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OPINION	:	No. 79-309
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of	:	<u>May 11, 1979</u>
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SUBJECT: WILLIAMSON ACT CONTRACT—This opinion deals with whether a county approving a tentative subdivision map proposing to subdivide a certain number of acres into homesite lots of varying acreage would constitute a violation of the “Williamson Act” contract.

The Honorable Selby Brown, Jr., County Counsel, County of Santa Clara, has requested an opinion on the following question:

Is the County of Santa Clara precluded by the California Land Conservation Act of 1965 (Williamson Act) and the county’s policies formulated thereunder from approving a tentative subdivision map proposing to subdivide 1308 acres of land under a Williamson Act contract into 29 homesite lots ranging in size from 20 acres to 185 acres?

CONCLUSION

Based on the facts presented and assumptions we are requested to make:

1. Unless the single-family residences proposed for each of the subdivided lots are incidental to the use of the lot for the purpose of producing agricultural commodities for

commercial purposes, the division of a 1308 acre preserve into 29 lots of varying acreage from 20 to 185 acres would constitute a violation of the Williamson Act contract binding on that land. It is the responsibility of the board of supervisors to make the determination of contract violation, and if it does so, it may sue to enjoin the sale of the lots or prevent the construction of such single family residences; and

2. The county may not disapprove the tentative map solely on the grounds that the subdivision or improvements under it would result in a violation of a Williamson Act contract. The underlying facts which constitute a violation of a Williamson Act contract may, however, also constitute grounds for disapproving the tentative subdivision map.

ANALYSIS

1. Background

The county has presented the following factual background: The owner of a 1308 acre parcel of land subject to a Williamson Act (Gov. Code § 51200 *et seq.*) contract has proposed and filed with the county a tentative subdivision map which would subdivide the parcels into 29 lots ranging in size from 20 acres to 185 acres with an average lot size of 45 acres, for homesite purposes. The County Planning Commission has approved the tentative map, and that decision has been appealed to the board of supervisors. The property in question is generally described as rugged terrain, with steep slopes, and with sparse vegetation over most of the parcel with some dense brush and trees along the steep slopes of a creek and a north-facing slope. The land is currently being used for non-intensive agricultural purposes (cattle grazing).

We have been asked to assume for purposes of this opinion:

(a) That the additional residential activity will reduce present agricultural productivity of the ranch; and

(b) That even if overall agricultural productivity is increased, subdivision will alter the land use from exclusively agricultural activities (grazing) to rural residential with agriculture as an avocation.

The policy adopted by the board of supervisors of Santa Clara County for accepting lands into an agricultural preserve requires a minimum parcel size of 10 acres for intensive or prime agricultural land and 20 acres for open space and nonintensive agricultural lands. The subject 1308 acre parcel is considered in the latter category and thus subject to the 20 acre minimum size limitation. The board's policy further requires that parcels under Williamson Act contract must be in an exclusive agricultural zoning district. The

appropriate zoning for such lands is considered to be “A” zoning district with at least 20 acres minimum lot size.¹

The county counsel represents that the existence of a single-family residence on any parcel meeting the minimum lot size has never been viewed by the board of supervisors as a bar to bringing land under contract or as incompatible with the continuing agricultural use of property.

¹ The county’s zoning regulations for “Exclusive Agricultural (Greenbelt) Zoning Districts” provide in part:

“No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered or enlarged except for the following: uses:

“(1) Botanical conservatory.

“(2) Field and truck crops.

“(3) Orchards and vineyards.

“(4) Nurseries, greenhouses, landscape gardening, botanical conservatories and arboreta.

“(5) Drying of crops.

“(6) Storage, bottling and wholesaling of wine.

“(7) Riding academies and stables, except as provided in section 37–3.1.2.

“(8) Animal breeding.

“(9) Apiary.

“(10) Dairies and processing of dairy products.

“(11) Poultry raising, eggs and hatcheries.

“(12) Fur farm.

“(13) Guest ranch, except as provided in section 37–3.1.2.

“(14) Hay and straw sale and storage.

“(15) Pasture.

“(16) Livestock ranches.

“(17) Land in its natural state held for future use.

