



November 11, 2005

Housing Land Use Environment and Transportation Committee
Santa Clara County Board of Supervisors
County Government Center
70 W. Hedding Street, 10th Floor, East Wing
San Jose, CA 95110

Re: Williamson Act Recommendations

Dear HLUET Members and Members of the Board of Supervisors;

As the Committee for Green Foothills stated in our letter of October 31, 2005 (attached), we appreciate the hard work by the County to bring its Williamson Act procedures into compliance with state law, and with administering the law as can best benefit the County as a whole. We submitted certain recommendations in the October 31 letter, and we make the following additional recommendations based on matters discussed at the November 1 presentation to the Board of Supervisors.

As an initial matter, the County's lax enforcement of Williamson Act procedures against landowners in the past does not mean the County should be lax in enforcing the contract now with different landowners. Landowners making this argument are arguing for a one-way ratchet in enforcement – if a regulation is ever non-enforced, it should never be enforced again. This is a terrible principle that is destructive to good government.

Many present landowners actually benefit from past non-enforcement, because they own small parcels that would not exist if the law had been enforced. They do not need to gain additional benefits, and can simply wait out the contractual period as they are required to. If they were assured by previous owners, real estate agents, or others that they could develop their parcels immediately, they need to take up the issue with the people who gave them the assurances, not with the County.

The proposed Open Space Easement should not become a dumping ground to accelerate development of land under Williamson Act restrictions. The point of transferring land to an Open Space easement should be to avoid the tax implications for the 9-year period following non-renewal of a Williamson Act contract. If a property is transferred to an Open Space Easement that is so unrestrictive as to not reduce development potential, then the transfer is just a subterfuge to avoid the requirements of Williamson Act cancellation procedures.

Committee for Green Foothills has consistently opposed lifting development restrictions when transferring to the Open Space Easement, while County staff has said their proposal was supported by the California Department of Conservation. We contacted the Department of Conservation prior to the November 1 meeting, and we understand that the Department has expressed reservations about the details of the County proposal. We continue to support the recommendations in our October 31 letter: no lifting of agricultural restrictions on development during the transitional period, or at least, no lifting of the restriction if the landowner chooses an easement that does not meaningfully reduce development potential.

To keep the Open Space Easement program both useful and meaningful, we support opening it up to parcels that are smaller than 10 acres, but only under the current staff position that parcels under 10 acres could not be developed. A developed, small parcel with an "Open Space Easement" is a contradiction in terms. It is not clear to us

whether County staff have changed the recommendations on development restrictions; the staff position was unchanged in the written documents presented at the November 1 meeting.

A new issue arose at the November 1 meeting that may not have been discussed previously: whether already-developed Williamson Act parcels could transfer to an Open Space Easement, presumably to facilitate a tear-down and rebuilding of residences. If the parcels are already developed and are too small to be subdivided, then transfer should not be allowed, or at the least it should be allowed only for a truly restrictive Open Space Easement that keeps residences under 1,000 square feet. To do anything else is to create a truly meaningless easement that would most likely attract the Department of Conservation's attention.

Finally, we believe that the Williamson Act should support true farming, not hobby activities on restricted parts of land and not as a façade to facilitate accelerated residential development on land that is protected by contract. We oppose the specific suggestions heard so far that either present income or land area percentage be used to determine if development is permissible. We generally support the statements and positions of the Santa Clara County Farm Bureau on these matters. If developers wish to present alternative proposals that require more than token farming, we are willing to hear them.

Please contact us if you have any questions.

Sincerely,

<signed>

Brian A. Schmidt
Legislative Advocate, Santa Clara County