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Christopher J. Butcher

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By *Christopher* J. B*utcher* *

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 volun-

* Juris Doctorate, U.C. Davis School of Law, and Master of Science in International Agricultural Development, U.C. Davis College of Agricultural and Environmental Science, Candidate, 2007; Bachelor of Arts in Environmental Studies, University of California at Los Angeles, 2002. I would like to thank my faculty adviser, Professor Jerrold Tannenbaum, for providing tremendous support and wonderful suggestions throughout the process of writing this note. I would also like to thank Professors Christopher Elmendorf, Albert Lin, and Alvin D. Sokolow for, also, graciously taking the time to review and comment on the note. In addition, I would like to thank H*astings West Northwest Journal of Environmental Law & Policy* Articles Editor Meghan Quinlivan for her assistance and meticulous effort during the editing process. Finally, I would like to thank Natalie Ikhlassi for her editorial support on this note and for her personal support in all aspects of my life. Author's contact:christopher.j.butcher@gmail.com.

1. *See generally* Alvin D. Sokolow & Mica Bennett, Conserving Agricultural Land Through Compensation, A Guide for California Landowners 18 (A.I.C. Research Area 2004), *available at* http://aic.ucdavis.edu/research1/Chapt2.pdf (last visited Oct. 12, 2005) (detailing various California land conservation programs).

2. I*d*. at 47, *available at* http://aic.ucdavis.edu/research1/Chapt5.pdf (last visited Oct. 12, 2005).

3. I*d*.

4. The California Land Conservation (Williamson) Act of 1965, ch. 1443, sec. 1, §§ 51200-51295, 1965 Cal. Stat. 3377 (current version at Cal. Gov't Code § 51200-51297.4 (West 2005)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

tary program[5] that, as of January 2003, all but four of California's 58 counties chose to adopt.[6]

The Act was designed to provide for "the long-term conservation of agricultural . . . land."[7] The Act employs two main strategies, the establishment of agricultural preserves and property tax incentives, to achieve this goal.[8] Property tax incentives are the most well known and studied of the Act's two strategies.[9]

Statewide, contractual use restrictions established under the Act cover approximately 16.6 million acres of agricultural land.[ten] Williamson Act contracts exist on roughly half of all agricultural land in California.[11] In total, these contractually-restricted lands make up about one-third of all privately owned land in the state.[12]

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."[13] 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."[14]

Although the Act deserves much of this praise, it has had its fair share of misapplications and other abuses.[15] 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).

6. Cal. Dep't of Conservation, California Land Conservation (Williamson) Act Status Report 2004, at 2 (2004) [hereinafter 2004 Status Report], *available at* http://www.consrv.ca.gov/dlrp/LCA/pubs/status%20reports/2004/Williamson%20Act%20Status%20Report%202004.pdf (last visited Oct. 12, 2005). The only four counties that have not adopted the Act are Del Norte, Inyo, San Francisco, and Yuba. I*d*.

7. S*ee* 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. S*ee* discussion *infra* Part I.B.

9. S*ee* Alvin D. Sokolow & Cathy Lemp, S*aving Agriculture or Saving the* E*nvironment*?, 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. I*d*. 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.

10. 2004 Status Report, *supra* note 6, at 2.

11. Sokolow & Bennett, *supra* note 1, at 47, *available at* http://aic.ucdavis.edu/research1/Chapt5.pdf (last visited Oct. 12, 2005).

12. 2004 Status Report, *supra* note 6, at 2.

13. Press Release, Cal. State Assembly – Democratic Caucus, Assemblymember Lois Wolk, Wolk Leads Bipartisan Effort to Protect Williamson Act from Governor's Budget Axe (Feb. 14, 2003), *at* http://democrats.assembly.ca.gov/members/a08/press/p082003009.htm (last visited Oct. 12, 2005).

14. Michael Kolber, S*prawl Feared if* F*arm Tax* B*reak is* C*ut*, 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).

15. See S.B. 985, 1999 Leg., 1999-2000 Reg. Sess. § 1(e) (Cal. 1999) (enacted), *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), for a finding by the California Legislature acknowledging abuses of the act.

overly broad definitions of agricultural and compatible uses.[16] In 1986, the Williamson Act Task Force explicitly concluded that some property owners were abusing the program and receiving illegitimate tax breaks.[17] In response to these misapplications and abuses, as this note will discuss, the California Legislature amended the Act numerous times.[18]

Many discussions of the Act focus on abuses of Williamson Act contracts.[19] Much less discussion concerns the non-contractual regulatory strategies employed by the Act to promote "the long-term conservation of agricultural . . . land."[20] These non-contractual strategies play an important, though seemingly forgotten, role in achieving the Act's goals.[21] 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 ag[ricultural] preserves, if they have ever heard of them."[22] 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.[23]

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[24] and compatible use requirements.[25] 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 require-

16. *Agricultural Land Preservation: Williamson Act Contracts: Hearing on* A.B. 1944 *Before the Assembly Committee on Natural Resources*, 2000 Leg., 1999-2000 Reg. Sess. 2 (Cal. 2000) (quoting the 1966 Attorney General), *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1901-1950/ab_1944_cfa_20000425_111714_asm_comm.html (last visited Oct. 12, 2005).

17. *Id.* The Williamson Act Task Force was commissioned by the Department of Conservation to conduct an extensive review of the Act in 1986. LAND CONSERVATION UNIT, CAL. DEP'T OF CONSERVATION, WILLIAMSON ACT TASK FORCE CONSENSUS FOR ACTION: AN INTERIM REPORT TO THE SECRETARY FOR RESOURCES 20 (1986).

18. Williamson Act of 1965, ch. 1443, sec. 1, §§ 51200-51295, 1965 Cal. Stat. 3377 (amended 1967, 1968, 1969, 1970, 1971, 1972, 1974, 1975, 1976, 1977, 1978, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004) (current version at CAL. GOV'T CODE §§ 51200-51297.4 (West 2005)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

19. *See generally, e.g.*, Dale Will, *The Land Conservation Act at the 32 Year Mark: Enforcement, Reform, and Innovation*, 9 SAN JOAQUIN AGRIC. L. REV. 1 (1999); Elisa Paster, *Preservation of Agricultural Lands Through Land Use Planning Tools and Techniques*, 44 NAT. RESOURCES J. 283, 310 (2004); Timothy J. Baldwin, *Chapter 889: Continuing to Fine Tune the Williamson Act*, 32 MCGEORGE L. REV. 791 (2001).

20. *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).

21. See discussion *infra* Part V for a case study of Merced County's violations of the Act's noncontracted land regulations.

22. E-mail from Dennis O'Bryant, Assistant Director of Land Resource Protection, California Department of Conservation, to Christopher Butcher, Dual Law and International Agricultural Development Master Student, University of California at Davis (Feb. 23, 2005, 14:29 PST) [hereinafter O'Bryant Email] (on file with author).

23. *See* discussion *infra* Part I.C.

24. *See* discussion *infra* Part II.B.3.

25. *See* discussion *infra* Part II.B.1-2.

ments, a beneficially interested party[26] may bring suit in mandamus to compel enforcement of the Act.[27]

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.[28] 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.[29]

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.[30] In addition, the county violated several procedural requirements of the Act and CEQA by improperly removing noncontracted land from its agricultural preserve.[31] 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[32] 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.[33] If noncontracted lands are regulated properly the Legislature's goal of "long-term conservation of agricultural and open-space land"[34] is achievable. Until that day, California taxpayers' significant investment in the Act[35] 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. *Citizens Ass'n for Sensible Dev. of Bishop Area*, 172 Cal. App. 3d at 158-59.

29. CAL. PUB. RES. CODE § 21081 (West 2005).

30. *See* discussion *infra* Part V.C.

31. *See* discussion *infra* Part V.B.

32. *See* discussion *infra* Part II-III.

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

34. *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).

35. *Id.* § 1(c).

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.[36] From 1945 to 1968, the state lost more than one million acres of prime farmland to urbanization.[37] The Act was designed by the Legislature in an effort to curtail the premature loss of farmland.[38]

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."[39] Over the years, amendments broadened the scope of the Act to include the conservation of recreational lands,[40] scenic highway corridors,[41] wildlife habitat areas,[42] saltponds,[43] managed wetland areas,[44] and other specified open-space uses.[45] Although the types of land covered by the Act expanded, the original rationale for protecting the lands remains unchanged.[46]

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.[47] Further, the Legislature believed

36. Division of Land Resource Protection, Cal. Dep't of Conservation, Williamson Act Program Overview: History, *at* http://www.consrv.ca.gov/dlrp/LCA/overview/history.htm (last visited Nov. 18, 2005); *see also* Sokolow & Bennett, *supra* note 1, at 20, *available at* http://aic.ucdavis.edu/research1/Chapt2.pdf (last visited Oct. 12, 2005).

