immediate family members operating by Joint Management Agreement), or by Section 51230.2 (for agricultural labor housing).

Cancellation of a contract can only be initiated by the landowner. To approve a cancellation, the Board must make specific rigorous findings pursuant to Government Code Section 51282. Additionally, the landowner must pay a cancellation fee equal to 12.5% of the unrestricted fair market value of the property if cancellation is approved. During the past 49 years, there have only been four cancellations which totaled approximately two acres of land released from contract. The last cancellation of a contract was a partial cancellation done in 2005. To date no other petition to cancel a contract has been processed largely due to the findings the Board must be able to make as well as the required payment of a cancellation fee.

Financial Implications of the CLCA in Napa County:

As of January 1, 2017 there are 848 parcels covered by CLCA contracts which contain 74,711-acres of land. Attachment A is a map showing the location of contracted parcels. Of these 848 parcels only 446 parcels receive any property tax benefit from the CLCA contract. The other 402 parcels are assessed at their Proposition 13 factored base year value. The total assessed value reduction for the 446 parcels receiving a benefit is \$547,945,026 which translates into approximately \$1,000,000 in reduced tax revenue for the Napa County General Fund. Attachment B shows the current and historical CLCA financial impacts.

The Open Space Subvention Act (OSSA) was enacted by the State in 1972, to provide for the partial replacement of

local property tax revenue foregone as a result of participating in the CLCA and other open space programs. The State eliminated subvention funding in the 2009-2010 Fiscal Year budget. In 2009, the last year the county received full subvention funding, the assessed value reduction for all contracted lands was \$538,450,249 or roughly \$1,000,000 in general fund revenue loss. In that year the subvention payment was approximately \$90,000.

Rule and Contract Updates:

Over the years the County has periodically updated local Williamson Act Rules and/or Contract Forms, to stay current with the State Statute and local standards and practices. A major update was done in April 2001 where the Local Preserve Rules and Contract forms were updated to the current rules and forms that are currently in place. This update was also required by amendments to the California Revenue and Taxation Code which changed the property lien date from March 1 to January 1, and included a general process calendar so that the Board would not need to review and adopt a processing calendar annually.

Other relevant updates to the Rules and/or Contract Forms include:

1. April, 2005: An update to all the contract forms due to an amendment to Government Code Section 51250, that identified certain structures that could constitute material breach of a contract as detailed in Section XVI of the current contract forms;
2. December, 2006: A Type C Preserve Rules and Contract form was created and offered, however at this time only one Type C has been issued and that contract has since been replaced with a standard Type A contract due to a lot line adjustment; and
3. June, 2008: Minor amendments were approved to achieve greater uniformity and clarity of the contract types including grammatical changes, and to reflect the definition of agriculture Napa County Code Section 18.08.040 as recently amended at that time to include Farm Management uses.

There is a discrepancy between the "Rules Governing the Administration of Agricultural Preserves on Lands Outside of the Agricultural Preserve Zoning Districts in Napa County (Type H Contract)" (Rules) and the contract form used for Type H contracts. Prior to 2001, the Rules included Rule 13 which provided a formula for calculating minimum imputed income in compliance with Section 423 of the California Revenue and Taxation Code. In 2001, Rule 13 was eliminated during the major update of the CLCA in 2001, referenced above. However, Section VIII of the Type H contract has continued to incorporate the terms and requirements that had been previously adopted in Rule 13. The County relied on the contract terms to ensure compliance with the California Revenue and Taxation Code. The County and the landowner execute a contract containing the definition of the minimum imputed income value, and that value was disclosed prior to the landowner's execution of the document. Staff is recommending that the contracts remain the same and that staff continues to use the income values established by former Rule 13 in Type H contracts.

