A Modern Perspective on the Williamson Act: Conservation, Confusion, and Controversy

By Michael Patrick Durkee, David H. Blackwell**, and Thomas P. Tunny****

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I. INTRODUCTION

As residential and commercial development continues its march outward, pressure to convert agricultural lands to urban uses increases. This pressure causes the price of agricultural land to rise, while at the same time, local and state regulations (such as endangered species, water quality, clean air, pesticide use, labor standards, wetlands, and conservation standards)[1] make farming less attractive. The result is often a market place where farmers can make more money selling their land to developers than selling their agricultural products to consumers. In California, 30 million acres are dedicated to agricultural use, of which over half are subject to the California Land Conservation Act of 1965, more commonly known as the Williamson Act.[2] The original purpose of the Williamson Act was to counteract the tax laws that often led to the conversion of agricultural land to urban uses (if you were being taxed at urban rates you might as well sell to urban developers). The Williamson Act enabled local governments to enter into "Williamson Act Contracts" with private landowners that restricted private land to agricultural or related open-space uses in return for the landowner securing a better property tax rate (hence removing the "payment of higher taxes" as one of the reasons farmers sold out).

There is no doubt that the Williamson Act has helped preserve agricultural land throughout the state. The modern conundrum, however, is the relationship between the Williamson Act, an individual Williamson Act Contract, and local planning laws, given the importance of the local general plan and comprehensive local planning law that the McCarthy "Consistency Legislation" of 1971 ushered into California. Other complicating factors include the growing need to provide housing of all types throughout California and the desire of the state to attract and retain commercial enterprises. These legal and political issues are further confused by the approach taken by the California Department of Conservation, which oversees the Williamson Act. Mixing these elements together can lead to a "High Noon" conflict involving farmers, local planners, developers, and the state.

For example, if the local general plan and the local guidelines implementing the Williamson Act are in conflict, which governs? Can a local Williamson Act Contract entered into between a farmer and a county in the 1970s be unilaterally amended by the county decades later if it is against the will of the farmer? Can any Williamson Act Contract amendment be inconsistent with the county's general plan? As discussed below, in the view of the authors, the Williamson Act does not and should not trump the state's comprehensive planning and zoning law.[3] The authors believe that agricultural conservation is strengthened, not weakened, by an approach that begins with the general plan. Ensuring that both a local agency's implementation of the Williamson Act and its execution of local Williamson Act Contracts are consistent with the local agency's general plan raises agricultural conservation to the highest local policy level and ensures that other general plan goals, policies, and programs will be consistent with such conservation ideals.

This article serves four purposes:

(1) it provides the reader with a basic understanding of the background and purpose of the Williamson Act;

(2) it explains how the Williamson Act is implemented by local governments;

(3) it examines the relationship between the Williamson Act and a local agency's planning regulations, and how, in the authors' view, the Williamson Act is often improperly used as a substitute for comprehensive planning; and,

(4) it briefly examines the future of the Williamson Act in light of the state's budget issues and recent attempts to reorganize state government.

II. HISTORIC OVERVIEW

A. Background and Purpose of the Williamson Act

Before 1966, the California Constitution required that individual property tax assessments be made according to the market value of the assessed property.[4] Thus, the county assessor was required to consider the highest and best use to which the property was naturally adapted and, therefore, could not limit consideration only to the property's present use.[5] Therefore, agricultural lands adjoining urban areas could be subject to higher property assessments and taxes, thereby forcing agricultural landowners to discontinue farming and sell or convert their land to urban development.[6] The Williamson Act helped to cure this problem. As explained by the California Supreme Court in *Sierra Club v. City of Hayward*,[7] the Williamson Act:

> ...was the Legislature's response to two alarming phenomena observed in California: (1) the rapid and virtually irreversible loss of agricultural land to residential and other developed uses and (2) the disorderly patterns of suburban development that mar the landscape, require extension of municipal services to remote residential enclaves, and interfere with agricultural activities. The Legislature perceived as one cause of these problems the self-fulfilling prophecy of the property tax system: taxing land on the basis of its market value compels the owner to put the land to the use for which

> it is valued by the market. As the urban fringe approaches, the farmer's land becomes valuable for residential development. His taxes are therefore increased, although his income is likely to shrink as more costly practices must be undertaken both to avoid interfering with his new neighbors and to protect his crops, livestock, and equipment from their intrusion. Often the farmer is forced to sell his land to subdivision developers, sometimes long before development is appropriate. As houses go up, so does the value of the remaining agricultural land, and the cycle begins anew.

Another concern was that farmers "fearing the encroachment of development incompatible with agricultural uses and the resultant increase in property taxes will not make the substantial investment in capital equipment, such as irrigation systems, required for a successful farming operation."[8]

In response to these concerns, the legislature made six findings when passing the Williamson Act in 1965, including that preservation of agricultural land is necessary (1) for the state's agricultural economy; (2) to assure healthy food for future residents of the state and nation; (3) to discourage premature and unnecessary conversion of agricultural land to urban uses, which causes checkerboard development; and (4) to preserve the value of agricultural lands as open space.[9]

As summarized by a California court of appeal: "The Williamson Act is a legislative effort to preserve open space and agricultural land through discouraging premature urbanization and, at the same time, to prevent persons owning agricultural and/or open lands near urban areas from being forced to pay real property taxes based on the greater value of that land for commercial or urban residential use, a factor which would force most landowners to prematurely develop."[10] In short, the Williamson Act aided agricultural land conservation through private-party tax incentives.

