



**NAPA COUNTY GRAND JURY
2017-2018**

June 15, 2018

FINAL REPORT

**THE WILLIAMSON ACT
IN NAPA COUNTY
Subsidizing a Lifestyle**

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SUMMARY

In 1965, the Legislature enacted the California Land Conservation Act, better known as the Williamson Act (WA), to provide tax incentives to owners of agricultural land to maintain such land in agricultural production. Counties may contract with property owners whereby owners agree to restrict their land to agriculture for a minimum of ten years with automatic annual extensions. In exchange, the property owners receive a reduction in property taxes.

With the creation of the Agriculture Preserve zoning district in 1968, the people of Napa County formally declared their commitment to agriculture as the highest and best use of land in the unincorporated portions of the county. Through a succession of initiatives, they confirmed and extended that commitment through 2058. Land within the Ag Preserve (AP) zone and its associated Agriculture Watershed (AW) zone cannot be developed except for agriculture and related uses. Changes in zoning must be approved by the voters. WA contracts may only be let in the AP and AW zones.

As of January 1, 2017, there were 74,711 acres covered by Napa County WA contracts representing 848 separate parcels of land. For the 2017-2018 tax year which began July 1, 2017, owners of land under contract received a total reduction in value of \$548 million.¹ Given the County average tax rate of approximately 1.1 percent, the cost to the County and other agencies that rely on property-tax funding (e.g., cities, schools) is about \$6 million in 2017-2018.² While the amount of taxes lost annually has fluctuated, in the past ten years the total lost revenue is approximately \$60 million. The County's general fund share is over \$10 million—half of the unfunded portion of the new jail construction.

The Napa County Board of Supervisors (BOS) authorizes and executes the WA contracts between the County and the property owners. The Department of Planning, Building and Environmental Services (Planning Department) processes the applications and, with the Agriculture Commissioner, determines parcel eligibility. County Counsel approves the forms of the contracts. Once contracts are in place, the Assessor Division establishes the assessed values of the properties.

The Grand Jury found the BOS, in practice, exercises little, if any oversight, of the application process and no oversight of contract compliance and enforcement. Instead, the BOS relies

¹ Per the Assessor's webpage "Of the 848 parcels under contract, only 446 parcels shared that reduction since the other 402 parcels had a higher value based on agricultural income and remained at their Proposition 13 base year."

² Per the Auditor-Controller's office, in FY 17-18, schools countywide including the Napa Valley College receive 65 percent of the property taxes, cities 11 percent, the county 22 percent, and the balance is divided among special districts.

exclusively on the various departments for these functions. Prior to the legal proceedings instituted by the Grand Jury regarding the Assessor, current supervisors were not knowledgeable of program provisions or its administration, and lacked understanding of the “size of the delta” or amount of property taxes foregone due to the County’s participation in the WA program.

Moreover, the Assessor Division does not conduct WA-contract assessment in accordance with the contract terms, relevant state statutes, and audit recommendations by the state Department of Conservation (DOC) and the Board of Equalization (BOE). The Assessor Division becomes aware of contract holders who are no longer eligible for a contract or who do not comply with contract terms such as responding to questionnaires requesting agricultural information needed to perform an assessment. This information does not find its way to Planning, the BOS, or the District Attorney in cases where statute violations occur.

According to the Director of Planning, Building and Environmental Services (Planning Director), “the uses allowed in the County’s agricultural zoning districts (i.e. AP and AW districts) are mirrored in the Williamson Act contracts as allowed uses.”³ That is, the definitions of agriculture in both the contracts and the zoning ordinances are substantially identical. The Grand Jury agrees. In addition, the Grand Jury found that Napa County’s WA rules are substantially less restrictive than those of other grape-growing counties, providing for tax benefit for properties where little or no agricultural use occurs.

Under the WA, the county need not offer WA contracts at all, may change the length of contracts from ten to nine years (reducing the amount of lost tax revenue by 10 percent), and may phase-out (non-renew) contracts where the properties cease to be eligible or whose owners fail to comply with contract terms and the law. The WA contracts cost ordinary Napa County taxpayers millions of dollars per year but provide no more protection against development than do the Ag Preserve zone, Ag Watershed zone, and the General Plan.

The Grand Jury recommends the Board of Supervisors undertake a comprehensive review and revision of the WA rules, contract terms, and enforcement procedures. As part of this process, the BOS should explore whether to terminate or limit the WA program as provided by state law, and take steps to ensure that those property owners who receive WA tax benefits continue to be entitled to those benefits.

³ Penal Code section 929 precludes the Grand Jury from releasing “the name of any person, or facts that lead to the identity of any person who provided information to the grand jury.” Seven witnesses testified under oath before the Grand Jury and the transcripts of that testimony have been made public by order of the Superior Court. In this report, where a witness is said to have “testified,” the Grand Jury refers to those public transcripts. Other attribution is to public presentations to the Board of Supervisors, such as the reference here to the Planning Director. His comments are part of his agenda letter to the BOS for May 8, 2018.

GLOSSARY

Proposition 13: A 1978 statewide voter initiative fixing property values for assessment purposes. It generally limits ad valorem property taxes to no more than 1 percent of assessed value and limits property-tax assessment increases to no more than 2 percent per year as long as the property is not sold. Once sold, the property is reassessed at the then-current fair market value (typically the sale price) and the 2-percent yearly cap becomes applicable to future years.

Minimum imputed income: A provision in Napa County Type-H Williamson-Act contracts at paragraph VIII establishing a minimum per-acre income for assessment purposes.

BACKGROUND

The 1965 Williamson Act authorizes county boards of supervisors to enter into contracts with owners of agricultural land to maintain that agricultural use for a minimum of ten years with automatic annual extensions. In return for keeping the land devoted to agriculture, the owner may receive a property tax benefit in the form of a reduction of the property's Proposition 13 value or current market value. In other words, the Assessor values land under a Williamson-Act contract at the lesser of:

- The value derived from capitalizing the agricultural income
- The Proposition 13 value
- The current market value

The WA only affects assessed values of the land itself. Physical and growing improvements are assessed separately under Proposition 13. In 1969, Napa County began offering Williamson Act contracts to owners in the Ag Preserve and Ag Watershed. It continues to offer contracts. As of January 1, 2017, there were 74,711 acres covered by Napa County WA contracts representing 848 separate parcels of land.

In 1971, the Legislature enacted the Open Space Subvention Act, which created a formula for allocating annual payments from the state to the counties to offset the loss of property tax revenue from their participation in the WA. Subvention payments were made through FY 2009, but California has suspended them since due to state revenue shortfalls. To offset the loss of these payments, new legislation permits counties to “shorten” their contracts to nine years, reducing owners' tax benefits by ten percent. The BOS has not elected to do so since the option became available in 2011.

METHODOLOGY

The Grand Jury investigation included:

-- Interviews with staff or executives from the Planning Department, Agricultural Commissioner's Office, Assessor Division, County Executive Office, and members of the Board of Supervisors;

- Sworn testimony by Assessor Division and Planning Department staff;
- Documentary information from the Agricultural Commissioner’s Office, Planning Department, Assessor Division, County Counsel Office, Auditor-Controller Office, California Department of Conservation, and state Board of Equalization;
- Electronic research of sister-county WA programs; Napa County BOS agendas, meeting documents and videos; Napa County website documents; Department of Conservation website documents; Board of Equalization website documents and assessor handbooks; and
- Legal research of state codes and opinions of the California Attorney General, Courts of Appeal, and California Supreme Court

DISCUSSION

Administration of the Williamson-Act program in Napa County

The County currently offers three different WA contracts—the “Type A” contract for property zoned in the Agricultural Preserve, the “Type C” contract for five- to ten-acre parcels in the AP with unique characteristics, and the “Type H” contract for property zoned outside the AP. In 2016-2017, approximately two-thirds of the contracts were Type-A, and the rest Type-H or other now-discontinued contract types (Type E or F). No Type-C contracts currently exist.

Eligibility

In general, to be eligible for a Napa County WA contract, a parcel must be at least 10 acres if considered prime land as defined by the Act, and 40 acres in areas less suited to intensive agricultural production, e.g., grazing. In addition, each contract applicant must show agricultural income from the property in three of the past five years. Certain non-agricultural uses deemed compatible to agriculture are permitted such as a single residence, a winery, or a cell-tower.

Application and Approval

The County accepts applications to enroll a parcel into the program annually in September. Contracts for qualifying parcels are recorded by December 31, following approval by the Board of Supervisors at its first meeting in December. The applications are processed by the Planning Department with the Agricultural Commissioner verifying the claimed agriculture use through aerial photos or site inspection.

Determining Assessed Values

In general, real property is assessed using the market-value approach. When a property is bought and sold, the “market” determines the value. This market value becomes the assessed value that can only be raised 2 percent annually under the provisions of Proposition 13. Property subject to a WA contract is assessed differently. The assessor must determine the income the property generates and then capitalize that income to arrive at assessed value.

For vineyards and wineries under Type-A contracts, the Assessor Division, by contract, must use the greater of actual agricultural rental income or “fair rental income” the property is capable of earning. The assessment is computed separately for the vineyard land, the vines, the wineries and buildings, and the sites for those wineries and buildings.

