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The California Land Conservation Act of 1965 and the Fight to Save California’s Prime Agricultural Lands

By John B. Dean*

In the face of the public's growing concern with the environment, our nation's land remains perhaps its most neglected natural resource. Each year thousands of acres of our most productive lands are paved and excavated to accommodate our expanding urban areas. A recent study by the United States Department of Agriculture (U.S.D.A.) found that from 1950 to 1970 an estimated 13.5 million acres of rural land in the United States were converted to urban uses, usually with little or no consideration of the land's relative productive capability. The U.S.D.A. report also noted that the foreign and domestic demand for food, fiber, and timber from productive lands is likely to increase to the point where it will “test the productive capabilities of the nation,” although when and with what degree of urgency this will occur remains a matter of debate. The nation is thus faced with the prospect of significant increases in demand for agricultural products, but, simultaneously, widespread urbanization of our productive lands.

This Note will analyze the status of productive agricultural lands in California. In particular, the Note will examine the effectiveness of the California Land Conservation Act of 1965, generally known as the Williamson Act, a preferential property-tax program intended to restrict the urbanization of California's most productive agricultural lands. An empirical approach is employed, examining the effectiveness of the Williamson Act in three counties: Contra Costa, Alameda, and Santa Clara.

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1. Perhaps indicative of the extent to which our land resource has been overlooked is the fact that in this age of increasing regulation of resources by the federal government, privately held undeveloped land remains virtually untouched by federal regulation, much less by a comprehensive federal policy. See Land: The Only Natural Resource Without Federal Rules, XXX Cong. Q. 1874 (1972).

2. COMMITTEE ON LAND USE, U.S. DEP'T OF AGRICULTURE, RECOMMENDATIONS ON PRIME LANDS 3 (1975).

3. Id. at 11.

At the outset, an overview of the California agricultural industry is set forth, followed by a discussion of the mechanics of the California property-tax system and its impact on California’s prime agricultural lands. The Williamson Act is then analyzed in detail. Within this framework, the results of the Williamson Act programs in Contra Costa, Alameda, and Santa Clara counties are evaluated. The Note concludes that the Williamson Act should be revamped to concentrate on prime agricultural lands, rather than open-space lands generally, and provision should be made for increased property tax incentives to encourage the enrollment of prime agriculture lands in the Williamson Act program. In addition to reform of the Williamson Act, local governments should be required to implement plans for staged growth, in order to avoid the disastrous effects of “leapfrog” development on the state’s agricultural lands. To ensure the long-term preservation of California’s prime agricultural lands, the Note recommends the implementation of a comprehensive, statewide plan for natural resources.

I. An Overview

A. California’s Agriculture Industry

California may rightly be called the agricultural center of the United States. Since 1947, California has yielded more income from agricultural produce than any other state, with gross receipts of 8.9 billion dollars in 1976.\(^5\)

Agriculture clearly dominates California’s economy. Agriculture is the state’s largest industry, generating an estimated 42.5 billion dollars annually in products, jobs, and related services (e.g., processing and transportation).\(^6\) The agricultural industry is also California’s largest employer, directly or indirectly providing one out of every three jobs in the state.\(^7\)

California’s agricultural prominence is due in large part to extensive areas considered “prime” agricultural land by the Soil Conservation Service of the United States Department of Agriculture. The Soil Conservation Service employs an eight-class Land-Use Capability Classification System which indicates the relative productive potential of agricultural land parcels in each state. The System rates land according to slope, soil texture, water-holding capacity, and other fac-

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6. Id. See also, CALIFORNIA CHAMBER OF COMMERCE, WHAT CALIFORNIA AGRICULTURE MEANS TO YOU (Jan. 1977).
7. Id. This figure includes all persons employed in any aspect of the agricultural industry, from field workers and employees of food processors to chemists employed by fertilizer manufacturers.
Land classified as "prime" for agricultural purposes is acreage in classes 1 and 2, land which is generally flat with good drainage capability. This prime land is suitable for intensive agriculture, such as row crops, and, with minimal amounts of irrigation and fertilizer, should be highly productive. Land in classes 3 and 4 requires greater amounts of fertilizer, irrigation and energy and generally never achieves the levels of productivity of soil in classes 1 and 2. Land in classes 5 to 8 is not suitable for agricultural cultivation under any circumstances, due to rocky soil, steep slope, dense tree growth, or other limitations. Such land, however, is frequently used for pasture and, particularly if irrigated, can be highly productive rangeland.

Of California's total of 100.2 million acres, some 12.6 million acres are currently rated prime by the Soil Conservation Service. At present, however, California loses an estimated 20,000 to 30,000 acres of prime land to urbanization each year. This annual loss of the state's most productive farmlands approximates an area of over forty-six square miles.

For all practical purposes, when farmland is covered by urban development or is otherwise taken out of agricultural production, it is irretrievably lost. Reconversion is generally economically prohibitive, as land use for agriculture is worth but a fraction of the value of an improved parcel. In addition, any reconversion effort would require that sufficient acreage be acquired to make the resurrected agricultural operation economically viable, and huge amounts of energy and fertilizer would be necessary to replenish soil nutrients and replace excavated topsoils.

This encroachment of suburbia onto highly productive agricultural land is the result of a number of factors. Land that the farmer

9. Id.
10. Id.
11. Id.
14. Figures compiled by the staff of the Calif. Assembly Comm. on Resources, Land Use and Energy, Fall 1977, based on data from the Division of Soil Conservation, California Resources Agency. See generally C. Ross, The Urbanization of Rural California (1975).
15. Recent figures indicate that the current average size of American farms is 387 acres, with California farms averaging a significantly larger 571 acres. California Chamber of Commerce, What California Agriculture Means to You (Jan. 1977).
views as ideal for agriculture—acreage that is flat, easily accessible, with a mild climate and good drainage—often is equally desirable to developers and speculators. Construction costs are cheaper on flat land, and accessibility and a mild climate attract home buyers as well as commercial and industrial property users.

B. Property Taxation: The Assessor As De Facto Planner

California's property-tax system must bear the brunt of the responsibility for the loss of much of the state's most suitable agricultural land. Prior to the adoption of the Williamson Act, the California Constitution declared that for property-tax purposes all land parcels were to be assessed by the county tax assessor at their "full cash value." The "full cash value" is generally taken to mean the "fair market value" of the parcel, i.e., the price the property would bring to its owner if offered for sale on a competitive market in which neither buyer nor seller had an unfair advantage.

16. In 1970, a Ralph Nader-sponsored study of land in California noted that since 1942 both prime and non prime agricultural land in the state had been converted to urban use at the rate of 60,000 to 150,000 acres per year. RALPH NADER'S STUDY GROUP ON LAND USE IN CALIFORNIA, POLITICS OF LAND 27-29 (1974). See generally Ciracy-Wantrup, The New Competition for Land and Some Implications for Public Policy, 4 NATURAL RES. J. 252 (1964).

17. See SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS OF THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS, 92d CONG., 1st SESS., PROPERTY TAXATION: EFFECTS ON LAND-USE AND LOCAL GOVERNMENT REVENUES 54 (Comm. Print 1971).

The recent passage by California voters of the Proposition Thirteen tax initiative will bring the state's agriculturalists little significant property-tax relief. Upon passage June 16, 1978, Proposition Thirteen became Article XIII A of the California Constitution. In brief, Proposition Thirteen requires that local assessors, in computing 1978-79 property tax assessments, assess all real property within their jurisdictions at the 1975-76 assessed valuation. Property that has been transferred since 1975 must be assessed at its fair market value at the time of the transfer. Proposition Thirteen also imposes percentage limitations on any subsequent increases in assessed valuation. However, the assessed valuations of California's agricultural lands have been rising steadily for nearly 25 years, though the increases have not been as dramatic as the relatively recent increases in the assessed valuations of residential property in the state. III ASSOCIATION OF BAY AREA GOVERNMENTS, HOW TO IMPLEMENT OPEN SPACE PLANS FOR THE SAN FRANCISCO BAY AREA 75 (1973). Accordingly, the roll back to the 1975 level of assessed valuation will generally have only a minimal effect on the property taxes paid by agriculturalists.

18. CAL. CONST. art. XI, § 12. The tax assessed was based on a percentage of this full cash value, normally 25%. CAL. REV. & TAX. CODE § 401 (West Supp. 1979).

The rationale for the fair-market-value assessment scheme is that the value of real property is constantly changing, even though a particular parcel and any improvements thereon remain unchanged. For example, a vacant, fifty-acre parcel five miles from an urban center may be initially assessed at "X" dollars. Two years later a highway is constructed nearby and a motel is erected adjacent to the parcel. Though the parcel remains a vacant, weed-strewn plot, its value has increased tremendously. The assessor, in determining fair market value, attempts to take into account the fact that real property can increase in value without the addition of any physical improvements to that parcel itself. That is, the assessor, in appraising parcels of land within his jurisdiction, appraises them as if they were all realizing their potential highest and best use, regardless of the current use of the parcel; and the potential best use is determined by referring to similar parcels in the area. To continue the example of the weed patch, the assessed value of this unimproved parcel is increased to reflect its potential use as the site of a motel, restaurant, or other improvement, as indicated by similar parcels in the vicinity, despite the fact that currently it is merely a vacant lot.