B. Background and Purpose of the General Plan

By 1971, the legislature provided a much stronger planning and conservation tool: the local general plan. As summarized by a leading commentator:[11]

> Before 1971, the general plan usually was considered an advisory document....In 1971, the Government Code was amended and the law since has required that all land use approvals be consistent with a city's general plan.... The initial 1971 legislation[12] and subsequent amendments require cities to "engage in the discipline of setting forth their development policies, objectives and standards in a general plan composed of various elements of land use." 58 Ops. Cal. Atty. Gen. 21, 23 (1975). The general plan thus was transformed from an "interesting study" to the basic land use charter that embodies fundamental land use decisions and governs the direction of future land use in a city's jurisdiction.

In California, a city's or county's general plan is the "constitution for all further development within the city or county."[13] It sits "atop the hierarchy of local government law regulating land use."[14] This elevated position requires that all subordinate regulations be consistent with the general plan. Generally, all lesser land use regulations, actions, or approvals (specific plans, zoning, subdivision maps, use permits, development agreements, etc.) must be consistent with the applicable general plan (with certain statutory exceptions for charter cities).[15]

Whether a subordinate regulation is consistent with the applicable general plan must be determined by comparing the substance of the regulation with each of the elements of the general plan, including the seven mandatory elements (land use, circulation, housing, conservation, open space, noise, and safety), any permissive elements included within the plan and the maps and diagrams within the various elements. "An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."[16] This consistency test has been cited with approval by the courts.[17]

In comparing the Williamson Act with the general plan laws, obvious questions arise. First, if there is an inconsistency, which governs? Second, can both planning tools be reconciled? Third, may a local agency amend one in a manner that would violate the provisions of the other? In order to analyze these questions properly, one must first understand both how the Williamson Act is implemented and the emerging importance of the local general plan and comprehensive planning.

III. HOW THE WILLIAMSON ACT WORKS

A. Establishment of Agricultural Preserves

The Williamson Act empowers local governments to establish "agricultural preserves" consisting of lands devoted to agricultural uses and other compatible uses.[18] A preserve can be much larger than an individual property: Preserves are "established for the purpose of defining the boundaries of those areas within which the city or county will be willing to enter into contracts pursuant to this act."[19] A proposal to establish an agricultural preserve must be submitted to the planning department (or, in some cases, the planning commission) of the county or city having jurisdiction over the land.[20] Within 30 days after receiving the proposal, the planning department must submit a report to the county board of supervisors or city council that includes a statement that the preserve is consistent with the general plan and the board or council must make a finding to that effect.[21] Therefore, it is clear that at its establishment, the agricultural preserve must be consistent with the local general plan.

An agricultural preserve generally must be at least 100 acres in size.[22] Smaller agricultural preserves may be established if the local government determines that the unique characteristic of the agricultural enterprise in the area calls for smaller agricultural units and if the establishment of the preserve is consistent with the local general plan.[23]

Only land located within an agricultural preserve is eligible for a Williamson Act Contract.[24] Preserves may be made up of land in one or more ownerships.[25] A preserve may contain land other than agricultural land; however, within two years of the effective date of any contract in the preserve, the nonagricultural land must be restricted by zoning in such a way as to make it compatible with the land under contract.[26]

The Williamson Act authorizes local governments to adopt rules and restrictions governing the administration of agricultural preserves and to ensure that the land within the preserve is

maintained for agricultural, open space, or other compatible uses.[27] A "compatible use" is any use determined by the county or city administering the preserve or by the Williamson Act to be compatible with the agricultural, recreational, or open-space use of land with the preserve and under contract.[28] According to the Williamson Act, a use on contracted lands is compatible if:

(1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.

(2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.

(3) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.[29]

The Williamson Act authorizes the approval of a use that does not meet the requirements of subparagraphs (1) and (2) above as long as it is located on "nonprime" agricultural land and is subject to certain specific statutory conditions.[30] A "compatible use" includes agricultural use, recreational use, or open-space use unless the local government makes a finding to the contrary after notice and hearing.[31] Those uses include "the erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities."[32]

B. Williamson Act Contracts

Once an agricultural preserve is established, the local government may offer to owners of agricultural land within the preserve the opportunity to enter into annually renewable Williamson Act Contracts that restrict the land to agricultural uses for at least ten years.[33] The ten-year minimum term "was intended to guarantee a long-term commitment to agricultural and other open space use to deny the tax benefits of the Act to short-term speculators and developers of the urban land, and to insure compliance with the constitutional requirement of an 'enforceable restriction.'"[34] Every Williamson Act Contract is binding upon all successors of interest.[35] If the land under the contract is divided, the owner of any parcel may exercise any of the rights of the owner to the original contract, independent of any other owner of a portion of the divided land.[36]

The Williamson Act Contract "may provide for restrictions, terms, and conditions, including payments and fees, more restrictive than or in addition to those required by" the Williamson Act.[37] Every Williamson Act Contract must exclude uses that are not agricultural and that are not compatible with agricultural uses, and this exclusion must remain in effect for the duration of the contract.[38]

In return for these restrictions, the landowner is guaranteed a relatively stable tax base, founded on the value of the land for open space use only and unaffected by its development potential. Local governments receive an annual subvention of the forgone property tax revenues from the state via the Open Space Subvention Act of 1971.[39] The state pays local governments $5 per acre for "prime agricultural land," as that term is defined by the Williamson Act, and $1 per acre for nonprime land.[40] The state controller pays these monies to the local governments.[41]

Once a Williamson Act Contract is made with any landowner, the local government must offer Williamson Act Contracts with similar terms to every other owner of agricultural land within the particular preserve.[42] The Williamson Act Contracts need not be identical, so long as the differences are related to differences in location and characteristics of the land and are pursuant to the uniform rules adopted by the local government.[43]

C. Termination of Williamson Act Contracts

There are five ways to terminate a contract under the Williamson Act: nonrenewal, cancellation, public acquisition, city annexation, and easement exchange.