Vineyard-land leases exist in Napa County, but they are long-term and location-specific, meaning a lease in Pope Valley has little application to values in Rutherford. With the lack of adequate comparable-site information, the Assessor Division has divided the county vineyard land into ten geographic zones and assigned land values based on assumed lease rates that are then capitalized at 4 percent. The lowest assumed rates are in Pope Valley; the highest are in Rutherford. The Assessor Division’s assigned values in zones 1 to 10 are: \$1200, \$2000, \$2800, \$3600, \$4600, \$5600, \$6600, \$7600, \$8600, and \$9600. Multiplying these assumed lease rates by 25 (4 percent x 25 = 100 percent) yields the assumed market values the Assessor Division uses. (For example, a Rutherford vineyard would be in zone 10. Its per-acre value is $\$9600 \times 25 = \$240,000$; a Pope Valley vineyard would be $\$1200 \times 25 = \$30,000$.) The Grand Jury could find no empirical data or documentation to support these lease rates or the capitalization rate of 4 percent, all of which appear to exist solely as a matter of past Assessor Division practice and discretion.

Very few wineries are leased in Napa County and the Assessor Division does not maintain actual rental-income data. The winery sites are valued using industrial-lease rates last revised in 1996. Winery-site values the Assessor Division uses do not include the value of entitlements such as tasting-room permits. Winery buildings, residences, and other accessory structures are valued using Proposition 13 or market values. That is, structures do not receive WA tax benefits.

For the vines, the Assessor Division first derives a vineyard’s gross income. They take the countywide per-ton price for each grape varietal and multiply that price by the owner’s five-year average production tonnage for each varietal. Owners who fail to return the Assessor Division questionnaires are assigned a production tonnage equal to one-and-one-half times the County average. The Assessor Division then takes the information from the owners’ questionnaire responses and attempts to derive a county-average-per-acre vineyard expense figure. This average per-acre expense is multiplied by the number of acres in the vineyard and then subtracted from the derived gross income. The resulting derived net income is then capitalized and compared to the Proposition 13 and current market values. The property is assessed and taxes are calculated using the lower of the Prop 13, market, or derived value.

For grazing lands, Type-H contracts direct the Assessor Division to use the greater of actual rental income or “fair rental income,” but not less than a minimum-imputed income based on parcel size. At the time a contract is entered into, a minimum per-acre income is made part of the contract.¹ In practice, the Assessor Division does not attempt to estimate “fair rental income” but relies exclusively on minimum-imputed income values.

Additionally, the Assessor Division must separately value all compatible uses on any contracted properties – non-living improvements such as wineries and tasting rooms. Actual or imputed income from these uses is capitalized to arrive at land value.

All Napa County Williamson-Act contracts require owners furnish income and expense information to the Assessor Division upon request. The Assessor Division mails a questionnaire each year to vineyard landowners and has mailed questionnaires to owners of grazing lands in 2010 and 2015. The owner is asked to report the nature of the agricultural enterprise, its income and expenses and, if a vineyard, the production. The Assessor Division's right to this information is also based in the law. By statute, the Assessor Division is entitled to all information "essential to the proper discharge of the assessor's duties." An owner's refusal to furnish this information to the Assessor Division is a misdemeanor. It is also a misdemeanor to willfully make a false statement concerning a fact involved in the imposition of a tax.

The Napa County Williamson-Act program does not achieve benefits beyond those provided by the AP and AW zoning

One witness before the Grand Jury characterized the County's WA program as "welfare for the rich." Another observed it "subsidized a lifestyle" rather than provided protection from development. The WA program in Napa does not appear to afford any more protection from the urbanization of agricultural land than the General Plan and the AP and AW zoning rules already do.

Napa County code section 18.16.010 provides:

The AP district classification is intended to be applied in the fertile valley and foothill areas of Napa County in which agriculture is and should continue to be the predominant land use, where uses incompatible to agriculture should be precluded and where the development of urban-type uses would be detrimental to the continuance of agriculture and the maintenance of open space which are economic and aesthetic attributes and assets of the county.

According to the Department of Conservation, the WA exists for the same purpose: “restricting specific parcels of land to agricultural or related open space use.” The basic agreement in the Napa County contracts is to limit use “to agriculture and other uses compatible with agriculture.” Under Revenue & Taxation Code § 430, agriculture is presumed to be the highest and best use for a WA parcel.

The Planning Director recently told the BOS in an agenda letter for May 8, 2018, “the uses allowed in the County’s agricultural zoning districts (i.e. AP and AW districts) are *mirrored* (Grand Jury emphasis added) in the Williamson Act contracts as allowed uses.” Another Planning staff member told the BOS in December 2017, the uses “match” each other. The Grand Jury’s comparison of the permitted uses under zoning and under contract substantiates the Planning Department’s analysis – the Williamson Act does not appear to provide a tangible benefit to the taxpayers of Napa County.

Despite the limitations on development from the County’s planning and zoning rules, Napa County agricultural land has become some of the most highly prized and valued agricultural land in the world. Yet the County taxpayers are subsidizing the owners of that land. In his comments to the BOS on May 8, 2018, the Assessor pointed out that the owners of newly-acquired vineyards are benefitting most from the WA-program.³ Because WA assessment is on a capitalization-of-income basis, as grape prices have risen, the longer-held vineyards have lower assessments under Proposition 13 than they do under the WA. In other words, the WA-tax benefit is concentrated in the hands of those most able to afford market-rate tax assessment—the wealthy and the corporations as they buy up Napa County agricultural land.

In a January 2011 presentation to the BOS, the Assessor characterized the County’s lost tax revenue as an “insurance premium” against urbanization, but what insurance are the taxpayers actually receiving for their premium and who is underwriting this insurance? Is this lost revenue a give-away to the very people paying inflated land values, at the expense of the County, the schools and the cities that share in the property tax revenue? The Grand Jury believes the BOS should cause an independent study to be made to determine whether the perceived benefits of the WA program justify the costs in lost tax revenue.

Assessment is not conducted according to contract, rule, and law

Many problems apply to the assessment of property under Williamson-Act contracts in Napa County.

Under reporting: The assessment process depends heavily on self-reporting by the owners. The contracts and the state Revenue & Taxation Code require owners to respond to Assessor Division inquiries.

³ For example, the land component of a 67.7-acre parcel at Acacia Drive and Oakville Grade was assessed at \$15,393,524 in 2017, \$226,378 per acre, based on a recent sale. But under its WA contract the BOS approved in December 2017, the property is assessed at \$10,411,993, an assessment reduction of \$4,981,531. Taxes are approximately \$114,532 instead of \$169,329.

In 2016, owners of 542 separately-assessed vineyard parcels received questionnaires. Only 106 responded fully – 19.5 percent. The non-responding owners include many of the largest grape and wine producers in the valley. In 2015, owners of 266 separately-assessed grazing parcels received questionnaires. 161 responded – 61 percent. The under-reporting predates a 2010 state Department of Conservation audit that criticized the practice. In 2008, the Assessor Division mailed 289 grazing questionnaires and 183 responded – 63 percent.

Assessor Division employees testified that the information requested by the questionnaires is “essential to the proper discharge of the assessor’s duties.” A taxpayer who fails to provide the assessor with information essential to the proper discharge of the assessor’s duties commits a misdemeanor.

Non-qualifying parcels: Prime vineyard parcels must be a minimum of 10 acres. Non-prime grazing parcels must be a minimum of 40 acres. According to Assessor Division and Planning staff, parcels must generate agriculture income. Approximately 20-25 parcels exist that do not satisfy the size requirements. Per the 2015 questionnaires that were returned, approximately 50 non-prime grazing parcels do not generate agriculture income and are effectively “open space.” Open-space Williamson-Act contracts are not offered in Napa County. The issue has existed at least since 2008 when 55 grazing-contract owners returned questionnaires acknowledging that they had no agriculture use on their properties.

Lack of current valuation rates: For WA assessment purposes, Revenue & Taxation Code section 423 requires income to be calculated on “typical rentals received in the area for similar land in similar use.” Type-A contracts require the Assessor Division to value the properties at the higher of actual income or fair rental income. Type-H contracts require assessment at the higher of actual income or fair rental income but not less than a contract-specified minimum income per acre.

The Assessor Division does not attempt to assess each parcel based on its actual income. For vineyard/winery properties the Assessor Division attempts to calculate fair rental income in the manner discussed above. The Assessor Division uses assumed industrial lease rental rates from 1996 to value winery and tasting room sites. The Assessor Division has not attempted to update these values since 1996.

The Assessor Division does not attempt to determine either the actual or the fair-rental income for the Type-H grazing parcels. Rather the Assessor Division exclusively uses the contract-specified minimum imputed income to value grazing parcels. The minimum-income values range from \$175/acre for 11- to 21-acre parcels to \$10/acre for parcels greater than 400 acres. The corresponding assessed values under current capitalization formulas are approximately \$3,000 per acre to \$175 per acre.