“(18) Other compatible uses as may be interpreted by the board of supervisors pursuant to Section 51201 (e) of the California Government Code.

“(19) Land in its natural state for recreation, or plant or animal preserves.” (Santa Clara County Zoning Ordinance § 4–2.)

The regulations also allow, among others, these “incidental uses”:

“Residence of the owner or owners or lessee or lessor of the land upon which the use is conducted.” (14. § 4–3.1.)

“Residence of other members of the family of those mentioned in Sec. 4–3.1.” (14. § 4–3.2.)

The land in question is also located in an area that is designated on the county general plan (Urban Development/Open Space Plan) as “Long Term Open Space.” The plan map contains a legend with reference to Long Term Open Space: “Low to very low density rural residential uses may also be appropriate.” The more restrictive Plan category of ‘Permanent Open Space’ contains the legend: “Very low density rural residential uses may also be appropriate.”

The standard Santa Clara County Williamson Act contract, to which the 1308 acre parcel in question is subject, contains several provisions pertinent to this discussion:

A. The pertinent recital clauses:

“WHEREAS, Owner possesses certain real property located within the County of Santa Clara, State of California, *which is presently devoted to agricultural use* and is described in Exhibit B attached hereto and made a part hereof; and

“WHEREAS, the property is located in an agricultural preserve heretofore established by County; and

“WHEREAS, both Owner and County desire to *limit the use of the property to agricultural and compatible uses*; and

“WHEREAS, the parties have determined that the highest and best use for the property during the term of this contract, or any renewal thereof, *shall be for agricultural purposes.*” (Emphasis added.)

B. Paragraph 1 which makes the contract subject to the Williamson Act:

“This contract is entered into pursuant to Chapter 7 (commencing with Section 51200) of Part 1, Division 1, Title 5 of the Government Code, which is known as the California Land Conservation Act of 1965. This contract is subject to all of the provisions of this Act including any amendments thereto which may hereafter be enacted.”

C. Paragraph 2, containing the agreed restrictions on use of the property:

“During the term of this contract, and any and all renewals thereof, the property described in Exhibit B *shall not be used by Owner, or Owner’s successors in interest, for any purpose other than the production of agricultural commodities for commercial purposes and uses compatible*

thereto. A list of all such compatible uses is set forth in Exhibit A, attached hereto and by this reference incorporated herein. . . .” (Emphasis added.)

D. Exhibit A, which is incorporated by paragraph 2 and contains the list of compatible uses.²

2

“LAND CONSERVATION CONTRACT
“COMPATIBLE USES”

“The following is a list of land uses determined to be compatible with the agricultural use of the land subject to this agreement:

“1. The drying, packing or other processing of an agricultural commodity usually performed on the premises where it is produced but not including slaughter houses, fertilizer yards, bone yards or plants for the reduction of animal or vegetable matter.

“2. Structures necessary and incidental to the agricultural use of the land.

“3. The holding of nonproducing land for future agricultural use.

“4. The holding of nonproducing mineral resource areas for future use.

“5. The maintenance of land in its natural state for the purpose of preserving open space for recreation or plant or animal preserves.

“6. Single family dwellings incidental to the agricultural use of the land for the residence of the owner, and the family of the owner.

“Single family dwellings incidental to the agricultural use of the land for the residence of the lessee of the land and the family of the lessee.

“Owner or lessee shall be construed to include:

“(a) stockholders in family corporations

“(b) beneficiaries of family trusts and estates

“(c) owners of undivided partial interests in the fee

“(d) joint tenants

“7. Dwellings for persons employed by owner or lessee in the agricultural use of the land.

“8. Temporary farm labor camps incidental and necessary to the gathering of the crops grown on the land.

“9. The construction and maintenance of a stand or shelter for the sale of agricultural commodities produced on the land.

“10. An aircraft landing strip incidental to the agricultural use of the land.

“11. The erection, construction, alteration or maintenance of gas, electric, water or communication utility facilities.

“12. The erection, construction, alteration or maintenance of radio, television or microwave antennas, transmitters and related facilities.