1. Nonrenewal

The first and most widely used method for terminating a Williamson Act Contract is a nine-year process called "nonrenewal."[44] Since 1991, more contracted acreage has been terminated through nonrenewal than all of the other methods of termination combined.[45] The California Supreme Court recognizes nonrenewal as the "preferred termination method" and the "intended and general vehicle for contract termination."[46] Either the local government or landowner can initiate the nonrenewal process.[47] A "notice of nonrenewal" must be recorded at least 90 days before the renewal date of the contract.[48] Normally, the renewal date is the anniversary date of the contract, but the contract should be reviewed carefully because some contracts provide for a renewal date that is different from the anniversary date. Once the notice of nonrenewal is recorded, the automatic annual renewal of the contract ceases and the contract expires nine years later. During the nonrenewal process, the annual tax assessment gradually increases to the level of an unrestricted property.[49] At the end of the nine-year nonrenewal period, the contract is terminated. Despite the inherent delays associated with nonrenewal, it is by far the most common method for terminating a contract. Since 1991, approximately 69% of the terminated contract land was accomplished by nonrenewal.[50]

2. Public Acquisition

The second most widely used tool for terminating contract land is through public acquisition, accounting for 23% of the terminated contract land. A Williamson Act Contract is deemed null and void if the entire parcel of land subject to the contract is condemned or acquired in lieu of eminent domain.[51] The contract is deemed null and void as of the date that the action is filed.[52] When the action is commenced to condemn or acquire an interest in less than the fee title of an entire parcel of land under contract, the contract is deemed null and void only as to the portion of the title that is the subject of the action.[53] In

this case, either party may petition to cancel the contract with regard to the remaining portion.[54]

3. Cancellation

A third mechanism for removing property from the obligations of a Williamson Act Contract is to "cancel" the contract immediately.[55] Although cancellation accounts for only about one percent of the total acreage of terminated contracts, it is the source of many disputes that have reached the appellate courts. To approve a contract cancellation, a county or city must make one of two primary findings supported by substantial evidence: (1) that cancellation is consistent with the Williamson Act; or (2) that cancellation is in the public interest.[56] In order to make the finding that cancellation is consistent with the Williamson Act, the city or county must find that "cancellation is for an alternative use which is consistent with the applicable provisions of the city or county general plan."[57] Prior to making the required findings, the city or county must send the cancellation application to the Department of Conservation and consider any comments on the required findings submitted by the Department of Conservation.[58]

The landowner must pay a cancellation fee equal to 12½% of the fair market value of the property as if it were free of the contractual restriction.[59] A city or county may waive the cancellation fee or a portion of it under certain limited conditions.[60] The fee is imposed "as a deterrent to the landowner to seek cancellation during the early years of the Contract and to ensure that owners who execute agreements are not speculators looking for a short-term tax shelter."[61] Cancellation of a contract is adjudicatory in nature and is therefore reviewable in a writ of mandate proceeding brought under the provisions of Code of Civil Procedure section 1094.5.[62] Cancellation fees are transmitted to the state controller for deposit in the state general fund.[63]

4. Annexation

City annexation accounts for about four percent of the terminated acreage under Williamson Act Contracts. Where a city is annexing a property subject to a Williamson Act Contract made with the county prior to January 1, 1991 and the city had filed a protest of the Williamson Act Contract with the local agency formation commission at the time the contract was entered into, and provided certain other conditions are met, the city may exercise its option not to succeed to the Williamson Act Contract and to cancel the contract, in which case no cancellation fee is applicable.[64]

5. Simultaneous Rescission and Entry into New Contract or Open-Space Easement

The parties to a Williamson Act Contract may agree to rescind the contract in order to enter into a new contract, so long as the new contract restricts the same property for an initial term that is at least as long as the unexpired term of the contract and in no event less than ten years.[65] As an alternative, the parties may rescind the contract in order to enter into an open-space easement agreement pursuant to the Open-Space Easement Act of 1974.[66]

D. The Effect of Recent and Pending Legislation on the Williamson Act

1. 1998 Amendments

The California Legislature amended the Williamson Act in 1998 by creating Farmland Security Zone ("FSZ") contracts (SB 1182) and by authorizing cancellation of a Williamson Act Contract in exchange for placing a comparable amount of land under a conservation easement (SB 1240). An FSZ is an area created within a county's agricultural preserve by the county board of supervisors upon request by a landowner or group of landowners.[67] FSZ contracts offer landowners a greater property tax reduction[68] in return for an initial contract term of 20 years,[69] with renewal occurring automatically each year. New special taxes for urban-related services must be levied at an unspecified reduced rate unless the tax directly benefits the land or living improvements.[70] Cities and special districts that provide nonagricultural services are generally prohibited from annexing land enrolled under an FSZ contract.[71] Similarly, school districts are prohibited from taking FSZ lands for school facilities.[72]

As to conservation easements, landowners now have the option of terminating a Williamson Act Contract on one piece of property in exchange for the dedication of a conservation easement on another piece of property of equal or greater size and agricultural suitability.[73] The conservation easement is granted in perpetuity, limits the land to agricultural uses, and is entered into with the Department of Conservation pursuant to the Agricultural Land Stewardship Program.[74] The payment of the 12½% cancellation fee is waived for the terminated Williamson Act Contract.[75]