The Grand Jury learned that the source of these minimum-imputed-income values is a “Rule 13” adopted by the BOS in 1969. The values reflected in Rule 13 are unchanged since its adoption and are still applied to all Type-H contracts, although the Planning Director reported to the BOS on May 8, 2018, that the rule as such was eliminated in 2001. Whether or not Rule 13 continues to exist, it occupies a curious place in the Type-H contract rules. It is not included in the

published Type-H rules and neither it nor the values set forth appear anywhere else on the County's website. It was not included in the 2008 revisions to County WA rules and contract forms. However, the joint Planning Department - Assessor Division response to the Department of Conservation audit in 2010 attached Rule 13 to describe how minimum imputed income worked in Napa County WA contracts.

A provision in Rule 13, which is incorporated into each Type-H contract, allows the Board of Supervisors to increase (or decrease) minimum-imputed-income-values every five years based on "the trend of real estate sales and rental values, and general economic movements." The Assessor has never requested the Board to adjust rates, either generally or on a contract-by-contract basis, and has never directed staff to conduct a rate study. The Assessor testified he was satisfied they were still current based on his experience as a rancher. The Assessor, as trustee of his family's trust, owns a Type-H parcel of approximately 1000 acres and is assessed at a minimum imputed income of \$10 per acre. His assessment would increase with an increase in imputed-income values.

The Grand Jury could find no evidence that County supervisors were aware of Rule 13, its minimum-imputed-income values, or of their options to revise those values globally or on a contract-by-contract basis, at least prior to the Grand Jury's initiation of legal proceedings against the Assessor. At a December 2017 BOS meeting, one supervisor expressed a lack of understanding about what a Type-H contract was.

No compliance efforts - how long has this been going on? In 2008, discussions occurred between the Assessor, Agriculture Commissioner's office, Planning Department and County Counsel regarding 55 parcels subject to grazing that did not have agriculture use. No apparent follow-up took place. That same year the BOS revised the WA contracts and rules but BOS archives do not reflect any discussion of compliance or enforcement.

On February 22, 2010, the state Department of Conservation audited the County's Williamson-Act program.⁴ The audit found 40-50 percent return rates for vineyard and grazing questionnaires. It further found, "Any review of reported data is a 'judgment call.'" The audit recommended, "The County should establish procedures that require WA contract holders to complete questionnaires in a timely manner." It also recommended grazing-contract (Type-H) holders be sent questionnaires biennially (every two years).

The Assessor responded to the Department of Conservation recommendation by saying that a warning would be included in future questionnaire mailings. He further stated that biennial questionnaires would not be "cost-efficient" because "Napa County has a minimum imputed income for grazing contracts. (See Attachment 4.) We will upgrade our grazing questionnaire

⁴ The DOC no longer conducts audits due to funding limitations. The 2010 audit was the last one performed on Napa County's program.

survey to every three years in response to this recommendation.” The Grand Jury obtained the attachment⁵ from DOC and confirmed it was Rule 13 with an explanation of how it works.

In preparing the joint Assessor Division – Planning Department response to the DOC audit, the various departments involved discussed whether to refer to the Planning Department and/or Agriculture Commissioner for non-renewal the persons who did not respond or responded indicating no-agriculture-use. No follow-up took place.

In 2010, 282 grazing questionnaires were to be sent. No apparent follow-up took place with owners who failed to respond or who indicated no agriculture income. The Assessor made the “judgment call” not to review the questionnaires that were returned. They were simply filed in the individual parcel folders.

In March 2013, the Assessor and then-Planning Director discussed enforcement of the Williamson-Act program. Per the Assessor, “We have identified a number of contracts that no longer meet the requirements of the CLCA and could be non-renewed.” No apparent follow up took place.

Notwithstanding his response to the Department of Conservation’s audit, the Assessor Division did not send 2013 questionnaires at all. The Assessor Division mailed questionnaires in 2015 to Type-H holders but again did not review those that were returned. They were simply batch-filed. This mailing did include a cover letter warning the owner of possible non-renewal if no compliance.

On May 8, 2018, the Planning Director and Assessor made a presentation to the BOS. The Board agenda letter from the Planning Director together with his and the Assessor’s oral presentation at the meeting substantially misstated the DOC audit finding. They also misstated the Assessor’s subsequent response, and omitted to state the Assessor’s failure to execute the corrective action he promised.

Contrary to the representations from the Planning Director and Assessor, the Assessor has not followed either the DOC recommendation or his partial agreement to comply with it. As noted, grazing questionnaires have not been sent every three years and those that were returned have never been reviewed. According to the Assessor, the grazing questionnaire data is not relevant because he continues in his belief that the 1969 Rule-13 minimum-imputed-income values represent current income levels.

Meanwhile, in August 2015, in response to a staff inquiry, the Assessor declined to transmit any information to the Planning Department regarding non-responding owners and non-qualifying parcels. Per the Assessor, that “is a Planning matter and to date they are not interested in undertaking that process. I may check again in 2016.” The Grand Jury could not confirm this statement with Planning Department staff. According to information received from the Assessor

⁵ The Assessor Division response letter to the DOC was provided to the BOS in connection with the Planning-Assessor presentation on May 8, 2018. The attachment showing Rule 13 was not included.

Division, 62 parcels exist that do not meet minimum size requirements. Over half of those 62 were smaller than 5 acres.

Per custom, the Assessor Division sent questionnaires to vineyard/winery owners in 2017. As noted, only 19.5 percent responded fully. Contrary to his representations to the Department of Conservation, the Assessor did not include any non-renewal warning in the transmittal letter. Non-complying property owners are assessed using one and one-half the county average tonnage for each grape varietal. The information concerning non-responding property owners is within the exclusive possession of the Assessor Division. The Grand Jury could find no evidence that the BOS or the Planning Department was made aware of this issue, which was identified by the DOC and never addressed.

The Planning Department, as directed by the BOS, has bolstered its code-enforcement efforts and has added additional staff for that purpose in recent years. The Grand Jury received conflicting information from the members of the Planning Department concerning department enforcement policy of WA contracts. Whatever the department policy is, the Planning Department has never undertaken any WA-contract enforcement or inquiry. The department's annual enforcement reports to the BOS have never discussed the WA program.

The Assessor's conflicts of interest and lack of internal controls taint the WA program

The state Board of Equalization conducts assessment-practices surveys of county assessors.

A 2013 Board of Equalization Assessment finds Assessor's conflict-of-interest procedures inadequate

The survey program is one of the State's major efforts to address these interests and to promote uniformity, fairness, equity, and integrity in the property tax assessment process. Under this program, the State Board of Equalization (BOE) periodically reviews the practices and procedures (surveys) of every county assessor's office.

The survey team makes recommendations when assessment practices in a given area are not in accordance with property tax law or generally accepted appraisal practices.

The Assessor is required to submit a response to the Board of Equalization which then distributes its report and the Assessor's response to the Board of Supervisors and other interested persons and agencies, including the Grand Jury.

In 2013, the BOE released its survey of the Napa County Assessor's office. Among other things, the BOE reported on its examination of the "assessor's internal controls and safeguards as they apply to staff-owned properties and conflicts of interest." The BOE found:

- No written conflict-of-interest procedures existed. They had been drafted and were under review.
- A supervisor did not review most assessments as provided for in earlier informal policies and in recently developed written procedures.

-The Assessor Division's written procedures for the assessment of staff-owned property were limited and should be expanded to fully address related potential issues.

The final BOE recommendation was:

Develop and adhere to written procedures for incompatible activities and the reporting of economic interests, and expand and adhere to written procedures for maintaining the integrity of staff-owned property assessments.

The Assessor responded:

WE CONCUR. We have completed, adopted and are implementing written procedures for reporting of economic interests, incompatible activities and maintaining the integrity of the assessment of staff-owned properties.

The procedures adopted by the Assessor remain inadequate with unqualified personnel expected to review assessments of property owned by the Assessor.

In connection with this investigation, the Grand Jury requested the Assessor Division's custodian of records to produce: "Conflict of interest/Assessor's employees assessment procedures from 2005 to present."

The sole document the Grand Jury received was entitled "ASSESSOR DIVISION EMPLOYEE PROPERTY (rev. 9-16) (Conflict Procedures)." None of the Assessor's employees who testified could confirm the existence of an earlier document, notwithstanding the Assessor's 2013 response to the BOE that one was being prepared at that time.

The Conflict Procedures provide:

For properties owned by the Assessor-Recorder-County Clerk, all work performed must be reviewed by the Chief Appraiser and Staff Services Manager.

The Staff Services Manager, testified that he:

- was unaware of any prior versions of the Conflict Procedures and had not seen the document previously;
- generally did not perform the duties specified in the document for the Staff Services Manager except to hand out and collect employee-owned property forms; and
- had never reviewed the assessment of the Assessor's property and was unqualified to do so.

The Chief Appraiser, testified that he:

- had not participated in drafting the document;
- had little to do under the conflict procedures; and
- had not worked with the Staff Services Manager in reviewing the Assessor's property assessments.

In other words, despite his response to the 2013 BOE audit, the Assessor has failed to "Develop and adhere to written procedures . . . maintaining the integrity of [his own] property assessments." The Grand Jury believes the BOS should take all steps to ensure the Assessor Division and WA program operate in accordance with the law, the contracts, and best practices.

