



Trouble on the Range or a Green Opportunity? How the State's Budget Woes are Creating Both Challenges and Opportunities For Landowners Under Williamson Act Contracts



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While there are signs that the greater economy may be turning a corner, the State of California continues to struggle with its finances in the wake of the economic downturn. Indeed, despite all the political wrangling and deep budget cuts last summer, Governor Schwarzenegger recently called for eliminating CalWORKS, California's welfare-to-work program, in an effort to close a projected \$19 billion budget deficit in the coming fiscal year. Other popular and fundamental programs have already suffered the wrath of the Legislature's budgetary axe, including the State's Williamson Act Program. Where there is trouble, however, there is usually opportunity as well. After a brief summary of the Williamson Act, this article will delve deeper into the Williamson Act Program's current troubles and the opportunities it may afford to certain types of development that can be found to be compatible with agriculture, like wind or solar energy projects.

The California Land Conservation Act of 1965 (aka the "Williamson Act")

Not unlike the rest of the country, California experienced sharp post-World War II increases in population growth. Published estimates state that between 1945 and 1968 California lost more than one million acres of prime farmland to urbanization. In an effort to address the impact of that growth on the state's valuable farmland, state Assembly member John C. Williamson (who represented Kern County) drafted the bill which became law as the California Land Conservation Act of 1965 (Government Code, §§ 51200 et seq.). The Williamson Act's broad goals include: (i) the preservation of agricultural land to assure sufficient food supplies; (ii) the discouragement of premature and unnecessary conversion of agricultural land and discontinuous urban development; and (iii) the preservation of open space.



The Williamson Act accomplishes its goals through a two-step conservation strategy and related voluntary program. In the first step, the Act authorizes counties to establish agricultural preserves of one or more parcels totaling at least 100 acres to be devoted to agricultural, open space or recreational uses. While cities are also able to participate, in practice, most of the land protected by the Act is situated within the jurisdiction of the counties. In order to create such a preserve, a county must hold a public hearing on the issue and pass a resolution declaring its intent to create the preserve. In the second step, landowners situated within such agricultural preserves may elect to enter into contracts with their counties with minimum 10-year rolling terms that restrict land use to agricultural and agricultural "compatible" uses in exchange for preferential property tax treatment. Such contracts are commonly referred to as "Williamson Act Contracts."

By all accounts, the Williamson Act has been quite successful. Of California's 58 counties, 54 have implemented the Act by adopting resolutions or promulgating rules governing the administration of agricultural preserves and Williamson Act Contracts. All told, upwards of 16.6 million acres, nearly one-third of all of the private land in the state, is currently under a Williamson Act Contract. This success, however, is due in large part to another law, the Open Space Subvention Act ("OSSA," enacted on January 1, 1972) which provides for the partial replacement of local property tax revenue foregone as a result of Williamson Act Contracts and other enforceable open space restriction programs (Government Code, §§ 16140 et seq.). Pursuant to the OSSA, participating local governments receive annual "subvention" payments on the basis of the quantity (number of acres) and quality (soil type and agricultural productivity) of land enrolled under eligible law. The State Department of Conservation reports that in fiscal year 2007-2008, local governments claimed approximately \$38 million in subvention payments (60% of which went to Central Valley counties), and that since the OSSA was passed, the state has distributed approximately \$839 million to counties and cities in support of the Williamson Act and other similar programs. Given that the state's General Fund is the source for these subvention payments, it is not hard to guess why the Williamson Act program is in jeopardy.

The Problem

This unique partnership between the state and its counties and the counties and its willing agricultural landowners was altered in 2008 when the Legislature reduced subvention payments for contracted land by 10% and thrown into complete disarray last year when the Governor slashed state subventions to only \$1,000 in the 2009-2010 budget. The virtual elimination of those subvention payments also eliminated a key subsidy which drove the success of the Williamson Act's agricultural and open space land conservation efforts. Given the \$19 billion dollar deficit projected for next year, it is likely that the state will continue the suspension of subvention payments to the counties for fiscal year 2010-2011. Indeed, the suspension has been included in early budget proposals.

According to a survey by the California State Association of Counties, while many counties opted to pick up the slack from their own general funds last year a majority of the counties surveyed are struggling with significant deficits of their own and indicated that they are investigating options to deal with the lack of subvention funding, including efforts to end Williamson Act Contracts. It is relatively difficult to end a Williamson Act Contract, but the five main methods include: nonrenewal (unilaterally available to landowner or county - contracts run out over a 9-year span); cancellation (only available to landowner, requires discretionary approval by county and requires payment of a fee of 12.5% of the unrestricted value of the property to the state); rescission (contracts end when other programs protect the land); public acquisition (contracts end when agencies buy or condemn the land); and annexation (contracts may end when certain cities annex the lands).



The Opportunity

Another less costly option to nonrenewal or cancellation, however, is gaining interest because it permits counties to retain their Williamson Act Contracts and generate additional revenue until the economy improves and state subvention payments resume. That option entails finding non-agricultural uses, such as wind or solar power generation, to be “compatible” with an underlying agricultural use. In these circumstances, the compatible non-agricultural use and the Williamson Act Contract can legally co-exist. The Williamson Act provides three general circumstances when a wind or solar power generation facility may be found compatible, a decision left largely to the discretion of the counties.

First, a wind or solar power generation facility may be a compatible use as an “electrical facility” when located on non-contracted land within an agricultural preserve. Second, a wind or solar power generation facility on contracted land may be a compatible use if it meets the “principles of compatibility” as set forth in the Act. (Government Code, § 51238.1(a).) Third, under certain circumstances a wind or solar power generation facility may be approved even if it is inconsistent with the principles of compatibility if the proposed site is located on non-prime land, approved pursuant to a conditional use permit and four specific findings are made. (Government Code, § 51238.1(c).)

Several counties have already considered this issue and determined that wind energy is a compatible use on property subject to a Williamson Act Contract. For example, Kern, Ventura and Solano Counties have adopted resolutions, guidelines or zoning ordinances that expressly list commercial wind farms as a compatible use. Obviously, large-scale wind or solar energy facilities which significantly displace or frustrate agricultural production and preservation (e.g., a massive concentrated solar power farm) cannot and should not attempt to locate on lands protected by Williamson Act Contracts under this “compatibility” option. That being said, if a proposed renewable energy project would displace a very small percentage of an agricultural operation, and help keep the farm in business going forward by reducing power costs or generating revenue from power sales to the grid, landowners and local jurisdictions should explore this opportunity to make ends meet while promoting the preservation of agricultural lands and reducing greenhouse gas emissions.

While the state’s budget problems are significant, they need not spell doom and gloom for agricultural landowners and local jurisdictions. With careful planning and cooperation, the pairing of renewable energy projects with agricultural operations can help cushion the loss of state subvention payments, and will go far in helping the state achieve its ambitious greenhouse gas emission reduction and renewable energy portfolio programs.

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