

AGENDA

**SAN MATEO COUNTY BOARD OF SUPERVISORS,
ENVIRONMENTAL QUALITY COMMITTEE
(RICHARD S. GORDON, CHAIR; JERRY HILL, VICE-CHAIR)
NOTICE OF SPECIAL MEETING
(GOVERNMENT CODE §§54954.3, 54956)**

Please take notice that the San Mateo County Board of Supervisors, acting pursuant to the authority of Government Code §54956, hereby calls a special meeting of the San Mateo County Board of Supervisors and the Environmental Quality Committee, to take place on Tuesday, September 25, 2007, from 2:00 pm to 3:00 pm in the Board of Supervisors Chambers, located at 400 County Center, Redwood City, California 94063.

The special meeting is for the purpose of discussing and transacting the following business:


1. *Call to order*
2. *Roll call*
3. *Oral communications and public comment*
4. *Approval of the minutes from the August 14, 2007 Meeting – attachment*
5. *Report back on Product Stewardship resolution – Dean Peterson*
6. *Report back on Cool Counties resolution – Peggy Jensen*
7. *Update on Climate Initiatives matrix – Kim Springer*
8. *Williamson Act update – Lisa Grote*
9. *Green Building update – Lisa Grote*
10. *Next meeting: October 30, 2007 at 2:00 PM*

11. Adjourn

Pursuant to Government Code §54954.3, members of the public will have the opportunity to directly address the Committee concerning the above-mentioned business.

This notice is to be delivered to each member of the Board of Supervisors, and to each local newspaper of general circulation and radio station requesting notice in writing. The notice shall be delivered personally or by other means, and shall be received at least 24 hours before the time of the meeting as specified in this notice.

Dated: September 20, 2007


President, Board of Supervisors

Please note: Public meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodations, including auxiliary aids or services to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact the Clerk of the Board of Supervisors at (650) 363-4121. Notification in advance of the meeting will enable the public agency to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.



**SAN MATEO COUNTY
BOARD OF SUPERVISORS
ENVIRONMENTAL QUALITY
COMMITTEE**

**Richard Gordon, Chair
Jerry Hill, Vice-Chair**

**Peggy Jensen, Deputy County Manager
Michael P. Murphy, County Counsel
400 County Center, Redwood City, CA 94063
www.co.sanmateo.ca.us 650-363-4123**

DRAFT ACTION MINUTES

Meeting Date and Time: August 14, 2007, 2 pm

Place: Board Conference Room, Office of the Board of Supervisors
First Floor, 400 County Center, Redwood City, California

1. Call to Order / Roll Call:

Committee Chair Rich Gordon called the meeting to order at 2:00 p.m. Supervisors Gordon and Hill were both in attendance. Also attending were Duane Bay, Merrill Bobele, Preston Burnes, Edwin Chan, Paula Duarte, Nancy Guerrero, Dave Holland, Christine Hollender, Peggy Jensen, Ken King, Mike Murphy, Lisa Okada, Brian Perkins, Jim Porter, Juda Tolmasoff and Waymond Wong.

2. Oral Communications:

There was no member of the public who wished to speak.

3. Approval of the Minutes from the July 24, 2007 meeting

Minutes were approved as submitted

4. Product Stewardship (Dean Peterson and Waymond Wong, Environmental Health)

Staff presented a report supporting product stewardship and extended producer responsibility policy, especially for universal waste products, here in the County. The Committee directed Staff to gather more information about potential impacts on County cost, purchasing, leasing, etc., to report back to the Committee in September. This would enable the Committee to place a resolution on a Board of Supervisors agenda in October.

5. Solid Waste Disposal Request for Proposals (Jim Porter, Department of Public Works)

Staff presented for review a Board Memo for September 11, 2007: *Approval of the South Bayside Waste Management Authority's Collection and Operations Request For Proposals and Agreements.*

6. Climate Action Initiative – Cool Counties (Preston Burnes, Supervisor Gordon's Office)

Staff reported on the Sierra Club's Cool Counties Declaration. Members of the Loma Prieta Sierra Club, Merrill Bobele and Ken King, spoke to the Committee in support of the declaration. Staff was directed to research other counties' efforts, including strategic plans, workplans, timelines, financing and outreach for report back at a future meeting, as well as reviewing the draft Cool Counties Declaration in order to prepare it for discussion and adoption at a future Board of Supervisors meeting.

The Committee directed Staff to continue research in order to inventory current Countywide climate initiatives.

Dean Peterson noted that climate change is of major concern to local and state environmental and public health departments.

10. Adjournment

The meeting was adjourned at 2:50 p.m.

MEMORANDUM

COUNTY OF SAN MATEO PLANNING AND BUILDING DEPARTMENT

DATE: September 25, 2007
TO: Board of Supervisors Environmental Quality Committee
FROM: Lisa Grote, Community Development Director LG.
SUBJECT: Williamson Act Audit Response

On June 11, 2007, the State Department of Conservation (DOC) issued an audit of San Mateo County compliance with the Williamson Act (WA) and Open Space Subvention Act. The WA and Open Space Subvention Act is intended to preserve agricultural uses on contracted property by providing substantial property tax reductions for landowners who enter into WA contracts. Local agencies are partially reimbursed for the loss of property tax revenues by subventions that are issued to the local agencies by the DOC.

The DOC audit found the County to be out of compliance with the WA in the following areas: overstated acreage of prime agricultural land; overstated acreage of non-prime agricultural land; absence of annual questionnaires verifying agricultural use on contracted lands; substandard parcel sizes for contracted land; contract language that defines compatible uses too broadly; contracted land with open space uses that may be out of compliance with the definition of open space in the WA; lot line adjustments that were approved at staff level; lack of a process for converting land in a WA contract to an Open Space contract; and six specific parcels potentially in material breach of the WA contracts on them.

The DOC assessed penalties for these violations totaling \$73,891.55. The penalties were primarily for the first two violations, overstated acreage of both prime and non-prime agricultural lands. The DOC found that the County overstated the acreage of prime agricultural land by 2,787.14 acres over the four-year period between 2004 and 2007 and by 2,978.14 acres in 2003. The DOC assessed a \$4.00 an acre penalty over the five-year period for a penalty of \$56,506.80. Additionally, the DOC found that the non-prime agricultural acreage eligible for subventions (money given to the County by the State to help off-set the loss of property tax revenue) was overstated for the same five-year period and assessed a penalty of \$1.00 an acre equaling \$17,384.75.

In addition to the \$73,891.55 penalty, the DOC made the following recommendations to bring the County into compliance with the WA. The County is required to:

- Develop an appropriate WA questionnaire verifying agricultural use on contracted land and send it to landowners on a regular basis;

- Provide evidence that all substandard parcels have been reviewed to determine that the parcel is commercially viable as agricultural use and initiate non-renewal of the contract on lands that are not commercially viable for agricultural use;
- Amend the standard contract language to ensure that the uses allowed by the contract will be in compliance with the WA. Specific parcels were also identified for further research regarding the compatibility of the uses with the WA;
- Evaluate all contracted parcels that are identified as Open Space to determine compliance with the WA;
- Develop a process that will ensure the Board of Supervisors reviews each lot line adjustment or subdivision application affecting contracted land;
- Determine how many contracted parcels were granted parcel maps or otherwise subdivided over the past six years, compile a list of these actions and determine remedies for the violations;
- Develop a process for replacement of WA contracts with Open Space contracts that ensures compliance with the procedures outlined in the WA; and
- Investigate each of the parcels identified as potentially being in material breach of the existing WA contract to determine whether or not a material breach has occurred and the appropriate penalty if it has occurred.

The Planning and Building Department and the Office of the Assessor were required to provide an initial response to the audit within 20 days of its issuance. The responses and the complete DOC audit are attached for your reference. The initial responses acknowledge that additional work is required to fully update and amend the County WA program in accordance with the DOC recommendations.

During review of the Planning and Building Department budget on June 25, 2007, the Board of Supervisors requested that the Department explore approaches to the audit response and provide an estimate of how much it would cost to respond to the audit and update the WA program including the possibility of using an outside consultant. Planning and Building Department staff resources are fully committed so staff contacted the consultant used by Santa Clara County to respond to its DOC audit and update its WA program.

Ms. Jody Hall Esser, Principal, JHE Services, submitted the attached contract services outline in response to the Planning and Building Department request. The total estimate for her services is \$54,000 and approximately five months time. The estimate is divided into two components: (1) Audit response; and (2) Updated WA program. The audit response addresses the immediate need to investigate specific contracted parcels and the violations resulting from past practices while

the WA program update addresses the longer-term program improvements that will help ensure violations do not continue to occur in the future. The immediate audit response is estimated at approximately \$12,500 and 45 days, while the WA program update is estimated at \$41,000 and five months time including an overlap of about four weeks with the audit response. Taken together, the total estimated cost would be \$54,000 and five months time.

Ms. Esser's resume is attached for your reference. She has considerable experience working with local government agencies including Santa Clara County. A copy of the DOC audit response Ms. Esser prepared for Santa Clara County is also attached for your reference.

Planning and Building staff recommend that \$54,000 be allocated from the General Fund to pay for Ms. Esser's assistance in responding to the DOC audit and updating the County WA program.

Attachments:

- A. Department of Conservation Audit of San Mateo County Williamson Act Compliance
- B. Contract Services Outline, Resume and Sample Audit Response Submitted by
Ms. Jody Hall Esser, JHE Services



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

June 11, 2007

ATTACHMENT A

Honorable Warren Slocum, Assessor
San Mateo County
555 County Center
Redwood City, CA 94063

Ms. Lisa Grote, Director
Community Development
Planning and Building Department
455 County Center
Redwood City, CA 94063

RECEIVED
2007 JUN 14 PM 4:16
SAN MATEO COUNTY
PLANNING DIVISION

Dear Assessor Slocum and Ms. Grote:

The Department of Conservation's (Department's) Williamson Act program auditor has completed an audit of compliance by San Mateo County (County) with the Williamson Act (WA) and the Open Space Subvention Act. He noted the following conditions during the review. These conditions have been referred to me at the Department's Division of Land Resource Protection for appropriate follow-up.

Findings in this Management letter are based on fieldwork that was done during March 2007 through May 2007. The auditor discussed these findings with County personnel on May 17, 2007 during the exit conference.

FINDING 1 Nonprime Acreage Claimed as Prime

Condition: The County relies on either the NRCS soil capability classification or the income generated by a parcel's agricultural plant production to determine if the land is classified as prime. According to the Natural Resource Conservation Service (NRCS), only land that is irrigated meets the definition for prime as defined by Section 51201 (1).

A parcel is designated as prime or nonprime based on the information provided by the landowner at the time the WA application is submitted. This information is carried forward year after year. In many cases, a parcel is no longer used in the same manner as it was when it entered the WA. Consequently, it is impossible to know if the land is currently used for commercial agriculture or is irrigated. Since the County has no documentation

that clearly demonstrates that the parcel is used for commercial agriculture and none of the land meets the definition for prime based on soil alone, unless irrigated, all prime acreage should be reclassified as nonprime until the County can demonstrate otherwise. According to Section 14112 (d) of the Open Space Subvention Regulations, the County must develop a process that ensures the landowner is using the property for commercial agriculture and that the land meets the definition of prime agricultural land pursuant to Government Code section 51201 (c)(3), (4) and (5), on an annual basis.

Criteria: Section 16142 of the Government Code states that \$5 per acre is paid "for prime agricultural land as defined in Section 51201" and \$1 per acre is paid "for all land, other than prime agricultural land ..."

Government Code Section 51201(c) provides five criteria by which land can be identified as "prime." Specifically:

1. All land that qualifies for rating as class I or II in the Natural Resource Conservation Service (NRCS) land use capability classifications.
2. Land which qualifies for rating 80 through 100 in the Storie Index Rating.
3. Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.
4. Land planted with fruit – or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.
5. Land that has returned from production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

Section 14112 (d) of the Open Space Subvention Regulations (Title 14, California Code of Regulations) states, "...When determining whether enforceably restricted land meets the definition of prime agricultural land pursuant to Government Code section 51201 (c)(3), (4) and (5), a participating local government shall rely on information derived from the assessment for the year in which the subvention claim is made, pursuant to subdivision (a) of this section."

Recommendations: The Department recapture 5 years of subventions for overpayment of prime land.

Fiscal year	Acreage	Penalty (\$5.00- \$1.00)	Total Penalty
06/07	2,787.14	\$4.00	11,148.56
05/06	2,787.14	\$4.00	11,148.56
04/05	2,787.14	\$4.00	11,148.56
03/04	2,787.14	\$4.00	11,148.56
02/03	2,978.14	\$4.00	11,912.56
Total Potential Penalty			\$56,506.80

FINDING 2 Agricultural Uses

Conditions: The County has not been sending out questionnaires validating an agricultural use on the property. Without up-to-date information, the County is unable to verify that the landowner is growing crops or grazing on the property. The WA requires that a landowner use the property for an agricultural or compatible use.

If a landowner is not using the property for an "agricultural use" as defined by GC Section 51201(b) but lives there, the use may be categorized as "residential" and not compatible with the WA. If the landowner builds any structures, it may trigger the material breach provisions and result in substantial penalties to the landowner.

Criteria: Government Code Section 51242 states that "no city or county may contract with respect to land pursuant to this chapter unless the land:

- (a) Is devoted to agricultural use.
- (b) Is located within an area designated by a city or county as an agricultural preserve."

Government Code Section 51243(a) states that every contract "shall provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract."

Section 51201 (b) defines "Agricultural Use" as the land for the purpose of producing an agricultural commodity for commercial purposes."

- Recommendations:
- A) The County should send each WA contract holder an annual questionnaire seeking both to gather information on agricultural income for the assessor's use and to validate the landowner is still using the property for an agricultural use.
 - B) If the landowner is not using the property in compliance with the WA, the County should consider nonrenewal.
 - C) The County should establish procedures for ensuring landowners provide the information requested by the County. Landowners who fail to respond and return the questionnaire within an established time period should be considered for nonrenewal or other available remedies.

FINDING 3 Overstated Acreage on Subvention Report

Condition: The Assessor's Office reviewed its WA program and calculated that there were 42,960.86 acres eligible for subventions for FY 06/07. As part of the review process, the County reduced its acreage by 1,770.18 acres for land located within city boundaries and another 931 acres for property owned by the Midpeninsula Regional Open Space District. In order for a County to claim land located within city boundaries on its subvention report, the County must comply with Section 14110.1 of the Open Space Subvention Regulations. There was no evidence that this had occurred. In addition, homesites and nonrenewals were also excluded as required by statute. Based on the County's analysis and the audit, it appears as though subventions were overstated for the past five years.

The following chart compares the subventions requested by the County to the acreage that was verified during the audit. The Peninsula Open Space Trust (POST) entered parcels into the WA in FY 04/05 and in FY 06/07, which is also reflected in the table.

[illegible]

Criteria: GC Section 16140 states, "...The payments provided by this chapter shall be made only when the value of each parcel of open-space land assessed under Sections 423, 423.3, 423.4 and 423.5 of the Revenue and Taxation Code is less than the value that would have resulted if the valuation of the property was made pursuant to Section 110.1 of the Revenue and Taxation Code, as though the property were not subject to an enforceable restriction in the base year."

Section 14110.1 of the Open Space Subvention Regulations state, "A County may claim on its application restricted acreage within the boundaries of a city, if:

- (a) the county and each affected city adopt concurrent resolutions authorizing the county to claim restricted acreage on behalf of the city, and acknowledging a joint responsibility to enforce the contracts pursuant to section 51251 of the Government Code;
- (b) Each affected city shall include in the resolution required by subsection (a) verification that rules governing administration of the contracts, pursuant to Government Code Section 51231, have been adopted;
- (c) The county shall identify the city contract lands and participating cities on the county application and map, and;
- (d) The county shall include the resolutions and map with each application report pursuant to Section 14110.

Recommendation: The Department recapture \$17,384.75 for over payment on the last five subvention reports.

FINDING 4 Substandard Parcels

Condition: According to the County's records, numerous contracted parcels are substandard in size. The FY 06/07 Subvention Report included almost 300 parcels below the WA's 40-acre minimum parcel size for non-prime land. About 10% of the parcels are located within city boundaries. In some cases, multiple parcels make up a contract but in other situations the subminimum parcel is not part of a larger contract. Landowners that build on substandard parcels could be subject to a breach of contract or to the material breach provision, since there is often either no agriculture or no viable commercial agriculture on the property.

Some of the substandard parcels resulted from landowners requesting Certificates of Compliance (CC) in order to recognize underlying

parcels. Subsequently the parcels were sold, resulting in parcels that are not agriculturally viable and should be considered for nonrenewal.

In other cases, substandard parcels were part of contracts that originated before the establishment of State minimum size presumptions. Nevertheless, for nearly two decades, the WA has required that contracted land be devoted to an agricultural use (as defined by Government Code Section 51201 (b)) and, necessarily remain in parcels large enough to sustain a commercial agricultural operation. Parcels must be large enough to meet this requirement on their own or be part of a larger agricultural operation.

Criteria: Section 51222 of the Government Code states that, "...it is in the public interest for local officials and landowners to retain agricultural lands which are subject to contracts entered into pursuant to this act in parcels large enough to sustain agricultural uses permitted under the contracts. For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is:

1. At least 10 acres in size in the case of prime agricultural land, or
2. At least 40 acres in size in the case of land which is not prime agricultural land."

Recommendations: A. Substandard parcels should be non-renewed. The County should develop, in conjunction with the county agricultural commissioner and the Department, criteria for minimum viable agricultural parcels, taking into account the acreage actually planted or grazed, and clearly delineating the specific soil, water, and climate characteristics that allow any parcels smaller than the legislatively-determined parcel sizes to be commercially viable.

B. Provide the Department with the following information:

- 1) Evidence that the County reviewed all substandard parcels to determine that they are commercially viable as agricultural parcels.
- 2) If the County does not initiate nonrenewal, it must document that parcels below the statutory minimums are commercially viable.

FINDING 5 Assessment of Parcels

Condition: According to GC Section 16140, the County is only authorized subventions for those parcels where the restricted value is less than

the value determined under Revenue and Taxation Code Section 110.1. The County has not made this comparison. Adequate controls are necessary to ensure that property tax bills are correct and that any parcels that should have been assessed under Section 110.1 were not claimed as eligible for subventions.

Criteria: Section 16140 of the Government Code states that subvention payments are authorized "...only when the value of each parcel of open-space land assessed under Section 423, 423.3, 423.4 and 423.5 of the Revenue and Taxation Code is less than the value that would have resulted if valuation of the property was made pursuant to Section 110.1 of the Revenue and Taxation Code..."

Recommendation: A. Ensure that all parcels are assessed at the lesser of the restricted valuation or Section 110.1 valuation.
B. Do not request subventions for parcels where the Section 110.1 valuation is lower than the restricted value calculation.

FINDING 6 Restricted Value Calculation

Condition: Each parcel under contract is required to be valued based on its agricultural income producing ability. This calculation should be based on current market conditions. The Assessor's Office is estimating the parcel's annual income based on 1985 rental data, which may lead to incorrect assessments of WA parcels. The California State Board of Equalization (BOE) identified this issue in its September 2005 San Mateo County Assessment Practices Survey. At that time, the BOE recommended that the County "use current income in determining the restricted value of CLCA lands."

Criteria: Section 423(a)(1) of the Revenue and Taxation Code requires the assessor to value WA property by capitalizing annual income based upon market rents.

Recommendation: The County should use current rental data to determine a parcel's restricted value as described in Section 423 of the Revenue and Taxation Code.

FINDING 7 Contract Language

Condition: The County establishes each Agricultural Preserve (AGP) by resolution, which also identifies the compatible uses in Exhibit C.

Although many of these uses are compatible with the WA, other

“uses” are not compatible or are so broadly stated that the “uses” may not conform to the principles of compatibility. Although the County has discretion in determining what constitutes a compatible use for WA contracts, approved uses must be consistent with the principles of compatibility. Furthermore, the County must consider Section 51220.5 when approving a compatible use.

Some of the “uses” identified in Exhibit C of the County’s *Resolution to Establish an Agricultural Preserve within San Mateo County and to Authorize Execution of Land Conservation Contract* are vague and require more specificity or are inconsistent and should not be listed as a compatible use.

Sections 51238.1 – 51238.3 require that the County review each parcel independently to determine if the use is compatible with that parcel. The following uses should be revised or eliminated to ensure that the County’s uses are consistent with the WA:

Item 1: One-family dwellings

All residential structures, including single-family residences for the landowner or family members, must be related and, in the case of subdivision, incidental to a commercial agricultural operation. This restriction applies to any contract or all contiguous property subject to a contract or contracts owned by the same landowner or landowners.

Over the years, the County has allowed landowners to construct family dwellings without ensuring that there is a viable commercial agricultural operation on the parcel. Many of these parcels are used only for residential purposes and are not in compliance with the WA. As described under Finding 2, the County should ensure an agricultural use before allowing a landowner to build a residence or an accessory building [See Item 4].

Item 4: Accessory uses and accessory buildings appurtenant to the uses permitted in the district

All structures must be related to the commercial AG use on the parcel.

In 2002, a landowner built a 10,000 square foot warehouse to store personal property on a 28.92-acre nonprime parcel. There was no evidence of an “agricultural use”. This appears to have been a breach of contract. Under current law, any such structures built after January 1, 2004 could be considered a material breach of contract, and subject to significant penalties. The County should revise its policy on accessory buildings and guest houses [Item 8] when it pertains to a WA contract.

Item 7(a) & (b): Riding academies and commercial stables

Public stables, corrals, and riding academies are not compatible uses. Private stables may be compatible if used for horses that belong to the landowner for recreational purposes or are associated with an agricultural operation.

The audit identified several parcels where a landowner had received a use permit for a commercial stable. The County should not issue any more permits for these activities and allow the existing permits to expire if the contracts remain. Furthermore, the construction of commercial stables, arenas or other facilities could trigger the material breach provisions.

Item 7(d): Dog breeding, Commercial dog kennels, and Dog training schools

Compatible uses should be related to the production of commercial agricultural commodities on the land. Therefore, unless the dogs are used for an agricultural purpose, such as herding cattle or sheep, the use is not compatible.

Item 7 (g): Dude Ranches

Converting an existing structure to be used a dude ranch is usually compatible with the WA. Developing a new structure for this purpose is not compatible.

Item 8: Some uses not listed could be considered as "Compatible Uses" upon determination by the Planning Commission and the Board of Supervisors (BOS).

Guest House

Converting an exiting structure to a guest house is usually compatible with the WA. Developing a new structure for this purpose is not compatible. Building a new home and converting the old structure to a guest house could trigger the material breach provisions.

Wholesale Nursery

The use of property to buy, grow and propagate ornamental plants in containers which will be sold wholesale to retail garden centers and landscape contractors is typically not compatible with the WA.

Bed and Breakfast Guest Facility

Converting an existing structure to a bed and breakfast (4 or so guest rooms) is usually compatible with the WA. However, the

construction of a new building to be used as a bed and breakfast facility is not compatible.

Mining

GC code section addresses proposed mining extraction on contracted land that cannot meet the conditions of 51238.1. It allows a responsible board or council, on a case-by-case basis, to approve mineral extraction if: (1) the underlying contractual commitment to preserve the prime or nonprime agricultural land has not been significantly impaired and (2) the mining operation is in compliance with the reclamation standards adopted by the Mining and Geology Board pursuant to Section 2773 of the Public Resource Code (PRC). Any subject parcel or parcels must be reclaimed back to original prime quality.

Criteria: Section 51201 (e) defines "'Compatible Use' is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open space use of land within the preserve and subject to contract."

Section 51220.5 states, "...For this reason, cities and counties shall determine the types of uses to be deemed 'compatible uses' in a manner which recognizes that a permanent or temporary population increase often hinders or impairs agricultural operations."

Section 51238.1 (a) states, "Uses approved on contracted lands shall be consistent with all of the following principles of compatibility:

- (1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.
- (2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.
- (3) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.

