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Available at: https://repository.uchastings.edu/hastings_environmental_law_journal/vol12/iss1/5
The Forgotten Intent of the Williamson Act:
The Regulation of Noncontracted Lands within Agricultural Preserves

By Christopher J. Butcher *

Introduction

In California, numerous conservation programs encourage landowners to protect their land from urbanization.1 The California Land Conservation Act, commonly known as the Williamson Act (“the Act”), is California’s most widely used compensatory land conservation program.2 The simplicity of the program, liberal eligibility requirements, and ease of enrollment contribute to the program’s appeal.3

The California legislature enacted the Act in 1965.4 The Act established a volu-
tary program that, as of January 2003, all but four of California’s 58 counties chose to adopt.

The Act was designed to provide for “the long-term conservation of agricultural land.” The Act employs two main strategies, the establishment of agricultural preserves and property tax incentives, to achieve this goal. Property tax incentives are the most well known and studied of the Act’s two strategies.

Statewide, contractual use restrictions established under the Act cover approximately 16.6 million acres of agricultural land. Williamson Act contracts exist on roughly half of all agricultural land in California. In total, these contractually-restricted lands make up about one-third of all privately owned land in the state.

In many respects, the Act is a tremendous success. California Assembly Member Lois Wolk described the Act as “one of the most successful programs in the nation in protecting agricultural and open space lands from development and keeping family farmers in business.” Another commentator declared, “[Williamson Act] contracts are even more powerful than agricultural zoning...since they can’t be altered by the vote of a planning commission and don’t allow the partition of even one acre.”

Although the Act deserves much of this praise, it has had its fair share of misapplications and other abuses. As early as 1966, the California Attorney General feared industry could exploit the Act due to its

5. Cal. Gov’t Code § 15230; see also Kelsey v. Colwell, 30 Cal. App. 3d 590, 595 (Cal. Ct. App. 1973) (determining that the Act is not mandatory and a county board of supervisors or city council is not obligated to implement the provisions of the act).


7. See S.B. 985, 1999 Leg., 1999-2000 Reg. Sess. § 1(a), (m) (Cal. 1999) (establishing that the Act was intended to promote the long-term conservation of agricultural land), available at http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0951-1000/sb_985_bill_19991010_chaptered.html (last visited Oct. 12, 2005); see also discussion infra Part I.C.

8. See discussion infra Part I.B.

9. See Alvin D. Sokolow & Cathy Lemp, Saving Agriculture or Saving the Environment?, 56 Cal. Agric. 1, 13 (Jan.-Feb. 2002), available at http://californiaagriculture.ucop.edu/0201JF/pdfs/save_agri.pdf (last visited Oct. 12, 2005). To become eligible for the Act’s tax benefits property owners must enter a contractual agreement that places use-restrictions on the land. Id. Once a parcel of land is eligible for the tax benefits, the benefits are achieved by requiring the tax assessor to assess the land based on its current use instead of its potential market value. 2004 Status Report, supra note 6, at 1.


14. Michael Kolber, Sprawl Feared if Farm Tax Break is Cut, SAC. BEE, Feb. 9, 2004 (quoting Alvin D. Sokolow, Professor of Human and Community Development at the University of California Cooperative Extension in Davis), available at http://www.sactaqc.org/resources/literature/funding/Williamson_Act_Sprawl.htm (last visited Nov. 30, 2005).

overly broad definitions of agricultural and compatible uses. In 1986, the Williamson Act Task Force explicitly concluded that some property owners were abusing the program and receiving illegitimate tax breaks. In response to these misapplications and abuses, as this note will discuss, the California Legislature amended the Act numerous times.

Many discussions of the Act focus on abuses of Williamson Act contracts. Much less discussion concerns the non-contractual regulatory strategies employed by the Act to promote “the long-term conservation of agricultural . . . land.” These non-contractual strategies play an important, though seemingly forgotten, role in achieving the Act’s goals. As Dennis O’Bryant, the Assistant Director of Land Resource Protection in the Department of Conservation, stated, “Since there is no contract . . . [noncontracted lands] are often ignored. County planners go by zoning ordinance, and mostly ignore agricultural preserves, if they have ever heard of them.” In order for the Act to succeed as a long-term conservation tool, it is imperative that the regulation of noncontracted lands no longer be overlooked.

This note examines the role of noncontracted lands in the Williamson Act program. Part I discusses the goals and structural evolution of the Act in its historical context, with an emphasis on the reasons noncontracted lands fall within its purview. Part II reviews the Act’s substantive regulation of noncontracted land, such as the minimum parcel size and compatible use requirements. Part III considers procedural requirements to remove noncontracted lands from an agricultural preserve. Together, Parts II and III set forth requirements that a county or city must follow to avoid violating the Act. If a county or city fails to comply with the Act’s requiremen-
In addition to the Act’s substantive and procedural requirements, the California Environmental Quality Act (“CEQA”) establishes procedural requirements that apply to projects associated with the Act. Part IV illustrates that removing noncontracted land from an agricultural preserve is a project under CEQA, which usually triggers the need for an Environmental Impact Report (“EIR”). A property owner may also file suit in mandamus to enforce these CEQA requirements. However, unlike a cause of action to enforce the Act, under CEQA a property owner may compel a county or city to identify and, more importantly, mitigate significant impacts on the environment arising from its approval of changes to an agricultural preserve.

Finally, Part V presents a case study of Merced County. The county has failed to conform with the Act’s substantive requirements by allowing landowners to subdivide noncontracted land below the minimum parcel size requirement established by the Act. In addition, the county violated several procedural requirements of the Act and CEQA by improperly removing noncontracted land from its agricultural preserve. While this case study is not representative of all counties, it illustrates many ways in which a county enrolled in the Act may violate CEQA or Act requirements relating to noncontracted lands.

The note argues that failure to regulate noncontracted lands as provided for in the Act reduces the program’s value to the state. This is evidenced, as in the case of Merced County, by the industrial, commercial, and residential developments that now exist in areas once part of an agricultural preserve. This is not an argument to end the program. The Act has played a significant role in preserving farmland within California. If noncontracted lands are regulated properly the Legislature’s goal of “long-term conservation of agricultural and open-space land” is achievable. Until that day, California taxpayers’ significant investment in the Act is not an investment in long-term land conservation. The Act provides, at best, temporary financial relief to qualifying landowners.

26. The term “beneficially interested” “generally means the petitioner ‘has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.’” Embarcadero Mun. Improvement Dist. v. County of Santa Barbara, 88 Cal. App. 4th 781, 786-87 (Cal. Ct. App. 2001) (quoting Carsten v. Psychology Examining Comm. of the Bd. of Med. Quality Assurance, 27 Cal. 3d 793, 796 (1980)). Further, a property owner that establishes a geographical nexus with the altered agricultural preserve has standing. Citizens Ass’n for Sensible Dev. of Bishop Area v. County of Inyo, 172 Cal. App. 3d 151, 158-59 (Cal. Ct. App. 1985) (establishing that a geographical nexus is enough to obtain standing in a case concerning an alleged violation of the California Environmental Quality Act (“CEQA”).

27. “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station.” Cal. Civ. Proc. Code § 1085(a) (West 2005).

28. See supra note 9, at 13.

29. See discussion infra Part V.C.

30. See discussion infra Part V.B.

31. See discussion infra Part II-III.

32. See generally Sokolow & Lemp, supra note 9, at 13.

33. See discussion infra Part II-III.

I. Evolution & Structure of the Williamson Act

A. Ambitious Goals: Intent Behind the Williamson Act

The primary stimulus of California’s interest in conserving agricultural land is often thought to be post-World War II increases in population growth, business development, and property taxes. From 1945 to 1968, the state lost more than one million acres of prime farmland to urbanization. The Act was designed by the Legislature in an effort to curtail the premature loss of farmland.

Assembly member John C. Williamson drafted the original bill to reflect his belief that “it is in the public interest to guarantee the future of agricultural use of our best agricultural land and . . . that farmers who are willing to provide the public with such a guarantee are entitled to protection from forces that might otherwise drive them out of agriculture.” Over the years, amendments broadened the scope of the Act to include the conservation of recreational lands, scenic highway corridors, wildlife habitat areas, saltponds, managed wetland areas, and other specified open-space uses. Although the types of land covered by the Act expanded, the original rationale for protecting the lands remains unchanged.

