



[Issue](#) | [Background](#) | [Findings](#) | [Conclusions](#) | [Recommendations](#) | [Responses](#) | [Attachments](#)

San Mateo County's Agricultural Mismanagement: Williamson Act Non-Compliance

Issue

What are the economic losses in the form of penalties, suspended subvention payments, and underreported taxes to San Mateo County resulting from non-compliance with the requirements of the Williamson Act? Have the appropriate County departments fulfilled their oversight responsibilities to ensure compliance with the Williamson Act?

Background

The California Land Conservation Act of 1965, commonly referred to as the Williamson Act (WA), enables local governments to enter into 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 are partially reimbursed for the associated tax losses via an annual subvention payment provided for in the Open Space Subvention Act (OSSA) of 1972.

Nearly 16.9 million acres of California's 29 million acres of farm and ranch land are currently restricted by WA contracts, constituting 55% of all agricultural lands, 71% of all prime agricultural lands, and 33% of all private lands. Fifty-four of the fifty-eight California counties participate in the WA program.

San Mateo County (County) is a participating county and has a land mass of 286,720 acres. In 2008, 47,058 acres of agricultural lands were enrolled in the WA program representing 16% of County lands. By comparison, the top ten counties in the program each have between one million and two million acres enrolled. Two hundred ninety-five titleholders own the approximately 540 parcels subject to WA contracts in the County.

The Williamson Act

The WA was passed to preserve agricultural and open space lands by discouraging premature and unnecessary conversion to urban uses. The WA creates an arrangement whereby private landowners' contract with counties and cities to voluntarily restrict land to agricultural and open-space uses. Landowners' property tax assessments are reduced based on an estimate of the

future rental value of the land in agricultural, open space, or recreational use, which the Department of Conservation WA website states can be as much as an 83% reduction from its Proposition 13 value.

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 contracting local authorities 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 (NCRS) 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.

An agricultural preserve defines the boundary of an area within which a city or county will enter into WA contracts with landowners. The boundary is designated by resolution of either the Board of Supervisors (Board) or City Council (Council) having jurisdiction. This report focuses on WA land within the County. A map of the County’s approved agricultural preserve is attached hereto as Attachment 1. Only land that is located within an agricultural preserve is eligible for a WA contract, which is entered into between the landowner and the Board. 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. An agricultural preserve must consist of no less than 100 acres. However, to meet this requirement, two or more parcels may be combined if they are contiguous or in common ownership. Preserves may be made up of land in one or more ownerships. Property owners with less than 100 acres may combine with neighbors to form preserves, provided the properties are contiguous. Smaller agricultural 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 preserve is consistent with the jurisdiction’s General Plan.

In 1998, the California Legislature amended the WA to allow Farmland Security Zones (FSZ), which are also referred to as Super WA 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 an agricultural preserve by a board of supervisors upon request by a landowner or group of landowners. The FSZ offers landowners greater property tax reduction. Land restricted by an

FSZ contract is valued for property assessment purposes at 65% of its WA valuation or 65% of its Proposition 13 valuation, whichever is lower. The County did not claim any FSZ acreage on its most recent subvention payment application.

A WA contract secures an enforceable 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 rules of each agricultural preserve and the contract specify the uses allowed. Generally, any commercial agricultural use will be permitted within any agricultural preserve. In addition, local jurisdictions have the flexibility to identify and permit other activities they deem compatible with agricultural use.

The minimum term for a WA contract is ten years. Contracts renew automatically every year unless the landowner or the local jurisdiction files a “notice of nonrenewal.” This notice starts a nine-year nonrenewal period. During the nonrenewal process, the annual tax assessment gradually increases. At the end of the nine-year nonrenewal period, the WA contract is terminated. Contracts can also be prematurely cancelled either by the landowner or the local jurisdiction. Only a landowner can petition the local jurisdiction to cancel a WA contract. The existence of an opportunity for another use of the property is not sufficient reason for cancellation. In addition, the uneconomic character of an existing agricultural use shall not, by itself, be a sufficient reason 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.

Open Space Subvention Act

The Open Space Subvention Act (OSSA) became law on January 1, 1972 to provide for the partial replacement of local property tax revenue foregone as a result of participation in the WA and other enforceable open space restriction programs (CA Government Code §16140 et seq.). Participating local governments receive an annual payment from the State of California (State) on the basis of the quantity (number of acres), quality (soil type and agricultural productivity), and, for FSZ contracts, location (proximity to a city) of land enrolled under eligible enforceable open space restrictions.

The State paid out more than \$38 million in subvention payments for the fiscal year 2007-2008. Subvention payments are calculated based on \$5 per acre for prime agricultural land and \$1 per acre for non-prime agricultural land. FSZ acreage is reimbursed at \$8 per acre. The most recent subvention application submitted by the County was \$59,338 for fiscal year 2006-2007.

San Mateo County Williamson Act Audit

In fiscal year 1996-1997, the California Department of Conservation (DOC) instituted an annual WA/OSSA compliance audit program through contracts with the California Department of Finance. In June 2007, the DOC notified the County Assessor (Assessor’s Office) and Building and Planning Department (Planning Department) that it had completed its first ever audit of the County’s compliance with the WA and OSSA for the years 2003 through 2007. The audit was conducted March through April of 2007. The DOC found the following non-compliance conditions resulting in improper or inaccurate subvention payments to the County:

1. Non-prime acreage claimed as prime;
2. Parcels not complying with claimed agricultural uses:
3. Reported acreage overstated;
4. Substandard sized parcels claimed;
5. Claiming acreage at full fair market value instead of the lesser statutorily restricted value;
6. Use of outdated agricultural land rental data in calculating the statutorily restricted value;
7. County WA contracts included impermissible uses inconsistent with state guidelines;
8. Certain non-agricultural lands reported must comply with the definition of open space;
9. Subdivisions and Lot Line Adjustments were not properly approved for continuing compliance with minimum acreage requirements;
10. WA contracts that were rescinded in order to enter into an Open Space Easement agreements were less restrictive than the original contracts;
11. Proper findings were not made permitting land subject to a WA contract to be converted to public use; and

The Assessor's Office responded to the findings in a letter dated July 12, 2007, and the Planning Department responded to the same findings on February 13, 2008 as discussed below:

1. Non-Prime Acreage Claimed as Prime

In order to apply for annual subvention payments, a determination of prime versus non-prime land needs to be made annually, since land use can often change from year-to-year. One of the primary methods for determining the property's actual use is a declaration by the landowner. The County failed to require such information on an annual basis that resulted in the State's disallowing all subvention payments applicable to approximately 2,800 acres for fiscal years 2003-2007 and amounting to \$56,507.

