

ATTACHMENT H

Letter from California Department of Conservation



DEPARTMENT OF CONSERVATION

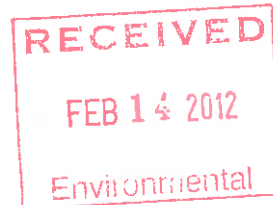
Managing California's Working Lands

DIVISION OF LAND RESOURCE PROTECTION

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February 10, 2012



Claudia Gemberling, Environmental Analyst II
Contra Costa County Public Works Department
255 Glacier Drive
Martinez, CA 94553

Subject: PROPOSED ACQUISITION OF TWO PROPERTIES SUBJECT TO THE WILLIAMSON ACT FOR THE ALHAMBRA VALLEY ROAD SAFETY IMPROVEMENTS PROJECT IN THE MARTINEZ AREA.

Dear Ms. Gemberling,

Thank you for your letter of January 31, 2012, notifying the Department of Conservation (Department) Division of Land Resource Protection (Division) about the Contra Costa County Public Works Department's proposed acquisition of a portion of two properties totaling 1.64± acres (APNs 365-020-035, 039) in Contra Costa County. The purpose of the proposed acquisition is to provide targeted safety improvements along Alhambra Valley Road that address traffic accident data at this specific location. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act, and offers the following comments in accordance with the provisions of Government Code (GC) §51291(b):

Property Description and Location

The property is described as Williamson Act contracted lands located on the north side of Alhambra Valley Road between the cities of Martinez and Pinole in Contra Costa County. The Contra Costa County Public Works Department is acquiring the properties to realign and widen a 2,425-foot long section of Alhambra Valley Road to provide shoulders and clear recovery areas for motorists to regain full control of their vehicles should they veer off the traveled way.

Required Findings

The Williamson Act (Government Code §51292) requires that public agencies cannot locate public improvements in agricultural preserves unless the following specific findings can be made.

- "The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve (§ 51292(a))."
- "If the land is agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement (§ 51292(b))."

The letter states that, pursuant to Section 51292, the proposed acquisition is not based primarily on consideration of the lower cost of the agricultural preserve land and that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement. The explanation provided in the letter is that the project includes vital and targeted safety improvements to an existing road based on traffic accident data recorded at this specific location and, due to the presence of a creek located immediately adjacent to the south side of the road, there is no other land that is reasonably feasible to implement this public improvement. Since the project involves safety improvements and requires the properties to be located at this specific location, it appears that the required findings of Section 51292 can be made.

California Environmental Quality Act (CEQA)

The letter states that a Mitigated Negative Declaration has been distributed for public comment and will be considered for approval by the County Board of Supervisors in February 2012. Please forward a copy of the CEQA document upon approval by the County Board of Supervisors along with the posted Notice of Determination as discussed in the letter.

Required Notification

The Notification Provisions of the Williamson Act (Government Code §51291) require public agencies to notify the Director of the Department of Conservation of the possibility of acquisition of Williamson Act contracted land for a public improvement. This notice is required when the public agency first considers purchasing land located in an agricultural preserve or enrolled in a Williamson Act contract for a public use. The Department of Conservation must be notified when an acquisition of Williamson Act land is first contemplated, not after the acquisition has been decided upon or consummated (Government Code §51290 et seq.).

The notice shall include:

1. The public agency's "...explanation of [its] preliminary consideration..." of section 51292;
2. A description of the agricultural preserve land potentially acquired by the public agency for the improvement; and
3. A copy of any Williamson Act contract which pertains to the subject land (GC, §51291(b.)).

The Department noticed that there was some confusion regarding the third requirement from above. The Contra Costa County Public Works Department provided a copy of the Williamson Act Contract for the specified parcels, but did not appear to have included a "recorded" copy of the Williamson Act Contract. The Department requires a "recorded" copy of the Williamson Act Contract from the County Assessor's Office be provided. The Contra Costa County Public Works Department later faxed a copy with the title page showing that the Williamson Act Contract provided was indeed a "recorded" copy.

Enclosed for your benefit is a copy of the Public Acquisition Notification Provisions of the Williamson Act, which we offer as a guide for the public acquisition process.

Eminent Domain

A Williamson Act contract is an enforceable restriction pursuant to Article XIII, §8 of the California Constitution and Government Code §51252. Pursuant to §51295, a Williamson Act contract may be voided through acquisition by eminent domain or in lieu of eminent domain (Code of Civil Procedure §1230.010 et seq. and Government Code §7260 et seq.). If the acquisition is not done in a manner that voids the contract, the uses of the contracted property will continue to be restricted by the terms of the contract and the provisions of the Act. The Department does not provide counsel regarding eminent domain law, but encourages the Contra Costa County Public Works Department to obtain legal counsel for this purpose. If the properties have been acquired by, or in lieu of eminent domain, please provide copies of the condemnation order or the offers made to the landowners to purchase the land in lieu of eminent domain.

Future Notifications

Please be advised that, pursuant to Government Code §51291(d), the Department and Contra Costa County must be notified of any proposed, significant changes to the project. If the Contra Costa County Public Works Department determines not to locate the proposed public improvement on the subject property, before returning the land to private ownership, it must notify the Department and Contra Costa County, and the land must be reenrolled in a new contract or encumbered by an enforceable restriction at least as restrictive as that provided in the Williamson Act (Government Code §51295).