The Board of Supervisors does not appear to have complete or accurate information about what the Williamson Act actually does, how the Williamson Act works, or the Board's options in implementing it

The BOS lacks complete information of the actual cost of the WA program to all County taxpayers

As noted, the County's participation in the Williamson-Act program has cost the taxpayers approximately \$60 million over the last decade alone. Yet the Grand Jury learned that the BOS may not fully understand the actual cost. Supervisors the Grand Jury interviewed expressed surprise at the "size of the delta" or the amount of lost revenue the program creates. Part of that misunderstanding may stem from the failure of Assessor and Planning staff to apprise the BOS fully.

In the May 8, 2018, presentation to the BOS on the Williamson Act, the Planning Director stated the WA cost the County \$1 million per year, to which one supervisor expressed the opinion, "that's a very small investment." However, that \$1 million only represents the direct loss to the County's general fund, which receives but 17 cents of each property-tax dollar.

The County (along with other taxing jurisdictions) is required by state law to subsidize the state's education-funding obligations by "shifting" property-tax revenue that would otherwise go to the general fund to what is called the Education Revenue Augmentation Fund or ERAF. When the amount "shifted" exceeds the amount needed "excess ERAF" results in funds that are returned to the County general fund. "Excess ERAF" is projected to provide \$34 million to cost of the new jail according to a May 15, 2018 presentation to the BOS. 12.3 percent of the 2017-2018 property tax dollars went to ERAF.

The Grand Jury believes the BOS must consider the interests of all entities that rely on the property tax in making decisions regarding property-tax concessions. Napa Valley Unified School District's property-tax share is about 30 cents, nearly \$2 million in annual lost tax revenue. These funds would go a long way to closing the deficit in NVUSD's budget instead of having to close schools. Moreover, had the County's \$1 million per year been invested at 2.5 percent starting in 2008, that fund would be \$11.23 million today—money that could be applied to a new jail. Instead, as reflected in the May 15, 2018 BOS presentation, the BOS contemplates borrowing \$20 million to fund a new jail.

The BOS does not have complete information of how the Williamson Act works

Supervisors told the Grand Jury that they necessarily must rely on staff—the Assessor, the Planning Director, County Counsel and the Agricultural Commissioner—to keep them informed. The Board approves new WA contracts annually in December presented by the Planning Department staff responsible for processing the applications. The presentation is brief and without substantive discussion. BOS approval appears perfunctory. In December 2017, the BOS added 470 acres to the WA program through 10 contracts without substantive discussion.

County Counsel has not made any substantive presentation to the BOS about the WA since the contracts and rules were last revised in 2008. Even then, Counsel's presentation did not discuss any of the issues concerning contract owners non-responding to Assessor questionnaires or the undersized parcels enjoying WA-tax benefits.

Before the May 8, 2018 BOS presentation, the last staff presentation to the BOS about the WA program was January 25, 2011, during which the Planning Director and Assessor made a presentation regarding BOS options to recoup state subvention payments. As noted in the summary, in 1971 the state devised a formula for allocating annual payments from the state to the counties to offset the loss of property tax revenue from their participation in the WA called subvention. Subvention payments were made through FY 2009, but the state has suspended them since due to revenue shortfalls. To offset the loss of these payments, legislation was adopted to allow counties to "shorten" their contracts to nine years, thereby reducing the tax loss to the County from the WA program by ten percent. The staff presentation lacked any explanation of just how the new provisions would work. The Assessor, a WA contract holder himself, expressed strong opposition to implementing the legislation to shorten the contracts.

Under the legislation, the BOS has an annual option to recoup some of the WA-tax losses. The Grand Jury has found no record that Assessor Division staff advised the BOS of its options since 2011. Three members of the current BOS were not on the Board when staff last presented any information about the WA. Without on-going information from the Assessor Division, these new members likely do not even know of this option.

The on-going use of Rule 13's minimum-imputed-income values provides an example of the BOS's seeming lack of information about how the Williamson Act works in Napa County.. The Grand Jury learned that a 1996 revision to the Type-H rules included Rule 13. A 2001 revision did not. BOS materials furnished to the Grand Jury from the 2001 BOS action do not reflect any discussion concerning why it was omitted. The 2008 revision to the Type-H rules likewise do not contain a Rule 13 and the County Counsel's agenda letter does not discuss minimum-imputed-income. But, in 2010, the Assessor and Planning Director furnished Rule 13 to the DOC to justify not sending income questionnaires to Type-H contract holders every two years as the DOC had recommended. As noted, Rule 13's 1969 values are being applied to Type-H contracts to this day. The Grand Jury cannot find a record of any BOS action approving its continued use. Instead, Planning staff inserts Rule-13 values into new Type-H contracts and submits them to the BOS for approval. The BOS approves the contracts as a matter of course.

The BOS does not have complete information on its options under the WA

State law does not require the County to participate in the WA program. The BOS may "shorten" the contracts as indicated above to reduce the tax impact. The BOS may initiate legal action to enforce the contract for an owner's failure to comply with contract terms or failure to supply Assessor-requested information. The BOS may non-renew some or all WA contracts. Non-renewal starts a ten-year process whereby the affected property owner loses benefits over time.

The Grand Jury could not find any indication that the BOS has ever reviewed the Napa program and compared it to that of other counties or to DOC best practices. The differences are significant. For example, Napa County WA contracts only require some "bona fide agricultural

use” in three of the last five years. Thus, a 1000-acre grazing parcel of which only 10 acres are used for grazing enjoys the tax benefit for the entire parcel. In other counties, to qualify, a parcel must be utilized for agriculture in some minimum percentage of its total acreage, e.g. 90 percent (Stanislaus), 75 percent (San Mateo) 60 percent (Alameda, Santa Clara) and 50 percent (Sonoma). Solano County requires minimum agricultural production measured by dollar amount.

The other counties surveyed require continuous agricultural use. The Assessor Division has been aware since at least 2008 that many Type-H contract holders do not generate agricultural income. Both Planning and Assessor staff told the Grand Jury that agricultural income is a condition of a contract qualification but Napa contracts do not expressly require the properties continue in agricultural use.

The Assessor and his supervisory staff disclaimed the responsibility to inform the BOS concerning contract owners who were not in compliance with their contracts and the law in their testimony before the Grand Jury. The Grand Jury received differing information from the Planning staff it interviewed concerning Planning Department’s “interest” in WA enforcement. Regardless, neither the Planning Department nor the Assessor Division has made any substantive presentation to the BOS about WA enforcement within the last 15 years. Without accurate, current information from its staff, the BOS cannot effectively supervise the WA program.

Napa County’s agricultural land, particularly its vineyard land, is some of the most valuable in the world, with almost 44,000 vineyard acres producing a \$750-million annual crop. According to a 2017 *Western Farm Press* report, Napa Valley vineyard values are now at least \$400,000 an acre, due in a large part to the scarcity of available land in the prime-growing regions or appellations. Under this formula, the vineyards alone are worth \$17.6 billion. Yet, according to the Assessor, the assessed value of the vineyards in tax year 2016-2017 only accounted for approximately \$2 billion of the total \$32.7-billion assessment roll. These figures suggest that, even allowing for Proposition 13, Napa County agricultural land may be under-assessed. The figures also indicate the need for the Board of Supervisors to undertake a cost-benefit analysis of the Williamson-Act program to determine whether, and on what basis, Napa County continues to offer WA contracts. The figures also highlight the supervisors’ need to ensure the WA assessment and enforcement process is conducted in accordance with best practices, the contracts themselves, and the law.

FINDINGS

- F1. The Napa County Williamson-Act program does not provide any more protection from development than does existing zoning and the General Plan.
- F2. The Board of Supervisors lacks adequate information about the workings of the Napa County Williamson-Act program, of BOS options under it, and of the total lost property tax revenue to all Napa County entities that share in the revenue.
- F3. Williamson-Act contract enforcement is non-existent. Planning and Assessor staff have not informed the BOS of undersize parcels, parcels without agricultural income, and

parcels whose owners do not supply Assessor-requested information as required by contract and by law.

- F4. The continued use of 1969 minimum-imputed-income values may result in Williamson-Act grazing parcels (Type-H) being systematically under assessed.
- F5. The Board of Supervisors has not exercised effective supervision of the Williamson-Act program since at least 2008.
- F6. The Assessor lacks adequate conflict-of-interest procedures regarding his own properties with unqualified personnel assigned to “check” any work.

RECOMMENDATIONS

- R1. No later than November 30, 2018, the Board of Supervisors commission an independent cost-benefit analysis of the Williamson-Act program, with public input, in which the cost to all stakeholders (e.g. schools, cities, special districts) in property tax revenues is considered so that the BOS may make informed decisions regarding the County’s continued participation in the Williamson-Act program.
- R2. No later than November 30, 2018, the Board of Supervisors commission an independent study of the County Williamson-Act program to determine whether the program comports with those programs in other counties and with best practices, and to recommend revisions to the program, including revisions to the minimum-imputed-income values in Type-H contracts.
- R3. No later than October 31, 2018, the Board of Supervisors commission an independent audit of the Napa County Williamson-Act program by the Auditor-Controller or outside agency to determine to what extent contract holders are in compliance with their contracts, the WA rules, and the law.
- R4. No later than October 31, 2018, the Assessor revise his internal conflict-of-interest procedures so that at least two assessment-qualified personnel perform all the work on employee-owned properties.