37. Sokolow & Bennett, *supra* note 1, at 21, *available at* http://aic.ucdavis.edu/research1/Chapt2.pdf (last visited Oct. 12, 2005).

38. I*d*.

39. Tulare County Resource Management Agency, The Agricultural Preserve Program as Implemented in Tulare County 3 (1989) (emphasis added), *available at* http://www.co.tulare.ca.us/cpb/documents/THE%20AGRICULTURAL%20PRESERVE%20PROGRAM.pdf#search='The%20Agricultural%20Preserve%20Program%20as%20Implemented%20in%20Tulare%20County' (last visited Oct. 12, 2005).

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 Dep't 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, Agriculture in Kern County, *at* http://www.bakersfieldchamber.org/ag.asp (last visited Oct. 12, 2005).

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.

I*d*.

41. I*d*. § 51201(i).

42. I*d*. § 51201(j).

43. I*d*. § 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. I*d*.

44. I*d*. § 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.[48] Property tax incentives alone cannot achieve these goals and protect a farmer from the "forces that might otherwise drive them out of agriculture."[49] Recognizing that property tax incentives alone were not sufficient, the Act established a two-step conservation strategy.[50]

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

1. Step One: Agricultural Preserves

The first step for a county or city to implement the Act is to establish an agricultural preserve.[51] An agricultural preserve is an area devoted to agricultural or other specified uses[52] that meet the Act's requirements.[53] With one exception,[54] all agricultural preserves must contain at least 100 acres of land.[55] An agricultural preserve may be made up of numerous parcels of land, but the parcels must be contiguous.[56]

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.[57] Additionally,

necessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontinuous urban development patterns which unnecessarily increase the costs of community services to community residents." CAL. GOV'T CODE § 51220(c) (West 2005).

48. CAL. GOV'T CODE § 51220(c).

49. TULARE COUNTY RESOURCE MANAGEMENT AGENCY, *supra* note 39, at 3.

50. *See* CAL. GOV'T CODE §§ 51230-52139 (containing the provisions on how a county or city initiates the Act and creates its agricultural preserves); *see id.* §§ 51240-51257 (containing the provisions on entering Williamson Act contracts). A third optional step that the Legislature added to the Act is Farmland Security Zones, which allows for increased tax benefits with more stringent contractual land-use restrictions. *See id.* §§ 51296-51297.4. This note does not discuss Farmland Security Zones in any further detail.

51. *Id.* § 51230.

52. *See supra* notes 40-45 and accompanying text.

53. CAL. GOV'T CODE § 51201(d). Legislation is currently pending which will amend the definition of agricultural preserves, but these amendments do not affect any of the substantive arguments in this note. *See* A.B. 365, 2005 Leg., 2005-2006 Reg. Sess. § 4 (Cal. 2005), *available at* http://www.leginfo.ca.gov/pub/bill/asm/ab_0351-0400/ab_365_bill_20050329_amended_asm.html (last visited Oct. 12, 2005).

54. The Act's only exception to the minimum acreage of an agricultural preserve is:

> [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.

CAL. GOV'T CODE § 51230 (emphasis added).

55. *Id.*

56. *Id.* One exception to the contiguity requirement exists: a county or city may incorporate land owned by a single landowner into an agricultural preserve even if the property owner's land is not contiguous with the rest of the preserve. *Id.* Historically, most agricultural preserves were created after landowners petitioned the county or city to create such preserves. Bill Hatch, *Merced County Williamson Act Lawsuit*, BADLANDS JOURNAL, Apr. 5, 2004, *available at* http://www.badlandsjournal.com/old/getarch2.php?title=Merced%20County%20Williamson%20Act%20lawsuit (last visited Nov. 30, 2005). However, a county or city may establish an agricultural preserve without landowners initiating the process. Joint Committee on Open Space Lands, Final Report on the Extension of the Land Conservation Act to Recreational Land, 1970 Leg., 1969-1970 Reg. Sess. (Cal. 1970), *reprinted in* App. J. of the Senate, vol. 1, at 15, 31 (Cal. 1970) (concluding that establishing an agricultural preserve based on a specific zoning ordinance is consistent with the Act).

57. CAL. GOV'T CODE § 51230. Beginning in 1971, a county or city was required to have a general plan

each county or city enrolled in the Act must maintain a map of its agricultural preserves[58] and provide an updated map to California's Director of Conservation on an annual basis.[59] However, California's Department of Conservation has not enforced this requirement, and few counties or cities submit maps of their agricultural preserves each year.[60]

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.[61] While the land is under contract, the property is taxed based on current use rather than on potential fair market value.[62] Each contract has an initial term of at least 10 years.[63] 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.[64] Thus, the contract will continue indefinitely if no changes are made.[65]

To remove a property from the restric-

to establish an agricultural preserve. I*d*. Prior to the public hearing, the county board of supervisors or city council must publish notice in a newspaper of general circulation for one day. I*d*. § 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). In addition to the published notice requirement, the county or city must provide written notice to the Local Agency Formation Commission ("LAFCO") and all cities within one mile of the agricultural preserve's boundaries at least two weeks in advance of the hearing. CAL. GOV'T CODE § 51233. Finally, prior to establishing an agricultural preserve, the county or city must receive a report from the planning department or commission verifying that the agricultural preserve is consistent with the general plan. I*d*. § 51234. If the county or city's planning department or commission is unable to produce a report within thirty days, then the county or city may proceed with establishing the agricultural preserve without the report. I*d*.

58. CAL. GOV'T CODE § 51237.5. The Act does not place a limit on the number or maximum size of agricultural preserves that a county or city can establish within its boundaries. I*d*. § 51230.

59. I*d*. § 51237.5.

60. O'Bryant Email, *supra* note 22. Most counties and cities have submitted maps of contracted land on a non-annual basis. S*ee* Division of Land Resource Protection, Department of Conservation, Index of Maps, *at* ftp://ftp.consrv.ca.gov/pub/dlrp/wa/Map%20and%20PDF/ (last visited Oct. 12, 2005), for a directory of maps provided to the Department of Conservation by counties and cities enrolled in the Act. These maps not only fail to meet the annual requirement, they also do not show the boundaries of the agricultural preserves as required by the Act. S*ee* CAL. GOV'T CODE § 51237.5.

61. CAL. GOV'T CODE § 51230.

62. 2004 STATUS REPORT, *supra* note 6, at 5. To tax the land based on such use, the assessor divides the annual income obtained from the property by a capitalization rate. CALIFORNIA RURAL POLICY TASK FORCE, GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, CALIFORNIA LAND CONSERVATION (WILLIAMSON) ACT TECHNICAL ADVISORY DOCUMENT 6 (2003) [hereinafter WILLIAMSON ACT TECHNICAL ADVISORY], *available at* http://www.assembly.ca.gov/ruralcaucus/documents/Williamson_Act_Fact_Sheet-FINAL_10-30-03%20.doc (last visited Oct. 12, 2005); *see also* CAL REV. & TAX. CODE § 423 (West 2005). The capitalization rate is based on the current interest rate, a risk factor, and the property tax rate. WILLIAMSON ACT TECHNICAL ADVISORY, *supra*, at 7. Proposition 13 amended the California Constitution to provide a real property tax rate limitation, a real property assessment limitation, a restriction on state taxes, and a restriction on local taxes. CAL. CONST. art. XIIIA. The assessment limitation states that the full cash value of real property is the assessed value during the 1975-1976 tax year. If purchased or built after that tax year, the full cash value of the real property is the assessed value in the year it was purchased or built. I*d*. § 2. Thus, because of Proposition 13, the total tax savings associated with the Act vary greatly depending on when the property last changed ownership. Division of Land Resource Protection, *supra* note 36. Even after Proposition 13 passed, studies have found that Williamson Act contracts reduce property taxes by anywhere from 20 percent to 83 percent. I*d*.; WILLIAMSON ACT TECHNICAL ADVISORY, *supra*, at 7.

63. CAL. GOV'T CODE § 51244.

64. Due to this renewal system, every parcel of land that is contracted will have between nine to ten years remaining on the contract indefinitely, unless the nonrenewal process is initiated. I*d*.

65. I*d*. The county or city may also begin the process of nonrenewal by following a procedure similar to that of the property owner. I*d*. § 51245.

tions of a contract, the property owner must file a notice of nonrenewal.[66] After such notice is filed, the contract no longer renews automatically, but the land remains restricted by the contract until the contract expires.[67] Once the land is free from the contract, it is still part of the agricultural preserve.[68] A separate procedure is required to remove the land from the agricultural preserve.[69]

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.[70] The first step, the creation of agricultural preserves, is often viewed as a mere procedural hurdle for entry into these contracts.[71] Although it is true that agricultural preserves are a prerequisite to establishing conservation contracts under the Act, that is not their sole purpose.[72] 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.[73]

As Congress member Williamson declared, the Act was intended to "[protect landowners] from forces that might otherwise drive them out of agriculture."[74] Williamson Act contracts effectively protect landowners from one such force, namely inflated property taxes.[75] Agricultural preserves, however, arguably play an even more important role than contracts in protecting landowners from being driven out of agriculture.[76] 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.[77]

Surrounding uses significantly affect the viability of agricultural or open-space use of a land parcel.[78] 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.[79] 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. REV. & TAX. 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.