The Planning Department agreed with the findings and instituted an annual survey that was first released in February 2009 with responses due May 2009. To date, 225 out of a total of 295 surveys have been returned by WA landowners. The survey will gather property-use data for calendar years 2005 through 2007. In addition, the Planning Department will verify 20% of the responses against data it currently has on file and which were submitted previously by the landowners for permitting purposes. Subvention payments for fiscal years 2002-2003 through 2006-2007 will be reconciled based on the information contained in the survey responses.

2. Parcels Not Complying With Claimed Agricultural Uses

As a result of the County's not sending surveys and/or questionnaires out to landowners with WA contracts, the DOC determined that there was insufficient information available to base a claim of permitted agricultural use. The DOC recommended that the County consider not renewing WA contracts. The DOC recommended that procedures be put in place to assure the submission of data by landowners necessary to substantiate agricultural use, including related commercial income information. The DOC also recommended that landowners who fail to submit such data in a timely manner be considered for non-renewal. The DOC did not impose any penalties for this instance of non-compliance. The Planning Department stated that landowners who fail to respond to a second notice to return their surveys will be presented to the Board by the end of calendar year 2009 for nonrenewal or imposition of other penalties.

3. Reported Acreage Overstated

The Assessor's Office conducted its own internal review of the County's WA program and determined that there were a total of 42,960 acres eligible for subvention. The Assessor's Office also determined that approximately 2,750 acres had been misreported for lands within city jurisdictional boundaries or were owned by the Midpeninsula Regional Open Space Trust (MROSD). The DOC imposed a penalty of \$17,385 equal to the improperly claimed subventions for four years from fiscal years 2003-2007. The Assessor's Office accepted the findings and agreed to adjust the balance of prime agricultural land for reporting purposes in future years.

4. Substandard Sized Parcels Claimed

The WA requires that lands in agricultural use also be "commercially viable." The WA presumes that lands are large enough to sustain their agricultural use if, in the case of prime lands, the land is at least ten acres in size and a minimum of 40 acres for non-prime agricultural land. The larger purpose of the WA recognizes the public interest in preserving economically viable agricultural lands and gives local government the flexibility to establish the minimum criteria for permitted agricultural use, taking into account the amount of acreage planted or grazed, as well as, the soil, water, and climate conditions that would support smaller parcels being commercially viable. In its recommendations, the DOC required that the County review and determine if all substandard parcels are commercially viable, otherwise, consider them for nonrenewal. In response, the Planning Department committed to comprehensively update all WA policies and procedures and, as part of that exercise, establish the criteria for determining the commercial viability of substandard parcels. Any parcels viewed as not commercially viable under the new criteria will be referred to the Board for nonrenewal.

5. Claiming Acreage at Full Fair Market Value Instead of the Lesser Statutorily Restricted Value

Subvention payments can only be claimed on parcels where the restricted value is less than the fair market value of the land. The restricted value is based on the agricultural income-producing ability of each parcel. California Revenue and Taxation Code Sections 423, 423.3, 423.4, and 423.5 set forth the methodology to be used to calculate a parcel's restricted value. In general, Section 423(a)(1) requires an assessor to calculate restricted value of WA lands by capitalizing annual income based on market rents. The Assessor's Office responded that it knew of no instances where the restricted value of a parcel was greater than its fair market value. The County makes such a comparison whenever lands are sold. The Assessor's Office believes that due to the high fair market value of land in the County, a parcel's restricted value is unlikely to be high.

6. Use of Outdated Agricultural Land Rental Data in Calculating the Statutorily Restricted Value

The County used 1985 market rental information instead of current market rental data for the relevant year. The restricted value is calculated using the rental value of the parcel discounted by an interest rate factor provided by the State. The Assessor's Office accepted the DOC finding and has since recalculated restricted values for the years 2006-2007.

7. County Williamson Act Contracts Included Impermissible Uses Inconsistent with State Guidelines

Each county with a WA program develops its own contract to be signed with landowners in conformity with guidelines set forth in the WA. The DOC determined that certain language in the County's standard form WA contract defined uses that were vague and not compatible with the principles of compatibility originally set forth in the WA. The principles of compatibility as set forth in CA Government Code Section 51238.1(a) provide that a permissible use will not significantly compromise the current, foreseeable, or long-term productive agricultural capability of the parcel and will not result in the significant removal of adjacent lands from agricultural or open space use.

The DOC identified the following non-compatible uses were authorized under the zoning regulations:

1. Residential structures not incidental to a commercial agricultural operation;
2. Warehouses holding personal goods;
3. Public stables, corrals, and riding academies;
4. Dog breeding, commercial dog kennels, and dog training schools;
5. Dude ranches;
6. The building of new structures for non-agricultural uses whereas converting existing structures would be permitted; and
7. Mining operations that substantially impair the prime or non-prime agricultural character of the underlying land.

The DOC recommended that the County rewrite and update the appropriate resolutions to clarify the allowed uses contained in the WA. The DOC specifically required the review of all existing nurseries for compatible agricultural use. The DOC also recommended that language in the County's current contract requiring the consent of the landowner for the elimination of any agricultural or permitted use be eliminated. The Planning Department agreed to update all policies, procedures, and contracts addressing agricultural and compatible uses and to eliminate the contract language requiring landowner consent when eliminating uses improperly approved as compatible.

