

# Updated Commentary

## Dealing with the Williamson Act

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With increasing frequency, development in some of California's leading growth regions is spreading to land for which agricultural use, although once predominant, is no longer economically viable and may be inconsistent with current plans and policies adopted by the local jurisdiction. Often these lands are subject to the restrictions imposed by long-term agricultural preserve contracts entered into by landowners and a city or county pursuant to the California Land Conservation Act of 1965 (Williamson Act) (Govt. Code § 51200 *et seq.*). In return for agreeing to use the land only for agricultural purposes, the landowner receives reduced property tax assessments based on restricted agricultural use rather than unrestricted market value.

Contracts under the Williamson Act are for a minimum term of ten years, with the term automatically renewing on an annual basis for an additional year. Termination of the contract is a prerequisite to any development for nonagricultural uses (see, e.g., Govt. Code § 66474.4, generally requiring denial of a tentative map if land is subject to a Williamson Act contract and the resulting parcels would be too small to sustain their agricultural use). However, termination of the contract can be a lengthy, difficult and expensive task that, at the earliest possible time, should be factored into the "economics" for a potential development project.

When considering the purchase of land for potential development, the developer should include within any "due diligence" inquiry a determination of the existence of any Williamson Act contract affecting the property. Since the contracts are recorded, a standard preliminary title report will usually indicate the existence of any contract. However, in many instances, notices of nonrenewal (see below) are not recorded with the county recorder, so any representation by a seller that the contract will terminate as of a particular date can only be verified by a review of the government records of the local jurisdiction (most cities and counties assign an identification number to each contract). The purchaser should also consider including a provision in the purchase contract requiring proof that, prior to the close of escrow (or, perhaps, prior to making final payment of all or a portion of the purchase price), any Williamson Act contract affecting the property shall have terminated.

There are three methods by which a landowner may terminate a Williamson Act contract. First, a property owner has the absolute right to file a "notice of nonrenewal" at least 90 days prior to the annual renewal date of the contract. Upon the filing of a notice of nonrenewal, the contract will ordinarily expire nine years after the next annual renewal date. Following the filing of a notice of nonrenewal, taxes on the property are increased gradually over the remaining term of the contract to tax levels for unrestricted property. Some jurisdictions prescribe a particular form of notice while others do not. Although the basic contract forms are generally similar as between different jurisdictions, each contract must be carefully reviewed in order to determine the applicable annual "renewal date", since not all contracts provide that the renewal date is the anniversary date of the contract. Further, some jurisdictions do not permit a notice of nonrenewal to be filed with respect to only a part of the land covered by the contract. These jurisdictions instead require that, prior to filing a notice of nonrenewal, a new contract be executed, covering only the particular land for which the notice is to be filed. This procedure can result in a new contract being executed on the same date that a notice of nonrenewal for the same contract is filed!

The second procedure for termination of a Williamson Act contract is cancellation upon petition by the landowner. Although cancellation results in immediate termination of the contract, this procedure is considerably more difficult and costly than nonrenewal. (The California Supreme Court has characterized nonrenewal as "the preferred termination method.") Cancellation is not a matter of right, but may be approved by the local government only after a noticed public hearing and only if specific statutory findings can be made. Approval of cancellation of a contract is clearly a "land use" decision which must meet both political and legal challenges.

In order to approve cancellation, the local government must find that the cancellation is either consistent with the purposes of the Act or in the public interest. It is not sufficient that continued agricultural use of the property is less "economic" than the proposed alternative use - there must be a finding that no nearby noncontracted land is available and suitable for the type of use proposed. Other required findings are specified in the Act and include any findings necessary for compliance with the California Environmental Quality Act (CEQA).

Significant costs are associated with cancellation of the contract. A purchaser of property subject to a Williamson Act contract who is considering cancellation, should take these costs into account when negotiating a purchase price. In addition to the increase in property taxes, a substantial cancellation fee must be paid. The amount of the fee is equivalent to 12.5% of the fair market value of the property absent any contractual restrictions (e.g., the cancellation fee for land with an unrestricted market value of \$2,000,000 would be \$250,000). The Act permits a city or county to waive or defer the cancellation fee if certain conditions are met, but some contracts state that no such waiver or deferral will be granted.

