WILLIAMSON ACT MATERIAL BREACH OF CONTRACT

GOVERNMENT CODE § 51250

Effective January 1, 2004 AB 1492 added §51250 to the California Government Code (GC). This section provides an additional and alternate remedy to enforcement by injunction, specific performance or other action authorized by GC § 51251, for a material breach of a Williamson Act (Act) contract. The intent of this legislation is to address the most egregious violations of the Williamson Act by penalizing those who construct structures in violation of the Act, or local rules or ordinances implementing the Act.

The material breach statute was enacted after the Legislature discovered that landowners had constructed structures and engaged in uses, and local governments had allowed uses on enforceably restricted lands, that were not related to the underlying agricultural or open space use of the land. Some of these uses included housing subdivisions, and construction of strip malls, commercial warehouses, and driving ranges which have no relation to agricultural use of the land.

Government Code § 51250 provides a remedy for a material breach of contract that did not previously exist. It does not place any new restrictions on existing uses allowed under the Williamson Act, existing contracts, or local uniform rules or ordinances, nor does it limit the authority of the Secretary of the Resources Agency under § 16146 or § 16147 of the Government Code.

In order for a structure or structures to be considered a material breach of contract all of the following must be met:

1. A structure or structures that exceed(s) 2500 square feet are built;

2. The structure(s) is/are commercial, industrial, or residential in nature;

3. The structure(s) is/are constructed on a parcel subject to an agricultural land conservation contract, after January 1, 2004, and

4. The structure(s) is/are not permitted by the Williamson Act, a Williamson Act contract or by local Williamson Act uniform rules or ordinances; and is not related to an agricultural use or compatible use (§51250 (b)). Any development on property subject to a Williamson Act contract must be related to the primary use of the land (i.e., agriculture), or designated compatible uses, and must be in compliance with local uniform rules and ordinances.

Structures related to compatible uses might not constitute a material breach. However, to be compatible, a use must conform to the compatible use statutes and local rules. Compatible uses on Williamson Act lands are defined in GC § 51201(e). Additionally, each participating local government is required to adopt rules consistent with the principles of compatibility found in GC § 51231, § 51238, and § 51238.1.

The 2500 square foot limitation applies only to commercial, industrial and residential buildings that do not relate to an agricultural or compatible use. A residence for the landowner, on property being used for agricultural production, is considered to be related to the agricultural use and therefore does not violate § 51250, regardless of the size of the residence. In other words, as long as the land under contract is devoted to producing a commercial agricultural product for commercial purposes as required by § 51242, the 2500 square foot limit does not apply to the owner's residence on that land.

LOCAL GOVERNMENT RESPONSIBILITIES:

It is the responsibility of the contracting city or county to determine whether a contract has been breached. If the Department of Conservation (Department) discovers a possible breach, it will notify the city or county. Once aware of a possible material breach, the city or county must determine if there is a valid contract on the subject property and if the breach is material (§51250(d)). Within 10 days of determining whether a material breach is likely, the city or county must send a notice explaining its determination of the breach of the contract and a copy of the land conservation contract by certified mail to the landowner and the Department.

Within 60 days of receiving notice of a likely material breach, the landowner may notify the city or county that the landowner intends to eliminate the conditions that resulted in the material breach within 60 days. If the conditions causing the breach are eliminated within 60 days, the city or county may take no further action. If the landowner fails to notify the city or county of their intention, or notifies the city or county of the intention to eliminate the conditions but fails to do so, the city or county shall proceed with a scheduling a public hearing no more than 120 days after the initial notice was sent to the landowner.

Notice of the public hearing must be sent to the landowner, the Department, and specified neighboring contracted landowners at least 30 days prior to the hearing. (§51250(g)).

If it is ultimately determined by the city or county that a material breach of contract has occurred, the city or county shall either order the landowner to eliminate the breach condition within 60 days or assess a monetary penalty and terminate the contract on that portion of the contracted parcel that has been made incompatible by the material breach. If the landowner is ordered to eliminate the condition that resulted in the material breach, and fails to do so within the time period specified, the city or county may abate the breach as a public nuisance. (§51250(l)).

Failure of the local government to make a determination of breach of contract or complete the breach of contract process in a timely manner as specified in statute may result in the Department taking the lead on enforcement. (§51250(r)).

DEPARTMENT OF CONSERVATION:

The Department may carry out the responsibilities of a city or county if: the city or county fails to determine there is a material breach within 210 days of discovery of the breach or the city or county fails to complete the requirements of this section within 180 days of the determination that a breach exists. (§51250(r)(1) The city or county may request an extension of time to act from the Department. (§51250(r)(2) The Department shall notify the city or county 30 days prior to its exercise of any responsibility. (§51250(r)(3)).

PENALTY:

The monetary penalty is a maximum 25 percent of the unrestricted fair market value of the land rendered incompatible by the material breach and 25 percent of the value of any incompatible building and any related improvements on the land.

A local government may negotiate a lesser monetary penalty. Negotiating a lesser penalty involves the local government, the Department, and the landowner, and could result in the monetary penalty being reduced to no less than 12 ½ percent of the unrestricted fair market value of the land and related improvements. The monetary penalty assessed must be secured by a lien payable to the county treasurer. The lien document must provide the name of the real property owner of record and a legal description or assessor's parcel number (APN) of the real property to which it is attached; and a telephone number and address for interested parties to contact to determine the final amount of assessments and penalties owing on the lien.

Simple interest of 10 percent per year will be assessed against any unpaid penalty after 60 days. Local governments are allowed to deduct and keep their administration costs from any penalty amount received as a result of enforcement of this section. Any remaining balance of the penalty funds shall be forwarded by the county treasurer to the State Controller for deposit in the Soil Conservation Fund.

CONTRACT TERMINATION BY BREACH:

Upon full payment of the lien, the city or county must record a release of lien and a certificate of contract termination by breach with the county recorder for that portion of the contract made incompatible by the breach.

STATEMENT OF TERMINATION OR CANCELLATION:

Government Code § 51250 also includes a provision requiring a landowner's statement acknowledging that the breach provisions may apply if a local government's action to terminate a contract is rescinded, a court permanently enjoins, voids or rescinds termination, or for any other reason the land continues to be subject to the contract.

The landowner's statement must be submitted within 30 days of contract termination or if the contract was terminated before January 1, 2004, prior to approval of a building permit for construction of a commercial, industrial, or residential building. The landowner's statement requires the landowner's notarized signature signed under penalty of perjury in a form acceptable to the Department and must be filed with the county recorder.

EXCEPTIONS:

GC §51250 does not apply to any building constructed or for which a permit was issued prior to January 1, 2004. Additionally, a building that becomes a breach of contract due to a change in law or ordinance is not subject to this section. A building owned by the State is also exempt.

Contracts terminated or canceled pursuant to § 51243.5, § 51280, and § 51295 are exempt, unless the action terminating or canceling the contract is rescinded or determined by a court to be improperly executed or for any reason, so that the land continues to be subject to contract. Moreover, a city or county may not cancel a Williamson Act contract pursuant to Article 5 (commencing with § 51280) to resolve a material breach except pursuant to section 51250. (§51250(w)).