8. Certain Non-Agricultural Lands Reported Must Comply with the Definition of Open Space

The County subvention payment applications included parcels identified as "natural pasture," woodlands, or other obviously non-agricultural uses. Even if these lands do not qualify as agricultural land, they may still qualify as open space or recreational lands under the WA. Landowners must sign a separate WA Open Space or Recreation contract with the County. Open space use requires the land to be used in such a manner as to preserve its natural characteristics, beauty or openness for the benefit of the public, and provide essential habitat for wildlife or the evaporation of seawater in salt production. Such lands shall remain undeveloped and be within the boundaries of a scenic highway corridor, a wildlife habitat area, a salt pond, a wetland area, or a submerged area. The foregoing definition only applies to WA Open Space contracts. A landowner is also permitted to convert his or her WA contract to an Open Space Easement

Agreement, where these eligibility standards are looser or do not apply at all. Recreational use is defined as land in its natural state that is used for hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports. The Planning Department agreed with the findings and instituted the annual survey for landowners to declare whether they have WA land. In addition, the Planning Department will verify 20% of the response against data it currently has on file and which were previously submitted for permitting purposes. The Planning Department further committed to rescind any existing contracts and enter into new WA Open Space or Recreational contracts, where appropriate, or present the contracts to the Board for nonrenewal.

9. Subdivisions and Lot Line Adjustments were Not Properly Approved for Continuing Compliance with Minimum Acreage Requirements

The WA and the Subdivision Map Act require the Board to review each property lot line adjustment or subdivision application for lands subject to a WA contract. Since the inception of the WA, numerous parcels have been subdivided with the necessary findings that the parcels can sustain commercial agriculture. These adjustments were approved by the Planning Department without the necessary findings and approvals having been made by the Board. A new contract may be signed reflecting the adjusted boundaries so long as the Board finds that the new contract (a) contains a term at least equal to the unexpired term on the original contract but in no event less than 10 years, (b) has no net decrease in the amount of acreage subject to restriction, (c) has at least 90% of the acreage, under the old contract, remaining restricted under the new contract, and (d) does not result, due to lot line adjustment, in a greater number of developable parcels than existed prior to the adjustment. The Planning Department committed to the DOC to ensure the Board review all future subdivision and lot line adjustments and clearly document all findings. The Planning Department also reviewed all parcels under WA contracts and determined that none of the parcels had been subdivided or otherwise adjusted in the last six years.

10. Williamson Act Contracts that were Rescinded in Order to Enter into Open Space Easement Agreements were Less Restrictive than the Original Contracts

On one occasion, the Board approved the rescission of a WA contract and replaced it with an Open Space Easement. The Board also approved the subdivision of the parcel into two substandard parcels that were to be developed for residential use. The requisite findings (referred in number 9 above) were not made. As such, the terms were not as restrictive as the previous WA contract. In response, the Planning Department committed to comprehensively update all WA policies and procedures and, as part of the process, ensure that all future rescissions and related conversions to Open Space Easements contain the necessary restrictive terms.

11. Land Subject to a Williamson Act Contract to be Converted to Public Use

In 1989, the County acquired a small parcel subject to a WA contract without cancelling the contract or following nonrenewal procedures. This property was sold by the County to a private party. Certain notifications and findings required of public agencies acquiring land for public use were not made, and eminent domain procedures were not followed. As such, the lands

remain restricted by the WA contract. In response to the finding, the County contacted all governmental agencies owning contracted lands informing them that such restrictions may still be in effect.

Open Space in San Mateo County

The WA governs privately-owned agricultural lands. In addition, other public agencies, such as the Midpeninsula Regional Open Space District (MROSD), own agricultural land in the County. Since 1977, the MROSD, an independent, non-enterprise California special district, has acquired more than 60,000 acres for an estimated \$250 million in San Mateo, Santa Clara, and Santa Cruz Counties in order to “preserve a regional greenbelt of open space land and easements into perpetuity, protect and restore the natural environment, and provide opportunities for ecologically sensitive public enjoyment and education.” The MROSD has developed 26 separate preserves and over 226 miles of hiking, biking, and equestrian trails.

In 2004, MROSD won approval for its Coastside Protection Program (CPP) allowing it to acquire 12,000 acres of open space and agricultural lands in the State-designated Coastal Protection Area of the County. A Service Plan, which is required by the CPP, was submitted by MROSD as part of the approval process and estimated a total acquisition cost of \$87 million. To date, more than 6,000 acres have been acquired under the CCP in the County. The largest acquisitions have been the 3,681 acre Driscoll Ranch and the 1,047 acre Mindago Ranch. Almost all purchases have been made with the cooperation of the Peninsula Open Space Trust (POST), a private, not-for-profit organization devoted to the preservation of open space and scenic beauty in the County. POST uses its funds to acquire lands, which are subsequently sold to MROSD at a substantial discount. MROSD both acquires land and maintains it under a stewardship program. MROSD’s stewardship duties are funded using tax revenues allocated from County parcel taxes, while acquisitions are funded by State grants.

Of the properties acquired by MROSD in San Mateo County, 5,435 acres were already in agricultural use. Currently, another 2,129 acres are being converted to agricultural use, largely for grazing in order to control the growth of woody plants and foster the spread of grasslands. MROSD recently hired a new General Manager with an excellent reputation for developing open space lands. MROSD will develop a strategic plan over the coming 18 months, including reviewing the remaining ten years on the original CPP Service Plan and revisiting its agricultural land development policy.

Investigation

The 2008-2009 San Mateo County Civil Grand Jury (Grand Jury) interviewed members of the San Mateo County Board of Supervisors, the County Assessor’s Office, the County Controller’s Office, and the County’s Building and Planning Department. The Grand Jury also interviewed officials of the Midpeninsula Regional Open Space District, Peninsula Open Space Trust, and the San Mateo County Farm Bureau, as well as, economic consultants and real estate experts familiar with land sales in the coastal open space and agricultural land areas.