74. TULARE COUNTY RESOURCE MANAGEMENT AGENCY, *supra* note 39, at 3.

75. Dale Will, *supra* note 19, at 3-4.

76. *See infra* notes 77-93 and accompanying text.

77. SOKOLOW & BENNETT, *supra* note 1, at 49, *available at* http://aic.ucdavis.edu/research1/Chapt5.pdf (last visited Oct. 12, 2005).

78. J. Dixon Esseks et al., *Estimating the Income, Environmental, and Social Benefits of Agricultural Conservation Easements from the Perspective of Local Stakeholders*, *in* COMPENSATING LANDOWNERS FOR CONSERVING AGRICULTURAL LAND 19, 21 (Alvin D. Sokolow et al. eds., 2003), *available at* http://aic.ucdavis.edu/research1/Conserv.ag.pdf (last visited Sept. 21, 2005).

79. *Id.*

lawsuits and other legal complaints associated with farm odors, noise, dust, and chemical drift.[80] 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.[81]

In 1998, a study determined that approximately ten,726 linear miles[82] of agricultural land in California bordered urban areas,[83] which represented a 23 percent increase from 1988.[84] 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.[85] Thus, in 1998 approximately 2.2 million acres, or 8 percent, of agricultural land in California was affected by proximity to urban areas.[86] Slowing the expansion of nonagricultural uses into agricultural areas is critical to ensuring the long-term conservation of farmland.[87]

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.[88] In addition to preventing the loss of farmland, numerous benefits are associated with protected clusters of agricultural land.[89] Agricultural preserves can slow urban sprawl and increase development concentration and efficiency within existing urban areas.[90] 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.[91] 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.[92] In order to regulate noncontracted land and maintain the integrity of agricultural preserves, the Act establishes substan-

80. I*d*.

81. I*d*.

82. As opposed to nautical miles, a linear mile contains 5280 feet. Nat'l Inst. of Standards and Tech., NIST Handbook 44 - 2006 Edition, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, app. C, at 2, *available at* http://ts.nist.gov/ts/htdocs/230/235/h44-06/PDF/AppendC-06-HB44-Final.pdf (last visited Oct. 12, 2005).

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. I*d*. 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. I*d*. 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. I*d*.

84. I*d*. at 302.

85. I*d*. at 291.

86. I*d*. Excluding rangeland, this formula for calculating "urban borders" establishes that approximately thirteen percent of cropland in California is on an urban border. I*d*.

87. I*d*. at 292-96.

88. Sokolow & Bennett, *supra* note 1, at 49, *available at* http://aic.ucdavis.edu/research1/Chapt5.pdf (last visited Oct. 12, 2005).

89. S*ee infra* notes 90-91 and accompanying text.

90. Sokolow & Bennett, *supra* note 1, at 6, *available at* http://aic.ucdavis.edu/research1/Intro_Chapt1.pdf (last visited Oct. 12, 2005).

91. Esseks, *supra* note 78, at 21.

92. Sokolow & Bennett, *supra* note 1, at 21, *available at* http://aic.ucdavis.edu/research1/Chapt2.pdf (last visited Oct. 12, 2005).

tive and procedural requirements that affect noncontracted lands within the preserves.[93]

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.[94] Therefore, the Act provided ways to regulate both contracted and noncontracted lands contained within the borders of an agricultural preserve.[95] Although the legislature has amended the Act numerous times,[96] it never altered the Act's original intent to regulate agricultural preserves as well as noncontracted lands contained within them.[97]

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.[98] Since 1967, the legislature has made no major modification to the definition of prime agricultural land.[99] Land is classified as prime agricultural land if it meets at least one of five criteria.[ten0]

93. S*ee* discussion *infra* Part II-III.

94. Sokolow & Bennett, *supra* note 1, at 49, *available at* http://aic.ucdavis.edu/research1/Chapt5.pdf (last visited Oct. 12, 2005).

95. "Existing law permits a county board of supervisors [or city council] to impose conditions on lands to be placed within the preserves." A.B. 2663, 1994 Leg., 1993-1994 Reg. Sess. (Cal. 1994), *available at* http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_2651-2700/ab_2663_bill_940930_chaptered (last visited Oct. 12, 2005). "[A]gricultural laborer housing facilities are hereby determined to be compatible uses within any agricultural preserve." Ducheney Farm Worker Housing Act, ch. 967, sec. 2, § 51238(a)(1), 1999 Cal. Stat. 90 (1999) (amending Williamson Act of 1965, ch. 1443, sec. 1, §§ 51200-51295, 1965 Cal. Stat. 3377 (current version at Cal. Gov't Code § 51200-51297.4 (West 2005))), *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1501-1550/ab_1505_bill_19991010_chaptered.pdf (last visited Oct. 12, 2005). See also discussion *infra* Parts II.A-B, for a detailed discussion of ways the Act regulates noncontracted lands.

96. Williamson Act of 1965, ch. 1443, 1965 Cal. Stat. 3377 (amended 1967, 1968, 1969, 1970, 1971, 1972, 1974, 1975, 1976, 1977, 1978, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004) (current version at Cal. Gov't Code § 51200-51297.4), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

97. I*d.*; *see* discussion *infra* Part II.A-B.

98. Williamson Act of 1965, ch. 1443, sec. 1, § 51201(d), 1965 Cal. Stat. 3377, 3377-78 (current version at Cal. Gov't Code §§ 51222, 51238.1(c)(4)) (retaining the Legislature's intent to allow counties to incorporate prime and non-prime agricultural land into an agricultural preserve), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

99. C*ompare* 1967 Williamson Act Amendment, ch. 1004, sec. 1, § 51201(c), 1967 Cal. Stat. 2596, 2596-97, *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005), *with* Cal. Gov't Code § 51201(c).

100. Cal. Gov't Code § 51201(c). Two of the criteria concern land rating systems. I*d.* § 51201(c)(1), (2). Two concern agricultural production per acre of at least two hundred dollars. I*d.* § 51201(c)(4), (5). The two hundred dollar value requirements have not increased since they were first enacted in 1965 and 1967. C*ompare* Williamson Act of 1965, ch. 1443, sec. 1, § 51201(c), 1965 Cal. Stat. 3377, 3377, *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005), *with* Cal. Gov't Code § 51201(c)(5); *compare* 1967 Williamson Act Amendment, ch. 1004, sec. 1, § 51201(c), 1967 Cal. Stat. 2596, 2596-97, *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005), *with* Cal. Gov't Code § 51201(c)(4). The final criterion requires that the land have a carrying capacity of at least one animal unit per acre. Cal. Gov't Code § 51201(c)(3). An animal unit represents 1000 pounds of live animal weight. Thus, one animal unit could consist of less than one cow or hundreds of chickens. Econ. Res. Serv., U.S. Dep't of Agric., C*onfined* A*nimal and* M*anure* N*utrient* D*ata* S*ystem* (Jan. 1, 2001), *at* http://www.ers.usda.gov/Data/manure/default.asp?ERSTab=1 (last visited Oct. 12, 2005).

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.[ten1]

Thus, the original Act allowed a county or city to create use restrictions on prime and nonprime agricultural land within an agricultural preserve.[ten2] The Act, however, only allowed contracts and the associated tax benefits on prime agricultural land within the preserves.[ten3] Therefore, when the Act was first enacted, agricultural preserves may have contained land that a county or city could not contract.[ten4] Thus, when the Act called for use restrictions in agricultural preserves,[ten5] it necessarily included use restrictions that could affect both contracted and noncontracted lands.[ten6]

Over time, the Legislature expanded the Act to allow landowners to place contractual restrictions on nonprime agricultural land as well.[ten7] 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.[ten8] 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.[ten9]

101. Williamson Act of 1965, ch. 1443, sec. 1, § 51201(d), 1965 Cal. Stat. 3377, 3377-78 (current version at CAL. GOV'T CODE § 51230, 51238-51238.2, 51240 (retaining the legislature's intent to allow land use restrictions on contracted and noncontracted land within an agricultural preserve)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

102. I*d*.

103. I*d*. at 3379, § 51240 (repealed 1969).

104. S*ee supra* notes 101-103 and accompanying text.

105. Williamson Act of 1965, ch. 1443, sec. 1, § 51201(d), 1965 Cal. Stat. 3377, 3377-78 (current version at CAL. GOV'T CODE § 51230, 51238-51238.1, 51240 (retaining the legislature's intent to allow land use restrictions on contracted and noncontracted land within an agricultural preserve)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

106. S*ee 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. I*d*.

107. 1969 Williamson Act Amendment, ch. 1372, sec. 11, § 51242, 1969 Cal. Stat. 2806, 2810 (current version at CAL. GOV'T CODE § 51242), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

108. See GEORGE H. MURPHY, CALIFORNIA LEGISLATURE 1969 REGULAR SESSION, SUMMARY DIGEST OF STATUTES ENACTED AND RESOLUTIONS ADOPTED INCLUDING PROPOSED CONSTITUTIONAL AMENDMENTS AND TABLE OF SECTIONS AFFECTED 201, *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005), for a summary of purposes of A.B. 1178 enacted and chaptered at 1372; *see also* A.B. 2663, § 8, 1994 Leg., 1994-1995 Reg. Sess. (Cal. 1994), *available at* http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_2651-2700/ab_2663_bill_940930_chaptered (last visited Oct. 12, 2005).