One of the most important goals of the Act was, and still is, to preserve farmland and open space, thereby reducing unnecessary infrastructure expenditures and environmental degradation caused by urban sprawl. Further, the Legislature believed


38. Id.


John C. Williams represented Kern County, which is largely a rural county. In 2004, the total value of agricultural commodities grown in the county was $3,142,481,400. KERN COUNTY DEPT OF AGRIC., KERN COUNTY CROP REPORT - 2004, at 13, available at http://www.co.kern.ca.us/kernag/crop00_09/crop04/Page13_Summary.pdf (last visited Oct. 12, 2005). The value of the county’s agricultural production outranks the agricultural production value of twenty states. Greater Bakersfield Chamber of Commerce, Agricultural land and . . . that farmers who are willing to provide the public with such a guarantee are entitled to protection from forces that might otherwise drive them out of agriculture.” Over the years, amendments broadened the scope of the Act to include the conservation of recreational lands, scenic highway corridors, wildlife habitat areas, saltponds, managed wetland areas, and other specified open-space uses. Although the types of land covered by the Act expanded, the original rationale for protecting the lands remains unchanged.

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40. CAL. GOV’T CODE § 51201(n) (West 2004). The Act describes land used for recreation as:

[L]and in its agricultural or natural state [used] 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. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public.

Id.

41. Id. § 51201(i).

42. Id. § 51201(j).

43. Id. § 51201(k). A “saltpond” is an area “used for the solar evaporation of seawater in the course of salt production for commercial purposes,” which meets specific Act guidelines. Id.

44. Id. § 51201(l).

45. See id. § 51201(m), (o), for specific details on how open-space is defined.

46. See id. § 51220, for legislative findings.

47. Division of Land Resource Protection, supra note 36. In addition, the legislative findings for the Act state “the discouragement of premature and un-
the preservation of such land was a physical, social, aesthetic, and economic asset to the state’s urban areas.\textsuperscript{48} Property tax incentives alone cannot achieve these goals and protect a farmer from the “forces that might otherwise drive them out of agriculture.”\textsuperscript{49} Recognizing that property tax incentives alone were not sufficient, the Act established a two-step conservation strategy.\textsuperscript{50}

B. The Williamson Act’s Two-Step Conservation Strategy

I. Step One: Agricultural Preserves

The first step for a county or city to implement the Act is to establish an agricultural preserve.\textsuperscript{51} An agricultural preserve is an area devoted to agricultural or other specified uses that meet the Act’s requirements.\textsuperscript{52} With one exception,\textsuperscript{53} all agricultural preserves must contain at least 100 acres of land.\textsuperscript{54} An agricultural preserve may be made up of numerous parcels of land, but the parcels must be contiguous.\textsuperscript{55}

There are two main procedural requirements for establishing an agricultural preserve. The county or city must pass a resolution of its intention to establish the preserve and hold a public hearing.\textsuperscript{56} Additionally,
each county or city enrolled in the Act must maintain a map of its agricultural preserves and provide an updated map to California’s Director of Conservation on an annual basis. However, California’s Department of Conservation has not enforced this requirement, and few counties or cities submit maps of their agricultural preserves each year.

2. Step Two: Williamson Act Contracts

Once an agricultural preserve is established, the second step allows landowners within the preserve to enter land-use contracts with enforceable restrictions. While the land is under contract, the property is taxed based on current use rather than on potential fair market value. Each contract has an initial term of at least 10 years. Each year, on the anniversary of the contract’s establishment or another date specified in the agreement, an additional year is automatically added to the contract. Thus, the contract will continue indefinitely if no changes are made.

To remove a property from the restric-
tions of a contract, the property owner must file a notice of nonrenewal. After such notice is filed, the contract no longer renews automatically, but the land remains restricted by the contract until the contract expires. Once the land is free from the contract, it is still part of the agricultural preserve. A separate procedure is required to remove the land from the agricultural preserve.

C. The Importance of Agricultural Preserves and the Regulation of Noncontracted Lands

Many analyses of the Act focus on the second step involving the contractual aspects of the program. The first step, the creation of agricultural preserves, is often viewed as a mere procedural hurdle for entry into these contracts. Although it is true that agricultural preserves are a prerequisite to establishing conservation contracts under the Act, that is not their sole purpose. Management of agricultural preserves, which includes the regulation of noncontracted lands contained within the preserves, plays a critical role in achieving the substantive goals of the Act.

As Congress member Williamson declared, the Act was intended to “[protect landowners] from forces that might otherwise drive them out of agriculture.” Williamson Act contracts effectively protect landowners from one such force, namely inflated property taxes. Agricultural preserves, however, arguably play an even more important role than contracts in protecting landowners from being driven out of agriculture. The original Act established agricultural preserves because, unlike scattered parcels of agricultural and open-space land, large blocks of such land provide a buffer from urban development.

Surrounding uses significantly affect the viability of agricultural or open-space use of a land parcel. For example, agricultural activities near urban and nonfarm residential areas have higher rates of crop damage caused by trespassing and equipment damage resulting from vandalism. Further, the agricultural activities in these areas leave landowners more vulnerable to nuisance

66. Id. § 51245.
67. Id. § 51246(a). If the land is subject to a nonrenewal proceeding, the land is taxed at an increasing yearly rate until the contract has expired, and no further discount applies. Cal. Gov’t Code § 426. If the county or city initiates the nonrenewal, the landowner may appeal to reduce the increase in taxes during the period before the contract expires. Id. § 426(b).
68. “The same procedure that is required to establish an agricultural preserve shall be used to disestablish or to enlarge or diminish the size of an agricultural preserve.” Cal. Gov’t Code § 51231. The procedure established for cancellation and nonrenewal of a Williamson Act contract is separate from the procedure to remove land from an agricultural preserve. Id. §§ 51245, 51280-51282.
69. See id. §§ 51231-51234; see also discussion infra Part III.
70. See generally, e.g., Elisa Paster, supra note 19; Timothy J. Baldwin, supra note 19; Dale Will, supra note 19.
71. See discussion infra Part V.
72. Sokolow & Bennett, supra note 1, at 49; see also discussion supra Parts I.C, infra Parts II-III.
73. Sokolow & Bennett, supra note 1, at 49.
75. Dale Will, supra note 19, at 3-4.
76. See infra notes 77-93 and accompanying text.
79. Id.
lawsuits and other legal complaints associated with farm odors, noise, dust, and chemical drift. As a result, agricultural rents in urban and non-farm residential areas are frequently lower than for other land uses, which additionally increases the pressure on many landowners to consider development options.

In 1998, a study determined that approximately ten,726 linear miles of agricultural land in California bordered urban areas, which represented a 23 percent increase from 1988. The study estimated that, at a minimum, all agricultural land within one-third of a mile from an urban area is negatively affected by proximity to urban uses. Thus, in 1998 approximately 2.2 million acres, or 8 percent, of agricultural land in California was affected by proximity to urban areas. Slowing the expansion of nonagricultural uses into agricultural areas is critical to ensuring the long-term conservation of farmland.

Through effective management of agricultural preserves, including the noncontracted lands contained within the preserves, it may be possible to maintain the integrity of large blocks of agricultural land and protect farmland from expanding urban borders. In addition to preventing the loss of farmland, numerous benefits are associated with protected clusters of agricultural land. Agricultural preserves can slow urban sprawl and increase development concentration and efficiency within existing urban areas. Further, economy of scale increases the efficiency of agricultural production and, as a result, processing, packaging, and other agricultural services are more likely to remain and expand locally. Thus, if noncontracted lands in agricultural preserves were regulated as the Act intended, the Act could achieve its original purpose: not only to give tax breaks to encourage the creation of agricultural preserves, but also to maintain the integrity of agricultural preserves and thereby facilitate long term conservation of agricultural land. In order to regulate noncontracted land and maintain the integrity of agricultural preserves, the Act establishes substan-

80. Id.
81. Id.
83. Alvin D. Sokolow, California’s Edge Problem: Urban Impacts on Agriculture, in CALIFORNIA AGRICULTURE: DIMENSIONS AND ISSUES 289, 290 (2003), available at http://are.berkeley.edu/extension/giannini/Chapter12.pdf (last visited Oct. 12, 2005). The study found that roughly one-third of agricultural land on the urban fringe was pastureland, while landowners used the remaining two-thirds for growing crops. Id. at 291. The survey likely underestimated the total amount of agricultural land on the urban fringe because urban developments under 10 acres were not included in the survey. Id. Further, some additional agricultural areas were not included because the quality of some area maps was too poor to utilize for the purpose of the study. Id.
84. Id. at 302.
85. Id. at 291.
86. Id. Excluding rangeland, this formula for calculating “urban borders” establishes that approximately thirteen percent of cropland in California is on an urban border. Id.
87. Id. at 292-96.
89. See infra notes 90-91 and accompanying text.
91. Esseks, supra note 78, at 21.
II. Substantive Regulation of Noncontracted Lands within Agricultural Preserves

The California legislature wrote the Act with an understanding of the importance of protecting contiguous blocks of agricultural land. Therefore, the Act provided ways to regulate both contracted and noncontracted lands contained within the borders of an agricultural preserve. Although the legislature has amended the Act numerous times, it never altered the Act’s original intent to regulate agricultural preserves as well as noncontracted lands contained within them.