Section 51243 states, "Every contract shall do both of the following:

- (a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract."

- Recommendations:
- A) Update the County's compatible uses to ensure compliance with the Williamson Act. Rewrite and update the County's resolutions in order to clarify what uses are allowed on WA parcels. County staff should consult with the Department of Conservation program and legal staff when writing the new language.
 - B) Review all existing nurseries located on WA parcels to determine if the activities comply with the WA. Specifically determine if the native plant nursery on APN 078-190-170 is compatible. There may also be a mining operation on this parcel, which if located on contracted land must meet the requirements for mining as outlined above.
 - C) The County approved a use permit that allows a landowner to use a 160-acre parcel as a sanctuary for wild animals that are non-releasable. Contact the Department to determine if the use on APN 066-160-100 is compatible with the WA.
 - D) Item 6 of the WA contract needs to be revised. The statement, "...provided that said Board shall not eliminate any such permitted agricultural or compatible use during the term of this Contract or any extension thereof without the written consent of the OWNER or his successors in interest." Compatible uses must comply with the WA and State law. Recommend that the County remove this statement to ensure that the County has the maximum flexibility to ensure compliance with State law and the WA.

FINDING 8

Open Space Use

Condition: There were numerous parcels where the Assessor's Office identified the land as "natural pasture", "wooded and wildlife" or some other designation indicating that the parcel is used for a purpose other than commercial agriculture. Much of the land is not suitable for commercial grazing or cropping and is simply open space. Section 51205 allows the County to contract with a landowner for the purpose of restricting the land to recreational or open space (OS) use as defined in Section 51201 (n) or (o). If the landowner meets the requirements, the County could rescind the current contract and enter into a new WA OS contract.

Open space use requires that the land be used in such a manner as to preserve its natural characteristics, beauty, or openness for the benefit of the public. The land must remain undeveloped and meet the requirements of Section 51201. OS WA contracts should ensure that the landowner maintains the land in its natural state, which would preclude a landowner from building any structure unless it was

necessary for the preservation of the open-space land and is related to the principal purpose of the contract.

Criteria: GC Section 51201(b) defines Agricultural Use "as land for the purpose of producing an agricultural commodity for commercial purposes."

GC Section 51201 (e) defines "'Compatible Use' is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open space use of land within the preserve and subject to contract."

GC Section 51205 (n) defines "Recreational use" as "the use of land in its agricultural or natural state by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public. Any ancillary structures necessary for a recreational use shall comply with the provisions of Section 51238.1."

GC Section 51205 (o) defines "Open-space use" as "the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the solar evaporation of seawater in the course of salt production for commercial purposes, if the land is within:

(1) A scenic highway corridor, as defined in subdivision (i)¹.

¹ (i) A "scenic highway corridor" is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which has been officially designated by the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

- (2) A wildlife habitat area, as defined in subdivision (j).²
- (3) A saltpond, as defined in subdivision (k).³
- (4) A managed wetland area, as defined in subdivision (l).⁴
- (5) A submerged area, as defined in subdivision (m).⁵

GC Section 51205 states, "Notwithstanding any provisions of this chapter to the contrary, land devoted to recreational use, or land within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area may be included within a agricultural preserve pursuant to this chapter.

When such land is included within an agricultural preserve, the city or county within which it is situated may contract with the owner for the purpose of restricting the land to recreational or open space use and uses compatible therewith in the same manner as provided in this chapter for land devoted to agricultural use. For purposes of this section, where the term 'agricultural' land is used in this chapter, it shall be deemed to include land devoted to recreational use and land within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area, and where the term 'agricultural use' is used in this chapter, it shall be deemed to include recreational and open space use."

Recommendations: A) Review all parcels to determine if the parcel meets the WA definition for "recreational use" (Section 51201(n)) or for "OS use" (Section 51201(o)) and is, therefore, eligible for a WA Recreation Contract or a WA OS Contract. Contact the Department for guidance and assistance for this type of contract.

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway has been officially designated by the Department of Transportation as an official county scenic highway.

² (j) A "wildlife habitat area" is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of great importance for the protection or enhancement of the wildlife resources of the state.

³ (k) A "saltpond" is an area which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, has been used for the solar evaporation of seawater in the course of salt production for commercial purposes.

⁴ (l) A "managed wetland area" is an area, which may be an area diked off from the ocean or any bay, river or stream to which water is occasionally admitted, and which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, was used and maintained as a waterfowl hunting preserve or game refuge or for agricultural purposes.

⁵ (m) A "submerged area" is any land determined by the board or council to be submerged or subject to tidal action and found by the board or council to be of great value to the state as open space.

- B) If a parcel cannot meet these requirements, the contract should be nonrenewed.

FINDING 9 Lot Line Adjustments (LLA) and Subdivision Map Act (SMA)

Condition: Over the past thirty years or so, many WA parcels have been subdivided, often creating parcels that are below the minimums required by GC Section 51222. Some of the divisions occurred by grant deed. In other cases, the Planning Department reviewed the Lot Line Adjustment or subdivision but did not follow the process articulated in section 51257 (a) of the WA or section 66474.4 of the Subdivision Map Act. For example, in 2001 the County approved a Minor Subdivision that subdivided a 77.6-acre parcel into two parcels consisting of 39.3 acres and a 38.3 acre parcel. Both parcels are substandard, owned by different landowners, and do not appear to have any commercial agricultural use.

Currently, the Planning Director approves any activity that results in a recorded action. Therefore, both subdivisions and LLAs are approved at the departmental level and do not necessarily have to go to the BOS for approval. This does not comply with the WA or the SMA, which requires that the BOS make specific finding when WA land is involved in either process.

Criteria: Government Code Section 51257 (a) states, " To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and not withstanding any other provision of this chapter, the parties may mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided the board or council finds all the following:

- (1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contracts, but for not less than 10 years.
- (2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.
- (3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

- (4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.
- (5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.
- (6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.
- (7) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan."

Government Code Section 66474.4 (a) states, "The legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it finds that either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land, and if the legislative body finds that the land is subject to any of the following:

- (1) A contract entered into pursuant to the California Land Conservation Act of 1965." (Williamson Act).

- Recommendations:
- A) Develop a process to ensure that the Board of Supervisors reviews each lot line adjustment or subdivision application affecting contracted land. The County's procedures must comply with either GC Section 51257 or GC Section 66474.4. In both cases, the County's WA contract records should contain documentation which clearly demonstrates that the BOS reviewed the application and reached a decision. If the lot line adjustment or subdivision was approved, the County's Williamson Act contract records must contain written evidence that the Board of Supervisors determined that the applicant met the required findings.
 - B) Determine how many contracted parcels were granted parcel maps or otherwise subdivided or received lot line adjustments for the past six years. Compile a list of parcels and determine what actions need to be taken to remedy these violations. Provide the Department with the list and what remedies are proposed for each parcel identified.

FINDING 10

Open Space Easement

Condition: A landowner filed a Notice of Nonrenewal on a 40.70-acre parcel on November 2, 2000. In March 2001, the BOS approved a resolution authorizing a landowner to rescind the WA contract and replace it with a Open Space (OS) Easement. Shortly thereafter, the landowner submitted a parcel map to divide the original 40.7-acre parcel into a 20.2-acre parcel and a 20.5-acre parcel. Both are substandard and do not meet the presumed minimums for nonprime as required by GC Section 51222. Furthermore, it appears that the primary purpose for the subdivision was residential development.

Although the County can rescind a WA contract in order to enter into an OS Easement as described in GC Section 51255, the terms and conditions of the OS Easement must be at a minimum as restrictive as the WA. This was not the case in this situation. Under the WA, the landowner would have had to make specific findings in order to subdivide the parcel, as described under Finding 9.

Criteria: Government Code Section 51255 (a) states, "Notwithstanding any other provision of this chapter, the parties may upon their mutual agreement rescind a contract in order simultaneously to enter into an open-space easement agreement pursuant to the open-space easement agreement pursuant to the Open-Space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51070)), provided that the easement is consistent with the Williamson Act (this chapter) for the duration of the original Williamson Act contract. The easement would enforceably restrict the same property for an initial term of not less than 10 years and would not be subject to the provisions of Article 4 (commencing with Section 51090) of Chapter 6.6. This action may be taken notwithstanding the prior serving of a notice of nonrenewal, and the land subject to the contract shall be assessed pursuant to Section 423 of the Revenue and Taxation Code."

Recommendation:

- A. Implement procedures to ensure that a WA contract, which is rescinded in order to enter an OS Easement, is done in compliance with GC Section 51255. It is mandatory that the all terms and conditions of the OS Easement be as or more restrictive than the original WA contract.
- B. Allow the WA contract to expire in 2011. It is important to ensure that no additional structures are built during the nonrenewal phase or the landowner could trigger the material breach provisions. Furthermore, the parcels should not be subdivided again until the WA contract expires.

Although government acquisitions are infrequent, it is important nevertheless for the County to develop a process that ensures both oversight and cooperation with local government, state and federal agencies when WA parcels are involved.

Recommendation: A. The Assessor's Office should notify the Planning Department or vice versa if either organization becomes aware of an acquisition of WA land by local, state or federal entities. The County should contact the entity and inform them that they have acquired land that may still be restricted by a WA contract.

B. Provide the Department with information regarding future acquisitions.

Condition: The audit identified six parcels on which structures had been built after January 1, 2004 and there was no evidence of an agricultural use.

Criteria: Section 51250 of the General Code states that "a breach is material if, on a parcel under contract, both of the following conditions are met:

- (1) A commercial, industrial, or residential building is constructed that is not allowed by this chapter or the contract, local uniform rules or ordinances consistent with the provisions of this chapter, and that is not related to an agricultural use or compatible use.
- (2) The total area of all of the building or buildings likely causing the breach exceeds 2,500 square feet for either of the following:
 - (A) All property subject to any contract or all contiguous property subject to a contract or contracts owned by the same landowner or landowners on January 1, 2004.
 - (B) All property subject to a contract entered into after January 1, 2004, covering property not subject to a contract on January 1, 2004."

"For purposes of this subdivision any additional parcels not specified in the legal description that accompanied the contract, as it existed prior to January 1, 2003, including any parcel created or recognized within an existing contract by subdivision, deed, partition, or pursuant to Section 66499.35, by certificate of compliance, shall not increase the limitation of this subdivision."

Recommendation: Investigate and determine if a material breach occurred on APN 048-310-160, APN 067-300-020, APN 078-140-070, APN 081-260-040, APN 081-310-140, and APN 085-100-290. Conduct the investigation as required by Section 51250 of the Government Code.

Please respond to the above findings within 20 working days of your receipt of this letter. This response should include the status of corrective action planned or taken on the findings and recommendations and should be addressed to:

Dennis J. O'Bryant
Williamson Act Program Manager
Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, CA 95814

One of the Department's principal responsibilities arising out of the audit process is ensuring that the County tracks and addresses the various audit findings. Therefore, the County must enumerate those specific actions taken in response to each of the audit findings, and provide the Department with documentation that the recommendations have

Honorable Warren Slocum, Assessor
Ms, Lisa Grote, Director
June 11, 2007
Page 19 of 19

been implemented. The Department will consider all Findings as "open" until it has received documentation showing that the recommendations were implemented.

We appreciate the County's cooperation and assistance. If you have any questions, regarding this letter, please contact Dennis O'Bryant at (916) 324-0850.

Sincerely,



Brian Leahy
Assistant Director
Department of Conservation
Division of Land Resource Protection

cc: Board of Supervisors
San Mateo County
Hall of Justice and Records
400 County Center
Redwood City, CA 94063

Mr. John L. Maltbie, County Manager
San Mateo County
Hall of Justice and Records
400 County Center
Redwood City, CA 94063



Warren Slocum

Chief Elections Officer & Assessor-County Clerk-Recorder

555 County Center
Redwood City, CA 94063
phone 650.363.4988 fax 650.363.1903
email wslocum@smcare.org
web www.smcare.org

July 12, 2007

Dennis J. O' Bryant
Williamson Act Program Manager
Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, CA 95814

RECEIVED
2007 JUL 16 P 4:02
SAN MATEO COUNTY
PLANNING DIVISION

RE: Department of Conservation Williamson Act Program Audit
County of San Mateo, June 11, 2007
Findings 3, 5, 6 and 11

Dear Mr. O'Bryant:

We have reviewed your audit findings, and in conjunction with San Mateo County Planning Department, submit the following response for findings 3, 5, 6 and 11. The response to the additional findings will be provided under separate cover by the Planning Department.

Finding 3 Overstated Acreage on Subvention Report

We agree. We have reviewed the Williamson Act program parcels during this audit and have recalculated the land eligible for subvention as stated in your audit report. These new land area calculations are now used as a basis for future reports.

Finding 5 Assessment of Parcels

As the audit found, there were no parcels in which the "factored base year value" or assessed value, as determined by Revenue and Taxation Code Section 110.1, was less than the restricted value, as calculated using the Williamson Act formulas. We do in fact make the comparison whenever there is a sale of property with a Williamson Act Contract. There were no subvention requests for parcels that would meet these criteria. Due to the very high value of land in San Mateo County, it would be a very rare condition where these set of circumstances would be the case. We will improve our computer program and assessment system to document these calculations as programming resources become available.

Dennis J. O'Bryant

Re: Department of Conservation Williamson Act Program Audit Response

July 12, 2007

Page 2 of 2

Finding 6 Restricted Value Calculation

We agree. We will develop a new "Williamson Act and Open Space" property questionnaire and implement this finding for the 2008-09, January 1, 2008, lien date.

Finding 11 Government Acquisitions

We agree. We will work more closely with the County Planning Department in the administration of the Williamson Act and Open Space Easement programs. Additionally, we will advise them of any restricted property that has been acquired by a governmental entity. Notification to the acquiring governmental entity will be performed by the Planning Department.

Thank you for your constructive review of our program and should you have any additional questions, please feel free to contact Terry Flinn, Deputy Assessor-County Clerk-Recorder at 650.599.1271.

Sincerely,



Warren Slocum

cc: Honorable Members of the Board of Supervisors, San Mateo County
 John Maltbie, County Manager
 Gail Raabe, County Agricultural Commissioner
 Lisa Grote, Community Development Director
 Tim Fox, Deputy County Counsel



County of San Mateo

Planning & Building Department

455 County Center, 2nd Floor
Redwood City, California 94063
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122

plngbldg@co.sanmateo.ca.us
www.co.sanmateo.ca.us/planning

July 12, 2007

Dennis J. O'Bryant
Williamson Act Program Manager
Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, CA 95814

Dear Mr. O'Bryant:

SUBJECT: Response to the Department of Conservation's Audit of
San Mateo County's Williamson Act Program

We are in receipt of your letter dated June 11, 2007, and submit the following response to the findings arising from the audit of San Mateo County's implementation of the Williamson Act (WA) and Open Space Subvention Act.

With regard to Findings 5, 6 and 11, the County Assessor's Office has responded separately with a letter dated July 12, 2007. With regard to the remaining findings, the County will be developing a coordinated response which will include a comprehensive program for reviewing and reconciling all current Williamson Act contracts to ensure compliance with the cited and applicable Government Code provisions, as well as monitoring all current and future contracts. This program will include a thorough investigation of the six parcels cited for material breach of contract under Finding 12. We will be going to the Board of Supervisors in mid-August to confirm the program elements and to secure the required resources.

We appreciate the opportunity to respond to your findings and look forward to working with the Department of Conservation to improve the County's implementation of the Williamson Act and Open Space Subvention Act program. Please contact me at 650/363-1861 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Grote".

Lisa Grote
Community Development Director

LG/DJH:cdn – DJHR0782_WCN.DOC

cc: Board of Supervisors
John Maltbie, County Manager
Peggy Jensen, Deputy County Manager
Warren Slocum, County Assessor
Terrence Flinn, Deputy County Clerk-Recorder-Assessor
Jim Eggemeyer, Deputy Community Development Director
Tim Fox, Deputy County Counsel
Gail Raabe, County Agriculture Commissioner
Jack Olsen, San Mateo County Farm Bureau

jhe services

Management and Organizational Development

DATE: August 6, 2007

TO: Lisa Grote, Community Development Director, County of San Mateo

FROM: Jody Hall Esser, Principal, jhe services

SUBJECT: *Outline Proposal for Professional Services to Assist County of San Mateo in Responding to the State Department of Conservation's Audit of the County's Williamson Act Program and in Revising/Updating that Program*

I am pleased to submit the following outline of services proposed to assist San Mateo County (County) in: 1) responding to the State of California Department of Conservation (DOC), Department of Land Resource Protection's audit of the County's Williamson Act (WA) program (audit letter dated June 11, 2007); and 2) revisions to the County's WA program to comply with County goals and policies and state statute.

I would be pleased to amplify the services outlined below at your convenience, and to discuss additions or deletions to services proposed. Please note that while services can be segregated, I recommend the same consultant assist the County to respond to outstanding audit findings *and* to revise the County's WA program. This is advantageous for two reasons: 1) familiarization with County policies, practices and personnel need only take place once; and 2) responses to certain outstanding audit findings will not unintentionally frame revisions or have policy, operational and cost implications to pending revisions to the County's WA program.

I have attached a copy of my resume. I have also attached copies of WA related reports and correspondence prepared for the County of Santa Clara to give you a sample of my writing style and skill. I have previously provided you with the names of County of Santa Clara staff and Board of Supervisors you might want to contact for references. Should you desire other references, I would be pleased to provide them.

OUTLINE OF PROPOSED SERVICES, FEE AND AVAILABILITY

I. Audit Response

Summary:

Facilitate staff responses to outstanding audit findings including conducting file and field research; research other County's WA programs; consult with the State

Department of Conservation; document all contacts; prepare written reports and recommendations; and brief County executives on operating, policy and fiscal implications of recommendations and alternatives.

Estimated time to complete audit response services: 45 days. Estimated number of days consultant will be on-site: 10.

Outline of Services:

- A. Schedule meetings with County Williamson Act team (Team). Team should include knowledgeable/management staff representatives from the Office of Assessor-County Clerk-Recorder, County Counsel, County Agricultural Commissioner and the Community Development Department. Approximately eight Team meetings over a period of 4-6 weeks are anticipated. (Participation in selected Team meetings by the County Executive or his representative is recommended.)
- B. Facilitate Team review and prioritization of preparation of responses to outstanding audit findings. Prioritization of responses will be influenced, in part, on whether site/file information is available or requires research and development. Document all Team meetings and Team assignments.
- C. Coordinate inventory and documentation of all file data available on contracted sites. Information will include but not be limited to Assessor data, pesticide/irrigation or related permits, planning/building file and permit data, aerial photography and field visits.
- D. Assemble copies of other counties (recently revised/reviewed) Williamson Act program contracts, joint management agreements, regulations, definitions and questionnaires not already in-hand.
- E. Schedule and coordinate on-going communication with the State DOC to advise of progress and assure completion of audit responses and program revisions.
- F. Consult with DOC regarding certain definitions/program options recommended in the audit response letter; document contacts.
- G. Facilitate Team preparation, coordination and inter-disciplinary understanding/agreement of draft responses and alternatives to all outstanding audit findings.
- H. Coordinate Team briefing(s) of County Executive, County Counsel and Board of Supervisors. Revise draft responses accordingly and present to DOC in draft for comment. Advise County of any response/revisions recommended. Ensure submission of final response to audit findings to DOC.

II. Revision of County's Williamson Act Program

Summary:

Schedule on-going meetings with project Team. Facilitate discussion and preparation of revisions to the County's WA program. Document research, Team assignments and coordinate preparation of staff reports. Regularly brief County executives on progress/problems as well as operating, policy and fiscal implications of recommendations and alternatives. Ensure Board Members and Board staff are kept advised of progress. Assist in formation of and seek public input/feedback on proposed revisions from an ad-hoc citizen's advisory committee. Schedule and conduct public information meetings on final draft program changes prior to presentation of same to the Board of Supervisors. Coordinate presentation of recommendations to Board of Supervisors. Prepare and submit recommendations for on-going program review.

Estimated time to complete WA program revision services: 5 months including approximately 4 week overlap with preparation of audit responses (above).

Estimated number of days consultant will be on site: 30

Outline of Services:

- A. Schedule and coordinate presentation of a "Williamson Act 101" presentation by DOC staff. Presentation to be made to staff Team, Advisory Committee, Board Aides and other interested County staff members. Optional: Work with Team to prepare a scripted field tour for Committee members, County executives and Board aides to better familiarize participants with field conditions and issues.
- B. Assist the project Team in revising the County's WA contract. Assist the project Team in creating an annual contract-holder's survey, joint management agreement for sub-standard sized parcels and an open space easement agreement for eligible contract holder's conversion from WA contracts.
- C. Facilitate Team development of:
 - 1. Revised Agricultural Preserve Map(s)
 - 2. Definitions of "compatible uses" and "viable commercial uses"
 - 3. Guideline for compatible use development
 - 4. Guideline for commercial agricultural use
 - 5. Guideline for exchange of WA contract for open space easement agreement
 - 6. Guideline and procedures for non-renewal of substandard parcels; documentation of pre-existing commitment to jointly manage and farm/graze substandard parcels through a Joint Management Agreement
 - 7. Policies/guideline regarding general program administration and monitoring
 - 8. Calculation of fiscal/staffing impacts projected to result from proposed program revisions.

- D. Assist the County in forming an ad-hoc citizen's Advisory Committee to provide input/feedback to staff on revised program rules/requirements prior to presentation to the Board of Supervisors. (It is recommended the Committee include representatives from the Farm Bureau, other farming/ranching associations, realty association(s), environmental groups and other key stake holders.) Prepare agendas and facilitate committee meetings. (Ensure public noticing of meeting agendas if desired or determined to be required per County Counsel.) Document all Advisory Committee meetings. (It is anticipated that this Committee will meet approximately 5 times during the process of developing revisions to the County's WA program.)
- E. Structure, consult with County PIO to notice and advertise (3) public information meetings for contract holders and other interested members of the public to present proposed program revisions. Facilitate meetings and document public's comments and Team responses during question and answer sessions. Brief County executives and Board of Supervisors regarding these meetings; work with Team to propose rule/guideline modifications, where possible, to address issues raised.
- F. Consult with DOC regarding final draft program revisions. Coordinate preparation of staff reports and presentation of recommendations for program revisions to the Board of Supervisors.
- G. Prepare a post services Summary Report (one bound and one reproducible copy) including all contract/subject related correspondence and reports plus recommendations for on-going San Mateo County WA program administration and review. Report to be submitted within 90 days of contract completion.

IV. County to Provide Consultant

On-site office/desk, computer with email on County system, phone with voice mail and place to keep a project files; use of copy and fax machines and conference room(s) for Team and Committee meetings; modest secretarial support in scheduling meetings, proofing documents and reproduction of reports.

In addition the County is requested to provide consultant:

- Copies of existing WA contract and forms
- Related County Ordinance and any existing WA administrative policies
- Assessor's runs of contracted parcels (if available) to include: APN's, site address, parcel size, name of owner
- Copies of relevant correspondence, minutes/tapes of open meeting discussions regarding the audit or pending WA program revisions.

IV. Fee

Audit Response: \$12,500 *inclusive* of travel expenses and services identified above.

Revision of County's WA Program: \$41,500 *inclusive* of services identified above, summary report and travel expenses.

Periodic billing details to be discussed.

V. Availability

Consultant is available selected days/weeks August through October and essentially full time as of November 12, 2007.

Should the County expand the scope of services to be provided or extend the schedule for performance of contracted services beyond March 1, 2008, the County and consultant shall, in good faith, shall renegotiate the contract maximum fee and contract schedule.

