



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: County Counsel  
Department No.: 07110  
For Agenda Of: September 18, 2007  
Placement: Set Hearing  
Estimated Tme: 1 hour on October 9,  
2007  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors

**FROM:** **County Counsel** Stephen Shane Stark 568-2950  
Contact Info: Mary Parks Slutzky 568-2950

**SUBJECT:** **Set hearing concerning membership and appointments to the Agricultural Preserve Advisory Committee ("Committee")**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:**

As to form: None required.

**Recommended Actions: Set a hearing for October 9, 2007 for the Board of Supervisors to consider:**

- a) Find that the adoption of the resolution reorganizing the Committee and the appointments to the committee are not a project pursuant to CEQA Guidelines Section 15378(b)(5), organizational or administrative activities of government that will not result in direct or indirect physical changes to the environment.
- b) Adopt a Resolution reorganizing the membership of the Agricultural Preserve Advisory Committee, Attached. [**Note:** the Board must clarify whether two members will be Williamson Act contract holders or non contract holder representatives of production agriculture]
- c) Appoint Willy Chamberlin and Bill Giorgi to represent and further the interests of the specific economic interest of Williamson Act contract holders as the members required to be Williamson Act contract holders

or

Request the Agricultural Advisory Committee (AAC) recommend two representatives from agricultural production who do not hold contracts and, after posting notice of vacancy pursuant

to Gov't Code § 54974 and receiving the AAC recommendations, appoint two non contract holder representatives.

**Summary Text:**

This item is on the agenda to implement the Board's direction at its hearing of August 14, 2007, that County Counsel report back and recommend actions necessary to address the issue of appointments to the County's Agricultural Preserve Advisory Committee by specifying the following:

- ❖ Due to the convoluted history of the Committee membership our office recommends the Board adopt the attached resolution reorganizing the membership and clarifying the role of the agricultural members.
- ❖ Because the previous agricultural nominees are Williamson Act contract holders several legal complications result. We, therefore, recommend they consult those authorities with enforcement jurisdiction to assure compliance with conflict of interest laws.

**Background:**

County of Santa Barbara administers its Agricultural Preserve Program under the California Land Conservation Act of 1965, which is better known as the Williamson Act. The purpose of the Williamson Act is the long-term conservation of a maximum amount of the limited supply of agricultural land. The Act establishes a program to enroll land in Williamson Act and Farmland Security Zone contracts, whereby that land is enforceably restricted to agricultural, open space, or recreational uses in exchange for reduced property taxes. Government Code § 51239 provides that the Board of Supervisors may appoint an advisory board, the members of which serve at the pleasure of the Board of Supervisors. The advisory board in Santa Barbara County, titled the Agricultural Preserve Advisory Committee, advises the Board of Supervisors on the administration of agricultural preserves in the County and on any matters related to contracts entered into pursuant to the Williamson Act.

The Committee makes recommendations on new and replacement contracts, cancellation and non renewal of contracts, rescissions and exchange agreements and on every Planning and Development project which affects Williamson Act lands, including but not limited to equestrian centers, single family dwellings and guest houses, reservoirs, barns, rezones, lot line adjustments and subdivisions.

On November 15, 2005, the Board of Supervisors approved amendments to the membership of the Agricultural Preserve Advisory Committee to include two members who were representatives of production agriculture and established the Agricultural Advisory Committee as the official body to make recommendation for the additional appointments. On December 7, 2005, the Agricultural Advisory Committee nominated Bill Giorgi and Willy Chamberlin to serve on the Agricultural Preserve Advisory Committee, selecting Lanny Stableford as an alternate. Mr. Giorgi and Mr. Chamberlin understood the nomination to be the appointment and the following month began to sit on the Agricultural Preserve Advisory Committee. Mr. Stableford has subsequently resigned. A member of the public noticed that the Board of Supervisors had not made the appointments and brought it to the attention of the County. The Board of Supervisors then requested that County Counsel report back with recommendations to

address the issue of appointments. The appointments of Mr. Chamberlin and Mr. Giorgi raises several legal considerations discussed herein.

The Committee's original seven office holders, including County Counsel, were established by minute order in July, 1967. Although there is no record of those who voted in the early years of the Committee, for the past several years County Counsel has not voted. The Division of Intergovernmental Services was an original member but no longer exists. There is some evidence that the Clerk of the Board was also a member at one time and perhaps the Parks Department and the Office of Environmental Quality. Therefore, when in 2005 the Board by minute order expanded the membership to seven members the membership may already have been seven with one vacant seat. In order to clarify the membership and appoint two new members it is necessary to adopt the proposed resolution to reorganize the membership, deleting the positions of county counsel and Intergovernmental Services, and adding two positions, and one alternate, to be filled by Williamson Act contract holders or representatives from production agriculture who are not contract holders implementing the Boards 2005 action. (This implements the Board's policy direction.)