A. The Establishment and Regulation of Agricultural Preserves Affects Both Contracted and Noncontracted Lands

The original Act allowed an agricultural preserve to consist of prime agricultural land as well as nonprime agricultural land. Since 1967, the legislature has made no major modification to the definition of prime agricultural land. Land is classified as prime agricultural land if it meets at least one of five criteria.

93. See discussion infra Part II-III.
The original Act intended to regulate both contracted and noncontracted lands within agricultural preserves. In defining agricultural preserves, the original enactment stated:

Such preserves, when established shall be for the purpose of placing restrictions upon the use of land within them, or supplementing existing restrictions, pursuant to the purpose of this chapter. Such preserves may contain land other than prime agricultural land, but the use of any land not under contract within the preserve shall subsequently be restricted in such a way as to not be incompatible with the agricultural use of the prime agricultural land the use of which is limited by contract in accordance with this chapter.

Thus, the original Act allowed a county or city to create use restrictions on prime and nonprime agricultural land within an agricultural preserve. The Act, however, only allowed contracts and the associated tax benefits on prime agricultural land within the preserves. Therefore, when the Act was first enacted, agricultural preserves may have contained land that a county or city could not contract. Thus, when the Act called for use restrictions in agricultural preserves, it necessarily included use restrictions that could affect both contracted and noncontracted lands.

Over time, the Legislature expanded the Act to allow landowners to place contractual restrictions on nonprime agricultural land as well. The legislature enacted this amendment because it understood that allowing owners of nonprime agricultural land to receive the Act’s tax benefits would help to ensure that landowners would remain willing participants in the program, thereby increasing the state’s ability to preserve the maximum amount of agricultural land. To prevent abuses related to contracting nonprime agricultural land, the Legislature established a procedure for determining if uses of such land are compatible with agricultural uses.


102. Id. at 3379, § 51240 (repealed 1969).

103. See supra notes 101-103 and accompanying text.

104. See supra notes 101-103 and accompanying text.


106. See supra notes 101-105 and accompanying text. The legislature obviously did not intend for restrictions that exclusively apply to contracted lands to apply to noncontracted lands as well, but restrictions that apply to agricultural preserves as a whole were intended to apply to contracted and noncontracted lands. Id.


Further, the amendment specified the meaning of nonprime agricultural land. "A board or council may define nonprime agricultural land as land not defined as 'prime agricultural land pursuant to subdivision (c) of Section 51201 or as land not classified as 'agricultural land' pursuant to subdivision (a) of Section 21060.1 of the Public Resources Code."

Id.
Although a county or city may now contract with owners of nonprime agricultural land, owners of nonprime agricultural land can still choose not to enter a contract.\textsuperscript{110} Regardless, as in the original Act,\textsuperscript{111} agricultural preserves can still contain both contracted and noncontracted lands.\textsuperscript{112} Therefore, regulation of agricultural preserves under the Act includes the regulation of both contracted and noncontracted lands.

B. A Review of Specific Provisions of the Williamson Act Regulating Noncontracted Lands within Agricultural Preserves

1. Restrictions on a Landowner's Use of Noncontracted Lands Within Agricultural Preserves

In order to protect contracted lands within agricultural preserves from outside forces, the original Act explicitly allowed a county or city "by agreement, but without payment to the landowner of any public funds, [to] limit the use of any land within an agricultural preserve to agricultural or compatible uses."\textsuperscript{113} Thus, the original Act clearly provided counties and cities with great power to regulate agricultural preserves and noncontracted lands within them.\textsuperscript{114} Although the Act has been amended numerous times, its intent to protect contracted lands by regulating noncontracted lands within agricultural preserves remains.\textsuperscript{115}

In 1969, the legislature added a new article to the Act providing details regarding agricultural preserves.\textsuperscript{116} In this amendment, the legislature rephrased and relocated to this article all provisions of the Act discussing the regulation of agricultural preserves.\textsuperscript{117}

\textsuperscript{110} "If such a contract is made with any landowner, the city or county shall offer such a contract under similar terms to every other owner of agricultural land within the agricultural preserve in question." \textit{Cal. Gov't Code} § 51241 (emphasis added). Allowing owners of nonprime agricultural land to enter contracts does not require them to enter a contract; it simply provides them with the opportunity to do so. Id. § 51230 (establishing that an agricultural preserve can contain land that is not under contract).


\textsuperscript{112} \textit{Cal. Gov't Code} § 51230 (establishing that an agricultural preserve can contain land that is not under contract).


\textsuperscript{114} Id. at 3377-78, § 51201(d) (current version at \textit{Cal. Gov't Code} 51230, 51238-51238.1, 51240 (retaining the Legislature's intent to allow land use restrictions on contracted and noncontracted lands within an agricultural preserve)).

\textsuperscript{115} See discussion supra Part II A.


\textsuperscript{117} Id. The 1969 amendment also declared that the rules established by a county or city for regulating noncontracted lands must apply uniformly throughout an agricultural preserve. Id. § 51231. This clarification was important to ensure the constitutionality of regulating noncontracted land within an agricultural preserve. \textit{Sinclair Refining Co. v. City of Chicago}, 178 F.2d 214 (7th Cir. 1949) (holding that the government must establish zoning laws that are fair and evenhanded to ensure they are not an unreasonable exercise of power). Regulation of noncontracted land in an agricultural preserve is similar to a zoning regulation. See discussion infra Part IV.B.3. Thus, it is likely that the courts would require a county or city to regulate noncontracted lands in an agricultural preserve in a fair and evenhanded way. Further, the Supreme Court has recognized that "a use restriction may constitute a 'taking' if not reasonably necessary to the effectuation of a substantial government purpose." \textit{Penn Central Transp. Co. v. New York City}, 438 U.S. 104, 127 (1978). Additionally, a use restriction "must substantially advance the state interest said to justify it, a finding that the regulation has a "rational basis" is not enough." \textit{Del Oro Hills v. City of Oceanside}, 31 Cal. App. 4th 1060, 1074 (Cal. Ct. App. 1995) (citing \textit{Surfside Colony, Ltd. v. California Coastal Comm'n}, 226 Cal. App. 3d 1260, 1270 (Cal. Ct. App. 1991)). It is unlikely the courts would consider variable restrictions placed on individual properties within an agricultural preserve as necessary to "substantially advance the state interest." Id.
In the new article, the legislature provided that counties or cities had up to two years from the date when the first contract was initiated to place restrictions on noncontracted lands within an agricultural preserve. After the two years lapses, the city or county must impose a minimum level of land use restrictions through zoning.

Nine years later, another amendment to the Act further clarified the ability to regulate uses of noncontracted lands. It specified that counties could establish separate lists of compatible uses on contracted and noncontracted lands. After this amendment, counties could create a less stringent list of compatible uses on noncontracted lands. Notwithstanding this amendment, counties and cities are required, at a minimum, to ensure that uses of noncontracted lands are compatible with agricultural uses of land under contract within the preserve even after the two-year period expires.

Under this amendment, counties and cities were encouraged to place additional conditions on noncontracted lands in order to promote public outdoor recreational uses in particular.

The Legislature believed that protecting all lands within an agricultural preserve is so critical to maintaining its integrity that
it even required a county or city to consider whether uses on contracted lands were compatible with agricultural uses on noncontracted lands. The original Act provided guidance regarding the definition of compatible uses. Over the years, the definition has become more specific and more detailed. Although the majority of compatible use requirements apply to contracted lands, the Act provides some compatible use requirements for noncontracted lands. Thus, a landowner’s entitlement for use of noncontracted land within an agricultural preserve is restricted. Further, the California Legislature established compatible use restrictions on noncontracted lands not only to regulate a private landowner’s use of the land, but also to regulate public agencies’ uses of the land.

2. Restriction on Placing Public Improvements on Contracted and Noncontracted Land Within Agricultural Preserves

The original Act explicitly required public agencies to avoid construction of state or local public improvements on all land within agricultural preserves. In 1970, the Joint Committee on Open Space Lands declared that the Legislature should not weaken the provision. Since then, the provision has grown stronger. For example, in 1998, an amendment was enacted to limit the development of improvements in agricultural preserves by the federal government whenever possible.


127. Compare Williamson Act of 1965, ch. 1443, sec. 1, § 51201(e), 1965 Cal. Stat. 3377, 3377, available at http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005), with CAL. GOV’T CODE §§ 51201(e), 51238-51238.3. See also CAL. GOV’T CODE § 51220.5 (“Cities and counties shall determine the types of uses to be deemed ‘compatible uses’ in a manner which recognizes that a permanent or temporary population increase often hinders or impairs agricultural operations.”); see also S.B. 985, 1999 Leg., 1999-2000 Reg. Sess. § 1(e)-(i) (Cal. 1999) (discussing the Legislature’s concern that the Act provides participating governments with too much latitude when establishing compatible uses).