COMMENDATIONS:

- C1. The Grand Jury commends the County employees who came forward and assisted the Grand Jury with this investigation.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following individuals:

- The Assessor-Recorder-County Clerk: F1, F2, F6, R4.

From the following governing bodies:

- The Board of Supervisors: F1, F2, F3, F4, F5, R1, R2, R3.

INVITED RESPONSES

The Grand Jury invites responses from:

- The Director of Planning, Building and Environmental Services: F1, F2, F3, F4, F5, R1, R2, R3.

BIBLIOGRAPHY

BOS meeting May 8, 2018 video:

http://napa.granicus.com/MediaPlayer.php?view_id=2&clip_id=4066

BOS meeting January 25, 2011 video:

http://napa.granicus.com/MediaPlayer.php?view_id=2&clip_id=1156

California Department of Conservation Williamson Act webpage (includes links to relevant statutes): <http://www.conservation.ca.gov/dlrp/lca>

Napa County Williamson Act Application (includes Type-A, Type-H contracts and rules)
<https://www.countyofnapa.org/documentcenter/view/3384>

Napa County Assessor's Williamson Act webpage:

<https://www.countyofnapa.org/1088/California-Land-Conservation-Williamson-Act>

California Board of Equalization Williamson Act webpage (includes links to relevant statutes):

http://www.boe.ca.gov/Assessors/pdf/clca_general.pdf

APPENDIX

County of Napa Property Tax 1% Apportionment Factors FY 2017/18

2010 Department of Conservation Audit Findings and Joint Planning-Assessor response including Rule 13

May 8, 2018 Board Agenda Letter re Williamson Act

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

This report was issued by the 2017-2018 Napa County Grand Jury with the exception of a juror who is a former employee of the Assessor's Division. This Grand Juror was excluded from all parts of the investigation, including interviews, deliberations, and the writing and approval of this report.

APPENDIX I

COUNTY OF NAPA
PROPERTY TAX 1% APPORTIONMENT FACTORS
 Current Secured/Unsecured
 FY 2017/18

	FUND	DESCRIPTION	17/18 CY APPORTIONMENT FACTORS
1	1000	NAPA COUNTY	0.171750
2	2100	FIRE NON-STRUCTURAL	0.015424
3	2020	LIBRARY	0.020266
4	2100	FIRE PROTECTION	0.014621
5		County subtotal	0.222061
7	15100	CITY OF CALISTOGA	0.004060
8	15200	CITY OF NAPA	0.050093
9	15300	CITY OF ST HELENA	0.009908
10	15400	TOWN OF YOUNTVILLE	0.002384
11	18175/71510	PARKWAY PLAZA RDA PROJECT	0.020516
12	18175/71520	SOSCOL GATEWAY RDA PROJECT	0.004573
13	18800	CITY OF AMERICAN CANYON	0.021408
14		City subtotal	0.112942
16	5220	LAKE BERRYESSA RESORT IMPROV	0.000074
17	5240	NAPA BERRYESSA RESORT IMPROV	0.000128
18	2860	MONTICELLO CEMETERY DISTRICT	0.000070
19	9504	CIRCLE OAKS WATER DISTRICT	0.000090
20	7400	CONGRESS VALLEY WATER DISTRICT	0.000215
21	18900	AMERICAN CANYON FIRE DISTRICT	0.010652
22	7100	NAPA COUNTY MOSQUITO ABATEMENT	0.003584
23	7300	NAPA COUNTY RESOURCE CONSERV	0.000896
24	7500	NAPA COUNTY RIVER RECLAMATION	0.000062
25	9503	BAY AREA AIR QUALITY MANAGEMENT	0.002726
26		Special District subtotal	0.018497
28	9020	HOWELL MTN ELEMENTARY SCHOOL	0.003739
29	9060	POPE VALLEY ELEMENTARY SCHOOL	0.003241
30	9300	FAIRFIELD-SUISUN UNIFIED SCHOOL	0.001623
31	9010	CALISTOGA JOINT UNIFIED SCHOOL	0.032803
32	9050	NAPA VALLEY UNIFIED SCHOOL	0.294192
33	9070	ST HELENA UNIFIED SCHOOL	0.077247
34	9030	NAPA VALLEY COMMUNITY COLLEGE	0.079593
35	9310	SOLANO COUNTY OFFICE OF EDUCATION	0.000065
36	9040	NAPA COUNTY OFFICE OF EDUCATION	0.030230
37	9490	ERAF	0.123767
38		Schools subtotal	0.648500
39		Total	1.000000

10/3/2017

3/5/2018

Assessor-Recorder-County Clerk
Assessor Division

1127 First Street, Suite 128
Napa, CA 94559-2931

(707) 253-4459
Fax: (707) 259-4440

JOHN TUTEUR
ASSESSOR-RECORDER-COUNTY CLERK



A Tradition of Stewardship
A Commitment to Service

March 22, 2010

ATTN: JOHN BARR, CLCA PROGRAM
DIV OF LAND RESOURCES PROTECTION
801 K ST MS 18 01
SACRAMENTO CA 95814

Dear Mr. Barr:

I am responding on behalf of Hillary Gitelman, Director of Conservation Development and Planning and for the Assessor-Recorder-County Clerk Department to the findings letter we received on February 22, 2010. I was asked to prepare the response as all the findings related to the operation of our department.

Accompanying this letter is a revised grazing and a revised vineyard questionnaire incorporating language as to possible non-renewal for failure to respond. There is no further implementation plan required.

FINDING 1: No Open Space Contracts

Condition: Several parcels, including but not limited to: APN's 050-380-010, 11; 032-080-081; 027-430-021; 020-340-030; 025-020-020, 021; 022-250-006; and 024-040-020, 21, 30, 41 are classified as partially or entirely open-space (OS) in the Assessor's Detailed Acreage Report (DAR). If those properties are OS use then the owners should be allowed to non-renew their WA contracts and re-enter into OS contracts.

*Received
Yolanda
3/22/10*

There is no provision for OS or recreation contracts.

ASSESSOR RESPONSE TO FINDING 1: NO OPEN SPACE CONTRACTS

During the audit our staff explained that the use of the word Open Space for certain acreage was a misnomer created by our Property Tax System Vendor. The correct designation for these acres should be "non-prime."

*Non prime is not grazing. As most areas it is
buffer and should not receive a tax reduction
based on grazing rates*

Attachment 1 is the screen (AS640) where we capture the acreage categories. There is a field for open space and no field for non-prime. We will work with our vendor to ensure that the next upgrade of the system renames that field to non-prime.

Attachment 2 is the Detail Acres Report ASR 70-2750-020. The use of "open space" should have been "non-prime." There is no non-prime category which confirms that "open space" is a substitute. We will work with our vendor to ensure that the next upgrade of the system renames that column to non-prime.

Attachment 3 is the Subvention Acres Report ASR 70-2750-070. The language of the report clearly indicates that Non-Prime on the report equals Open Space on the detail acres report. We will work with our vendor to ensure that the next upgrade of the system removes the need for the translation from one report to the other.

There are NO OPEN SPACE acres under contract in Napa County. All contracts are reviewed by the Agricultural Commissioner prior to being signed to ensure that a bona-fide agricultural use exists on the parcel to be placed under contract.

FINDING 2: Improve the Questionnaire Process

Condition: The County Assessor's Office sends vineyard landowners annual questionnaires to collect information about production and crop activity. An income and expense questionnaire is sent at the same time. The response rate for the questionnaires is less than 50% and any review of reported data is a "judgment call."

The Assessor sends a separate questionnaire to landowners with property used for grazing purposes. The "grazing" questionnaires are sent every three to five years and have only a 40% response rate.

The Assessor's Detailed Acres Report (DAR) classifies non-prime land as OS but the questionnaires seek information on grazing activities. Are OS and grazing land classified as one in the same?

Parcel folders with completed copies of Napa's *Williamson Contract Agricultural Report* (ag report) do not indicate that a large portion of the site is actually OS. The form allows for such reporting under the heading of other, but typically such use goes unreported. Those parcel folders with incomplete ag reports leave it to the county to determine the agricultural activity occurring on the property.

Recommendations: A. The County should streamline their survey efforts by sending bi-annual questionnaires to all WA contract holders. The new questionnaires would collect information for all ag activity. The current vineyard only form would be enveloped by the all ag activity questionnaire and OS activity on the same form. This could be done by separating grazing land from OS land.

ASSESSOR RESPONSE TO FINDING 2, Recommendation A:

As discussed in ASSESSOR RESPONSE TO FINDING 1: NO OPEN SPACE CONTRACTS, there are no open space contracts or lands under contract in Napa County. We believe that a separate, annual questionnaire for vineyards is necessary because vineyard changes happen on a more frequent basis and more data needs to be tracked. We will discuss including a grazing activity questionnaire in the annual vineyard questionnaire for those few parcels that have both vineyard and grazing activities.