When land is purchased in a particular area, the tax assessor uses the price paid for that parcel as a guide in determining the fair market value, and hence the property tax, of all nearby property. The problem that has faced landowners on the rural-urban fringe is that in the rush for land the price paid for this "test lot" by speculators and developers was often several times the value of the property if used as farmland. In a competitive market, the developer would be willing and able to pay more than the true value of the property as farmland, since he could reasonably expect a much higher return on his investment. Meanwhile, since both the fair market value and best use of a parcel were determined by comparison with the uses and prices paid for similar property in the vicinity, agricultural property close to a test lot was, and often is still, taxed at a rate far above the returns it could reason-

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20. Similarly, the value of a parcel of real property (whether urbanized or not) may decrease dramatically due to external factors, such as a general economic recession, location of a noxious or unsightly use nearby, or various changes in the character of the surrounding area which render the property undesirable or less desirable to some prospective purchasers.


22. For example, in Contra Costa County developers often purchase farmland at four to six times the value of the property for agricultural purposes. Frequently, land which would sell for $500 per acre if restricted to agricultural use sells for $2,000 to $3,000 per acre. Interview with Jack DeFremery, Farm Advisor, Contra Costa County Department of Agriculture, in Concord, California (March 10, 1978).
ably generate from agricultural use.\textsuperscript{23} The assessor, under the traditional assessment system, became the county’s de facto planner, and the assessments applied to open-space lands tended to become self-fulfilling prophecies.

Moreover, urban growth does not proceed in a gradual, contiguous manner, progressing slowly outward from the central city. Rather, expanding communities have tended to grow in checkerboard fashion, with development jumping from area to area within the region in a process known as leapfrog development. Generally, land decreases in cost as the distance from an urban center increases. Developers therefore tend to bypass (leapfrog) high-priced parcels adjacent to urbanized areas, in favor of lower-priced outlying lands. This pattern of scattered, noncontiguous development merely serves to increase the rate at which California’s prime agricultural lands are urbanized.\textsuperscript{24}

II. The Williamson Act

Recognizing the inequities inherent in the state’s property tax structure, the California Legislature approved the California Land Conservation Act of 1965 (known generally as the Williamson Act).\textsuperscript{25}

\textsuperscript{23} Although California farm income increased in the decades after World War II, property taxes paid on agricultural land increased at an even faster rate. In 1951 taxes on California farm property totalled only 7\% of the state’s net income, but in 1971 they comprised 30\% of California’s net farm income. This figure is double the national average, and the highest percentage of any state in the nation. \textit{III Association of Bay Area Governments, How to Implement Open Space Plans for the San Francisco Bay Area 72-75} (1973).

\textsuperscript{24} In addition to contributing to soaring property taxes, particularly on the rural-urban fringe, leapfrog development is also cited as the primary cause of the decline in the quality of municipal services. The jump to outlying property usually involves substantial distances, so that it is impractical for the local government to supply municipal services. In practice, the municipality is in effect forced to provide such services and necessary support facilities (\textit{e.g.}, fire stations, water, and sewage pumping stations) at such a premature and rapid rate that they are inefficient. \textit{See, e.g., Schnidman, A Legislator’s Guide to Land Management 8} (1974).

Recently several California communities have sought to prevent leapfrog development and the resulting strain on municipal services and the municipal treasury. \textit{See, e.g., Associated Home Builders of the Greater Eastbay v. City of Livermore, 18 Cal. 3d 582, 557 P.2d 473, 135 Cal. Rptr. 41} (1976), in which the California Supreme Court upheld a local ordinance enacted by initiative which was intended to slow and control the community’s growth. The ordinance established an on-going system under which residential building permits would not be issued within the city unless and until local public educational, sewage disposal, and water-supply facilities met certain specified standards (\textit{e.g.}, no double sessions in the public schools and no overcrowded classrooms, as determined by the California Education Code). For an excellent discussion of municipal growth-limiting techniques, see \textit{Note, So You Want to Move to the Suburbs: Policy Formulation and the Constitutionality of Municipal Growth-Restricting Plans, 3 Hastings Const. L.Q. 803} (1976).

The Williamson Act grants preferential property-tax consideration to landowners who agree, by contract with the local city council or county board of supervisors, to keep their land in agricultural or a compatible nonurban use for a minimum period of ten years.

The Act was intended to make the continuation of agricultural operations economically feasible for farmers and ranchers on the rural-urban fringe, while preserving agricultural lands for the state's citizens. By reducing the property-tax pressures on these landowners, it was hoped that the premature conversion of these lands to urban use would be prevented.26

In the years since its enactment, the Williamson Act has been the subject of repeated amendment and legislative tinkering. Originally available only to owners of certain agricultural lands,27 subsequent amendments shifted the emphasis of the Williamson Act to the preservation of open space in general, including virtually any land in nonurban use.28 The mechanics of the Williamson Act program have also been the focus of repeated legislative interest,29 as has the extent of state participation in the Williamson Act program.30 Indeed, several

otherwise noted, the contract provisions of the Williamson Act and the related open-space property-tax provisions of article XXVIII (now article XIII, § 8) of the California Constitution, discussed in detail infra, will be referred to as the Williamson Act.

28. The statutory language restricting Williamson Act contracts to prime agricultural land was deleted in 1969. Act of Aug. 31, 1969, Cal. Stat. 1969, ch. 1372, at 2806 (current version at CAL. GOV'T CODE § 51201 (West Supp. 1979)). Presently, local governments in California are authorized to enter into contracts with the owners of land devoted to recreational use, land within a scenic highway corridor, wildlife habitat areas, salt ponds, managed wetland areas, and submerged areas, all as both prime and non prime agricultural land. CAL. GOV'T CODE §§ 51201, 51205 (West Supp. 1979). The extension of the Williamson Act program to nonagricultural land has been hotly debated. See Danielson, California's Open Space Land Program 10 (Jan. 7, 1971) (unpublished report compiled by the staff of then-State Senator George E. Danielson); RALPH NADER'S STUDY GROUP ON LAND USE IN CALIFORNIA, POLITICS OF LAND 39-40 (1974).
29. See, e.g., CAL. GOV'T CODE § 51285 (West Supp. 1979), pertaining to protests of proposed Williamson Act cancellations by other landowners. Formerly, this section provided that no contract could be approved for cancellation by the local legislative body if the owners of 51% of the contracted acreage in the agricultural preserve protested such cancellation. Act of July 16, 1965, Cal. Stat. 1965, ch. 1443, § 1, at 1377 (current version at CAL. GOV'T CODE § 51285 (West Supp. 1979)). This provision was amended in 1969 to provide that any owner of any property located in the city or county in which the agricultural preserve is situated may protest the proposed cancellation of the Williamson Act contract on that preserve. Act of Aug. 31, 1969, Cal. Stat. 1969, ch. 1, § 1, at 2806 (current version at CAL. GOV'T CODE § 51285 (West Supp. 1979)).
30. See, e.g., CAL. GOV'T CODE § 51282 (West Supp. 1979) regarding the conditions necessary for cancellation of Williamson Act contracts. As originally enacted, this section
significant modifications were made in the administration of the Williamson Act program during the 1978 legislative session. This Note deals with the Williamson Act as currently written, and will consider the Act’s legislative history only insofar as such history affects the current impact of the Williamson Act on the preservation of prime agricultural land.

Provisions and Purposes

In keeping with California’s tradition of “home rule,” the Williamson Act is an enabling act that allows, but does not require, the various local governments to implement and administer it within their jurisdictions. Presently, the Act authorizes cities and counties to create local agricultural preserves, and to enter into contracts with owners of prime agricultural land, wildlife habitat areas, submerged areas, scenic highway corridors, salt ponds, and managed wetland areas to preserve such open spaces and retard their premature conversion to urban uses.


33. Cal. Gov’t Code § 51201(c) states that “‘[prime agricultural land’ means any of the following: (1) All land which qualifies for rating as Class I or Class II in the Soil Conservation Service land use capability classifications. (2) Land which qualifies for rating 80 through 100 in the Storie Index Rating. (3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture. (4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a non-bearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant products not less than two hundred dollars ($200) per acre. (5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars ($200) per acre for three of the previous five years.”


35. Cal. Gov’t Code § 65300-65306 (West 1966 & Supp. 1978) requires that all cities and counties adopt a general plan which must include nine enumerated elements (including noise, transportation, and open space elements). Designation of an agricultural preserve by the local government must be consistent with the general plan. Cal. Gov’t Code § 51234 (West Supp. 1979).
are to be carefully screened by the local planning department, the county assessor's office, and the local legislative body. Final decisions as to the designation of land as a preserve may be challenged by the landowner or any concerned citizen by appealing at a public hearing before the legislative body. Indeed, the local community must reconcile its desire to preserve agricultural/open-space lands with the practical realization that the contract will shift some of the tax burden to the remaining lands within its boundaries, and may result in the loss of significant amounts of property-tax revenue.

The legislature has further specified that individual preserves must be no less than 100 acres, although preserves may be composed of contiguous parcels under separate ownership, or noncontiguous parcels under the same ownership. The local legislative body, however, may establish smaller preserves if they are necessary due to the unique agricultural enterprises in the area, but only if such action is consistent with the community's general plan.