Both Mr. Giorgi and Mr. Chamberlin are contract holders. Mr. Giorgi has an ownership interest in lands subject to three Williamson Act contracts (71-AP-66, 71-AP-67, and 75-AP-42), totaling 1,050 acres including both prime and non prime lands, out of 555,000 acres and 1247 contracts. Mr. Chamberlin has an ownership interest in seven contracts totaling approximately 8,000 acres of non prime land.

### **Political Reform Act**

Because the Committee believes its recommendations have been regularly followed over its history, it will be considering the adoption of the county's single comprehensive conflict of interest code at its September meeting. Thus, the proposed appointments should be consistent with the provisions of the Political Reform Act, Government Code sections 810000 et seq. in the event the Committee is added to the County's conflict of interest code by the Board. Persons subject to the Act cannot make or participate in making a decision which will result in a reasonably foreseeable material financial effect on one or more of his/her economic interests, unless that effect is indistinguishable from the effect on the public generally. Although Mr. Giorgi and Mr. Chamberlin do not qualify for the "public generally" exception because they do not meet the criteria, they qualify under a subset of that exception, FPPC Regulation 18707.4, adopted to address situations where commission members are required to represent a specific economic interest if the following apply:

"(a) For the purposes of Government Code section 87103, the public generally' exception applies to appointed members of boards and commissions who are appointed to represent a specific economic interest, as specified in section 87103(a) through (d), if all of the following apply:

(1) The statute, ordinance, or other provision of law which creates or authorizes the creation of the board or commission contains a finding and declaration that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest.

(2) The member is required to have the economic interest the member represents.

(3) The board's or commission's decision does not have a reasonably foreseeable material financial effect on any other economic interest held by the member, other than the economic interest the member was appointed to represent.

(4) The decision of the board or commission will financially affect the member's economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent. For purposes of this regulation, a significant segment constitutes fifty percent of the persons the member was appointed to represent.”

If it is the Board’s intention to appoint Mr. Chamberlin and Mr. Giorgi our office recommends the appointees get a formal opinion from the Fair Political Practices Commission regarding the Political Reform Act and the Attorney General regarding Gov’t Code §1090 (Conflict of Interest Contracts) as to the parameters of their ability to participate in the Committee’s recommendations.

The participation of Mr. Giorgi and Mr. Chamberlin in the Committee’s previous recommendations does not void those actions. They occupied their positions in the good faith belief that they were properly appointed. The actions taken on August 10, 2007, after review of the situation by County Counsel, are also not voided by their participation; the actions were recommendations only and there were four properly appointed members present (representatives of County Counsel, Agricultural Commissioner, Assessor, and Cooperative Extension) representing a majority of the membership. "A quorum consists of a majority (more than half) of the existing membership of the body.”62 Op. Atty Gen. 698, 699-700 (1979). A quorum refers to the number of members present, not to the number of members actually voting on a particular question; however, the quorum members must be *entitled* to vote. 62 Ops. Cal. Atty. Gen. 698, 699-700 (1979) citing Roberts' Rules of Order (Rev. 1970). A quorum is needed for a body to transact business. The Committee has no adopted rules for the conduct of its meetings; therefore, a vote of three of the quorum, constituting a majority of the members present, can be considered to be sufficient for a motion to pass. In [61 Op. Cal. Atty Gen. 243, 252 \(1978\)](#), the Attorney General noted that "in the absence of a contrary statutory provision, the number of votes required to sustain the action by a collective body is a majority of a quorum." Each motion on August 10, 2007 included affirmative votes by the three of the four members present all of whom were entitled to vote.

### **Conclusion**

In conclusion, because the Board has previously expressed a desire to clarify the membership of the Committee and include members of the agricultural community in the Committee membership our office recommends you adopt the proposed recommendations. In addition, we recommend the appointees contact the Fair Political Practices Commission and the Attorney General for advice on the whether the appointments comply with FPPC Regulation 18707.4 and Gov’t code 1090 prior to participation.

**Fiscal and Facilities Impacts:** None. Committee members are not reimbursed for expenses.

**Fiscal Analysis:** N/A

**Staffing Impacts:** N/A

**Special Instructions:** The Clerk of the Board shall post notice of vacancy pursuant to Gov't Code § 54974. Proof of such notice shall be provided County Counsel.

**Attachment:** Resolution

**Authored by:** Mary Parks Slutzky

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