RESOLUTION - ACTION REQUESTED 2018-479

MEETING: October 2, 2018

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director


RECOMMENDATION AND JUSTIFICATION:
Authorize Enforcement Action to Record Notices of Non-Renewal on Land Conservation Act (Williamson Act) Contracted Parcels that Were Determined to be Non-Compliant with Resolution 10-150 Based on the County’s Review of Biennial Reports for Reporting Years 2015-2016.

Staff is requesting authorization to proceed with enforcement action to record Notices of Non-renewal on Land Conservation Act (LCA), commonly known as Williamson Act, contracted parcels that were determined to be non-compliant with Board of Supervisors Resolution No. 10-150 based on the County’s review of Biennial Reports for reporting years 2015-2016. Authorization will allow staff to:

1. Prepare Notices of Non-renewal for 16 parcels, to be effective January 1, 2019; the Notice of Non-renewal is signed by the Clerk of the Board,

2. Provide property owners of these 16 parcels with written notice of the intended non-renewal action; notice will provide property owners with a 20 calendar-day opportunity to file a written protest,

3. Review any supplemental information that may be subsequently received from the property owners (if supplemental information provides evidence of compliance, no further enforcement action would occur),

4. Record the Notices of Non-renewal (following the protest period), and

5. Record Notices of Withdrawal of Non-renewals for parcels that may become compliant with Resolution 10-150, prior to January 1, 2019, and in conformance with Government Code §51245.

The Report also provides final information to the Board regarding contracted parcels that were determined to be non-compliant with Board of Supervisors Resolution No. 10-150 based on the County’s Biennial Report review for reporting years 2015-2016.

Please see the attached staff memorandum for additional information.
Resolution - Action Requested 2018-479

BACKGROUND AND HISTORY OF BOARD ACTIONS:
3/23/2010 - Resolution No. 10-150 (comprehensive update to Board policies to implement Williamson Act in Mariposa County)


ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Negative action would mean LCA policies of Resolution 10-150 are not met.

ATTACHMENTS:
BOS MEMO LCA BIENNIAL REVIEW 2015 2016 NNR ACTIONS (DOC)
ATT A LCA & 2015-2016 BIENNIAL REVIEW MAPS (PDF)
ATT B RULES OF PROCEDURE 10 150 (PDF)
ATT C DEC 1 2017 PC LCA BR MEMO (PDF)
ATT D VIOLATION LETTER SAMPLE (PDF)
ATT E Final NNR SAMPLE (DOC)

RESULT: ADOPTED [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Kevin Cann, District IV Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
MEMORANDUM

Date: October 2, 2018
To: Board of Supervisors
From: Steve Engfer, Senior Planner

PURPOSE

The purpose of this memorandum is to:

1. Request Board authorization to proceed with enforcement action to record Notices of Non-renewal on LCA (Williamson Act) contracted parcels that were determined to be non-compliant with Board of Supervisors Resolution No. 10-150 based on the County’s Biennial Report Reviews for reporting years 2015-2016.

2. Provide final information to the Board regarding LCA (Williamson Act) contracted parcels that were determined to be non-compliant with Board of Supervisors Resolution No. 10-150 based on the County’s Biennial Report Reviews for reporting years 2015-2016.

BACKGROUND

Biennial Reviews are required by Board of Supervisors Resolution No. 10-150 [Mariposa County’s Rules of Procedure to Implement the California Land Conservation Act of 1965 (Williamson Act)] for all Williamson Act Contracts not in non-renewal as of January 1, 2011 and any new Contracts recorded after January 1, 2011 in Mariposa County. The Biennial Review is the process established by the Board for monitoring Williamson Act program compliance (Attachment A- BR LCA Lands Map).

Williamson Act Contracts are 20 year contracts, which limit property uses to commercial agricultural production uses and compatible uses in exchange for tax benefits. The

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.
contracts are "running contracts", which automatically renew each and every January 1st, unless a Notice of Non-Renewal is recorded. A Notice of Non-Renewal "stops" the automatic renewal process and starts a 19 year "wind down" period for the contract. At the end of the 19 years, the contract is void. Either party to the contract can file a non-renewal. Pursuant to Resolution No. 10-150, the non-renewal process is the preferred method to terminate a contract, and is listed as an enforcement remedy for non-compliant parcels.

Planning staff conducted the 2015-2016 Williamson Act (LCA) Biennial Review (BR) in accordance with Resolution No. 10-150. BR progress reports have been provided to the Board for each review cycle. The following provides an update included information regarding enforcement actions required by the Board's policy. (Attachment B- Resolution 10-150, Rules of Procedure).