Under the terms of the contract, the landowner agrees to keep the

36. CAL. GOV'T CODE § 51230 (West Supp. 1979). The local legislative body must give notice of its intent to designate a preserve, and such notice must conform to CAL. GOV'T CODE § 6061 (West 1968), which requires written notice to all landowners directly affected as well as to all surrounding landowners.

37. Since agricultural and open-space lands are not equally distributed throughout California's fifty-eight counties, the impact of revenues lost due to implementation of the Williamson Act varied widely. However, by the late 1960s the situation had become critical in the rural counties of the Central and San Joaquin valleys, where huge tracts of land were enrolled in the local Williamson Act programs, placing a severe strain on the local tax base. Largely at the behest of these counties, the California Legislature in 1971 enacted the Open Space Subvention Act. CAL. STAT. 1972, ch. 1, § 3.6, at 4873 (renumbered and amended by Act of Aug. 18, 1972 CAL. STAT. 1972, ch. 1066, at 1066) (current version at CAL. GOV'T CODE §§ 16140-16153 (West Supp. 1979)). Under the Open Space Subvention Act, local school districts receive at least partial reimbursement from the state's general fund for each acre of land enrolled in the Williamson Act program, based on a sliding scale ranging from $3.00 per acre for prime land within three miles of an incorporated city, to $0.50 per acre for nonprime land. The local school district receives either the total according to this formula, or the total property-tax revenue lost due to Williamson Act contracts, whichever is less. For the 1976-77 fiscal year, the state-administered open-space subventions totalled approximately $17.9 million, with payments estimated at $21 million for 1978-79. Legislative Analyst, Analysis of the Budget of the State of California for the Fiscal Year July 1, 1978 to June 30, 1979, at 1070-71 (1978). After repeated recommendations in previous years that the subvention program be terminated, the state's Legislative Analyst recently recommended that the legislature approve funding of the program for the 1978-79 fiscal year, although he did so grudgingly. The Analyst noted that the bulk of the lands under Williamson Act contract are in no danger of development and therefore do not need reduced property-tax assessments in order to remain in nonurban use. Id.

38. Id. For example, the Santa Clara County Board of Supervisors has declared the entire county an agricultural preserve, thereby enabling the county's numerous horticultural enterprises—most of which are conducted on parcels of 10 acres or less—to become eligible for Williamson Act benefits. SANTA CLARA COUNTY BOARD OF SUPERVISORS, A POLICY
land in agricultural use, or a compatible use as determined by the local legislative body, for a period of at least ten years. Provisions of the contract specify that the contract is self-renewing, so that on the anniversary date of the contract each year another year is automatically added to the contract term.\textsuperscript{40}

**Property Tax Benefits to the Landowner**

At the time the Williamson Act was enacted, its proponents anticipated that the local tax assessors would recognize the contractual restrictions on the use of enrolled lands in the computation of the property–tax assessments on such lands.\textsuperscript{41} It was hoped that the contractual mechanism would shift the focus of the assessor from the prevailing market-value assessment procedure, based on highest and best use and comparable sales data, toward value as determined by the restricted use of the land and its income-generating capabilities.\textsuperscript{42} However, in practice assessors tended to ignore the existence of these contractual restrictions.\textsuperscript{43} In continuing to apply the market–value assessment process, the assessors undercut the effectiveness of the Williamson Act, since acreage enrolled in the program could not be assured of any reduction in property–tax assessment.

In response to assessor inaction, the voters of California enacted article XXVIII of the California Constitution in 1966,\textsuperscript{44} providing that

\begin{footnotesize}
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  \item For the Preservation of Agricultural Lands (adopted Nov. 20, 1967). Santa Clara County’s experiences with the Williamson Act are discussed infra.
  \item See, e.g., Snyder, Toward Land Use Stability Through Contracts, 6 Natural Res. J. 406 (1966).
  \item Id. See also Bowden, Article XXVIII—Opening the Door to Open Space Control, 1 Pac. L.J. 461 (1970).
  \item See 47 Ops. Cal. Att’y Gen. 171 (1966), in which the Attorney General stated that the inclusion of transitional values in the assessment of lands in developing areas was required by the California Constitution.
  \item Cal. Const. art. XXVIII (repealed Nov. 5, 1974). Prior to the enactment of article XXVIII of the California Constitution, approved by the voters as Proposition Three in the 1966 general election, assessors were required to include transitional values in the assessment of lands in developing areas, regardless of whether the land was under Williamson Act contract or any other enforceable restriction. See 47 Ops. Cal. Att’y Gen. 171 (1966). The substance of article XXVIII is now embodied in article XIII, § 8 of the constitution. For an analysis of the impact of former article XXVIII on agricultural land assessment policies, see D. Collin, Open Space Land Assessment Procedures (Jan. 1968). Mr. Collin, together with former California Assemblyman John C. Williamson, was a principal drafter of the Williamson Act as originally enacted. See also Land, Unravelling the Rurban Fringe: A Proposal for the Implementation of Proposition Three, 19 Hastings L.J. 421 (1968), which, although somewhat dated in light of subsequent Williamson Act reforms, does provide an excellent analysis of the impact of article XXVIII on the assessment of agricultural and similar nonurban lands.
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open-space lands subject to enforceable restriction shall be assessed
based on use, rather than market value. Article XXVIII constituted a
profound departure from the traditional market-value assessment pro-
cedure. Rather than setting forth a new method for determining mar-
ket value, article XXVIII provided the legislature with a constitutio-
nal basis for the promulgation of use-value assessment formulas, aimed at
the equitable assessment of restricted open-space lands.

Revenue and Taxation Code Section 423 provides that when valu-
ing enforceably restricted open-space land the assessor shall use the
income-capitalization method.45 This method, as its name implies, takes a parcel of land on the basis of the income it actually produces, rather than its current or potential value as determined by more subjective standards. Under the income-capitalization procedure, the value of a parcel of agricultural land is equal to the net agricultural income derived from the parcel, divided by the capitalization rate.46 The capitalization rate is determined according to a statutory formula47 and in recent years has ranged from approximately seven to ten percent on most parcels.48

The effect of this method on property-tax assessment of agricul-
tural land can be very substantial. For example, under market-value assessment an acre of grazing land might be appraised at $200 by the county assessor, and would have an assessed valuation of fifty dollars (twenty-five percent of the property's market value). If we assume a tax rate of $10 per $100 of assessed valuation, this parcel would yield $5 per year in property taxes. Under the Williamson Act, however, the parcel would be assessed according to the income capitalization

45. CAL. REV. & TAX. CODE § 423 (West Supp. 1979). Section 422 of the Revenue and Taxation Code provides that for purposes of article XIII, § 8 of the California Constitution, land is enforceably restricted if, inter alia, the land is subject to a Williamson Act contract. CAL. REV. & TAX. CODE § 422 (West Supp. 1979). There is a rebuttable presumption that enforceable restrictions will not be removed or substantially modified in the predictable future. CAL. REV. & TAX. CODE § 402.1 (West Supp. 1979). However, specific allowance is made for rebuttal on the basis of a past history of change in similar restrictions, although presumably such evidence would be limited to the particular jurisdiction or the surrounding area. For example, on the rural-urban fringe it is often the case that zoning restrictions are frequently changed. In such cases, the assessor must consider the transitional value of the property in view of the fact that zoning, although presently enforceable, may be changed in the near future. See Alden & Shockro, Preferential Assessment of Agricultural Lands: Preservation or Discrimination?, 42 So. Cal. L. Rev. 59, 66 (1969). See also ASSESSMENT STANDARDS DIVISION, PROPERTY TAX DEPARTMENT, CALIFORNIA STATE BOARD OF EQUALIZATION, ASSESSOR'S HANDBOOK: THE VALUATION OF OPEN-SPACE PROPERTY 6 (Nov. 1975).
46. CAL. REV. & TAX. CODE § 423(c) (West Supp. 1979).
47. CAL. REV. & TAX. CODE § 423(b) (West Supp. 1979).
method. If the landowner is realizing a net agricultural income of $10 per year from the same one-acre parcel, the value of the parcel would be $100 (assuming a capitalization rate of ten percent), and its assessed valuation would be $25 (twenty-five percent of the value of the parcel). Based on our tax rate of $10 per $100 of assessed valuation, the property tax on the parcel would thus be $2.50, a savings of one-half.

Needless to say, a more productive parcel of land generates greater income, and its tax benefits are therefore proportionately smaller. Thus, fallow, low-yield lands, such as grazing acreage, tend to get a much greater tax advantage under the Williamson Act than highly productive lands producing food and fiber.

Contract Termination

Two methods are available by which the parties may terminate their contractual relationship: nonrenewal and cancellation. The nonrenewal procedure is available to either party as of right. Nonrenewal provides a means of unilaterally terminating the contractual relation, limited only by the requirement that proper notice be given to the other party in advance of the anniversary date of the contract. Even in the event that notice of nonrenewal is timely served, the contract remains in effect until the end of the existing term, generally a period of nine years from the next anniversary of the contract. All restrictions on use of the contracted acreage continue in effect during this wind-down period, discouraging use of Williamson Act contracts by speculators seeking to reduce their property taxes while awaiting opportunities to develop the property.