109. 1994 Williamson Act Amendment, ch. 1251, sec. 5, § 51238.1(c), 1994 Cal. Stat. 7860, 7865-66 (current version at CAL. GOV'T CODE § 51238.1(c)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). Further, the amendment specified the meaning of nonprime agricultural land: "[A] board or council may define nonprime 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." I*d*.

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.[1ten] Regardless, as in the original Act,[111] agricultural preserves can still contain both contracted and noncontracted lands.[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."[113] Thus, the original Act clearly provided counties and cities with great power to regulate agricultural preserves and noncontracted lands within them.[114] Although the Act has been amended numerous times, its intent to protect contracted lands by regulating noncontracted lands within agricultural preserves remains.[115]

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

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." 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).

111. Williamson Act of 1965, ch. 1443, sec. 1, § 51201(d), 1965 Cal. Stat. 3377, 3377-78 (current version at Cal. Gov't Code § 51201(d)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

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

113. Williamson Act of 1965, ch. 1443, sec. 1, § 51255, 1965 Cal. Stat. 3377, 3381 (section repealed 1969), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

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

115. *See* discussion *supra* Part II.A.

116. *See* 1969 Williamson Act Amendment, ch. 1372, sec. 8, art. 2.5, §§ 51230-51239, 1969 Cal. Stat. 2807, 2807-10 (current version at Cal. Gov't Code §§ 51230-51239), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

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. *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." *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." *Del Oro Hills v. City of Oceanside*, 31 Cal. App. 4th 1060, 1074 (Cal. Ct. App. 1995) (citing *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.[118] After the two years lapses, the city or county must impose a minimum level of land use restrictions through zoning.[119]

Nine years later, another amendment to the Act further clarified the ability to regulate uses of noncontracted lands.[120] It specified that counties could establish separate lists of compatible uses on contracted and noncontracted lands.[121] After this amendment, counties could create a less stringent list of compatible uses on noncontracted lands.[122] 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.[123] 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.[124]

The Legislature believed that protecting all lands within an agricultural preserve is so critical to maintaining its integrity that

118. 1969 Williamson Act Amendment, ch. 1372, sec. 8, art. 2.5, § 51230, 1969 Cal. Stat. 2807, 2807-08 (current version at CAL. GOV'T CODE § 51230), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

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 or other suitable means 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. (emphasis added).

119. In the 1969 amendment the county or city could use "zoning or other suitable means" to create the restrictions required after the two-year grace period expired. *Id*. In 1999, this provision was amended to remove "other suitable means" from the provisions language. Ducheney Farm Worker Housing Act, ch. 967, sec. 2, § 51230, 1999 Cal. Stat. 90 (1999) (amending Williamson Act of 1965, ch. 1443, sec. 1, §§ 51200-51295, 1965 Cal. Stat. 3377 (current version at CAL. GOV'T CODE § 51200-51297.4)), *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1501-1550/ab_1505_bill_19991010_chaptered.pdf (last visited Oct. 12, 2005). The Legislature made the amendment to strengthen the Act's regulatory power. *See* S.B. 985, 1999 Leg., 1999-2000 Reg. Sess. § 1(d)-(k) (Cal. 1999), *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).

120. *See* 1978 Williamson Act Amendment, ch. 1120, sec. 3, § 51231, 1978 Cal. Stat. 3426, 3428 (1978) (current version at CAL. GOV'T CODE § 51231), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005); *see also id*. at 3429, sec. 6, § 51238.

121. *See id*. at 3428, sec. 3, § 51231. "[T]he board or council may *enumerate those uses*[, *including agricultural laborer housing*,] which are to be considered to be compatible uses on contracted lands separately from those uses which are to be *considered to be compatible uses on land not under contract within the agricultural preserve*." *Id*. (emphasis added). The bracketed words were added to the provision in 1980. *See* 1980 Williamson Act Amendment, ch. 764, sec. 1, § 51231, 1980 Stat. 2278, 2278 (current version at CAL. GOV'T CODE § 51231), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

122. 1978 Williamson Act Amendment, ch. 1120, sec. 3, § 51231, 1978 Cal. Stat. 3426, 3428 (current version at CAL. GOV'T CODE § 51231), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

123. CAL. GOV'T CODE § 51230.

124 . 1978 Williamson Act Amendment, ch. 1120, sec. 6, § 51238(b), 1978 Cal. Stat. 3426, 3429 (current version at CAL. GOV'T CODE § 51238(b)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). "The board of supervisors may *impose conditions on lands* [*or land uses*] *to be placed within preserves to permit and encourage compatible uses* [in conformity with Section 51238.1], particularly public outdoor recreational uses." *Id*. (emphasis added). The bracketed words were added to the provision in 1994. *See* 1994 Williamson Act Amendment, ch. 1251, sec. 5, § 51238.1(c), 1994 Cal. Stat. 7860, 7865-66 (current version at CAL. GOV'T CODE § 51238.1), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

it even required a county or city to consider whether uses on contracted lands were compatible with agricultural uses on noncontracted lands.[125] The original Act provided guidance regarding the definition of compatible uses.[126] Over the years, the definition has become more specific and more detailed.[127] Although the majority of compatible use requirements apply to contracted lands,[128] the Act provides some compatible use requirements for noncontracted lands.[129] 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.[130]

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.[131] In 1970, the Joint Committee on Open Space Lands declared that the Legislature should not weaken the provision.[132] Since then, the provision has grown stronger.[133] For example, in 1998, an amendment was enacted to limit the development of improvements in agricultural preserves by the federal government whenever possible.[134]

125 . 1994 Williamson Act Amendment, ch. 1251, sec. 5, § 51238.1(a)(3), 1994 Cal. Stat. 7860, 7865 (current version at CAL. GOV'T CODE § 51238.1(a)(3)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

126. Williamson Act of 1965, ch. 1443, sec. 1, § 51201(e), 1965 Cal. Stat. 3377, 3378 (current version at CAL. GOV'T CODE § 51201(e)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

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 ("[C]ities 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.

131. *See* Williamson Act of 1965, ch. 1443, sec. 1, § 51290, 1965 Cal. Stat. 3377, 3384 (current version at CAL. GOV'T CODE § 51290), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005); *see also* S.B. 1835, 1998 Leg., 1997-1998 Reg. Sess. pt. 4 (Cal. 1998) ("Existing provisions of the Williamson Act also require the state to avoid, whenever practicable, the location of any public improvement by a state or local public agency, and the acquisition of the land therefore, in agricultural preserves.").

132. Joint Committee on Open Space Lands, Final Report on the Extension of the Land Conservation Act to Recreational Land, 1970 Leg., 1969-1970 Reg. Sess. (Cal. 1970), *reprinted in* App. J. of the Senate, vol. 1, at 15, 31 (Cal. 1970).

133. *Compare* 1969 Williamson Act Amendment, ch. 1372, sec. 8, § 51290, 1969 Cal. Stat. 2806, 2807-10, *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005), *with* CAL. GOV'T CODE § 51290.

134. 1998 Williamson Act Amendment, ch. 690, sec. 5, § 51290, 1998 Cal. Stat. 93 (current version at

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.[135] 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.[136] In 1984, the Act was amended to specify more precisely the kinds of comments the Director of Conservation must make.[137]

> [T]he 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][138] of Food and Agriculture on any other matters related to agricultural operations.[139]

With the exception of a list of public uses deemed compatible by the Legislature in 1965 and 1967,[140] 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-

CAL. GOV'T CODE § 51290), *available at* http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_1801-1850/sb_1835_bill_19980922_chaptered.pdf (last visited Oct. 12, 2005). This provision has never been challenged. As the Constitution's Supremacy Clause invalidates any state law that frustrates the full effectiveness of a federal law, the constitutionality of the amendment is questionable. U.S. CONST. art. VI, cl. 2. Nonetheless, the amendment demonstrates the extent to which the Legislature wanted to restrict public entities' entitlements for use of land within an agricultural preserve.