2. 2003 Amendments

In 2003, the California Legislature amended the Williamson Act by adding section 51250 to provide for new remedies for the public agency when the landowner pursues an incompatible use of property that constitutes a material breach of a Williamson Act Contract.[76] Under this new law, a breach is material if a commercial, industrial, or residential building is constructed on contracted land that is not allowed by the Williamson Act or the contract, or local regulations consistent with the Williamson Act, and the building is not related to an agricultural or compatible use.[77]

The new law gives the Department of Conservation a considerable role in the process of resolving the potential breach. Once it learns of a potential breach, the department notifies the city or county.[78] If the locality determines the breach may be material, the locality must notify the property owner and the department, and it must give the property owner 60 days to eliminate the conditions that caused the breach.[79]

If the property owner does not remedy the breach, the locality must hold a public hearing to consider the issues and determine whether a breach exists.[80] If the locality determines that a breach exists, it must either: (1) order abatement of the breach, or (2) assess a monetary penalty equal to 25% of the unrestricted fair market value of the land rendered incompatible by the breach plus 25% of the value of the incompatible building and improvements, and terminate the contract on that

portion of the contracted land that has been made incompatible by the material breach.[81] If the locality fails to process the resolution of the breach, the Department of Conservation may carry out the locality's responsibilities.[82]

3. 2004 Legislation

Legislation sponsored by Senator Michael Machado (D-Linden) that will affect local cancellation fee calculations (SB 1820) was recently passed into law.[83] As explained herein, a landowner must pay a cancellation fee equal to 12½% of the fair market value of the property in order to cancel a Williamson Act Contract. The county assessor determines the fair market value of the property.[84] The assessor's valuation is very important because the valuation and the resulting cancellation fee can have a significant impact on contract cancellations. A higher cancellation fee serves as a disincentive to cancellation and may result in fewer cancellations and more lands under contract. On the other hand, if the contract is being canceled in order to develop the property with residential uses, the higher cancellation fee may simply be passed on to homebuyers in the form of higher home costs. A lower cancellation fee may result in lower home costs.

Under Senator Machado's new legislation, the Department of Conservation or the landowner may challenge the county assessor's valuation of the contracted property and require the assessor to conduct a formal review of the original valuation. If after the assessor's reconsideration of the valuation the Department of Conservation or the landowner still disagrees with the assessor's valuation, the department or landowner may legally challenge the valuation. This challenge must be brought within 180 days. Separate and apart from the assessor's valuation, the Department of Conservation and the landowner are authorized to agree on a valuation that shall be the binding valuation.

IV. THE WILLIAMSON ACT SHOULD NOT BE USED TO IGNORE A LOCAL AGENCY'S PLANNING REGULATIONS OR THE CONTRACTUAL RIGHTS OF THE LANDOWNER

The Williamson Act, and the cases interpreting it, have left several important questions unanswered. For example, must a local Williamson Act Contract be consistent with the local general plan? If so, when? At execution? At implementation? After it is unilaterally amended by the local agency? May a local agency change the rules of an agricultural preserve to affect the bargained-for terms in the Williamson Act Contract? May it do so if such amendments are inconsistent with the local general plan? Assuming the agricultural preserve and Williamson Act Contract are consistent with the general plan when created and executed, can a subsequent amendment to the general plan make the agricultural preserve and Williamson Act Contract inconsistent with the general plan? These issues are addressed below.

A. Williamson Act Contracts and Agricultural Preserves Must Be Consistent with the Local General Plan at their Inception

As discussed above, the general plan is "the constitution for all future developments within the city or county" to which any local decision affecting land use and development must conform.[85] Nothing in the Williamson Act or the state's Planning and Zoning Law exempts a local government's actions under the Williamson Act from complying with its local general plan.

To the contrary, courts recognize the importance of local planning regulations *vis a vis* the act: "The Williamson Act embraces statewide purposes; it was adopted by the Legislature to preserve open spaces, to conserve irreplaceable agricultural lands and to eliminate socio-economic problems associated with urban sprawl. Nevertheless, the state aims envisioned by the law, by necessity, must be correlated with local environmental and community needs. And, by implication the state objectives must be correlated with long-range community planning."[86]

With regard to agricultural preserves, the Williamson Act requires that a resolution establishing an agricultural preserve must contain a finding that the preserve is consistent with the general plan.[87] Because a Williamson Act Contract must comply with the terms of the agricultural preserve within which the property is located,[88] it follows that a Williamson Act Contract should also be consistent with the general plan.

This reasoning is supported by prior Attorney General Opinions. The California Attorney General has opined that in the context of contract cancellation during the 1982 "window provision" provided by the Robinson Act, "to suggest that a contract could be terminated and development approved which is inconsistent with the general plan applicable at the time of the governmental decision ... would be contrary to provisions of the statutory scheme pertaining to general plans."[89] "Governmental decisions are to be in conformity with the current general plan."[90] Yet, the sanctity of contract and rights against its impairment must also play a role. Perhaps, like redevelopment law, Williamson Act Contracts should be consistent with the local general plan at their execution and any time they are amended, but otherwise are protected by their sanctity against unwanted change, even if at the general plan level.

Although a local agency and the landowner are free to enter into a Williamson Act Contract that restricts the owner's property to uses more restrictive than would be permitted under the applicable zoning,[91] these restrictions should nonetheless be consistent with the applicable general plan.