During the interim between the filing of a notice of nonrenewal and the subsequent removal of all restrictions some years later, the as-

52. The landowner must give notice of nonrenewal at least ninety days prior to the designated anniversary date of the contract, while the city or county must give notice sixty days prior to the anniversary date. CAL. GOV'T CODE § 51245 (West Supp. 1979). Failure to observe these time requirements will result in automatic renewal of the contract. Id. From 1972 through 1976, notice of nonrenewal was filed on an average of 48 contracts per year, state-wide. CALIFORNIA RESOURCES AGENCY, DEPARTMENT OF CONSERVATION, SUMMARY OF THE WILLIAMSON ACT AND OPEN SPACE SUBVENTIONS, ACREAGE REMOVED FROM THE OPEN SPACE SUBVENTION PROGRAM—METHOD OF REMOVAL (NUMBER OF PARCELS) (Aug. 1978).
53. Because the minimum contract period is 10 years, at the time the notice of nonrenewal is filed the contract period will be at least 9 years from the succeeding anniversary date of the contract. Where the provisions of a particular contract provide for an initial contract period in excess of 10 years, the contract is not subject to automatic renewal until 10 years remain in the original contract term, at which point the above provisions concerning nonrenewal are applicable. CAL. GOV'T CODE § 51244.5 (West Supp. 1979).
sessor, in determining the value of the parcel, must take into account its transitional nature. Quite simply, the assessor must be cognizant of the fact that while the parcel currently remains subject to enforceable use restrictions, such restrictions will be removed on a definite date in the relatively near future. California Revenue and Taxation Code section 426 requires that once notice of nonrenewal is filed, the assessor must recalculate the assessed value of the parcel each year until the contract expires.54

Cancellation, unlike the nonrenewal procedure, is a discretionary means of terminating a Williams Act contract. It allows the landowner, but not the local legislative body, to initiate an immediate termination of the arrangement.55 However, cancellation requires the approval of the local legislative body,56 and the burden is on the landowner to demonstrate that the proposed cancellation conforms to the local general plan and is not contrary to the public interest.57

Cancellation, if approved, carries a penalty of up to fifty percent of the new assessed value of the property as determined by its unrestricted fair market value on the date of cancellation.58 Effective January 1,

54. CAL. REV. & TAX. CODE § 426(b) (West Supp. 1979) sets forth a six-step procedure to be followed by the assessor in determining the assessed valuation of a parcel following notice of non-renewal: (1) The full cash value of the parcel is determined as if the parcel were not subject to any enforceable restrictions; (2) The value of the land is then determined using the income capitalization method; (3) The income capitalization value of the land is subtracted from the unrestricted fair market value of the parcel; that is, (1), above, minus (2); (4) The amount obtained in (3) is then discounted for the number of years remaining until termination of the enforceable restriction at the end of the contract term. The discount rate is announced each year by the California State Board of Equalization; (5) The value of the land is then derived by adding the value as determined by the income capitalization method ((1), above) to the figure obtained in (4), above; and (6) Finally, the mandatory assessment ratio is applied to the value of the property as determined in (5), producing the assessed valuation of the property for the year. This figure, when multiplied by the applicable local property-tax rate, will yield the parcel's property-tax assessment for the year. This annual recomputation is designed to gradually raise the assessed value of the still-restricted property until the assessed value for the year prior to termination of the contract approximates the assessed value of the parcel based on its unrestricted fair market value. This transitional tax formula following notice of nonrenewal is criticized in Mix, Restricted Use Assessment in California: Can It Fulfill Its Objectives?, 11 SANTA CLARA L. 259 (1971).

57. Id. Generally, in examining the proposed cancellation, the local legislative body is prohibited from considering any development opportunity or potential financial windfall which might be available to the landowner if the cancellation is approved. CAL. GOV'T CODE § 51282 (West Supp. 1979).
58. CAL. GOV'T CODE § 51283 (West Supp. 1979). This cancellation fee amounts to one-eighth of the unrestricted fair market value of the property on the date of cancellation. This one-eighth figure is based on the fact that real property in California must be assessed
1979, an additional cancellation fee designed to further recoup the deferred property taxes on the parcel is imposed. Either or both of these cancellation fees may be waived, in whole or in part, by the local legislative body.

With the preceding information as background, we now turn to an evaluation of the effectiveness of the Williamson Act in the three sample counties.

III. The Williamson Act at Work in Three Bay Area Counties

Contra Costa, Alameda, and Santa Clara counties represent three stages of land development, a virtual continuum of the urbanization process. Least urbanized of the three is Contra Costa County, which is at a stage of land development similar to that of Alameda County twenty years ago. Currently, a steadily sprawling urban area is challenging Contra Costa's extensive tracts of highly productive agricultural lands. Alameda County is today essentially a bedroom community, though it retains some limited agricultural and other open-space areas. Those agricultural areas that remain are concentrated in the rapidly urbanizing southern portion of the county and in the Livermore Valley region. Santa Clara County, the most highly urbanized of the three counties, has seen its tracts of highly productive agricultural lands almost completely consumed by suburban sprawl, and those open-space lands that remain are scattered piecemeal throughout the county.

The selection of these three counties is not meant to imply that any one of the three, or a composite, may accurately be labelled typical. Indeed, given the state's tremendous economic, topographic, and climatic variations, as well as population differences, it is doubtful that a typical county may rightly be said to exist. Rather, an evaluation of the effects of the Williamson Act on land use in these sample counties is meant to disclose the major strengths and weaknesses of the Act.
A. Contra Costa County

Blending highly productive agriculture with urban development, Contra Costa County has grown steadily in the last twenty years. Although Contra Costa County is the second smallest of California’s fifty-eight counties in terms of land area, it is now the ninth largest in population. Today the county is essentially a community in transition. Previously a rural area with some industrial and residential development, the county is gradually expanding its urban and industrial regions, at the expense of some of the most productive farmland in the state.

The bulk of the county’s industrial development has taken place along the Sacramento River and San Pablo Bay in the northwestern section of the county, where a ready supply of water for manufacturing purposes and access to major transportation routes provide an ideal location for heavy industry. Four-fifths of the county’s cultivable land is in the eastern portion of the county near the cities of Pittsburg, Brentwood, and Byron. In this region some of the most productive farmland in the state produces high yields of sugar beets, fruit and nut crops, and vegetable crops. In recent years, however, the amount of

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63. Most of the land in the eastern section of Contra Costa County is prime. Soil Conservation Service, U.S. Department of Agriculture, Soil Survey of Contra Costa County, California 8 (1977). The land in this area currently produces high yields of fruit and nut crops, vegetables, and grains. Contra Costa County Land Conservation Committee Report, Preservation of Prime Agricultural Lands in Eastern Contra Costa County 35-36 (1972) [hereinafter CCLC Report]. In recent years the eastern section of Contra Costa County has undergone substantial urbanization, as indicated by both significant population increases and large increases in the number of residential housing units. Contra Costa County Planning Department, Contra Costa County Keynotes No. 4 (May 1976) (discussing 1975 special census housing starts); Contra Costa County Planning Department, Contra Costa County Keynotes No. 3 (May 1976); Contra Costa County Planning Department, Contra Costa County: Historic and Projected Population by Census Tract: 1960-1990 (Aug. 8, 1978). For example, between 1970 and 1975 the city of Brentwood in eastern Contra Costa County underwent a 51.2% increase in the number of housing units. Contra Costa County Planning Department, Contra Costa County Keynotes No. 4 (May 1976).


66. CCLC Report, supra note 63, at 35-36.
farm acreage in the county has steadily declined. Over 56,000 acres of farmland were taken out of production in the county between 1969 and 1974, and this trend has continued. Nevertheless, the bulk of the county's land remains in agricultural use: of 468,650 total acres, approximately 260,000 acres are currently used for agriculture. Residential developments housing the county's growing population are scattered throughout the San Ramon Valley, Clayton Valley, Pittsburg, and Brentwood areas in a classic pattern of leapfrog development.

The Williamson Act

In Contra Costa County both the potential and the inherent weaknesses of the Williamson Act are rendered vividly clear. Of the three counties discussed in this Note, none could have reaped greater benefits from the Williamson Act. Yet, perhaps no county administration in the state has been as frustrated by the failings of the Act as has that of Contra Costa County. Despite the substantial amounts of prime acreage in the county, virtually none of it is currently under contract. In an effort to improve the operation of its Williamson Act program, the county in 1968 established the Contra Costa County Land Conservation Committee, an official body composed of farmers as well as county planning and agriculture officials. Despite the efforts of the Land Conservation Committee, landowners in the eastern section of the county have been relatively slow to enroll in the program.

