

**RULES GOVERNING THE ADMINISTRATION OF AGRICULTURAL  
PRESERVES ON LANDS OUTSIDE OF AGRICULTURAL PRESERVE  
ZONING DISTRICTS IN NAPA COUNTY (TYPE “H” CONTRACT)**

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**RULE 1. Scope.**

These Rules shall govern the administration of Type H Williamson Act Agricultural Preserves in the unincorporated territory of the County of Napa, including procedures for initiating, filing and processing requests to establish, enlarge, diminish or disestablish Type H Agricultural Preserves on lands in the unincorporated area of Napa County that are suitable for agricultural use but are not located within an Agricultural Preserve (AP) Zoning District and do not include land intended for commercial mineral extraction use; the approved form, criteria and procedures for Type H Agricultural Preserve Contracts used within Type H Preserves; and the determination of uses compatible with agriculture which will be permitted on land within Type H Preserves and Contracts.

**RULE 2. Definitions.**

- (A) “Act” or “Williamson Act” shall mean the California Land Conservation Act of 1965 (Sections 51200 *et seq.* of the California Government Code),<sup>1</sup> as such may be amended from time to time.
- (B) “Owner” shall mean and refer collectively to all persons having any record title interest in the real property proposed to be established as a Type H Agricultural Preserve.
- (C) The following definitions derived from Section 51201 apply to these Type H Rules and the approved form for the Type H Contracts unless otherwise apparent from the context:

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<sup>1</sup> All statutory references are to the Government Code unless otherwise indicated.

- (1) *“Agricultural commodity”* means any and all plant and animal products produced in this state for commercial purposes.
- (2) *“Agricultural use”* means use of land for the purpose of producing an agricultural commodity for commercial purposes.
- (3) *“Agricultural Preserve,” “Preserve”* or *“Type H Preserve”* means an area devoted to either agricultural use, recreational use, or open-space use, or any combination of those uses and which is established in accordance with the provisions of the Williamson Act and these Type H Rules.
- (4) *“Board”* means the Board of Supervisors for the County of Napa, which shall serve as the administering body for Type H Preserves and Type H Contracts.
- (5) *“Compatible use”* is any use determined by the Board pursuant to Sections 51231, 51238, or 51238.1 or by these Rules to be compatible with the agricultural, recreational, or open-space use of land within the Type H Preserve and subject to Type H Contract.
- (6) *“Contract”* or *“Agricultural Preserve Contract”* or *“Type H Contract”* means a contract entered into pursuant to the Williamson Act and these Type H Rules in relation to land located within a Type H Preserve.
- (7) *“County”* or *“city”* means the county or city having jurisdiction over the land.
- (8) *“Legal parcel”* or *“parcel”* shall be as defined in Title 17 of the Napa County Code; the assignment by the Napa County Assessor’s Parcel Number to land is for taxing purposes only and shall not imply that the portion of land so assigned is a “legal parcel” for purposes of these Rules.
- (9) *“Open-space use”* is the use or maintenance of land in a manner that preserves 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 seawater in the course of salt production for commercial purposes, if the land is within: a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area, as such terms are defined in the Williamson Act.
- (10) *“Prime agricultural land”* means any of the following:
  - (i) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications.
  - (ii) Land which qualifies for rating 80 through 100 in the Storie Index Rating.
  - (iii) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.
  - (iv) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.
  - (v) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.
- (11) *“Recreational use”* is the use of land in its agricultural or natural state 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, where any fee charged for such use is in a reasonable amount which does not have the effect of unduly limiting its use by the public, and where any ancillary structures necessary for such use comply with the provisions of Section 51238.1.

