

Alameda County
Eligibility Requirements for Williamson Act Contracts
for Agricultural Uses

GUIDELINES FOR COMMERCIAL AGRICULTURE

Introduction

These Guidelines are intended to summarize the requirements found under Uniform Rule 1 of the Uniform Rules and Procedures governing Agricultural Preserves and Land Conservation (Williamson Act) Contracts in Alameda County. Additional and more detailed information as to how the requirements for commercial agriculture are to be interpreted may be found in the Endnotes at the back of these Guidelines.

Contract Requirements

In order to enter land into a Williamson Act contract, to amend an existing contract, and to maintain continued eligibility during the life of the contract, land must meet all of the following contract requirements:

- Be in an agricultural preserve (*see Uniform Rule 1*);
- Meet minimum parcel size requirements according to whether prime or non-prime agricultural land (*addressed here and in Uniform Rule 1*);
- Be devoted to a commercial agricultural use (*addressed here and in Uniform Rule 1*); and,
- Be restricted to additional uses that are incidental to and compatible with the primary agricultural use of the land (*see Uniform Rule 2*).

These Commercial Agriculture Guidelines outline definitions and thresholds for what constitutes:

- minimum parcel size
- prime and non-prime land
- agricultural use
- commercial agriculture as a viable primary use

Minimum Parcel Size

Establishing and sustaining commercial agricultural production on under-sized parcels is particularly challenging. Therefore, applications for new Williamson Act contracts are limited to properties that meet the statutory minimum size presumption of 10 acres for prime land and 40 acres for non-prime land (see California Government Code Act Section 51222). However, if commercial viability can be demonstrated (see Thresholds for Commercial Agriculture below), contracts on parcels smaller than the 10/40 acres will be allowed.

Definition of Prime Land

In Alameda County, prime agricultural land is land that meets any one of the following criteria:

1. Land that qualifies for rating as Class I or Class II in the Natural Resource Conservation Service land use capability classifications.
2. Irrigated land planted in annual or perennial crops that has produced an annual gross revenue of not less than \$200 per acre when averaged over at least 3 of the previous 5 years; or, in the case of recently planted perennial crops, would produce an annual gross revenue of not less than \$200 per acre when in full commercial bearing.
3. Non-irrigated land planted in perennial crops (such as olives and grapes) that has produced an annual gross revenue of not less than \$200 per acre when averaged over at least 3 or the previous 5 years; or, if recently planted, would produce an annual gross revenue of not less than \$200 per acre when in full commercial bearing.

See Endnotes for further explanation of Agricultural Production Requirements.

Definition of Non-Prime Land

Non-prime agricultural land means land that does not meet any of the criteria for classification as prime agricultural land.

Definition of Agricultural Use

Contracted land must be devoted to commercial agriculture as the primary use of the land (see Government Code Section 51242). Commercial agricultural use means the production and sale of agricultural commodities. Agricultural commodities mean unprocessed plant and animal products of farms, ranches, production nurseries and forests.

Agricultural commodities include, but are not limited to, the following: fruits, nuts, and vegetables; grains, such as wheat, barley, oats, and corn; legumes, such as field beans and peas; animal feed and forage crops, such as grain hay and alfalfa; seed crops; fiber and oilseed crops, such as safflower and sunflower; biofuels; production nursery stock; aquaculture; trees grown for lumber and wood products; turf grown for sod; poultry, such as chickens, ostriches, and emus;

livestock, such as cattle, sheep and swine; rangeland and pasture for livestock production; and commercially-bred horses (see definition in Uniform Rule 1, Section II. C. 2).

It is recognized that the list above is not comprehensive and that new agricultural commodities may be developed under future market conditions. Questions as to whether or not a specific plant or animal product is agricultural in nature will be decided by the County Planning Department in conference with the County's Agricultural Commissioner.

Any other use or development of contracted lands must be compatible with and incidental to the use of the land for the commercial production of agricultural commodities (see Uniform Rule 2).

Thresholds for Commercial Agriculture

For a landowner to qualify as engaged in commercial agriculture, the contracted land must meet minimum annual revenue requirements and in some cases land coverage requirements. Land coverage means the amount of land, as a percentage of the contracted parcel(s), required to be in commercial agricultural use.

Thresholds for Prime Land

For *prime* land to be considered as devoted to commercial production of agricultural commodities, the contracted parcel(s) must meet one of the following conditions:

- 1) Land that is at least 10 acres in size, has a Natural Resource Conservation Service (NRCS) land capability rating of Class I or Class II, and is planted in annual and/or perennial crops:
 - agricultural production must yield "some" gross annual revenue as substantiated by Schedule F of the federal tax returns or other relevant tax form filed in 3 of the past 5 years, if requested by the County
 - at least 60% of the property under contract must be used for commercial agriculture

Discussion: The property under Option #1 meets the presumptive minimum parcel size for commercial viability (Government Code Section 51222) and has prime soils, which the County seeks to preserve by minimizing the contract requirements; therefore, a specific minimum revenue is not being required. The moderate land coverage requirement ensures that the parcel will be primarily used for agriculture.