For example, the California Attorney General has opined that although the zoning allowed 20-acre parcels, an owner under contract could not sell off 20-acre parcels for homesites because the county determined that the subdivision would result in a loss of productive agricultural land because no commercial agricultural enterprises were contemplated.[92] The owner's attempt to sell the land for nonagricultural uses violated the terms of the contract, the agricultural preserve, and the Williamson Act.[93] Conversely, the proposed sales should have been approved by the county if it could be shown that the lots would be devoted to agricultural uses.

The situation above is far different than one where the applicable general plan and zoning provide for 20-acre minimum parcels, but the Williamson Act Contract or the resolution establishing the agricultural preserve requires 200-acre minimum parcels. If in fact 200-acre minimums are needed to ensure agricultural viability, then the direction should start at the highest level: The general plan should be amended to require 200-acre minimums, and then the Williamson Act Contracts would follow suit. To allow a contract to set an inconsistent

standard in the name of expediency or higher purpose confuses the role of the general plan. In short, the authors believe that if a local Williamson Act Contract is in direct conflict with the jurisdiction's general plan at execution or amendment (even if it is a unilateral amendment forced by the county through amendment to its local regulations), the contract or its amendment is void *ab initio*.[94]

B. Local Government's Implementation of the Williamson Act Should Not Undermine the Landowners' Contractual Rights

A landowner's rights under a Williamson Act Contract are enforceable under ordinary contract law. In *County of Marin v. Assessment Appeals Board of Marin County*,[95] the court applied general contract law to interpretation of a contract under the Williamson Act, including the maxims that "a contract entered into for the mutual benefit of the parties is to be interpreted so as to give effect to the main purpose of the contract and not to defeat the mutual objectives of the parties," and that "the court shall avoid an interpretation which will make a contract extraordinary, harsh, unjust, inequitable, or which would result in an absurdity." The court rejected the appellants' argument that the contract should be interpreted in a manner that would unilaterally deny the landowner the tax benefit secured by the contract while keeping the landowners bound by the Williamson Act's restrictions, concluding that "[i]t goes without saying that such result would be totally inequitable."[96]

Under this rationale, it would be "totally inequitable" for a local agency to attempt unilaterally to modify the terms of a contract by changing the rules for the agricultural preserve. Some local agencies, and the Department of Conservation, have asserted that the Williamson Act is a regulatory tool and may be used to adversely affect a landowner's rights under the contract if the local agency can show its action was a reasonable exercise of its police power. This attitude ignores the fundamental importance of contracts to the Williamson Act:

> ...it is important to note that the Land Conservation Act's mechanisms are wholly contractual. Although a city or county could through exercise of its police power bind all purchasers by zoning the land for "agricultural and compatible uses," the Land Conservation Act does not draw on that source of power but rather relies solely on the power of local government to make "contracts."[97]

Because the Williamson Act does not address how Williamson Act Contracts may be modified,[98] the application of general "contract law provides that a written contract may be modified by another contract in writing."[99] This means that before a local agency can seek to change the bargained-for terms of a contract, it must obtain the landowner's written consent. In *Delucchi v. County of Santa Cruz*,[100] plaintiff landowners and the county entered into a contract wherein the owners agreed to restrict the property to uses authorized by the county's Agricultural Preserve ("A-P") Zone during the term of the contract. The county then enacted new zoning regulations for the A-P Zone that were more restrictive than at the time of the contract. The court rejected the owners' argument that the contract should be interpreted to prohibit the county from changing the zoning.[101] The contract simply limited the property to uses allowed in the A-P Zone, rather than expressly identifying what those allowable uses were, and whether they were limited to only those in the A-P Zone at the time of contract execution. Thus, the court reasoned that the contract contained an elastic provision that subjected the owner to whatever uses were allowed in the A-P Zone, as it might by amended, over the term of the contract. In *dicta*, the court stated that the owners' argument that the contract "effectuated a wholesale freeze of zoning" would make the contract invalid because it would amount to the county contracting away its police power.[102] The authors simply note that this is *dicta* and that many similar agreements that bind future actions and laws have been allowed by law and upheld by the courts.[103]

C. State and Local Governments Use the Williamson Act in Reaction to Fear of Uncontrolled Development

The California Legislature has directed the Department of Conservation to "assist local, regional, state, and federal agencies, organizations, landowners, or any person or entity in the interpretation" of the Williamson Act.[104] In response, the department has made aggressive interpretations of the act, and has commenced litigation against local governments that it believes are not fulfilling the act's objectives.[105] The department also has threatened the loss of subvention funds to counties that fail to enforce the act as interpreted by the department. Insight into the department's aggressive approach is partially provided by an August 11, 2004 explanation of its rationale for supporting AB 1492:[106]

> The root of the problem that AB 1492 attempts to address appears to be planted in the subdivision of Williamson Act contracted parcels. Creation of multiple smaller parcels from larger parcels is usually the first step in the eventual sale to individual property owners for residential development, and the sale of integral parcels can impair the ability of a rancher or farmer to continue to graze or farm on remaining agricultural parcels, or create conflicts with new nonagricultural uses that may ensue.
>
> For subdivision of Williamson Act contracted land, a local government must have a substantive basis for approving the application and map, it must do so on the basis of a specific and affirmative determination that EACH OF THE RESULTING parcels is large enough to sustain their agricultural uses to which it is restricted, and that the subdivision will not result in residential development of the resulting parcels except where residential use will be incidental to the COMMERCIAL AGRICULTURAL use of the land.
>
> The Department is aware that local governments have approved subdivision and improvements on contracted lands that violate the Williamson Act, although the State Attorney General has twice opinioned [sic] that the Williamson Act prohibits the subdivision of contracted lands for the purpose of residential development. (62 Op. Cal. Att'y Gen. 233 (1979), 54 Op.