**RULE 3. Minimum Size and Maximum Number of Parcels in Type H Preserves and Contracts.**

- (A) Size and Parcel Parameters for Type H Preserves. No Type H Preserve shall be less than ten (10) acres in size in the case of prime agricultural land nor less than forty (40) acres in size in the case of land which is not prime agricultural land. Only one legal parcel may be included in each Type H Preserve. In adopting this Rule, the Board hereby determines that the establishment of Type H Preserves smaller than one hundred (100) acres in size but equal to or greater than foregoing minimum sizes is necessary due to the unique characteristics of the viticultural and other relatively intensive and site specific farming enterprises within Napa County which must often be conducted on legal parcels historically established (and therefore continuing to exist as legal nonconformities) in smaller sizes than contemplated for future land divisions by the Napa County General Plan and agricultural zoning regulations.
- (B) Size and Parcel Parameters for Type H Contracts. The minimum size of a legal parcel eligible for a Type H Agricultural Preserve Contract shall be not less than ten (10) acres in size in the case of prime agricultural land nor less than forty (40) acres in size in the case of land which is not prime agricultural land. Not more than one legal parcel may be included in a single Type H Contract.

**RULE 4. Compatible Uses.**

Because these Type H Rules allow Type H Preserves to be established only for legal parcels for which Type H Contracts are simultaneously approved, the only uses permitted on land located within a Type H Preserve and subject to a Type H Contract shall be agriculture and those uses compatible with agriculture set forth in Section IV of the approved Type H Contract form attached hereto and incorporated by reference as if set forth herein.

**RULE 5. Application for Type H Preserve and Contract Establishment, Alteration, Disestablishment and Non-Renewal.**

- (A) Form of Application. Application to establish a Type H Agricultural Preserve and to enter into a Type H Contract shall be submitted in writing by all of the Owners of the property to the Napa County Conservation, Development and Planning Department (hereinafter referred to as the "Planning Department") by completing the Type H Application form attached hereto and incorporated by reference herein.

- (B) Proof of Concurrent Parcel Consolidation Proceedings. If, to qualify for a Type H Preserve or Type H Contract as provided in Rule 3 it is necessary to consolidate the property into a single legal parcel, the Owner of the property shall file a completed application and pay all applicable fees for processing such merger, whether by lot line adjustment, subdivision, merger or other procedure allowed by law, to the appropriate County department prior to filing an application for establishment of the Preserve and, notwithstanding anything to the contrary in these Type H Rules, the Type H Preserve shall not be deemed established and the corresponding Type H Contract shall not become effective until January 1 following the effective date of such merger.
- (C) Application Fee. A fee for filing the application to establish a Type H Preserve and to enter into a Type H Contract shall be in the amount approved by resolution of the Board as set forth in Section 80.030 of Part III of the Napa County Policy Manual. Such fee shall be paid at the time of filing the application and the application shall not be considered complete until the fee has been paid.
- (D) Submission of Joint Management Agreement. Where, in consequence of subdivision for the purpose of intra-family transfers as permitted by Government Code section 51230.1, Owner is required by Sections XII, XIII and XXV of the Type H Contract to rescind and substitute the existing Type H Preserve and Contract for new Type H Preserves and Contracts for each of the resulting parcels, Owner shall submit a fully executed joint management agreement meeting the requirements of the foregoing statutory and contract provisions with the application for the new Preserves and Contracts.
- (E) Filing Deadline. To ensure adequate time for the County to meet the requirements of the California Revenue and Taxation Code relating to valuation of enforceably restricted land, the application for establishment of the Type H Preserve and Contract shall be filed with the Planning Department no later than the first Friday in the month of October preceding the tax lien date (January 1) when the term of the Contract is desired to commence.
- (F) Additional Procedures for Preserve Alteration or Disestablishment and Contract Non-Renewal. The procedures set forth in these Rules relating to establishment of a Type H Preserve shall also apply to any proposal to enlarge, diminish or disestablish a Type H Preserve, except that the provisions relating to the filing of an application and application fee shall not apply when the proposal is initiated by the County rather than the Owner. Pursuant to Section 51232, the Board shall also furnish notice of any alteration or disestablishment proposed by the County to the Owner by certified mail directed to the Owner at the latest address known to the Board and, whether the proponent is the County or the Owner, County shall furnish notice of any diminution or disestablishment of the Type H Preserve by first-class mail to each owner of land under a Williamson Act Contract with the County, any portion of which is situated within one mile of the exterior boundary of the land to be removed from the Type H Preserve. Any proposal to alter a Type H Preserve which will result, if approved, in a diminution or disestablishment of the Type H Preserve shall be accompanied by the filing by the proponent of a Notice of Non-Renewal or partial Non-Renewal of the Type H Contract applicable to the land involved, subject to those