68. Interviews with James W. Cutler, Project Planner, Contra Costa County Planning Department, in Martinez, California (February 23, 1979); and William Bruner, District Conservationist, United States Soil Conservation Service, Contra Costa Resource Conservation District, in Concord, California (February 22, 1979).
71. Id.
72. Since its inception, the Williamson Act has received the detailed scrutiny of planners, lawyers, and environmentalists, among others. See, e.g., Snyder, Toward Land Use Stability Through Contracts, 6 Natural Res. J. 406 (1966); Carman & Polson, Tax Shifts as a Result of Differential Assessment of Farmland: California, 1968-69, 24 Nat'l Tax J. 449 (1971).
73. Interview with James W. Cutler, Project Planner, Contra Costa County Planning Department, in Martinez, California (Feb. 23, 1979).
74. Such efforts have included distribution of Williamson Act information packets through the county planning department, and several meetings between members of Contra Costa County Land Conservation Committee and landowners in the eastern sector of the county. CCLC REPORT, supra note 63, at 18-19. The Report of the Contra Costa County Land Conservation Committee noted that of the approximately 50,000 acres enrolled in the county's Williamson Act program as of July 1, 1972, only 217 acres were in the eastern portion of the county, although this region embraces an area of approximately 32,000 acres of mostly prime agricultural land. Id. at 1, 7.
have steadfastly refused to enroll their lands in the Williamson Act program. In May, 1978, the Contra Costa County Board of Supervisors voted to disband the Land Conservation Committee, based in part on the recommendations of disillusioned committee members themselves.\textsuperscript{75}

Under the Contra Costa County Williamson Act program, agricultural preserve status is granted only to "those lands whose primary use is commercial agricultural production."\textsuperscript{76} Thus, Contra Costa County does not approve contracts for the preservation of open-space areas per se.

As of December 1, 1978, Contra Costa County had over 88,000 acres under Williamson Act contract. However, although the county has in excess of 48,000 acres of prime agricultural land, less than 9000 acres of prime agricultural land are currently enrolled in the county's Williamson Act program.\textsuperscript{77} More than one-half of the total contracted acreage is over three miles from an incorporated city, and to date only minor acreage is located in the eastern sector of the county.\textsuperscript{78} The bulk of the contracted acreage is grazing land in the county's foothills.\textsuperscript{79}

The ten-year minimum contract period and the meager property-tax benefits conferred on highly productive land appear to be the primary reasons for the reluctance of owners of prime agricultural land, and particularly landowners in the eastern end of the county, to enroll in the Contra Costa Williamson Act program.\textsuperscript{80} Most farms in Contra Costa County are fifty acres or less, a fraction of the size of the huge farms of the nearby Central Valley.\textsuperscript{81} Due to the rising costs of farming these relatively small parcels, and their fairly marginal profitability, these landowners are particularly wary of limiting their land-use options for the minimum ten-year contract period.\textsuperscript{82} In addition, these farmers are no doubt well aware of the county's attraction to residential developers because of its relatively flat topography and proximity to the nearby urban centers of Oakland and San Francisco.

Secondly, the property-tax relief offered under the Williamson Act's income-capitalization method of assessment simply is not a suffi-

\textsuperscript{75} The Land Conservation Committee was abolished by order of the Contra Costa County Board of Supervisors on May 2, 1978.
\textsuperscript{76} Contra Costa County, California Ordinance No. 69-49 (adopted June 13, 1969).
\textsuperscript{77} Figures compiled by the Assessor's Office, Contra Costa County (Dec. 1978).
\textsuperscript{78} \textit{Id.}
\textsuperscript{79} \textbf{CONTRA COSTA COUNTY PLANNING DEPARTMENT, CONTRA COSTA COUNTY AGRICULTURAL PRESERVE MAP} (July 1976).
\textsuperscript{80} \textit{CCLC REPORT, supra note 63, at 19-20.}
\textsuperscript{81} \textbf{CONTRA COSTA COUNTY PLANNING DEPARTMENT, CONTRA COSTA COUNTY: A PROFILE} 8 (1977).
\textsuperscript{82} Interview with James W. Cutler, Project Planner, Contra Costa County Planning Department, in Martinez, California (Feb. 23, 1979).
cient incentive to overcome the landowners' reluctance to restrict the use of their land, particularly in the case of the farmers of the highly productive eastern region of the county. This income-capitalization formula is largely self-defeating in the case of prime farmland, since it provides only a minimal tax reduction for the owner of highly productive land. The result of these disincentives is that Contra Costa County landowners have tended to enroll only fallow, low yield or grazing lands, while the county's productive, easily developed prime agricultural lands remain largely outside the restrictions and the benefits of the Williamson Act.

In late 1971, the Contra Costa County Land Conservation Committee released a report calling upon the county board of supervisors to (1) study the feasibility of declaring the entire eastern sector of the county an agricultural preserve, thereby allowing parcels of less than 100 acres to enroll under the Act; and (2) to adopt "affirmative land use controls" specifically designed to "reduce suburban pressure" and the consequent competition for prime lands in the eastern sector of the county through a comprehensive growth limitation plan. In April of 1978, the Contra Costa County Board of Supervisors adopted the East County Area General Plan, which constituted a revision of the county's general plan. With respect to agriculture, the East County Area General Plan provides for the establishment of an agricultural "core" of approximately 14,600 acres in the eastern sector, composed of prime agricultural land. Through the use of zoning controls, urban development would be prohibited in this intensely farmed core area, and the minimum parcel size would be increased to ten acres. Despite the adoption of this wide-ranging plan, Williamson Act enrollments in the eastern sector have not significantly increased.

With much of the county already urbanized (notably the Walnut Creek-Concord and Richmond-El Cerrito areas), the pressure of urbanization will be focused on the eastern region of the county. Indeed, the pressure to develop the eastern sector is already increasing. As the county's population has steadily increased, the assessed valuations of farmland have increased several fold. Currently, average market prices of undeveloped land in the eastern section of the county are at a
level of two to three times the return that could be realized from even the most productive and efficient agricultural operations. Obviously, these buyers are anticipating a time when another, nonagricultural land use will be more financially rewarding.

B. Alameda County

The county of Alameda enjoys a unique and enviable geographic setting, with its lands ranging from the eastern shoreline of the San Francisco Bay to the rolling hills of the Livermore Valley. Like the rest of the nine-county San Francisco Bay Area, Alameda County experienced tremendous growth in the years following World War II, particularly in the southern section of the county. The post-war population explosion, tremendous industrial expansion throughout the Bay Area during and after the war, and the emergence of the commuter, all combined with growing affluence to produce a twelve percent county population increase in the period from 1960 to 1970. The majority of the new residents were housed in subdivisions built on the farmlands of the southern portion of the county.

The Williamson Act

As of June 30, 1970, Alameda County had slightly more than 103,000 acres of land contracted under the Williamson Act, of which less than 1500 acres were defined as prime agricultural land. In the years since 1970, total contracted acreage in the county has nearly doubled. As of December 31, 1978, Alameda County had 197,010.95 acres under Williamson Act contract, representing two-thirds of the

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90. Id. at 43-55. The Report of the Contra Costa County Land Conservation Committee contains a detailed compilation of "sales per year" and "average price per acre" for land in the eastern sector of the county, based on records of the county assessor. This analysis indicates that in 1971 the average price per acre for agricultural land in the eastern region of the county was approximately $3000. Id. at 55. Since the typical cash rents generated by such parcels range from $60 to $120 per acre per year, id. at 51, it is apparent that these buyers are anticipating another, nonagricultural use for their land.


92. ALAMEDA COUNTY PLANNING DEPARTMENT, ESTIMATES OF POPULATION, ALAMEDA COUNTY (1976). This growth rate has apparently slowed in recent years, however.

93. FUTURE OF SOUTHERN ALAMEDA COUNTY, supra note 91.


95. Interview with Gerald Wallace, Associate Planner, Alameda County Planning Department, in Hayward, California (Feb. 22, 1979) (based on information compiled by Mr. Wallace in Dec., 1978). This county total includes both lands under county-administered contracts (over 173,000 acres as of December 31, 1978) and lands under contract with any of
county's agricultural and open-space land. Of this total, however, only approximately 9400 acres are prime, representing less than one-half of the prime agricultural land currently under cultivation in the county. Meanwhile, significant amounts of prime agricultural land lie fallow in the southern portion of the county facing imminent development.

Over 250 landowners participate in the Williamson Act program in Alameda County, with most of the land under contract consisting of rangeland in the rolling hills of the eastern portion of the county near Pleasanton and Livermore. Land in this area is generally considered nonprime due to rocky soil, steep slope, and mineral imbalances. Such lands are marginally suited for grazing, but not for any degree of cultivation. Particularly notable exceptions are the vineyards of the Livermore Valley. In addition, there are a number of very high-intensity horticultural and nursery parcels scattered throughout the southern and eastern portions of the county, many of which are enrolled in the Williamson Act program.

To date, terminations of Williamson Act contracts at the county level have been very limited. Since the program was initiated in 1966,
there has not yet been an owner-initiated cancellation or nonrenewal.\textsuperscript{105} In contrast, the county in 1975 served notices of nonrenewal on three contractees, claiming that the affected parcels (five to ten-acre lots with homes) were in effect “large lot subdivisions.”\textsuperscript{106}

The county recently initiated an effort to terminate (through nonrenewal) the contracts on numerous small nurseries that deal exclusively in “potted” vegetation and greenhouse products, on the basis that such nursery operations are not “attached to the ground.” This termination effort was abandoned in the face of negative public reaction to the new county policy.\textsuperscript{107} As a result of this experience, several years will likely pass before the county attempts to initiate another contract termination.

Several municipalities within Alameda County also administer Williamson Act programs, although relatively little acreage is involved.\textsuperscript{108} These city-administered programs vary widely both in the lands that are eligible for contracts and in the relative ease with which a contract may be terminated. For example, the City of Livermore refuses to issue Williamson Act contracts to owners of nongrowing nurseries, while the City of Fremont has issued contracts on virtually any nonurbanized parcel of land.\textsuperscript{109} Similarly, the City of Hayward is quite strict regarding cancellation of Williamson Act contracts, while Fremont’s records reveal numerous cancellations on lands which were subsequently converted to urban uses.\textsuperscript{110} These variations in local standards reflect the almost total deference of the state legislature in favor of local control of the Williamson Act program, and the often conflicting policies resulting therefrom.