Cal. Att'y Gen. 90 (1971). We have commented on numerous proposals for subdivisions, reminding counties of the Attorney General opinions and that the proposals would violate the Williamson Act.

Taking the cue of the Department of Conservation, the legislature recently expressed concern that some "owners of contracted land are seeking to establish multiple legal parcels to circumvent local restrictions on minimum parcels sizes on land for which the original parcel size was an element of the contract."[107] This circumvention was apparently due to the fact that the Williamson Act does "not require that local zoning of designated agriculture preserves be consistent with the minimum parcel size under the act, and without that requirement the purpose of the act can be seriously undermined by subminimum parcel sizes and incompatible uses within those preserves."[108] The legislature then claims: "More specific guidance is needed, in concert with the careful enforcement of the Williamson Act by administering local governments, so that the result will not excessively curtail the latitude of local governments to manage agricultural preserves and Williamson Act contracts."[109]

The fear of the legislature and the Department of Conservation regarding uncontrolled subdivisions and development on land under contract is misplaced. California law already requires that all development entitlements must be consistent with the local general plan and any applicable specific plan. Through its constitutional powers,[110] a local city council or board of supervisors (in their general plan, applicable specific plan, zoning, etc.) already controls or precludes development. All development in California involves at the very least, the issuance of a building permit, and all building permits must be consistent with the local general plan.[111]

By analogy, in *San Dieguito Partnership v. City of San Diego*,[112] the city argued that unregulated and unwanted development would result from the Subdivision Map Act's statutory exemptions for lot line adjustments. The court dismissed the city's argument and held:

> Any aura of horribles sought to be created if the parcels in this lot-line adjustment are not held to be subject to the [Subdivision Map Act] should be considered in light of the multitude of zoning and regional planning regulation applicable to this land. The situation is not one in which uncontrolled use of the land is available to the Owner.... Government land-use planning and control is present [under the City's general plan] with respect to this land notwithstanding its exclusion from the SMA.

Thus, the *development* of lands under contract could not take place if the general plan reflected the agricultural use of the land. If a local government truly desires to restrict or prohibit development within its jurisdiction, it can easily do so through implementation of its general plan and zoning regulations. The Williamson Act need not be contorted by local governments or the Department of Conservation in a manner to substitute for these local planning regulations, nor should it.

V. THE FUTURE OF THE WILLIAMSON ACT

According to the Department of Conservation, both it and the Williamson Act have long lives ahead:

> The Williamson Act Program has remained stable and effective as a mechanism for protecting agricultural and open space land from premature and unnecessary urban development. Participation in the program has been steady, hovering at about 16 million acres enrolled under contract statewide since the early 1980s. This number represents about one third of all privately held land in California, and about one half of all the state's agricultural land. Every indication points to an indefinite continuation of this level of participation into the future.[113]

The future of the Department of Conservation, however, is uncertain. In mid-September, the Director of the department left office, and the Governor proposed eliminating the Department of Conservation and replacing it with a new, broad-based Department of Natural Resources.[114] The responsibilities of the Department of Conservation's Division of Land Resource Protection (which includes the Williamson Act program) would be administered by the Department of Natural Resources' Division of Land Management.[115] If key personnel from the Department of Conservation are simply transferred to the Department of Natural Resources, then the state would more likely continue its aggressive interpretation and enforcement of the Act. If, however, the Williamson Act is administered by new personnel, then a less antagonistic approach may be implemented.

Regardless of whether the Department of Conservation is eliminated, the state's executive and legislative branches should seriously consider clarifying the relationship between the Williamson Act and local planning regulations. Until this occurs, both local agencies and landowners under contract will lack the certainty necessary for proper stewardship of agricultural lands.

VI. CONCLUSION

The Williamson Act has been a positive force in preserving agricultural lands throughout the state. However, it must be better coordinated with the planning scheme that controls California's future. The Williamson Act should be viewed as a complement to good local planning, not its replacement, and the Department of Conservation should recognize the larger scheme of local planning so that the goal of agricultural land preservation can be embodied in the highest local policy regulation, not just in a series of individual Williamson Act Contracts.

* Michael Patrick Durkee is a partner in the San Francisco office of Allen, Matkins, Leck, Gamble & Mallory, LLP, where he represents private and public sector clients in all aspects of land use, planning, and elections law. Mr. Durkee writes and lectures extensively throughout the state on a wide range of land use topics and is the primary author of *Ballot Box Navigator* (Solano Press Books, 2003) and *Map Act Navigator* (Land Use Navigators 1999-2004), and the co-author of *Land-Use Initiatives and Referenda in California* (Solano Press Books, 1990, 1991).

** David H. Blackwell is a partner in the San Francisco office of Allen, Matkins, Leck, Gamble & Mallory, LLP, where he specializes in all aspects of land use and planning law, representing landowners, businesses, developers, and governmental entities before administrative agencies and state and federal courts. Mr. Blackwell is a co-author of *Ballot Box Navigator* (Solano Press Books, 2003).

*** Thomas P. Tunny is an associate in the San Francisco office of Allen, Matkins, Leck, Gamble & Mallory, LLP, where his practice focuses on litigation and transactions in all aspects of state and local land use and planning law. Mr. Tunny is a contributing author of *Map Act Navigator* (Land Use Navigators, 2004).