135. Williamson Act of 1965, ch. 1443, sec. 1, §§ 51290(c), 51291(b), 51292, 51293, 1965 Cal. Stat. 3377, 3384 (current version at CAL. GOV'T CODE §§ 51290(c), 51291(b)-(d), 51292-51293.1 (retaining and adding procedure for a public agency to use land within an agricultural preserve)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

136. Williamson Act of 1965, ch. 1443, sec. 1, § 51291(b), 1965 Cal. Stat. 3377, 3384-85 (current version at CAL. GOV'T CODE § 51291(b)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). After the Department of Conservation was established, the provision was changed to require that public agencies consult with the Department of Conservation and not the Department of Agriculture. 1984 Williamson Act Amendment, ch. 851, sec. 4, § 51291, 1984 Cal. Stat. 2886, 2887 (current version at CAL. GOV'T CODE § 51291), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). The Legislature exempted certain public improvements that were considered compatible with agricultural uses from these procedural requirements. Williamson Act of 1965, ch. 1443, sec. 1, § 51293, 1965 Cal. Stat. 3377, 3385-86 (current version at CAL. GOV'T CODE § 51293), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). *See* 1967 Williamson Act Amendment, ch. 1371, sec. 14, §§ 51291(b), 51293.1, 1967 Cal. Stat. 3214, 3221 (current version at CAL. GOV'T CODE §§ 51291(b), 51293.1), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005), for additional exemptions added by this amendment.

137. 1984 Williamson Act Amendment, ch. 851, sec. 4, § 51291(b), 1984 Cal. Stat. 2886, 2887 (current version at CAL. GOV'T CODE § 51291(b)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

138. In 1998, the provision was amended to replace "Department" with "Secretary." 1998 Williamson Act Amendment, ch. 690, sec. 6, § 51291(b), 1998 Cal. Stat. 93 (1998) (current version at CAL. GOV'T CODE § 51291(b)), *available at* http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_1801-1850/sb_1835_bill_19980922_chaptered.pdf (last visited Oct. 12, 2005).

139. 1984 Williamson Act Amendment, ch. 851, sec. 4, § 51291(b), 1984 Cal. Stat. 2886, 2887 (current version at CAL. GOV'T CODE § 51291(b)) (emphasis added), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

140. Williamson Act of 1965, ch. 1443, sec. 1, § 51293, 1965 Cal. Stat. 3377, 3385-86 (current version at CAL. GOV'T CODE § 51293), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005); 1967 Williamson Act Amendment, ch. 1371, sec. 14, §§ 51291(b), 51293.1, 1967 Cal. Stat. 3214, 3221 (current version at CAL. GOV'T CODE §§ 51291(b), 51293.1), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

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

141. 1967 Williamson Act Amendment, ch. 1371, sec. 14, § 51293.1, 1967 Cal. Stat. 3214, 3221 (current version at CAL. GOV'T CODE § 51293.1), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

142. Williamson Act of 1965, ch. 1443, sec. 1, § 51290(c), 1965 Cal. Stat. 3377, 3384 (current version at CAL. GOV'T CODE § 51290(c)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

143. I*d*. at 3385, § 51292(a) (current version at CAL. GOV'T CODE § 51292(a)).

144. I*d*. 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. I*d*. at 3384, § 51290(a) (current version at CAL. GOV'T CODE § 51290(a)).

146. I*d*. at 3384-86, §§ 51290-51295 (current version at CAL. GOV'T CODE §§ 51290-51295); *see* discussion *supra* Part II.B.2.

147. Second 1984 Williamson Act Amendment, ch. 1111, sec. 1, § 51222, 1984 Cal. Stat. 3737, 3737 (current version at CAL. GOV'T CODE § 51222), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

148. I*d*. Initially this provision was set to expire on January 1, 1991. I*d*. In 1990, an amendment to the Act made the provision permanent. 1990 Williamson Act Amendment, ch. 841, sec. 3, § 51222, 1990 Cal. Stat. 3641, 3642 (current version at CAL. GOV'T CODE § 51222), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

149. I*d*.

150. 1999 Williamson Act Amendment, ch. 1018, sec. 3, § 51230, 1999 Cal. Stat. 90, 90 (current version at CAL. GOV'T CODE § 51230), *available at* http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0951-1000/sb_985_bill_19991010_chaptered.pdf (last visited Oct. 12, 2005); *see supra* text accompanying note 129.

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 965, 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]

151. 1999 Williamson Act Amendment, ch. 1018, sec. 3, § 51230, 1999 Cal. Stat. 90, 90 (current version at CAL. GOV'T CODE § 51230), *available at* http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0951-1000/sb_985_bill_19991010_chaptered.pdf (last visited Oct. 12, 2005); *see supra* text accompanying note 129; *see also* 1990 Williamson Act Amendment, ch. 841, sec. 3, § 51222, 1990 Cal. Stat. 3641, 3642 (current version at CAL. GOV'T CODE § 51222), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

152. Williamson Act of 1965, ch. 1443, sec. 1, §§ 51200-51295, 1965 Cal. Stat. 3377 (current version at CAL. GOV'T CODE 51200-51297.4), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

153. Second 1967 Williamson Act Amendment, ch. 1004, sec. 1, § 51201(d), 1967 Cal. Stat. 2596, 2597 (current version at CAL. GOV'T CODE § 51230 (retaining Legislature's intent to 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). In 1969, this language was among the sections concerning agricultural preserves that was rephrased and relocated to the new article on agricultural preserves. 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. I*d*. 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 § 51233), *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. I*d*.

156. I*d*. The county or city must publish the notice in a newspaper of general circulation for one day. S*ee id*. §§ 6060, 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. I*d*. 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,

Two other sections that provide procedures for establishing agricultural preserves are also relevant when altering them.[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.[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.[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.[160] After reviewing the report, the board of supervisors has discretion to approve or deny the removal.[161] It is mandatory that a county complete these procedural steps before a landowner can remove land from an agricultural preserve.[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.[163] With one exception,[164] the Act requires that agricultural preserves contain at least 100 acres of land.[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.[166] The 1969 amendments retained the 100 acre requirement to establish an agricultural preserve,[167] but the consequences of a preserve dropping below the

1978 Cal. Stat. 3426, 3429, *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005), *and* CAL. GOV'T CODE § 51232, *with* 1969 Williamson Act Amendment, ch. 1372, sec. 8, art. 2.5, § 51232, 1969 Cal. Stat. 2807, 2808, *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005). Further, the LAFCO and cities within one mile of the outer boundary of the agricultural preserve must receive written notice at least two weeks before the hearing. CAL. GOV'T CODE § 51233.

157. CAL. GOV'T CODE §§ 51231, 51234; *see supra* text accompanying note 153.

158. CAL. GOV'T CODE § 51231; *see supra* text accompanying note 153.

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.

160. CAL. GOV'T CODE § 51234.

161. *Id.*

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).

163. *See infra* notes 164-172 and accompanying text.

164. CAL. GOV'T CODE § 51230.

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.

Id.

165. *Id.*

An agricultural preserve shall consist of no less than 100 acres; provided, that in order to meet this requirement two or more parcels may be combined if they are contiguous or if they are in common ownership.

Id.

166. Williamson Act of 1965, ch. 1443, sec. 1, § 51242(b), 1965 Cal. Stat. 3377, 3379 (amended 1969) (current version CAL. GOV'T CODE § 51242), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

No city or county may contract with respect to any land pursuant to this chapter unless the land . . . [i]s located within an area designated by a city or county as an agricultural preserve containing not less than 100 acres.

Id.

167. 1969 Williamson Act Amendment, ch. 1372, sec. 8, art. 2.5, § 51230, 1969 Cal. Stat. 2806, 2807-08 (current version at CAL. GOV'T CODE § 51230), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

An agricultural preserve shall consist of no less than 100 acres. . . . A county or city may establish agricultural

100-acre requirement became more vague because the 1969 amendment did not explicitly list the 100-acre requirement as a prerequisite to contracting.[168] In 1984, an amendment to the Act re-clarified the impact of such an occurrence.[169] Based on the 1984 amendment, if an agricultural preserve drops below the 100-acre requirement, with the one exception,[170] it no longer meets the definition of an agricultural preserve.[171] If an area does not meet the definition of an agricultural preserve, no landowner in the area can enter a Williamson Act contract.[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.[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.[174] Therefore, it is also critical that cities and counties follow the guidelines established by CEQA.

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.

I*d*.

168. I*d*. at 2810, § 51242 (current version CAL. GOV'T CODE § 51242).

No city or county may contract with respect to any land pursuant to this chapter unless the land:

(a) Is devoted to agricultural use.

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

I*d*. 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. I*d*. However, the provision still required that the contracting property owner's land be within an area meeting the definition of an agricultural preserve. I*d*.

169. 1981 Williamson Act Amendment, ch. 845, sec. 1, § 51246(c), 1981 Cal. Stat. 3262, 3262 (current version at CAL. GOV'T CODE § 51246(c)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

In order to meet the minimum acreage requirement of an agricultural preserve pursuant to Section 51230, *land formerly within the agricultural preserve* which is zoned timberland production . . . may be taken into account.