VI. Attachments

1. Resume
2. Sample Writing Skills – Reports Prepared by Jody Hall Esser:
 - (A) (Word format) Santa Clara County BOS Agenda Item 3-14-06
(submitted for publication)
 - (B) (pdf format) Santa Clara County BOS Agenda Item 3-14-06 (published)
 - (C) Summary of Public Comments and Responses at November 2005 BOS
(Housing Land Use and Environment- HLUET) Committee Meeting
 - (D) October 2005 Letter to Public/Contract Holders Summarizing Proposed
WA Revisions and Inviting All to HLUET Committee and BOS Meetings

Mary JoAnne ("Jody") Hall Esser

7901 Chase Avenue ▪ Los Angeles, California 90045

Phone: (310) 645-8331 ▪ Fax: (310) 645-6621

Email: jhallessen@ca.rr.com

PROFESSIONAL EXPERIENCE

- 2006-2007 Executive Director, Westside Cities Council of Governments. Part-time, one year contract (ending 6-30-07) to assist COG in first year of operation as a COG, to establish administrative procedures, policy direction and to scope necessary skills/abilities and to assist in recruitment of permanent Executive Director. Contract emanated from multi-year relationship as the facilitator of regular meetings between elected officials and staff from the California Cities of Beverly Hills, Culver City, Santa Monica, West Hollywood and the western Council Districts of the City of Los Angeles who formally became a COG in 2006. Primary areas of interest and collaboration: economic development, transportation/mobility, affordable housing, homeless issues, environmental sustainability and improved land use policies, legislative advocacy and homeland security.
- 2005-2006 Interim Director of Planning and Development and Consultant on special projects, County of Santa Clara, CA. Responsible for organization and development of a new department composed of planning, land use engineering, survey and building services; staffing to Planning Commission, Historic Heritage Commission and Airport Land Use Commission. Following completion of interim assignment, the County asked me to continue in a consultant capacity to continue directing multi-disciplinary team and development of public consensus regarding revising/updating the County's Williamson Act program and adoption of the County's first Historic Preservation Ordinance.
- 2001-2006 Principal, *jhe services*, assisting local government and non-profit organizations in leadership, organization and public policy development; financial planning and public funding strategies; general management, strategic planning and meeting facilitation. Clients: Facilitator for Westside Cities - Council of Governments; consultant to and trainer for Josephson Institute for Ethics; trainer for California Commission on Peace Officer Standards and Training (Command College); consulting Senior Counsel with the firm of Netzel Associates, Inc., in areas of public policy and funding; consultant to Berkshire Advisors, Inc., performing management audits for cities/counties; grantsmanship trainer for local government and nonprofit agencies.
- 1999-2001 Retirement — travel and leisure pursuits.
- 1991-1999 Chief Administrative Officer ("CAO"), City of Culver City, CA; Executive Director, Culver City Redevelopment Agency. Responsible for day-to-day operations of this full service city of 40,000 population with a City Budget of \$110 Million, Redevelopment Agency Budget of \$60 million and 750 full-time and part-time employees. (Strong CAO/Council form of government.) Unprecedented period of city/agency strategic and fiscal planning; staff development, community outreach

and participation; intergovernmental interaction and cooperation; emergency preparedness; funding and new construction/renovation of public buildings, cultural and historic resources, parks, public works and other municipal facilities.

Governor appointed Commissioner, California Commission on Peace Officer Standards and Training, 1992 to 1998. Vice-Chair: 1996. Chair: 1997.

- 1979-1991 Community Development Director, City of Culver City, CA; Assistant Executive Director, Culver City Redevelopment Agency. Responsible for economic development, planning, redevelopment, engineering, grants, and housing divisions as well as all major capital projects. Sole designated Acting CAO in any/all CAO absences from the City. (1986 to 1991)
- 1976-1979 Housing Director, Housing Division, Community Development Department, City of Culver City, CA. First director – new city division. Designed and implemented all city and redevelopment agency funded housing policies and activities including new construction, renovation and rental subsidy programs. Responsible for grant applications/compliance.
- 1974-1976 Director, Social, Patient and Volunteer Services, Western Region, American MediCorp International, Los Angeles, CA. Designed and assisted hospital administrators, staff and volunteers corps in implementing a variety of programs at 12 hospitals in 7 western states.
- 1971-1974 Director, Culver City Senior Center, Department of Parks and Recreation, City of Culver City, CA. First director – new regional facility and city program. Designed, scheduled, and supervised recreation, education, social, volunteer service and information/referral programs for older adults. Responsible for grant applications, management and compliance.

EDUCATION AND CERTIFICATES

University of Southern California, 1970: B.A.

California State University Northridge, 1972 to 1972: M.S. (coursework completed)

Continuing Education 1972 to 1999: List upon request

Los Angeles County Bar Association, 1999: Certificated Mediator

Grants Related Training and Education: Certified Grants Specialist, Certified Grants Reviewer and Certified Grants Consultant.

SPECIAL PROJECTS/ACTIVITIES

Current Member, Board of Trustees, Center for Healthy Aging, Santa Monica, CA.

Co-author 4 books and numerous professional/general trade articles (details upon request.)

Personal and professional recommendations and awards provided upon request.

JHE:mh

7/07

County of Santa Clara
Department of Planning and Development
Planning Office



PLN03 031406

Prepared by: Jody Hall Esser
Consultant, Williamson Act and
Historic Preservation Programs

DATE: March 14, 2006

TO: Board of Supervisors

FROM: *Valentin Alexeeff*
Valentin Alexeeff
Director, Department of Planning and Development

SUBJECT: Revisions to Administrative Policies and Guidelines for Land Conservation (Williamson Act) Contracts.

RECOMMENDED ACTION

Consider recommendations relating to revisions to administrative policies, procedures and guidelines governing the County of Santa Clara's Land Conservation (Williamson Act) contracts and program.

Possible action:

- a. Accept Report back from Department of Planning and Development;
- b. Approve and adopt by Resolution the Guidelines necessary to revise policies and procedures governing the County's Williamson Act program:
 1. Guideline for Commercial Agricultural Use
 2. Guideline for Compatible Use Development on Restricted Lands
 3. Guideline for Procedures for County Non-renewal of Williamson Act Contracted Parcels Substandard in Size
 4. Guideline for General Administration, Monitoring and Enforcement of Williamson Act Contracts and Open Space Easement Agreements; and
 5. Guideline for Policies Governing the Exchange of an Existing Williamson Act Contract for an Open Space Easement Agreement;
- c. Direct staff to process existing Williamson Act contract holders with applications for discretionary permits deemed complete by March 14, 2006 under the Interim Guidelines approved for the Williamson Act program in June of 2005;
- d. Direct staff to prepare necessary Williamson Act and Open Space Easement ordinances for the Board's consideration at a future date
- e. Direct staff to provide all required noticing for the adoption of the revised Agricultural Preserve Map and to return to the Board for final adoption of the Map.

FISCAL IMPLICATIONS

There are no fiscal implications associated with the acceptance of this report. However, implementation of revisions to the Williamson Act program and the new Open Space Easement program will have an impact on staff in four departments: Agriculture and Environmental Management, Clerk of the Board, Planning and Development and County Assessor.

Based on the revised Williamson Act and new Open Space Easement programs proposed, fiscal impacts are expected to range from approximately \$300,000 (3.0 FTE) to approximately \$400,000 (4.0 FTE) for each of the next three years (See Attachment 1). Staff projects the fiscal impact to be at/towards the high end of this range for the first 6–12 months, and stabilizing at the lower end of this range by the 36–month mark.

Where permitted by State statute, new fees will be imposed to offset fiscal impacts. However, such new and existing fees would only be imposed: 1) when a Williamson Act contract holder proposes to transfer to an Open Space Easement Agreement; 2) when participants in either the Williamson Act or Open Space Easement programs propose to develop their land; 3) for monitoring agricultural uses on substandard size properties; 4) when an interpretation of the Guidelines is requested; 5) if a property owner fails to return the Assessor's annual questionnaire, necessitating staff follow-up; or, 6) if an enforcement action must be taken by the County against a property owner.

The proposed Guidelines continue to provide for self-certification of contract compliance through the Assessor's annual questionnaire, at no fee, for contract holders who do not propose to develop their land, request an administrative guideline interpretation, exchange their contract for an Open Space Easement Agreement, and otherwise comply with the requirements of the Williamson Act. All restricted lands will be subject to a no fee County review (of GIS, file and other information on-hand) at least every three years to ensure land uses comply with program restrictions.

Staff estimates the imposition of new fees will result in recovery of between 8%–31% (or between \$25,000 and \$132,000) estimated costs. Increased staff work load and fee collection will depend on the final policies approved by the Board, the number of substandard size parcel holders who assert current agricultural use of their land, and the number of Williamson Act participants choosing to apply to transfer to an Open Space Easement Agreement.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

In 2001, Planning Office and County Counsel staff became concerned about the County's administration and enforcement of its Williamson Act program. Concerns included the lack of a review process for development proposals involving land covered by Williamson Act contracts, and the absence of any monitoring or enforcement programs. State law had also been amended in several respects since the County approved the vast majority of the existing contracts in the 1960s and 1970s and the County's program had not been reviewed or updated. In response to these concerns, the Planning Office included a review of the County's Williamson Act policies and procedures for consistency with County policy and State law as a "high priority" item on the work plan it submitted to the Board of Supervisors, which the Board adopted in January 2002. Later that year, the California Department of Finance, on behalf of the California Department of Conservation (DOC), completed an audit of the County's compliance with the Williamson Act.

The audit found the County to be generally in compliance with the Williamson Act. In the State's opinion, however, allowing the subdivision and lot line adjustment of Williamson Act lands, which facilitated the conversion of such land to rural ranchettes, violated the intent of the Williamson Act.

The audit provided further impetus for the County to review the process by which Williamson Act contracts are approved and the policies that guide program administration. Subsequent discussions between County and DOC staff disclosed that the DOC had significant concerns about whether the County was properly evaluating development proposals/applications for contracted lands to ensure that the property was being used primarily for commercial agriculture, and any non-agricultural development was both compatible with and incidental to the agricultural use of the property.

Following the State audit, an Interim Guideline for Commercial Agriculture was approved, a Stakeholder Advisory Committee was formed, and a specific list of tasks and a related schedule was approved by the Board to guide the program revision process.

Between July and October of 2005, staff met regularly with and solicited input from the Stakeholder Advisory Committee. Draft program Guidelines and policies were presented and discussed at two widely noticed public information meetings and at the Housing, Land Use Environment and Transportation (HLUET) Committee meeting of October 6, 2005.

On November 1, 2005, the Board considered a set of comprehensive recommendations for revisions to policies and criteria governing the County's administration of its Williamson Act program. At that meeting, the Board heard from and addressed questions to staff and members of the public. Following their deliberations, the Board referred a number of questions and concerns back to staff and the HLUET Committee for further research and clarification. Attachment 2 is a copy of the resulting report to presented to the HLUET Committee at its meeting of November 29, 2005. This report includes a summary of questions raised by the public on November 1st, staff's response to questions and requests for clarification, and recommended revisions to draft program guidelines and policies in response to Board direction and public input. Recommended revisions to draft program Guidelines were reviewed with members of the Stakeholders Advisory Committee prior to presentation to HLUET.

On November 29, 2005, HLUET heard from staff and took testimony from the public. The HLUET Committee requested one addition to the draft revised program Guidelines, and again, requested that staff summarize and respond to public questions and suggestions. Attachment 3 is a summary of public testimony and staff responses to questions/issues raised by the public at the HLUET meeting on November 29. This attachment also includes staff recommendations for additional clarifications and revisions to draft program guidelines and policies in response to HLUET Committee member and public comments. Recommended revisions to draft program Guidelines were reviewed with members of the Stakeholders Advisory Committee prior to presentation to the Board.

On January 24, 2006, staff presented revised final draft Guidelines to the Board for consideration. In the week leading up to that meeting, Board staff had asked for additional comparison data from other counties. Also, the day before the meeting of the 24th, staff was advised that DOC was re-thinking their guidance regarding how timberlands should be classified. As a result, the Board took public comment but continued action on the revised program Guidelines was continued to March 14, 2006 in order to provide time to hear back from DOC and to complete staff's survey of other counties regarding: a) the frequency of review of annually revenue requirements; and b) how appeals of staff decisions are handled.

Attachment 4 to this transmittal is a summary of public testimony at the January 24, 2006 Board meeting and staffs responses to those questions prepared subsequent to that meeting. Subsequent to this meeting, staff contacted every speaker who said they had outstanding questions. In addition, a third public information meeting was held on March 6, 2006 to review proposed Guidelines and answer site-specific questions – all contract holders and interested parties received notice of this meeting by mail.

Attachment 5 to this transmittal is the Survey of Counties. (This attachment combines on one chart, all information requested from other counties in the preparation of staff recommendations to date. The two right-hand columns summarize the new information requested in January.)

At this time, staff is seeking Board approval of the final program Guidelines and policies as drafted or as revised by the members at the meeting of March 14. These Guidelines are intended both (1) to provide clarification/interpretation of existing contract language, which is rather general in nature, so that County staff and land owners have more definitive guidance regarding what constitutes contract compliance and when/what type of compatible use development is allowed; and (2) to ensure that the County's administration and enforcement of its Williamson Act program complies with State law, including amendments that have been enacted since the existing contracts were approved. Staff is not proposing that the Guidelines be codified as ordinances due to the need for flexibility in addressing the wide variety of circumstances we have experienced in dealing with contracted properties. The Guidelines would apply prospectively, and would not require land owners to remove any structures or other development that were legally established prior to the Board's adoption of the Guidelines. County Counsel will provide the Resolution to adopt the guidelines to the Board separately.

Staff is also requesting Board direction to prepare and send necessary notices and ordinances and return same to the HLUET Committee and then to the Board (or directly to the Board if desired) for consideration and adoption.

BACKGROUND

There have been three "rounds" of revisions to the recommendations presented to the Board of Supervisors on November 1, 2005. These revisions resulted from questions and input from the public at-large, ongoing consultation with the Stakeholders Advisory Committee, direction from the Board and staff's continuing efforts to provide clear, detailed and comprehensive Guidelines to ease understanding and implementation of revisions/additions.

Revisions Based on Board Direction and Public Input at the November 1, 2005 Meeting of the Board of Supervisors

First round of revisions to draft guidelines and policies:

- Revised minimum percentage coverage from 75% to 60% for standard parcels and from 90% to 75% for substandard parcels
- Added income eligibility category for high value crops and development

- Further defined "farmable land" allowing the Agricultural Commissioner discretion to exclude natural land features such as streams and rock outcroppings
- Added language to address crop rotation and fallow land
- Prepared a sample Joint Management Agreement
- Removed language requiring owners of substandard parcels to sign a contract amendment prohibiting individual sale of substandard parcels as a condition of withdrawing a notice of non-renewal
- Clarified self-certification for contract compliance through the Assessor's questionnaire, at no fee, for contract holders not proposing to develop or transfer to an Open Space Easement Agreement
- Further researched and provided for cost recovery where contract holders propose to develop or transfer to an Open Space Easement Agreement, or when enforcement actions are undertaken by the County
- Eliminated the three-year option to establish a new agricultural crop to avoid non-renewal
- Reduced minimum acreage necessary to participate in the Open Space Easement program from 10 to 5 acres
- Provided a third type of Open Space Easement that would, at the owner's election, prohibit all development and thus maximize tax benefits
- Revised language to exempt subsurface utility systems and facilities including leachfields, leachlines and septic tanks from the Open Space Easement maximum development calculation (5% of land area)
- Exempted roads, driveways and required turnarounds serving the primary residence from the Open Space Easement development maximum (5% of land area), and
- Revised language to clarify nature of enhanced Design Review of development on parcels subject to Open Space Easement Agreements to ensure adherence to prescribed siting criteria.

On November 1, the Board also asked staff to consider two other points:

1. Consider the merit of increasing the allowable percentage of development permitted under an Open Space Easement from five (5) percent to nine (9) percent.

As previously advised, staff has concluded that allowing a development percentage increase from 5% to 9% would be contrary to feedback regarding draft Guidelines solicited from the DOC and might exacerbate earlier concerns raised and addressed regarding our proposed Open Space Easement program. In order to ensure that restrictions applied to the Open Space Easement program are, as required, at least as restrictive as those applied to Williamson Act contracted lands, staff recommends the development maximum remain at 5% and the term of an Open Space Easement Agreement be increased from 10 to 15 years. In an attempt to also respond to concerns expressed by contract holders potentially interested in transferring to an Open Space Easement Agreement, staff has added language excluding roads serving the primary residence and subsurface utilities from the 5% of parcel development calculation.

2. Explore the option of qualifying viable commercial agricultural use by using either the gross income requirements; OR the percentage of land used for agricultural production.

Staff members devoted a significant amount of effort attempting to devise a percentage of land in commercial agricultural use or income approach that was viable for the broader categories of commercial agricultural production: grazing, permanent crops, field crops (e.g. hay), row crops (e.g. vegetables) and production greenhouses/greenhouses. Though several specific approaches were identified and one discussed with the Stakeholders Advisory Committee, staff could not find a generally applicable "percentage or income approach" that staff felt was viable and not also potentially subject to significant abuse and ongoing debate. However, based on input from the Stakeholder Committee, staff developed an additional eligibility category for those involved in high value crops and advised the HLUET Committee accordingly.

At the HLUET meeting, staff provided examples of the difficulties in developing a viable "percentage or income" option and reiterated the necessity that substandard size parcel holders overcome the presumption in state law that substandard parcels are too small in size to be viable producers of commercial agricultural products.

Proposed Revisions Based on Input from HLUET Committee and the Public at the

November 29, 2005 HLUET Meeting

The second round of revisions is based on direction from the HLUET Committee at the meeting of November 29, 2005, as requested by the HLUET Committee members, and on

staff's response to public comments at that meeting. The second round of revisions included:

- Revision of the Guideline for Commercial Agricultural Use to:
 - ◆ clarify that the County Agricultural Commissioner "shall consider" exceptions to land coverage standards
 - ◆ clarify that developed land within a fenced area shall be excluded from the calculation of land required to be in agricultural use
 - ◆ expand acceptable documentation of income from agricultural products to include an affidavit on a form provided by the County and supported by tax or other verifiable documentation substantiating agricultural use of a property in question, and
 - ◆ provide that income thresholds be adjusted by the HLUET Committee for inflation at least once every three years if warranted versus being automatically adjusted annually by the Consumer Price Index.
- Revision to the guideline relating to Open Space Easements to clarify that landscaping in keeping with the natural setting of the parcel in question shall be exempted from the 5% maximum development calculation, and
- Determination that applications for discretionary permits deemed "complete" prior to adoption of Williamson Act Guidelines by the Board shall be processed under the Interim Guidelines approved by the Board in June 2005.

On November 29, HLUET Committee also requested the report to the Board be revised as follows:

1. The HLUET Committee requested staff revise the draft recommendations to be presented to the Board of Supervisors, to provide that appeals from staff decisions regarding requests for interpretation of policies and Guidelines may be appealed to the Planning Commission or the Board of Supervisors.

As proposed, requests for interpretation or clarification of policies and Guidelines would first be heard by a committee composed of the Planning Manager, Williamson Act program manager and Deputy Agricultural Commissioner; and the decision of this group could be appealed to a second level staff committee composed of the Director of Planning and Development, Director of Agriculture and Environmental Management and Deputy County Counsel. As an option to including a third level of appeal to the Planning Commission or Board of Supervisors, Administration suggests using an Administrative Hearing Officer. With this alternative, the Board would provide a third level of appeal and could monitor the appeal process as any/all requests for interpretation made by the staff committees and the Administrative Hearing

Officer would be reported to the Board in the twice annual implementation reports.

If the Board determines a third level of appeal is warranted at the outset of the revised programs, staff requests the board determine the appropriate individual/body to hear such appeals at this time.

Additional Information Requested and Proposed Revisions Based on Input from the Board and Public at the January 24, 2006 Meeting

Frequency of Review of Minimum Annual Required Revenue: A review of the Survey of Counties (Attachment 5) reveals that not all comparison counties require Williamson Act participants to generate annual revenue. Of those that do, none have a formally prescribed frequency for review/revision of this requirement. Nonetheless, several counties have regularly reviewed and revised income requirements and/or have such review/revisions pending. Santa Clara County's proposed Guidelines call for the minimum annual revenue threshold to be reviewed at least once every three years, and revised if warranted.

If the Board prefers a different frequency of review, staff should be directed to revise the Guideline for General Administration, Monitoring and Enforcement of Williamson Act Contracts and Open Space Easement Agreements accordingly.

Appeal Processes Used by Other Counties: Attachment 5 also reveals that in all but one case, the Board of Supervisors for that County is the direct or indirect "final" appeal body from decisions of staff. In the one exception, only the Board makes any/all decisions regarding Williamson Act matters and so they are the first and last body of approval; any further appeals would be in a court of law.

Staff requests the Board provide direction regarding the preferred third level to be included in the Guidelines governing the SCC Williamson Act and Open Space Easement programs.

Feedback from DOC Regarding Timberlands: On January 23, 2006, Mr. Dennis O'Bryant, Acting Assistant Director for Land Resource Protection, advised staff that the Department of Conservation was re-thinking their earlier formal guidance that timberlands should not be in the Williamson Act, but rather in Timber Protection Zones. On February 23, 2006, Mr. O'Bryant advised that confirmation or rescission of this earlier advice may not be forthcoming for some time. Staff suggested and Mr. O'Bryant agreed that it would, therefore, be reasonable to continue to include timberlands in the Williamson Act until/unless DOC is forthcoming with additional advice/direction.

On March 1, 2006, County staff met with representatives from commercial timber producers and developed proposed revisions to the Guideline for Commercial Agriculture (see Attachment 8). These revisions now include timber and forest products as agricultural commodities and establish qualifications to remain in the Williamson Act.

DOC and the State Board of Forestry continue to review the State's position on Timber Protection Zones and may offer additional guidance in this area. Staff will return to the Board with additional changes if warranted.

Proposed Revisions Based on Input from the Public at the January 24, 2006 Board Meeting

A third and final round of revisions to the Guidelines presented to the Board for consideration at this time have been revised based on comments at the Board meeting of January 24, 2006 as follows:

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Revised Footnote in Guideline for Commercial Agricultural Use and Guideline for Non-renewal Procedures to remove reference to the eligibility of only "contiguous" parcels for Joint Management Agreements

- Revised Guideline for Compatible Use Development and Guideline for Policies Governing Exchange of an Existing Williamson Act Contract for Open Space Easement Agreement adding language to define what is and is not considered "development" and how maximum permitted development (parcel coverage) will be calculated, and

On January 24, Supervisor McHugh also requested staff prepare a matrix to include the size and type of parcel, including parcels under five acres in size, with corresponding options available to parcel owners and in what cases new houses would be permissible and of what size. See Attachment 6. Supervisor McHugh also suggested this document be used in community outreach to assist in informing interested parties. Once prepared, this document was posted on the Planning web page and was made available at the public information meeting held on March 6, 2006.

Final Revised Draft Guidelines

The final revised draft Guidelines and policies presented for Board consideration at this time are included as Attachments 7–12 [Probably need to revise this numbering] to this transmittal and will be summarized in the oral staff report prepared for this meeting. Revisions to the Guidelines since the January 24 Board meeting are presented in underline/strikeout format.

Public Notification

Consistent with notification efforts for all HLUET Committee and Board of Supervisors meetings on this subject, all contract holders were notified by mail that this matter would be on the Board of Supervisor's agenda on March 14. In addition, the public was advised that the focus of desired input from the public at this meeting would be on new information presented by staff and that it would not be necessary to reiterate comments previously addressed to the Board members. (Attachment 13)

CONSEQUENCES OF NEGATIVE ACTION

If the County chooses not to revise its administrative practices relating to the Williamson Act, individuals subdividing or developing restricted parcels may be in breach of contract and subject to statutory penalties, including those prescribed by AB1492 (Laird, 2003).

STEPS FOLLOWING APPROVAL

The Clerk of the Board will agendize consideration of the Agricultural Preserve Map and program ordinances on the agenda of the HLUET Committee at its regular meeting in April 2006 and the Board of Supervisors meeting of May 2, 2006; or if directed, the Agricultural Preserve Map and ordinances will be agendized for Board consideration (only), in April 2006.