E. Paragraph 6, making the contract and the restrictions binding upon the successors in interest of the owner. This paragraph also clearly contemplates the possibility of division of the land, and provides in part:

“ . . . Whenever any of the property described in Exhibit B is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided property, any of the rights of the owner in this contract, including the right to give notice of nonrenewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land described in Exhibit B shall not be imputed to the owners of the remaining parcels and shall have no effect on this contract as it applies to the remaining parcels of the divided property.”

2. Williamson Act

The initial question to be answered is whether the proposed subdivision as outlined would result in a violation of either the Williamson Act or the contract covering the land sought to be subdivided.

The Williamson Act is designed, among other purposes, to preserve a maximum amount of a limited supply of agricultural land, to discourage premature and unnecessary conversion of agricultural land to urban uses, and to conserve open space and the preservation and agricultural production of such lands. (Gov. Code § 51220(a), (b) and

“13. Public or private hunting of wildlife or fishing.

“14. Public or private hunting clubs and accessory structures.

“15. Public or private rifle and pistol practice range, trap or skeet field, archery range or other similar use.

“16. Public or private riding or hiking trails.

“17. Riding academy, stables and the boarding of horses or other livestock but not including an animal hospital or kennel.

“18. Oil and gas well drilling, including the installation and use of such equipment, structures and facilities as are necessary or convenient for oil and gas drilling and producing operations customarily required or incidental to usual oil field practice, including the initial separation of oil, gas and water and the storage, handling, recycling and transportation of such oil, gas and water from the premises.”

The identical list of compatible uses is contained in the county’s ordinance on agricultural land contracts. (Santa Clara County Code § C13–8.) This code list is introduced by a recital: “The following list of land uses are hereby determined by the board of supervisors to be compatible with the agricultural use of land included in the agricultural preserve:”

(c)³) The scheme for accomplishing these objectives is to restrict the use of agricultural lands to enable the land to be assessed according to its restricted use rather than in conformity with some other use which might constitute its highest and best use, as authorized by California Constitution, article XIII, section 8.

The mechanism for accomplishing the act's purpose is the establishment of agricultural preserves by cities or counties consisting of agricultural, recreational or open space land (§§ 51230–51239) and restricting the use of the land to agricultural or compatible uses by long-term contracts entered into by the cities or counties with the land owners. (§§ 51240–51255.) land within an agricultural preserve which is subject to such restrictive contracts must then be assessed according to the constitutional and restrictive use basis. (Rev. & Tax. Code § 421 *et seq.*) A county or city is not, however, obligated to implement the Williamson Act. (*Kelsey v. Colwell* (1973) 30 Cal. App. 3d 590, 595.) Further, a county may require a minimum capital outlay for the creation of an agricultural preserve and limit such preserves to lands currently in agricultural production. (56 Ops. Cal. Atty. Gen. 160, 163 (1973).)

For purposes of this opinion, the most significant sections of the Williamson Act are:

(A) Definitions:

1. “Agricultural Preserve” is defined to mean

“ . . . an area devoted to either agricultural use, as defined in subdivision (b), recreational use as defined in subdivision (n), or open space use as defined in subdivision (o), or any combination of such uses and which is established in accordance with provisions of . . . [the Williamson Act].” (§ 51201(d).)

2. “‘Agricultural use’ means use of land for *the pulp ore of introducing an agricultural commodity for commercial purposes.*” (§ 51201(b); emphasis added.)

3. “Recreational use” is defined as

“ . . . the use of land by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. . . .” (§ 51201(n).)

³ All section references are to the Government Code unless otherwise specified.

4. “‘Open-space use’ is the use or maintenance of land in such a manner as to preserve its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the solar evaporation of sea water in the course of salt production for commercial purposes, . . .” (§ 51201(o).)

5. “‘Compatible use’ is any use determined by the county or city administering the preserve pursuant to Section 51231 or Section 51238 or by this act to be compatible with the agricultural, recreational, or open space-use of land within the preserve and subject to contract. ‘Compatible use’ includes agricultural use, recreational use or open-space use unless the board or council finds after notice and hearing that such use is not compatible with the agricultural, recreational or open space-use to which the land is restricted by contract pursuant to this chapter.” (§ 51201(e).)