128. CAL. GOV’T CODE § 51238.1(c)(4) (“Nothing in this section shall be construed to overrule, rescind, or modify the requirements contained in Sections 51230 and 51238 related to noncontracted lands within agricultural preserves.”).

129. See id. § 51230.

An agricultural preserve may contain land other than agricultural land, but the use of any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning, including appropriate minimum parcel sizes that are at a minimum consistent with this chapter, in such a way as not to be incompatible with the agricultural use of the land, the use of which is limited by contract in accordance with this chapter.

Id.

130. See id. §§ 51290-51295.


To ensure compliance by public agencies, the Act established procedural requirements to assist such agencies in understanding the consequences of locating improvements on contracted or noncontracted land within agricultural preserves. It required the Director of Conservation and the local governing body to comment on a proposed project before a public agency could locate a public improvement in an agricultural preserve. In 1984, the Act was amended to specify more precisely the kinds of comments the Director of Conservation must make.

The Director of Conservation shall consider issues related to agricultural land use, including, but not limited to, matters related to the effects of the proposal on the conservation of adjacent or nearby agricultural land to non-agricultural uses, and shall consult with, and incorporate the comments of, the Secretary of Food and Agriculture on any other matters related to agricultural operations.

With the exception of a list of public uses deemed compatible by the Legislature in 1965 and 1967, all public improvement projects, whether on contracted or noncontracted lands within agricultural preserves, were required to follow this procedure whether or not county or city regula-
tions considered the public improvement use compatible.141

Beginning with the original Act in 1965, a public agency had to use the comments made by the Department of Conservation in weighing the public value of land in its agricultural or open-space state against the value of developing the public improvement within the preserve.142 Additionally, projects were explicitly prohibited by the Act if the primary reason for locating the improvement within the agricultural preserve was to lower costs of acquiring the land.143 If a county’s board of supervisors or the city council approved a project within the agricultural preserve, the public agency had to use land that was not under contract wherever possible.144 Although the Legislature expressed its preference for a public agency to use noncontracted lands over contracted lands, the ultimate goal was to restrict unnecessary use of any land within an agricultural preserve.145 These provisions of the Act make it clear that a county or city’s authority to locate public improvement projects on both contracted and noncontracted lands within an agricultural preserve is restricted.146 Thus, removal of contracted or noncontracted lands from an agricultural preserve increases a county or city’s entitlement for use by lifting these restrictions.

3. Minimum Parcel Size Requirement of Noncontracted Lands in Agricultural Preserves

Another example of a restriction resulting from the creation of an agricultural preserve relates to allowable parcel sizes. In 1984, the Act was amended to specify the minimum parcel sizes required on contracted land.147 The section required prime agricultural parcels to be at least 10 acres and nonprime agricultural parcels to be at least 40 acres.148 The minimum parcel size requirement was established to ensure that parcels were large enough to maintain agricultural uses.149 In 1999, the Legislature required that noncontracted lands meet the same minimum parcel size requirements after two years.150 Therefore, within agricultural preserves and after two years, zoning must limit all nonprime agricultural land to a minimum of 40 acres and prime agricultural land to a minimum of 10 acres regardless of whether a

143. Id. at 3385, § 51292(a) (current version at CAL. GOV’T CODE § 51292(a)).
144. Id. at 3384, § 51290(b) (current version at CAL. GOV’T CODE § 51290(b)); id. at 3385, § 51292(b) (current version at CAL. GOV’T CODE § 51292(b)).
145. Id. at 3384, § 51290(a) (current version at CAL. GOV’T CODE § 51290(a)).
146. Id. at 3384-86, §§ 51290-51295 (current version at CAL. GOV’T CODE §§ 51290-51295); see discussion supra Part II.B.2.
149. Id.
contract exists. 151 These requirements restrict landowners from subdividing their property beyond these minimum levels, and are thus another example of the Act limiting entitlements for use of noncontracted lands in agricultural preserves.

III. Procedural Requirements for Removing Noncontracted Land from Agricultural Preserves

In 1965, when the Legislature first enacted the bill, it did not address the removal of land from agricultural preserves. 152 Two years later, in the first amendments to the Act, the legislature clarified that “[t]he same procedure to establish an agricultural preserve shall be used to enlarge or diminish the size of an agricultural preserve including disestablishment of an agricultural preserve.” 153

Two sections of the Act specifically lay out the procedures for disestablishing or diminishing the size of an agricultural preserve. 154 Both provisions state that a hearing is required before a county or city can disestablish or alter the boundaries of an agricultural preserve. 155 Several different notice requirements are associated with these hearings. 156


153. 1969 Williamson Act Amendment, ch. 1372, sec. 8, art. 2.5, § 51231, 1969 Cal. Stat. 2807, 2808 (current version at CAL. GOV’T CODE § 51231), available at http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). Recognizing that removing land from an agricultural preserve would raise issues irrelevant to establishing an agricultural preserve, in 1969, the Legislature added a provision establishing a notice procedure that exclusively applied to removing land from an agricultural preserve. Id. Later, in 1978, the Legislature amended the general notice provision for creating agricultural preserves in order for the provision to apply to disestablishing or altering boundaries of agricultural preserves as well. 1978 Williamson Act Amendment ch. 1120, sec. 4, § 51232, 1978 Cal. Stat. 3426, 3429 (current version at CAL. GOV’T CODE § 51232), available at http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). This clarification, however, was not specifically necessary since the Act clearly provides that the same procedure covers both enlarging and diminishing the size of an agricultural preserve. Second 1967 Williamson Act Amendment § 51230, 1967 Cal. Stat. at 2597 (current version at CAL. GOV’T CODE § 51230 (retaining Legislature’s intent require a county or city to use the same procedure when establishing or diminishing an agricultural preserve)), available at http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

154. CAL. GOV’T CODE §§ 51232, 51233.

155. Id.

156. Id. The county or city must publish the notice in a newspaper of general circulation for one day. See id. §§ 6006, 51232, notice published in a newspaper was not required until the 1978 amendments. 1978 Williamson Act Amendment, ch. 1120, sec. 4, § 51232, 1978 Cal. Stat. 3426, 3429 (current version at CAL. GOV’T CODE § 51232), available at http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). If the disestablishment or alteration removes land under contract from the agricultural preserve, the landowners with the affected contracts must receive notice by certified mail. CAL. GOV’T CODE § 51232. Owners of land under contract that the disestablishment or alteration will not remove, but that are within one mile of the exterior boundary of the land the county or city proposes to remove, must receive notice by first class mail. Id. This portion of the provision was amended in 1978, prior to the amendment only landowners that had common boundaries with the property the county or city proposed to remove had to receive notice by first class mail. Compare 1978 Williamson Act Amendment, ch. 1120, sec. 4, § 51232, with 1967 Williamson Act Amendment, ch. 1120, sec. 4, § 51232.
Two other sections that provide procedures for establishing agricultural preserves are also relevant when altering them.\(^\text{157}\) The county or city must require payment of the same fees associated with establishing or entering an agricultural preserve when disestablishing or altering the preserve.\(^\text{158}\) Moreover, when proposing to disestablish or alter an agricultural preserve, a county or city must submit the proposal to the planning department or planning commission.\(^\text{159}\) The report ensures that the board of supervisors is aware of, and considers, potential impacts to the county or city’s general plan before removing land from an agricultural preserve.\(^\text{160}\) After reviewing the report, the board of supervisors has discretion to approve or deny the removal.\(^\text{161}\) It is mandatory that a county complete these procedural steps before a landowner can remove land from an agricultural preserve.\(^\text{162}\)

### A. Impacts of Removing Noncontracted Land from Agricultural Preserves

Removing land from an agricultural preserve may dissolve the preserve by preventing other landowners from entering contracts.\(^\text{163}\) With one exception,\(^\text{164}\) the Act requires that agricultural preserves contain at least 100 acres of land.\(^\text{165}\) Further, the original Act specified that if an agricultural preserve dropped below the 100 acre requirement, landowners within the agricultural preserve could no longer enter Williamson Act contracts.\(^\text{166}\) The 1969 amendments retained the 100 acre requirement to establish an agricultural preserve,\(^\text{167}\) but the consequences of a preserve dropping below the

A county or city may establish agricultural preserves of less than 100 acres if it finds that smaller preserves are necessary due to the unique characteristics of the agricultural enterprises in the area and that the establishment of preserves of less than 100 acres is consistent with the general plan of the county or city.\(^\text{168}\)

\(^\text{157}\) CAL. GOV’T CODE §§ 51231, 51234; see supra text accompanying note 153.