Findings

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. San Mateo County's (County) Williamson Act (WA) program has not been audited in the entire 40-year history of the program. The California State Department of Conservation (DOC) completed the County's first audit in May 2007 and found substantial instances of non-compliance with provisions of the WA and the related Open Space Subvention Act (OSSA).
2. Most of the County's WA parcels were enrolled in the 1960s and 1970s with fewer than 20 new enrollments in the last decade.
3. Acreage restricted under WA contracts equal 16% of all countywide lands yet amount to less than one tenth of 1% of total countywide assessed value.
4. There are 543 parcels comprising 47,058 acres enrolled in the WA program compared to a total of 219,316 parcels and 286,720 acres countywide. Only 2,750 of the County's 47,058 WA acreage are categorized as prime agricultural land.
5. Most non-prime acreage is used for grazing.
6. The 2008 assessed value of WA restricted lands totaled \$173 million-- \$68 million in assessed land value and \$105 million in improvements, personal property and fixtures-- compared to a total countywide assessed value of over \$132 billion.
7. More than half of the WA restricted parcels, approximately 250, have WA restricted assessed land values of less than \$1,000 per acre. Only 70 parcels have assessed land values greater than \$10,000 per acre. The overall average assessed land value for WA restricted lands is less than \$1,500 per acre. By comparison, Midpeninsula Regional Open Space District (MROSD) paid an average of \$6,000 per acre for land acquired between 2003 and 2008 as part of its Coastal Annexation program with some lands acquired by the Peninsula Open Space Trust (POST) as part of the program, exceeding \$20,000 an acre.
8. The market value of agricultural land in the County has increased 500% in the last 50 years.
9. The San Mateo County Assessor's Office (Assessor's Office) has been using rental data from the 1980s, with some rental data reportedly dating back to the 1960s, in calculating the restricted value of agricultural lands.
10. The County's non-compliance with certain provisions of the WA resulted in \$73,892 in penalties and the suspension of any further subvention payments typically amounting to more than \$50,000 annually from the State. The WA and OSSA payment program may be suspended as part of the State budget crisis resolution.
11. The County Building and Planning Department (Planning Department) and Assessor's Office have instituted a procedure to selectively audit 20% of WA properties annually.

Conclusions

The 2008-2009 San Mateo County Civil Grand Jury concludes that:

1. The County's compliance obligations under the Williamson Act (WA) and the Open Space Subvention Act (OSSA) programs have been seriously neglected during the last 20 years.
2. Responsibility for compliance with the provisions of the WA rests with the San Mateo County Board of Supervisors (Board) and the San Mateo County Assessor's Office (Assessor's Office). These responsibilities have been neglected by the Board and the Assessor's Office. These elected officials have failed to provide proper oversight. Due to the lack of oversight, it is not known whether or not land has been properly classified as agricultural lands under the provisions of the WA.
3. Agricultural lands may be significantly under assessed due to the use of outdated rental information in calculating their restricted assessed value resulting in lost tax revenues to the County. Depending on the trends in the rental value of agricultural lands on a year-to-year basis, the County could have substantially misstated the restricted value of the agricultural lands.
4. Even if WA lands are misclassified and/or their restricted values improperly calculated, their taxable assessed value may not increase immediately as many parcels are held by multigenerational families and, thus, likely to be assessed at pre-Proposition 13 valuations until sold.
5. The County does not have a comprehensive agricultural lands strategy designed to increase the amount of prime agricultural acreage, establish Farmland Security Zones, maximize subvention payments from the State of California (State), fund marketing programs for locally produced products, and increase agricultural use of open space lands to the extent these strategies are consistent with acceptable environmental standards.
6. The State budget crisis may affect Midpeninsula Regional Open Space District's ability to finance the acquisition of the remaining Coastside Protection Program acreage.

Recommendations

The 2008-2009 San Mateo County Civil Grand Jury recommends that the San Mateo County Board of Supervisors (Board), Assessor-County Clerk-Recorder, Treasurer-Tax Collector, and Controller should coordinate to:

1. Complete the Williamson Act (WA) surveys as soon as possible.
2. Cancel the WA contracts with those owners who have failed to respond to the second notice to submit their surveys.
3. Identify properties that have no apparent agricultural, open space, or recreational use and determine which contracts are subject to nonrenewal.
4. Publish revised San Mateo County Land Conservation Act Uniform Rules and Procedures no later than December 31, 2009.
5. Commission an annual report from all agencies and not-for-profits acquiring and maintaining open space lands in the County, such as the Midpeninsula Regional Open Space District and the Peninsula Open Space Trust (POST), setting forth plans for the use of their lands for agricultural purposes.

6. After the Planning Department has identified non-compliant properties, the Treasurer & Tax Collector should quantify lost tax revenues for tax years 2002 through 2008 resulting from the County's non-compliance with the provisions of the WA no later than six months after the completion of the surveys.
7. After the Treasurer & Tax Collector has calculated the lost tax revenues, the Controller should calculate the impact on school or special districts that otherwise would have received an allocation of any lost tax revenues for the period including tax years 2002 through 2008.
8. The Assessor's Office and the Planning Department should jointly author an annual report stating the County's compliance with the provisions of the WA.
9. Subventions payments not used to defray the costs of the Planning Department's administration of the program should be assigned to the San Mateo Farm Bureau to be used to fund marketing programs to promote San Mateo County's locally produced agricultural products. Encourage local not-for-profit agencies acquiring and maintaining open space lands, such as the POST, to contribute to the funding of such marketing programs.
10. Convene a conference after all the commissioned reports have been received to develop a comprehensive agricultural lands strategy designed to increase the amount of prime agricultural acreage, establish additional Farmland Security Zones, maximize subvention payments by the State of California, fund marketing programs for locally produced products, and increase agricultural use of open space lands to the extent these strategies are consistent with acceptable environmental standards.



