

[Blogs](#)

December 09, 2019

No Subdivision of Williamson Act Land Unless Residential Development is Closely Associated With Agricultural Use

The County of San Diego violated the Subdivision Map Act by approving residential development of land restricted to agricultural use under the Williamson Act when the development was neither closely related to nor necessary for agricultural use. *Cleveland Nat. Forest Foundation v. County of San Diego*, 37 Cal. App. 5th 1021 (2019). Genesee Properties, Inc., sought tentative map approval for a 24-lot residential subdivision on nearly 1,500 acres of land in San Diego County. Most of the property was subject to a Williamson Act contract restricting the land to agricultural and compatible uses and was within a County-designated agricultural preserve.



ing a
ght to
Act

Land

subject to a Williamson Act contract may not be developed for residential use unless the use is "incidental to agricultural uses." The California Department of Conservation reviewed the project and concluded that allowing at least one home site on each new parcel would likely make commercial viability of livestock use impractical; subdivision would thus result in residential development not incidental to the agricultural use of the land. The Board of Supervisors nonetheless approved the tentative map, finding in part that the subdivision would "not result in residential development not incidental to the commercial agricultural use of the land" pursuant to the Subdivision Map Act. The Court of Appeal identified the key issue as the meaning of the statutory phrase "residential development not incidental to the commercial agricultural use of the land." The court found that "incidental" meant the residential use must not merely be subordinate or minor, it must be "naturally used with or functionally necessary to the agricultural use." Under this standard, the record was insufficient to support the Board's finding that a 24-lot residential development would be "incidental" to agricultural use. The subdivision proposed rural residential development unrelated to the only presently viable agricultural use of the property: managed low-density cattle grazing and breeding. Future residents were permitted, but not required, to engage in agriculture. The ranchers who managed the grazing and breeding operation would live elsewhere; the residential infrastructure for the homes would convert portions of the land from protected agricultural to urban use; and the

limited number of cattle proposed to be onsite did not amount to a viable commercial operation. The County Board therefore abused its discretion in approving the project. The court rejected the claim that inclusion of a substantial amount of open space within the subdivision required a different outcome. The Williamson Act's definition of agricultural use does not include open space, only production of agricultural commodities. Even though the Williamson Act equates agricultural and open space, the court refused to rewrite section 66474 to substitute "open space" for "commercial agricultural use."

Authors