I*d*. (emphasis added). 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.

170. CAL. GOV'T CODE § 51230; *see supra* note 167.

171. Absent the explicit exception, an area less than one hundred acres does not meet the definition of an agricultural preserve. CAL. GOV'T CODE §§ 51230, 51242; *see also supra* text accompanying note 169.

172. CAL. GOV'T CODE § 51242; *see supra* text accompanying note 168.

173. Esseks, *supra* note 78.

174. S*ee* 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-

175. Although the courts have not considered the CEQA implications of removing land from an agricultural preserve, they have addressed the CEQA implications of canceling a Williamson Act contract. F*riends of E*a*st Willits Valley v. County of M*e*ndocino*, 101 Cal. App. 4th 191, 209 (Cal. Ct. App. 2002) (determining that CEQA findings are required to approve a petition for cancellation of a Williamson Act contract). Further, in 2000, the California Legislature stated, "[l]ike all discretionary decisions involving development projects, the cancellation of a Williamson Act contract is subject to the California Environmental Quality Act (CEQA)." S*ee* A.B. 1944, 2000 Leg., 1999-2000 Reg. Sess. (Cal. 2000), *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1901-1950/ab_1944_cfa_20000819_122626_sen_floor.html (last visited Oct. 12, 2005).

176. Cal. Code Regs. tit. 14, § 15317 (2005).

177. I*d*.

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. T*he cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the* CEQA *process*.

I*d*. (emphasis added).

178. S*ee 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. S*ee* Cal. Gov't Code § 51231.

182. S*ee id*. § 51230; *see K*e*lsey v. C*o*lwell*, 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).

183. N*atural Resources Defense Council, I*n*c. v. A*r*cata N*a*t'l C*o*rp*., 59 Cal. App. 3d 959, 970 (Cal. Ct. App. 1976).

184. S*ee supra* text accompanying notes 179-183.

185. Cal. Pub. Res. Code § 21080(a) (West 2005).

186. S*ee* discussion *supra* Part IV.A.

moval is a project. In F*riends of* M*ammoth v.* B*oard of* S*upervisors*, 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 F*riends of* M*ammoth*.[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]

1. 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-

187. F*riends of* M*ammoth v.* B*d. of* S*upervisors*, 8 Cal. 3d 247, 256 (Cal. 1972).

188. 1972 CEQA Amendment, ch. 1154, sec. 1, § 21065(c), 1972 Cal. Stat. 2270, 2271-72 (1972) (current version at CAL. PUB. RES. CODE § 21065(c)), *available at* http://192.234.213.35/clerkarchive/ (last visited Oct. 12, 2005).

189. CAL. PUB. RES. CODE § 21065 (emphasis added).

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.

CAL. CODE REGS. tit. 14, § 15064(d)(2)-(3) (2005).

192. CAL. PUB. RES. CODE § 21065.

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.

195. CAL. GOV'T CODE § 51231 (West 2005).

196. *See id*. § 51238.

197. *See supra* text accompanying notes 193-196. Action upon an entitlement is not required for an entitlement to exist. B*ozung v.* L*ocal* A*gency* F*ormation* C*omm'n*, 13 Cal. 3d 263, 279 (Cal. 1975).

serve.[198] The Act establishes several hurdles to prevent public entities at all levels, local, state, and federal, from developing land within an agricultural preserve.[199] 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.[200] The Act only regulates land within an agricultural preserve. Therefore, by removing land from an agricultural preserve a public entity can avoid these requirements.[201]

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."[202] Removing land from an agricultural preserve increases the entitlement for use of two types of persons.[203] 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.[204] 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.[205] In *Rosenthal*, no specific development projects were associated with at least four of the five rezoning ordinances.[206] Nevertheless, because rezoning expanded allowable uses on the land,[207] CEQA required the county or city to consider whether the projects had significant impacts on the environment.[208]

In *City of Carmel-By-The-Sea v. Board of Supervisors*, a California court of appeal reached a similar conclusion.[209] *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.[2ten] 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."[211] 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.[212] "[S]uch difficulty only reduces the level of specificity required and shifts the focus to the secondary effects."[213]

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.[214] 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.

202. CAL. PUB. RES. CODE § 21065 (West 2005).

203. *See* discussion *supra* Part IV.B.1.

204. *See Rosenthal v. Bd. of Supervisors*, 44 Cal. App. 3d 815 (Cal. Ct. App. 1975); *City of Carmel-by-the-Sea v. Bd. of Supervisors*, 183 Cal. App. 3d 229 (Cal. Ct. App. 1986).

205. *Rosenthal*, 44 Cal. App. 3d at 824.

206. *Id.* at 821-22.

207. *Id.* at 818-19.

208. *Id.* at 824.

209. *City of Carmel-by-the-Sea*, 183 Cal. App. 3d at 245.

210. *Id.* at 234.

211. *Id.* at 244.

212. *Id.* at 250; *see* CAL. CODE REGS. tit. 14, § 15357 (West 2005).

213. *City of Carmel-by-the-Sea*, 183 Cal. App. 3d at 250.

214. *Bozung v. Local Agency Formation Comm'n*, 13 Cal. 3d 263, 279 (Cal. 1975).

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"[215] and "regulate the use of land."[216] Similarly, agricultural preserves are designed to "discourage discontiguous urban development patterns"[217] and preserve agricultural and open-space lands, "the use of which may be limited under the provisions of [the Act]."[218] Moreover, both zoning[219] and agricultural preserves[220] directly affect a person's entitlement for use. Therefore, agricultural preserves substantively resemble zoning. More specifically, they resemble overlay zoning[221] because, like overlay zoning, they essentially "[add] a supplemental zoning classification to the existing base use classification for a property."[222]

An amendment to a zoning ordinance is considered a project under CEQA,[223] even if the amendment is not associated directly with a development project.[224] 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.[225] 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.[226] 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.[227] In other words, an annexation by itself, unlike the

215. *Granberg v. Turnham*, 166 Cal. App. 2d 390, 396 (Cal. Ct. App. 1958).

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).

222. *Compare* Alejandro Esteban Camacho, *Mustering the Missing Voices: A Collaborative Model for Fostering Equality, Community Involvement and Adaptive Planning in Land Use Decisions*, 24 STAN. ENVTL. L. J. 3, 17 n. 55 (2005) (defining overlay zoning), *with* discussion *supra* Parts II-III (establishing that agricultural preserve status places restrictions, above and beyond those established by the zoning ordinance, on the land contained within).

223. *See* CAL. PUB. RES. CODE § 21080(a); *City of Santa Ana v. City of Garden Grove*, 100 Cal. App. 3d 521, 531 (Cal. Ct. App. 1979).

224. *See Rosenthal v. Bd. of Supervisors*, 44 Cal. App. 3d 815 (Cal. Ct. App. 1975); *City of Carmel-by-the-Sea v. Bd. of Supervisors*, 183 Cal. App. 3d 229 (Cal. Ct. App. 1986).

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).

226. *See Simi Valley Recreation & Park Dist. v. Local Agency Formation Comm'n*, 51 Cal. App. 3d 648, 665-66 (Cal. Ct. App. 1975); *People ex rel. Younger v. Local Agency Formation Comm'n*, 81 Cal.App.3d 464, 473 (Cal. Ct. App. 1978).

227. *See Simi Valley Recreation & Park Dist.*, 51 Cal. App. 3d at 665-66; *People ex rel. Younger*, 81 Cal. App. 3d at 473.

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 Commission*, 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:

> [N]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. . . . [The] 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.

229. *See* CAL. PUB. RES. CODE § 21080(a) (West 2005).

230. *See id.*

231. *Bozung v. Local Agency Formation Comm'n*, 13 Cal. 3d 263, 269, 273 (Cal. 1975).

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.

235. *See generally Simi Valley Recreation & Park Dist.*, 51 Cal. App. 3d 648.

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.[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,"[242] CEQA review is required. In addition, because CEQA mandates review "at the earliest possible stage,"[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.[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.[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]."[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."[247]

Especially when cumulative effects[248] are considered, removing land from an agricultural preserve should usually meet the fair argument standard.[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."[250] As previously discussed,[251] removal of land from an agricultural preserve may have a significant impact on numerous aspects of the environment, as defined by CEQA.[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.[253] Within the first three years of adopting the Act, landowners in Merced County placed more acres under contract than landown-

241. S*ee* discussion *supra* Part IV.B.3-4.

242. CAL. PUB. RES. CODE § 21065 (West 2005); *see* discussion *supra* Part IV.B.2.

243. *Bozung v. Local Agency Formation Comm'n*, 13 Cal. 3d 263, 282 (Cal. 1975).

244. S*ee* discussion *supra* Part IV.B.

245. N*o 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.

246. N*o Oil, Inc.*, 13 Cal. 3d at 75.

247. CAL. PUB. RES. CODE § 21060.5.

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.