Warren Slocum

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September 8, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Re: Response to the 2008-09 Grand Jury findings and recommendations

Dear Judge Miram:

I thank the 2008-09 Grand Jury for their constructive review of San Mateo County's management of the California Land Conservation Act, commonly referred to as Williamson Act, properties. I look forward to using their constructive review of our process to improve the assessed value product that we produce for the citizens and taxing jurisdictions of San Mateo County.

This year's report focused on the 2007 compliance audit of San Mateo County's Williamson Act and Open Space Subvention Act programs by the California Department of Conservation. As the report accurately states, accountability for various aspects of the program are distributed to various County officials. The legislative body of a local governmental entity negotiates the contract with private landowners restricting the use of their land. Once the contract is approved and recorded, the County Assessor has very specific responsibilities in determining the assessed value as articulated in the California Revenue and Taxation Code. The assessed value of these enforceably restricted open space lands is determined by our appraisal staff each year.

I'm concerned that the tenor of this report and its accompanying press release do not fully represent the hard work and dedication we expend each year in preparing a fair and equitable assessment roll. I want to acknowledge our staff for their hard work, professionalism and commitment to serving San Mateo County and the San Mateo County taxpayer. Their continuing dedication to improving our performance is greatly appreciated.

Listed on the following pages are the 2008-09 Grand Jury findings and recommendations followed by our response which attempts to clarify and correct any misunderstandings in the official report, press release and related media coverage. Please keep in mind that my responses pertain only to the Assessor responsibilities under the Williamson Act.

Findings

- 1. San Mateo County's (County) Williamson Act (WA) program has not been audited in the entire 40 year history of the program. The California Department of Conservation (DOC) completed the County's first audit in May 2007 and found substantial instances of non-compliance with the provisions of the WA and the related Open Space Subvention (OSSA).**

Assessor's Response *partially agree*

I take exception with this grand jury finding and the press release that was issued. While Government Code Section 51206 seems to provide the authority for the Department of Conservation to review County practices, none of these statutes or regulations specifically control or authorize any audit of the Assessor practices.

Our assessment practices are audited by the California State Board of Equalization (BOE) every five (5) years. As part of this comprehensive survey, the BOE reviews assessed values, practices and procedures in the assessment of California Land Conservation Act (Williamson Act) property. Copies of these surveys are available at the Assessors Office and at the BOE.

These BOE surveys, their recommendations as related to the Williamson Act, and the assessor's response to the recommendations are evidence of continuous engagement and process improvements to this program over the past 40 years. The BOE surveys and their recommendations have been reviewed by prior Grand Jury investigations, the most recent being the 2002-03 Grand Jury.

Given that the Assessor's Office has been in compliance with regard to its responsibilities for the Williamson Act, it was disheartening to read the Grand Jury's press release entitled: San Mateo County Officials Mismanage Agricultural Program - July 9, 2009 and the various press stories that resulted.

Grand Jury release: *San Mateo County Officials Mismanage Agricultural Program, July 9, 2009*

"A 2008-2009 San Mateo County Civil Grand Jury investigation concludes that the San Mateo County Board of Supervisors and Assessor's Office have neglected the County's Williamson Act (Act) agricultural lands tax relief program resulting in the assessment of penalties and suspension from the State's subvention payment program. The Grand Jury found that non-agricultural properties may be misclassified as agricultural lands under the Act and the assessed value misstated over the forty-year history of the Act's program."

- 2. Most of the County's WA parcels were enrolled in the 1960s and 1970s with fewer than 20 new enrollments in the last decade.**

Assessor's Response *agree*

- 3. Acreage restricted under WA contracts equal 16% of all countywide lands yet amount to less than one tenth of 1% of total countywide assessed value.**

Assessor's Response *agree*

- 4. There are 543 parcels comprising 47,058 acres enrolled in the WA program compared to a total of 219,316 parcels and 286,720 acres countywide. Only 2,750 of the County's 47,058 WA acreage are categorized as prime agricultural land.**

Assessor's Response *agree*

- 5. Most non-prime acreage is used for grazing.**

Assessor's Response:

There is insufficient information available to verify this finding.

- 6. The 2008 assessed value of WA restricted lands totaled \$173 million -- \$68 million in assessed land value and \$105 million in improvements, personal property and fixtures -- compared to a total countywide assessed value of over \$132 billion.**

Assessor's Response: *Partially agree*

It is correct that the 2008 assessed value of WA restricted lands totaled \$68 million.

However, the WA assessment process restricts the valuation of only the land. Improvements, fixtures and personal property are not included in the restricted valuation process or procedures and are assessed like all improvements, fixtures and personal property.

- 7. More than half of the WA restricted parcels, approximately 250, have WA restricted assessed land values of less than \$1,000 per acre. Only 70 parcels have assessed land values greater than \$10,000 per acre. The overall average assessed land value for WA restricted lands is less than \$1,500 per acre. By comparison, Midpeninsula Regional Open Space District (MROSD) paid an average of \$6,000 per acre for land acquired between 2003 and 2008 as part of its Coastal Annexation program with some lands acquired by the Peninsula Open Space Trust (POST) as part of the program, exceeding \$20,000 an acre.**

Assessor's Response: *Partially agree*

This finding mixes apples and oranges. In the valuation of parcels restricted by a WA contract, section 423 of the Revenue and Taxation Code specifically prohibits the Assessor from referencing sales prices in the determination of the assessed value. The comments regarding acquisitions by MROSD and POST are not relevant in the determination of the assessed value of WA land.

8. The market value of agricultural land in the County has increased 500% in the last 50 years.

Assessor's Response:

Data is not readily available to agree or disagree

On the last page of the Assessor response to the Grand Jury findings, the chart attached (Exhibit "A") shows the recent historical increase in the assessed value of WA properties in San Mateo County, as allowed by law.

9. The San Mateo County Assessor's Office (Assessor's Office) has been using rental data from the 1980s, with some rental data reportedly dating back to the 1960s, in calculating the restricted value of agricultural lands.