Based on assessor data and lands subject to the 2015-2016 Biennial Review:

- There are 209,957 acres under Williamson Act contracts
  - There are 23,925 acres in non-renewal subject to Resolution No. 77-157 (158 parcels)
  - There are 184,722 acres under contract subject to Resolution No. 10-150 (649 parcels)
  - There are 1,310 acres in non-renewal subject to Resolution No. 10-150 (7 parcels)

The 656 parcels subject to Resolution No. 10-150 were required to submit biennial review reports by January 31, 2017, for the 2015-2016 reporting period. (Attachment C- Dec. 1, 2017 PC LCA BR Memorandum)

**BIENNIAL REVIEW, COMPLIANCE & ENFORCEMENT**

The review for the 2015-2016 reporting years was the third formal LCA BR conducted under the Resolution No. 10-150. A series of letters were sent to property owners under contract:

- Parcels that were found to be compliant were sent a letter of compliance.
- Parcels which were found (for the first time) to be in non-compliance were given one (1) year to bring them into compliance pursuant to Resolution No. 10-150.
  - Parcels which remain in non-compliance following the one (1) year notice will be subject to the filing of a Notice of Non-renewal and potential breach of contract penalties pursuant to Resolution No. 10-150 (action to be taken by Board of Supervisors in the future, following a public process).
- Parcels which were found to be in non-compliance for 2015-2016 reporting period (following the one (1) year reporting period) are subject to final enforcement action by Mariposa County.¹

¹ Property owners of parcels found to be in non-compliance, or owners not submitted the required reports have been sent multiple letters requesting information.
Tables 1 and 2 below provide the BR reporting statistics for the 2015-2016 Reporting year.

<table>
<thead>
<tr>
<th></th>
<th>Total Reports Required</th>
<th>Reports Received</th>
<th>Reports Not Received</th>
<th>Submittal Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>LCA BR 2015-2016</td>
<td>656</td>
<td>596</td>
<td>60</td>
<td>91%</td>
</tr>
</tbody>
</table>

*Table 1- Submittal Statistics*

<table>
<thead>
<tr>
<th></th>
<th>Total Reports Required</th>
<th>Compliant Reports</th>
<th>Non-Compliant reports</th>
<th>Compliance Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>LCA BR 2015-2016</td>
<td>656</td>
<td>587</td>
<td>69</td>
<td>90%</td>
</tr>
</tbody>
</table>

*Table 2- Compliance Statistics*

Pursuant to Resolution 10-150, there are two primary enforcement actions for parcels found to be in non-compliance through the BR process:

ONE: The first action is a notice of violation letter due to a property owner’s failure to file a BR report, the filing of an incomplete BR report, or the filing of a report that does not demonstrate compliance with Resolution 10-150 requirements. The notice of violation (NOV) letter provides a property owner a 1 year time frame to rectify the violation. (Attachment D- NOV Letter Sample)

TWO: The second action is the Notice of Non-renewal (NNR). This action is taken if, after the one year time frame, a property is still non-compliant with Resolution 10-150. (Attachment E-NNR Sample)

Table 3 below provides the final numbers of non-compliant parcels resulting from the 2015-2016 BR review.

<table>
<thead>
<tr>
<th></th>
<th>Non-Compliant Parcels</th>
<th>Violation Letters Sent Have 1 year Time Frame for Compliance</th>
<th>Notices of Non-renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>LCA BR 2015-2016</td>
<td>69</td>
<td>53</td>
<td>16</td>
</tr>
</tbody>
</table>

*Table 3- Non-compliance Statistics*

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2 Staff notes a secondary enforcement action would involve pursuit of a Breach of Contract. This action would involve the County Counsel’s office and could include action in Superior Court.
Requested Enforcement Actions

Staff is requesting Board authorization to:

1. Prepare Notices of Non-renewal for 16 parcels, to be effective January 1, 2019; the Notice of Non-renewal is signed by the Clerk of the Board,

2. Provide property owners of these 16 parcels with written notice of the intended non-renewal action; notice will provide property owners with a 20 calendar-day opportunity to file a written protest,

3. Review any supplemental information that may be subsequently received from the property owners (if supplemental information provides evidence of compliance, no further enforcement action would occur),

4. Record the Notices of Non-renewal (following the protest period), and

5. Record Notices of Withdrawal of Non-renewals for parcels that may become compliant with Resolution 10-150, prior to January 1, 2019, and in conformance with Government Code §51245.