We have not felt that an annual or biannual grazing questionnaire is cost-efficient for two reasons:

- 1) grazing uses do not change frequently nor do grazing revenues change much over time.
- 2) Napa County has a minimum imputed income for grazing contracts (see Attachment 4).
Grazing revenues are so stable in Napa County that the minimum imputed incomes still match or exceed the actual grazing revenue for grazing contracts in Napa County.

We will upgrade our grazing questionnaire survey to every three years in response to this recommendation. Our first survey in the new cycle will go out in the next 30 days for the 2010 contract valuation process.

Recommendations: B. Grazing is a form of ag activity but OS use may not satisfy WA requirements for ag. To ensure compliance with the WA and proper reporting of uses, the County should separate the reported use of grazing land from OS land as reported on the questionnaire.

Disregarded

ASSESSOR RESPONSE TO FINDING 2, Recommendation B: We have already discussed in Response to Finding 1 the confusion caused by the mislabeling of non-prime acres as open space in our vendor product. No open space lands are reported on grazing questionnaires.

Recommendations: C. The County should establish procedures that require WA contract holders to complete questionnaires in a timely manner. Landowners should be informed that if they fail to respond, their contracts will be considered for nonrenewal.

ASSESSOR RESPONSE TO FINDING 2, Recommendation C: The County will include a statement on future questionnaires informing contract holders that a timely response is required, and that failure to respond may lead to nonrenewal of their contract.

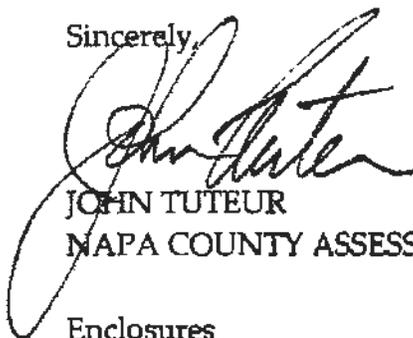
CONCLUSION

The auditor met with County staff throughout the audit process and discussed various issues. The Planner III in the Conservation Division manages the WA program. He has accurate knowledge of the program and maintains the records necessary to support the County's subvention report and to promote program goals.

The County appreciates the Auditor's input and his acknowledgement of staff members who implement the WA program. To clarify, there are two county departments involved. A Planner III in the Conservation Division of the Conservation, Development and Planning Department handles contract application, non-renewal and administrative duties. An Appraiser III in the Assessor Division of the Assessor-Recorder-County Clerk Department handles valuation issues and manages the data needed for the preparation of the subvention report for transmission to the County Executive Officer as the Authorized Representative for submission to the State. Both departments work together to promote and enhance the goals of the California Land Conservation (Williamson) Act.

On behalf of both departments we wish to thank Mr. Barr for the professional manner in which he conducted the audit.

Sincerely,

A handwritten signature in black ink, appearing to read "John Tuteur", written over a large, stylized flourish that loops around the text.

JOHN TUTEUR
NAPA COUNTY ASSESSOR-RECORDER-COUNTY CLERK

Enclosures



Minimum imputed Income

JOHN TUTEUR
ASSESSOR

NAPA COUNTY

ASSESSOR

1127 FIRST ST ROOM 128 NAPA CA 94559-2931
PHONE 707.253.4466 FAX 707.253.6171

TO: OWNERS INTERESTED IN THE WILLIAMSON ACT
FROM: JOHN TUTEUR, NAPA COUNTY ASSESSOR
RE: VALUATION OF WILLIAMSON ACT PROPERTIES

Under the terms of a California Land Conservation (Williamson) Act contract, the assessed value of the property restricted by contract is the lowest of three values: 1) the Proposition 13 factored base year value, or 2) the current market value (Proposition 8 "decline in value") or 3) the capitalization of agricultural income value (AIV). Annually our office calculates the AIV by dividing an income figure (which may be a minimum income stipulated to in your contract [see reverse] or the actual income) by a "capitalization (cap) rate" or in mathematical terms: VALUE = INCOME/CAP RATE.

The capitalization rate is composed of three factors, the cost of money which is a figure sent to all counties from Sacramento each year based on the five-year mean of the yield for long-term US government bonds [for 1998 the figure was 6.75%]; a risk factor which varies for grazing or vineyard, and a property tax component which is estimated at one per cent. THE FORMULA IS CAP RATE = COST/MONEY+RISK+TAX RATE

The following example is for illustration only:

NON-VINEYARD LAND ONLY		VINEYARD LAND	
Imputed Income	\$25.00/ac (100 - 199 acres)	Market rent	\$1,000/ac
Cost of money	6.75 %	Cost of Money	6.75 %
Risk	0.25 %	Risk	1.95 % (0.95% 1997 and prior)
Tax rate	1.00 %	Tax rate	1.00 %
Total cap rate	8.00 %	Total cap rate	9.70%
	$\$25.00/.0800 = \$312.50/ac$ value		$\$1,000.00/.0970 = \$10,309/ac$ value

The value of the vines themselves are calculated using the actual five-year average production of each block times the county-wide price per ton (3 year weighted average) of that variety [gross income] minus the county-wide pre-harvest expense/ac and harvest expense/ton minus an amortization figure for the non-living improvements minus a charge for the land rent to arrive at a net income. Using a present worth factor based on the cap rate times the net income projected for the remaining life of the vines, a value per acre is determined for each block of vines.

PLEASE CONTACT ASSESSOR JOHN TUTEUR IF THERE ARE ANY QUESTIONS.



NAPA COUNTY

ASSESSOR

JOHN TUTEUR
Assessor

1195 THIRD STREET, ROOM 101 • NAPA, CALIFORNIA 94559-26
AREA CODE 707/253-4466

1127 FIRST ST. RM. 128
NAPA, CA 94559-2931

From: Napa County Assessor John Tuteur

RULE 13. Rental Income.

- (A) For purposes of calculating the value of the property covered by a Type H contract, the County, through its Assessor, shall apply either (1) the then actual annual rental income earned by the property, or (2) the fair rental income (also known as the market or economic rental income) which the property is susceptible of earning, whichever is greater.
- (B) In all events, the rental income to be used by the Assessor in subparagraph (A) above shall not be less than the amount hereinafter specified, based upon the acreage size of the parcel. The amounts so specified are designated the "minimum imputed income" for the purposes of these rules.

<u>Parcel Size (Acres)</u>	<u>Minimum Imputed Income (per acre or fraction thereof)</u>
From 11 to 20.99	\$175.00 per acre
21 to 49.99	\$ 80.00
50 to 99.99	\$ 50.00
100 to 199.99	\$ 25.00
200 to 399.99	\$ 15.00
400 and over	\$ 10.00

- (C) The "minimum imputed income" shall be subject to review by the Board of Supervisors of the County of Napa during each fifth year of the contract. As a consequence of such review, including a consideration of the trend of real estate sales and rental values, and general economic movements, the Board may determine to increase the "minimum imputed income" by an amount not to exceed ten percent (10%) for the next succeeding five (5) year period. Subsequent fifth-year anniversary reviews may be accomplished by the Board of Supervisors which may direct similar adjustments (to a maximum of ten percent (10%)), upward or downward, to said "minimum imputed income", but in no event shall such amount decline below those specified in paragraph (B) above.

APPENDIX 3



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 5/8/2018
Agenda Placement: 10B

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Donald Barrella, Planner III - 707-299-1338
SUBJECT: California Land Conservation Act (aka Williamson Act) Program Workshop

RECOMMENDATION

Director of Planning, Building and Environmental Services and Assessor-Recorder-County Clerk request the following actions:

1. Receive the presentation regarding the California Land Conservation Act (CLCA) also known as the Williamson Act Program, including its administration, enforcement, policy, and tax assessment and revenue implications;
2. Provide direction as to whether staff should take one or more of the following actions:
 - a. Amend the Local Rules and/or Contract forms for Type A and/or Type H Williamson Act Agricultural Preserves and Agricultural Preserve contracts to address the issues raised by the elimination of Rule 13 in 2001; and
 - b. Investigate and take action regarding contracts that are not in compliance with current minimum requirements or contract terms.

EXECUTIVE SUMMARY

Napa County's commitment to the preservation of agriculture is evident through the variety and breadth of local programs enacted over the past 50 years. These include implementation of the County's historic Agricultural Preserve (AP) Zoning District in 1968 (Ordinance No. 274), Measure A in 1980 (which limits the number of residential building permits issued annually in the unincorporated area), Measures J and P enacted in 1990 and 2008 respectively (which prohibit any land use change or intensification of non-agricultural land uses in agricultural zoning without prior voter approval), the Winery Definition Ordinance enacted in 1990 which strictly limits wineries and their accessory uses, the Right-to-Farm Ordinance also adopted in 1990, and adoption of the General Plan in 2008. It is also evident in the County's participation in the California Land Conservation Act of 1965 (CLCA), commonly referred to as the Williamson Act. Given the 50th anniversary of the Agricultural Preserve Zoning District

this year, staff is providing this overview of the CLCA for the Board's consideration and to receive direction of any changes in the administration of the CLCA that should be considered.