ENDNOTES

1. *Crisis on the Farm, A Report Prepared by the California Farm Bureau Federation Farm Crisis Task Force,* April 2001, at p. 21.
2. Cal. Gov't Code §§ 51200-51297.4.
3. Cal. Gov't Code §§ 65000 et seq.
4. *Dorcich v. Johnson*, 110 Cal. App. 3d 487, 492 (1980).
5. *Id.*
6. *Id.*
7. *Sierra Club v. City of Hayward*, 28 Cal. 3d 840, 850 (1981).
8. *DeVita v. County of Napa*, 9 Cal. 4th 763, 791 (1995).
9. Section 51220 provides the following findings:

   (a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.

   (b) That the agricultural work force is vital to sustaining agricultural productivity; that this work force has the lowest average income of any occupational group in this state; that there exists a need to house this work force of crisis proportions which requires including among agricultural uses the housing of agricultural laborers; and that such use of agricultural land is in the public interest and in conformity with the state's Farmworker Housing Assistance Plan.

   (c) That the discouragement of premature and unnecessary 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 discontiguous urban development patterns which unnecessarily increase the costs of community services to community residents.

   (d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments.

   (e) That land within a scenic highway corridor or wildlife habitat area as defined in this chapter has a value to the state because of its scenic beauty and its location adjacent to or within view of a state scenic highway or because it is of great importance as habitat for wildlife and contributes to the preservation or enhancement thereof.

   (f) For these reasons, this chapter is necessary for the promotion of the general welfare and the protection of the public interest in agricultural land.
10. *Honey Springs Homeowners Ass'n v. Board of Supervisors*, 157 Cal. App. 3d 1122, 1130 (1984) [hereinafter "*Honey Springs*"]. *See also* 51 Ops Att'y Gen. 80, 83 (1968): "The whole purpose of the [Act] is to ease the property tax burden on farmers, thereby encouraging them to keep their land in agriculture."
11. Daniel J. Curtin, Jr. & Cecily T. Talbert, CURTIN'S CALIFORNIA LAND USE AND PLANNING LAW (Solano Press Books 24th ed. 2004) pp. 7-8 (internal citations omitted).
12. 1971 Cal. Stat. 1446 (McCarthy legislation).
13. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553 (1990).
14. *DeVita v. County of Napa*, 9 Cal. 4th 763, 773 (1995).
15. *See, e.g.*, Cal. Gov't Code § 65300 *et seq.*; *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553 (1990).
16. Governor's Office of Planning and Research, General Plan Guidelines 128 (1990).
17. *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Supervisors*, 62 Cal. App. 4th 1332, 1336 (1998).
18. Cal. Gov't Code § 51230.
19. *Id.*
20. *Id.* § 51234.
21. *Id.*
22. *Id.* § 51230.
23. *Id.*
24. *Id.* § 51242(b).
25. *See* 56 Ops Att'y Gen. 160, 161 (1973).
26. Cal. Gov't Code § 51230
27. *Id.* § 51231.
28. *Id.* § 51201(e).
29. *Id.* § 51238.1(a).
30. *Id.* § 51238.1(c).
31. *Id.* § 51201(e).
32. *Id.* § 51238(a).
33. *Id.* §§ 51240, 51242, 51244.
34. *Honey Springs*, *supra* note 10, at 1131.
35. Cal. Gov't Code § 51243(b).
36. *Id.*
37. *Id.* § 51240.
38. *Id.* § 51243(a).
39. *Id.* §§ 16140-16154.
40. *Id.* § 16142.
41. *Id.*
42. *Id.* § 51241.
43. *Id.*
44. *Id.* § 51245.
45. The California Land Conservation (Williamson) Act Status Report 2002, Department of Conservation, August 2002, at 13.
46. *Sierra Club v. City of Hayward*, 28 Cal. 3d 840, 852-853 (1981).
47. *Id.*
48. *Id.*
49. Cal. Rev. & Tax Code § 426.
50. The California Land Conservation (Williamson) Act Status Report 2002, Department of Conservation, August 2002, at 13.
51. Cal. Gov't Code § 51295.