If you have any questions regarding these comments, please contact the Department at (916) 324-0850.

Sincerely,



John M. Lowrie
Program Manager
Williamson Act Program

Enclosure

cc: Contra Costa County Board of Supervisors
651 Pine Street
Martinez, CA 94553

Contra Costa County Farm Bureau
5554 Clayton Road
Concord, CA 94521

**SUMMARY OF INFORMATION REQUIRED TO BE PROVIDED BY PUBLIC
AGENCIES TO THE DEPARTMENT OF CONSERVATION WHEN A PUBLIC
IMPROVEMENT IS CONTEMPLATED ON LAND
WITHIN AN AGRICULTURAL PRESERVE**

This document is intended to summarize/identify the information any public agency is required to include in a notice to the Department of Conservation (DOC) of the agency's possible acquisition of land within an agricultural preserve. The information described below is required to be included in the public agency's notice to DOC pursuant to Government Code section 51291, subdivision (b). *Before* considering land within an agricultural preserve for a public improvement, public agencies should be aware of the State's policy of preserving agricultural lands, and against converting such land to other uses (Gov. Code, § 51220), even public uses (Gov. Code, § 51290, subd. (a)).

Any public agency (as defined by Gov. Code section 51291, subd. (a)) *considering* locating a public improvement on land within an agricultural preserve (as opposed to making even a tentative decision) is required to notify DOC's Director, and the local government agency administering the preserve, of its intentions. (Gov. Code, § 51291, subd. (b).) This notice is required in order to provide DOC and the public agency administering the agricultural preserve with an opportunity to comment on the public agency's intention to locate a public improvement on land within the preserve. (Gov. Code, § 51291, subd. (b).) The notice must include:

- (1) the public agency's "explanation of [its] preliminary consideration . . ." of section 51292 (discussed further below);
- (2) a description of the agricultural preserve land potentially acquired by the public agency for the improvement; and
- (3) a copy of any Williamson Act contract which pertains to the subject land. (Gov. Code, § 51291, subd. (b).)

The second and third requirements of the notice are relatively easy to meet. The agricultural preserve land can be described by text or diagram, and a copy of any Williamson Act contract covering the land should be obtainable from county records.

More complicated is the first requirement of providing an explanation of the public agency's consideration of section 51292. Depending on the nature of the public improvement contemplated, a public agency's explanation of its consideration of section 51292 will either be:

- (a) an explanation of how the agency may reach findings required by section 51292, or
- (b) an explanation of the nature of the public improvement such as to justify the agency's claim that the improvement is exempt from section 51292 and its required findings.

Government Code section 51292 requires public agencies locating an improvement within an agricultural preserve to make certain findings. First, the agency must find that the location considered for the improvement is not based primarily on the low cost of agricultural land. (Gov. Code, § 51292, subd. (a).) The second finding is only required for land subject to a Williamson Act contract, and that finding is that there is no other land where the improvement could be reasonably located regardless of whether or not such land is the agricultural preserve. (Gov. Code, § 51292, subd. (b).) Any formal findings made by a public agency must be supported by evidence, and often must be supported by "substantial evidence." (Code Civ. Proc., § 1094.5, subd. (c).) In short, a public agency's findings must be based on something tangible, as opposed to being mere conclusions.

Public agencies may avoid the requirements of section 51292 if the public improvement is exempt from the requirements pursuant to section 51293. Section 51293 identifies several types of public improvements that the Legislature has determined to be exempt from the requirement to make the findings required by section 51292. *However, all public agencies must be aware that the duty of a public agency to provide the notice required by section 51291, subd. (b) is not eliminated even when a public improvement is exempt under section 51293.* In other words, in its notice the public agency must either explain its preliminary consideration of the findings required by section 51292, subdivision (b), or in the alternative, explain the nature of the contemplated public improvement and why the improvement would be exempt from section 51292 pursuant to section 51293. Furthermore, section 51293's exemption from making section 51292 findings does not exempt a public agency from the State policy to avoid locating public improvements in agricultural preserves or upon land that is subject to a Williamson Act contract (Gov. Code, § 51290, subsd. (a) and (b)), and to give consideration to the value to the public of such land as set forth in the Williamson Act (Gov. Code, § 51290, subd. (c)).

After the public agency has submitted the required information to DOC, DOC will provide the agency with DOC's comments and any comments from the Department of Food and Agriculture. (Gov. Code, § 51291, subd. (b).) The acquiring public agency must consider the comments received from the DOC in its decision to acquire the land for a public use. (Gov. Code, § 51291, subd. (b).)

After the public agency has actually acquired the land located in an agricultural preserve it must notify DOC's Director within 10 working days. (Gov. Code, § 51291, subd. (c).) This notice must include:

- (a) a general explanation of the decision by the public agency to acquire the land within a preserve, and
- (b) any findings made pursuant section 51292. (Gov. Code, § 51291, subd. (c).)

NOTES:

Reliance on, or review of, this document is not a substitute for any public agency's duty to meet and **fulfill** the obligations of Government Code section 51291 and related statutes.

This document does not address any issues that may arise under local land use laws, the law of eminent domain, or the California Environmental Quality Act with respect to any specific public improvement.

Further information regarding compliance with Government Code section 51291 and related statutes may be obtained by contacting DOC's Williamson Act Program Staff at 916/324-0850.