\(^\text{158}\) CAL. GOV’T CODE § 51231; see supra text accompanying note 153.

\(^\text{159}\) CAL. GOV’T CODE § 51234; see supra text accompanying note 153. The planning department or commission has thirty days to return a report to the board of supervisors. CAL. GOV’T CODE § 51234; see supra text accompanying note 153. The city or county can extend the period for the planning department or commission to finish the report by up to 30 additional days. CAL. GOV’T CODE § 51234; see supra text accompanying note 153.

\(^\text{160}\) CAL. GOV’T CODE § 51234.

\(^\text{161}\) Id.

\(^\text{162}\) Gonzales v. City of San Jose, 125 Cal. App. 4th 1127, 1134-35 (Cal. Ct. App. 2004) (establishing that a State law of statewide concern preempts local laws).

\(^\text{163}\) See infra notes 164-172 and accompanying text.

\(^\text{164}\) CAL. GOV’T CODE § 51230.
preserves of less than 100 acres if it finds that smaller preserves are necessary due to the unique characteristics of the agricultural enterprises in the area and that the establishment of preserves of less than 100 acres is consistent with the general plan of the county or city.\textsuperscript{168} No city or county may contract with respect to any land pursuant to this chapter unless the land: \textsuperscript{169}

(a) Is devoted to agricultural use.

(b) Is located within an area designated by a city or county as an agricultural preserve.

\textsuperscript{168} Id. at 2810, § 51242 (current version \textsc{Cal. Gov't Code} § 51242).

\textsuperscript{169} After this 1969 amendment, the provision no longer explicitly stated that a preserve must consist of a minimum of 100 acres for a landowner to enter a contract. \textsuperscript{Id.} However, the provision still required that the contracting property owner's land be within an area meeting the definition of an agricultural preserve. \textsuperscript{Id.}

100-acre requirement became more vague because the 1969 amendment did not explicitly list the 100-acre requirement as a prerequisite to contracting.\textsuperscript{168} In 1984, an amendment to the Act re-clarified the impact of such an occurrence.\textsuperscript{169} Based on the 1984 amendment, if an agricultural preserve drops below the 100-acre requirement, with the one exception,\textsuperscript{170} it no longer meets the definition of an agricultural preserve.\textsuperscript{171} If an area does not meet the definition of an agricultural preserve, no landowner in the area can enter a Williamson Act contract.\textsuperscript{172} Thus, removing noncontracted land from an agricultural preserve can have serious consequences that may affect all other landowners in the preserve. This is why it is essential that counties follow the procedural requirements established by the Act to remove noncontracted land from an agricultural preserve: through the Act's required removal procedure the county should discover potential impacts of the removal, allowing the county to make an informed decision.

Nonetheless, removing noncontracted land from an agricultural preserve may have many environmental impacts that are not revealed by the Act's removal procedure.\textsuperscript{173} Although a public hearing is required to remove land from an agricultural preserve, the Act does not require any specific findings relating to environmental impacts.\textsuperscript{174} Therefore, it is also critical that cities and counties follow the guidelines established by CEQA.

In order to meet the minimum acreage requirement of an agricultural preserve pursuant to Section 51230, \textit{land formerly within the agricultural preserve which is zoned timberland production . . . may be taken into account.} \textsuperscript{168} This amendment proves the legislature still intended the minimum acreage requirement to be a strict minimum requirement throughout the existence of the preserve and not just a minimum during the initial establishment of an agricultural preserve. If this were not the case, the Legislature would not have needed to make this clarification.

\textsuperscript{170} \textsc{Cal. Gov't Code} § 51230; see supra note 167.

\textsuperscript{171} Absent the explicit exception, an area less than one hundred acres does not meet the definition of an agricultural preserve. \textsc{Cal. Gov't Code} §§ 51230, 51242; see also supra text accompanying note 169.

\textsuperscript{172} \textsc{Cal. Gov't Code} § 51242; see supra text accompanying note 168.

\textsuperscript{173} Esseks, supra note 78.

\textsuperscript{174} See \textsc{Cal. Gov't Code} §§ 51200-51297.4.
IV. CEQA & Removal of Noncontracted Land from Agricultural Preserves

No appellate case has addressed the question of whether CEQA applies to removing land from an agricultural preserve.175 Although CEQA Guidelines explicitly exempt the establishment of agricultural preserves,176 they provide that the disestablishment of an agricultural preserve is “normally an action subject to the CEQA process.”177 Thus, the CEQA guidelines seem to require CEQA review of removal of land from an agricultural preserve.178 The following section provides a more detailed discussion of the rationale for requiring CEQA review of such removals.

A. Removing Noncontracted Land from Agricultural Preserves is a Discretionary Act

CEQA only applies to discretionary projects.179 The Act provides that the same procedure used to establish an agricultural preserve is required to disestablish or diminish the size of an agricultural preserve.180 Therefore, if establishing an agricultural preserve is a discretionary act, disestablishing or diminishing the size of an agricultural preserve must be as well.181 The Act clearly intended for a county or city to have discretion when creating an agricultural preserve.182 Further, “doubts whether [a] project is ministerial or discretionary should be resolved in favor of the latter characterization.”183 Thus, disestablishing or altering the size of an agricultural preserve is a discretionary act subject to the requirements of CEQA.184

B. Removing Noncontracted Land from Agricultural Preserves is a Project Under CEQA

CEQA only applies to discretionary projects.185 Because removing land from an agricultural preserve is discretionary,186 the next question under CEQA is whether re-


177. Id.

Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the CEQA process.

178. See id.

179. CAL. PUB. RES. CODE § 21080(a) (West 2005). A discretionary project is:

[A] project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.

CAL. CODE REGS. tit. 14, § 15357.

180. CAL. GOV’T CODE § 51231.

181. See CAL. GOV’T CODE § 51231.

182. See id. § 51230; see *Kelsey v. Colwell*, 30 Cal. App. 3d 590, 595 (Cal. Ct. App. 1973) (holding that the Legislature used discretionary language when it created the Act and that is not mandatory for a county or city to participate in the Act).


184. See supra text accompanying notes 179-183.

185. CAL. PUB. RES. CODE § 21080(a) (West 2005).

186. See discussion supra Part IV.A.
moval is a project. In *Friends of Mammoth v. Board of Supervisors*, the first California Supreme Court case to interpret provisions of CEQA, the court held that the term “project” included acts that expand a person’s entitlement for use of land.\(^{187}\) Later that year, the Legislature added a provision to CEQA to that defined “project” in a way that conformed with *Friends of Mammoth*.\(^{188}\) As defined by CEQA, a project is:

>[A]n activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is . . . . [a]n activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.\(^{189}\)

For the purpose of this provision, the term “person” is defined to include private persons and business entities, as well as public entities including counties, cities, town, and the state.\(^{190}\) Thus, if removing land from an agricultural preserve causes either a direct physical change or a reasonably foreseeable indirect physical change\(^{191}\) in the environment and increases a person’s entitlement for use, it is a project under CEQA.\(^{192}\)

I. Removing Noncontracted Land from Agricultural Preserves Increases the Entitlement for Use of Two Types of “Person”

a. Impacts of Removing Noncontracted Land from Agricultural Preserves on a Landowner’s Entitlement for Use

Removing land from an agricultural preserve increases a landowner’s entitlement for use by releasing the property from the Act’s compatible use requirements.\(^{193}\) These requirements include the mandatory minimum zoning restrictions,\(^{194}\) the county or city’s list of compatible uses of noncontracted land,\(^{195}\) and additional restrictions encouraged by the Act, if implemented by the county or city.\(^{196}\) Thus, whether or not a landowner acts upon the expanded entitlement for use, once the restrictions are removed, the landowner’s entitlement for use has expanded.\(^{197}\)

b. Impacts of Removing Noncontracted Land from Agricultural Preserves on a Public Entity’s Entitlement for Use

A public entity’s entitlement for use of a parcel of land also increases when a county’s board of supervisors or city council removes land from an agricultural pre-

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190. See id. § 21066.

191. A reasonably foreseeable indirect physical change in the environment is:

>[A] physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. . . . For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution. . . . [But a] change which is speculative or unlikely to occur is not reasonably foreseeable.


193. See discussion supra Part II B.1. Land that is not part of an agricultural preserve is not covered by the Act, and thus is released from restrictions established under the Act. See discussion supra Part III B.

194. See discussion supra Part II B.3.


196. See id. § 51238.

serve. The Act establishes several hurdles to prevent public entities at all levels, local, state, and federal, from developing land within an agricultural preserve. These hurdles include an outright prohibition of developing public improvements in an agricultural preserve if a public entity chooses the location based on its low property value. The Act only regulates land within an agricultural preserve. Therefore, by removing land from an agricultural preserve a public entity can avoid these requirements.