Assessor's Response: *Partially agree*

As our most recent 2008 and 2009 data has verified, the rental value of much of our WA land has been stagnant for decades as much of the land is non-productive, is difficult to access and is used as open space. As a cost savings to both our department and WA landowners, we stopped sending annual income and expense questionnaires to the county WA landowners in 1986. The process had proven to be cumbersome and produced results that indicated that this property experienced "de minimis" annual changes in rental value. But this approach was not applied to every WA property in the county.

In 2002, we contacted all plant nurseries located on WA land and obtained their current rent schedules to value those properties. Additionally, the appraisal staff has continually used various publicly produced information, such as "Trends in Agricultural Land & Lease Values" produced by the American Society of Farm Managers and Rural Appraisers; UC Berkley Extension reports; and, San Mateo Farm Bureau reports. These data help identify economic conditions and changes in San Mateo County agricultural property rental values.

10. The County's non-compliance with certain provisions of the WA resulted in \$73,892 in penalties and the suspension of any further subvention payments typically amounting to more than \$50,000 annually-from the State. The WA and OSA payment program may be suspended as part of the State budget crisis resolution.

Assessor's Response: *Agree*

11. The County Building and Planning Department (Planning Department) and Assessor's Office have instituted a procedure to selectively audit 20% of WA properties annually.

Assessor's Response: Disagree

The Assessor has no plan to institute a procedure to audit WA property owner's income and expense filings. This would be very time consuming for our staff and burdensome on our WA property owners. We believe our current process has proven to validate our past practice and resulting assessed values. The Assessor's current assessment practices are in the process of being audited by the California State Board of Equalization. We are confident that our current practices will prove to be found sound and compliant with California Assessor's best practices.

It is our understanding that the County Planning Department will institute a program to review 20% of the WA properties annually to determine the continued eligibility for the WA program.

Recommendations

1. Complete the Williamson Act (WA) surveys as soon as possible.

Assessor's Response: Agree

The Assessor's 2008 and 2009 WA questionnaire programs have been completed.

2. Cancel the WA contracts with those owners who have failed to respond to the second notice to submit their surveys.

Assessor's Response:

Not within the Assessor's jurisdiction but we will constructively participate

3. Identify properties that have no apparent agricultural, open space, or recreational use and determine which contracts are subject to non-renewal.

Assessor's Response:

Not within the Assessor's jurisdiction but we will constructively participate

4. Publish revised San Mateo County Land Conservation Act Uniform Rules and Procedures no later than December 31, 2009.

Assessor's Response:

Not within the Assessor's jurisdiction but we will constructively participate

- 5. Commission an annual report from all agencies and not-for-profits acquiring and maintaining open space lands in the County, such as the Mid-peninsula Regional Open Space District and the Peninsula Open Space Trust (POST), setting forth plans for the use of their lands for agricultural purposes.**

Assessor's Response:

Not within the Assessor's jurisdiction but we will constructively participate

- 6. After the Planning Department has identified non-compliant properties, the Treasurer & Tax Collector should quantify lost tax revenues for tax years 2002 through 2008 resulting from the County's non-compliance with the provisions of the WA no later than six months after the completion of the surveys.**

Assessor's Response:

Not within the Assessor's jurisdiction but we will constructively participate

- 7. After the Treasurer & Tax Collector has calculated the lost tax revenues, the Controller should calculate the impact on school or special districts that otherwise would have received an allocation of any lost tax revenues for the period including tax years 2002 through 2008.**

Assessor's Response:

Not within the Assessor's jurisdiction but we will constructively participate

- 8 The Assessor's Office and the Planning Department should jointly author an annual report stating the County's compliance with the provisions of the WA.**

Assessor's Response: *Disagree*

The Assessor's compliance with the appropriate provisions of the California Revenue and Taxation Code are the responsibility of the California State Board of Equalization (BOE). The BOE audits and reports on our compliance every five (5) years.

- 9. Subventions payments not used to defray the costs of the Planning Department's administration of the program should be assigned to the San Mateo Farm Bureau to be used to fund marketing programs to promote San Mateo County's locally produced agricultural products. Encourage local not-for-profit agencies acquiring and maintaining open space lands, such as the POST, to contribute to the funding of such marketing programs.**

Assessor's Response:

Not within the Assessor's jurisdiction but we will constructively participate

10. Convene a conference after all the commissioned reports have been received to develop a comprehensive agricultural lands strategy designed to increase the amount of prime agricultural acreage, establish additional Farmland Security Zones, maximize subvention payments by the State of California, fund marketing programs for locally produced products, and increase agricultural use of open space lands to the extent these strategies are consistent with acceptable environmental standards.

Assessor's Response:

Not within the Assessor's jurisdiction but we will constructively participate

Conclusion

The Assessor is required to annually value all enforceable restricted land within the county. Our assessment practices are reviewed every 5 years by the BOE. Although our annual valuation program includes land located within the jurisdiction of some cities as well as other types of open space land, the majority of our enforceable restricted valuation program is WA land located within the unincorporated area. We have attached as Exhibit "A" to this response a 7-year assessed value history of all enforceable restricted land as compared to the assessed value of the county. As demonstrated by this exhibit, the assessed value the entire county has increased by 52 percent since the 2002-03 assessment roll was produced, whereas the assessed value of enforceable restricted land has increased 113 percent.

As the most recent 2008 and 2009 data has verified, the rental value of much of the WA land has been stagnant for decades as much of the land is non-productive, is difficult to access and is used as open space. The cost saving measures that were instituted in the mid 1980's have proven to be both effective and reasonable.