(B) Agricultural Preserves:

1. Section 51230 provides for the establishment of agricultural preserves after publication of notice and public hearing.

“. . . Such preserves shall be established for the purpose of defining the boundaries of those areas within which the city or county will be willing to enter into contracts pursuant to this act. An agricultural preserve shall consist of no less than 100 acres; provided, that in order to meet this requirement two or more parcels may be combined if they are contiguous or if they are in common ownership; . . .

“An agricultural preserve may contain land other than agricultural land, but the use of any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning or other suitable means in such a way as not to be incompatible with the agricultural use of the land, the use of which is limited by contract in accordance with this chapter.

2. Section 51231 requires the board of supervisors or city council by resolution to adopt rules governing the administration of agricultural preserves. This section also provides:

“. . . In adopting rules related to compatible uses, *the board or council may enumerate those uses which are to be considered to be compatible uses on contract lands separately from those uses which are to be considered to be*

compatible uses on lands not under contract within the agricultural preserve.”⁴ (Emphasis added.)

(C) Contracts:

1. Section 51240 authorizes a city or county to limit the use of agricultural land by contract. “. . . A contract may provide for restrictions, terms, and conditions, including payments and fees, more restrictive than or in addition to those required by this chapter.”

2. Section 51242 requires that:

“No city or county may contract with respect to any land pursuant to this chapter unless the land:

“(a) Is devoted to agricultural use.

“(b) Is located within an area designated by a city or county as an agricultural preserve.”⁵

3. Section 51243 requires that each contract shall:

“(a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract.

“(b) Shall be binding upon, and inure to the benefit of, all successors

⁴ Until January 1, 1979, the portion of section 51231, which was added by Statutes 1969, chapter 1372, section 8, relating to compatible uses read:

“. . . Such rules shall be applied uniformly throughout the preserve, shall enumerate those uses which are to be considered to be compatible uses, and may require the payment of a reasonable application fee....

The language quoted in the text was adopted by Statutes 1978, chapter 1120, section 3.

⁵ As initially enacted in 1965 (Stats. 1965, ch. 1443), this section contained a subdivision (c):

“(c) Is classified as prime agricultural land.”

We conclude that the then three requirements of section 51242 were conjunctive. (See Preliminary Report, Joint Committee on Open Space Land, March 1969. pp. 11–12.) The elimination of the third requirement by Statutes 1969, chapter 1372, section 11 did not remove the conjunctive feature, so it appears that to qualify for a Williamson Act contract, the land must be both devoted to agricultural use (as defined in § 51201(b)) and located within an agricultural preserve.

in interest to the owner. . . .”⁶

Applying the above provisions of the Williamson Act to the contract in question and the facts presented, we reach several conclusions. First, the contract (§ 6) and the Williamson Act (§ 51243) clearly authorize, as far as Williamson Act contracts are concerned, division of contract lands into more than one parcel. Once a division is made, the determination whether the act or the contract is violated, must, by the same provisions, be measured separately by the activity on each subdivided parcel, and the county would be entitled to enforce the contract as to each such parcel.

Secondly, the contract and the county code provisions relating to agricultural land contracts by the use of certain terms and by reference to the Williamson Act in our opinion incorporate the definitions and provisions of the Williamson Act. For example, paragraph 1 of the contract acknowledges that it is entered into pursuant to and is subject to the Williamson Act. The recitals refer to “agricultural use” and “agricultural and compatible uses.” Paragraph 2, setting forth the contractual restrictions, provides that the property shall not be used “. . . for any purpose other than the production of agricultural commodities for commercial purposes and uses compatible thereto.” This closely parallels the definition of agricultural use in section 51201(b). Thus, the meaning of any terms in the contract, if in doubt, should be measured against Williamson Act provisions.

