SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

DATE: AUGUST 1, 2011

TO: AGRICULTURAL LIAISON ADVISORY BOARD

FROM: WARREN HOAG, DIVISION MANAGER, CURRENT PLANNING

SUBJECT: UPDATE ON WILLIAMSON ACT LEGISLATION AND FUNDING AND POSSIBLE IMPLEMENTATION OF ASSEMBLY BILL 1265

SUMMARY:

At today's meeting, staff will update the Agricultural Liaison Advisory Board (ALAB) on the Board of Supervisors' discussion on June 7, 2011 of the current status of the Williamson Act subvention funding and will also discuss recently enacted legislation for alternative means of funding the Williamson Act program, Assembly Bill (AB) 1265.

RECOMMENDATION:

Receive and discuss the staff update and make a recommendation to the Board of Supervisors on whether the County should implement AB 1265 or not.

DISCUSSION:

Background

At your meeting on May 2, 2011, ALAB discussed the issues related to the Williamson Act funding changes and possible responses to them. In general, ALAB indicated that they are strongly supportive of the County's continued participation in the Williamson Act program but they are aware of the longer term fiscal implications of the County continuing to backfill the subvention money from the general fund. In terms of how the County should respond to the funding changes, ALAB's first choice was **Option 1, Keep the Program As Is** (Status Quo). ALAB's second choice was **Option 2, Freeze the Program at the Current Level** (stop accepting new applications except for additions of contiguous property to existing contracts and contract amendments for minor lot line adjustments). ALAB also indicated that they consider Option 2 as an interim measure that should be rescinded in the future when economic conditions improve. ALAB's third choice was **Option 3, Modify Program to Make Eligibility More Focused** (primarily by raising the minimum acreage required for eligibility of grazing land). ALAB did not support **Option 4, Withdraw From State Program** (non-renew contracts), in any form. ALAB did not take a position on **Option 5, Implement Pending State Legislation for Alternative Funding (If Passed)**, because its prospects for passage were uncertain at that time. However, ALAB was concerned as to the overall benefits of this legislation (SB 863 / AB 1265) because of the fiscal impact to the contract holders.

The recommendations made by the Agricultural Preserve Review Committee (APRC) on these issues at their meeting on May 23, 2011 are discussed in detail in the Board of Supervisors staff report dated

June 7, 2011, which was previously distributed to ALAB with the original agenda for today's meeting along with related APRC staff reports from their July 18, 2011 meeting.

Board of Supervisors' Williamson Act Discussion

At their meeting of June 7, 2011, the Board of Supervisors received a staff report on the current status of the Williamson Act subvention funding and pending legislation for alternative means of funding the Williamson Act program. The Board also considered the recommendations of the APRC and the Agricultural Liaison Advisory Board (ALAB) and gave the following direction:

1. Pursue Option One (Keep program as is) by continuing to backfill the subvention funding loss with General Fund dollars in fiscal year (FY) 2011-12. *(The FY 2011-12 budget adopted by the Board on June 21, 2011 reflects this direction.)*

2. Implement Option 3 (Modify program to make eligibility more focused) by beginning to look into modifying the County's Williamson Act program to make the eligibility standards in the Rules of Procedure more focused.

3. Authorize processing of the amendments to the County Rules of Procedure to Implement the Land Conservation Act of 1965 recommended by the APRC. *(These amendments are described and discussed in the following item on today's ALAB agenda.)*

4. Continue to accept new agricultural preserve and contract applications based on the current Rules of Procedure until the amendments are adopted and become effective.

5. Engage in discussions on the amendments and the status of the Williamson Act with the agricultural community and other outside agencies.

6. Return to the Board with the proposed language changes of the amendments before starting the formal public hearing and adoption process.

The Board did not wish to pursue Option 2 (Freeze the program at the current level and stop accepting new applications) or Option 4 (Withdraw from State program and issue county-initiated non-renewals of contracts). The Board gave no direction on Option 5 (Implement Pending State Legislation for Alternative Funding).

Recently Adopted State Legislation

Assembly Bill (AB) 1265 (Nielsen) reinstates the provisions of repealed Senate Bill 863 to provide alternative means of off-setting the loss of subvention funding. This legislation allows counties to recoup a significant portion of their actual foregone property tax revenue through shortening contracts by one or two years (depending on whether they are 10 or 20 years) and recapturing 10% of the property tax savings from January 1, 2011 to January 1, 2016. Participation in this program is voluntary and, for our County, would only cover the four years between January 1, 2012 and January 1, 2016 since we did not implement SB 863 prior to its repeal. AB 1265 was passed by both the Assembly and the Senate on unanimous votes and was signed into law by the Governor on July 13, 2011. The bill became effective immediately as it was passed as an urgency statute. A copy of the adopted bill is included with this report as Attachment 1.