2. Removing Noncontracted Land from Agricultural Preserves May Cause a Physical Change in the Environment

In determining whether a government act is a “project” under CEQA, the act must have the potential to at least cause “a reasonably foreseeable indirect physical change in the environment.” Removing land from an agricultural preserve increases the entitlement for use of two types of persons. Expansion of a person’s entitlement for use has a reasonably foreseeable indirect physical impact on the environment even if the expansion is not associated with a specific development project. For example, in Rosenthal v. Board of Supervisors, the court held that each of five separate rezoning ordinances the city adopted was a project subject to CEQA review. In Rosenthal, no specific development projects were associated with at least four of the five rezoning ordinances. Nevertheless, because rezoning expanded allowable uses on the land, CEQA required the county or city to consider whether the projects had significant impacts on the environment.

In City of Carmel-By-The-Sea v. Board of Supervisors, a California court of appeal reached a similar conclusion. City of Carmel-By-The-Sea involved rezoning a property in order to designate a wetland area and bring a hotel on the property into compliance with the zoning code. The court held that even if the rezoning ordinance was not directly linked to a development project, “the rezoning by itself . . . [represented] a commitment to expanded use of the property.” The court acknowledged the difficulty in predicting all potential environmental impacts of rezoning land absent an associated development project, but held that this does not excuse a public entity from CEQA review. “[S]uch difficulty only reduces the level of specificity required and shifts the focus to the secondary effects.”

Further, the California Supreme Court determined that if a person whose entitlement for use has expanded does not use the new entitlement, the project expanding the person’s entitlement for use does not retroactively become a nonproject. Thus, even in the absence of an associated development project, the act of removing land from an agricultural preserve is normally a project subject to CEQA review.

198. See discussion supra Part II.B.2.
199. Id.
200. CAL. GOV’T CODE § 51292.
201. See id. § 51242.
203. See discussion supra Part IV.B.1.
206. Id. at 821-22.
207. Id. at 818-19.
208. Id. at 824.
210. Id. at 234.
211. Id. at 244.
212. Id. at 250; see CAL. CODE REGS. tit. 14, § 15357 (West 2005).
3. Removing Noncontracted Land from Agricultural Preserves is Analogous to Amending Zoning Requirements

Zoning amendments are analogous to removing land from an agricultural preserve. California zoning laws are designed to create “orderly development of properties” and “regulate the use of land.” Similarly, agricultural preserves are designed to “discourage discontinuous urban development patterns” and preserve agricultural and open-space lands, “the use of which may be limited under the provisions of [the Act].” Moreover, both zoning and agricultural preserves directly affect a person’s entitlement for use. Therefore, agricultural preserves substantively resemble zoning. More specifically, they resemble overlay zoning because, like overlay zoning, they essentially “[add] a supplemental zoning classification to the existing base use classification for a property.”

An amendment to a zoning ordinance is considered a project under CEQA, even if the amendment is not associated directly with a development project. Because zoning amendments are analogous to removal of land from agricultural preserves, the CEQA requirements triggered by zoning amendments should apply to the removal of land from agricultural preserves.

4. Removing Noncontracted Land from Agricultural Preserves is Not Analogous to a LAFCO’s Annexation and Deannexation Decisions

The Local Government Reorganization Act established administrative bodies called local agency formation commissions (“LAFCOs”) to help control and promote orderly development during the process of municipality expansion. A LAFCO decision does not have to affect a landowner’s entitlement for use. The only direct impact of annexation and deannexation decisions by a LAFCO is to allow a change in the governing body that controls an area of land. Thus, unlike zoning amendments and the removal of land from an agricultural preserve, these annexation and deannexation proceedings do not always directly affect a landowner’s entitlements for use. In other words, an annexation by itself, unlike the

216. Morehart v. County of Santa Barbara, 7 Cal. 4th 725, 750 (Cal. 1994).
217. CAL. GOV’T CODE § 51220(c) (West 2005).
218. Id. § 51220(d).
219. See CAL. PUB. RES. CODE § 21080(a) (West 2005).
220. See discussion supra Part IV.B.1.
221. Overlay zoning consists of zoning regulations “superimposed on one or more established zoning districts and may be used to impose supplemental restrictions on uses in these districts, permit uses otherwise disallowed, or implement some form of density bonus or incentive zoning program.” EDWARD H. ZIEGLER ET AL., RATHKOPF’S THE LAW OF ZONING AND PLANNING § 1:31 (4th ed. 2004).
225. CAL. GOV’T CODE § 56001; see also Sierra Club v. San Joaquin Local Agency Formation Comm’n, 21 Cal. 4th 489, 546 (Cal. 1999).
rezoning or the removal of land from an agricultural preserve, does not necessarily affect a person’s entitlement for use. 228 If no evidence establishes that an annexation or deannexation indirectly affects a person’s entitlement for use, there is no reason to assume the annexation or deannexation has an impact on the environment. In such a case, the annexation or deannexation does not meet CEQA’s definition of a project. 229 Thus, CEQA analysis is not necessary. 230

Certain annexations have been determined to be projects requiring CEQA review. In Bozung v. Local Agency Formation Comm’n, the California Supreme Court determined whether the LAFCO’s decision not to conduct CEQA review before annexing 677 acres of unincorporated land in Ventura County into the city of Camarillo was appropriate. 231 The court decided that the annexation was the first step in expanding the landowner’s and the city’s entitlement for use because, unlike the county, the city was ready to use the land for “residential, commercial, and recreational purposes.” 232 Thus, the court held that the annexation was a project subject to CEQA. 233 Acknowledging that the critical consideration was whether the annexation was connected to expanding the entitlement for use of the property, which may have resulted in physical environmental impacts, the court stated: “[t]his is not the case of a rancher who feels that his cattle would chew their cud more contentedly in an incorporated pasture.” 234

On the other hand, Simi Valley Recreation & Park District v. Local Agency Formation Comm’n, is an example of a deannexation without an environmental impact. 235 This case involved the deannexation of land from the Simi Valley Recreation and Park District. 236 The court concluded:

[No]o facts alleged or otherwise shown suggest that the availability of the property in the detached area for development in any respect depend[ed] upon the detachment. . . . [T]he detachment in this case did not make any change whatever in the uses to which the land might be put. . . . [B]oth before and after the detachment . . . the land use permitted by the county was ‘open space or agricultural.’ 237

Thus, unlike zoning amendments or removing land from an agricultural preserve, the court determined that the deannexation did not affect any person’s entitlement for use. 238 The court held that, under the circumstances alleged, the deannexation was not a project subject to CEQA. 239

The rationale in cases like Simi Valley Recreation & Park District is not applicable to the removal of land from an agricultural preserve. The Act restricts entitlement for use of land within an agricultural preserve by a landowner or public entity, both of which are “persons” under the CEQA definition. 240 Unlike annexations and deannexations, removal of land from a preserve will always

228. See People ex rel. Younger, 81 Cal. App. 3d at 473.
230. See id.
232. Id. at 281.
233. Id. at 279.
234. Id. at 281; see also Simi Valley Recreation & Park Dist., 51 Cal. App. 3d at 665-66.
236. Id. at 652.
237. Id. at 665-66.
238. Id.
239. Id. at 666-67.
240. See discussion supra Part IV.B.1.
expand a person’s entitlement for use.\textsuperscript{241} Because the removal of land from a preserve expands a person’s entitlement for use and causes "a reasonably foreseeable indirect physical change in the environment,"\textsuperscript{242} CEQA review is required. In addition, because CEQA mandates review “at the earliest possible stage,”\textsuperscript{243} CEQA review should occur when a county or city considers removing land from an agricultural preserve.

C. Removing Noncontracted Land from Agricultural Preserves Usually Requires an Environmental Impact Report

The foregoing discussion of CEQA has established that the removal of land from an agricultural preserve is a project.\textsuperscript{244} Because the project is not exempt from CEQA review, even if a public agency determines that an environmental impact report (“EIR”) is not required, the agency must complete a negative declaration.\textsuperscript{245} However, an EIR, is required “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact[s].”\textsuperscript{246} CEQA guidelines create an expansive definition of “environment” that includes “the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, [and] objects of historic or aesthetic significance.”\textsuperscript{247}

Especially when cumulative effects\textsuperscript{248} are considered, removing land from an agricultural preserve should usually meet the fair argument standard.\textsuperscript{249} The Act allows and encourages counties to restrict uses on land in agricultural preserves in order to protect “important physical, social, esthetic and economic asset[s] to existing or pending urban or metropolitan developments.”\textsuperscript{250} As previously discussed,\textsuperscript{251} removal of land from an agricultural preserve may have a significant impact on numerous aspects of the environment, as defined by CEQA.\textsuperscript{252} Therefore, removing land from an agricultural preserve should usually trigger an EIR rather than a mere negative declaration.