Thus, the land subject to the contract must be devoted to agricultural use, that is, the production of agricultural commodities for commercial purposes, or other compatible uses. The compatible uses, as authorized by section 51240, *et seq.*, and as defined in section 51201 (e), are set forth in Exhibit A to the contract and in County Code section C13–8. The only allowable compatible use which authorizes or contemplates a homesite or single-family residence is item 6 allowing single-family dwellings incidental to the agricultural use of the land for the residents of the owner (or lessee), and the family of the owner (or lessee). Thus, even though item 5 provides for the maintenance of land in its natural state for the purpose of preserving open space for recreation or plant or animal preserves, a single-family residence must be “incidental to” the *agricultural use* of the land, and that contemplates the production of agricultural commodities for commercial purposes. If the primary use of the land is not agricultural use, the construction of a single-family home would, in our opinion, violate the contract. The county by its contract form and its

⁶ The Williamson Act also contains provisions for a term of not less than 10 years, automatic annual extension for an additional year unless notice of nonrenewal is given (§§ 51244–51246), and makes the contract enforceable by the city or county, the land owner, or an owner of land within one mile of a contract land (§ 51251). The act also prohibits cancellation except upon extremely stringent conditions (§§ 51281–51285). “The existence of an opportunity for another use of the land involved shall not be sufficient reason for the cancellation of a contract.” (§ 51282.)

regulations has developed a list of compatible uses more restrictive than required by the Williamson Act itself, as permitted by the act. (§ 51240; and see 56 Ops. Cal. Atty. Gen. 160, 163 (1973).)

It is the responsibility of the board to evaluate at the proper time whether any particular activity on any specific parcel constitutes a violation or threatened violation of the act.⁷ The test to be applied is whether the construction of a single-family residence or any other subdivision improvements is incidental to the production of agricultural commodities for commercial purposes on the particular parcel.

In 54 Ops. Cal. Atty. Gen. 90 (1971), this office analyzed a situation similar to the instant one. There, the question was whether the owner of a 1200 acre farm under a Williamson Act contract in Solano County could be prevented from selling off 20 acre parcels for use as homesites, even though zoned for 20 acre parcels if the board of supervisors determined that such division would be incompatible for continuance of such land as an agricultural preserve. It was concluded that upon such determination by the board, the board may seek specific performance of the contract and a civil injunction against such sales. *Ibid.*

“What is proposed here does violence to the letter and spirit of the Williamson Act. If it were permitted, then there actually could be a conversion of approximately 2 square miles of farm land into a rural subdivision containing sixty homes, with no commercial agricultural enterprises. It is apparent that to give such parcels special treatment under section 423 of the Revenue and Taxation Code would be inequitable to the county and the State in that each is deprived of the chief benefit of the contract, namely the preservation of agricultural land.” *Id.* at 92.

In the Solano County opinion, the analysis was of that county’s resolution relating to agricultural preserves, and concluded:

“If the board determines that such 20 acre parcel homesites will not result in the continuance of such land in agricultural production then such activity on the part of the landowner would result in a failure to comply with the county’s uniform rules for administration of agricultural preserves.” *Id.* at 91.

⁷ In point 3 below, the legality of the county disapproving of the tentative subdivision map because future homesite construction or other subdivision improvements might be a violation of the contract is discussed.

We reaffirm the holding in that opinion. See also 39 Ops. Cal. Atty. Gen. 16, 29–30 (1962) where the then existing phrase “solely for commercial agricultural purposes” in a statute providing an exemption from the Subdivided Land Act (Bus. & Prof. Code § 11000 *et seq.*) was construed to include “. . . sale of a residence for the farmer cultivating for commercial purposes. However, sales of subdivided farm land on the inducement that it would be used for residential purposes, do not qualify for the exclusion.” *Id.* at 30.

It can be argued that the zoning regulations of Santa Clara County would permit the construction of the homesites as contemplated by the proposed subdivision within an agricultural preserve. The uses permitted in the county’s A Zoning District as set out in footnote 1, above, appear to be broader than those permitted in Exhibit A of the county’s Williamson Act contract and County Code section C13–8. For example, the incidental uses under the zoning ordinances permit a residence of the owner or lessee as incidental to such primary uses as pasture, land in its natural state held for future use, or land in its natural state for recreation, or plant or animal preserves. (Santa Clara County’s Zoning Ordinance §§ 4–2(15), (17) and (19); 4–3.1.) As noted, however, the Williamson Act permits a different list of compatible uses for contract purposes than for agricultural preserve purposes (§ 51231), and we know of no reason why the list for contract purposes cannot be more restrictive than those for noncontract lands in an agricultural zoning area. Thus, given a more restrictive list of compatible uses under the Williamson Act contract, it is those uses against which proposed use of the contract lands is to be measured.