Sincerely,



Warren Slocum

Attachment: Exhibit "A" - Open Space Value Change 2002-03 to 2009-10

cc: Members, Board of Supervisors
David Boesch, County Manager
grandjury@sanmateocourt.org

Exhibit "A"

Assessed Value Change 2002-03 to 2009-10

Restricted Land Assessed Value
Compared to
County Assessed Value

Year	Restricted Land Assessed Value	\$ Change	% Change	Local Roll Assessed Value (net)	\$ Change	% Change
2009-10	\$ 83,209,231	\$ 14,526,559	21.2%	\$ 142,921,792,582	\$ 996,175,452	0.7%
2008-09	\$ 68,682,672	\$ 4,000,191	6.2%	\$ 141,925,617,130	\$ 10,721,459,843	8.2%
2007-08	\$ 64,682,481	\$ 831,145	1.3%	\$ 131,204,157,287	\$ 9,411,790,077	7.7%
2006-07	\$ 63,851,336	\$ 6,132,869	10.6%	\$ 121,792,367,210	\$ 9,732,679,752	8.7%
2005-06	\$ 57,718,467	\$ (203,068)	-0.4%	\$ 112,059,687,458	\$ 7,761,774,631	7.4%
2004-05	\$ 57,921,535	\$ 8,603,320	17.4%	\$ 104,297,912,827	\$ 4,662,846,046	4.7%
2003-04	\$ 49,318,215	\$ 10,335,141	26.5%	\$ 99,635,066,781	\$ 5,396,656,942	5.7%
2002-03	\$ 38,983,074			\$ 94,238,409,839		
2002-03 to 2009-10 Change		\$ 44,226,157	113%		\$ 48,683,382,743	52%

Office of Controller



TOM HUENING
CONTROLLER

COUNTY OF SAN MATEO

555 COUNTY CENTER, 4TH FLOOR • REDWOOD CITY • CALIFORNIA 94063

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August 3, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Dear Judge Miram:

Listed below are the recommendations in the 2008-09 Civil Grand Jury report directed to the San Mateo County Controller's Office followed by our response.

Recommendation 6

After the Planning Department has identified non-compliant properties, the Treasurer & Tax Collector should quantify lost tax revenues for tax years 2002 through 2008 resulting from the County's non-compliance with the provisions of the WA no later than six months after the completion of the surveys.

Recommendation 7

After the Treasurer & Tax Collector has calculated the lost tax revenues, the Controller should calculate the impact on school or special districts that otherwise would have received an allocation of any lost tax revenues for the period including tax years 2002 through 2008.

Response:

Concur. The Controller's Property Tax Division will calculate the loss in total and by individual school and special districts. In order to make that calculation, we will need from the Assessors Office the amount by which properties were under assessed as a result of this non-compliance, identified by tax rate areas.

**APPROVED BY
BOARD OF SUPERVISORS**

SEP 29 2009

CLERK OF BOARD
BY *Marie S. Peterson* DEPUTY



**COUNTY OF SAN MATEO
Inter-Departmental Correspondence**

County Manager's Office

DATE: September 1, 2009
BOARD MEETING DATE: September 29, 2009
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Board of Supervisors
FROM: David S. Boesch, County Manager
SUBJECT: 2008-09 Grand Jury Response

RECOMMENDATION:

Accept this report containing the County's responses to the following 2008-09 Grand Jury report: San Mateo County's Agricultural Mismanagement: Williamson Act Non-Compliance.

BACKGROUND:

This activity contributes to the goal by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process improvements are made to improve the quality and efficiency of services provided to the public and other agencies.

DISCUSSION:

The County is mandated to respond to the Grand Jury within 90 days from the date that reports are filed with the County Clerk and Elected Officials are mandated to respond within 60 days. To that end, attached is the County's response to the Grand Jury report on San Mateo County's Agricultural Mismanagement: Williamson Act Non-Compliance, issued on July 9, 2009.



San Mateo County's Agricultural Mismanagement: Williamson Act Non-Compliance

Findings:

Staff agrees in part with the Grand Jury's findings.

Grand Jury Finding Number 5: Most non-prime acreage is used for grazing.

Planning and Building Department Response: There is insufficient information available to verify this finding. Determining whether agricultural land is prime requires an analysis of soil type, grazing capacity, and profit margin. The Department attempted to obtain the information needed to make such determinations in a 2008 survey of 292 contract holders. The results of that survey were inconclusive because of the approximately 120 returned, very few provided the precise information needed to confirm that most non-prime land is used for grazing.

Grand Jury Finding Number 11: The County Planning and Building Department and Assessor's Office have instituted a procedure to selectively audit 20% of WA properties annually.

Planning and Building Department Response: The Planning and Building Department would like to clarify that it has committed to verifying 20% of the WA questionnaire responses received each year. This verification could involve site visits, review of site maps, and other research. The verification process would not be considered an audit in the manner that the Assessor's Office conducts audits related to other matters.

Recommendations:

The Grand Jury recommends that the San Mateo County Board of Supervisors (Board), Assessor-County Clerk-Recorder, Treasurer-Tax Collector, and Controller should coordinate to:

2. Cancel the WA contracts with those owners who have failed to respond to the second notice to submit their surveys

Response: The Department is in the process of implementing this recommendation. The list of properties that will be recommended for contract non-renewal is being compiled and will be forwarded to the Board of Supervisors for consideration and action in October 2009. The non-renewal list will include the contracts held by property owners that failed to respond to the second notice to submit WA questionnaires and those that have no apparent agriculture on the contracted lands.

3. Identify properties that have no apparent agricultural, open space, or recreational use and determine which contracts are subject to nonrenewal.

Response: Please see Department's response to GJ Recommendation Number 2 above. Whether contracts for open space or recreational uses will be non-renewed, replaced with an open space easement, or entered into in the future is a matter that will be considered by the Board of Supervisors in conjunction with the non-renewal process and the Program Update described below.

4. Publish revised San Mateo County Land Conservation Act Uniform Rules and Procedures no later than December 31, 2009.

Response: The Department is in the process of implementing this recommendation. The Department drafted revised Uniform Rules and Procedures and has submitted the document to the Agricultural Advisory Committee (AAC) for review and comment. The AAC anticipates completing its review in October 2009, after which the Department will hold public meetings with contract holders and interested parties and will forward final recommendations to the Board of Supervisors in December 2009.