ATTACHMENTS

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- Attachment 1 – Fiscal Impact of Revisions to Williamson Act Program
- Attachment 2 – Summary of Board Direction and Public Comments (BOS 11/01/05, HLUET 11/29/05)
- Attachment 3 – Summary of Public Testimony and Responses (HLUET 11/29/05)
- Attachment 4 – Summary of Public Testimony and Responses (BOS 1/24/06)
- Attachment 5 – Survey of Counties
- Attachment 6 – Options Available to Williamson Act Contract Holders
- Attachment 7 – Agricultural Preserve Map
- Attachment 7 – Information on Agricultural Preserve Map
- Attachment 8 – Draft Proposed Guideline for Commercial Agricultural Use
- Attachment 9 – Proposed Guidelines for Compatible Use Development
- Attachment 10 – Proposed Guidelines for Procedures for County Non-Renewal of Substandard Size Parcel
- Attachment 10A – Joint Management Agreement
- Attachment 11 – Proposed Guidelines for Policies Governing Exchange of WA Parcels for Open Space Easement Agreement
- Attachment 12 – Proposed Guidelines for General Administration, Monitoring and Enforcement

- Attachment 13 – Public Meeting Notification
- Supp. Info 1–Draft Resolution

(Keyboard Transmittal for BOS Meeting of March 14, 2006)

DATE: March 14, 2006

TO: Board of Supervisors

FROM: Valentin Alexeeff, Director, Department of Planning and Development

Prepared by: Jody Hall Esser, Consultant, Williamson Act and Historic Preservation

Reviewed by: Michael Lopez, Interim Planning Manager
Greg Van Wassenhove, Director, Agriculture and Environmental
Management
Lizanne Reynolds, Deputy County Counsel
Jane Decker, Deputy County Executive

SUBJECT: Revisions to Administrative Policies and Guidelines for Land
Conservation (Williamson Act) Contracts.

RECOMMENDED ACTION

Consider recommendations relating to revisions to administrative policies, procedures and guidelines governing the County of Santa Clara's Land Conservation (Williamson Act) contracts and program. Possible action:

- A. Accept the report from the Department of Planning and Development;
- B. Approve and adopt the Guidelines necessary to revise policies and procedures governing the County's Williamson Act program:
 - 1. Guideline for Commercial Agricultural Use
 - 2. Guideline for Compatible Use Development on Restricted Lands
 - 3. Guideline for Procedures for County Non-renewal of Williamson Act Contracted Parcels Substandard in Size
 - 4. Guideline for General Administration, Monitoring and Enforcement of Williamson Act Contracts and Open Space Easement Agreements; and
 - 5. Guideline for Policies Governing the Exchange of an Existing Williamson Act Contract for an Open Space Easement Agreement;
- C. Direct staff to process existing Williamson Act contract holders with applications for discretionary permits deemed complete by March 14, 2006 under the Interim Guidelines approved for the Williamson Act program in June of 2005;
- D. Direct staff to prepare necessary Williamson Act and Open Space Easement ordinances for the Board's consideration at a future date;

- E. Direct staff to provide all required noticing for the adoption of the revised Agricultural Preserve Map and to return to the Board for final adoption of the Map.

FISCAL IMPLICATIONS

There are no fiscal implications associated with the acceptance of this report. However, implementation of revisions to the Williamson Act program and the new Open Space Easement program will have an impact on staff in four departments: Agriculture and Environmental Management, Clerk of the Board, Planning and Development and County Assessor

Based on the revised Williamson Act and new Open Space Easement programs proposed, fiscal impacts are expected to range from approximately \$300,000 (3.0 FTE) to approximately \$400,000 (4.0 FTE) for each of the next three years (See Attachment 1). Staff projects the fiscal impact to be at/towards the high end of this range for the first 6-12 months, and stabilizing at the lower end of this range by the 36-month mark.

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CONTRACT HISTORY

Not applicable

REASONS FOR RECOMMENDATION

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Proposed Revisions Based on Input from HLUET Committee and the Public at the November 29, 2005 HLUET Meeting

The second round of revisions is based on direction from the HLUET Committee at the meeting of November 29, 2005, as requested by the HLUET Committee members, and on staff’s response to public comments at that meeting. The second round of revisions included:

- Revision of the Guideline for Commercial Agricultural Use to:
 - clarify that the County Agricultural Commissioner “shall consider” exceptions to land coverage standards
 - clarify that developed land within a fenced area shall be excluded from the calculation of land required to be in agricultural use
 - expand acceptable documentation of income from agricultural products to include an affidavit on a form provided by the County and supported by tax or other verifiable documentation substantiating agricultural use of a property in question, and
 - provide that income thresholds be adjusted by the HLUET Committee for inflation at least once every three years if warranted versus being automatically adjusted annually by the Consumer Price Index.
- Revision to the guideline relating to Open Space Easements to clarify that landscaping in keeping with the natural setting of the parcel in question shall be exempted from the 5% maximum development calculation, and
- Determination that applications for discretionary permits deemed “complete” prior to adoption of Williamson Act Guidelines by the Board shall be processed under the Interim Guidelines approved by the Board in June 2005.

On November 29, HLUET Committee also requested the report to the Board be revised as follows:

1. The HLUET Committee requested staff revise the draft recommendations to be presented to the Board of Supervisors, to provide that appeals from staff decisions regarding requests for interpretation of policies and Guidelines may be appealed to the Planning Commission or the Board of Supervisors.

As proposed, requests for interpretation or clarification of policies and Guidelines would first be heard by a committee composed of the Planning Manager, Williamson Act program manager and Deputy Agricultural Commissioner; and the decision of this group could be appealed to a second level staff committee composed of the Director of Planning and Development, Director of Agriculture and Environmental Management and Deputy County Counsel. As an option to including a third level of appeal to the Planning Commission or Board of Supervisors, Administration suggests using an Administrative Hearing Officer. With this alternative, the Board would provide a third level of appeal and could monitor the appeal process as any/all requests for interpretation made by the staff committees and the Administrative Hearing Officer would be reported to the Board in the twice annual implementation reports. *If the Board determines a third level of appeal is warranted at the outset of the revised programs, staff requests the board determine the appropriate individual/body to hear such appeals at this time.*

Additional Information Requested and Proposed Revisions Based on Input from the Board and Public at the January 24, 2006 Meeting

Frequency of Review of Minimum Annual Required Revenue: A review of the Survey of Counties (Attachment 5) reveals that not all comparison counties require Williamson Act participants to generate annual revenue. Of those that do, none have a formally prescribed frequency for review/revision of this requirement. Nonetheless, several counties have regularly reviewed and revised income requirements and/or have such review/revisions pending. Santa Clara County's proposed Guidelines call for the minimum annual revenue threshold to be reviewed at least once every three years, and revised if warranted. *If the Board prefers a different frequency of review, staff should be directed to revise the Guideline for General Administration, Monitoring and Enforcement of Williamson Act Contracts and Open Space Easement Agreements accordingly.*

Appeal Processes Used by Other Counties: Attachment 5 also reveals that in all but one case, the Board of Supervisors for that County is the direct or indirect "final" appeal body from decisions of staff. In the one exception, only the Board makes any/all decisions regarding Williamson Act matters and so they are the first and last body of approval; any further appeals would be in a court of law. *Staff requests the Board provide direction regarding the preferred third level to be included in the Guidelines governing the SCC Williamson Act and Open Space Easement programs.*

Feedback from DOC Regarding Timberlands: On January 23, 2006, Mr. Dennis O'Bryant, Acting assistant Director for Land Resource Protection, advised staff that the Department of Conservation was re-thinking their earlier formal guidance that timberlands should not be in the Williamson Act but rather in a different statute providing for Timber Protection Zones. On February 23rd, Mr. O'Bryant advised that confirmation or rescission of this earlier advice may not be forthcoming for some time. Staff suggested and Mr. O'Bryant agreed that it would, therefore, be reasonable to continue to

include timberlands in the Williamson Act until/unless DOC is forthcoming with additional advice/direction.

On March 1, 2006, County staff met with representatives from commercial timber producers and developed proposed revisions to the Guideline for Commercial Agriculture (see Attachment 8). These revisions now include timber and forest products as agricultural commodities and establish qualifications to remain in the Williamson Act.

DOC and the State Board of Forestry continue to review that State's position on Timber Protection Zones and may offer additional guidance in this area. Staff will return to the Board with additional changes as warranted.

Proposed Revisions Based on Input from the Public at the January 24, 2006 Board Meeting

A third and final round of revisions to the Guidelines presented to the Board for consideration at this time have been revised based on comments at the Board meeting of January 24, 2006 as follows:

- Revised Footnote in Guideline for Commercial Agricultural Use and Guideline for Non-renewal Procedures to remove reference to the eligibility of only "contiguous" parcels for Joint Management Agreements
- Revised Guideline for Compatible Use Development and Guideline for Policies Governing Exchange of an Existing Williamson Act Contract for Open Space Easement Agreement adding language to define what is and is not considered "development" and how maximum permitted development (parcel coverage) will be calculated, and

On January 24th, Supervisor McHugh also requested staff prepare a matrix to include the size and type of parcel, including parcels under five acres in size, with corresponding options available to parcel owners and in what cases new houses would be permissible and of what size. See Attachment 6. Supervisor McHugh also suggested this document be used in community outreach to assist in informing interested parties. Once prepared, this document was posted on the Planning web page and was made available at the public information meeting held on March 6, 2006.

Final Revised Draft Guidelines

The final revised draft Guidelines and policies presented for Board consideration at this time are included as Attachments 7-12 [Probably need to revise this numbering] to this transmittal and will be summarized in the oral staff report prepared for this meeting. Revisions to the Guidelines since the January 24th Board meeting are presented in underline/strikeout format.

Public Notification

Consistent with notification efforts for all HLUET Committee and Board of Supervisors meetings on this subject, all contract holders were notified by mail that this matter would be on the Board of Supervisor's agenda on March 14th. In addition, the public was advised that the focus of desired input from the public at this meeting would be on new information presented by staff and that it would not be necessary to reiterate comments previously addressed to the Board members. (Attachment 13)

CONSEQUENCES OF NEGATIVE ACTION

If the County chooses not to revise its administrative practices relating to the Williamson Act, individuals subdividing or developing restricted parcels may be in breach of contract and subject to statutory penalties, including those prescribed by AB1492 (Laird, 2003).

STEPS FOLLOWING APPROVAL

The Clerk of the Board will agendize consideration of the Agricultural Preserve Map and program ordinances on the agenda of the HLUET Committee at its regular meeting in April 2006 and the Board of Supervisors meeting of May 2, 2006; or if directed, the Agricultural Preserve Map and ordinances will be agendized for Board consideration (only), in April 2006.

ATTACHMENTS

	<u>Document Title</u>	<u>Page(s)</u>
Attachment 1	Fiscal Impact - Revisions to Williamson Act Program	1
Attachment 2	Summary of Board Direction and Public Comment at 11/01/05 BOS Meeting and Staff Responses Included in Report to HLUET for 11/29/05 Meeting Titled: "Proposed Revisions to the Policies and Criteria Governing Administration of Santa Clara County's Land Conservation (Williamson Act) Program" Dated 11/18/05	2-10
Attachment 3	"Summary of Public Testimony and Responses Special HLUET Meeting - November 29, 2005"	11-22
Attachment 4	"Summary of Public Testimony and Responses Board of Supervisors Meeting - January 24, 2006"	

Attachment 5	Survey of Counties
Attachment 6	Options Available to Williamson Act Contract Holders (McHugh Request 1/24/06)
Attachment 7	Agricultural Preserve Map
Attachment 8	Proposed Guideline for Commercial Agricultural Use
Attachment 9	Proposed Guidelines for Compatible Use Development on Restricted Lands
Attachment10	Proposed Guidelines for Procedures for County Non-renewal of Williamson Act Contracted Parcels Substandard in Size
Attachment 10-A	Joint Management Agreement
Attachment 11	Proposed Guidelines for Policies Governing Exchange of an Existing Williamson Act Contract for Open Space Easement Agreement
Attachment 12	Proposed Guidelines for General Administration, Monitoring and Enforcement of Williamson Act Contracts and Open Space Easement Agreements
Attachment 13	Public meeting notification

Summary of Public Testimony and Responses Special HLUET Meeting - November 29, 2005 2 PM

This document contains a summary of public comments addressed to the County of Santa Clara Housing, Land Use Environment and Transportation (HLUET) Committee at a special meeting of the Committee on November 29, 2005. The subject of that meeting was consideration of proposed revisions to the County's Williamson Act (Act) program.

Public comments are followed by "notes" of information provided by the HLUET members or staff at the November meeting, and additional "responses" to questions and comments prepared subsequent to that meeting date. Other statements and speaker preferences are also summarized for information and reference.

1. **Arthur Graham:** Why are we proposing changes to regulations for standard parcels? What is the problem we're trying to solve? The State audit referenced issues with substandard parcels only. What is the justification for setting a particular percentage coverage requirement – the Act references only income threshold. He has a 126 acre parcel with a stream. It has taken him two years and significant expense to build bridge to access area he'd like to farm. Property also has a 1000 foot gully and is not usable for anything but recreation.

NOTE: At the HLUET meeting, Supervisor Gage responded that the County is drafting revised regulations to bring the program into compliance with State statute, and that the intent of the Act has always been to have parcels under contract that are in agricultural production.

Response: *The goal of the process underway is to ensure that its County's Williamson Act program complies with County goals and policies and with state statute. The State Department of Finance audit completed in 2002 identified some but not all necessary program revisions.*

State statute provides that cities and counties may not contract with private property owners unless their land is "devoted to agricultural use." This statement of required use is repeated in the preamble to every County contract. "Agricultural use" is defined as producing an agricultural commodity for commercial purposes. The test for land being "devoted" to agricultural use can, staff believes, be most straightforwardly confirmed by establishing a required percentage of land that shall, with limited exceptions, be devoted to commercial agricultural production: 75% coverage for substandard parcels and 60% for standard parcels. The term "agricultural use" also encompasses open space and public recreation uses, as those terms are defined in the law. However, those terms are very narrowly defined and most, if not all, of the land under contract in the County does not meet these definitions. (See Government Code section 51201(n) and (o).)

The concept of "income" produced by the land is raised in state statute as one of the ways of defining "prime land" (vs. how the land is used as a basis for eligible participation in Williamson Act.) It has also been introduced by staff as an

alternative means of qualifying parcels with crops that involve a high initial cost and high production value.

2. **Kenn Robert Weeks**: Chief, Uvas Fire Dept. Thanked Board for supporting Uvas Canyon grape-growers. Staff has done a fine job drafting revisions. Expanding Fire Department and negotiating for land for two additional fire houses. Requested confirmation there is an exemption for public safety use that would not jeopardize development rights of contract holders if they grant easements for firehouses. Recommended, as in Helena, MT, we require disclosure in the listing of contracted parcels for sale.

Response: *County counsel has spoken with Mr. Weeks about the Fire Department's issues and explained that, while the Board has discretion to determine that fire stations are compatible uses on Williamson Act lands, the County would need to conduct a property-specific analysis to ensure that the proposed fire station would meet the compatibility criteria. State law does not exempt public or quasi-public uses from these requirements. County counsel will research whether local jurisdictions have the authority to require real estate listings (vs. disclosures) to contain certain information.*

3. **Dhruv Khanna**: 48-acre parcel at Day and Watsonville Roads. The Act defines compatible uses to include agriculture, open space and recreational uses. Recommended we revise our definitions to conform to State statute. Is it right to change existing contracts without providing incentives to property owners to buy into those changes? Has 30 acres in grape vines— not all in current production — has intentionally limited production to reduce business risk. As proposed, the 10% restriction would limit development to 10%, ag. to 10%, recreation to 10% and open space to 10%. The 10% limitation on development is draconian — some recreational uses, (for example, golf driving ranges and skeet and trap shooting) should be exempt from the 10% as they can be reconverted to ag use.

Response: *The subject 48.52 acre parcel is a non-prime standard parcel that historically has had vineyards and a winery on the property. More recently, some of the vineyards have been removed and been converted to multi-use sports fields. The property owner has recently submitted a pre-application for a multiuse sports field with proposed special events facility for weddings, BBQ and/or picnics. The proposal includes the addition of a 4000 sq. ft. canopy and parking meant to accommodate 300-500 people. In addition, the pre-application indicates that the recreational areas will occupy approximately 11 acres of the site.*

The Act provides that for parcels to be eligible for Williamson Act contract, they must first be located in an established Agricultural Preserve within which agriculture, public recreation and open space, as defined in the Act, are permitted.

The County's Williamson Act contracts specify that the land is "devoted to agricultural use". "Agricultural use" is defined in state statute as producing an agricultural commodity for commercial purposes. Staff suggests the test of land

being “devoted” to agricultural use can most straightforwardly be confirmed by establishing the percentage of land devoted to commercial agricultural production: 75% for substandard parcels and 60% for standard parcels.

Other uses of contracted lands must be compatible with and incidental to agricultural use. (“Compatible uses” are defined in State statute and County Ordinance, and by attachment to every County contract.)

The 10% development restriction for parcels under Williamson Act, or 5% development maximum as proposed for Open Space Easement (OSE) parcels, governs the maximum area of physical development/construction of structures and above grade facilities (hardscape) on the land in question. These percentage restrictions do not apply to non-development related uses such as hunting and fishing. The restrictions would apply, however, to any structures related to those uses such as cabins. Whether a particular recreational use would constitute development would depend on the specifics of that use, most specifically, any structures or installations associated therewith.

Mr. Khanna’s property is 48 acres in size, a standard parcel and is planted in a high-income crop. If he cannot meet the 60% coverage eligibility requirement, the property owner should consider increasing the ag use on his land. Alternatively, he may qualify for the “Income Option” eligibility category; an Open Space Easement, or he may file for non-renewal. If the County initiates the non-renewal action, Mr. Khanna may file a protest which, if nothing else, would extend the period of tax advantage by 3 years.

4. **Shanna Boigon:** Representing SCC Realtor’s Association and Stakeholder Committee Member. Asked County to be sure to notice those who are currently out of the Agricultural Preserve and will be in, as well as those who are currently in and will be out, if new Preserve/Map is approved. Requests Guideline for Commercial Ag. be changed striking Agricultural Commissioner “may consider” and substituting Agricultural Commissioner “shall exclude” streams and outcroppings from calculation of farmable area. Recommends staff include use of a management agreement as an option in one of the scenarios. It’s the seller’s responsibility to disclose a contracted parcel, not the real estate professional. Disclosure is also on preliminary title report. Recommended staff provide assistance to those who want to cancel or switch to an Open Space Easement (OSE).

Response: *The County will adhere to specific requirements in the state statute as well as County ordinances in the preparation and distribution of public notice regarding altering/adopting the Agricultural Preserve Map.*

Staff believes it is important the Agricultural Commissioner retains flexibility and discretion when evaluating exceptions to the land coverage standard in order to ensure properties enrolled in the Williamson Act are truly devoted to the commercial production of agricultural commodities. As such, the Guideline for Commercial Agricultural Use, footnote #, 2 is amended to read:

*"The Agricultural Commissioner **shall** consider exceptions to the land coverage standards when there are natural land features present, such as streams or rock outcroppings, which the owner demonstrates are not conducive to the commercial agricultural uses appropriate for the property. **If more than 50% of the property is not conducive to commercial agricultural uses which are appropriate for the property, the property will be subject to non-renewal.**"*

5. **Rex Lindsay:** Stakeholder Committee member. Concerned that audit will be conducted every three years involving entering onto property without just cause. Has had a contract for 38 years, and always complied; now County wants to go off on a different track. Has followed Humboldt County case – believes it says we can't change our existing contracts. Said County is now trying to manage his property – tell him what he can and can't do with it. Range land is very sensitive land of seasonal growth. Over grazing would be disastrous. Coverage requirement is unnecessary. Requests Guideline for Commercial Agriculture be changed striking Agricultural Commissioner "may consider" and substituting Agricultural Commissioner "shall exclude" streams and outcroppings from calculation of farmable area.

NOTE: At the HLUET meeting, Lizanne Reynolds, Deputy County Counsel, advised Mr. Lindsay that the audit to take place every three years would be based on available documentation including the Assessor's questionnaire, aerial photographs and conversations with the property owner as necessary. Access to/onto a property would not be part of this normal compliance process, but rather would occur if the County had probable cause to believe a violation existed and would be arranged with the property owner.

Response: *The Humboldt County case found that the County's attempt to force a property owner to rescind the sale of lots covered by a Williamson Act contract was a material impairment of the property owner's contract rights. There was nothing in the contract that authorized the County to prevent such a sale. In contrast, the policies and guidelines under consideration by the Board in Santa Clara County would implement the existing contract language and State law. For example, they define what constitutes a commercial agricultural use and what types and amount of non-agricultural uses are incidental to and compatible with agriculture. They do not modify the contract.*

See #4 for comment regarding Agricultural Commissioner's discretion in calculating "farmable land".

6. **Bart Hechtman:** Asked for more than 3 minutes since representing many contract holders. Agreed to forward recommendations he did not have time to present directly to HLUET Committee members so that HLUET might give "direction" to the Board of Supervisors. Pleased with progress but more work to be done. Given recent decision in Humboldt County case, recommends caution in changing terms of use of contracted lands. Just because Department of Conservation (DOC) says it, doesn't make it necessarily so. Doesn't see the problem in establishing a percentage or income threshold option: the income

option developed by staff does not work for cattle ranchers. Recommends Guideline for Commercial Agriculture be changed - striking Agricultural Commissioner "may consider" and substituting Agricultural Commissioner "shall exclude" streams and outcroppings from calculation of farmable area. Perhaps what staff means is that "undeveloped" land is land available for grazing vs. land that is fenced shall be considered available for grazing. Why exclude parcels less than 5 acres in size from opportunity to switch to an Open Space Easement (OSE)? – may have "takings" claims. Requested the County expressly exclude landscaping from 5% development area max. for OSE's. Wants appeal of staff decisions/interpretations to Planning Commission. What is "enhanced design review"?

Response: See #5 for comment regarding the Humboldt County case.

See #4 for comment regarding Agricultural Commissioner's discretion in calculating "farmable land".

Staff recommends the Guideline for Commercial Agriculture be revised to clarify that developed land within a fenced area shall be excluded from the land determined to be in agricultural use. Developed land is land encumbered with buildings or structures for Compatible Uses as defined. Development shall not exceed 10% of a contracted parcel.

Regarding the "takings" allegations, the property owners agreed to the contract restrictions in exchange for preferential property tax treatment. Requiring the property owners to comply with their contracts does not result in a "taking" of private property without just compensation, even if the contract precludes the owners from building homes on their property.

Staff recommends the Guideline for Policies Governing the Exchange of Williamson Act Contracted Land for Open Space Easement be revised to clarify that landscaping (softscape) that is in keeping with the natural setting and that is composed of natural features and vegetation generally found in the area of land in question shall be excluded from the 5% maximum development permitted under the OSE.

The existing Design Review process includes: 1) consideration of conformance with the County's General Plan and applicable zoning and other area/district specific design regulations adopted by the Planning Commission or Board of Supervisors; 2) mitigation of significant impacts raised in the context of an environmental review of proposed development of a site of archeological or historic significance; and 3) compatibility with the natural topography/environment and 4) mitigation of adverse visual impacts from proposed structures, grading and vegetation removal, through the use of paint color, reduced reflectivity value of exterior materials/treatment of the exterior of structures and installation of additional landscaping.

The proposed **enhanced** Design Review process would also consider: 1) allowing for the maintenance of the open space in large, contiguous areas capable of serving the various purposes of such open space, including but not limited to recreation and trails, agriculture, viewshed protection, habitat

preservation and wildlife corridors; 2) the clustering of structures, to the extent possible, in order to avoid noteworthy and valuable features of the land such as rock outcroppings, significant stands of mature trees and riparian areas; 3) balancing factors such as topography, visual impacts and conservation of natural resources and landscape features while also minimizing the need for grading and earthwork to the maximum extent possible.