V. A Case Study of Merced County

Merced County enrolled in the Williamson Act as of January 1, 2001.\textsuperscript{253} Within the first three years of adopting the Act, landowners in Merced County placed more acres under contract than landown-

\textsuperscript{241} See discussion supra Part IV.B.3-4.


\textsuperscript{243} Bozung v. Local Agency Formation Comm’n, 13 Cal. 3d 263, 282 (Cal. 1975).

\textsuperscript{244} See discussion supra Part IV.B.

\textsuperscript{245} No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 80 (Cal. 1974). “‘Lead agency’ means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.” Cal. Pub. Res. Code § 21067. “‘Negative declaration’ means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.” Cal. Pub. Res. Code § 21064.

\textsuperscript{246} No Oil, Inc., 13 Cal. 3d at 75.


\textsuperscript{248} Cumulative effects occur.

[When] two or more individual effects . . . considered together, are considerable or . . . compound or increase other environmental impacts . . . . The individual effects may be changes resulting from a single project or a number of separate projects . . . . The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.


\textsuperscript{249} See discussion supra Part I.C.

\textsuperscript{250} Cal. Gov’t Code § 51220(d).

\textsuperscript{251} See discussion supra Part I.C.

\textsuperscript{252} Id.; see Cal. Pub. Res. Code § 21060.5.

\textsuperscript{253} Williamson Act Technical Advisory, supra note 62, at 2.
ers in any other county during the same period. In total, Merced County has entered into contracts on 417,318 acres of land. Of this, 240,515 acres are prime agricultural land and 176,803 acres are nonprime agricultural land. In 2003, the Merced County Williamson Act program received the eighth largest amount of subvention payments from the state, totaling $1,376,478. Overall, Merced County is ranked fifteenth in total acreage covered by Williamson Act contracts.

Merced County provides an interesting case study because it is young, in terms of its participation in the Act, yet its program has expanded rapidly. This is not a comprehensive analysis. It will focus on how the county established its preserve and on flaws in its administration. The criticisms made here of Merced County’s implementation of the Act do not apply to all counties. Hopefully this analysis will provide insight into various ways a county may misinterpret and abuse the Act.

A. Establishment of Merced County’s Agricultural Preserve

On July 25, 2000, Merced County passed a resolution implementing the Act. Landowners within an agricultural preserve could enter contracts with the county beginning September 1, 2000. Merced County chose to implement a blanket agricultural preserve across all land that complied with the county’s rural land use designation and was zoned general agricultural (A-1) or exclusive agricultural (A-2). As a result, this preserve included a vast amount of land. Despite its wide reach, few Merced County farmers are aware that their land is part of this agricultural preserve.

Assemblyman Dennis Cardoza, who at the time was the chairman of the Assembly Committee on Agriculture, pushed for

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254. 2004 STATUS REPORT, supra note 6, at 4. Overall, Merced had the greatest number of new enrollments in 2001 and 2002. Id. at 5. In 2003, Merced County ranked ninth in new enrollments. Id. The drop in Merced County’s number of new enrollments is attributed to a stabilization process as the county’s agricultural preserve matured. Id. at 4.

255. Id. at 26.

256. Id.

257. A subvention payment is financial assistance often provided to a local government by the state or federal government. Dorcich v. Johnson, 110 Cal. App. 3d 487, 494 (Cal. Ct. App. 1980). The Act’s subvention program is, in part, designed to “provide replacement revenues to local government by reason of the reduction of the property tax on open space lands assessed under . . . the Revenue and Taxation Code.” CAL. GOV’T CODE § 16141 (West 2005).

258. See CAL. GOV’T CODE § 16140-16154 for more details on Open-Space Subventions in California.

259. 2004 STATUS REPORT, supra note 6, at 18. In 2003, the state provided a total of $39,242,234 to all counties participating in the Act. Id. at 2.

260. Id. at 26.


262. Id.; 2004 STATUS REPORT, supra note 6, at 4.

263. See discussion infra Part V.A.

264. See discussion infra Parts V.B-C.


266. Id. at 6, C.4.c.

267. The term “blanket agricultural preserve” refers to the fact that, rather than creating individual preserves based on petitions from landowners, the county decided to implement one agricultural preserve that covered all agricultural zoned properties within its zone of influence. Id. at 2, B.1.a.

268. Id.

269. Bill Hatch, supra note 56.

270. Id.
Merced to adopt the Act as “mitigation for UC Merced.” Shortly after the agricultural preserve’s creation, the county amended the resolution establishing the agricultural preserve to include land designated as part of its specific urban development plan within the preserve. This amendment made the county’s intent seem less like long-term conservation of agricultural land and more like a tax break before development.

Traditionally, landowners established agricultural preserves by petitioning their county board of supervisors or city council. Merced County, however, established a blanket preserve based on county zoning. Merced County was not the first county to establish a blanket preserve. Stanislaus County utilized this method when it created its agricultural preserve on October 20, 1970. In 1970, the Joint Committee on Open Space Lands determined that “establishing agricultural preserves in areas coextensive with land subject to [a specific] zoning ordinance [is] consistent with the law.” Although applying a blanket agricultural preserve to specific zoning ordinances clearly has some advantages, counties and cities need to understand the commitment they are making when they choose to do so.

Merced County clearly did not understand the commitment it was making when it created its agricultural preserve. Only a few landowners attended the public hearing regarding the establishment of the preserve. One landowner requested that the county exempt his property from the agricultural preserve. His request was denied.

Under the Act, the county had the right to deny the landowner’s exemption request. The Board of Supervisor’s explanation for the denial is telling, however. Supervisor Deidre F. Kelsey, the current Chairman of the Merced County Board of Supervisors, stated that “once an individual’s property [was] in the Preserve, the landowner [would] have the opportunity to choose whether or not to exercise inclusion in the Williamson Act.” This statement indicates that Supervisor Kelsey clearly did not understand that once the agricultural preserve was established, all landowners within the preserve would be...
subject to Act restrictions. Landowners have the option to decide if they want to enter a contract and place their land under heightened restrictions, but after an agricultural preserve is established, all landowners within its boundaries are brought under applicable regulations established by the Act.

Further, Chairman Jerry O’Banion made the clarification that landowners in the agricultural preserve had “the ability or right to desire development rights or preserve that land in agriculture.” O’Banion understated the regulatory impact of establishing an agricultural preserve when he claimed that landowners within a preserve have the “right to desire development rights.” While landowners can “desire development rights,” landowners cannot act upon this desire until they follow the procedure established by the Act to remove land from the agricultural preserve.

The supervisors have grossly misinterpreted the Act. As discussed above, an agricultural preserve is an area designated and regulated by the Act to protect and encourage agricultural and open-space uses. By incorporating land into an agricultural preserve, new procedural hurdles are attached to development of the land and additional restrictions are placed on the government and landowner’s entitlement for use.

The Act provides a county or city with significant discretion in establishing its own procedure and regulations for administration of agricultural preserves. A county or city cannot, however, bypass the procedures and regulations established by the state legislature. A landowner can choose whether or not to enter a contract with the county or city, but once land is incorporated into an agricultural preserve, and until it is removed through the proper procedure, it is subject to applicable regulations under the Act.

**B. Removing Noncontracted Land from Merced County’s Agricultural Preserve**

As discussed earlier, a county or city must follow certain procedures in order to remove land from an agricultural preserve. The Merced County rules of procedure adopted to administer the Act state:

A landowner may request removal from the agricultural preserve if they are not under a Land Conservation Contract or upon termination of it. As the Williamson Act is a voluntary program, and an owner may not wish to participate, requests for removal will be forwarded to the Board of Supervisors for approval.

Based on the procedure established by Merced County, landowners may request the county to remove their land from the agricultural preserve. This does not mean, however, that the county can skip the state-mandated procedure for removing the...
land.\textsuperscript{299} Ideally, the procedure established by the California Legislature will ensure that the county or city considers the impacts of the removal. However, so long as the procedure is followed, the county or city has full discretion in its decision.\textsuperscript{300} Unfortunately, Merced County has generally not followed the state-mandated procedure to remove land from its agricultural preserve.\textsuperscript{301}

In 2004, Supervisor Kelsey reaffirmed “that people who did not want to partici-

\textsuperscript{299} See Gonzales v. City of San Jose, 125 Cal. App. 4th 1127, 1134-35 (Cal. Ct. App. 2004) (establishing that a State law of statewide concern preempts local laws); see also Sherwin Williams Co. v. City of Los Angeles, 4 Cal. 4th 893 (1993) (establishing the test for preemption).

\textsuperscript{300} See Kelsey v. Calwell, 30 Cal. App. 3d 590, 595 (Cal. Ct. App. 1973) (holding that the Legislature used discretionary language when it created the Act and that is not mandatory for a county or city to participate in the Act).

