

CALIFORNIA'S FARMLAND SECURITY ZONE: A NEW INCENTIVE FOR THE PRESERVATION OF EXISTING FARMLAND

INTRODUCTION

For over half a century, Californians have had to live with the unintended consequences of over-crowded airways, choked highways, and traffic-congested cities induced by the limitless factors associated with sprawl.¹ At one point, it was thought that growth was good. At least that is the traditional American credo. Blessed with lands that seemed limitless, our history has been to pave and plow our country and create cities.² However, now at the start of a new century and a new millennium, Californians no longer reflexively equate progress with development. A recent report by the American Farmland Trust revealed that every year in the United States one million acres of productive farm land and open space get bulldozed by sprawling development.³ These developments are replacing farmers' fields, disrupting small-town agriculture and its way of life. An astounding seventy percent of prime or unique farmland is now in the path of rapid development.⁴ Now that the costs and consequences of poorly planned development have become clear and common, we are clamoring for better, smarter ways to grow yet preserve that which is so vitally important to us.

The good news is that suburban sprawl is not inevitable. We are not doomed to a future of traffic congestion, air pollution, abandoned city centers, and lost open space and farm land. Currently, many communities across the state are working hard to rein in sprawl and manage

¹ Donald H. Camph, *Transportation and the Changing Face of America*, Surface Transportation Policy Project 1 (1999).

² Carl Pope, *Solving Sprawl*, 1999 Sierra Club Report ¶ 1 (last modified Oct. 5, 1999) <<http://www.sierraciub.org/sprawl/report99/intro.asp>>.

³ *Id.*

⁴ *Id.*

growth so that it enhances and does not undercut our quality of life.⁵ For example, with the adoption of the state's newly enacted Farmland Security Zones,⁶ Californians can assure "adequate, healthful, and nutritious food for future residents of this state and nation," as well as preserve "a maximum amount" of California's land, mitigating the negative effects associated with sprawl.⁷

This article is intended to enlighten the reader on the newly enacted Farmland Security Zone. It addresses steps California currently has in progress with respect to policies regarding the preservation of its agricultural lands and also evaluates whether the Farmland Security Zone will have a positive impact on discouraging the premature and often unnecessary conversion of farmland to urban uses.

I. PRESERVING CALIFORNIA'S PRIME FARM LAND

Over the years, California has had numerous laws and policies that proclaim the importance of agriculture and the need to preserve farmland. From the Thurman Agricultural Policy Act⁸ to the Cortese-Knox Local Government Reorganization Act of 1985,⁹ California has established guidelines for city annexations and other local government boundary changes. These legislative enactments certainly express the state's intent to guide urban development away from agricultural land. Other laws clearly state the intention to preserve open space lands.¹⁰ However, no other law has had a more profound impact on the preservation of agricultural land than the California Land Conservation Act of 1965 (Williamson Act).¹¹

The Williamson Act is an outgrowth of many years of concern about the conservation of agricultural land and open space in the face

⁵ *Id.*

⁶ CAL. GOV'T CODE, §§ 51296-51297.4 (West 2001).

⁷ CAL. GOV'T CODE § 51220(a) (West 2001). The California Legislature has found that "the preservation of a maximum amount of the limited supply of agriculture 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."

⁸ CAL. FOOD & AGRIC. CODE §§ 801-822 (West 2001).

⁹ Cortese-Knox Local Government Reorganization Act of 1985, CAL. GOV'T CODE §§ 56000-57550 (West 2001).

¹⁰ Open-Space Easement Act of 1974, CAL. GOV'T CODE §§ 51070-51095 (West 2001); Open-Space Maintenance Act, CAL. GOV'T CODE §§ 50575-50620 (West 2001).

¹¹ California Land Conservation Act of 1965 (the Williamson Act), CAL. GOV'T CODE §§ 51200-51295 (West 2001).

of rapid urbanization and increasing non-farm land values. "More commonly known by the surname of its author, former Assemblyman John Williamson of Bakersfield,"¹² it has been California's "principal policy for the preservation of agricultural and open-space land."¹³ Essentially, it is a voluntary, locally administered "[land conservation] program that provides a mechanism for local governments to protect farmland and open space in cooperation with [landowners]."¹⁴

Under the Williamson Act, cities and counties may establish "agricultural preserves"¹⁵ that help foster conservation of agricultural land.¹⁶ A preserve is created by the local legislative body following public hearings and a recommendation by the Planning Commission.¹⁷ This process ensures that the preserve area properly relates to the general plan as an agricultural and open-space area and that its conservation is in the public interest. Moreover, an agricultural preserve must be at least one hundred acres in size, unless the requirement is waived pursuant to statute.¹⁸ To meet the one hundred acre requirement, "two or more parcels may be combined if they are contiguous or if they are in common ownership."¹⁹ Parcels must also be large enough to sustain "agricultural use."²⁰ A parcel is "large enough to sustain their agricultural use if the land is (1) at least 10 acres in size in the case of prime agricultural land or (2) at least 40 acres in size in the case of land which is not prime agricultural land."²¹

Once an agriculture preserve is established, the local government may then decide to execute voluntary contracts with property owners restricting land use for an initial term of no less than ten years under

¹² CALIFORNIA DEPARTMENT OF CONSERVATION, *THE WILLIAMSON ACT: PROTECTING OUR LAND RESOURCES* (Rev. 1992).

¹³ ELIN D. MILLER, DEPARTMENT OF CONSERVATION, *THE CALIFORNIA LAND CONSERVATION (WILLIAMSON) ACT: 1993 TO 1995 STATUS REPORT 1* (1996).