The primary intent of the CLCA program is to preserve the limited supply of agricultural land in the state by discouraging premature and unnecessary conversion to urban uses. The CLCA allows local jurisdictions to enter into contracts with landowners for the purpose of preserving agriculture. The County is able to limit the types of activities allowed on parcels covered by the contract, to agriculture and other uses deemed compatible with agriculture, for a rolling 10-year period. In return, property owners receive a reduction in property taxes depending on whether they are assessed at the lower of their factored Proposition 13 base year value or the restricted CLCA value.

PROCEDURAL REQUIREMENTS

1. Staff report.
2. Public comments.
3. Discussion and possible direction to staff.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15376 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

For the past half-century, Napa County has been in the forefront of agricultural preservation, both in California and in the nation. As a result of strong policies and consistent leadership, unincorporated Napa County is one of the few jurisdictions that has withstood intense economic pressure and remained almost exclusively agricultural, despite being located within one of the largest metropolitan areas in the United States. In the past, the cities and county have jointly worked to support this vision. The County has generally foregone new sales and transient occupancy tax opportunities, and has instead focused urban development into the five cities. In return, most of the cities have adopted Urban Limit Lines and have historically minimized annexations. Voters in both the cities and the county have voted on several proposals subject to Measure J (a 1990 voter-sponsored initiative that prohibits any land use change or intensification of non-agricultural land uses in agricultural zoning without prior voter approval), and in 2008 further extended those provisions to 2058 through Measure P.

As noted in the Visit Napa Valley surveys of people visiting Napa, the two main reasons for their travels are the wine-tasting and scenery, both of which are the responsibility of the County. It is this reason why the issue of the protection of farmland is so important. Agricultural preservation allows for the maintenance of a rural lifestyle for many, and allows us to continue our historical communities and traditions, but most importantly is that agriculture serves as the economic backbone for the nearly 40,000 families who live and work within Napa County. The California Land Conservation Act (CLCA) of 1965, commonly referred to as the Williamson Act, is one program within the array of policies used by the County to manage the unincorporated area for the greatest good.

The Term "Agricultural Preserve"

The term "Agricultural Preserve" appears in both local zoning as well as the CLCA and has a different meaning depending on the context it is used. The Napa County Agricultural Preserve (AP) Zoning District was implemented in 1968, and established agriculture as the highest and best use for lands primarily located within the Napa Valley. It increased the minimum parcel size for subdividing land within the AP District from 1-acre to 20-acres. In 1997 the minimum parcel size within the AP District was increased again to 40-acres. Initially the AP zoning district included approximately 23,000-acres. Today the AP Zoning District contains approximately 32,000-acres and includes lands within the Napa Valley, Wooden Valley and Gordon Valley.

A CLCA preserve refers to specific parcels where Williamson Act contracts are allowed. Before the County can enter into a contract with a property owner, the Board must first establish a CLCA preserve (as opposed to the zoning Agricultural Preserve) to define the geographic area within which the County is willing to enter into a contract with the property owner. Napa County has designed its rules to require that each property subject to contract constitutes its own CLCA preserve. Whether or not a parcel is eligible for a contract and associated CLCA preserve depends on its size and agricultural use as determined by the Planning Building Environmental Services (PBES) Department in cooperation with the Agricultural Commissioner. Under Government Code 51230, land within a designated CLCA preserve that is not otherwise agricultural land, shall be restricted by zoning including appropriate minimum parcel size.

CLCA Overview

The CLCA enables local governments to enter into voluntary contracts with private landowners for the purpose of restricting specific parcels of land to agricultural, open space, or recreational use. In return, landowners receive reduced property tax assessments based on the restricted uses rather than full market value. Local governments were partially reimbursed for the associated tax losses via an annual subvention payment provided for in the Open Space Subvention Act (OSSA) until 2009, when the State eliminated subvention funding for the CLCA.

Agricultural use is defined as the commercial production of agricultural commodities, which in general includes fruits, vegetables, grains, legumes, animal feed, seed crops, bio-fuel and oilseed crops, nursery stock, trees for lumber products, sod, livestock, poultry, horses for commercial sale, and other commodities accepted by local jurisdictions based on the recommendation of the Agricultural Commissioner. "Prime agricultural" means land that either:

1. Qualifies for rating as Class I or II in the Natural Resource Conservation Service (NRCS) Land use Capability Classifications; or Class III, if producing no less than \$200 an acre in annual gross income for three of the last five years;
2. Qualifies for rating 80 through 100 in the Storie Index Rating, a widely known and accepted method of rating soils for land use and productivity in California;
3. Supports livestock in the production of food or fiber and which has an annual carrying capacity of at least one animal per acre, as defined by the United States Department of Agriculture;
4. Planted with fruit or nut-bearing trees, vines, bushes, or crops with a non-bearing period of less than five years and which will return during the bearing period no less than \$200 per acre annual gross income; or
5. Other lands producing unprocessed agricultural plant products with an annual gross value of not less than \$200 per acre for three of the last five years.

In all cases, prime land must be irrigated to support agriculture on the premises. "Non-prime agricultural" lands are those lands that do not meet the definition of prime agricultural lands and are generally used for grazing and dry farming.

A Williamson Act contract is an enforceable contractual restriction. Failure to meet the terms and conditions will result in breach of contract. In the case of breach, the local jurisdiction may seek a court injunction to enforce the terms of the contract. The contract and associated CLCA preserve are governed by rules that specify the uses allowed. Generally, any commercial agricultural use will be permitted within a CLCA preserve. In addition, local jurisdictions have the flexibility to identify and permit other activities they deem compatible with agricultural use. Contracts have an initial term of 10 years, run with the land, and are binding on all successors. Unless a non-renewal is filed, the term automatically extends for an additional year each January 1. Thus a contract signed in 1969 still has a 10 year term as of January 1, 2017. Non-renewal can be initiated by either the land owner or the County. When a notice of non-renewal is served and recorded, the annual tax assessment gradually increases over nine years (unless the property owner protests a county-initiated non-renewal, in which case the increase in taxes takes place over the last five years of the non-renewal period), at which time the contract expires. Currently there are approximately 1,241-acres within the county that are in non-renewal. For examples of why non-renewal was pursued see the 'Program Compliance and Enforcement' section below.

Contracts can also be prematurely cancelled either by the landowner or the local jurisdiction. A landowner can petition the local jurisdiction to cancel a contract. The landowner must pay a cancellation fee equal to 12.5% of the unrestricted fair market value of the property. Remedies for material breach of contract may include penalties of 25% of the value of the affected land and 25% of the value of any improvements built in violation of the law, local regulations, or the contract.

A CLCA preserve defines the boundary of an area within which a city or county will enter into Williamson Act contracts with landowners. The boundary is designated by resolution of either the Board of Supervisors (Board) or City Council (Council) having jurisdiction. Only land that is located within a CLCA preserve is eligible for a Williamson Act contract. CLCA preserves are regulated by rules and restrictions designated in the resolution to ensure that the land within the preserve is maintained for agricultural or open space use. A CLCA preserve must consist of no less than 100 acres. Although Napa County currently requires a separate CLCA preserve for each parcel under contract, older CLCA preserves may include two or more parcels and/or owners. Smaller CLCA preserves may be established if a Board or Council determines that the unique characteristic of the agricultural enterprise in the area calls for smaller agricultural units and if the establishment of the CLCA preserve is consistent with the jurisdiction's General Plan.

In 1998, the California Legislature amended the law to allow Farmland Security Zones (FSZ), which are also referred to as Super Williamson Act parcels, where, in exchange for further property tax breaks, the land is committed to agricultural use for a 20-year period. A FSZ is an area created within a CLCA preserve by a board of supervisors upon request by a landowner or group of landowners. The land restricted by an FSZ contract is valued for property assessment purposes at 65% of its Williamson Act valuation or 65% of its Proposition 13 valuation, whichever is lower. Napa County does not currently participate in the FSZ program (25 counties currently allow for FSZ contracts).

Presently, approximately 15 million acres of California's 31.4 million acres of farm and ranch lands are restricted by Williamson Act contracts. Of California's 58 counties, 53 participate in the program; county's that do not participate include Del Norte, San Francisco, Inyo and Yuba. (Alpine and Los Angeles Counties have enacted the program but have no existing Williamson Act contracts.) In January of 2011, Imperial County exited the program by filing Notices of Non-renewal on all their Williamson Act Contracts (covering over 139,000-acres) as a result of the loss of subvention payments. To date no other county has chosen to exit the program. In total approximately 492,000-acres of contracted land statewide are reported to be in non-renewal.

The CLCA in Napa County:

The County has been participating in the Williamson Act program since 1969 as a tool for promoting agricultural land preservation consistent with the County's agricultural heritage and General Plan agricultural preservation

goals and policies.

- Goal AG/LU-1: Preserve existing agricultural land uses and planed of agriculture and related activities as the primary land use in Napa.
- Policy AG/LU-6: The County will continue to study tax assessment policies which recognize the long-term intent of agricultural zoning and the fact that agricultural land uses require a minimum of public expenditure for protection and servicing.
- Policy AG/LU-7: The County will research, evaluate, and pursue new approaches to ensure even stronger protections for the County's finite and irreplaceable agricultural resources. Approaches to be evaluated shall include implementation of a "Super Williamson Act" program, a conservation easement program or other permanent protection s, and program promoting the economic viability of agriculture.