The county counsel’s opinion to the board of supervisors on this matter states that “. . . the existence of a single family residence on any parcel meeting the aforementioned minimum lot size has never been viewed by the Board of Supervisors as a bar to bringing the land under the Williamson Act contract or as incompatible with the continuing agricultural use of the property.” (Letter of March 8, 1979 to Board of Supervisors, p. 4.) Assuming this is offered as evidence of administrative construction of the county’s Williamson Act contract requirements, we believe such a construction goes contrary to the clear meaning of the contract provisions as outlined above if it is intended to show that single-family residences other than as incidental to the production of agricultural commodities for commercial purposes on the particular parcel are permitted. The usual rules as to administrative construction apply to county ordinances. (*Atlantic Oil Co. v. County of Los Angeles* (1968) 69 Cal. 2d 585, 599; *Johnston v. Board of Supervisors* (1947) 31 Cal. 2d 66, 74.) As stated in the *Johnston* case and quoted in the *Atlantic Oil* case:

“. . . Moreover, although contemporaneous construction by officials charged with the administration of a statute or ordinance is given great weight, final responsibility for the interpretation of the law rests with the courts. ‘At most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.’” [Citation.] The rule of contemporaneous construction

may not be applied when the wording of the statute or ordinance, as in the present case, clearly calls for a different construction. [Citation.]” (31 Cal. 2d at 74–75; 69 Cal. 2d at 599.)

“Moreover, an erroneous administrative construction does not become decisive no matter how long continued.” *Trabue Pittman Corp. v. County of L.A.* (1946) 29 Cal. 2d 385, 399.

It is therefore concluded that, consistent with the purposes of the Williamson Act and the very terms of the contract used by the County of Santa Clara, if the board of supervisors determines that the division of the subject parcel into lots as proposed would result in the development of single family residences other than as incidental to the production of agricultural commodities for commercial purposes, such a division would violate the subject Williamson Act contract. The board would then be empowered to bring an action to enjoin the sale of such lots, or would be empowered to prohibit the construction of any such single-family residences. (§§ 51251–51252; 54 Ops. Cal. Atty. Gen. 90, 91.)

4. Subdivision Map Act

We now turn to the question of whether, assuming a determination by the board of supervisors that the proposed subdivision or the construction of single-family residences on any of the subdivided lots would violate the subject Williamson Act contract, the board may disapprove the tentative map offered for filing by the owner.

The Subdivision Map Act (§ 66410 *et seq.*) sets forth the procedure for an owner to subdivide lands. Regulation and control of the design and improvement of subdivisions are vested in cities and counties. (§ 66411.) Section 66426 requires both a tentative and a final map for all subdivisions dividing land into five or more parcels. Section 66451 *et seq.*, contains the procedure for approval, conditional approval or disapproval of tentative and final maps, by the local “advisory agency” (which in the case of the County of Santa Clara is the County Planning Commission), with an appeal to an appeals board (which in this case is the Santa Clara Board of Supervisors). This procedure includes approval of tentative maps by failure of the proper body to act within specified time limits. (§ 66452.4.)

Chapter 3 (§ 66473 *et seq.*) contains the requirements for subdivision maps. These include authorization for dedication of lands for public easements or purposes (article 3), access to public resources (article 3.5), acquisition of reservations within a subdivision by public agencies (article 4), and similar requirements which may be imposed by the city or county as a prerequisite to approval of a tentative or final map.

Article 1 of chapter 3 contains the grounds on which a city or county may or must disapprove a tentative or final subdivision map. These are basically contained in four sections:

a. Section 66473 requires disapproval of a map “. . . for failure to meet or perform any of the requirements or conditions imposed by . . . [the Subdivision Map Act] or local ordinance enacted pursuant thereto; . . . and provided further that such disapproval shall be accompanied by a finding identifying the requirements or conditions which have not been met or performed. . . .”.

b. Section 66473.5, which provides in part:

“No local agency shall approve a map unless the legislative body shall find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan . . . or any specific plan adopted by the agency). . . .”