### **KOREK LAND COMPANY, INC.**

15230 BURBANK BLVD., SUITE 101 • SHERMAN OAKS, CA 91411 • (818) 787-3077 • FAX (818) 787-9677  
www.korekland.com • mail@korekland.com

In addition to the cancellation fee, other "upfront" planning costs related to the alternative use may be incurred. A petition for contract cancellation must be accompanied by "a proposal for a specified alternative use of the land," including a list of all government agencies that the landowner knows have permit authority over such use. The Act itself does not mandate the level of specificity required in the proposal, but defers this determination to the local jurisdiction. However, prior to granting and recording a certificate of cancellation, the local government must be satisfied that "all permits necessary to commence the project" have been obtained. Such permits will, in many cases, include a general plan amendment and rezoning for the property to allow the alternative nonagricultural use.

Effective January 1, 1998, a third method of landowner termination of a Williamson Act contract is available, which involves placing a portion of land under a conservation easement in exchange for the release of a comparable amount of land from a Williamson Act contract. Under the Agricultural Land Stewardship Program of 1995 (ALSP) (Public Resources Code § 10200 *et seq.*), landowners may enter into 25-year conservation easements with the Department of Conservation in exchange for a monetary grant from the Department. A conservation easement is a voluntary, legally recorded agreement between a landowner and either the local government or a nonprofit organization that limits the land to agricultural uses. In turn, the Williamson Act (in particular, Government Code § 51256) now gives landowners the option of dedicating an easement on one piece of property pursuant to ALSP in exchange for rescission of a Williamson Act contract on another piece of property of equal or greater agricultural quality. As part of this exchange, the normal 12.5% Williamson Act cancellation fee is waived. The Director of Conservation and the local legislative body must authorize any such termination of a Williamson Act contract.

In addition to landowner termination of a Williamson Act contract, an often-overlooked provision of the Act provides that, under certain circumstances, a contract automatically becomes null and void as to land annexed to a city. In order for this automatic termination to occur, three requirements must be met: (1) the land must have been within one mile of the city at the time of the contract; (2) the city must have filed and the local agency formation commission (LAFCO) must have approved a protest to the contract; and (3) in its resolution of intention to annex, the city must state its intent not to succeed to the contract. A purchaser of Williamson Act land should review the appropriate county and LAFCO records to determine the potential applicability of this provision. While the particular county may not be willing to cancel the contract, the landowner may be able to achieve termination by annexation.

Government Code § 51257, also effective January 1, 1998, facilitates lot line (property boundary) adjustments on land subject to a Williamson Act contract. Pursuant to this statute, the local government may rescind a Williamson Act contract on land for which a lot line adjustment has been requested and simultaneously enter a new Williamson Act on the adjusted property. It must be kept in mind, however, that although this procedure may result in the release of a portion of property from a Williamson Act contract, it is not a method of terminating the contract as a whole. In fact, the use of this procedure is highly limited. Before a lot line adjustment may occur on Williamson Act land, the local government must conclude that the adjustment will not result in a net decrease in the amount of restricted land. Also, at least 90% of the land under the former contract must remain under the new contract, and the agricultural use of the land under contract must not be compromised by the new contract. The local government also must make specific findings that adjacent land will not be removed from agricultural use as a result of the adjustment. The statute specifies that the new contract must have an initial term at least as long as the rescinded contract's unexpired term, but, in any event, not less than 10 years. In addition, only one new contract may be entered into with regard to a given parcel of land prior to January 1, 2000, after which the performance of this particular statute will be reviewed as part of the Department of Conservation's annual report to the Legislature regarding implementation of the Williamson Act. This statute also "sunsets" as of January 1, 2003, unless a previously enacted statute deletes or extends that date.

As can be seen, there are many hurdles to be cleared before developing property that is subject to a Williamson Act contract. Before signing on the "dotted line", any developer considering the purchase of property subject to such contract should make sure that he has accurately figured the "bottom line" with respect to the Williamson Act.

*Written by David L. Preiss, a partner in the law firm of Wendel, Rosen, Black & Dean, LLP, in Oakland, (510) 834-6600. Mr. Preiss' practice emphasizes real estate development and transactions. This article is intended only as a brief overview of some of the provisions of the Williamson Act and is not intended to be an in-depth discussion of all provisions, procedures and issues involved in terminating a Williamson Act contract. This article is not intended to provide legal advice, and readers should consult with their own counsel regarding any Williamson Act issues that may apply to their particular situation.*

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