Any interpretation of the program’s results in Alameda County must be made in light of the Williamson Act’s ill-defined objectives. In terms of preserving open space generally, the Williamson Act program in Alameda County must be deemed a success, as substantial acreage is enrolled. With regard to the preservation of prime agricultural land, however, the Act has been far less successful. Although approximately one-half of the county’s currently cultivated prime agricultural land is

\begin{footnotes}
\footnote{105. Id.}
\footnote{106. Id.}
\footnote{107. Interview with Gerald Wallace, Associate Planner, and coordinator of the Williamson Act program, Alameda County Planning Department, Hayward, California (March 9, 1978). This notion of “attachment to the ground” was a concept advanced by Alameda County planning officials, based on their interpretation of the Williamson Act.}
\footnote{108. Alameda County Planning Department, Williamson Act Files (March 1978) (information contained in public files located at Hayward, California).}
\footnote{109. Id.}
\footnote{110. Id.}
\end{footnotes}
enrolled in the Williamson Act program, substantial amounts of prime agricultural land have been taken out of cultivation in anticipation of development. The overwhelming bulk of all contracted acreage is in the rolling hills of the eastern section of the county, which are in all likelihood beyond the reaches of urbanization for at least the predictable future. A map of the county's agricultural preserves indicates that approximately ninety percent of the contracted acreage is three or more miles from an incorporated city.

Agricultural/open-space land so far removed from urbanized areas hardly needs the Williamson Act to remain in agricultural or similar use. Since there is no urban development in the immediate vicinity, a parcel's highest and best use is probably nonurban, meaning that the landowner is not faced with an excessive or inequitable tax assessment. Thus, the problem the Williamson Act was designed to alleviate simply does not exist in the case of most lands under contract in Alameda County. On the contrary, virtually all of the contracted land is non-prime rangeland in the eastern portion of the county, far from any current or planned development. Much of this rangeland is in the rugged foothills beyond Pleasanton, which for reasons of topography is ill-suited for urban development. Meanwhile, urban development continues to occur in the lowlands of southern Alameda County and the Livermore Valley area, as the rich, row-crop land of the south portion of the county and the orchards of the county's valleys are steadily devoured. Thus, in a very real sense, the Williamson Act is saving the wrong land in Alameda County.

C. Santa Clara County

Santa Clara County in recent years has emerged as one of the fastest-growing metropolitan regions in the United States. Spread

111. Alameda County Planning Department, William Act Files, (Dec. 1978) (information contained in public files located at Hayward, California).
112. Future of Southern Alameda County, supra note 91.
113. Id.
114. Alameda County Planning Department, Agricultural Preserve Map, Alameda County, (revised March 1, 1978).
115. Pleasanton and Livermore, the two cities in the Livermore Valley, both recorded significant population increases between 1970 and 1978. The City of Pleasanton recorded an 89% increase, for a 1978 population of nearly 35,000. Livermore went from 37,000 inhabitants to more than 50,000, for a 34% increase. Alameda County Planning Department, Estimates of Population and Housing for Alameda County, Cities and Places as of January 1, 1978 (1978).
across 1,312 square miles, the county’s population has jumped from 288,000 in 1950 to an estimated 1.2 million as of April 1, 1978. While the county’s population growth has slowed in recent years, it is still continuing to increase by more than eight percent annually.

This spectacular population growth has had a significant effect on the pattern of land usage in the county. In studies of urbanization and land utilization, Santa Clara County is often cited as an example of urban sprawl and fragmented, uncontrolled development. Indeed, because of its large tracts of flat agricultural and open-space lands and its rapid increase in population, Santa Clara County achieved national notoriety as one of the first regions in the nation to experience the phenomenon of leapfrog development. In the process of this leapfrog development, much of the county’s rich endowment of agricultural lands, including substantial amounts of prime land in the Santa Clara Valley, were dissipated. Santa Clara County is estimated to have had 140,000 acres of prime farmland, of which more than one-half has been urbanized since 1950.

This fragmented development served to further undermine the economic productivity of much of the county’s prime agricultural land, and idled additional lands not then necessary for urban purposes. For example, between 1962 and 1967, 7,400 acres of agricultural land were developed for residential use in Santa Clara County, yet an additional, even larger amount of land (9,200 acres) was left vacant and unused due to the checker-board fashion of development within the county. Though much of this unused land remains cultivable, farm operations are impractical from an economic standpoint due to the small size of the parcels, as well as aesthetic and environmental constraints placed on urban agricultural operations by virtue of the proximity of nearby subdivisions.

Unlike many local governments, Santa Clara County has taken

117. SANTA CLARA COUNTY PLANNING DEPARTMENT, ESTIMATED AREA OF CITIES, SANTA CLARA COUNTY 1 (1975).
121. SANTA CLARA COUNTY PLANNING DEPARTMENT, URBAN DEVELOPMENT/OPEN SPACE PLAN FOR SANTA CLARA COUNTY 1 (1973) [hereinafter cited as URBAN DEVELOPMENT PLAN].
122. Id.
123. PETER LERT, SANTA CLARA COUNTY AGRICULTURE: A LOOK AT ITS FUTURE 4 (1972) [hereinafter cited as LERT].
steps to prevent future leapfrogging and to control its urban development. The Santa Clara County Local Agency Formation Commission,\textsuperscript{124} in conjunction with county planning officials and the Board of Supervisors, released in late 1973 an Urban Development/Open Space Plan for Santa Clara County (Urban Development Plan).\textsuperscript{125}

The Urban Development Plan is an effort to control both the timing and the location of urban development within the county. Intended as the “Open Space Element” of the county’s general plan,\textsuperscript{126} the Urban Development Plan is an official recognition of the fact that any long-term plan for open-space preservation must of necessity include a plan for urban development. The product of nearly three years of study, the Urban Development Plan establishes urban service areas around the perimeters of each of the county’s fifteen incorporated cities.\textsuperscript{127} These service areas are intended to be of sufficient size to accommodate the projected growth of the particular city for the next fifteen to twenty years. Under the plan, however, the boundaries of the service areas are reviewed annually and appropriate adjustments are made.\textsuperscript{128}

The Urban Development Plan effectively restricts all urban development within these established urban service areas.\textsuperscript{129} If a developer decides to build beyond the urban services area, he must apply to the

\textsuperscript{124} Each county in California is required to establish and maintain a Local Agency Formation Commission (LAFCO). \textsc{Cal. Gov’t Code} \S\S 54773-54779.5 (West 1966 & Supp. 1979). Among the stated purposes of the LAFCO is “the discouragement of urban sprawl and the encouragement of the orderly formation and development of local government agencies.” \textsc{Cal. Gov’t Code} \S 54774 (West Supp. 1979). The LAFCO is directed to ascertain the ultimate “sphere of influence” of each governmental entity within the county, so as to provide for the “present and future needs of the county and its communities.” \textit{Id.} In implementing these directives, the Urban Development Plan—adopted by the Santa Clara County Board of Supervisors on May 30, 1973, and by the Santa Clara County Planning Commission on May 3, 1973—designates subdivisions within the “spheres of influence.” Specifically, the Urban Development Plan divides the “spheres of influence” of its political subdivisions into Urban Service Areas (including both urbanized areas and areas designated for urban expansion); Urban Transition Areas (in which development is presently prohibited, subject to annual review); and Non-urban/Open Space Areas and Urban Open Space Areas.

\textsuperscript{125} \textsc{Urban Development Plan, supra} note 121.

\textsuperscript{126} \textsc{Urban Development Plan, supra} note 121, at 3-4. All local governments in California are required to have a general plan, which must contain, \textit{inter alia}, an “open space element.” \textsc{Cal. Gov’t Code} \S 65563 (West Supp. 1966 to 1979).

\textsuperscript{127} \textsc{Urban Development Plan, supra} note 121, at 14-15. This portion of the Urban Development Plan is based largely on a set of guidelines adopted by the Santa Clara County LAFCO on April 1, 1970. \textsc{Santa Clara County Local Agency Formation Commission Guidelines} (Feb. 1978). These guidelines set forth a general policy that all future development in the county should proceed on a staged basis, moving outward from the cities in an orderly fashion. The LAFCO Guidelines subsequently formed the basis of the Urban Development Plan.

\textsuperscript{128} \textsc{Urban Development Plan, supra} note 121, at 4.

\textsuperscript{129} \textit{Id.} at 10.
nearest city for annexation. If this request is approved, the Urban Development Plan recommends that the cost of providing urban services and facilities (water and sewage facilities, streets, etc.) to the new development “should be borne by the new residents and should not be an unreasonable burden on existing residents.” If the developer’s request for annexation is denied, he is effectively prevented from developing the outlying parcel.

The practical effect of Santa Clara County’s Urban Development Plan has been to limit sprawl, largely through simple economics. While land acquisition costs may be significantly lower in an outlying area than within the designated urban service area, added costs to the developer as a result of providing public services and facilities for the outlying parcel generally render such fragmented development uneconomical. Development is thereby channelled into the urban service areas, precluding leapfrog development. Moreover, the effective limitation on the supply of developable land has caused developers to increasingly turn to the smaller parcels left vacant in the scattered leapfrogging of past years. In short, the Urban Development Plan has provided for staged development, resulting in a more orderly and efficient use of the county’s land resources.