5. Commission an annual report from all agencies and not-for-profits acquiring and maintaining open space lands in the County, such as Midpeninsula Regional Open Space District and Peninsula Open Space Trust (POST), setting forth plans for the use of their lands for agricultural purposes.

Response: Land that is not under Williamson Act contract is not required to be in agricultural use. Absent such a contract, there is no basis for the Department to commission a report from agencies or organizations regarding their intent to use open space land for agricultural purposes.

Agencies and non-profits that own contracted land are required to comply with the terms of the contracts and the provisions of the Land Conservation Act. This includes participating in County surveys that will be used to verify that these requirements are being met. In addition, the County reviews land acquisitions proposed by public agencies such as the Midpeninsula Regional Open Space District (MROSD) for conformity with the General Plan, which provides an additional opportunity to address agricultural use and open space preservation. It is also worth noting that MROSD and POST often provide the County and other interested parties with the opportunity to provide input on real estate transactions and land use practices, as they relate to agricultural and open space resource protection, on their own volition.

8. The Assessor's Office and the Planning Department should jointly author an annual report stating the County's compliance with the provisions of the WA.

Response: The Planning and Building Department prepares an annual Subvention Report, which is submitted to the State of California Department of Conservation (DOC). The DOC uses the report to determine the annual subvention amount. The report has not been prepared in the last two years while the County's WA program is undergoing a thorough review and update. The Department will resume the

preparation of the Subvention Report upon the completion of the program update. The report will document the County's compliance with the updated WA program and will be available to all interested parties.

9. Subventions payments not used to defray the costs of the Planning Department's administration of the program should be assigned to the San Mateo Farm Bureau to be used to fund marketing programs to promote San Mateo County's locally produced agricultural products. Encourage local not-for-profit agencies acquiring and maintaining open space lands, such as the POST, to contribute to the funding of such marketing programs.

Response: Historically there has been no unused portion of the subvention payment. In the past, the payment has been approximately \$57,000. As a result of the 2007 Department of Conservation audit of the County WA Program, the subvention amount will likely be reduced to approximately \$30,000. Administration of the revised WA Program will take approximately half of a Planner's time, which will equal approximately \$30,000. The Department does not anticipate having an unused portion of the County's subvention payment to assign to the Farm Bureau. □□As a reviewing and permitting agency for many types of discretionary applications, the Department does not involve itself in the financial decisions of other agencies. It would be inappropriate for the Planning and Building Department to solicit or encourage other agencies, public or private, to contribute to specific programs or causes.

10. Convene a conference after all the commissioned reports have been received to develop a comprehensive agricultural lands strategy designed to increase the amount of prime agricultural acreage, establish additional Farmland Security Zones, maximize subvention payments by the State of California, fund marketing programs for locally produced products, and increase agricultural use of open space lands to the extent these strategies are consistent with acceptable environmental standards.

Response: The Department is currently in the process of updating the Uniform Rules and Procedures for the Williamson Act Program. The Agricultural Advisory Committee, Farm Bureau, County Assessor's Office, contract holders and general public are all included in the update process. Income generation on contracted land is one method of determining prime soils and is being discussed as part of the update process. It is possible that a change in income thresholds may increase the amount of prime agricultural land within the County, which in turn will maximize the subvention payments from the State of California. Even with such an increase, however, the Department does not anticipate receiving more than approximately \$30,000 a year in subvention payments from the State.

A possible benefit of an increase in the amount of prime soil could be that a greater number of property owners will be interested in entering into Farmland Security Zone contracts. Initiating such a contract is an individual property owner's decision and is

not done by independent County action. The Department will continue to evaluate and process these contracts as private property owners submit them.

The Department anticipates that the entirety of subvention money will be needed to administer the revised WA Program and does not expect money to be available to fund the programs of other agencies.

COUNTY OF SAN MATEO



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555 COUNTY CENTER - 1ST FLOOR * REDWOOD CITY * CALIFORNIA 94063

August 4, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: Response to 2008-2009 Grand Jury report on San Mateo County's Agricultural Mismanagement: Williamson Act Non-Compliance Report

Dear Judge Miram,

Thank you for the opportunity to review and comment on the findings of the Grand Jury. This letter serves as response to the recommendations found therein.

Grand Jury Recommendation:

6. After the Planning Department has identified non-compliant properties, the Treasurer & Tax Collector should quantify lost tax revenues for tax years 2002 through 2008 resulting from the County's non-compliance with the provisions of the WA no later than six months after the completion of the surveys.

7. After the Treasurer & Tax Collector has calculated the lost tax revenues, the Controller should calculate the impact on school or special districts that otherwise would have received an allocation of any lost tax revenues for the period including tax years 2002 through 2008.

Treasurer-Tax Collector's response to Recommendation 6 & 7

The Tax Collector bills and collects based on information provided by the Assessor and Controller. The basic information necessary to comply with recommendations 6 and 7 resides with the Controller's office.

I appreciate the opportunity to communicate with you on this report.

Sincerely,

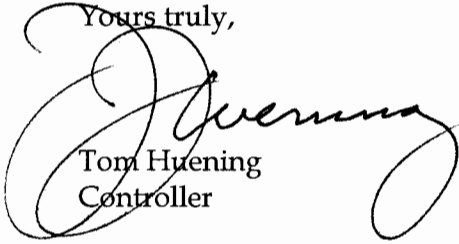
Lee Buffington.
Tax Collector-Treasurer

cc: Board of Supervisors

Honorable George A. Miram
Page two
August 3, 2009

The Controller will provide assistance to the Assessor or the Treasurer/Tax collector as is necessary in implementing the remaining nine recommendations.

Yours truly,

A handwritten signature in black ink, appearing to read "Huening", written over the typed name and title.

Tom Huening
Controller

TH:jr

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c: Members, Board of Supervisors
David Boesch, County Manager
grandjury@sanmateocourt.org