



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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December 29, 2006

Emma Mirelez, Planner III
Madera County Planning Department
2037 W. Cleveland Ave., Mail Stop G
Madera, CA 93637

Dear Ms. Mirelez:

Thank you for your e-mailed letter of December 28, 2006, seeking guidance and clarification on Williamson Act issues associated with the Raymond Area General Plan.

All of the questions posed in your letter have to do with subdivision of Williamson Act parcels, and construction of residences on the subsequent smaller parcels. It is important for the County and area residents to understand that the Subdivision Map Act (Government Code Sec. 66474.4) prohibits the County from subdividing Williamson Act land for the primary purpose of residential development. All of the scenarios included in your questions would appear to fail this test. We strongly discourage the County from violating this Section, as willful violation of the Act could result in a Department review of subvention fee payments.

Under different circumstances than those described, if the County found that a subdivision of contracted lands was not for residential purposes, the test for any residence nonetheless constructed on subdivided parcels is that the residence must be incidental to the agricultural use. Aside from the original residence in the scenarios you describe, none of the residences would appear to meet this test, and all could be considered breaches of contract. Because Government Code Section 51250 measures breaches of contract against parcels as they existed on January 1, 2004, the first square foot of new construction over 2500 sq. ft. anywhere on the original 160 acres that was not incidental to the agricultural use, under the scenarios you pose, could be considered a material breach, and subject to the enhanced penalties.

Several of the scenarios you pose also discuss minimum parcel size of contracted land. As you note, the statewide minimum parcel sizes are 40 acres for non-prime lands and 10 acres for prime lands. The Legislature found that these are the smallest parcels that

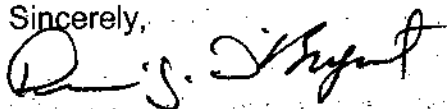
could be agriculturally viable in the state. However, if counties are subdividing contracted parcels, they should be able to document that the subdivided parcels are agriculturally viable in their part of the state. The stated intent of the Williamson Act is to keep land in parcels large enough to be viable. As an example, 10 acres of grapes in Sonoma may indeed be agriculturally viable, but it is unlikely that 10 acres of alfalfa in Yolo County would be. A number of counties have found that acreages far greater than 40 are required for agricultural viability on non-prime lands. We recommend that the County work with your Agricultural Commissioner, the Ag Advisor, and the Resource Conservation District to determine the minimal size for agriculturally-viable parcels. It is important for the County to determine what types of commercial agricultural land it desires to protect for the future, rather than how small parcels can split for residential use.

When considering the approximately 100,000 acres in the plan area, the majority of which is under contract, your letter notes that some are contracted parcels not in agricultural use. The Williamson Act was designed to protect commercial agricultural land, and some specified open-space uses. To avoid potential breaches of contract, we urge the County to identify areas under contract that are not in agricultural use, and to determine if an open-space contract is more appropriate. If neither type of contract is appropriate, the parcels should be nonrenewed.

Also, regarding enforcement of material breaches of contract under Government Code Section 51250, it is the County's responsibility to enforce this section; if the Department finds a material breach, we must refer it to the County for enforcement, and will act only if the County fails to carry out its responsibilities.

Please feel free to contact me if you have any additional questions. I can be reached at (916) 324-0850.

Sincerely,



Dennis J. O'Bryant
Program Manager

Emma