- 2) Land that is at least 10 acres in size and is planted in annual and/or perennial crops:
 - agricultural production must yield an annual gross revenue equal to or exceeding \$200 per acre per year as substantiated by Schedule F of the federal tax returns or other relevant tax form filed in 3 of the past 5 years, if requested by the County
 - at least 60% of the property under contract must be used for commercial agriculture

Discussion: The property under Option #2 does not have prime soils but meets the minimum parcel size requirement as well as the revenue and crop requirement by which it qualified as prime; it must continue to meet the revenue and crop requirement to

maintain the contract. Here the revenue requirement is relatively low, and the moderate land coverage requirement ensures that the parcel will be used primarily for agriculture

- 3) Land that is less than 10 acres in size and is planted in annual and/or perennial crops:
- agricultural production must yield an annual gross revenue equal to or exceeding at least \$3,500 as substantiated by Schedule F of the federal tax returns or other relevant tax form filed in 3 of the past 5 years, if requested by the County
 - at least 75% of the property under contract must be used for commercial agriculture

Discussion: The property under Option #3 is smaller than the minimum parcel size established for prime land; therefore, in order to establish commercial viability, higher thresholds are required: in this option, the revenue requirement per acre is higher than the previous options as is the land coverage requirement. This option allows for small intensive commercial agriculture niche operations.

- 4) Land that is less than 10 acres in size and is planted in annual and/or perennial crops:
- agricultural production must yield an annual gross revenue equal to or exceeding \$10,000 as substantiated by Schedule F of the federal tax returns or other relevant tax form filed in 3 of the past 5 years, if requested by the County
 - no planting coverage is required unless compatible use development is proposed, in which case at least 50% of the parcel under contract must be used for commercial agriculture to ensure that any development is incidental to the agricultural use

Discussion: The property under Option #4 is smaller than the minimum parcel size required for prime land; therefore, in order to establish commercial viability, higher thresholds are required: in this option, the revenue requirement is much higher than the previous option, but a land coverage requirement only goes into effect if compatible use is proposed. This option allows for small intensive commercial agriculture niche operations of higher revenue per acre on less acreage than Option #3.

Thresholds for Non-Prime Land

For *non-prime land* to be considered as devoted to commercial production of agricultural commodities, the contracted parcel(s) must meet one of the following conditions:

- 1) Land that is at least 40 acres in size and is being used for dryland farming, grazing of livestock or livestock production, the breeding of horses, and/or other types of agricultural pursuits:
- agricultural production must yield “some” gross annual revenue as substantiated by Schedule F (and/or Form 4797 for a horse breeding operation) of the federal tax returns or other relevant tax form filed in 3 of the past 5 years, if requested by the County
 - at least 60% of the property must be used for commercial agriculture

Discussion: The property under Option #1 meets the presumptive minimum parcel size for commercial viability (Government Code Section 51222), therefore, a specific

minimum revenue is not being required. While the revenue requirement is minimal, the moderate land coverage requirement ensures that the parcel will be used primarily for agriculture.

- 2) Land that is less than 40 acres in size and is being used for dryland farming, livestock production, and/or other types of agricultural pursuits:
- agricultural production must yield an annual gross revenue equal to or exceeding at least \$2,000 as substantiated by Schedule F of the federal tax returns or other relevant tax form filed in 3 of the past 5 years, if requested by the County
 - at least 75% of the property must be used for commercial agriculture

Discussion: The property under Option #2 is smaller than the minimum parcel size required for non- prime land; therefore, in order to establish commercial viability, higher thresholds are required: in this option, there is a moderate revenue requirement and a high land coverage requirement.

- 3) Land that less than 40 acres in size and is being used for dryland farming, grazing of livestock or livestock production, or other types of agricultural pursuits:
- agricultural production must yield an annual gross revenue equal to or exceeding \$10,000 as substantiated by Schedule F of the federal tax returns or other relevant tax form filed in 3 of the past 5 years, if requested by the County
 - if compatible use is proposed outside the building envelope, at least 50% of the parcel must be used for commercial agriculture to ensure that any development is incidental to the agricultural use

Discussion: The property under Option #3 is smaller than the minimum parcel size required for non-prime land; therefore, in order to establish commercial viability, higher thresholds are required: in this option, the revenue requirement per acre (or per operation) is much higher than the previous option, but a land coverage requirement only goes into effect if compatible use is proposed.