The Williamson Act

Despite Santa Clara County’s national notoriety as an example of

130. Id. at 14.
131. Id. at 19.
132. Id. at 17-22. The Urban Development Plan encourages local governmental entities to evaluate capital improvement programs carefully to insure that such programs are consistent with the Plan. Id. If a developer wishes to build beyond the urban service area, and his request for annexation is denied by the nearest city, he has two options: reapply for annexation, offering to install necessary and appropriate municipal improvements (water and sewage lines, public roadways, public safety facilities, etc.) in his proposed development at his own expense; or abandon the project unless and until the boundaries of the urban service area are extended to include his development site. Id.
133. This process—often described as “in-filling”—is already being emphasized by the City of San Jose. See SAN JOSE CITY COUNCIL, URBAN DEVELOPMENT POLICIES OF THE CITY OF SAN JOSE (Oct. 19, 1970). This policy is now contained in the General Plan of the City of San Jose, which was adopted in February, 1976. San Jose, Cal., Resolution No. 19992: Adopting a General Plan for the City of San Jose (Feb. 14, 1976).
134. Staged development, alternatively described as “programmed urban development,” involves the planning of major public investment decisions—the timing, location, and scope of public facilities such as sewers and utilities, streets and public safety facilities—in order to influence the physical, social, and economic form of the community. For an excellent discussion of the concept of staged development, see Note, Phased Zoning: Regulation of the Tempo and Sequence of Land Development, 26 STAN. L. REV. 585 (1974). The Santa Clara County Urban Development Plan, by channelling new developments into or near areas already supplied with sufficient municipal facilities and services, involves such a staged development policy.
urban sprawl, more than one-half of the county's total acreage is currently in agricultural use.\textsuperscript{135} However, less than ten percent of this agricultural acreage constitutes harvestable farmland.\textsuperscript{136} Further, most of the county's remaining crop land is in the southern portion of the Santa Clara Valley, where much of the soil is only marginally productive.\textsuperscript{137} The prime agricultural lands of the northern section of the county, by contrast, have been almost completely urbanized.\textsuperscript{138}

The Santa Clara County Board of Supervisors, in an effort to preserve the county's remaining agricultural and open-space lands, in 1967 declared the entire county an agricultural preserve under the Williamson Act.\textsuperscript{139} By so doing, the supervisors have in effect waived the standard, minimum preserve size of 100 acres generally required by the Williamson Act.\textsuperscript{140}

The supervisor's pragmatic action was necessitated by the nature of the agricultural operations in the urbanized areas of the county, which primarily involved small-scale farms and nurseries. These urban agricultural operations, frequently the result of fragmented, leapfrog development, are generally well under the 100-acre limit and, moreover, are rarely contiguous to other agricultural parcels with which they could combine in applying for preserve status. Although the 100-acre minimum has now been removed, the board of supervisors generally requires that nonprime parcels contain at least ten acres.\textsuperscript{141} However, even this limitation may be waived by the board if the landowner de-

\begin{itemize}
\item \textsuperscript{135} \textit{Bureau of Census, U.S. Department of Commerce, 1974 Census of Agriculture—California.}
\item \textsuperscript{136} Lert, \textit{supra} note 123, at 2. Most of this agricultural acreage consists of forest and range land. \textit{Id.}
\item \textsuperscript{137} \textit{Urban Development Plan, supra note 121, plan map (appendix); Lert, supra note 123, at 2.}
\item \textsuperscript{138} \textit{Soil Conservation Service, U.S. Department of Agriculture, Soils of Santa Clara County 11 (1968).}
\item \textsuperscript{139} \textit{Santa Clara County Board of Supervisors, A Policy for the Preservation of Agricultural Lands (Nov. 20, 1967).}
\item \textsuperscript{140} The Williamson Act requires that a preserve be at least 100 acres, although the preserve may encompass separate, noncontiguous parcels under the same ownership, or contiguous parcels under separate ownership. \textit{Cal. Gov't Code} § 51230 (West Supp. 1979). In addition, the local legislative body is authorized to waive the minimum-acreage requirement if it finds that the proposed preserve has unique characteristics worthy of preservation. \textit{Id.}
\item \textsuperscript{141} \textit{Santa Clara County Board of Supervisors, Policy Guidelines of the Board of Supervisors for Consideration and Approval of Williamson Act Applications, 1978, (Exhibit A) (Oct. 17, 1977).}
\end{itemize}
monstrates that the parcel "possess[es] unique agricultural or open space characteristics."142

The county's effective removal of the 100-acre requirement has not been without its critics. It has been charged that the county, by granting Williamson Act contracts to owners of such small parcels, is merely granting a property tax reduction to residents of semirural, large-lot subdivisions.143 At least one critic claims that with the exception of nursery operations, no form of agriculture is economically viable on such small parcels.144

The county-wide preserve was declared in 1967, only one year after the Williamson Act became effective. Accordingly, any discussion of the effect of the preserve policy on Santa Clara County's Williamson Act program must remain somewhat speculative. Initial results, however, were disappointing at best. No prime acreage at all was enrolled in the county's Williamson Act program prior to 1970.145 The declaration of a county-wide preserve and the resulting reduction of the minimum-acreage requirement apparently had no immediate effect on the enrollment of small prime parcels previously bypassed by developers.

With the enactment of the Urban Development Plan in 1973, however, Santa Clara County's Williamson Act program began to produce impressive results. Largely due to the Plan, nearly forty-seven percent of the county's total area was enrolled under the Williamson Act as of December 31, 1978.146 Of far more significance to agriculture, nearly eighty percent of the county's agricultural land is currently enrolled, and approximately six percent (over 22,000 acres) of all enrolled lands are considered prime.147 In addition to these significant increases in enrolled acreage, the number of Williamson Act contracts in the county has increased by sixty percent since the adoption of the Urban Development Plan.148

The importance of Santa Clara County's Urban Development Plan cannot be overemphasized in assessing the dramatic increase in the acreage enrolled under the Williamson Act program. It appears

142. Id.
143. See, e.g., California Assembly Select Committee on Open Space Lands, Summary of Testimony, Special Hearing on Remedial Approaches to the California Land Conservation Act of 1965 (Williamson Act) 110 (March 23, 1973) (statement of Ms. Polly Roberts, speaking on behalf of California Action, Inc.).
144. Interview with Joseph Janelli, Executive Director, California Farm Bureau Federation, in Sacramento, California (March 10, 1978).
146. Id.
147. Id.
148. Id.
that as long as farmers had some hope that they could sell their property in the near future at development prices, they were not interested in restricting the property's use and value by enrolling in the Williamson Act program. The Urban Development Plan changed the landowner's expectations as to the prospects for development of his land. The Plan provided owners of agricultural and other open-space lands on the county's rural-urban fringe with an objective means of evaluating and predicting the development potential of their property. As the Plan's stated purpose was to channel growth for a fifteen to twenty-year period, subject to annual review, the minimum ten-year Williamson Act contract term appears to have become a relatively attractive means for many farmers and would-be developers to reduce their holding costs while awaiting development opportunities.

Standing alone, the concept of staged growth, relied upon in the Urban Development Plan, merely serves to postpone urbanization, and exerts but an indirect and temporary impact on the preservation of California's agricultural lands. However, recent legislative action on the local level may serve to further decrease development pressures in the southern section of Santa Clara County and may further increase Williamson Act enrollments. The cities of Gilroy and Morgan Hill, the only incorporated cities in the southern Santa Clara Valley, have in recent years undergone substantial urbanization as developers have moved south from the built-up areas of the north county near San Jose. In order to prevent continued uncontrolled urbanization, both cities have adopted growth-control measures that in effect limit the number of residential dwellings that may be erected annually in either community. In conjunction with the county-wide development limi-

149. For example, in 1976 the population of Morgan Hill rose by 21.4% over its 1975 level, while the number of residential building permits more than doubled during the same period. City of Morgan Hill, Cal., Ordinance No. VIII-I.01: Background and Purpose, Residential Development Control System (adopted by initiative Nov. 8, 1977).

150. The Morgan Hill Residential Development Control System (DCS) was enacted by initiative (Measure 'E') in the city's November 8, 1977 General Election. Under the DCS, a population-based formula is employed to determine the maximum number of new residential dwelling units to be constructed during the ensuing fiscal year. In essence, the city enacted a sequential growth plan. Would-be developers, after complying with all other subdivision requirements (such as submission and approval of proposed subdivision maps), then compete for the allotted number of building permits on a point system similar to the much-discussed "Petaluma Plan." See Petaluma, Cal., Resolution 5760 N.C.S., Adopting a Development Plan for the City of Petaluma (June 1, 1971); Petaluma, Cal., Resolution 6028 N.C.S., Policy Respecting Residential Construction and Population Growth and Reaffirming the Cessation of the Zoning Moratorium (April 17, 1972); Petaluma, Cal., Resolution 6113 N.C.S., Establishing a Residential Development Control System (August 21, 1972). The Petaluma Plan survived a constitutional challenge by the housing industry, Construction Indus. Ass'n of Sonoma County v. City of Petaluma, 522 F.2d 897 (9th Cir. 1975), cert. denied, 424 U.S. 934 (1976).

