



A Tradition of Stewardship  
A Commitment to Service

Board of Supervisors

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Brad Wagenknecht  
Chair

August 20, 2018

**FILED**

**AUG 21 2018**

Clerk of the Napa Superior Court

By: C. Brennan  
Deputy

The Honorable Elia Ortiz  
Presiding Judge  
Superior Court of California, County of Napa  
825 Brown Street  
Napa, CA 94559

Dear Judge Ortiz:

Responses to the Grand Jury's Final Reports are enclosed. They include responses to the Napa County Climate Action Plan, Emergency Alerts, Farmworker Housing, Juvenile Hall, Napa County Jail, and Williamson Act. The County received final reports individually during the month of June and then received one Consolidated Final Report that staff used to prepare responses. There was a discrepancy regarding responses to recommendations between the individual report entitled "New Napa County Jail Who's Paying for All of This?" received on June 16 and the Consolidated Report. The individual report requested a response to Recommendation No. 3 but the Consolidated Report did not, therefore there is no response to that recommendation.

The Board acknowledges the members of the 2017-2018 Grand Jury for the time they have devoted in preparing their reports.

Sincerely,

A handwritten signature in black ink that reads "Brad Wagenknecht".

Brad Wagenknecht  
Chair  
Napa County

**RECEIVED**

**AUG 21 2018**

**Napa Superior Court  
Court Executive Office**

Brad Wagenknecht  
District 1

Ryan Gregory  
District 2

Diane Dillon  
District 3

Alfredo Pedroza  
District 4

Belia Ramos  
District 5

NAPA COUNTY  
RESPONSE TO THE GRAND JURY FINAL REPORT ON  
WILLIAMSON ACT

August 14, 2018

The Grand Jury requested responses from the Board of Supervisors, which are included below.

**Finding 1: The Napa County Williamson-Act program does not provide any more protection from development than does existing zoning and the General Plan.**

*Director of Planning, Building, and Environmental Services' Response:* The Director (Director) of Planning, Building, and Environmental Services (PBES) respectfully disagrees with this Finding. Both the Williamson Act program and the County General Plan provide strong and robust protection for farmland. They are not duplicative, but complementary; providing an effective mix of both short-term and long-term benefits that when combined provide greater protection against the potential of urban sprawl.

The General Plan is a long-term strategy for land use management. For rural California counties such as Napa, a 20-year timeframe is common for General Plans. However, the Board of Supervisors may amend the General Plan up to four times each year. Members of the public may amend the General Plan through the initiative process, as has happened several times in Napa County. Court decisions and legislation also regularly require changes in the content and/or interpretation of the General Plan.

Williamson Act contracts are for an initial term of 10 years, but are automatically renewed each year unless one of the parties seeks to end the agreement. As a result, many contracts have been in effect for the entire 50-year history of the Williamson Act program, lasting through three General Plan cycles. Because contracts are binding agreements between the County and the property owner, they are less subject to more immediate changes in land use policy and can provide consistency in taxation for multiple generations of family farmers. This is an especially critical issue for agriculture, where landowners are often "asset rich," but "liquidity poor." The transfer of land from one generation to the next may involve significant estate taxes that can force sale of the property to outside interests. Long-term valuation under the Williamson Act helps to keep farmland within family holdings, which allows for greater stability in land use management and reduced real estate speculation.

As a result of its proven effectiveness, the Williamson Act program is directly referenced and supported in the General Plan, as a means to achieve the long term land use goal of agricultural and open space preservation:

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 protections, and program promoting the economic viability of agriculture.