CAL. CODE REGS. tit. 14, § 15355 (2005).

249. S*ee* discussion *supra* Part I.C.

250. CAL. GOV'T CODE § 51220(d).

251. S*ee* discussion *supra* Part I.C.

252. I*d.*; *see* CAL. PUB. RES. CODE § 21060.5.

253. WILLIAMSON ACT TECHNICAL ADVISORY, *supra* note 62, at 2.

ers in any other county during the same period.[254] In total, Merced County has entered into contracts on 417,318 acres of land.[255] Of this, 240,515 acres are prime agricultural land and 176,803 acres are nonprime agricultural land.[256] In 2003, the Merced County Williamson Act program received the eighth largest amount of subvention payments[257] from the state,[258] totaling $1,376,478.[259] Overall, Merced County is ranked fifteenth in total acreage covered by Williamson Act contracts.[260]

Merced County provides an interesting case study because it is young, in terms of its participation in the Act,[261] yet its program has expanded rapidly.[262] This is not a comprehensive analysis. It will focus on how the county established its preserve[263] and on flaws in its administration.[264] 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.[265] Landowners within an agricultural preserve could enter contracts with the county beginning September 1, 2000.[266] Merced County chose to implement a blanket agricultural preserve[267] 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).[268] As a result, this preserve included a vast amount of land.[269] Despite its wide reach, few Merced County farmers are aware that their land is part of this agricultural preserve.[270]

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

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

255. I*d*. at 26.

256. I*d*.

257. A subvention payment is financial assistance often provided to a local government by the state or federal government. D*orcich v.* J*ohnson*, 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. I*d*. at 2.

260. I*d*. at 26.

261. Williamson Act Technical Advisory, *supra* note 62, at 2.

262. I*d*.; 2004 Status Report, *supra* note 6, at 4.

263. S*ee* discussion *infra* Part V.A.

264. S*ee* discussion *infra* Parts V.B-C.

265. County of Merced, Rules of Procedure to Implement the California Land Conservation Act of 1965, Board of Supervisors Res. No. 2000-137 (2000) [hereinafter County of Merced Board of Supervisors Res. No. 2000-137], *available at* http://web.co.merced.ca.us/williamsonact/pdfs/rulesprocedures.pdf#search='CALIFORNIA%20LAND%20CONSERVATION%20ACT%20merced' (last visited Oct. 12, 2005).

266. I*d*. 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. I*d*. at 2, B.1.a.

268. I*d*.

269. Bill Hatch, *supra* note 56.

270. I*d*.

Merced to adopt the Act as "mitigation for UC Merced."[271] 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.[272] This amendment made the county's intent seem less like long-term conservation of agricultural land and more like a tax break before development.[273]

Traditionally, landowners established agricultural preserves by petitioning their county board of supervisors or city council.[274] Merced County, however, established a blanket preserve based on county zoning. [275] Merced County was not the first county to establish a blanket preserve.[276] Stanislaus County utilized this method when it created its agricultural preserve on October 20, 1970.[277] 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."[278] Although applying a blanket agricultural preserve to specific zoning ordinances clearly has some advantages,[279] 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.[280] One landowner requested that the county exempt his property from the agricultural preserve.[281] His request was denied.[282]

Under the Act, the county had the right to deny the landowner's exemption request.[283] 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."[284] This statement indicates that Supervisor Kelsey clearly did not understand that once the agricultural preserve was established, all landowners within the preserve would be

271. I*d*.

272. Minutes of the Merced County Board of Supervisors Regular Meeting, Williamson Act Working Group, Public Hearing on the Establishment of an Agricultural Preserve as per the Provisions of the California Land Conservation Act of 1965, at 12 (Aug. 22, 2000) [hereinafter Minutes of the Merced County Board of Supervisors Regular Meeting (Aug. 22, 2000)], *available at* http://web.co.merced.ca.us/bos/pdfs/2000sam/08222000F.pdf (last visited Oct. 12, 2005).

273 Bill Hatch, *supra* note 56.

274 I*d*.; Tulare County Resource Management Agency, *supra* note 39, at 4 ("The Board of Supervisors creates an Agricultural Preserve at the request of the landowner."). Tulare County established its first Agricultural Preserves in 1967. I*d*.

275. County of Merced Board of Supervisors Res. No. 2000-137, *supra* note 265, at 2, B.1.a. See *supra* note 267 for a definition of "blanket agricultural preserve."

276. Stanislaus County Department of Planning and Community Development, Williamson Act Information, at 1 (1990) (on file with author).

277. I*d*. at 6.

278. Joint Committee on Open Space Lands, Final Report on the Extension of the Land Conservation Act to Recreational Land, 1970 Leg., 1969-1970 Reg. Sess. (Cal. 1970), *reprinted in* App. J. of the Senate, vol. 1, at 15, 31 (Cal. 1970).

279. I*d*.

280. S*ee* Minutes of the Merced County Board of Supervisors Regular Meeting (Aug. 22, 2000), *supra* note 272, at 11.

281. I*d*.

282. I*d*.

283. K*elsey v. Colwell*, 30 Cal. App. 3d 590, 595 (Cal. Ct. App. 1973) (holding that a county or city's implementation of the Act is discretionary).

284. Minutes of the Merced County Board of Supervisors Regular Meeting (Aug. 22, 2000), *supra* note 272, at 11.

subject to Act restrictions.[285] 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.[286]

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."[287] 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."[288] 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.[289]

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.[290] By incorporating land into an agricultural preserve, new procedural hurdles are attached to development of the land[291] and additional restrictions are placed on the government and landowner's entitlement for use.[292]

The Act provides a county or city with significant discretion in establishing its own procedure and regulations for administration of agricultural preserves.[293] A county or city cannot, however, bypass the procedures and regulations established by the state legislature.[294] 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.[295]

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.[296] 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.[297]

Based on the procedure established by Merced County, landowners may request the county to remove their land from the agricultural preserve.[298] This does not mean, however, that the county can skip the state-mandated procedure for removing the

285. S*ee* discussion *supra* Part II-III.

286. I*d*.

287. Minutes of the Merced County Board of Supervisors Regular Meeting (Aug. 22, 2000), *supra* note 272, at 11.

288. I*d*.

289. S*ee* discussion *supra* Part II.

290. I*d*.

291. I*d*.

292. I*d*.

293. Cal. Gov't Code § 51231 (West 2005).

294. *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).

295. S*ee* discussion *supra* Part II.

296. S*ee* discussion *supra* Part III.

297. County of Merced Board of Supervisors Res. No. 2000-137, *supra* note 265, at 3, B.3.a.

298. I*d*.

land.[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.[300] Unfortunately, Merced County has generally not followed the state-mandated procedure to remove land from its agricultural preserve.[301]

In 2004, Supervisor Kelsey reaffirmed "that people who did not want to participate [in the Act] could opt out."[302] Since the Act was implemented in Merced County, the county has removed property from the agricultural preserve through rezoning on at least ten occasions.[303] The Board of Supervisors recognized that changing zoning removed land from the agricultural preserve in only two of these hearings.[304] During the other eight hearings the Board of Supervisors did not acknowledge that the land in question was part of Merced County's agricultural preserve.[305]

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).

300. *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).

301. *See* discussion *supra* Part III; *see also infra* notes 302-329 and accompanying text.

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).

303. *See* Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning and Community Development, at 8-9 (Sept. 28, 2004), *available at* http://web.co.merced.ca.us/bos/pdfs/2004sam/09282004.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning and Community Development, at 9-12 (Aug. 31, 2004), *available at* http://web.co.merced.ca.us/bos/pdfs/2004sam/08312004.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning, at 14-15 (Apr. 27, 2004), *available at* http://web.co.merced.ca.us/bos/pdfs/2004sam/04272004.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Continued Public Hearing on Planning, at 7-8 (Feb. 10, 2004), *available at* http://web.co.merced.ca.us/bos/pdfs/2004sam/02102004.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning Regarding General Plan Amendment No. 02006, Zone Change No. 02009, Property Line Adjustment No. 02033, at 11 (Apr. 29, 2003), *available at* http://web.co.merced.ca.us/bos/pdfs/2003sam/04292003.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning Regarding Amendment of the Agricultural Preserve Under the California Land Conservation Act of 1965 (Williamson Act) in Merced County, at 10 (Mar. 25, 2003), *available at* http://web.co.merced.ca.us/bos/pdfs/2003sam/03252003.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning Regarding General Plan Amendment No. 99001, Zone Change Application No. 99001 and Master Plan, Pacific ComTech Park, at 16-17 (Dec. 17, 2002), *available at* http://web.co.merced.ca.us/bos/pdfs/2002sam/12172002.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning Regarding General Plan Amendment No. 02003, Zone Change Application No. 02003, and Administrative Permit Application No. 02021, at 12-15 (Jul. 23, 2002), *available at* http://web.co.merced.ca.us/bos/pdfs/2002sam/07232002.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning Regarding General Plan Amendment No. 01001 and Zone Change No. 01002, at 9 (Oct. 2, 2001), *available at* http://web.co.merced.ca.us/bos/pdfs/2001sam/10022001F.pdf (last visited Oct. 12, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning Regarding General Plan Amendment No. 99012, Parallel Zone Change No. 99013, and Conditional Use Permit No. 00006, at 11-13 (Jul. 24, 2001), *available at* http://web.co.merced.ca.us/bos/pdfs/2001sam/07242001F.pdf (last visited Oct. 12, 2005).