In 1978 the original Petaluma Plan was superseded by an updated version, Petaluma,
tations set forth in the Urban Development Plan, applicable to the surrounding unincorporated lands, these local legislative efforts at growth control should further encourage owners of agricultural and open-space lands in the region to consider the benefits of the Williamson Act program. Nevertheless, even in concert, the Williamson Act, staged growth, and limitations on new building permits by no means constitute an adequate long-term public policy for the preservation of California's prime farmlands.

IV. Recommendations

The California Land Conservation Act of 1965 was an attempt to deal pragmatically with the tremendous growth California has been experiencing for the last twenty-five years. The Act, in effect, had the dual purpose of (1) preserving the state's highly productive prime agricultural land from premature and unnecessary development while (2) thereby channelling urban growth into nonprime land that was neither suitable for agriculture nor set aside by the community for another open-space purpose such as a recreation area. Further, the contract mechanism, with a minimum ten-year term, offered the local legislative body far more effective control over the use of the land than changeable, often-abused zoning designations.

In practical terms, farmers and developers compete for the same limited lands. For a voluntary, owner-initiated land conservation pro-


The criteria used in awarding design points under the Morgan Hill DCS closely resemble those set forth in the so-called Livermore (Cal.) Plan. See Associated Home Builders of the Greater Eastbay v. City of Livermore, 18 Cal. 3d 582, 557 P.2d 473, 135 Cal. Rptr. 41 (1976). Under the DCS, consideration is given to such factors as the availability of necessary school rooms without overcrowding or double sessions, and adequate sewage and water facilities. Design points are awarded to those developers whose proposed projects would not conflict with these community goals, or whose projects make provisions for such facilities, much like routine subdivision exactions. Once the design review process has been completed, all proposed projects are ranked according to the number of design points received. The available building permits for the ensuing fiscal year are then distributed among the projects, beginning with the project which received the highest total of design points. MOR-
GAN HILL RESIDENTIAL DEVELOPMENT CONTROL SYSTEM, §§ VIII-6-1.01 to 6-11.01.

At least partially motivated by the Morgan Hill initiative, the city council of Gilroy, California, adopted an Interim Growth Management Policy on December 5, 1977. This policy, in the form of a brief memorandum to the city administrator and planning director, states in essence that no new tentative subdivision maps will be accepted for filing during the 1978 and 1979 calendar years. Gilroy City Council, Memorandum to City Administrator and Planning Director (Dec. 5, 1977). During this moratorium on the filing of new subdivision maps, the city council intends to adopt a new general plan, including a growth control mechanism. Telephone interview with Robert Medeola, Associate Planner, Gilroy, California, Planning Department (April 10, 1978).
gram such as the Williamson Act to succeed, a delicate balance must be maintained. There must be sufficient financial incentive to encourage landowners to enroll in the program, but effective safeguards must be established to prevent abuse by would-be developers. Care must also be taken that the financial benefits to the landowners do not undermine the local property-tax base.

As shown in the preceding analysis, the Williamson Act has to date failed to achieve such a balance. Moreover, the shortcomings of the Williamson Act are by no means peculiar to Contra Costa, Alameda, and Santa Clara counties. Similar problems have been encountered in virtually every city or county which has implemented the program.151

Despite its flaws, however, the Williamson Act remains the best mechanism currently available to prevent the premature conversion of California's most productive farmlands to urban uses. Accordingly, necessary reform of the Williamson Act should be instituted at once.

A. Statewide Plan

Many of the Williamson Act's failings may be traced to the complete lack of state guidance and coordination, and the resulting haphazard implementation at the local level. There is no clear-cut or unifying land-use philosophy in the Williamson Act program.152 As a result, the various local governments apply widely differing standards in awarding contracts. For example, the Santa Clara County Board of Supervisors declared the entire county an agricultural preserve, allowing virtually any owner of nonurban land to enroll under the Act, with little regard for the size of the parcel.153 Other counties, however, still adhere to the 100-acre requirement for preserves.154 Meanwhile, Contra Costa County refuses contracts to owners of open-space land per se, restricting preserve status to commercial agricultural operations.155


152. The widely-divergent aims of the Williamson Act are apparent in Cal. Gov't Code § 51220 (West Supp. 1979), in which the legislative findings underlying the Williamson Act are set forth.

153. See notes 139-42 & accompanying text supra.


The nearby counties of Alameda and Santa Clara, in contrast, regularly award contracts to owners of nonagricultural open-space lands.\textsuperscript{156}

The Williamson Act must be evaluated with a view to a clear definition of purpose. Until the program's objective has been clarified, no meaningful improvement in its operation on the local level can be expected. Specifically, the Williamson Act should be amended to return to its original purpose: the preservation of California's prime agricultural lands through equitable property-tax treatment. While other open-space lands, such as salt ponds and marshlands, may well be deserving of preservation in the public interest, the preservation of these lands can and should be accomplished by other land-use regulatory devices such as zoning, the purchase by public or private entities of open-space easements, and other techniques. Indeed, such lands would appear to be subject to different, and lesser, developmental pressures than flat, readily developed prime agricultural lands.

By permitting the enrollment of virtually any open-space land, the Williamson Act currently preserves primarily land far-removed from any existing or planned urban development. These out-lying, non-prime lands are generally in no need of preferential property taxation, since the highest and best use of such land is probably nonurban.

Rather than functioning as a de facto agricultural subsidy program, the Williamson Act should instead provide equitable property taxation for prime agricultural lands in danger of urban development. Once this purpose of the Williamson Act is clearly defined, modifications aimed at the preservation of the state's prime agricultural lands may be implemented.

B. Increased Tax Benefits

The owner of prime agricultural land has a relatively meager incentive to enroll his land as a preserve. The effect of the income-capitalization formula on the property-tax assessments of this highly productive land is frequently too slight to overcome the landowner's reluctance to restrict the potential uses of his property for a minimum of ten years. If the Williamson Act is to be effective, the financial incentives to the owners of prime farmland must be increased. This goal could be met by retaining the current income-capitalization method of assessment for enrolled lands, while providing an additional percentage reduction from the resulting assessment, based on the amount of prime acreage in the parcel. When the entire parcel is prime agricultural land, the property-tax assessment derived by the in-

\textsuperscript{156} Alameda County Planning Department, Williamson Act Files (Dec. 1978) (information contained in public files located at Hayward, California); interview with Gerald Wallace, Associate Planner, Alameda County Planning Department, in Hayward, California (Feb. 22, 1979).
come—capitalization formula would be further reduced by ten percent; if only one-half of the parcel is prime agricultural land, a five percent reduction would be made. Research will be necessary to ascertain equitable assessment reductions that will provide a sufficient incentive to owners of prime agricultural land to enroll in the Williamson Act program.

Even with these modifications, however, the Williamson Act will fall short of a comprehensive land-planning tool. A major flaw in the Act is that at best it is only a temporary solution to the problem of our dwindling supply of agricultural and open—space lands. The landowner has the option of cancelling the contract, subject to the approval of the local legislative body, or simply allowing it to expire through nonrenewal. For example, in 1976-77 statewide figures indicate that Williamson Act contracts on twenty-seven parcels were cancelled, and an additional fifty-nine notices of nonrenewal were filed,157 out of a total of 90,000 parcels under Williamson Act contracts.158 These terminations involved the eventual removal of approximately 12,000 acres of land from the Williamson Act program.159 Thus, the Williamson Act may merely postpone or slow the urbanization of California’s agricultural lands, allowing contracted lands to gradually become part of the problem they were intended to solve. More than mere financial incentives will be necessary to preserve California’s dwindling prime agricultural lands. The most immediate need is for a staged growth mechanism to preclude continued leapfrog development.

C. Staged Growth

As a means of effecting farmland preservation in the state, the California legislature should mandate that all counties institute formal programs of staged development akin to Santa Clara County’s Urban Development Plan, utilizing the concept of urban service areas. Such a plan could be readily implemented in other counties. Presently, each county in the state is required to have a Local Agency Formation Commission (LAFCO), which is required to designate the “sphere of influence” for each incorporated city within the county.160 Each county is also required to adopt a general plan containing an “Open Space Element” setting forth the types and locations of permanent and long-term open—space areas within the county.161 To combine these two mecha-
nisms would produce, inter alia, a coordinated assault on the on-going urbanization of California's agricultural and other open-space lands. By channelling urban expansion into already-developed areas, local communities might control growth and prevent costly and disastrous leapfrog development. However, staged growth is also a less than permanent solution to the problem of California's diminishing farmlands.

**Conclusion**

Enacted fourteen years ago, the Williamson Act, though in need of reform, remains the best mechanism currently available for preserving California's vital agricultural lands. Modifications to the Act, such as those set forth above, should be instituted immediately. Together with local programs to channel growth, the redefined and strengthened Williamson Act should become an integral part of a new, statewide, comprehensive resource plan. As the Santa Clara County experience has amply illustrated, efforts to plan for a single resource, or a single land use, are destined to be both haphazard and ineffective. If California's agricultural lands are to continue to feed the nation, a comprehensive, statewide land-use plan, coordinated with similar programs for air and water resources, waste disposal, transportation, and other human needs, must be enacted at once.