In addition, the Williamson Act plays an important role in calculating Napa County's Regional Housing Need Assessment (RHNA). The Association of Bay Area Governments (ABAG) conducts the RHNA process every seven years to set housing goals for individual cities and counties, including Napa. Section 65584.04 of the Government Code requires that when ABAG calculates the RHNA, they must take several factors into consideration, including the following:

Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

The Williamson Act program provides an additional level of policy protection that helps to prevent farmland from being converted into residential subdivisions, and ensures that the intent of voter initiatives such as Measures J and P are honored. Specifically, one of the exceptions to voter approval in Measure P allows agricultural land to be re-designated to residential use if necessary to comply with state law regarding the need for local jurisdictions to provide housing. Because of their long-term contractual status, agricultural lands protected under the Williamson Act would be excluded for the purposes of such rezoning. Conversely, lands not under Williamson Act contract would qualify for rezoning to meet state mandated housing requirements.

Without the Williamson Act, some farmers would not be able to generate sufficient income from agriculture alone to pay taxes and other expenses relating to land maintenance. As a result, properties could become blighted, as there would be no opportunity to provide outside income for low-profit operations such as livestock grazing. Alternatively, some owners may more aggressively seek development opportunities to provide the income needed to maintain their land. Napa County contains some of the most valuable farmland in the country, but urban development can be worth 5-10 times more on a per-acre basis. Without the voluntary incentives to protect farming provided through the Williamson Act program, there would be more pressure to allow for development and challenges to land use policy could become more dynamic. The General Plan is only as strong as the public support it inspires. The loss of the Williamson Act would weaken farmers as a key component of that public support.

Land use policy requires many overlapping vehicles to ensure successful implementation. A single parcel may be subject to a variety of restrictions, including planning and zoning, development agreement, affordable housing agreement, conservation agreement, use permit, annexation agreement, and many more. Tools such as the Williamson Act are not duplicative; each of these actions address a specific issue but work in concert to guarantee desired public benefits and outcomes. Good government policy, whether it involves law enforcement, health care, social services, or land use, relies on a diverse and multi-faceted range of options to create a comprehensive and integrated approach.

*County Assessor Response:* The Assessor agrees with the Director.

*Board of Supervisors Response:* The Board of Supervisors agrees with the Director.

**Finding 2: 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.**

*Board of Supervisors Response:* The Board of Supervisors disagrees with this Finding. The Board always has access to information about the function and performance of any of the County's programs. Regarding the Williamson Act, the Board takes action every year to approve contracts and provide appropriate direction regarding the program. In addition, the Board held a workshop on May 8, 2018, which provided an overview of the Williamson Act program, the opportunity for the public to comment, and discussion of potential improvements.

Property tax revenue has not been lost. Napa County, like 53 out of the 58 California Counties, has specifically determined to compensate landowners for the long-term and voluntary limitation of their property rights. The Williamson Act program is similar to other government activity, not unlike redevelopment, business enterprise zones, solar subsidies, conservation easements, or other foregone government revenues used to incentivize actions consistent with broadly supported policy goals such as the preservation of agriculture.

*County Assessor's Response:* The Assessor agrees with the Board of Supervisors.

**Finding 3: 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.**

*Director of Planning, Building, and Environmental Services' Response:* The Director respectfully disagrees with this Finding. PBES enforces requirements on thousands of permits and approvals every year, and investigates more than 300 citizen complaints annually, for actions including but not limited to construction, land use, agricultural conversion, wells and septic

systems, private roads, storm water, mining, flooding, restaurants, swimming pools, tattoo parlors, hazardous materials, solid waste, and the Williamson Act. It would be neither feasible nor practical for staff to inform the Board of Supervisors of each potential violation. The Board of Supervisors delegates powers and authority to the Director to ensure that PBES consistently implements County policies and Board directions.

At the direction of the Board of Supervisors on May 8, 2018, PBES has increased its efforts to comprehensively review the Williamson Act program over the past three months to ensure that the program is in full compliance. The following is a brief summary of the initial findings, which staff will implement.

Staff has identified 64 potential contracts where there may be no existing bona fide agricultural use occurring on the contracted parcel. PBES will send those contract holders a notice of our findings and the opportunity to provide documentation of a bona fide agricultural use. Staff will file a Notice of Non-renewal for all parcels where the owner cannot provide adequate evidence/documentation demonstrating that an agricultural use has been occurring. These represent 9% of the 692 Williamson Act contracts within Napa County.