52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* § 51282.
56. *Id.*
57. *Id.* § 51282(b)(3). *Friends of East Willits Valley v. County of Mendocino*, 101 Cal. App. 4th 191, 209 (2002) (a local agency approving a cancellation is "not required to make any other findings, including findings of general plan consistency" addressing only the requirements of a "public interest" finding).
58. Cal. Gov't Code § 51284.
59. *Id.* § 51283(a).
60. *Id.* § 51283(c).
61. *Dorcich v. Johnson*, 110 Cal. App. 3d 487, 496 (1980).
62. *People v. Triplett*, 48 Cal. App. 4th 233, 243 (1996).
63. Cal. Gov't Code § 51283(e).
64. *Id.* § 51243.5.
65. *Id.* § 51254.
66. *Id.* § 51255. The Open-Space Easement Act of 1974 is found at California Government Code section 51070 et seq.
67. *Id.* § 51296.1.
68. *Id.* § 51296.2(a).
69. *Id.* § 51296.1(d).
70. *Id.* § 51296.2(b).
71. *Id.* § 51296.3.
72. *Id.* § 51296.6.
73. *Id.* § 51256.
74. *Id.*
75. *Id.* § 51256.1(d).
76. 2003 Cal. Stat. 694 (AB 1492, Laird).
77. Cal. Gov't Code § 51250(b).
78. *Id.* § 51250(c).
79. *Id.* § 51250(e),(f).
80. *Id.* § 51250(g).
81. *Id.* § 51250(i),(j).
82. *Id.* § 51250(r).
83. 2004 Cal. Stat. 794 (SB 1820, Machado).
84. Cal. Gov't Code § 51283(a).
85. *Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 531, 570 (1990).
86. *Kelsey v. Colwell*, 30 Cal. App. 3d 590, 594 (1973).
87. Cal. Gov't Code § 51234.
88. *See, e.g.*, Cal. Gov't Code §§ 51201(e), 51231, 51238.1, 51241, 51242.
89. 67 Ops. Cal. Att'y Gen. 247, 6 (1984).
90. *Id.*
91. 54 Ops. Cal. Att'y Gen. 90, 92 (1971); 62 Ops. Att'y Gen. 233, 242 (1979).
92. 54 Ops. Cal. Att'y Gen. 90, 92 (1971).
93. *Id.* at 91; Cal. Gov't Code § 51243(a).
94. *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 545-46 (1990).
95. 64 Cal. App. 3d 319, 325 (1976).
96. *Id.* at 329.
97. 51 Ops. Cal. Att'y Gen. 80, 85 (1968).
98. 56 Ops. Cal. Att'y Gen. 8, 11 (1973).
99. *Id.*
100. 179 Cal. App. 3d 814, 822 (1986).
101. *Id.* at 824.
102. *Id.* at 823.
103. *See, e.g.*, Cal. Gov't Code § 65864 *et seq.* (development agreements); *Id.* § 66498.1 (vesting tentative maps); *SMART v. San Luis Obispo County*, 84 Cal. App. 4th 221, 232-33 (2000) (development agreement); *Stephens v. City of Vista*, 994 F.2d 650, 655 (9th Cir. 1993) (settlement agreement); *Morrison Homes v. City of Pleasanton*, 58 Cal. App. 3d 724, 734 (1976) (annexation agreements).
104. Cal. Gov't Code § 51206.
105. *See, e.g.*, The California Land Conservation (Williamson) Act Status Report 2002, Department of Conservation (August 2002), pp. 18-19.
106. <http://www.consrv.ca.gov/DLRP/lca/lrcc/AB_1492.htm>.
107. 1999 Cal. Stat., § 1 (f) (SB 985).
108. *Id.* at §1(g).
109. *Id.* at §1(k).
110. Cal. Const., art. XI, § 7.
111. *See Land Waste Management v. Contra Costa County Board of Supervisors*, 222 Cal. App. 3d 950, 957-59 (1990).
112. 7 Cal. App. 4th 748, 760 (1992).
113. <http://www.consrv.ca.gov/DLRP/lca/overview/history.htm>.
114. See Report of the California Performance Review at Chapter 8; see also proposed Cal. Gov't Code § 12830.2(d) (eliminates the Department of Conservation by July 1, 2005).
115. *Id.*

CRPJ MCLE Test No. 2 (Vol. 22, No. 4)

A MODERN PERSPECTIVE ON THE WILLIAMSON ACT

1 Hour MCLE Credit

How to Earn MCLE Credit

After reading the article, "A Modern Perspective on the Williamson Act," complete the following test to receive 1.00 hour of MCLE credit. Please mark all answers on the answer sheet provided.

The Real Property Law Section of the State Bar of California certifies that this activitiy is approved for and will earn 1 hour of MCLE Credit.

1. True/False. The Williamson Act is the common name given to the California Land Conservation Act of 1965.

2. True/False. The purpose of the Williamson Act was to promote urbanization.

3. True/False. Williamson Act Contracts are consensual agreements between private landowners and local governmental agencies.

4. True/False. The Williamson Act operates independently of a city's or county's general plan and expressly enjoys priority status.

5. True/False. Establishment of an agricultural preserve is not always necessary prior to entry into Williamson Act Contracts.

6. True/False. An agricultural preserve must always be at least 100 acres.

7. True/False. An agricultural preserve may include land in one or more ownerships.

8. True/False. A compatible use is any use reasonably determined by the landowner to be consistent with agricultural, recreational, or open-space use of the land.

9. True/False. Every Williamson Act Contract is binding upon a landowner's successors in interest.

10. True/False. Williamson Act Contracts may be more restrictive, but not less restrictive, than as required under the Williamson Act.

11. True/False. Local governments are hesitant to enter into Williamson Act Contracts as they receive no compensation from the state for the foregone property tax revenue.

12. True/False. Every landowner in an agricultural preserve must be offered a Williamson Act Contract on terms identical with the terms offered to every other owner in the preserve.

13. True/False. Once entered into, a Williamson Act Contract can only be terminated in one of 5 ways.

14. True/False. The preferred and most common means of termination is nonrenewal.

15. True/False. Once notice of nonrenewal is recorded, the Williamson Act Contract expires three years later.

16. True/False. Termination by condemnation requires termination of the Williamson Act Contract as to all of the property and ownership interests covered by the contract.

17. True/False. The city or county, upon request of the landowner, may cancel the Williamson Act Contract for any valid reason as determined by the city or county.

18. True/False. Rescission of a Williamson Act Contract may occur upon simultaneous entry into a new contract or substitute open space easement.

19. True/False. A Farmland Security Zone contract is a 20-year preservation agreement with property tax reductions greater than those available under the Williamson Act.

20. True/False. The Department of Conservation was directed by the state legislature to assist in the interpretation of the Williamson Act.

MCLE Test Instructions

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After you finish the test, please mail the original completed test and marked answers to:

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San Francisco, CA 94105

You may wish to retain a copy of your test for your records. Within eight weeks, the Real Property Law Section will return your test along with the answers and a certificate for this self-assessment MCLE activity.

ANSWER SHEET TO CRPJ MCLE TEST NO. 2

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