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.

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.[306] 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.[307] More recently, a project involved rezoning 655 acres of A-2 zoned property to allow for a development project called "Yosemite Lake Estates."[308] During this hearing, a nearby property owner expressed his concern that the project was a "leapfrog development [that] promote[d] urban sprawl."[309] 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.[3ten]

Merced County's failure to follow mandated procedure for removing land from the agricultural preserve clearly violates the Act.[311] 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.[312] In other words, the hearings made no mention of the Act or the preserve.[313] The Board of Supervisors, therefore, not only violated the Act's notice requirement,[314] but also violated the hearing requirement by failing to discuss the removals from the agricultural preserve.[315]

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.[316] As discussed earlier,[317] the Legislature amended the Act to require counties to change the zoning of land within

note 303, at 8-9; Minutes of the Merced County Board of Supervisors Regular Meeting, (Aug. 31, 2004), *supra* note 303, at 9-12; 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. 29, 2003), *supra* note 303, at 11; Minutes of the Merced County Board of Supervisors Regular Meeting (Dec. 17, 2002), *supra* note 303, at 16-17; Minutes of the Merced County Board of Supervisors Regular Meeting (Jul. 23, 2002), *supra* note 303, at 12-15; Minutes of the Merced County Board of Supervisors Regular Meeting (Oct. 2, 2001), *supra* note 303, at 9; Minutes of the Merced County Board of Supervisors Regular Meeting (Jul. 24, 2001), *supra* note 303, at 11-13.

306. Minutes of the Merced County Board of Supervisors Summary Action Minutes Regular Meeting (Dec. 17, 2002), *supra* note 303, at 16-17.

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

308. Minutes of the Merced County Board of Supervisors Regular Meeting, (Apr. 27, 2004), *supra* note 303, at 14-15.

309. I*d*.

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. During the hearing on December 17, 2002, one supervisor abstained from voting. Minutes of the Merced County Board of Supervisors Summary Action Minutes Regular Meeting (Dec. 17, 2002), *supra* note 303, at 17.

311. S*ee* discussion *supra* Part III.

312. S*ee* discussion *supra* Part I.B.2.c.; *see* sources cited *supra* note 305.

313. S*ee* discussion *supra* Part I.B.2.c.; *see* sources cited *supra* note 305.

314. S*ee* discussion *supra* Part I.B.2.c.

315. I*d*.

316. S*ee* S.B. 985, 1999 Leg., 1999-2000 Reg. Sess. § 1(f)-(k) (Cal. 1999) (enacted), *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).

317. S*ee* discussion *supra* Part III.

a preserve if necessary to ensure compliance within the two-year window provided for in the Act.[318] 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 [A]ct, and without that requirement the purpose of the [A]ct can be seriously undermined by subminimum parcel sizes and incompatible uses within those preserves.[319]

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.[320] In Merced County, the minimum parcel size allowed in A-1 zoning is twenty acres.[321] However, within an agricultural preserve, the Act requires that parcels of nonprime agricultural land to be at least 40 acres.[322] 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.[323] 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.[324]

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.[325] Since the

318. CAL. GOV'T CODE § 51230 (West 2005); *see* discussion *supra* Part III.

319. S.B. 985, 1999 Leg., 1999-2000 Reg. Sess. § 1(g) (Cal. 1999) (enacted), *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).

320. Maps on file with author.

321. MERCED COUNTY, CAL., ZONING ORDINANCES ch. 18, art. 2, § 1(b)(1) (2004), *available at* http://codemanage.com/mercedcounty/index.php?topic=18-18_02-18_02_010 (last visited Oct. 12, 2005)

322. CAL. GOV'T CODE §§ 51222, 51230; *see* discussion *supra* Part II.B.3.

323. In Merced, landowners could begin contracting on January 1, 2001. COUNTY OF MERCED BOARD OF SUPERVISORS RES. NO. 2000-137, *supra* note 265, at 6, C.4.c. Thus, the two-year window expired in early 2003.

324. *See* MERCED COUNTY, CAL., ZONING ORDINANCES ch. 18, art. 2, § 1(b)(1) (2004), *available at* http://codemanage.com/mercedcounty/index.php?topic=18-18_02-18_02_010. In Merced County, A-1-40 zoning requires a minimum parcel size of forty acres. This forty-acre minimum is compatible with the forty-acre minimum parcel size requirement for nonprime agricultural land within an agricultural preserve. 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 Regarding an Appeal of the Planning Commission Denial of Zone Variance Application No. 03001 and Minor Subdivision Application No. 03003 (Jun. 24, 2003), at 12 (subdividing a parcel into 11.2 and 1.7 acre parcels), *available at* http://web.co.merced.ca.us/bos/pdfs/2003sam/06242003.pdf (last visited Apr. 5, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning and Community Development (Mar. 18, 2003), at 8-9 (subdividing a thirty-three acre parcel below the minimum acreage allowed in Merced County's agricultural preserve), *available at* http://web.co.merced.ca.us/bos/pdfs/2003sam/03182003.pdf (last visited Apr. 5, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning and Community Development (Dec. 3, 2002), at 12-13 (subdividing a parcel into 13.4 and 4.4 acre parcels), *available at* http://web.co.merced.ca.us/bos/pdfs/2002sam/12032002.pdf (last visited Apr. 5, 2005); 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 11-12 (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.[326] 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]."[327] 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."[328] None of the subdivision hearings addressed how the subdivisions conflicted with the Act.[329]

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

The county has rarely complied with CEQA when removing land from the preserve.[330] In fact, when removing land from an agricultural preserve, it appears the county has complied with CEQA on only two occasions.[331] Both of these removals were associated with development projects that would remove the land from agricultural production.[332] But, Merced County is not alone.[333] 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.[334]

bos/pdfs/2002sam/10222002.pdf (last visited Apr. 5, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning and Community Development (Sep. 24, 2002), at 6-7 (subdividing a parcel into 2.4 and one acre parcels), *available at* http://web.co.merced.ca.us/bos/pdfs/2002sam/09242002.pdf (last visited Apr. 5, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning and Community Development (Aug. 20, 2002), at 10-11 (subdividing a parcel into 4.2, 18.7, and 19.1 acre parcels), *available at* http://web.co.merced.ca.us/bos/pdfs/2002sam/08202002.pdf (last visited Apr. 5, 2005); Minutes of the Merced County Board of Supervisors Regular Meeting, Public Hearing on Planning Regarding an Appeal of Denial of Zone Variance Application No. 01023 and Minor Subdivision Application No. 01057 (Mar. 12, 2002), at 8-10 (subdividing a parcel into 2.75 and five acre parcels), *available at* http://web.co.merced.ca.us/bos/pdfs/2002sam/03122002.pdf (last visited Apr. 5, 2005).

326. S*ee* sources cited *supra* note 325.

327. Minutes of the Merced County Board of Supervisors Regular Meeting (Mar. 18, 2003), *supra* note 325, at 8-9.

328. Minutes of the Merced County Board of Supervisors Regular Meeting (Jun. 24, 2003), *supra* note 325, at 12.

329. S*ee* sources cited *supra* note 325.

330. S*ee* discussion *supra* Part III.B-C.

331. S*ee* Minutes of the Merced County Board of Supervisors Regular Meeting (Feb. 10, 2004), *supra* note 303, at 7-8; Minutes of the Merced County Board of Supervisors Regular Meeting (Mar. 25, 2003), *supra* note 303, at 10.

332. Minutes of the Merced County Board of Supervisors Regular Meeting (Feb. 10, 2004), *supra* note 303, at 7-8; Minutes of the Merced County Board of Supervisors Regular Meeting (Mar. 25, 2003), *supra* note 303, at 10.

333. O'Bryant Email, *supra* note 22.

334. I*d*.

335. S*ee* discussion *supra* Part V.

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 discontiguous 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.

336. *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 *supra* Parts I.C, III.A.

337. *See* discussion *supra* Part I.C.

338. *People ex rel. Dept. of Conservation v. Triplett*, 48 Cal. App. 4th 233, 253 (Cal. Ct. App. 1996) (citing *Kim v. Servosnax, Inc.*, 10 Cal. App. 4th 1346, 1356 (Cal. Ct. App. 1992)).

339. *Id.*

340. CAL. GOV'T CODE § 51237.5 (West 2005).

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

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

343. *Id.*