7. **Brian Schmidt:** Committee for Green Foothills and Stakeholder Committee member. Generally supports staff recommendations. Shares concerns of DOC regarding switching from Act to OSE. Questioned whether the proposed OSE restrictions really mean anything. Recommends any parcels switching from Act to OSE be restricted to Act requirements for the length of the non-renewal period; or add a restriction that if the Assessor determines no tax advantage would accrue to a property switching to OSE as compared to a completely unrestricted property, then the "no expressed house size limitation" category of OSE should not be available to the property owner. Requested the County not consider roads as exempted from 5% development maximum – roads are not "open space". Should limit OSE's to parcels 10 or more acres in size. If Board elects to allow parcels between 5 and 10 acres to switch to OSE's, recommended prohibiting all development on those parcels.

Response: *As staff understands the suggestion, after a contract holder opts for the Open Space Easement Agreement alternative requiring enhanced design review, the Assessor would evaluate whether the enforceable OSE restriction resulted in a diminution of assessed value to a level lower than the properties factored base year value. If it did not, the property would be redesignated to one of the more restrictive easement levels (as conversion to the OSE could not be nullified).*

That suggestion goes beyond the Assessor's scope of responsibility. The Assessor is required to value non-Williamson Act restricted real property whenever there is a change in ownership; completion of new construction; or annually as of lien date January 1, if conditions have resulted in diminution of market value to a level lower than the factored base year value. Accordingly, the Assessor considers the impact of enforceable restrictions only under those conditions. The Assessor does not have the authority or resources to value property for the purpose of determining whether it qualifies for a specific type of Open Space Easement.

A value determination for the purpose of qualifying for the easement could be based upon an independent appraisal prepared at the owner's expense and submitted with the application for the OSE. This would eliminate uncertainty regarding whether the applicant qualifies for the "enhanced design review" OSE. However, the remaining fundamental problem would be that owners with essentially similar property would be treated differently regarding being allowed to obtain an "enhanced design review" OSE. For example, two parties each own 10-acre parcels which have a non-restricted (i.e. no Williamson Act, no OSE) market value of \$1.5 million as of the valuation date. One property has been owned since 1975 and has a factored base year value of \$143,465; the other property was acquired early in 2005-06 and has a January 1, 2006 factored base

year value of \$1,479,000; each assessee requests a "enhanced design review" OSE. The market value, with the OSE encumbrance, is estimated to be \$1,425,000 as of January 1, 2006. The owner of the property with the \$143,465 factored base year value would receive no tax advantage and would be precluded from obtaining an "enhanced design review" OSE while the owner of the property with the \$1,479,000 factored base year value would be allowed to proceed with the easement. Under the above scenario, long-term owners are penalized and recently acquired property could be immediately developed.

8. **Sean Cottle:** Represents a property owner with a pending application for BSA and grading permit. What will be the impact of revised regulations on his client? Regarding Attachment F (Non-renewal), what if a property owner is in the process of establishing an ag. use but only has a 2 year income stream (vs. 3 out of past 5 years)? Requested reinstatement of the one-time 3-year option to establish a crop into Guidelines; and inclusion of a sunset/termination date on this option. Requested that the definition of "nurseries" also include palm trees.

NOTE: Supervisor Gage referred him to staff to further discuss specific case issues/concerns.

Response: *Mr. Cottle commented that the Guidelines should address Christmas trees and palm trees in a similar manner. Staff believes the proposed Guidelines already treat these products in a similar manner.*

The "Guideline for Commercial Agricultural Use" presented for HLUET Committee's consideration defines "agricultural commodities" as a "... unprocessed product of farms, ranches, and production nurseries." As such, retail nurseries, wholesale nurseries, nursery stock holding yards and broker operations are excluded, and only nurseries truly "producing" (growing) nursery stock are eligible for program participation. Christmas trees and palm trees are treated in a similar manner in these situations.

In regards to achieving the annual income thresholds, the Guidelines permit the Agricultural Commissioner to consider income projections from future sales generated from non-bearing fruit and nut orchards. Production nurseries, including those growing either Christmas trees or palm trees, are not included in this provision.

All applications for any discretionary permit deemed complete prior to adoption of final Act Guidelines by the Board of Supervisors, shall be processed under the Interim Guidelines approved by the Board in June 2005.

9. **Dennis Wong:** Has a BSA. Believes 15-year OSE term is unreasonable; not legally required and proposed only to satisfy DOC. Wants existing BSA holders to have 3-5 years to establish an ag. use. If he leases his land, doesn't have access to lessee's tax documents – therefore, other types of proof of revenue must be identified as acceptable.

Response: *Staff recommends that the Guideline for Commercial Agricultural Use be amended in regards to the documentation necessary to substantiate a commercial agricultural use as follows:*

“Annual revenue will be validated by an affidavit on a form provided by the County and with tax forms or other verifiable documents substantiating the annual revenue generated by the commercial agricultural use of the property.”

10. **J. P. Rouland:** Bought 150 acres. It was cheap. Land has never been farmed. Much of it at 60% grade. Would like to farm it but must live on land to do so and currently resides too far away to tend, but cannot get permit for a house unless he's already established an ag. use. Contract he signed said he could have a house for himself and his “servants”. Does not understand what's changed – feels cheated.

Response: *Based upon the information provided, it appears Mr. Rouland has a standard parcel that has never been used for agriculture. He wants to stay in the Act. His options are to consider leasing his land to a tenant who can expand his grazing/ag. use onto this land; to proceed to establish an ag use on his land subject to County non-renewal when audited in the next three years; to non-renew and file a protest to extend the tax advantage for three years; or to transfer to an Open Space Easement if the parcel meets the criteria.*

11. **Howard Hall:** 26 acres left of larger piece that belonged to his family. Used to raise cattle on his land. In recent years has been leasing it out for grazing. Income from lease so small he has not segregated amount out from other income – could do so but if must show 3 of past 5 years income to qualify to stay in Act cannot comply. Requested reinstatement of the 3 year opportunity to establish ag. use into the Guidelines.

Response: *Based on the information provided, the speaker has a substandard non-prime parcel which has been being leased for grazing purposes in recent years for an unspecified amount. If the land does not generate \$2000 in annual revenue, the property owner may want to consider the following options: 1) execute a joint-management agreement with adjacent property owner to expand grazable land area (to meet standard parcel definition); non-renew and file a protest to retain tax advantage for 3 additional years; or 3) convert to an OSE if the criteria can be met.*

See #9 for comment regarding acceptable documentation of income from agricultural uses.

12. **Larry Matteson:** Realtor. Concerned that “enhanced design review” will be discretionary vs. ministerial review. 5% development maximum in OSE's should exclude landscaping. Believes 15 year OSE term would be excessive. Thinks the number of Building Site Approvals (BSA's) provided to HLUET may be low and asked that the numbers be checked. Requested clarification on the situation faced by a client who had let his BSA expire, and owners in a subdivision where site approvals were granted at the time the subdivision was approved.

Response: *The County's Design Review process is always a discretionary, not ministerial, review process.*

County Planning Office records show the following breakdown of properties under Williamson Act:

- *10 property owners have Building Site Approval (BSA) applications pending.*
- *10 additional contract holders with other discretionary applications pending including applications for Architectural Site Approval, Use Permit and Grading Permits.*
- *There are currently 9 Building Site Approval holders with Williamson Act Contracts who have not been issued Building Permits. Of these, 2 are standard properties; 7 are substandard. Of the 7 substandard properties, 1 is a parcel less than 5 acres in size.*
- *Since 2001, 21 parcels with Building Site Approvals have been issued Building Permits. (Of those 21, as of 12/1/05, 10 have completed construction; the remaining 11 are in various stages of construction/inspection.)*

If a BSA holder was issued a Building Permit and allowed the permit to lapse without doing substantial construction, that permit cannot be reinstated. The Property owner will be required to resubmit for a Building Permit, and will be subject to the Williamson Act, and all other relevant Ordinances and Codes in force and effect at the time of resubmission. The number of BSA holders who, overtime, were issued and allowed their Building Permit's to lapse, is unknown.

Contract holders with substandard parcels created as part of a subdivision, received "site approval" as part of the standard subdivision approval process. Site Approval authorizes (future) development on a parcel, subject to compliance with all Ordinances and Codes in force at the time application is made for a specific building or structure. Also, if the property is subject to the Williamson Act Contract or an Open Space Easement at the time building permits are applied for, all requirements of the Act/Easement (including the requirement for agricultural use per the Act and/or limitation on percentage of developable area under the Act or Easement) will be required before a Building Permit can be issued.

Contract holders with substandard parcels created as part of a subdivision, can anticipate being issued a notice of non-renewal in 2006. If they can establish they have existing agriculture on their land meeting the adopted criteria; or can/have entered into a joint management agreement for the continued use of their land for agricultural purposes, the non-renewal notice will be withdrawn.

13. **Kristin Tarabetz:** Has non-prime 10+ acre parcel in foothills. Wants to have property reclassified prime. Property in family since 1932 – now adjacent inherited parcels in many family member names. Investigating "joint management agreement" concept but may not work because of family members involved. Once apricot orchards, trees diseased and allowed them to die-back.

Recently planted some persimmons and pomegranate trees, but very low yield to date. Questioned how could I keep my property in the Act for the tax advantage?

NOTE: At the HLUET meeting, Supervisor Gage referred Ms. Tarabetz to staff to further discuss case specifics.

Response: *Based upon the information provided, the subject property appears to be a substandard parcel with dead and dying apricot trees. There does not appear to be a history of farm income in the past five years and the owner expressed difficulty in establishing new trees.*

The property does not have an existing commercial agricultural use under the proposed Guidelines. Further, the owner's situation exemplifies how difficult and expensive it is to establish and maintain a commercial agricultural use on a substandard, non-prime property.

Options the property owner may wish to consider include the possible conversion to OSE or non-renewal. Filing a protest to the re-assessment can retain a tax advantage for the property owner for 3 additional years. An OSE may provide an unspecified level of on-going tax relief to the property owner.

14. **Consuelo Crosby:** Owns 15 acres close to Monterey Road. Purchased 30 years ago – prune orchards at that time. Old trees died off during drought -- did not replant. Property also designated “Greenbelt”. Concerned about what is going to happen to her property – it is identified one place as “Open Space” and another place as “Greenbelt”. This parcel was non-renewed by the owner two years ago.

Response: *Property within the Coyote Greenbelt has a General Plan and zoning designation of either Agriculture-Large Scale or Agriculture-Medium Scale. The Zoning Ordinance identifies what types of uses are allowed on these properties. Agriculture-Large Scale is the most restrictive. Properties that are subject to Williamson Act contracts have further restrictions on their uses. There are no additional restrictions associated with being in the “Greenbelt.”*

Options available to this property owner would include establishing an agricultural use in order to develop a compatible use during the owner-initiated non-renewal period underway; or transferring to an OSE subject to meeting the requirements of this program.

15. **Jenny Derry:** Executive Director SCC Farm Bureau and Stakeholder Advisory Committee member. Generally support staff recommendations. Farm Bureau does not support 15 year OSE term – should be a true option of same length contract as Act. Bureau recommends that all development be prohibited on parcels between 5 and 10 acres in size proposing to switch to OSE. Recommends right of appeal to Planning Commission and Board of Supervisors.

Response: The recommendations of the speaker are acknowledged.

16. **Ken Churchill:** Owns 32 acres near Chesboro Road. Has oats and grazing on his land generating about \$2500 income annually. Has 10 acres not farmable/grazable because of grade; concerned that will be included in 75% required land coverage requirement. Also has 2 box springs on land. Income threshold or percentage coverage approach might work. Would like to stay in the Act.

Response: *Based upon the information provided, it appears Mr. Churchill owns a substandard parcel generating sufficient income to qualify as producing viable commercial agriculture but may not meet the 75% coverage requirement. The proposed guidelines provide that the Agricultural Commissioner may make exceptions to the area calculated to be farmable/ranchable where the owner can demonstrate natural land features are not conducive to same. Other options to this property owner would include a joint management agreement with adjacent property owner to expand grazable land area (to meet standard parcel definition); County initiated non-renewal followed by property owner filing a protest to retain tax advantage for 3 additional years; possible conversion to OSE.*

17. **Robert Weeks, Sr:** Expressed concern that the name "Open Space Easement" may/will be misunderstood especially in light of recent Supreme Court eminent domain case. Recommends we use Open Space Conservancy or some other name as "old timers" think the word "easement" means the County wants to "grab" their property.

NOTE: At the HLUET meeting, Lizanne Reynolds, Deputy County Counsel, advised Mr. Weeks that the term "Open Space Easement" comes from the enabling legislation: Open Space Easement Act of 1974, and cannot be changed. She also explained that conveying an open space easement to the County has no relation to the County taking the property through the eminent domain process.

Response: *Staff will do further education and outreach to help property owners understand the OSE.*

18. **LETTER RECEIVED SUBSEQUENT TO THE 11/29/05 HLUET MEETING.**

Subsequent to the HLUET meeting of 11/29, Mr. Bart Hechtman submitted a letter dated 12/1/05 (attached for reference), that included one point unduplicated by his or other speakers comments at the meeting on 11/29/05.

Comment: Point #9 in Mr. Hechtman's letter states his belief that the County's Williamson Act program income eligibility figures should not be adjusted annually based on the CPI, but rather recommended adjustments should be brought back to the Board, with evidence supporting any adjustment, in five or ten years.

Response: Staff recommends footnote 3 in the Guideline for Commercial Agricultural Use, be revised to state that income thresholds shall be reviewed by the HLUET Committee at least once every three years, and adjusted if/as justified and warranted.

JHE:mh 12/22/05

October 21, 2005

Dear Interested/Affected Party,

I am writing to let you know of several upcoming meetings on proposed changes to the County of Santa Clara's Williamson Act Program. The first will be a meeting of the Board of Supervisors to consider the proposed program changes and give direction to staff. The Supervisors meeting will be followed by a meeting of the Board's Housing, Land Use, Environment and Transportation (HLUET) Committee, charged with responsibility to review the actual proposed Ordinance changes and make recommendations prior to sending the Ordinance back to the Board for final action.

Also, I'd like to thank those of you who accepted our invitation to attend informational meetings, and a meeting of the (HLUET) Committee held earlier this month, to hear the specific proposed changes and learn how they would affect current and future Williamson Act contract holders. Over 400 of you attended one or more of these meetings, and shared valuable comments and questions. Your participation, and that of the Williamson Act Stakeholder Committee (comprised of representatives from local farming, real estate, cattle, open space, environmental and property assessment interests), has been instrumental in shaping the proposed program changes.

An overview of the proposed Williamson Act program changes, including options developed in response to public input, is attached (see Attachment 1). They are outlined at greater length on the County's Web site (<http://www.sccplanning.org>) and will be discussed at the upcoming meetings:

County of Santa Clara Board of Supervisors Public Meeting

(Consider proposed County Williamson Act Program concepts and criteria)

November 1, 2005, 2:00 p.m.

Board Chambers

County Government Center

70 W. Hedding Street, San Jose

HLUET (Housing, Land Use, Environment and Transportation Committee) Public Meeting

(Review and discuss proposed County Williamson Act ordinance revisions and related documents)

November 16, 2005, 1:30 p.m.

Board Chambers

County Government Center

70 W. Hedding Street, San Jose

In addition, a County of Santa Clara Board of Supervisors public meeting to consider the proposed Williamson Act Ordinance revisions and related documents is tentatively scheduled as follows:

Board of Supervisors Public Meeting (TENTATIVE)

(Take action on the proposed County Williamson Act ordinance revisions)

December 6, 2005, 2:00 p.m.

Board of Supervisors Chambers, First Floor

County Government Center

70 W. Hedding Street, San Jose

I encourage your attendance at and involvement in these meetings to learn more about what is being proposed. If you have questions or comments, please share them at the scheduled meetings or contact County staff.

Planning Department

Dana Peak - (408) 299-5798 or Dana.Peak@pln.sccgov.org
Re: Non-renewal, Open Space Easements,
Monitoring/Enforcement, Compatible Use Development

Cherry Maurer - (408) 299-5746 or
cherry.maurer@pln.sccgov.org
Re: Agricultural Preserve Map

Assessor's Office

Frank Giordano - (408) 299-5350 or
Frank.Giordano@asr.sccgov.org
Re: Property Valuation

Agricultural Commissioner's Office

Greg Van Wassenhove (408) 918-4600
Greg.Van.Wassenhove@aem.sccgov.org
Kevin O'Day (408) 465-2902
Kevin.O'Day@aem.sccgov.org
Re: Commercial Agriculture Guidelines

Thank you in advance for your attention and participation.

Sincerely,

Mrs. Jody Hall Esser
Interim Director
Department of Planning and Development

Attachments

Revised Draft

Overview of Williamson Act Proposals

General Williamson Act Principles (New and Existing Contracts)

- Land under contract must be used primarily for commercial agriculture. Compatible uses are also allowed so long as land is primarily used for agriculture.
- State law presumes that land must be at least 10 acres (prime) or 40 acres (non-prime) to sustain commercial agricultural use. Staff recommends that no new contracts be approved that do not meet these minimum sizes.
- Property is assessed at the lower of its (i) current market value; (ii) Williamson Act value for agricultural use or; (iii) Prop. 13 value. Compatible uses on contracted lands (e.g., residences) assessed at normal values (lower of current market value or Prop. 13 value).
- Contracts last for 10 years. May only be terminated through non-renewal (9-year phase-out) or cancellation (strict findings, high fee). If non-renewed, contract restrictions remain in effect throughout non-renewal period.

Agricultural Preserve (New and Existing Contracts)

- Preserves are generally required to be 100 contiguous acres. 10 distinct agricultural preserves are proposed (1 large, 9 small).
- Will cover all land zoned AR (Agricultural Ranchlands), A (Exclusive Agriculture), HS (Hillside), and some lands zoned RR (Rural Residential) in San Martin. (Note: For San Martin RR lands, would need to adopt zoning overlay to conform the zoning to Williamson Act requirements.)

Commercial Agriculture Guidelines (New and Existing Contracts)

- Agricultural use means commercially produced agricultural commodities (unprocessed plant and animal products). Horse-related uses (boarding, training) may be allowed as compatible uses only if land is primarily used for producing agricultural commodities.
- If property is at least 10 acres prime or at least 40 acres non-prime, at least 75% of land must be used for commercial agriculture in 3 of last 5 years. Owners must also substantiate farm revenue.
- For properties less than 10 acres prime, 90% of land shall be used for commercial agriculture and generate \$3,500 in 3 of last 5 years. For properties less than 40 acres non-prime, 90% of land shall be used for commercial agriculture and generate \$2,000 in last 3 of 5 years.
- Farm revenue must be substantiated with tax documents.

NOTE: On 10/5/05 the HLUET Committee directed staff revisit the \$3500 and \$2000 amounts (bullet three above). Staff reviewed these thresholds but does not recommend these amounts be changed

Compatible Use Development Guidelines (New and Existing Contracts)

- Land must be primarily in agricultural use before any compatible use development will be considered.
- Compatible uses must meet criteria in state law and County ordinance (e.g., must not displace or interfere with existing or future commercial agricultural use of property, must be “incidental” to agricultural use)
- No more than 10% of property (maximum of 5 acres) may be devoted to compatible uses.
- Compatible uses must comply with siting criteria (e.g., clustering, minimal grading)

Nonrenewal of Substandard Parcels (Existing Contracts)

- All parcels not meeting minimum size criteria (10 acres prime, 40 acres non-prime) will be non-renewed in 2006.
- Board will establish general criteria for parcels to be non-renewed and delegate administration/processing to staff.
- Owner has 60 days to protest non-renewal. County will withdraw notice if owner demonstrates that land meets commercial agriculture guidelines.
- Undersized parcels that are contiguous to other contracted lands that are being collectively used for commercial agriculture may remain under contract if common owner agrees not to transfer undersized parcels or if separate owners sign and record joint management agreement.
- Property taxes for non-renewed parcels increase over the non-renewal period in accordance with a formula established by state law. This formula generally results in a relatively large increase in the first year and a more gradual increase thereafter. Tax increases may be delayed for first 4 years of non-renewal period if owner protests non-renewal.

Monitoring/Enforcement¹ (New and Existing Contracts)

- Enhanced public education/outreach. E.g., when Williamson Act property is transferred, information packet will be mailed to new owner regarding requirements for Williamson Act properties.

¹ Contingent upon additional funding/staff resources.

- Increased follow-up on agricultural questionnaire mailed by Assessor, which owner must sign on penalty of perjury. If owner fails to return questionnaire, will trigger follow-up by Planning and Agricultural Commissioner staff. If investigation discloses that property is not used primarily for agriculture, contract may be non-renewed.
- Proposals for development on contracted land will trigger compliance review. No development permits will be issued until all compatible use development criteria are met.
- Staff will review all contract lands on a regular basis to ensure contract compliance.
- Material breaches of contract will be processed in accordance with state law (AB 1492 (25% penalty)).
- Monitoring/enforcement fees – (1) annual fee for owners of substandard parcels (below 10- and 40-acre minimums) as a condition of not non-renewing their contract; (2) monitoring fee for owners who do not return Assessor's questionnaire, thus requiring follow-up investigation by staff.

NOTE: In response to input at the public information meetings October 3-4, 2005, staff developed the following policy option:

- At the owner's request, non-renewal would be deferred for up to 3 years to allow the establishment of a commercial agricultural use pursuant to an approved plan.

Open Space Easements (Existing Contracts; New Easements)

- State law allows owner to exchange Williamson Act contract for an open space easement under Open Space Easement Act of 1974.
- Definition of "open space" under Open Space Easement Act is very broad .
- Staff is proposing 10-acre minimum to be considered for easement exchange.
- Public access is not required.
- Easements must last at least 10 years and automatically renews for an additional year each year unless non-renewed. Termination process similar to Williamson.
- Two levels of easements proposed: (1) restricts development to 1,000 sq.ft residence (this category would maximize potential tax advantages); and (2) would permit development in excess of 1000 sq.ft. and impose Design Review for construction in excess of 2000 sq.ft, but in no case could development exceed 5% of property (maximum of 5 acres).
- Tax benefit of open space easement questionable. Depends on how easement affects property value, based on market sales of similarly restricted properties. E.g., if development restrictions are not very onerous, easement may not have much effect on property value.

- Owners of Williamson Act properties who do not have an agricultural use and meet the minimum acreage requirement for an easement would be allowed to construct a residence on their property, even if tax benefit is minimal.

NOTE: In response to input at the public information meetings October 3-4, 2005, staff developed the following policy options:

- Any non-renewed parcel, regardless of size, could request to transfer to an Open Space Easement during the 9-year Williamson Act non-renewal period
- Owners could choose a no-development tier that could provide greater tax advantage for those wishing to switch to an Open Space Easement and hold land in a natural state.

Jhe 11/17/05

MEMORANDUM

COUNTY OF SAN MATEO PLANNING AND BUILDING DEPARTMENT

DATE: September 25, 2007
TO: Board of Supervisors Environmental Quality Committee
FROM: Lisa Grote, Community Development Director LG
SUBJECT: San Mateo County Green Building Program

In mid-July 2007, Supervisor Church requested that the Planning and Building Department pursue the development of a Green Building Program, including a priority permitting process, for San Mateo County. Board members were copied on the correspondence in which Supervisor Church outlined the benefits of developing such a program. Some of these benefits include: lowering energy usage, reducing the operating and maintenance costs for buildings; providing a healthier indoor environment; reducing waste in landfills; and reducing global warming impacts. He also indicated that forming a stakeholders group would help insure that all aspects of a potential program would be fully vetted prior to Planning Commission review and final action by the Board of Supervisors. We anticipate a stakeholders' group comprised of architects, builders, environmental group representatives, and the general public. I have attached Supervisor Church's memorandum for your reference.

Prior to selecting the stakeholders, beginning the meetings and developing a program for review and recommendation, I wanted to incorporate direction from the Environmental Quality Committee so that the proposed Green Building Program will be as complete as possible when it returns to the Committee for review and then is forwarded to the Planning Commission for review and to the Board of Supervisors for final action.