\textsuperscript{301} See discussion supra Part III; see also infra notes 302-329 and accompanying text.

\textsuperscript{302} Videotape: Merced County Board of Supervisors Regular Meeting, Continued Public Hearing to Amend the Merced County Agricultural Preserve (Feb. 10, 2004), available at rtsp://66.124.46.131/boardaudio/02-10-2004_bdsup.rm (last visited Oct. 12, 2005).


\textsuperscript{304} Minutes of the Merced County Board of Supervisors Regular Meeting (Mar. 25, 2003), supra note 303, at 10; Minutes of the Merced County Board of Supervisors Regular Meeting (Feb. 10, 2004), supra note 303, at 7-8.

\textsuperscript{305} See Minutes of the Merced County Board of Supervisors Regular Meeting, (Sept. 28, 2004), supra
One of the latter projects involved rezoning 372 acres of A-1 land to industrial planned development (PD-1) in order to build an industrial business park. In another project, the county converted A-1 zoned land to general commercial (C-2) to allow for the construction of a service station, a mini-mart, and two fast food restaurants. More recently, a project involved rezoning 655 acres of A-2 zoned property to allow for a development project called “Yosemite Lake Estates.” During this hearing, a nearby property owner expressed his concern that the project was a “leapfrog development [that] promote[d] urban sprawl.” The Board of Supervisors unanimously approved each of these three projects, and no one on the board mentioned the Act or the County’s preserve during any of the hearings.

Merced County’s failure to follow mandated procedure for removing land from the agricultural preserve clearly violates the Act. In eight of the 10 removal proceedings discussed above, the county did not conform to the Act’s notice requirement; one explanation for this failure is that, in those eight proceedings, no hearing was held on the subject for which to provide notice. In other words, the hearings made no mention of the Act or the preserve. The Board of Supervisors, therefore, not only violated the Act’s notice requirement, but also violated the hearing requirement by failing to discuss the removals from the agricultural preserve.

C. The Two-Year Window And Compatible Zoning for Noncontracted Land Within Merced County’s Agriculture Preserve

In 1999, the Legislature recognized that land within agricultural preserves must comply with the Act’s minimum parcel size requirements. As discussed earlier, the Legislature amended the Act to require counties to change the zoning of land within

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306. Minutes of the Merced County Board of Supervisors Summary Action Minutes Regular Meeting (Dec. 17, 2002), supra note 303, at 16-17; Minutes of the Merced County Board of Supervisors Regular Meeting (Jul. 24, 2001), supra note 303, at 11-13. During the hearing on December 17, 2002, one supervisor abstained from voting.


308. Minutes of the Merced County Board of Supervisors Regular Meeting (Jul. 24, 2001), supra note 303, at 11-13.

309. Id.

310. Minutes of the Merced County Board of Supervisors Summary Action Minutes Regular Meeting (Dec. 17, 2002), supra note 303, at 16-17; Minutes of the Merced County Board of Supervisors Regular Meeting (Jul. 24, 2001), supra note 303, at 11-13; Minutes of the Merced County Board of Supervisors Regular Meeting (Apr. 27, 2004), supra note 303, at 14-15; Minutes of the Merced County Board of Supervisors Regular Meeting (Apr. 27, 2004), supra note 303, at 14-15.

311. See discussion supra Part III.

312. See discussion supra Part I.B.2.c.; see sources cited supra note 305.

313. See discussion supra Part I.B.2.c.; see sources cited supra note 305.

314. See discussion supra Part I.B.2.c.

315. Id.


317. See discussion supra Part III.
a preserve if necessary to ensure compliance within the two-year window provided for in the Act. To justify this amendment, the Legislature declared:

Existing provisions of the Williamson Act do not require that local zoning of designated agriculture preserves be consistent with the minimum parcel size under the Act, and without that requirement the purpose of the Act can be seriously undermined by subminimum parcel sizes and incompatible uses within those preserves.

A comparison of Merced County maps of zoning and prime agricultural land demonstrate that parcels of nonprime agricultural land exist within the county’s A-1 zoned regions. In Merced County, the minimum parcel size allowed in A-1 zoning is twenty acres. However, within an agricultural preserve, the Act requires that parcels of nonprime agricultural land to be at least 40 acres. Therefore, the county’s A-1 zoning, which allows a minimum of twenty acres per parcel, is below the minimum acreage required for nonprime agricultural land in agricultural preserves under the Act. Merced County’s two-year window for ensuring that parcel sizes within its agricultural preserve are consistent with the Act’s requirements expired in early 2003.

Merced County could easily work towards remedying this violation by converting A-1 zoned nonprime agricultural land within the agricultural preserve to a compatible zone established in its general plan, such as the A-1-40 zoning.

In addition, the Merced County Board of Supervisors has approved numerous subdivisions that are well below the ten-acre prime agricultural and 40-acre nonprime agricultural minimum parcel sizes allowed in the agricultural preserve. Since the minimum parcel size requirement for nonprime agricultural land within an agricultural preserve.

318. CAL. GOV’T CODE § 51230 (West 2005); see discussion supra Part III.
320. Maps on file with author.
322. CAL. GOV’T CODE §§ 51222, 51230; see discussion supra Part II.B.3.
325. See Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning and Community Development Continued from October 8, 2002 (Oct. 22, 2002), at 1-12 (subdividing a parcel into 1.59 and one acre parcels), available at http://web.co.merced.ca.us/
agricultural preserve was created, the county has subdivided land within the preserve on at least seven occasions and created at least eleven new parcels under five acres. In 2003, Ed Pattison, the Executive Director of Merced County’s Farm Bureau urged the Board of Supervisors not to divide a particular parcel of A-1 zoned land because “breaking up [the] land [would] have a negative impact on the neighboring lands and [would] set precedence [sic].” Three months after the Board of Supervisors approved the subdivision, it approved another subdivision in which the applicant’s lawyer explained that the county should approve the variance because “there are smaller parcels in the surrounding area.” None of the subdivision hearings addressed how the subdivisions conflicted with the Act.

D. Noncontracted Land in Merced County’s Agricultural Preserve And CEQA

The county has rarely complied with CEQA when removing land from the preserve. In fact, when removing land from an agricultural preserve, it appears the county has complied with CEQA on only two occasions. Both of these removals were associated with development projects that would remove the land from agricultural production. But, Merced County is not alone. Dennis O’Bryant, the Assistant Director of Land Resource Protection at the California Department of Conservation, stated that he has probably only seen one removal that complied with CEQA, and it was part of a large project.
CONCLUSION

The foregoing analysis demonstrates that Merced County has failed to administer its preserve in a manner that complies with the Act.335 As a result, the Act is less likely to achieve its goal of “long-term conservation of agricultural and open-space land”336 in Merced County. The Act requirements discussed in this note have received little attention over the years. Merced County’s violations are likely not anomalies; rather, it is probable that cities and counties throughout the state have also routinely violated these Act and CEQA requirements.

The regulation of noncontracted lands within agricultural preserves is essential to maintaining large clusters of viable agricultural and open-space land, as the Act intended.337 A California Appellate court has stated that “the Williamson Act[’s] . . . language must be interpreted liberally to effectuate [its] remedial purpose.”338 Nonetheless, it seems that much of the Act’s language relating to agricultural preserves and the regulation of noncontracted lands is not “interpreted liberally to effectuate [its] remedial purpose.”339 At least in the case of Merced County, it appears the county has not tried to interpret this language at all.

As mentioned earlier, the Department of Conservation should receive maps of agricultural preserves from every county or city that is participating in the Act.340 This requirement has been ignored for many years, and the Department of Conservation is only now beginning to demand that counties produce the maps.341 It is critical that the Department of Conservation take all necessary action to ensure that participating cities and counties create these maps. As maps of agricultural preserves do not currently exist, the degree to which clusters of agricultural land making up agricultural preserves have become discontinuous is unclear.

In addition, the Department of Conservation should commission a full review of each county’s agricultural preserves. Loosely followed requirements relating to noncontracted land have likely led to preserves pock marked with gaps caused by land that was improperly removed. These disjointed preserves are less likely to effectuate the goals of the Act. Without such a review, there is no way to know the full scope and impact of poor management of noncontracted lands within each county and city’s preserves.

The State of California has provided more than 600 million dollars in subvention payments since 1972.342 In recent years, subvention payments have grown larger than ever.343 If the Act could achieve its goals, the burden on California taxpayers would pale in comparison to the program’s value. Unfortunately, if counties do not comply with all aspects of the Act, it is unlikely its goals will be achieved.


337. See discussion supra Part I.C.


339. Id.


341. O’Bryant Email, supra note 22; see supra text accompanying note 60.

342. 2004 STATUS REPORT, supra note 6, at 18.

343. Id.