This requires an affirmative finding by the county of consistency between the map and the county’s general or specific plan. (See 59 Ops. Cal. Atty. Gen. 129, 130–131 (1976); 58 Ops. Cal. Atty. Gen. 21, 27–29 (1975).)

c. Section 66474 provides:

“A legislative body of a city or county shall deny approval of a final or tentative map if it makes any of the following findings:

“(a) That the proposed map is not consistent with applicable general and specific plans.

“(b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

“(c) That the site is not physically suitable for the type of development.

“(d) That the site is not physically suitable for the proposed density of development.

“(e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

“(f) That the design of the subdivision or the type of improvements is likely to cause serious public health problems.

“(g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. . . .”

Under this section, if the county makes one or more of the requisite findings, it must deny approval of the map. (*Carmel Valley View, Ltd. v. Board of Supervisors* (1976) 58 Cal. App. 3d 817, 821, 823; 58 Ops. Cal. Atty. Gen. 21, 28.)

d. Section 66474.6 which allows disapproval of a tentative map if the city or county finds that the proposed waste discharge from the subdivision would violate the requirements of the regional water quality control board.

The question is then presented as to whether the county *may* deny approval of the tentative map on any grounds other than those enumerated in the above sections. We believe the statement of the Supreme Court in *Wildlife Alive v. Chickering* (1976) 18 Cal. 3d 190, 196 is pertinent:

“First, under the doctrine of *expression unius est exclusion alterius*, the creation of a limited express exemption suggests that a broader implied exemption could not have been intended. “In the grant [of powers] and in the regulation of the mode of exercise, there is an implied negative; an implication that no other than the expressly granted power passes by the grant; that it is to be exercised only in the prescribed mode . . .”” (See also 2A Sutherland, *Statutory Construction* (4th ed. 1973) § 47.23.)

We thus conclude that the grounds stated in the cited sections are the only grounds on which the county may disapprove or deny approval of a tentative subdivision map. The entire scheme of the Subdivision Map Act appears to set forth precisely the types of conditions that a city or county may impose as a condition for approval of a subdivision. Article 1 in turn is precise in specifying the grounds on which a map may or must be disapproved including failure to comply with the imposed conditions.

A violation or breach of a Williamson Act contract is not, in and of itself, one of the grounds upon which a tentative map may be disapproved under the Subdivision Map Act.⁸

⁸ Even though it is concluded that the county may not disapprove a tentative subdivision map solely because it would result in a violation of a Williamson Act contract, the Real Estate Commissioner might be authorized to not issue a “public report” under the Subdivided Land Act

The underlying facts which may constitute a violation or breach of a Williamson Act contract may, however, also constitute a ground for disapproval of a tentative subdivision map under the Subdivision Map Act. Also, other facts extraneous to the Williamson Act and contracts made pursuant thereto may likewise furnish grounds for disapproval of the tentative subdivision map. It is the responsibility of the local advisory agency and the appeals board to make the findings required by the Subdivision Map Act enumerated above upon which its approval or disapproval of the tentative subdivision map must be based.

(Bus. & Prof. Code § 11000 *et seq.*), a prerequisite to actual sale of the lots. Business and Professions Code section 11018 lists, among the grounds for denial of a public report:

“(f) Failure to make a showing that the parcels can be used for the purpose for which they are offered;

If the construction of single-family residences on the subdivided lots in question would violate the Williamson Act contract binding on each parcel, then a purchaser could not build pending the term of that contract, which would be a minimum of 10 years from the date of filing of the subdivision map, depending on when notice of nonrenewal is given. (§§ 55244, 51245.) In a letter opinion, I.L. 66–18 (1966), this office concluded that the fact that land within a subdivision was being condemned by the United States for the Whiskeytown-Shasta-Trinity National Recreational area was sufficient evidence of a failure to make a showing that the parcels can be used for the purpose for which they were to be offered (single-family residence) to allow the Real Estate Commissioner to deny a public report and to issue an order prohibiting any further sales if a final report had already been issued. We conclude that a legal impediment (Williamson Act contract) against using a subdivided lot for its offered purposes for a long term such as 10 years falls under the same category.