The following table provides a list of all the APNs subject to this request.

<table>
<thead>
<tr>
<th>Non-renewal APNs</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>003-090-0150</td>
<td>120</td>
</tr>
<tr>
<td>003-090-0160</td>
<td>160</td>
</tr>
<tr>
<td>003-090-0170</td>
<td>8</td>
</tr>
<tr>
<td>003-090-0180</td>
<td>157.70</td>
</tr>
<tr>
<td>003-090-0190</td>
<td>1</td>
</tr>
<tr>
<td>003-090-0200</td>
<td>1.3</td>
</tr>
<tr>
<td>001-250-0270</td>
<td>37.21</td>
</tr>
<tr>
<td>001-250-0290</td>
<td>43.77</td>
</tr>
<tr>
<td>007-100-0270</td>
<td>6</td>
</tr>
<tr>
<td>007-100-0260</td>
<td>165</td>
</tr>
<tr>
<td>008-100-0060</td>
<td>471</td>
</tr>
<tr>
<td>017-040-0320</td>
<td>50.99</td>
</tr>
<tr>
<td>018-150-0090</td>
<td>44.80</td>
</tr>
<tr>
<td>008-140-0210</td>
<td>157.26</td>
</tr>
<tr>
<td>008-140-0220</td>
<td>160</td>
</tr>
<tr>
<td>008-140-0230</td>
<td>120</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>1704.03</strong></td>
</tr>
</tbody>
</table>

Table 4- NNR Enforcement Statistics

The requested action includes direction to the Clerk of the Board of Supervisors to sign the Notices of Non-renewal.

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3 Based on state law procedural requirements, the non-renewals are effective January 1, 2019.

4 Detailed information regarding non-compliant parcels is not provided in this public document, as this is an enforcement action. Detailed information would be provided to the Board if a written protest is received or upon request.
If written protests are received, the item (including property-specific details) will be scheduled for further Board of Supervisors' consideration and action.

Communications with the Department of Conservation will occur, as required by Government Code.

PROCEDURAL REQUIREMENTS

Non-renewal is the preferred method for landowners and county to terminate the LCA contract according to Resolution 10-150. The notice of non-renewal process must adhere to Government Code §51245 which states:

"51245. Notice of non-renewal. If either the landowner or the city or county desires in any year not to renew the contract, that party shall serve written notice of non-renewal of the contract upon the other party in advance of the annual renewal date of the contract. Unless such written notice is served by the landowner at least 90 days prior to the renewal date or by the...county at least 60 days prior to the renewal date, the contract shall be considered renewed as provided in Section 51244 or Section 51244.5.

Upon receipt by the owner of a notice from the county...of non-renewal, the owner may make a written protest of the notice of non-renewal. The county...may, at any time prior to the renewal date, withdraw the notice of non-renewal. Upon request by the owner, the board...may authorize the owner to serve a notice of non-renewal on a portion of the land under a contract.

Within 30 days of the receipt of a notice of non-renewal from a landowner, the service of a notice of non-renewal upon a landowner, or the withdrawal of a notice of non-renewal, the...county shall deliver a copy of the notice or a notice of withdrawal of non-renewal to the Director of Conservation.

No later than 20 days after a...county receives a notice of non-renewal from a landowner, serves a notice of non-renewal upon a landowner, or withdraws a notice of non-renewal, the clerk of the board...shall record with the county recorder a copy of the notice of non-renewal or notice of withdrawal of non-renewal."

Unless resolved prior to January 1, 2019, the 16 parcels subject to the notices of non-renewal will see tax increases, potential penalties (if pursued by the County via separate Breach of Contract actions) and begin a 19 year wind-down period of the contract.

The timeframes meet Resolution 10-150 requirements, Government Code §51245 requirements and grants sufficient time for parcel owners to provide information necessary to demonstrate compliance with Resolution 10-150.
REQUESTED ACTION:

Staff is requesting Board authorization to:

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5. Record Notices of Withdrawal of Non-renewals for parcels that may become compliant with Resolution 10-150, prior to the renewal date, and in conformance with Government Code §51245.

Property owners of the 16 parcels will be sent a courtesy notice regarding this action.

Attachments:

A. BR LCA Lands Map
B. Resolution 10-150, Rules of Procedure
C. December 1, 2017 PC LCA BR Memorandum
D. NOV Letter Sample
E. NNR Sample

Cc: Planning Commission
    Assessor/Recorder
    Department of Conservation
    Agricultural Advisory Committee