ENDNOTES

Agricultural Production and Revenue Requirements

Annual gross revenue refers to gross agricultural income from unprocessed agricultural commodities produced by the property under contract. If annual production for any one year falls below the required value, the annual income requirement may be averaged over up to 3 of the previous 5 years. In the case of dry land farming, for example, hay that is baled but held over for sale for the following year due to current low prices may show no income for one year but double the income the following year which would then be averaged over the two years.

Income from sales of unprocessed agricultural commodities or rent of land used for commercial production of agricultural commodities shall be the only sources of income used to calculate annual revenue.

In the case where the unprocessed commodity (e.g. grapes) is not sold but is processed (e.g. into wine) as part of the landowner's larger operation, annual gross revenue from the unprocessed commodity can be estimated based on current market price using information provided by the Agriculture Commissioner's office

If the property under contract is temporarily fallowed, or there is a change of crop or production method, the applicant must demonstrate that the practice is a typical and appropriate agricultural management strategy in the annual questionnaire sent to all landowners under contract.

Proof of production value will be required at the time of application submittal and when a permit is sought for a compatible use. At the time of application, landowners must show that their agricultural operation has met the annual gross revenue requirement under the threshold they are qualifying for a minimum of three years as substantiated by Schedule F (or other appropriate tax forms) of their federal tax returns. Exceptions to the requirement that the landowner has had an existing operation for a minimum of 3 years on the land to be contracted are as follows:

1. A landowner who has bought an existing agricultural operation that is not under the Williamson Act may qualify for a contract if he/she can demonstrate that the past operation under the past owner was able to meet one of the thresholds for 3 out of the 5 past years, and that the future operation will continue to meet the threshold for which he/she is applying. For example, in the case of non-prime land: if the acquired property was at least 40 acres in size, of which at least 60 % was fenced, and that a grazing lease had been in place for at least the past 3 years and would be in place for the next 3-5 years, the new owner would qualify for a contract. For example, in the case of prime land: if the acquired property was at least 10 acres in size and had records of high value crops yielding an annual gross revenue of at least \$200 per acre for the past 3 years over 60% of the property, and if the capital investment and future sale agreements indicated future success, the new owner would qualify for a contract. For either operation, if after 3 years, the operation fails to show the required revenue, the contract may be non-renewed. Parcels smaller than the presumptive size of 10 acres for prime land or 40 for non-prime land would not qualify for this exception.
2. A landowner with land that has recently been fully planted to commercial standards (as determined by the Agriculture Commissioner's Office) with trees, vines, bushes, or crops but that will not bear fruits or nuts for 2 or more years would qualify for a contract. In this case, the potential production value is to be substantiated by multiplying the average production per acre by the average value of the commodity for the previous five years as determined from the Annual Reports of the Alameda County Department of Agriculture, Weights and Measures. Parcels smaller than the presumptive size of 10 acres for prime land or 40 acres for non-prime land would not qualify for this exception.

As noted, proof of production value, when requested by the Planning Department, must be substantiated by landowners using Schedule F of their federal tax returns, or other relevant tax forms. Proof of production value may be required annually for all contracted land of less than 10 acres in the case of prime land, and for all contracted land of less than 40 acres in the case of non-prime land. The property owner must maintain records of annual productive acreage and its per acre gross revenue, or its gross annual and must provide this information to the County on request and on the annual questionnaires sent out to landowners under contract.

Failure to meet these contract requirements may result in non-renewal of the contract by the County.

Land Coverage Requirement

The Planning Department, in collaboration with the Agricultural Commissioner, shall consider exceptions to the land coverage standards when there are natural land features present, such as streams or rock outcroppings or specimen native trees, which the owner demonstrates are not conducive to the commercial agricultural uses appropriate for the property. If more than 50% of the property is not conducive to commercial agricultural uses which are appropriate for the property, the property may be denied a contract.

In general, the lower the per acre gross revenue, the higher the land coverage required; conversely, the higher the productive value per acre, the lower the land coverage required.

Grazing Land

For livestock production, land that is fenced and available for grazing will be considered as being in agricultural production, even though grazing may only occur on a seasonal basis or be temporarily discontinued due to drought conditions. An exception will be unfenced property that is included as part of a larger operation. Grazing lands temporarily unused may be considered as being in agricultural production if the applicant demonstrates that such practice is a typical and appropriate agricultural management strategy. For parcels 40 acres and larger in size, gross income generated through grazing activities may be limited to an estimate of the annual carrying capacity of the land.

Dryland Farming

As noted for all agricultural operations, if annual production for any one year falls below the required value, the annual income requirement may be averaged over 3 of the previous 5 years. In the case of dryland farming, if drought conditions prevail for an extended period of time such that no income is generated for 3 or more years out of 5, the Agricultural Commissioner shall review the situation. If the Agricultural Commissioner determines that the landowner has acted in good faith, the contract shall remain in force until which time either the income requirement can again be met or the Agricultural Commissioner determines that the situation calls for non-renewal of the contract.