



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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

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

July 1, 2005

Honorable Linda A. Hill, Assessor
Humboldt County
825 Fifth Street, Room 300
Eureka, CA 95501-1153

Mr. Kirk A. Girard, Director
Humboldt County
Community Development Service
3015 "H" Street
Eureka, CA 95501

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HUMBOLDT COUNTY
PLANNING COMMISSION

Dear Assessor Hill and Mr. Girard:

We have completed our audit of compliance by Humboldt County (County) with the Williamson Act (WA) and the Open Space Subvention Act. Specifically, we audited the County's Open Space Subvention Application for fiscal year 2003-04, contract cancellations for fiscal years 1994-95 through 2003-04, and contract non-renewals for fiscal years 1994-95 through 2003-04. In general, we found that the County's Agricultural Preserve Program and Subvention applications were in compliance with the Williamson Act and the Open Space Subvention Act. However, we noted the following conditions during the review. These conditions are being referred to the Department of Conservation's (Department) Division of Land Resource Protection for appropriate follow-up.

FINDING 1: **Contract Enforcement**

Condition: Recently, the County had taken the initiative to review each contract to ensure that the landowner's property was still in compliance with the WA. As part of this process, the County identified each landowner as compliant, non-compliant, or non-compliant but easily corrected. Those identified as non-compliant were included in Group 3 – *Enforcement/Non-renewal*. As of the time of the audit, the County had included 28 contracted properties in Group 3. Common violations included: dividing or transferring property without using proper procedures; landowner not engaged

in a commercially viable agricultural operation; and/or insufficient land required for an Agricultural preserve or contract. The Assessor's Office conducted site visits, in many cases, to substantiate and verify these deficiencies. A memorandum was prepared on each landowner/ranch and distributed to the Planning Office and to County Counsel's Code Enforcement Section. Infractions were reviewed and possible courses of action discussed. The County has been proactive in identifying infractions and trying to develop viable solutions.

The County also identified 12 Lot-Line-Adjustments (LLA) that had been approved without going through the required process as mandated by Section 51257 (a) of the WA. Each LLA will be reviewed to determine if the LLA would have been approved if it had gone through the proper process. For those that meet the requirements, the LLA will remain as originally approved. LLAs that do not meet Section 51257 (a) will be turned over to the County's legal staff for further review and to determine potential remedies.

Criteria:

Section 51240 states, "Any City or county may by contract limit the use of agricultural land for the purpose of preserving such land pursuant and subject to the conditions set forth in the contract and in this chapter. A contract may provide for restrictions, terms, and conditions, including payments, fees, more restrictive than or in addition to those required by this chapter."

- Recommendations:
- A. Continue enforcement of Group 3 violations. In cases where the contract is no longer valid and cannot be corrected, consider non-renewal.
 - B. Notify the Department whenever a landowner/ranch issue is resolved and the landowner/ranch is removed from the list. The County should resolve all 28 cases and keep the Department informed of all progress.
 - C. Finish reviewing the 12 LLAs and notify the Department when the issue has been resolved.
 - D. Use the criteria contained in G.C. Section 51257 for any future Lot Line Adjustments on Williamson Act contracted land.

FINDING 2: Detailed Acres Report

Condition: Subvention Reports are prepared using Megabyte Systems Inc. software package. The prior year's ending balance is carried forward and becomes the beginning balance for the current year. The beginning balance is adjusted for non-renewals, cancellations, public acquisitions, and new contracts. Megabyte generates an ending balance for the current year. The difference between the adjusted beginning balance and the ending balance, which was generated by the Megabyte software, is identified as an "adjustment" on the current Subvention Report. For FY 04/05, the County's adjustment reduced prime acreage by 342.5 and increased nonprime acreage by 3,546.23. The Assessor's Office cannot identify the changes on a parcel-by-parcel basis. It is impossible to know if the adjustment occurred in one year or over many years and was due to one parcel or the accumulation of many minor changes affecting many parcels. Megabyte does not provide details. Also, the County had previously relied on both a manual process and Megabyte to complete the Subvention Reports. Therefore, the adjustments could have been a result of the changes that occurred on previous Subvention Reports and simply carried forward. Consequently, it is possible, although unlikely, that a contract was terminated and the acreage was absorbed within the "adjustments" category. To know conclusively, the Assessor's Office would need to go through each parcel individually, retroactively for each prior FY, to determine precisely when and how the changes occurred. This would be extremely time consuming and labor intensive, especially since other significant adjustments were recorded on prior Subvention Reports.

Criteria: Section 16142 (a): The Secretary of the Resources Agency shall direct the Controller to pay annually out of the funds appropriated by Section 16140, to each eligible county, city, or city and county, the following amounts for each acre of land within its regulatory jurisdiction that is assessed pursuant to Section 423, 423.3, 423.4, or 423.5, or 426 of it was previously assessed under Section 423.4, of the Revenue and Taxation Code.