procedures and criteria for Non-Renewal set forth in Section VII of the standard Type H Contract form attached to these Rules and incorporated by reference herein.

- (G) Processing by other departments and agencies. Except to the extent otherwise expressly provided, the Planning Department may refer the processing of an application to another County department or agency, subject to that department or agency's agreement to accept the referral. Approval of a contract as to form by County Counsel's office shall be sought before execution of the contract by all parties holding a fee, leasehold interest, lien encumbrance, other security interest in the property.

**RULE 6. Conservation, Development and Planning Department Report.**

- (A) Referral to Napa County Agricultural Commissioner. A copy of the application to establish a Type H Preserve and enter into a Type H Contract shall be forwarded to the Napa County Agricultural Commissioner (hereinafter referred to as "Commissioner") who will investigate and report upon the nature and extent of the agricultural activities on the property involved during the previous five (5) years. The Commissioner shall express his or her opinion, based on the pursuits and proposals of the Owner and the Owner's predecessors in interest on the property and calling upon the assistance of such other resources as the Commissioner considers appropriate, whether the property has been used for a bonafide agricultural purpose during not less than three (3) of the preceding five (5) years. The report of the Commissioner shall be forwarded to the Director of the Planning Department (hereinafter referred to as the "Planning Director") within twenty (20) calendar days following receipt of a copy of the application by the Commissioner.
- (B) Submission of Planning Director's Report. In accordance with Section 51234, the Planning Director shall submit a report on the proposal to the Board within thirty (30) days after receipt of a complete application by the Planning Department. If after thirty (30) days the Board has not received the Planning Director's report, an automatic extension of time will be granted, extending the time allowed for an additional thirty (30) days.
- (C) Contents of Planning Director's Report. The report of the Planning Director shall include the following:
- (1) A determination by the Planning Director of the acreage of the parcel;
  - (2) Two completed copies of a current Type H Contract in the form prescribed by these Rules, executed by all parties holding a fee or leasehold interest, or lien encumbrance and all parties holding a security interest in such real property;
  - (3) A statement that the proposed Preserve is consistent, or inconsistent, with the County's zoning and general plan, together with the reasons supporting such statement;
  - (4) A statement regarding the current status of any actions undertaken to merge the property to achieve compliance with Rule 3, including the expected completion date for such actions; and
  - (5) The report of the Commissioner provided pursuant to subsection (A) of this Rule 6.

**RULE 7. Public Hearing and Approval of Preserve and Contract.**

- (A) Notice of Hearing. Upon receipt of the Planning Director's report, the Board shall set a date, time and place for a public hearing on the application for Type H Preserve as required by Section 51230. Notice of the hearing shall be published pursuant to Section 6061, and shall include the Assessor's Parcel Number or Numbers of the land proposed to be included within the Type H Preserve. Written notice of the hearing shall also be given at least two weeks before the hearing to the Napa County Local Agency Formation Commission and to every city within the County of Napa within one mile of the exterior boundary of the proposed Preserve. When giving such written notice to such cities, the Clerk of the Board shall also give such cities written notice pursuant to Section 51243.5 of the Board's intention to consider entering into a Type H Contract for the land within the proposed Type H Preserve.
- (B) No Separate Appeal Required. At the hearing, any determination of the Planning Director with which the Owners disagree shall be considered by the Board and deemed to have been appealed by the Owner to the Board without the necessity for complying with any provisions of the Napa County Code pertaining to appeal of decisions of County officers.
- (C) Content of Hearing. At the hearing, the Board shall hear all interested persons regarding whether the proposed action pertaining to the Type H Preserve and Contract meet the requirements of the Williamson Act and these Rules.
- (D) Continuance and Conclusion of Hearing. The hearing may be continued from time to time in the sole discretion of the Board. At the conclusion of the hearing, if the Board finds that the application for the Type H Preserve and Contract complies with the requirements of the Williamson Act and these Type H Rules, including the standard provisions of the Type H Contract incorporated into these Rules by reference, the Board by resolution shall establish the Type H Preserve, authorize execution of the Type H Contract, and direct the filing and recordation of all documentation relating to establishment of the Type H Preserve and execution of the Type H Contract as are required by the Williamson Act.