Staff has identified an additional 54 potential contracts that require confirmation of the existing agricultural use. These parcels appear to be used for livestock and grazing, but require documentation to confirm an agricultural use. PBES Staff will work with the Assessors Division and these owners/contract holders to verify agricultural use. These represent 8% of the Williamson Act contracts within Napa County.

Staff has identified 29 parcels that are currently under Williamson Act contract that are 10 acres or less in size. These represent 4% of the Williamson Act contracts within Napa. Two of these contracts/parcels are already in non-renewal. Some of these parcels may be included in contracts with multiple properties. Staff will file a Notice of Non-renewal for all non-qualifying parcels and work with those owners that have the ability to reconfigure parcels to achieve a qualifying parcel size. In these cases, the original contract would be rescinded and replaced with a new contract.

Staff has also reviewed the 14 remaining Type E & F contracts. All parcels covered by Type E & F parcels remain qualified to participate in the Williamson Act program. Two of these contracts are in non-renewal and four do not realize any current tax benefit. Staff will send these contract holders a letter advising them that we no longer offer these type of contracts and will provide them the opportunity to rescind and replace with a contract Type that is currently offered

Please note that there may be contracts that occur within one or more of the above categories, which may overstate the total number of potential parcels affected. These issues are common for programs throughout the State. In the 2016 Williamson Act Status Report issued by the Department of Conservation, 10 counties failed to report their activities (Napa County

submitted its report). Certainly, PBES needs to improve its process within the area of existing contract review and qualification, but this need in no way undermines the success of the Williamson Act program or justifies its termination.

Staff recently reviewed the "Rules Governing the Administration of Agricultural Preserves on Lands within the Agricultural Preserve Zoning Districts in Napa County," which were last updated in 2008. The Rules as currently adopted are compliant with State law and provide the necessary guidance to PBES staff in their administration and review of Williamson Act contracts. Staff does not recommend any changes to the Rules.

*Board of Supervisors Response:* The Board of Supervisors agrees with the Director.

**Finding 4: The continued use of 1969 minimum-imputed-income values may result in Williamson-Act grazing parcels (Type-H) being systematically under assessed.**

*Director of Planning Building and Environmental Services Response:* Determination of value is not the responsibility of PBES, and as such, defers this response to the County Assessor.

*County Assessor's Response:* The minimum imputed incomes contained in grazing contracts are substantially higher than current grazing rents as evidenced by the Federal Bureau of Land Management rates and prevailing rates in Napa County.

*Board of Supervisors Response:* The Board of Supervisors agrees with the PBES Director and the Assessor.

**Finding 5: The Board of Supervisors has not exercised effective supervision of the Williamson-Act program since at least 2008.**

*Board of Supervisors Response:* The Board of Supervisors disagrees with this Finding. The Board annually approves contracts and receives a brief annual report on the status of the Williamson Act program. Napa County has implemented the Williamson Act in full compliance with all applicable State law, and the direction of the Board has played a key role in the program's ongoing and demonstrated success.

According to the California Department of Conservation (CDOC, Williamson Act Status Reports, Napa County had 69,030 acres enrolled in contracts in 2008. The most recent report (2016) shows a total of 73,990 acres enrolled, an increase of 4,960 acres or about 0.008% annually. During this time, the County non-renewed a total 1,049 acres, or more than 20% of the amount of contracted land added to the program. PBES has regularly worked to non-renew contracts as concerns regarding compliance are identified through pending land use and lot line adjustment applications.

The CDOC suspended State subvention payments to local jurisdictions in the 2009-2010 Fiscal Year. The following year, it suspended its audits of county Williamson Act programs. It should be noted that in the 11 years prior to the suspension of the audits (from 1998-2010), the State audited 35 counties. The total amount of subvention money returned to the state during this time averaged \$180,000 annually in a statewide program of \$35.1 million, or approximately 0.5%. Historically, State audits have not demonstrated significant problems in local government administration of the Williamson Act program.