Staff will be bringing forward to the Board of Supervisors the issue of whether the County should implement the provisions of AB 1265 or not. A definite date has not yet been set for the Board's initial

consideration of this matter but it could be scheduled for one of their meetings in September. In the meantime, both ALAB and the APRC are being asked to make recommendations on whether AB 1265 should be implemented or not for the Board to consider when they do take the matter up. Staff requests that ALAB consider making their recommendation at today's meeting. The APRC will consider making their recommendation at their next meeting, which will be held on August 29, 2011.

ATTACHMENT:

1. Assembly Bill 1265.

ATTACHMENT 1

ASSEMBLY BILL (AB) 1265

Assembly Bill No. 1265

CHAPTER 90

An act to amend, repeal, and add Sections 16142, 16142.1, and 51244 of, to add Section 51244.4 to, and to add and repeal Section 51244.3 of, the Government Code, relating to local government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 2011. Filed with Secretary of State July 15, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1265, Nielsen. Local government: Williamson Act.

Existing law, the Williamson Act, authorizes a city or county to enter into 10-year contracts with owners of land devoted to agricultural use, whereby the owners agree to continue using the property for that purpose, and the city or county agrees to value the land accordingly for purposes of property taxation. Existing law sets forth procedures for reimbursing cities and counties for property tax revenues not received as a result of these contracts.

This bill would, beginning January 1, 2011, and until January 1, 2016, authorize a county, in any fiscal year in which payments authorized for reimbursement to a county for lost revenue are less than ½ of the participating county's actual foregone general fund property tax revenue, to revise the term for newly renewed and new contracts and require the assessor to value the property, as specified, based on the revised contract term. The bill would provide that a landowner may choose to nonrenew and begin the cancellation process. The bill would also provide that any increased revenues generated by properties under a new contract shall be paid to the county.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 16142 of the Government Code is amended to read:

16142. (a) The Secretary of the Natural Resources Agency shall direct the Controller to pay annually out of the funds appropriated by Section 16140, to each eligible county, city, or city and county, the following amounts for each acre of land within its regulatory jurisdiction that is assessed pursuant to Section 423, 423.3, 423.4, or 423.5, or 426 if it was previously assessed under Section 423.4, of the Revenue and Taxation Code:

(1) Five dollars ($5) for prime agricultural land, as defined in Section 51201.

(2) One dollar ($1) for all land, other than prime agricultural land, which is devoted to open-space uses of statewide significance, as defined in Section 16143.

(b) The amount per acre in paragraph (1) of subdivision (a) may be increased by the Secretary of the Natural Resources Agency to a figure which would offset any savings due to a more restrictive determination by the secretary as to what land is devoted to open-space use of statewide significance.

(c) The amount per acre in subdivision (a) shall only be paid for 10 years from the date that the land was first assessed pursuant to Section 426 of the Revenue and Taxation Code, if it was previously assessed under Section 423.4 of that code.

(d) Notwithstanding any other provision of law, for the 2008–09 fiscal year and each fiscal year thereafter, the Controller shall reduce, by 10 percent, any payment made pursuant to this section.

(e) Effective January 1, 2011, if the payment pursuant to this section for the previous fiscal year is less than one-half of the participating county's actual foregone general fund property tax revenue, the county may make a determination to implement subdivision (b) of Section 51244 and Section 51244.3. The implementation of these sections shall be suspended for any subsequent fiscal year in which the payment for the previous fiscal year exceeds one-half of the foregone general fund property tax revenue.

For purposes of this subdivision, a county's actual foregone property tax revenue shall be based on the county's respective share of the general property tax dollars as reflected in the most recent annual report issued by the State Board of Equalization or 20 percent, whichever is higher.

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 2. Section 16142 is added to the Government Code, to read:

16142. (a) The Secretary of the Natural Resources Agency shall direct the Controller to pay annually out of the funds appropriated by Section 16140, to each eligible county, city, or city and county, the following amounts for each acre of land within its regulatory jurisdiction that is assessed pursuant to Section 423, 423.3, 423.4, or 423.5, or 426 if it was previously assessed under Section 423.4, of the Revenue and Taxation Code:

(1) Five dollars ($5) for prime agricultural land, as defined in Section 51201.