**RULE 8. Form of Type H Contract.**

Within a Type H Preserve, the County shall offer and enter into Type H Contracts in the form and subject to all of the terms and provisions of the Type H Contract attached hereto and incorporated by reference herein.

**RULE 9. Map.**

Once a Type H Preserve has been established pursuant to these Rules and as long as it remains in effect, a map of such Type H Preserve and the Board resolution by which the Preserve was established shall be filed and kept current by the County with the Napa County Recorder.

**RULE 10. Filings with Director of Conservation.**

On or before the first day of September of each year the County shall file with the Director of Conservation for the State of California a map of the unincorporated area of the County of Napa and designate thereon all Agricultural Preserves in existence at the end of the preceding fiscal year. Within thirty (30) days after the Type H Contract form prescribed by these Type H Rules is first used, the Clerk of the Board shall file a sample copy of such form of Contract with the Director of Conservation.

**RULE 11. Recordation.**

No later than twenty (20) days after the County enters into a Type H Contract pursuant to these Type H Rules, the Clerk of the Board shall record a copy of the Contract with the Napa County Recorder, together with a reference to the map showing the location of the Type H Preserve in which the property lies.

**RULE 12. General Processing Schedule.**

The following shall be used as the general processing schedule for Type H Preserve contract applications:

1. Board of Supervisors reviews and acts upon requests for revisions to contract forms and rules.
2. Publish notice in local newspapers that applications may be submitted.
3. Send application(s) deemed complete to Agricultural Commissioner; Agricultural Commissioner's comments due within twenty (20) days of receipt of completed application.
4. Conservation, Development, and Planning Report due within thirty (30) days of date application is deemed complete; automatic extension of thirty (30) days if report is not filed with Board of Supervisors within first thirty (30) days.
5. Set date of public hearing before Board of Supervisors; provide at least two (2) weeks written notice to cities within one mile of contract parcel, LAFCO and cities within one mile of area proposed for Agricultural Preserve; publish notice of public hearing in accordance with Government Code §6061.
6. Record contract(s) within twenty (20) days of hearing.

The following schedule sets forth general deadlines in order to complete the process by December 31.

- (A) No later than the last Tuesday of August: Board of Supervisors review and decision of contract forms and rules if changes are requested or required by State law;
- (B) First Wednesday of September through the first Saturday of September: Contract-filing deadline publicly noticed in local newspapers;
- (C) First Friday in October: Contract application submissions deadline at 5:00PM;
- (D) Third Friday in October: Notice deadline to cities within one mile of contract parcel, LAFCO, and cities within one mile of area proposed for Agricultural Preserve;
- (E) Fourth Friday in October: Deadline for receiving Agricultural Commissioner's comments on submitted contract forms;
- (F) Second Tuesday in November: Deadline for notice of Board of Supervisors public hearing to be submitted to the newspaper;
- (G) Third Friday in November: Board of Supervisors public hearing notice published in newspaper;
- (H) First Tuesday in December: Completed Agricultural Preserve contract applications presented to the Board of Supervisors for review and action. Public Works to report on the status of all transfers of property applications.
- (I) December 31<sup>st</sup> or last working day in December: Last day to record contracts prior to January 1<sup>st</sup> tax lien deadline.