Our initial research indicates that there are several green building checklists available for use. The checklist that is specifically designed for single-family construction is the Single-Family Green Point Checklist. An organization called "Build It Green" developed the Single-Family Green Point Checklist, which is the basis for the third-party verification program called "Green Point Rated". The checklist is attached for your reference. The measures within the checklist are grouped into sections corresponding to the stages of construction. The measures are designed to approach single-family construction in a holistic manner. The checklist includes the following 14 sections: Site measures; foundation measures; landscaping; structural frame and building envelope; exterior finishes; insulation; plumbing; heating, ventilation and air conditioning; renewable energy; building performance; interior finishes; flooring; appliances; and "Other" techniques which go above and beyond the basics found in the preceding sections. A home can be considered green if it earns at least 50 points and meets the minimum points per category: Energy-30 points; Indoor Air Quality/Health-5 points; Resources-6 points; and Water-9 points.

The second checklist that is currently available for use is the one that the San Mateo County Public Works Department uses for all County sponsored construction projects. It is called the Countywide Sustainable Buildings Checklist and it can be applied to commercial, industrial, multi-family and single-family construction. It is also attached for your reference. The Countywide Sustainable Checklist also groups measures according to stages of construction, but it includes the goal that is being achieved by using a particular measure. For example, the checklist shows that by using any of the eight possible measures in the Site and Landscape group, a property owner would be helping achieve the goals of: 1) Respecting the site; and 2) Saving water and reducing local water impacts. Inclusion of the 22 Goals adds a dimension to the Checklist that keeps the purpose of the Program uppermost in the user's mind.

The third checklist that is currently available is the Leadership in Energy and Environmental Design (LEED) checklist. It is also attached for your reference. This checklist has primarily been used for commercial and industrial buildings but a new residential component will be released in November 2007 as a pilot checklist. The LEED checklist includes the categories of: Sustainable Sites; Water Efficiency; Energy and Atmosphere; Materials and Resources; Indoor Environmental Quality; and Innovation and Design Process. The LEED certification process includes four levels of certification based upon a point system: Certified (45 points); Silver (60 points); Gold (75 points); and Platinum (90 points). Communities can either provide different incentives for each level of certification or encourage the same level of certification for every project by providing incentives to reach that specific level.

The cost to the property owner of implementing a Green Building Program will need to be evaluated during Program development. Our initial research indicates that the costs to a property owner of incorporating green building techniques may range from 2 to 7% more than would otherwise be incurred. The potential to reduce monthly costs can start immediately and many of the techniques can "pay for themselves" within five to eight years. I've attached an article entitled "Green Building Costs and Financial Benefits" for your review. The article focuses on two particular benefits: lower energy costs; and health and productivity benefits. It concludes that these benefits outweigh the initial costs of incorporating green techniques into a construction project. These costs and benefits will be explored further as the Program is being developed.

Planning and Building staff has started collecting information from other Counties and Cities that have or are developing green building programs. These include: San Bernardino County; Marin County; City and County of San Francisco; the City of Santa Rosa; and the City of Palo Alto. I've attached excerpts from information published by San Bernardino County about how it has incorporated Green Building into its General Plan update and its building permit review process. Staff has also recently attended a Build It Green Conference in Redwood City and will be attending the West Coast Green Conference in San Francisco, September 20 – 22.

In addition to evaluating the different checklists the County may want to use, and the potential costs to property owners, stakeholders will consider the various incentives that can be used in green building programs including permit expediting for reaching a certain number of points or level of certification and fee reductions or waivers. In addition, the stakeholders will weigh the

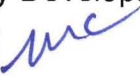
advantages and disadvantages of voluntary and mandatory programs. Counties and Cities have used various approaches and the building and construction industry has commented on the success of those approaches.

We look forward to receiving direction from the Environmental Quality Committee on September 25, 2007 regarding additional thoughts, techniques and approaches to developing a Green Building Program for San Mateo County. We anticipate convening the stakeholders group in mid-October through January 2008 with recommendations to the Environmental Quality Committee by February 2008, Planning Commission review at the end of February. Action by the Board of Supervisors will be scheduled in March 2008.

Attachments:

- A) Memorandum from Supervisor Church to Lisa Grote, dated July 18, 2007
- B) Single-Family Green Point Checklist
- C) San Mateo County Sustainable Buildings Checklist
- D) LEED checklist
- E) Green Building Costs and Financial Benefits article by Gregory H. Kats
- F) Green County San Bernardino Information

**COUNTY OF SAN MATEO
INTERDEPARTMENTAL CORRESPONDENCE**

To: Lisa Grote, Director of Community Development
From: Supervisor Mark Church, District1 
Subject: *Proposed Green Building Priority Permitting Incentive for Planning Department*
Date: July 18, 2007

Green Building benefits our community in many ways. Green Building can lower energy usage, lower operating and maintenance costs, provide a healthier indoor environment, reduce waste in landfills and reduce global warming impacts. To encourage the development of Green Buildings in our unincorporated areas, I am proposing that the Planning and Building Department develop a priority permitting process for both residential and commercial builders who choose to build "green" in San Mateo County.

There has been a lot of interest in the subject of green building and sustainability in our community and I believe this proposal will reflect our County's commitment to conservation and to being better environmental stewards. Developing a priority permitting process for those who choose to build green is in alignment with our Shared Vision 2010, goal #12, which states that land use decisions shall consider impacts on the environment and on surrounding communities.

The San Mateo County Planning Department processes an estimated 1500 building permit applications each year. Up to 90% of those applications are for residential units and 10% are for commercial or industrial use. It currently takes planning and building staff an average of six to seven weeks to complete an application for a residential or commercial building permit. Under a Green Building Priority Permitting Incentive Process, a builder that chooses to build "green" would have his/her application for a new building or major addition processed in three weeks; half the time of a standard permit application.

I propose that Planning Staff create a checklist of requirements that would qualify a building to be green. This "green check-list" would include, but not be limited to, elements such as design, construction, operation of buildings that employ materials and methods that promote natural resource conservation, energy efficiency, and good indoor air quality. This "green building check-list" would be made available to all permit applicants and work on a point system. An applicant would earn points by meeting individual requirements on the "green checklist". If an applicant's final point total meets the predetermined criteria for a green building, the applicant would be rewarded with a faster turnaround time for his/her application. As you know, our Public Works office

Memo to Lisa Grote
July 18, 2007
Page 2

already has a checklist for sustainable building under the County Green Building Program, and this checklist could be possibly used as a template for the Green Building Priority Permitting Incentive Program.

Two other possible templates for a checklist the County might use include the LEED (Leadership in Energy and Environmental Design) checklist or the Green Point checklist. The LEED checklist applies to single-family residential, multiple-family residential and commercial uses. The LEED program includes four different levels based on a point system: Certified (45 points); Silver (60 points); Gold (75 points); and Platinum (90 points). The Green Point System applies only to single-family and multiple family residential uses. A home can be considered "green" if it earns at least 50 points. In both cases the rating system is based on earning points in specific categories including but not limited to: structural building elements; exterior finishes; insulation; plumbing; site orientation and design; landscaping; and renewable energy. I would anticipate that any recommendations brought forward to the Board of Supervisors for consideration would include an analysis of all three possible checklists: the County's current checklist; the LEED checklist and the Green Point Checklist.

The Green Building Priority Permitting Incentive program would be voluntary. Currently, the City of San Francisco, the City of Berkeley, and the County of Marin have similar policies or are in planning phases to expedite building permits as an incentive for green building construction. *Jurisdictions with Priority Permit programs have resulted in increased construction of green buildings.*

A Green Building Priority Permitting Incentive program will have positive impacts for the applicant, contractor, and the County. Although initial outlays may be more expensive in terms of materials or techniques, the applicant will save in the long term on future energy bills and increased property values. By speeding up the permitting process, contractors can start and finish projects quicker, allowing them to move onto new projects. Contractors will also save time and money by not having to wait as long for permits to start construction. And of course, the increase in the number of green buildings will benefit the County and the environment.

Based on the above, I am requesting that you, as Director of Community Development, develop a Green Building Priority Permitting Incentive Program for the Board of Supervisors' consideration. When developing such a program for San Mateo County, I would like you to consider the costs to the property owner that may be associated with the use of "green" techniques, how long these techniques would take to pay for themselves, the availability of "green" building materials and the possibility of a phased approach to implementing mandatory Green Building standards in the future.

Memo to Lisa Grote
July 18, 2007
Page 3

Prior to consideration of the proposed policy, I would recommend that staff convene meetings of all relevant stakeholders, including, but not limited to, representatives of the general public, architects, contractors and environmental groups. The policy should then be reviewed by the Environment Quality Standing Committee and the Planning Commission, and thereafter be presented to the entire Board of Supervisors.

cc: Supervisor Rose Jacobs Gibson, President
Supervisor Jerry Hill
Supervisor Richard Gordon
Supervisor Adrienne Tissier
John Maltbie, County Manager
Tom Casey, County Counsel
David Boesch, Assistant County Manager
Mary McMillan, Deputy County Manager
Peggy Jensen, Deputy County Manager
Jim Porter, Director of Public Works

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Chapter Three: Single-Family GreenPoint Checklist

The GreenPoint Checklist offers builders, homeowners and municipalities a tool to assess how environmentally friendly or green a home is. This checklist is also the basis for Build It Green's third-party verification program—GreenPoint Rated. GreenPoint Rated was developed with the cooperation of local builders, city planners and building officials. Each green measure has been assigned a point value based on its benefits to the homeowners and the environment, as well as its ease of implementation.

A home can be considered green if it fulfills the prerequisites, earns at least 50 points and meets the minimum points per category: Energy (30), Indoor Air Quality/Health (5), Resources (6), and Water (9). Please contact Build It Green for a list of certified GreenPoint Raters if you are interested in obtaining a green home rating.

"Centex Homes continues to pursue sustainable building methods and practices in all our Northern California neighborhoods. The GreenPoint Checklist provides a meaningful way to gauge our progress."

—Jeff Jacobs, Centex Homes

Single-Family GreenPoint Checklist 2007 EDITION

POINTS PER CATEGORY					
	Community	Energy	IAQ/Health	Resources	Water
A. SITE					
1. Protect Topsoil and Minimize Disruption of Existing Plants & Trees					
a. Protect Topsoil from Erosion and Reuse after Construction	1				1
b. Limit and Delineate Construction Footprint for Maximum Protection					1
2. Deconstruct Instead of Demolishing Existing Buildings On Site				3	
3. Recycle Construction Waste (Including Green Waste)					
a. Minimum 50% Waste Diversion by Weight (Recycling or Reuse) - Required				P	
b. Minimum 65% Diversion by Weight (Recycling or Reuse)				2	
c. Minimum 80% Diversion by Weight (Recycling or Reuse)				2	
4. Use Recycled-Content Aggregate (Minimum 25%)					
a. Walkway and Driveway				1	
b. Roadway Base				1	
Site = Total 12					
B. FOUNDATION					
1. Replace Portland Cement in Concrete with Recycled Flyash or Slag					
a. Minimum 20% Flyash or Slag				1	
b. Minimum 25% Flyash or Slag				1	
2. Use Frost-Protected Shallow Foundation in Cold Areas (C.E.C. Climate Zone 16)				3	
3. Use Radon Resistant Construction (In At-Risk Locations Only)			1		
4. Design and Build Structural Pest Controls					
a. Install Termite Shields & Separate All Exterior Wood-to-Concrete Connections by Metal or Plastic Fasteners/Dividers				1	
b. All New Plants Have Trunk, Base, or Stem Located At Least 36 Inches from Foundation				1	
Foundation = Total 8					
C. LANDSCAPING					
1. Construct Resource-Efficient Landscapes					
a. No Invasive Species Listed by Cal-IPC Are Planted					1
b. No Species Will Require Shearing				1	
c. 75% of Plants Are Drought-tolerant California Natives, Mediterranean, or Other Appropriate Species					3
2. Use Fire-Safe Landscaping Techniques	1				
3. Minimize Turf Areas in Landscape Installed by Builder					
a. All Turf Will Have a Water Requirement Less than or Equal to Tall Fescue (0.8 plant factor)					2
b. Turf Shall Not Be Installed on Slopes Exceeding 10% or in Areas Less than 8 Feet Wide					2
c. Turf is <=33% of Landscaped Area (total 2 points)					2
d. Turf is <=10% of Landscaped Area (total 4 points)					2
4. Plant Shade Trees					3
5. Group Plants by Water Needs (Hydrozoning)					2
6. Install High-Efficiency Irrigation Systems					
a. System Uses Only Drip, Bubblers, or Low-flow Sprinklers					2
b. System Has Smart Controllers					3
7. Incorporate Two Inches of Compost into the Top 6 to 12 Inches of Soil					3
8. Mulch All Planting Beds to the Greater of 2 Inches or Local Water Ordinance Requirement					2
9. Use 50% Salvaged or Recycled-Content Materials for 50% of Non-Plant Landscape Elements				1	
10. Reduce Light Pollution from Site Lighting by Shielding Fixtures and/or Directing Light Downward	1				
Landscape = Total 31					

POINTS PER CATEGORY

Community Energy IAQ/Health Resources Water

D. STRUCTURAL FRAME & BUILDING ENVELOPE

1. Apply Optimal Value Engineering					
a. Place Rafters & Studs at 24-Inch On Center Framing				1	
b. Size Door and Window Headers for Load				1	
c. Use Only Jack and Cripple Studs Required for Load				1	
2. Use Engineered Lumber					
a. Beams and Headers				1	
b. Insulated Engineered Headers	1				
c. Wood I-Joists or Web Trusses for Floors				1	
d. Wood I-Joists for Roof Rafters				1	
e. Engineered or Finger-Jointed Studs for Vertical Applications				1	
f. Oriented Strand Board for Subfloor				1	
g. Oriented Strand Board for Wall and Roof Sheathing				1	
3. Use FSC-Certified Wood					
a. Dimensional Lumber, Studs and Timber: Minimum 40% (total 2 points)				2	
b. Dimensional Lumber, Studs, and Timber: Minimum 70% (total 4 points)				2	
c. Panel Products: Minimum 40% (total 1 point)				1	
d. Panel Products: Minimum 70% (total 2 points)				1	
4. Use Solid Wall Systems (Includes SIPs, ICFs, & Any Non-Stick Frame Assembly)					
a. Floors		2		2	
b. Walls		2		2	
c. Roofs		2		2	
5. Reduce Pollution Entering the Home from the Garage					
a. Tightly Seal the Air Barrier between Garage and Living Area			1		
b. Install Garage Exhaust Fan OR Build a Detached Garage			1		
6. Design Energy Heels on Roof Trusses (75% of Attic Insulation Height at Outside Edge of Exterior Wall)		1			
7. Design Roof Trusses to Accommodate Ductwork		1			
8. Use Recycled-Content Steel Studs for 90% of Interior Wall Framing				1	
9. Thermal Mass Walls: 5/8-Inch Drywall on All Interior Walls or Walls Weigh more than 40 lb/cu.ft.		1			
10. Install Overhangs and Gutters					
a. Minimum 16-Inch Overhangs and Gutters				1	
b. Minimum 24-Inch Overhangs and Gutters		1			

Structural Frame and Building Envelope = Total 36

E. EXTERIOR FINISH

1. Use Recycled-Content (No Virgin Plastic) or FSC-Certified Decking				2	
2. Install a Rain Screen Wall System				2	
3. Use Durable and Noncombustible Siding Materials				1	
4. Use Durable and Noncombustible Roofing Materials				2	

Exterior Finish = Total 7

F. INSULATION

1. Install Insulation with 75% Recycled Content					
a. Walls and/or Floors				1	
b. Ceilings				1	
2. Install Insulation That Is Low-Emitting (Certified CA Section 01350)					
a. Walls and/or Floors			1		
b. Ceilings			1		
3. Inspect Quality of Insulation Installation before Applying Drywall		1			

Insulation = Total 5

G. PLUMBING

1. Distribute Domestic Hot Water Efficiently					
a. Insulate Hot Water Pipes from Water Heater to Kitchen		1			1
b. Insulate All Hot Water Pipes		1			1
c. Use Engineered Parallel Piping					1

POINTS PER CATEGORY		Community	Energy	IAQ/Health	Resources	Water
d. Use Engineered Parallel Piping with Demand Controlled Circulation Loop						1
e. Use Structured Plumbing with Demand Controlled Circulation Loop			1			2
f. Use Central Core Plumbing			1		1	2
2. Install Only High Efficiency Toilets (Dual-Flush or 1.3 gpf)						4
Plumbing = Total 17						
H. HEATING, VENTILATION & AIR CONDITIONING						
1. Design and Install HVAC System to ACCA Manual J, D, and S Recommendations			4			
2. Install Sealed Combustion Units						
a. Furnaces				2		
b. Water Heaters				2		
3. Install Zoned, Hydronic Radiant Heating with Slab Insulation			1	1		
4. Install High Efficiency Air Conditioning with Environmentally Responsible Refrigerants	1					
5. Design and Install Effective Ductwork						
a. Install HVAC Unit and Ductwork within Conditioned Space			3			
b. Use Duct Mastic on All Duct Joints and Seams			1			
c. Install Ductwork under Attic Insulation (Buried Ducts)			1			
d. Pressure Balance the Ductwork System			1			
e. Protect Ducts during Construction and Clean All Ducts before Occupancy			1			
6. Install High Efficiency HVAC Filter (MERV 6+)				1		
7. Don't Install Fireplaces or Install Sealed Gas Fireplace with Efficiency Rating Not Less Than 60% using CSA Standards				1		
8. Install Effective Exhaust Systems in Bathrooms and Kitchens						
a. Install ENERGY STAR Bathroom Fans Vented to the Outside				1		
b. All Bathroom Fans Are on Timer or Humidistat				1		
c. Install Kitchen Range Hood Vented to the Outside				1		
9. Install Mechanical Ventilation System for Cooling						
a. Install ENERGY STAR Ceiling Fans & Light Kits in Living Areas & Bedrooms			1			
b. Install Whole House Fan with Variable Speeds			1			
c. Automatically Controlled Integrated System			2			
d. Automatically Controlled Integrated System with Variable Speed Control			3			
10. Install Mechanical Fresh Air Ventilation System						
a. Any Whole House Ventilation System That Meets ASHRAE 62.2			1	2		
b. Install Air-to-Air Heat Exchanger			1	2		
11. Install Carbon Monoxide Alarms				1		
Heating, Ventilation and Air Conditioning = Total 37						
I. RENEWABLE ENERGY						
1. Pre-Plumb for Solar Water Heating			4			
2. Install Solar Water Heating System			10			
3. Install Wiring Conduit for Future Photovoltaic Installation & Provide 200 ft ² of South-Facing Roof			2			
4. Install Photovoltaic (PV) Panels						
a. 30% of electric needs OR 1.2 kw (total 6 points)			6			
b. 60% of electric needs OR 2.4kw (total 12 points)			6			
c. 90% of electric need OR 3.6 kw (total 18 points)			6			
Renewable Energy = Total 34						
J. BUILDING PERFORMANCE						
1. Diagnostic Evaluations						
a. House Passes Blower Door Test			1			
b. House Passes Combustion Safety Backdraft Test				1		
2. Design and Build High Performance Homes - 15% above Title 24 - Required			30			
3. House Obtains ENERGY STAR® with Indoor Air Package Certification				5	2	
Building Performance = Total 39						
K. FINISHES						
1. Design Entryways to Reduce Tracked-In Contaminants				1		
2. Use Low-VOC or Zero-VOC Paint						
a. Low-VOC Interior Wall/Ceiling Paints (<50 gpl VOCs (Flat) and <150 gpl VOCs (Non-Flat))				1		
b. Zero-VOC: Interior Wall/Ceiling Paints (<5 gpl VOCs (Flat))				3		

POINTS PER CATEGORY		Community	Energy	IAQ/Health	Resources	Water
3.	Use Low-VOC, Water-Based Wood Finishes (<250 gpl VOCs)			2		
4.	Use Low-VOC Caulk and Construction Adhesives (<70 gpl VOCs) for All Adhesives			2		
5.	Use Recycled-Content Paint				1	
6.	Use Environmentally Preferable Materials for Interior Finish: A) FSC-Certified Wood B) Reclaimed, C) Rapidly Renewable D) Recycled-Content or E) Finger-Jointed					
	a. Cabinets (50% Minimum)				1	
	b. Interior Trim (50% Minimum)				1	
	c. Shelving (50% Minimum)				1	
	d. Doors (50% Minimum)				1	
	e. Countertops (50% Minimum)				1	
7.	Reduce Formaldehyde in Interior Finishes (CA Section 01350)					
	a. Subfloor & Stair Treads (50% Minimum)			1		
	b. Cabinets & Countertops (50% Minimum)			1		
	c. Interior Trim (50% Minimum)			1		
	d. Shelving (50% Minimum)			1		
8.	After Installation of Finishes, Test of Indoor Air Shows Formaldehyde Level <27ppb			3		
Finishes = Total 22						

L. FLOORING

1.	Use Environmentally Preferable Flooring: A) FSC-Certified Wood B) Reclaimed C) Rapidly Renewable D) Recycled-Content E) Exposed Concrete. <i>Flooring Adhesives Must Have <50 gpl VOCs.</i>					
	a. Minimum 15% of Floor Area				1	
	b. Minimum 30% of Floor Area				1	
	c. Minimum 50% of Floor Area				1	
	d. Minimum 75% of Floor Area				1	
2.	Thermal Mass Floors: Floor Covering Other than Carpet on 50% or More of Concrete Floors		1			
3.	Flooring Meets Section 01350 or CRI Green Label Plus Requirements (50% Minimum)			2		
Flooring = Total 7						

M. APPLIANCES

1.	Install Water- and Energy-Efficient Dishwasher					
	a. ENERGY STAR		1			
	b. Dishwasher Uses No More than 6.5 Gallons/Cycle (total 2 points)					1
2.	Install Water- and Energy-Efficient Clothes Washing Machine					
	a. Meets CEE Tier 2 requirements (modified energy factor 2.0, Water Factor 6.0) (total 3 points)		1			2
	b. Meets CEE Tier 3 requirements (modified energy factor 2.2, Water Factor 4.5 or less) (total 5 points)	2				
3.	Install ENERGY STAR Refrigerator					
	a. ENERGY STAR Qualified & < 25 Cubic Feet Capacity		1			
	b. ENERGY STAR Qualified & < 20 Cubic Feet Capacity		1			
4.	Install Built-In Recycling & Composting Center					
	a. Built-In Recycling Center				2	
	b. Built-In Composting Center				1	
Appliances and Lighting = Total 12						

N. OTHER

1.	Incorporate GreenPoint Rated Checklist in Blueprints - Required				P	
2.	Develop Homeowner Manual of Green Features/Benefits		1	1		1
3.	Innovative Measures That Meet the Green Building Objectives of the Guidelines. Maximum of 20 points.					
4.	Community Design Measures and Local Priorities: Maximum of 20 points.	20				
Other = Total 43						

	Community	Energy	IAQ/Health	Resources	Water	Total
Total Available Points in Specific Categories	24	108	45	66	47	290
Innovation Points Available in Any Category						20
OVERALL TOTAL (Note: Some points are not applicable to every project type.)						310
MINIMUM POINTS REQUIRED IN SPECIFIC CATEGORIES		30	5	6	9	50

SAN MATEO COUNTYWIDE SUSTAINABLE BUILDINGS CHECKLIST



checklist

Permit applicants are required to complete and return this checklist as part of the permit and planning process. Place a check mark next to each sustainable building practice planned for your project. For assistance, contact your city or call the RecycleWorks hotline at 1-888-442-2666.