Currently the County offers three types of contracts, Type A, Type C, and Type H. (There are no active Type C contracts.) Type A contracts are specific to the Agricultural Preserve (AP) zoning district. Type H contracts are for agricultural land that is not zoned AP. There are currently no active Type C contracts in Napa County. There are also Type E and F contracts, which are no longer offered, but remain in effect.

To qualify for the establishment of a CLCA preserve and associated contract, a parcel must meet a minimum size requirement and contain a bona fide agricultural use (or Agricultural commodity as defined by Government Code Section 51201.a). For prime agricultural land, if a parcel is either being zoned AP or meets the definition of Prime Agricultural Land within local rules, a minimum of 10 acres is required. For non-prime agricultural land (i.e. grazing land) a minimum 40-acre parcel is required.

Applications for new enrollees into the Act are taken in during the month of September. Qualification requirements (i.e. minimum parcel size and agricultural use) are confirmed as part of the application review process. Contracts for qualifying parcels are prepared and sent to owners for signature(s). Returned contracts are set to be heard by the Board at the first meeting in December at which time preserves and contracts are authorized and approved. Approved contracts are then recorded prior to January 1 so that they are enrolled prior to the January 1 lien date.

Parcels under contract cannot be subdivided during the term of a contract except to the extent permitted by Government Code Section 51230.1 (for immediate family members operating by Joint Management Agreement), or by Section 51230.2 (for agricultural labor housing).

Cancellation of a contract can only be initiated by the landowner. To approve a cancellation, the Board must make specific rigorous findings pursuant to Government Code Section 51282. Additionally, the landowner must pay a cancellation fee equal to 12.5% of the unrestricted fair market value of the property if cancellation is approved. During the past 49 years, there have only been four cancellations which totaled approximately two acres of land released from contract. The last cancellation of a contract was a partial cancellation done in 2005. To date no other petition to cancel a contract has been processed largely due to the findings the Board must be able to make as well as the required payment of a cancellation fee.

Financial Implications of the CLCA in Napa County

As of January 1, 2017 there are 848 parcels covered by CLCA contracts which contain 74,711-acres of land. Attachment A is a map showing the location of contracted parcels. Of these 848 parcels only 446 parcels receive any property tax benefit from the CLCA contract. The other 402 parcels are assessed at their Proposition 13 factored base year value. The total assessed value reduction for the 446 parcels receiving a benefit is \$547,945,026 which translates into approximately \$1,000,000 in reduced tax revenue for the Napa County General Fund. Attachment B shows the current and historical CLCA financial impacts.

The Open Space Subvention Act (OSSA) was enacted by the State in 1972, to provide for the partial replacement of

local property tax revenue foregone as a result of participating in the CLCA and other open space programs. The State eliminated subvention funding in the 2009-2010 Fiscal Year budget. In 2009, the last year the county received full subvention funding, the assessed value reduction for all contracted lands was \$538,450,249 or roughly \$1,000,000 in general fund revenue loss. In that year the subvention payment was approximately \$90,000.

Rule and Contract Updates:

Over the years the County has periodically updated local Williamson Act Rules and/or Contract Forms, to stay current with the State Statue and local standards and practices. A major update was done in April 2001 where the Local Preserve Rules and Contract forms were updated to the current rules and forms that are currently in place. This update was also required by amendments to the California Revenue and Taxation Code which changed the property lien date from March 1 to January 1, and included a general process calendar so that the Board would not need to review and adopt a processing calendar annually.

Other relevant updates to the Rules and/or Contract Forms include:

1. April, 2005: An update to all the contract forms due to an amendment to Government Code Section 51250, that identified certain structures that could constitute material breach of a contract as detailed in Section XVI of the current contract forms;
2. December, 2006: A Type C Preserve Rules and Contract form was created and offered, however at this time only one Type C has been issued and that contract has since been replaced with a standard Type A contract due to a lot line adjustment; and
3. June, 2008: Minor amendments were approved to achieve greater uniformity and clarity of the contract types including grammatical changes, and to reflect the definition of agriculture Napa County Code Section 18.08.040 as recently amended at that time to include Farm Management uses.

There is a discrepancy between the "Rules Governing the Administration of Agricultural Preserves on Lands Outside of the Agricultural Preserve Zoning Districts in Napa County (Type H Contract)" (Rules) and the contract form used for Type H contracts. Prior to 2001, the Rules included Rule 13 which provided a formula for calculating minimum imputed income in compliance with Section 423 of the California Revenue and Taxation Code. In 2001, Rule 13 was eliminated during the major update of the CLCA in 2001, referenced above. However, Section VIII of the Type H contract has continued to incorporate the terms and requirements that had been previously adopted in Rule 13. The County relied on the contract terms to ensure compliance with the California Revenue and Taxation Code. The County and the landowner execute a contract containing the definition of the minimum imputed income value, and that value was disclosed prior to the landowner's execution of the document. Staff is recommending that the contracts remain the same and that staff continues to use the income values established by former Rule 13 in Type H contracts.

Recent Board Review of the CLCA

In 2010, the Senate Budget and Fiscal Review Committee introduced Senate Bill (SB) 863. It essentially allowed Counties participating in the CLCA to voluntarily reduce the term of Williamson Act contracts from 10 years to 9 years, and for the Assessor to value the property, based on the revised contract term. Landowners with contracts would be provided a minimum 60-day notice before the County could take action, and would be offered the opportunity to non-renew the contract. This program would effectively raise property taxes on those owners who choose to remain under contract and under the new provisions. Of the 51 Counties that currently have active CLCA contracts, 11 (21%) have adopted the SB 863 provisions (Butte, Kings, Lassen, Madera, Mendocino, Merced, Shasta, Stanislaus, Sutter, Tulare, and Yolo).

On January 25, 2011, the Board of Supervisors reviewed the CLCA program, shortly after the elimination of the State subvention funds. At that time, the Assessor estimated that implementation of SB 863 would increase

property tax revenues by approximately \$500,000 between 2011 and 2016. The Board discussed the provisions of Senate Bill (SB) 863, acknowledged that non-renewal of Williamson Act contracts would have little immediate effect (because of the 9-year phase out), and emphasized that continued participation in the Williamson Act program is consistent with the County's general plan focus on agricultural preservation values. Following a presentation by the Assessor and PBES Director, the Board unanimously voted to continue the CLCA without any changes.

Program Compliance and Enforcement

From the inception of the program, the PBES Department has administered the CLCA in full compliance with the statutes and local rules. In 2005, the County received the Stewardship Award from the State Department of Conservation (DOC) for "...outstanding and long-term efforts to uphold and promote the California Land Conservation Act." In 2009-2010 the DOC audited the Napa County program. The audit contained two findings: 1) the Assessor Megabyte property tax system used the term "open space" when the correct term should have been "non-prime," and 2) the County should improve the agricultural activity survey questionnaire process identified in Section XXIV of the current contract forms. The DOC Audit Report is provided in Attachment C. The County's Response can be found in Attachment D.

With an almost 50 year history and many contracts having a similar duration, many contracts were signed prior to the imposition of current minimum standards. Since those standards were adopted, the County has not contracted parcels with Type A or Type H Contracts of less than 10-acres (for Prime Agricultural land) or less than 40 acres (for non-prime land).

Areas of non-compliance can be: minimum parcel size; consistent and complete reporting as required by the Assessor Division; absence of approved agricultural use and activities that could constitute a breach of the contract. Remedies could include County initiated non-renewal and county initiated legal action for breach of contract. Enforcement issues are addressed on an as needed basis by PBES and County Counsel. Because the uses allowed in the County's agricultural zoning districts (i.e. AP and AW districts) are mirrored in the Williamson Act contracts as allowed uses, in conjunction with the Winery Definition Ordinance, breaches associated with incompatible uses and/or structures on a contracted property are highly unlikely. No breaches of contract related to uses or structures have been identified through the history of the program. As noted above, the DOC 2009-2010 audit of the program did not identify any incompatible uses or structures on contracted parcels and found that the County maintains the necessary records to support the County's subvention report.

Presently there are approximately 157.4-acres of contracted land within six contracts in non-renewal that were initiated by the County due to qualification issues or as a result of failure of the contracted property owners to rescind and replace contract(s) due to a recorded lot line adjustment. In 2017 approximately 140-acres of contracted land was in non-renewal as initiated by the county, due to the failure of the owners to rescind and replace the previous contract(s), which were re-enrolled into the Act once the owners submitted their application.

Additionally, the County has worked with the Napa County Land Trust to non-renew contracts covering the Archer Taylor Preserve and the S.V. Wantrup Preserve (totaling 759-acres). The contracts covering these ranches were no longer necessary because they are covered by conservation easements with restrictions equal to or greater than the CLCA restrictions and are owned by a property tax exempt entity.

SUPPORTING DOCUMENTS

- A. Map of Williamson Act Contracts
- B. Impact of CLCA on Assessed Value
- C. DOC Division of Land Resource Protection Williamson Act Audit Findings

D . County Response to DOC Williamson Act Finding

CEO Recommendation: Approve

Reviewed By: Helene Franchi