(2) One dollar ($1) for all land, other than prime agricultural land, which is devoted to open-space uses of statewide significance, as defined in Section 16143.

(b) The amount per acre in paragraph (1) of subdivision (a) may be increased by the Secretary of the Natural Resources Agency to a figure which would offset any savings due to a more restrictive determination by

the secretary as to what land is devoted to open-space use of statewide significance.

(c) The amount per acre in subdivision (a) shall only be paid for 10 years from the date that the land was first assessed pursuant to Section 426 of the Revenue and Taxation Code, if it was previously assessed under Section 423.4 of that code.

(d) Notwithstanding any other law, for the 2008–09 fiscal year and each fiscal year thereafter, the Controller shall reduce, by 10 percent, any payment made pursuant to this section.

(e) This section shall become operative on January 1, 2016.

SEC. 3. Section 16142.1 of the Government Code is amended to read:

16142.1. (a) In lieu of the payments made pursuant to Section 16142, in a county that has adopted farmland security zones pursuant to Section 51296, the Secretary of the Natural Resources Agency shall direct the Controller to pay annually out of the funds appropriated by Section 16140, to each eligible county, city, or city and county, the following amount for each acre of land within its regulatory jurisdiction that is assessed pursuant to Section 423.4 or 426 of the Revenue and Taxation Code, if it was previously assessed under Section 423.4 of that code:

Eight dollars ($8) for land that is within, or within three miles of the boundaries of the sphere of influence of, each incorporated city.

(b) The amount per acre in subdivision (a) shall only be paid for 10 years from the date that the land was first assessed pursuant to Section 426 of the Revenue and Taxation Code, if it was previously assessed under Section 423.4 of that code. The appropriation authorized by this subdivision shall not exceed one hundred thousand dollars ($100,000) per year until 2005.

(c) Notwithstanding any other provision of law, for the 2008–09 fiscal year and each fiscal year thereafter, the Controller shall reduce, by 10 percent, any payments made pursuant to this section.

(d) Effective January 1, 2011, if the payment pursuant to this section for the previous fiscal year is less than one-half of the participating county's actual foregone general fund property tax revenue, the county may make a determination to implement subdivision (b) of Section 51244 and Section 51244.3. The implementation of these sections shall be suspended for any subsequent fiscal year in which the payment for the previous fiscal year exceeds one-half of the foregone general fund property tax revenue.

For purposes of this subdivision, a county's actual foregone property tax revenue shall be based on the county's respective share of the general property tax dollars as reflected in the most recent annual report issued by the State Board of Equalization or 20 percent, whichever is higher.

(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 4. Section 16142.1 is added to the Government Code, to read:

16142.1. (a) In lieu of the payments made pursuant to Section 16142, in a county that has adopted farmland security zones pursuant to Section 51296, the Secretary of the Natural Resources Agency shall direct the

Controller to pay annually out of the funds appropriated by Section 16140, to each eligible county, city, or city and county, the following amount for each acre of land within its regulatory jurisdiction that is assessed pursuant to Section 423.4 or 426 of the Revenue and Taxation Code, if it was previously assessed under Section 423.4 of that code:

Eight dollars ($8) for land that is within, or within three miles of the boundaries of the sphere of influence of, each incorporated city.

(b) The amount per acre in subdivision (a) shall only be paid for 10 years from the date that the land was first assessed pursuant to Section 426 of the Revenue and Taxation Code, if it was previously assessed under Section 423.4 of that code. The appropriation authorized by this subdivision shall not exceed one hundred thousand dollars ($100,000) per year until 2005.

(c) Notwithstanding any other law, for the 2008–09 fiscal year and each fiscal year thereafter, the Controller shall reduce, by 10 percent, any payments made pursuant to this section.

(d) This section shall become operative on January 1, 2016.

SEC. 5. Section 51244 of the Government Code is amended to read:

51244. (a) Each contract shall be for an initial term of no less than 10 years. Each contract shall provide that on the anniversary date of the contract or such other annual date as specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in Section 51245.

(b) (1) If the county makes a determination pursuant to subdivision (e) of Section 16142 or subdivision (d) of Section 16142.1, contracts shall be for a term of no less than nine years for contracts currently 10 years in length or 18 years for contracts currently 20 years in length, as the case may be. For new contracts entered into during a year in which this subdivision is in effect, the initial contract length shall be either 9 or 18 years. Each contract shall provide, except in the initial year of the determination, that on the anniversary date of the contract or such other annual date as specified by the contract, a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in Section 51245.