ELECTRICAL

✓	No.	Item	Applicable Building Types			
Goal: Save energy in lighting						
	41	Design lighting levels for actual use, and use task lighting to reduce general lighting levels	c	t	m	s
	42	Use energy-efficient lamps and lighting fixtures	c	t	m	s
	43	Use lighting controls that save energy such as occupancy sensors	c	t	m	s

Goal: Save energy in equipment use						
	44	Use ENERGY STAR® appliances	c	t	m	s
	45	Use a building energy management system	c	t	m	

Goal: Save energy through passive design						
	46	Use passive solar design, thermal mass, and insulation to reduce space heating needs	c		m	s
	47	Replace air conditioning with natural ventilation and passive cooling	c		m	s
	48	Use ceiling fans for comfort cooling, and use a whole-building fan for night-time cooling	c	t	m	s
	49	Upgrade wall, floor, and ceiling insulation to exceed minimum State requirements	c		m	s

Goal: Save energy in equipment use						
	50	Use high-efficiency equipment including furnaces, boilers, fans, and pumps	c		m	s
	51	Use heat recovery equipment	c		m	s
	52	Use geothermal systems, cogeneration, or other alternatives for heating and cooling	c		m	
	53	Place ductwork within conditioned space, seal joints properly, and clean before occupancy	c	t	m	s
	54	Zone mechanical systems for more efficient heating and cooling	c	t		
	55	Use radiant and hydronic systems for increased efficiency, health, and comfort	c	t	m	s
	56	Use equipment without ozone-depleting refrigerants		t	m	

Goal: Create healthy indoor environments						
	57	Use recycled-content, formaldehyde-free fiberglass insulation, cellulose insulation, or other green insulation products	c	t	m	s
	58	Separate ventilation for indoor pollutant sources and provide advanced filtration to improve indoor air quality	c	t	m	s
	59	Use clean and efficient alternatives to wood-burning fireplaces			m	s

Goal: Replace fossil fuel use with alternatives						
	60	Generate clean electricity onsite using solar photovoltaics	c		m	s
	61	Generate clean electricity onsite using wind turbines	c		m	s
	62	Use solar hot-water systems for domestic use and swimming pools	c		m	s
	63	Use solar hot-water systems for space heating	c		m	s
	64	Pre-plumb for a solar hot-water system	c		m	s

Goal: Create healthy indoor environments						
	65	Use low- or no-VOC, formaldehyde-free paints, stains, and adhesives	c	t	m	s
	66	Use low- or no-VOC carpets, furniture, particleboard, and cabinetry	c	t	m	s
	67	Use exposed concrete as a finished floor	c	t	m	s
	68	Use natural materials such as wool and sisal for carpets and wallcoverings	c	t	m	s
	69	Use sustainable materials for flooring, trim, and interior surfaces	c	t	m	s

Goal: Support the market for recycled materials						
	70	Use recycled-content floor tile, carpets and pads, cabinets, and countertops	c	t	m	s

Goal: Support sustainable forests						
	71	Use reclaimed / salvaged, sustainably harvested (FSC certified), or engineered wood for flooring and trim, or use wood alternatives such as bamboo and cork	c	t	m	s

Goal: Use creativity and innovation to build more sustainable environments						
	72	Use insulated concrete forms	c		m	s
	73	Use structural insulated panels to replace wood-framed walls	c	t	m	s
	74	Use natural building materials and techniques	c		m	s
	75	Other sustainable methods or materials used. <i>Please describe:</i>	c	t	m	s

KEY

- c Commercial/Industrial
- t Tenant Improvement
- m Multi-family housing
- s Single-family home

HEATING & COOLING

RENEWABLE POWER & SOLAR ENERGY

INTERIOR MATERIALS

OTHER GREEN ALTERNATIVES

Applicant Signature: _____

ATTACHMENT C

SAN MATEO COUNTYWIDE SUSTAINABLE BUILDINGS CHECKLIST



checklist

COMMUNITY PLANNING

Goal: Create a more sustainable community

✓	No.	Item	Applicable Building Types	
	1	Build mixed-use developments and provide public amenities such as open space	c	m
	2	Cluster development to minimize paving and utilities, and to preserve open space	c	m
	3	Reuse a brownfield or previously occupied site	c	m
	4	Design for easy pedestrian, bicycle, and transit access	c	t m

SITE & LANDSCAPE

Goal: Respect your site

	5	Design and landscape to create comfortable micro-climates and reduce heat island effects	c	m s
	6	Optimize building orientation for heat gain, shading, daylighting, and natural ventilation	c	m s
	7	Reduce building footprint - smaller is better	c	m s
	8	Limit site impacts, balance cut and fill, preserve existing vegetation and protect soil during construction	c	m s
	9	Use native plants that are drought-resistant, create habitat for indigenous species, and do not require pesticides for maintenance	c	m s
	10	Use recycled rubble for backfill drain rock	c	m s

Goal: Save water and reduce local water impacts

	11	Maximize onsite stormwater management through landscaping and permeable pavement	c	m s
	12	Use rainwater harvesting	c	m s
	13	Use water-conserving landscape technologies such as drip irrigation, moisture sensors, and watering zones	c	m s

WASTE REDUCTION & MANAGEMENT

Goal: Reduce, reuse, recycle

	14	Reuse a building (renovate) instead of tearing down and rebuilding	c	t m s
	15	Deconstruct old buildings for materials reuse (salvage)	c	t m s
	16	Recycle construction & demolition waste	c	t m s
	17	Design for durability and eventual reuse	c	t m s
	18	Provide adequate space for storing and handling recyclables	c	t m s

CONCRETE

Goal: Make concrete with sustainable materials

	19	Use flyash in concrete	c	t m s
	20	Use recycled aggregate in non-structural concrete	c	t m s
	21	Use prefabricated forms or save and reuse wood form boards	c	t m s

WOOD FRAMING

Goal: Design to save wood and labor

	22	Use spacings, sizes, and modular dimensions that minimize lumber use and optimize performance	c	t m s
	23	Use engineered lumber or metal stud framing to replace solid-sawn lumber	c	t m s

Goal: Support sustainable forests

	24	Use sustainably harvested lumber (FSC certified) for wood framing	c	t m s
	25	Use reclaimed or salvaged lumber	c	t m s

EXTERIOR TREATMENTS: SIDING & FOOTING

Goal: Make a sustainable roof

	26	Use durable roofing materials	c	m s
	27	Use a cool roof	c	m
	28	Use a green or living roof	c	m s

Goal: Support healthy environments and sustainable forests

	29	Use sustainable siding materials	c	m s
	30	Use sustainable decking materials	c	m s

WINDOWS & DOORS

Goal: Save energy through passive design

	31	Provide shading on east, west and south windows with overhangs, awnings, or deciduous trees	c	m s
	32	Plan windows and skylights, light shelves, and window treatments to provide daylight that improves indoor environments	c	t m s
	33	Choose window sizes, frame materials, and glass coatings to optimize energy performance	c	m s
	34	Stop air leakage at doors and windows	c	m s

PLUMBING

Goal: Save water and energy in plumbing systems

	35	Use water-conserving plumbing fixtures	c	t m s
	36	Use water-saving appliances and equipment	c	t m s
	37	Insulate hot and cold water pipes	c	t m s
	38	Use heat recovery equipment, tankless water heaters and/or on-demand hot water circulation pumps	c	t m s
	39	Pre-plumb for future graywater use for toilet flushing and landscape irrigation	c	m s

Goal: Reduce environmental impacts from materials production

	40	Use sustainable materials for pipes	c	t m s
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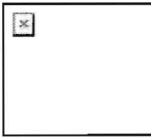
NAME: _____
SITE ADDRESS: _____
PERMIT NUMBER: _____

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KEY

c Commercial/
Industrial
t Tenant
Improvement
m Multi-family
housing
s Single-family
home

B: LEED NC CHECKLIST



LEED for New Construction v2.2 Registered Project Checklist

Project Name:
Project Address:

Yes	?	No			
Sustainable Sites 14 Points					
<input checked="" type="checkbox"/>			Prereq 1	Construction Activity Pollution Prevention	Required
			Credit 1	Site Selection	1
			Credit 2	Development Density & Community Connectivity	1
			Credit 3	Brownfield Redevelopment	1
			Credit 4.1	Alternative Transportation, Public Transportation Access	1
			Credit 4.2	Alternative Transportation, Bicycle Storage & Changing Rooms	1
			Credit 4.3	Alternative Transportation, Low-Emitting & Fuel-Efficient Vehicles	1
			Credit 4.4	Alternative Transportation, Parking Capacity	1
			Credit 5.1	Site Development, Protect or Restore Habitat	1
			Credit 5.2	Site Development, Maximize Open Space	1
			Credit 6.1	Stormwater Design, Quantity Control	1
			Credit 6.2	Stormwater Design, Quality Control	1
			Credit 7.1	Heat Island Effect, Non-Roof	1
			Credit 7.2	Heat Island Effect, Roof	1
			Credit 8	Light Pollution Reduction	1
Water Efficiency 5 Points					
			Credit 1.1	Water Efficient Landscaping, Reduce by 50%	1
			Credit 1.2	Water Efficient Landscaping, No Potable Use or No Irrigation	1
			Credit 2	Innovative Wastewater Technologies	1
			Credit 3.1	Water Use Reduction, 20% Reduction	1
			Credit 3.2	Water Use Reduction, 30% Reduction	1
Energy & Atmosphere 17 Points					
<input checked="" type="checkbox"/>			Prereq 1	Fundamental Commissioning of the Building Energy Systems	Required
<input checked="" type="checkbox"/>			Prereq 2	Minimum Energy Performance	Required
<input checked="" type="checkbox"/>			Prereq 3	Fundamental Refrigerant Management	Required
			Credit 1	Optimize Energy Performance	1 to 10
				10.5% New Buildings or 3.5% Existing Building Renovations	1
				14% New Buildings or 7% Existing Building Renovations	2
				17.5% New Buildings or 10.5% Existing Building Renovations	3
				21% New Buildings or 14% Existing Building Renovations	4
				24.5% New Buildings or 17.5% Existing Building Renovations	5
				28% New Buildings or 21% Existing Building Renovations	6
				31.5% New Buildings or 24.5% Existing Building Renovations	7
				35% New Buildings or 28% Existing Building Renovations	8
				38.5% New Buildings or 31.5% Existing Building Renovations	9
				42% New Buildings or 35% Existing Building Renovations	10
			Credit 2	On-Site Renewable Energy	1 to 3
				2.5% Renewable Energy	1
				7.5% Renewable Energy	2
				12.5% Renewable Energy	3
			Credit 3	Enhanced Commissioning	1
			Credit 4	Enhanced Refrigerant Management	1
			Credit 5	Measurement & Verification	1
			Credit 6	Green Power	1

Yes ? No

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Materials & Resources

13 Points

<input checked="" type="checkbox"/>	Prereq 1	Storage & Collection of Recyclables	Required
<input type="checkbox"/>	Credit 1.1	Building Reuse, Maintain 75% of Existing Walls, Floors & Roof	1
<input type="checkbox"/>	Credit 1.2	Building Reuse, Maintain 100% of Existing Walls, Floors & Roof	1
<input type="checkbox"/>	Credit 1.3	Building Reuse, Maintain 50% of Interior Non-Structural Elements	1
<input type="checkbox"/>	Credit 2.1	Construction Waste Management, Divert 50% from Disposal	1
<input type="checkbox"/>	Credit 2.2	Construction Waste Management, Divert 75% from Disposal	1
<input type="checkbox"/>	Credit 3.1	Materials Reuse, 5%	1
<input type="checkbox"/>	Credit 3.2	Materials Reuse, 10%	1
<input type="checkbox"/>	Credit 4.1	Recycled Content, 10% (post-consumer + ½ pre-consumer)	1
<input type="checkbox"/>	Credit 4.2	Recycled Content, 20% (post-consumer + ½ pre-consumer)	1
<input type="checkbox"/>	Credit 5.1	Regional Materials, 10% Extracted, Processed & Manufactured Regional	1
<input type="checkbox"/>	Credit 5.2	Regional Materials, 20% Extracted, Processed & Manufactured Regional	1
<input type="checkbox"/>	Credit 6	Rapidly Renewable Materials	1
<input type="checkbox"/>	Credit 7	Certified Wood	1

Yes ? No

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Indoor Environmental Quality

15 Points

<input checked="" type="checkbox"/>	Prereq 1	Minimum IAQ Performance	Required
<input checked="" type="checkbox"/>	Prereq 2	Environmental Tobacco Smoke (ETS) Control	Required
<input type="checkbox"/>	Credit 1	Outdoor Air Delivery Monitoring	1
<input type="checkbox"/>	Credit 2	Increased Ventilation	1
<input type="checkbox"/>	Credit 3.1	Construction IAQ Management Plan, During Construction	1
<input type="checkbox"/>	Credit 3.2	Construction IAQ Management Plan, Before Occupancy	1
<input type="checkbox"/>	Credit 4.1	Low-Emitting Materials, Adhesives & Sealants	1
<input type="checkbox"/>	Credit 4.2	Low-Emitting Materials, Paints & Coatings	1
<input type="checkbox"/>	Credit 4.3	Low-Emitting Materials, Carpet Systems	1
<input type="checkbox"/>	Credit 4.4	Low-Emitting Materials, Composite Wood & Agrifiber Products	1
<input type="checkbox"/>	Credit 5	Indoor Chemical & Pollutant Source Control	1
<input type="checkbox"/>	Credit 6.1	Controllability of Systems, Lighting	1
<input type="checkbox"/>	Credit 6.2	Controllability of Systems, Thermal Comfort	1
<input type="checkbox"/>	Credit 7.1	Thermal Comfort, Design	1
<input type="checkbox"/>	Credit 7.2	Thermal Comfort, Verification	1
<input type="checkbox"/>	Credit 8.1	Daylight & Views, Daylight 75% of Spaces	1
<input type="checkbox"/>	Credit 8.2	Daylight & Views, Views for 90% of Spaces	1

Yes ? No

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Innovation & Design Process

5 Points

<input type="checkbox"/>	Credit 1.1	Innovation In Design: Provide Specific Title	1
<input type="checkbox"/>	Credit 1.2	Innovation In Design: Provide Specific Title	1
<input type="checkbox"/>	Credit 1.3	Innovation In Design: Provide Specific Title	1
<input type="checkbox"/>	Credit 1.4	Innovation In Design: Provide Specific Title	1
<input type="checkbox"/>	Credit 2	LEED® Accredited Professional	1

Yes ? No

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Project Totals (pre-certification estimates)

69 Points

Certified: 26-32 points, Silver: 33-38 points, Gold: 39-51 points, Platinum: 52-69 points

GREEN BUILDING COSTS AND FINANCIAL BENEFITS

by Gregory H. Kats



Green Building Costs and Financial Benefits

by Gregory H. Kats

Sponsors

Barr Foundation
Environmental Business Council of New England, Inc.
Equity Office Properties
Massachusetts Technology Collaborative
Massport

In co-operation with

The City of Boston Green Buildings Task Force
Greater Boston Real Estate Board
Boston Society of Architects
Western Massachusetts AIA
Green Roundtable & Developers Roundtable
Northeast Sustainable Energy Association
Greater Boston Chamber of Commerce
Real Estate Finance Association
Health Care without Harm
Springfield Chamber of Commerce
New Ecology Inc.

The Massachusetts Technology Collaborative is the state's development agency for renewable energy and the innovation economy. The agency administers the Renewable Energy Trust, which is maximizing the benefits of clean energy and helping to create jobs for the Commonwealth by stimulating new supply and demand for green power. The Trust was created in 1998 through the electric restructuring law and is funded through a monthly surcharge on electric utility bills. For more information, please visit the agency's website www.masstech.org.

Captions for cover photos (top to bottom)

The J.F. Williams Federal Building in Boston includes 30 kW of solar photovoltaics and a 75 kW cogeneration system. Through an MTC grant, a data acquisition system has been installed at the site to monitor the production and savings of these systems.

Artists for Humanity is building a new facility in the Fort Point Channel district of Boston to house its arts education programs. The building has been designed to reduce energy use by 65% and to include significant daylighting and other green building features. Up to 100% of remaining energy needs will be met by the installation of 45 kW of solar photovoltaics funded by MTC.

In its redevelopment of an historic mill building as a mixed-use office and commercial facility, Alternatives Unlimited has focused on the design of green building and energy efficiency features that will best meet occupant needs. The capstone of this project will be the restoration of a hydropower system in Whitinsville's Mumford River adjacent to the mill to provide the facility's electricity.

GREEN BUILDING COSTS AND FINANCIAL BENEFITS

Greg Kats, Capital E

INTRODUCTION

Massachusetts is a leading state in the rapidly growing green building movement. Buildings consume 70% of the nation's electricity and a large part of the materials, water and waste used and generated in our economy. Buildings have traditionally been viewed as a relatively static sector of the economy experiencing relatively little change in technology or resource consumption patterns. To date there has been a widespread perception that green buildings—though more attractive from an environmental



The Woods Hole Research Center received a total of \$500,000 in MTC awards to install 26.4 kW of solar photovoltaics and a 100 kW wind turbine at the site of its new headquarters. Combined with innovative energy efficiency measures and high-performance design, these renewables will help Woods Hole achieve its goal of a "Zero Energy" facility, producing more energy than it consumes. Pictured here, the Ordway Building.

and health perspective—are substantially more costly than conventional design and may not be justified from a cost benefits perspective. This perception has been the single largest obstacle to the more widespread adoption of green design.

This paper reviews a major recent report on the issue of green building costs benefits, "The Costs and Benefits of Green Buildings," Kats¹ et al., October 2003² (the Report). Led by Capital E,

the Report was prepared in partnership with the US Green Building Council and California's Sustainable Building Task Force for 40+ California state agencies.

WHAT ARE GREEN BUILDINGS?

"Green" or "sustainable" buildings use key resources like energy, water, materials, and land more efficiently than buildings that are just built to code. With more natural light and better air quality, green buildings typically contribute to improved employee and student health, comfort, and productivity. The United States Green Building Council (USGBC), a national non-profit membership organization, developed the Leadership in Energy and Environmental Design (LEED) System™ to provide a guideline and rating system for green buildings.

It is generally recognized that buildings consume a large portion of water, wood, energy, and other resources used in the economy. For example, US buildings alone are responsible for more CO₂ emissions than those of any other entire country in the world except China.³ If building green is cost effective, a broad shift to green construction offers a potentially promising way to help address a range of challenges facing Massachusetts, including:

- Address growing costs of transmission and distribution congestion. The growth of Time of Use rates (TOU) by Massachusetts utilities, and the creation of congestion pricing in the form of locational marginal pricing⁴ allows building owners to capture some of the benefits associated with lower overall and lower peak energy use in green buildings

1 The author is founding Principal of Capital E, a national clean technology deployment and strategy firm. Mr. Kats served from 1996 to 2001 as the Director of Financing for the \$1.1 billion dollar Office of Energy Efficiency and Renewable Energy at the US Department of Energy - the largest clean technology R&D and deployment program in the US. He is Chair of the Energy And Atmosphere Technical Advisory Group for LEED and serves on the LEED Steering Committee.

2 "The Costs and Benefits of Green Buildings", A Report to California's Sustainable Building Task Force, October 2003. Principal author Greg Kats, For full text and summary slides see www.cap-e.com

3 Kinzey et al., "The Federal Buildings Research and Development Program: A Sharp Tool for Climate Policy," 2002 ACEEE proceedings, Section 9.21.

4 see: [http://www.iso-ne.com/iso_news/SMD_Reference_Guide/02_Locational_Marginal_Pricing_\(LMP\).pdf](http://www.iso-ne.com/iso_news/SMD_Reference_Guide/02_Locational_Marginal_Pricing_(LMP).pdf)

- Reduce or slow rise in electricity and gas prices through expanded green construction and building retrofits and reduced energy demand ⁵
- Help cut pollution from fossil fuels (Massachusetts fuel mix includes 28% coal as of 1999 - US DOE) including fine particulates in urban areas
- Help Massachusetts meet EPA mandated emissions reductions targets
- Improve quality of educational environment and improve school test scores
- Enhance competitiveness by providing work and living environments characterized by superior health and comfort and work environments

HOW MUCH MORE DO GREEN BUILDINGS COST?

Green buildings are commonly perceived to be a lot more expensive than conventional buildings and often not worth the extra cost. For example, an early 2003 article in the New York Times was entitled "Not Building Green Is Called a Matter of Economics."

In order to determine the cost of building green compared to conventional design, several dozen building representatives and architects were contacted to secure the cost of 33 green buildings from across the United States compared to conventional designs for those same buildings. The average premium for these green buildings is slightly less than 2%, or \$3-5/ft², substantially lower than is commonly perceived (See Figure 1). The majority of this cost is due to the increased architectural and engineering (A&E) design time, modeling costs and time necessary to integrate sustainable building practices into projects. Generally, the earlier green building features are incorporated into the design process, the lower the cost.

The cost of green design has dropped in the last few years as the number of green buildings has risen. The trend of declining costs associated with increased experience in green building construction has been experienced in Pennsylvania, as well as in Portland and Seattle. Portland's three reported and completed LEED Silver buildings were finished in 1995, 1997, and 2000. They incurred cost premiums of 2%, 1% and 0% respectively. Seattle has seen the cost of LEED Silver buildings drop from 3-4% several years ago to 1-2% today.

Figure 1
Average Green Cost Premium vs. Level of Green Certification for Offices and Schools



Source: USGBC, Capital E Analysis

GREEN BUILDINGS FINANCIAL BENEFITS

Green Buildings provide financial benefits that conventional buildings do not. These benefits include energy and water savings, reduced waste, improved indoor environmental quality, greater employee comfort/productivity, reduced employee health costs and lower operations and maintenance costs. This paper will focus on two of these benefits: lower energy costs, and health and productivity benefits.

⁵ See for example, "Impacts of Energy Efficiency and Renewable Energy on Natural Gas Markets", Elliott et al., ACEEE, Sept, 2003. See: <http://aceee.org>

Energy

Energy is a substantial and widely recognized cost of building operations that can be reduced through energy efficiency and related measures that are part of green building design. The average annual cost of energy in Massachusetts buildings is approximately \$2.00/ft². On average, green buildings use 30% less energy than conventional buildings—a reduction, for a 100,000 ft² state office building, worth \$60,000 per year, with a 20-year present value of expected energy savings at a 5% real discount rate worth about three quarters of a million dollars.

A detailed review of 60 LEED rated buildings, demonstrates that green buildings, when compared to conventional buildings, are:

- On average 25-30% more energy efficient
- Characterized by even lower electricity peak consumption
- More likely to generate renewable energy on-site
- More likely to purchase grid power generated from renewable energy sources (green power and/or tradable renewable certificates)

Green building energy savings primarily come from reduced electricity purchases and secondarily from reduced peak energy demand. On average, green buildings are 28% more efficient than conventional buildings and generate 2% of their power on-site from photovoltaics (PV). (See Figure 2.) The financial benefits of 30% reduced consumption at an electricity price of \$0.08/kWh are about \$0.30/ft²/yr, with a 20-year NPV of over \$5/ft², equal to or more than the average additional cost associated with building green.



The Genzyme Corporation's recently completed office in Cambridge is a world-class example of green building construction, including advanced daylighting and thermal technologies. In addition to a photovoltaic installation funded by MTC, one of the most prominent features is a combined heliostat and reflective panel system designed to channel daylight deep into the 8-story building.

Figure 2

Reduced Energy Use in Green Buildings as Compared with Conventional Buildings

	Certified	Silver	Gold	Average
Energy Efficiency (above standard code)	18%	30%	37%	28%
On-Site Renewable Energy	0%	0%	4%	2%
Green Power	10%	0%	7%	6%
Total	28%	30%	48%	36%

Source: USGBC, Capital E Analysis

The environmental and health costs associated with air pollution caused by non-renewable electric power generation and on-site fossil fuel use are generally externalized (not considered) when making investment decisions. The larger Report this paper draws from quantifies two of these benefits: the value of peak power reduction and the value of emissions reductions associated with the energy strategies integrated into green building design. The Report calculates these additional financial benefits are equal to about one third of that provided by energy savings alone.

