

# Navigating California's Williamson Act

*Although the Williamson Act has been on the books for decades, developers often question how and when the act applies to their projects.*

BY MATTHEW C. NESBURN & BRENT SCHORADT

Roughly one-third of all private lands and one-half of all agricultural lands in California are subject to development restrictions under the California Land Conservation Act of 1965, otherwise known as the Williamson Act. Under the act, a landowner enters into a contract with the local government whereby the owner pays lower property taxes in exchange for maintaining the agricultural nature of the property. Because of the pervasiveness of the act's restrictions on the developable land in California, wind energy developers must understand the act and how it may impact their projects.

The Williamson Act authorizes California counties to establish agricultural preserves. Landowners within the boundaries of an established agricultural preserve have the option of whether or not to enter into Williamson Act contracts with the local government (usually, the county). In exchange for limiting the contracted land to agricultural use, the local government agrees to assess the property for tax purposes based on the agricultural value of the land rather than on its potential for commercial or residential development.

The contract term is 10 years and is renewable. Landowners that choose not to renew a contract must submit a notice of nonrenewal and then wait for the nine-year period to expire before

engaging in land uses that are incompatible with agriculture, unless otherwise permitted under the Williamson Act.

The act provides renewable energy developers two avenues for avoiding the lengthy nine-year nonrenewal period. First, developers can seek a compatibility finding from the local government stating that the project is compatible with agricultural use of the land and does not violate the terms of the Williamson Act contract.

If a compatibility finding is not possible, the developer can seek to cancel the Williamson Act contract; however, cancellation is a more expensive option involving large fees of at least 12.5% of the value of the land, and often subjects the developer to expensive mitigation measures imposed by the local government, such as replacing the land subject to the cancellation with other land, which would then be restricted for agricultural use.

## **Compatibility findings**

If the local government concludes that a renewable energy project is compatible with the Williamson Act, the project may proceed without canceling the Williamson Act contract. A compatibility finding allows the developer to avoid the uncertainty, delays and fees associated with the cancellation process. As such, developers should pursue a compatibility finding before

seeking to cancel a Williamson Act contract. Fortunately for wind energy developers, compatibility findings are routinely issued for wind energy projects in most – but not all – California counties.

Some counties, such as Kern County, have gone as far as making a general finding that wind projects within the county are deemed compatible. With renewable energy as one of the state's top priorities, it is likely that more counties may follow this lead in order to speed the development process for such projects.

Understanding how compatibility findings are made can help a developer properly navigate the process in most counties where there is no broad compatibility finding for wind energy development. The local government will issue compatibility findings upon concluding that the project meets the "principles of compatibility" set forth in the act.

Generally, the compatibility principles under the Williamson Act require that renewable energy projects on contracted land "[do] not significantly compromise the long-term productive agricultural capability" of the contracted land or other contracted lands in an agricultural preserve. Moreover, proposed renewable energy projects cannot "significantly displace or impair current or reasonably foreseeable agricultural operations," and cannot "result

# A Step-By-Step Approach To The Williamson Act

**W**ind energy developers should follow these steps to effectively navigate the Williamson Act:

1. Determine whether the land parcel is subject to a Williamson Act contract by acquiring a title report for the property. If the land is subject to a Williamson Act contract, evidence of such contract will be listed as an exception on Schedule B of such report.

2. If the property is subject to a Williamson Act contract, contact the local county planning department to investigate any county-specific Williamson Act ordinances or rules. In particular, request copies of all county rules, resolutions and ordinances on the determination of compatibility with the Williamson Act.

3. If the property is subject to a Williamson Act contract, determine whether the property is considered prime or nonprime agricultural land by inquiring with the county planning department. Siting the project on nonprime lands may make it easier to receive a compatibility finding.

4. To the extent possible, design the project so as not to overdevelop prime agricultural lands. When negotiating with landowners, developers may want to condition the closing of the sale, easement or lease upon the Williamson Act contract compatibility finding or cancellation.

5. Follow the county procedures to request a finding from the County Board of Supervisors that the project

is compatible with the Williamson Act.

6. In the unlikely event that a wind project is found to not be a compatible use, the developer should explore whether the County Board of Supervisors would be willing to cancel the Williamson Act contract. Cancellation is a discretionary decision by the local county government. Because cancellation involves the payment of a cancellation fee of at least 12.5% of the unrestricted value of the land, developers should work with the county to time the Williamson Act cancellation to coincide with other necessary project approvals so that, if possible, payment is made only when the project is otherwise entitled.

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in the significant removal of adjacent contracted land from agricultural or open-space use.”

Put simply, wind energy projects will be found compatible with the purposes of the Williamson Act to the extent that the projects allow agricultural production to continue on the contracted parcel and do not impede agricultural use of the surrounding land. When arguing for their projects’ compliance with such requirements, developers commonly emphasize that wind generation facilities increase landowner revenues while maintaining agricultural productivity, thereby making the land more economically productive and less likely to be converted to commercial or residential development.

Developers also argue that wind projects are unlikely to impede the continued agricultural use of surrounding land because the noise impacts of wind generation facilities may tend to discourage nearby residential subdivisions, and the wake effect may discourage adjacent wind farm developments.

Although the Williamson Act establishes statewide principles of compatibility, local governments have broad

discretion regarding whether to implement the Williamson Act consistently with those principles.

For instance, a county may limit the percentage of a contracted parcel that may be developed with a compatible use or may impose certain siting criteria that limit the clustering of facilities or that otherwise impact development. Therefore, as a part of early-stage development, developers should inquire as to whether the local government has adopted any county-specific rules governing renewable energy development on Williamson Act contracted lands.

Of the 16.6 million acres of California land subject to Williamson Act contracts, approximately 10 million acres are classified as nonprime. In general, prime farmlands are more agriculturally productive and have higher-quality soils and better access to water than nonprime agricultural lands. The rules for finding a project compatible under the Williamson Act are more flexible for nonprime lands. If a particular parcel is densely developed with infrastructure and/or support facilities – such as operations and maintenance structures and roads – then, in the aggregate, it may be found to inhibit the

current agricultural use of the contracted land.

If the use of a parcel is found to impair agricultural development, a local government may still approve it as a compatible use, but only on nonprime lands and only by imposing mitigation or avoidance measures to deal with on-site and off-site impacts to agricultural operations.

In order to make such a finding, the local government must consider the productive capability of the land and the extent of any displacement of or impairment to agricultural operations. In planning the layout of the wind project, a developer should consider such siting matters and, if possible, avoid the over development of agricultural land subject to a Williamson Act contract and especially prime agricultural land. **SVP**

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