In any subsequent year during the reduced term of contract in which increased revenue is not realized by the county pursuant to Section 51244.3, two or three additional years shall be added to the contract on the next anniversary date, as necessary, to restore the contract to its full 10-year or 20-year contract length.

(2) In any year in which this subdivision is implemented, the county shall record a notice that states the affected parcel number or numbers and current owner's names, or, alternatively, the same information for those parcels that are not affected.

(3) An addition to the assessed value shall be conveyed to the auditor, consistent with the 10-percent reduction in the length of the restriction, equal to 10 percent of the difference between the valuation pursuant to Section 423, 423.3, or 423.5 of the Revenue and Taxation Code, as applicable, and the valuation under subdivision (b) of Section 51 or Section 110.1 of the Revenue and Taxation Code, whichever is lower. If the valuation

under subdivision (b) of Section 51 or Section 110.1 of the Revenue and Taxation Code is lower, the addition to the assessed value shall be zero. The increased amount of tax revenue that results from the decrease in restriction shall be separately displayed on the taxpayer's annual bill.

(4) A landowner may elect to serve notice of nonrenewal instead of accepting a 9-year or 18-year contract, as the case may be. In that case, the additional assessed value shall not be added to the property as provided for in paragraph (3).

For purposes of this subdivision, a landowner may serve notice of nonrenewal at any time. However, a landowner who withdraws that notice prior to the effective date shall be subject to term modification and additional assessed value. Once served and effective, a landowner nonrenewal notice may not be withdrawn except for cause and with the consent of the county. A county may adopt amendments to its uniform rules to facilitate implementation of this subdivision during the 2011–12 fiscal year, and thereafter as necessary.

(5) In addition to any other notice requirements, a county shall provide a landowner under contract with timely written notice of all of the following:

(A) Any initial hearing by the county on a proposal to adopt or rescind the implementation of this subdivision.

(B) Any final decision regarding the adoption or rescission of implementation of this subdivision.

(C) The landowner's right to prevent the reduction in the term of his or her contract pursuant to this subdivision by serving notice of nonrenewal as specified by Section 51245. This notice may be combined with the county's notice in subparagraph (B).

(6) A county shall not modify or revalue a landowner's contract pursuant to this subdivision unless the landowner is given at least 90 days' notice of the opportunity to prevent the modification and revaluation by serving notice of nonrenewal and the landowner fails to serve notice of nonrenewal. The county may use the primary owner of record from the assessment roll to identify landowners entitled to receive notice under this subdivision. A landowner shall be advised of the landowner's right to avoid continued imposition of this subdivision in any future year and thereafter by serving a notice of nonrenewal for that contract year. Failure of the landowner to serve timely notice of nonrenewal in any year shall be considered implied consent to the implementation of this subdivision for that year.

The 90-day notice requirement may be reduced to 60 days if the county adopts a procedure to allow landowners to serve a notice of nonrenewal until February 1, 2012.

(7) This subdivision shall not apply to any of the following:

(A) Contracts that have been nonrenewed.

(B) Contracts with cities.

(C) Open-space or agricultural easements.

(D) Scenic restrictions.

(E) Wildlife habitat contracts.

(F) Atypical term contracts, including, but not limited to, 20-year initial term contracts declining to 10 years, or reencumbrances pursuant to Section 51295, if the county's board of supervisors determines the application of this subdivision to them would be inequitable or administratively infeasible.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 6. Section 51244 is added to the Government Code, to read:

51244. (a) Each contract shall be for an initial term of no less than 10 years. Each contract shall provide that on the anniversary date of the contract or such other annual date as specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in Section 51245.

(b) This section shall become operative on January 1, 2016.

SEC. 7. Section 51244.3 is added to the Government Code, to read:

51244.3. (a) This section shall apply to properties under a 9-year or 18-year contract, as the case may be, pursuant to subdivision (b) of Section 51244. Notwithstanding any other provision to the contrary, increased revenues generated by those properties shall be allocated exclusively to the respective counties in which those properties are located.

(b) This section shall only apply if the county makes a determination pursuant to either Section 16142 or 16142.1.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 8. Section 51244.4 is added to the Government Code, to read:

51244.4. Notwithstanding subdivision (c) of Section 51244.3, payments authorized until January 1, 2016, pursuant to Section 16142, 16142.1, 51244, or 51244.3 may be collected after January 1, 2016.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

County assessors in counties that participate in the Williamson Act need to be given certainty about the administration of the program by July 1, 2011, in order to properly assess affected properties.

O