Productivity and health

There is growing recognition of the large health and productivity costs imposed by poor indoor environmental quality (IEQ) in commercial buildings—estimated variously at up to hundreds of billions of dollars per year. This is not surprising as people spend 90% of their time indoors, and the concentration of pollutants indoors is typically higher than outdoors, sometimes by as much as 10 or even 100 times.⁶

The relationship between worker comfort/productivity and building design/operation is complicated. There are thousands of studies, reports and articles on the subject that find significantly reduced illness symptoms, reduced absenteeism and increases in perceived productivity over workers in a group that lacked these features.⁷ For example, two studies of over 11,000 workers in 107 European buildings analyzed the health effect of worker-controlled temperature and ventilation. The Report relies in large part on recent meta-studies that have screened tens or hundreds of other studies and have evaluated and synthesized their findings.

Following are some relevant attributes common in green buildings that promote healthier work environments:

- On average 25-30% more energy efficient
- Much lower source emissions from measures such as better siting (e.g., avoiding locating air intakes next to outlets, such as parking garages, and avoiding recirculation), and better building material source controls (e.g., required attention to storage). Certified and Silver level green buildings achieved 55% and Gold level LEED buildings achieved 88% of possible LEED credits for use of the following:⁸ less toxic

materials, low-emitting adhesives & sealants, paints, carpets, and composite woods, and indoor chemical & pollutant source control.



Urban Edge is developing a pioneering example of green building opportunities in affordable housing. Through an MTC grant, the non-profit will install 63 kW of solar photovoltaics at the new Egleston Crossing development in Jamaica Plain and Roxbury. This installation, in combination with multiple energy efficiency measures, will reduce the project's electricity needs by 50%.

- Significantly better lighting quality including: more daylighting (half of 21 LEED green buildings reviewed provide daylighting to at least 75% of building space⁹), better daylight harvesting and use of shading, greater occupancy control over light levels and less glare
- Generally improved thermal comfort and better ventilation—especially in buildings that use underfloor air for space conditioning
- Commissioning, use of measurement and verification, and CO₂ monitoring to ensure better performance of systems such as ventilation, heating and air conditioning

Measuring the exact financial impact of healthier, more comfortable and greener buildings is

⁶ US Environmental Protection Agency, "Indoor Air Quality," January 6, 2003. Available at: <http://www.epa.gov/iaq/>.

⁷ Judith Heerwagen, "Sustainable Design Can Be an Asset to the Bottom Line - expanded internet edition," Environmental Design & Construction, Posted 07/15/02. Available at: http://www.edcmag.com/CDA/ArticleInformation/features/BNP_Features_Item/0,4120,80724,00.html.

⁸ Capital E analysis of USGBC data (based on analysis of points actually achieved in building performance data submitted to USGBC), November and December 2002. For more detail on achievable reductions from some of these indoor emissions sources, please see: Hodgson AT. "Common Indoor Sources of Volatile Organic Compounds: Emissions Rates and Techniques for Reducing Consumer Exposures." University of California, Lawrence Berkeley National Laboratory. 1999.

Prepared for California Air Resources Board.

Available at: <http://www.arb.ca.gov/research/apr/past/indoor.htm#Toxic%20Air%20Contaminants>.

⁹ Capital E analysis of USGBC data, November and December 2002.

difficult. The costs of poor indoor environmental and air quality—including higher absenteeism and increased respiratory ailments, allergies and asthma—are hard to measure and have generally been “hidden” in sick days, lower productivity, unemployment insurance and medical costs.

However, four of the attributes associated with green building design—increased ventilation control, increased temperature control, increased lighting control and increased daylighting—have been positively and significantly correlated with increased productivity. Increases in tenant control over ventilation, temperature and lighting each provide measured benefits from 0.5% up to 34%, with average measured workforce productivity gains of 7.1% with lighting control, 1.8% with ventilation control, and 1.2% with thermal control. Additionally, significant measured improvements have been found with increased daylighting.

There are also quantifiable green building gains in attracting and retaining a committed workforce—an aspect beyond the scope of the Report. Attracting and retaining the best employees can be linked to the quality of benefits that workers receive, including the physical, environmental and technological workplace. Green buildings are designed to be healthier and more enjoyable working

environments. Workplace qualities that improve the environment of knowledge workers may also reduce stress and lead to longer lives for multi-disciplinary teams.

LEED rated buildings all address some combination of measures that help reduce the pollutants that cause sickness and increase health care costs; improve quality of lighting and increase use of daylighting; and increase tenant control and comfort. LEED Green buildings consistently include a range of material, design and operation measures that directly improve human health and productivity. Gold and Platinum level LEED buildings are more comprehensive in applying IEQ-related measures and therefore should be viewed as providing larger productivity and health benefits than Certified or Silver level green buildings.

Given the studies and data reviewed above, the Report recommends attributing a 1% productivity and health gain to Certified and Silver level buildings and a 1.5% gain to Gold and Platinum level buildings. These percentages are at the low end of the range of productivity gains for each of the individual specific building measures—ventilation, thermal control, light control and daylighting—analyzed above. They are consistent with or well below the range of additional studies reviewed in the Report.



The Blackstone Valley Vocational Regional School District is planning an ambitious 80,000 square foot addition to accommodate four new vocational programs, and will renovate the existing building which has some systems that date back to the 1960's. Daylighting will be accomplished in this project by using light tube technology, which will save over 500 kW a year. Other efficiency measures include efficient air conditioning equipment and variable speed drives for the air handling unit. The school will also incorporate photovoltaic panels mounted on the roof and a solar thermal domestic water preheating system.

A 1% increase in productivity (equal to about 5 minutes per working day) is equal to \$600 to \$700 per employee per year, or \$3/ft² per year. A 1.5 % increase in productivity (or a little over 7 minutes each working day) is equal to about \$1000 per year, or \$4 to \$5/ft² per year. Over 20 years and at a 5% real discount rate, the present value of the productivity benefits is about \$35/ft² for Certified and Silver level buildings, and \$55/ft² for Gold and Platinum level buildings. The relatively large impact of productivity and health gains reflects the fact that the direct and indirect cost of employees is far larger than the cost of construction or energy. Consequently, even small changes in productivity and health translate into large financial benefits. Assuming a longer building operational life, such as 30 or 40 years, would result in substantially larger benefits.

It is worth noting that:

- Nearly one-fifth of Massachusetts' population spend their day inside schools
- Only 43% of high-volume chemicals have been tested for potential human toxicity, and only 7% have been tested for their effect on children's development ¹⁰
- Asthma is the leading cause of admission of urban children into hospitals and the leading cause of days absent from school ¹¹

Green building improvements—especially for new buildings—appear to be very cost effective compared with other available measures to enhance student performance. Under the

recently adopted Federal Education Bill, schools and states stand to lose billions of dollars in federal funding if students do not perform well on annual standardized tests. School and university systems should consider adopting whole building green design at the LEED Gold level or corresponding MASS-CHP scoring as a standard requirement in new school design and school retrofits.



The MITRE Corporation is developing a new state-of-the-art campus center at its Bedford facility to be built according to a comprehensive energy plan and green building standards. With assistance from an MTC grant, the project will incorporate 16.5 kW of rooftop photovoltaics and 12.5 kW of advanced semi-transparent solar photovoltaic panes installed on a covered walkway.

¹⁰ Philip Landrigan et al, "Environmental Pollutants and Disease in American Children: Estimates of morbidity, Mortality, and Costs of Lead Poisoning, Asthma, Cancer and Developmental Disabilities," Environmental Health Perspectives, Volume 110, Number 7, July 2002.

Available at: <http://ehpnet1.niehs.nih.gov/docs/2002/110p721-728landrigan/abstract.html>.

¹¹ Ibid.

OVERALL COSTS AND FINANCIAL BENEFITS

Green Buildings provide financial benefits that conventional buildings do not. As indicated in Figure 3 below, the Report concluded that financial benefits of green design are between \$50 and \$70 per square foot in a LEED building, over 10 times the additional cost associated with building green. The financial benefits are in lower energy, waste and water costs, lower environmental and emissions costs, and lower operational and maintenance costs and increased productivity and health.

Massachusetts already has established national leadership in green buildings, including achieving the first gold rated federal building (at EPA's Chelmsford Lab), and is well positioned to build on this. Doing so will involve developing policies that allow green buildings to capture the financial value of benefits associated with green design. Although this issue is beyond the scope of this paper, two disparate examples are worth noting:

- Accelerated permissioning for the Manulife Financial Headquarters building in South Boston ¹² resulting from the perceived

benefits associated from its green design suggests one way to make these links more clearly.

- An expected shift from zonal to nodal pricing system for load and generation pricing is a step towards allowing more accurate mapping of real cost into price signals that might allow green buildings to better capture the financial benefits resulting from green construction.

The benefits of building green include cost savings from reduced energy, water, and waste; lower operations and maintenance costs; and enhanced occupant productivity and health. As Figure 3 indicates, the total financial benefits of green buildings are over ten times the average initial investment required to design and construct a green building. Despite data limitations and the need for additional research in various areas, the data demonstrates that building green is cost-effective today, particularly for those projects which start "green" design early in the process.

Figure 3
Financial Benefits of Green Buildings
Summary of Findings (per ft²)

Category	20-year Net Present Value
Energy Savings	\$5.80
Emissions Savings	\$1.20
Water Savings	\$0.50
Operations and Maintenance Savings	\$8.50
Productivity and Health Benefits	\$36.90 to \$55.30
Subtotal	\$52.90 to \$71.30
Average Extra Cost of Building Green	(-\$3.00 to -\$5.00)
Total 20-year Net Benefit	\$50 to \$65

Source: Capital E Analysis

¹² See: http://www.bankerandtradesman.com/pub/4_91/commercial/185123-1.html

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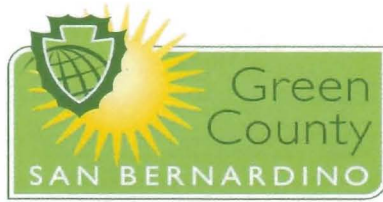
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HOW THE COUNTY IS GOING GREEN

San Bernardino County is continuing to act as a leader in environmental stewardship to improve health and economic well-being through the Green County San Bernardino program. To achieve its goals, the County has implemented policies and programs to improve our sustainability, including:

- 
San Bernardino County Green Builder (SBCGB)
 A voluntary program offering incentives to homebuilders who follow green building practices in new residential construction.
- 
Green building standards
 Construction and major renovations of County-owned buildings will strive to meet Leadership in Energy and Environmental Design (LEED) Silver certification standards for energy conservation, material efficiency and sustainability.
- 
Fee waivers
 The County is waiving building permit fees for solar and wind-generated energy systems, tankless water heaters and energy-efficient heating, ventilation and air-conditioning (HVAC) systems on existing buildings.
- 
Fuel-efficient hybrid vehicles
 The County will add 30 new hybrid vehicles to its fleet of 48 hybrids, which generate 90% less emissions than conventional vehicles.
- 
Solar-powered highway message boards
 The County Public Works Department/Flood Control District is replacing gasoline and diesel-powered units with signs powered by renewable energy.
- 
World's first hybrid power plant
 The County is working with City of Victorville and Inland Energy Inc. to develop a hybrid power plant that will generate 563 megawatts using 250 acres of solar thermal collectors in combination with natural gas generators.
- 
Tax refunds, rebates and other incentives
 A new County Web Site, www.greencountysb.com, launching in 2007 will provide homeowners, businesses and builders energy and conservation tips, as well as links to a variety of existing incentives available for environmentally-friendly projects.
- 
Commuter Services Program
 For 20 years, the county has encouraged, coordinated and rewarded carpooling and public transportation use among its 20,000 county workers to improve air quality.



FACT SHEET

Green County San Bernardino programs provide incentives, tools and resources to help businesses and residents lessen their impacts on the environment.

San Bernardino County Green Builder

- Provides priority plan processing and field inspections for developers who build homes that meet California Green Builder (CGB) program standards.
- CGB homes exceed state energy efficiency standards by 15%, use at least 20,000 gallons less water annually than non-CGB homes, and contain wood products primarily from sustainable forests.
- In addition, the developer must recycle 50% of construction waste and must use paints, lacquers, and other materials that emit zero or low levels of smog-producing pollutants.

Fee Waivers

- County will waive building fees for residents or business owners who install solar energy systems, wind-generated electrical systems, tankless water heaters, or highly energy-efficient heating, ventilation and air-conditioning systems on existing homes and businesses.
- By taking advantage of these incentives, residents and business owners can lower their energy usage, which in turn will reduce greenhouse gasses.

Green Building Standards

- County will adhere to the Leadership in Energy and Environmental Design (LEED) Silver standard when renovating or building new County facilities.
- LEED is a nationally recognized Green Building Rating System for new construction or major renovations.
- LEED certified buildings optimize the use of energy, water and building materials.

Environmental Resources Web site

- County will develop a Web site that provides comprehensive information about *Green County San Bernardino* programs and other steps residents and business owners can take to conserve resources and lessen impacts on the environment.
- Web site will include information about topics such as drought-tolerant landscaping, recycling, and energy conservation as well as links to other organizations that promote environmental stewardship.

The logo for the Los Angeles Times, featuring the word "latimes.com" in a bold, sans-serif font, with "Los Angeles Times" in a smaller font above it.

<http://www.latimes.com/news/local/la-me-warming28aug28,1,978501.story>
From the Los Angeles Times

San Bernardino County to waive fees for solar, wind systems

The program is an effort to join the move to reduce greenhouse gas emissions.

By Sara Lin

Los Angeles Times Staff Writer

August 28, 2007

Environmentally friendly developers and homeowners in San Bernardino County could start seeing green -- and saving money -- thanks to initiatives announced Monday by county supervisors.

Under a four-part plan unveiled by board Chairman Paul Biane that is expected to be approved by the Board of Supervisors today, the county will waive building permit fees for homeowners installing solar and wind-generated energy systems and expedite applications from developers whose projects meet certain green-building criteria.

"Time is money," Biane said. "We're encouraging residents and businesses to make changes that will help us cut our greenhouse gas emissions."

Homeowners currently pay \$200 for a solar permit and \$250 for a wind-energy permit, county planning officials said.

In a rare show of solidarity, environmentalists and developers alike applauded the county's new plan, which also features a county website encouraging residents to "go green" and a pledge by supervisors that new county buildings and any renovations of existing facilities will comply with national green building standards. Several California counties, including Orange and Marin, have incorporated greenhouse gas measures in their planning.

Jane Block of the Endangered Habitats League, an environmental organization, praised the county's new plan. She thanked supervisors "for going for good things in solar energy and conservation."

The green push comes a week after county leaders settled a lawsuit brought by California Atty. Gen. Jerry Brown. Brown's highly publicized suit sought to reduce global warming emissions by attacking sprawl. Environmental planners have criticized San Bernardino County, the largest county by size in the lower 48 states, for its spread-out subdivisions. The county expects more than 500,000 new residents to move in by 2030, bringing its population to 2.5 million.

Supervisors said the rollout of their new initiatives was not related to last week's settlement.

Under San Bernardino County's new plan, several other energy-efficient technologies for the home will be covered by the permit fee waiver, include tankless water heaters and energy-efficient heating, ventilation and air-conditioning systems. The priority processing for green builders will

shave weeks off a review process that can last more than a year.

The county is also trying to cut carbon emissions by expanding its fleet of hybrid cars, county officials said.

Still, at least one environmental group would like to see San Bernardino County do more to reduce its greenhouse gas emissions. The Center for Biological Diversity, an environmental advocacy group, has not settled its suit against the county.

"But will these measures result in substantial or meaningful reduction of greenhouse gases from county's current emission levels? Probably not, because they all deal with more growth," said Jonathan Evans, staff attorney with Center for Biological Diversity. "But these are positive first steps."

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NEWS

From the County of San Bernardino
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FOR IMMEDIATE RELEASE
August 27, 2007

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Biane unveils "Green County San Bernardino" programs *Environmental initiatives strengthen county's status as a green leader*

From its dense alpine forests to its vast pristine deserts, San Bernardino County's variety of natural settings make it unique among California's urban counties and are key to the county's success as a destination for residents, businesses, and visitors.

In that spirit, Board of Supervisors Chairman Paul Biane today unveiled a package of environmental initiatives known collectively as Green County San Bernardino.

"Combined with the landmark global warming measures announced last week and the variety of substantive environmental efforts the county has undertaken throughout the past 20 years, Green County San Bernardino establishes us as a leader among local government agencies in addressing environmental issues," Chairman Biane said today.

Green County San Bernardino includes four proposals that will be considered for adoption by the Board of Supervisors tomorrow as well as an eight-page booklet outlining the county's efforts and offering individual residents and businesses information on how they can join the county in protecting our natural resources and minimizing society's long-term impact on the planet.

Tomorrow, Chairman Biane will ask the Board of Supervisors to approve:

- Adoption of a county policy that would require that new county buildings and major renovations of existing county facilities comply with U.S. Green Building Council Leadership in Energy and Environmental Design Silver standards. LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health – sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality.

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- Establishment of the San Bernardino County Green Builder Program as a voluntary green building incentive program for residential construction. Under the SBCGB program, builders who agree to satisfy the requirements of the California Green Builder program would receive priority processing for plan review from the county Land Use Services Department, including guaranteed timelines and priority field inspection service. The California Green Builder program has set goals for significant improvements in energy efficiency, indoor air quality and comfort, onsite waste recycling, and water and wood conservation.
- Waiver of county building permit fees for the installation of solar energy systems, wind-generated electrical systems, tankless water heaters, and highly energy-efficient heating, ventilation and air-conditioning systems for existing buildings. The waiver of fees would promote energy conservation, facilitate a reduction in greenhouse gas emission, and reduce the public's reliance on commercial energy sources.
- Establishment of a County website, www.greencountysb.com, to serve as a resource for the public to obtain information on creating and maintaining environmentally friendly buildings, landscapes, and lifestyles. Through this website, the public would have access to the various "green" programs such as the Green Builder Program, the Municipal Leadership in Energy and Environmental Design (LEED) program, and the New Commercial Construction and Renovation LEED Program. The website would also contain information pertaining to energy efficient building permits, useful "green" tips, and information on affordable ways to protect the environment.

"Working with leaders from throughout the region it is clear to me the need to take measures to clean up our air and to take these environmentally sound measures in order to better the health and well-being of our residents," said Supervisor Gary Ovitt, who serves as President of the Southern California Association of Governments and as a Board Member on the South Coast Air Quality Management District.

Green County San Bernardino has already won praise from a key member of Southern California's environmental community, and should garner support from all individuals and groups interested in protecting our planet and our future.

"We commend the innovative Green County initiative," said Dan Silver, executive director of the Endangered Habitats League. "This incentive-based program immediately makes San Bernardino County a regional leader in energy efficiency and green building practices. Citizens will save money on electricity bills and know that they are helping combat global warming."

The Endangered Habitats League, <http://www.ehleague.org/>, is a non-profit Los Angeles-based organization dedicated to ecosystem protection and sustainable land use.

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The Green County programs also have the support of the Baldy View Chapter of the Building Industry Association, demonstrating that these initiatives strike a rare balance between the concerns of environmentalists and those of builders. That balance is essential to the success of any proposals in a quickly growing region like San Bernardino County.

"Green building means healthier environments, economies, communities, and futures for all of our families and our neighborhoods in San Bernardino County. It's yet another reason we call the American home the American dream," said Todd Tatum, president of the Baldy View Chapter of the Building Industry Association, www.biabuild.com.

"These initiatives continue the County of San Bernardino's proud heritage of fostering sustainable growth and responsible stewardship of our natural resources," Chairman Biane said. "Our goal now is to build upon these programs and continue to work with everyone in our communities to add additional elements under the Green County San Bernardino banner."

Green County San Bernardino builds upon the county's past environmental accomplishments, which include:

- The Greenhouse Gas Reduction Plan announced on August 21, 2007 to include a countywide inventory of 1990 greenhouse gas emissions, an inventory of current emissions and their sources, a projected inventory of emissions through 2020 attributable to the county's discretionary land use decisions and internal government operations, a reduction target, and mitigation measures to meet the target. The county will amend the General Plan within 30 months to add a policy outlining the county's goal of reducing greenhouse gas emissions reasonably attributable to the county's discretionary land use decisions and internal government operations.
- The County of San Bernardino created the state's first regional air quality planning element, which earned the 1991 SCAQMD Clean Air Award, the 1991 CSAC Challenge Award, and the 1993 Southern California Gas Company Partners in Energy Efficiency Award. This resulted in critical policies and procedures that have been integrated into the development review process through the county General Plan and Development Code since the early '90s and reiterated and strengthened in the 2007 General Plan Update and Development Code.
- In 2004, the County of San Bernardino became one of the first counties in the state to launch a fleet of hybrid vehicles, purchasing 20 Toyota Prius sedans.
- Currently, the county Motor Pool has 48 hybrid vehicles in its fleet – 38 sedans and 10 4x4 SUVs. The vehicles average 42 MPG in combined city/highway driving. These vehicles are in such high demand that some county employees arrange their workloads around hybrid availability.

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- The county is committed to purchasing/providing the lowest emission vehicles available. Research indicates that hybrids produce 90% less emissions than the average gasoline-fueled vehicle, and produce zero emissions when running in electric mode.
- This year, the county plans to purchase 30 additional hybrids, a combination of sedans and SUVs. Long-term, the goal is to add 30-35 hybrids to the fleet every year.
- The county is also exploring the purchase of 10 all-electric trucks later this year. Electric vehicles are considered 100% cleaner than any gasoline vehicle and are ideal for in-town, stop-and-go type driving, where typical gasoline-engine vehicles are least efficient.
- The county has also applied to South Coast Air Quality Management District to participate in a plug-in hybrid experiment later this year. This project proposes converting Toyota Prius hybrids to plug-in hybrids, meaning that when parked the vehicle can be plugged into a standard outlet to recharge the batteries, lessening the amount of time the gasoline engine has to run. Preliminary reports indicate fuel mileage as high as 100 MPG using plug-ins hybrid technology.
- The county continues to research and purchase the lowest emissions vehicles available, even for the conventional sedans. All new sedans purchased by the county are at least Ultra Low Emission Vehicles (ULEV) rated or cleaner, which means they are at least 13% cleaner than the average gasoline fueled vehicle. Currently about 33% of the Motor Pool's nearly 1,700 vehicles are ULEV or better, with a goal of at least 45% ULEV by June 2008.
- The County of San Bernardino Regional Parks Department recently obtained 10 electric maintenance carts to replace gas-powered vehicles.
- The County Public Works Department/Flood Control District recently purchased eight solar-powered highway message boards to replace noisy gasoline- and diesel-powered units.
- Public Works also purchased two air vacuums to remove dirt from cracks in the county's roadways prior to repair, replacing the practice of blowing the dirt into the air with air compressors.
- Public Works also purchased five liquid natural gas heavy-duty water trucks, dump trucks, and an asphalt-patch truck to replace diesel-powered units. The county has ordered three additional liquid natural gas heavy-duty trucks in order to remove more diesel-powered units from the fleet. Each liquid natural gas truck reduces greenhouse gases placed in the air each year by approximately 300 pounds and reduces the Particulate Matter by approximately 37 pounds each per year.
- The county plans to purchase seven compressed natural gas heavy-duty trucks to replace diesel-powered units.

-MORE-

- The county has implemented programs to reduce the unnecessary idling of diesel trucks, including using GPS technology to monitor idling.
- The county has received \$100,000 in grant funds from the South Coast Air Quality Management District and currently has a grant request application under consideration for an additional \$250,000 to assist with the future purchase of alternative-fuel heavy-duty vehicles.
- The county's Economic Development Agency is working with the City of Victorville and Inland Energy Inc. to develop the world's first hybrid power plant, which will generate 563 megawatts using 250 acres of solar thermal collectors in combination with natural gas generators.
- For more than two decades the county Human Resources Department has operated an active and effective Commuter Services Program to encourage, coordinate, and reward carpooling, provide information about public transportation and other alternatives to solo commuting. Because the county is by far the largest employer in the Inland Empire with nearly 20,000 employees, these efforts have a very real impact on the quality of our atmosphere.
- The county has applied to the California Pollution Control Financing Authority for a grant of \$250,000 from the Sustainable Communities Grant and Loan Program. If the county is successful in obtaining the grant, the funds could be applied toward the costs to prepare a greenhouse gas reduction plan.