Recent Board Review of the CLCA:

In 2010, the Senate Budget and Fiscal Review Committee introduced Senate Bill (SB) 863. It essentially allowed Counties participating in the CLCA to voluntarily reduce the term of Williamson Act contracts from 10 years to 9 years, and for the Assessor to value the property, based on the revised contract term. Landowners with contracts would be provided a minimum 60-day notice before the County could take action, and would be offered the opportunity to non-renew the contract. This program would effectively raise property taxes on those owners who choose to remain under contract and under the new provisions. Of the 51 Counties that currently have active CLCA contracts, 11 (21%) have adopted the SB 863 provisions (Butte, Kings, Lassen, Madera, Mendocino, Merced, Shasta, Stanislaus, Sutter, Tulare, and Yolo).

On January 25, 2011, the Board of Supervisors reviewed the CLCA program, shortly after the elimination of the State subvention funds. At that time, the Assessor estimated that implementation of SB 863 would increase

property tax revenues by approximately \$500,000 between 2011 and 2016. The Board discussed the provisions of Senate Bill (SB) 863, acknowledged that non-renewal of Williamson Act contracts would have little immediate effect (because of the 9-year phase out), and emphasized that continued participation in the Williamson Act program is consistent with the County's general plan focus on agricultural preservation values. Following a presentation by the Assessor and PBES Director, the Board unanimously voted to continue the CLCA without any changes.

Program Compliance and Enforcement:

From the inception of the program, the PBES Department has administered the CLCA in full compliance with the statutes and local rules. In 2005, the County received the Stewardship Award from the State Department of Conservation (DOC) for "...outstanding and long-term efforts to uphold and promote the California Land Conservation Act." In 2009-2010 the DOC audited the Napa County program. The audit contained two findings: 1) the Assessor Megabyte property tax system used the term "open space" when the correct term should have been "non-prime," and 2) the County should improve the agricultural activity survey questionnaire process identified in Section XXIV of the current contract forms. The DOC Audit Report is provided in Attachment C. The County's Response can be found in Attachment D.

With an almost 50 year history and many contracts having a similar duration, many contracts were signed prior to the imposition of current minimum standards. Since those standards were adopted, the County has not contracted parcels with Type A or Type H Contracts of less than 10-acres (for Prime Agricultural land) or less than 40 acres (for non-prime land).

Areas of non-compliance can be: minimum parcel size; consistent and complete reporting as required by the Assessor Division; absence of approved agricultural use and activities that could constitute a breach of the contract. Remedies could include County initiated non-renewal and county initiated legal action for breach of contract. Enforcement issues are addressed on an as needed basis by PBES and County Counsel. Because the uses allowed in the County's agricultural zoning districts (i.e. AP and AW districts) are mirrored in the Williamson Act contracts as allowed uses, in conjunction with the Winery Definition Ordinance, breaches associated with incompatible uses and/or structures on a contracted property are highly unlikely. No breaches of contract related to uses or structures have been identified through the history of the program. As noted above, the DOC 2009-2010 audit of the program did not identify any incompatible uses or structures on contracted parcels and found that the County maintains the necessary records to support the County's subvention report.

Presently there are approximately 157.4-acres of contracted land within six contracts in non-renewal that were initiated by the County due to qualification issues or as a result of failure of the contracted property owners to rescind and replace contract(s) due to a recorded lot line adjustment. In 2017 approximately 140-acres of contracted land was in non-renewal as initiated by the county, due to the failure of the owners to rescind and replace the previous contract(s), which were re-enrolled into the Act once the owners submitted their application.

Additionally, the County has worked with the Napa County Land Trust to non-renew contracts covering the Archer Taylor Preserve and the S.V. Wantrup Preserve (totaling 759-acres). The contracts covering these ranches were no longer necessary because they are covered by conservation easements with restrictions equal to or greater than the CLCA restrictions and are owned by a property tax exempt entity.

SUPPORTING DOCUMENTS

- A . Map of Williamson Act Contracts
- B . Impact of CLCA on Assessed Value
- C . DOC Division of Land Resource Protection Williamson Act Audit Findings

D . County Response to DOC Williamson Act Finding

CEO Recommendation: Approve

Reviewed By: Helene Franchi