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- (1) Five dollars (\$5) for prime agricultural land, as defined in Section 51201.

- (2) One dollar (\$1) for all land, other than prime agricultural land, which is devoted to open-space uses of statewide significance, as defined in Section 16143.

Recommendations: A. Work with Megabyte Systems Inc. to create an option that compares parcels from FY to FY and allows the County to create an "exception" report. Any California county using the Megabyte system and participating in the agricultural preserve program may require the same software capability. The "exception" report should list the parcel(s) where a change(s) occurred. At a minimum, the "exception" report should list the APN and identify any changes to the parcel's prime, non-prime, and homesite acreage. The total for all the changes should provide the "adjustment" value on the Subvention Report.

FINDING 3:

Contract Language - Compatible Uses & Material Breach

Condition:

The County establishes each Agricultural Preserve with a resolution as required by Section 51230 of the WA. Included in the resolution is a list of "Permitted Uses" and "Uses Permitted with a Permit." According to the WA, the uses must be compatible as described in Sections 51238.1-51238.3. Under the section "Permitted Uses," the County allows noncommercial guest houses. Although, the County has some discretion to determine compatible uses, such uses must comply with requirements in Government Code Section 51238. For contracted lands, structures, unrelated to the production of a commercial agricultural commodity or a compatible use are non-compatible. Under this definition, there is the potential that a guest house could be considered as unrelated and, therefore, as a breach or material breach of the Williamson Act contract. In 2004, section 51250 was added to the Williamson Act defining "material breach."

The County also allows for the following conditional uses, which may result in breach or material breach. The language is vague and could result in a landowner building a structure that is incompatible as defined by the code.

- (a) Dog Kennels
- (b) Animal Hospitals
- (c) Public Stables and Training Facilities

In 2000, APN 106-021-086 (33 acres) changed ownership. During 2002, the landowner built a new agricultural storage building (2112 square feet) that is being used as an airplane hanger. There is also a barn on the property. The landowner completed a second home on the property in 2004, which also included a detached garage. If the structure is not related to a commercial agricultural use or compatible use there may be an existing breach of contract. If incompatible structures total more than 2,500 square feet, additional structure built could result in a material breach. Moreover, the use of the agricultural storage building as an airplane hanger may be a non-compatible use. Although the County identified the contract as non-compliant, it is important that the issue be resolved quickly to avoid a potential breach, especially a material breach.

Criteria:

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

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

"For purposes of this subdivision any additional parcels not specified in the legal description that accompanied the contract, as

remaining since the original execution or the last renewal of the contract, as the case may be." In other words, the contract will remain in force for the remaining 9 years.

Section 426 of the Revenue and Taxation Code describes the process of computing the taxes that are due when a parcel is nonrenewed according to Section 51245.

Section 16142 (a) states, "...the Controller to pay annually out of the funds appropriated by Section 16140, to each eligible county, city, or city and county, the following amounts for each acre of land within its regulatory jurisdiction that is assessed pursuant to Section 423, 423.3, 423.4, or 423.5, or 426 if it was previously assessed under Section 423.4, of the Revenue and Taxation Code."

- Recommendations:
- A. The Department should consider withholding \$368.00 (2 years * \$1 @ 184 acres).
 - B. Ensure that the landowners do not build any more structures, so that Section 51250 is not triggered. However, structures that were built after January 2004 could constitute a material breach and should be investigated by the County.

Findings in this Management letter are based on fieldwork that was done during November 2004 through January 2005. The auditor discussed these findings with County personnel on January 28, 2005 during the exit conference.

County personnel were extremely helpful, knowledgeable, and conscientious. During the audit, staff provided data and updated information. The auditor met with county staff throughout the audit and discussed various issues.

Please respond to the above findings within 15 working days of your receipt of this letter. This response should include the status of corrective action planned or taken on the findings and recommendations and should be addressed to:

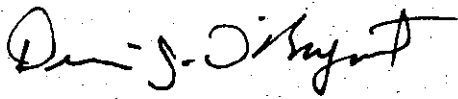
Dennis O'Bryant
Acting Assistant Director for Land Resource Protection
Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, CA 95814

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One of the Department's principal responsibilities arising out of the audit process is ensuring that the County tracks and addresses the various audit findings. Therefore, the County must enumerate those specific actions taken in response to each of the audit findings, and provide the Department with documentation that the recommendations have been implemented. The Department will consider all Findings as "open" until it has received documentation showing that the recommendations were implemented.

We appreciate the County's cooperation and assistance. If you have any questions, regarding this letter, please contact Robert Shun at (916) 324-7347.

Sincerely,



Dennis J. O'Bryant
Acting Assistant Director