In 2009-2010, the CDOC 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. The State did not find any additional issues or concerns regarding Napa County's administration of the program.

On January 25, 2011, the Board of Supervisors reviewed the Williamson Act program, shortly after the elimination of the State subvention funds. At that time, the Assessor estimated that implementation of Senate Bill (SB) 863 would increase property tax revenues by approximately \$500,000 between 2011 and 2016. The Board discussed the provisions of 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 Williamson Act program without any changes.

Each year, PBES and the Assessor's Office submit a Subvention Report to the California Department of Conservation (CDOC). This report provides detailed information about a wide range of issues related to the Williamson Act program, including new contracted acreage, non-renewals, cancellations, public acquisitions, city annexations, farmland security zones, and calculation of payments. The CDOC regularly uses this information to monitor and report on the statewide program.

*Director of Planning Building and Environmental Services Response:* The Director agrees with the Board of Supervisors.

**Finding 6: The Assessor lacks adequate conflict-of-interest procedures regarding his own properties with unqualified personnel assigned to "check" any work.**

*County Assessor's Response:* The process for reviewing the valuation of property owned or controlled by the assessor involves the Chief Appraiser and the Staff Services Manager. The Chief Appraiser holds an advanced appraisal certificate from the State Board of Equalization. The Staff Services Manager provides oversight of the process.

## Recommendations

*Recommendation 1:* 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.

*Board of Supervisors Response:* This recommendation will not be implemented. This recommendation places a high emphasis on maximizing property tax revenue. Accordingly if the County were to undertake such a study, it should also look at the cost of similar programs, such as conservation easements, land trusts, and public agency and/or non-profit organization land acquisition, all of which similarly reduce potential property tax revenue. There may also be an argument to review the County's General Plan, or voter initiatives such as Measures J and P, to consider their costs to stakeholders. The protection of farmland prevents its conversion to the highest and best economic use, which reduces potential local government revenues.

Maximizing government revenue is not the defining aspect of Napa's quality of life. The importance of open space, habitat conservation, and resource management do not easily factor into a cost-benefit analysis. Our rural landscape is highly valued by both residents and tourists alike, and a study cannot easily account for these amenities in a ledger. Land use policy is more than simply managing property to ensure the largest government budgets. It fundamentally defines our community and shapes the way in which we live, work and play. It also provides the foundation for the legacy that we leave to our children. A sound and secure system for preserving Napa agricultural land and the open space qualities it provides will be far more valuable to future generations than limited short-term financial gains.

*Director of Planning Building and Environmental Services Response:* The Director agrees with the Board of Supervisors.

*Recommendation 2:* 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 minimum-imputed-income values in Type-H contracts.

*Board of Supervisors Response:* This recommendation will not be implemented. Based on the review conducted to date, staff has already identified areas of improvement and these are in the process of being remedied. If interested in pursuing such a study, the study should be conducted by the Planning Commission in public meetings to ensure transparency in policymaking, rather than an outside group without the benefit of public oversight and without accountability.



*Director of Planning Building and Environmental Services Response:* The Director agrees with the Board of Supervisors.

*Recommendation 3:* 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.

*Board of Supervisors Response:* This recommendation will not be implemented. The Auditor is not a lawyer, nor is the position familiar with the regulatory framework of Williamson Act law or its implementation, much less the standard practices of other agencies. The Auditor's function is not that of an Inspector General and it would not be well suited to this purpose. Based on the review conducted to date, staff has already identified areas of improvement and process modifications that are being implemented.

*Director of Planning Building and Environmental Services Response:* The Director agrees with the Board of Supervisors.

*Recommendation 4:* 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.

*County Assessor's Response:* This recommendation will not be implemented. The current conflict of interest procedures are sufficient and do not need modification.

Attachments:

Farm Bureau Letter dated August 2, 2018