¹⁴ *Id.*

¹⁵ CAL. GOV'T CODE § 51201(d) (West 2001) (defining an agricultural preserve as "an area devoted to either agricultural use, as defined in subdivision (b), recreational use as defined in subdivision (n), or open space use as defined in subdivision (o), or any combination of such uses and which is established in accordance with the provisions of this chapter").

¹⁶ *See* CAL. GOV'T CODE § 51220 (West 2001).

¹⁷ CAL. GOV'T CODE § 51230 (West 2001).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ CAL. GOV'T CODE § 51201(b) (defining agricultural use as "use of land for the purpose of producing an agricultural commodity for commercial purposes") (West 2001).

²¹ CAL. GOV'T CODE § 51222 (West 2001).

this agreement.²² By agreeing to restrict the use of the land, landowners who enroll their land in contracts with the local governing agency receive preferential tax treatment based upon the actual use of the land for agricultural purposes, as opposed to its unrestricted market value.²³ This preferential treatment reduces the property tax burden on enrolled farmland, acting as an incentive for landowners to retain their parcels in agriculture.²⁴ In addition, where the property owner agrees to limit the use of land to agricultural and other compatible uses for a specified time, a stable agricultural and open space environment is more readily established.

Once farmers have enrolled their land in voluntary contracts, upon each anniversary date of the contract's execution, the term is automatically extended for another year unless one of the parties initiates the nonrenewal process.²⁵ Under nonrenewal, the contract "winds down" over the remaining term, with taxes gradually rising back to the full, unrestricted, rate.²⁶ The Williamson Act also allows for the immediate cancellation of contractual restrictions under extraordinary circumstances and when specified conditions exist.²⁷ Additionally, only the landowner may initiate a request for cancellation.²⁸ To grant approval, a local government must find that the cancellation is either "consistent with the purposes of [the Williamson Act], or . . . is in the public interest."²⁹

Contract cancellation requires the payment of a fee equal to twelve and one half percent of the full market value of the subject land.³⁰ The market value is determined according to the proposed alternative use of the land. The fees are then paid by the landowner to the local government which, in turn, pays the fees to the State Controller for deposit into the state's Soil Conservation and General Funds.³¹ In addition to non-renewal and cancellation, Williamson Act contracts become

²² The Land Conservation Act, providing for the establishment of agricultural preserves by cities or counties, is not mandatory and the County Board of Supervisors with a general plan does not have a duty to implement provisions of the Act. *See Kelsey v. Colwell* 30 Cal. App. 3d 590, 593-95 (1973).

²³ CAL. REV. & TAX. CODE §§ 423.3, 423.4 (West 2001).

²⁴ *See* John E. Kesecker et al., *The Farmland Security Zone: Preserving California's Prime Agricultural Farmland* 2 (1999).

²⁵ CAL. GOV'T CODE § 51244 (West 2001).

²⁶ CAL. REV. & TAX. CODE § 426 (West 2001).

²⁷ *See* CAL. GOV'T CODE § 51280 (West 2001).

²⁸ CAL. GOV'T CODE § 51281 (West 2001).

²⁹ CAL. GOV'T CODE § 51282 (West 2001).

³⁰ CAL. GOV'T CODE § 51283(a)(b) (West 2001).

³¹ CAL. GOV'T CODE § 51283(3)(d) (West 2001).

void when the subject property is acquired by an agency for public improvement. It is the policy of the state however, to avoid locating public improvements in agricultural preserves.³² The Williamson Act specifies two conditions that must be met before land in an agricultural preserve can be acquired for public improvement:

(a) The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve. (b) If the land is agricultural land covered under a contract pursuant to [the Williamson Act] for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.³³

Contract cancellations do not fair well for most local governments since counties and cities end up losing property tax revenue when land is enrolled in a Williamson Act contract. To partially compensate for this loss, the state pays each county and city participating in the Williamson Act a "subvention" payment based on the amount and the type of land enrolled in contracts.³⁴ This policy, as provided under the Open Space Subvention Act,³⁵ created a formula for allocating payments to local governments based on acreage enrolled in the program. Essentially, the Williamson Act allows local governments to receive annual subvention payments for eligible lands at a rate of \$5.00 per acre for prime land and \$1.00 per acre for nonprime land.³⁶

"Supporters of the Williamson Act had hoped that financial assistance from the state [subvention payments] to local governments would be a large part of the program[']s . . . success since it created a tangible incentive not only for the landowners to enter into contracts but for the local governments to initiate more contracts as well."³⁷ This is because local governments can now partially replace property tax revenues lost on enrolled land with annual subvention payments from the state. Consequently, "[m]ore than thirty years after its passage, the objectives of the Williamson Act have only increased in importance."³⁸ As of March 1, 1995, approximately sixteen million acres were enrolled in a Williamson Act contract in fifty-two participating agricultural counties and twenty cities.³⁹ Thus, "nearly seventy percent

³² CAL. GOV'T CODE § 51290(a) (West 2001).

³³ CAL. GOV'T CODE § 51292 (West 2001).

³⁴ CAL. GOV'T CODE § 16141 (West 2001).

³⁵ CAL. GOV'T CODE § 16142(a) (West 2001).

³⁶ CAL. GOV'T CODE § 16142(a) (West 2001).

³⁷ MILLER, *supra* note 13, at 2.

³⁸ *Id.*

³⁹ *Id.*; see also Richard Cummings, Great Valley Center, Agricultural Land Conser-

of the state's prime agricultural land is protected under the [Williamson] Act."⁴⁰

II. THE FARMLAND SECURITY ZONE

Since the California State Legislature enacted the California Land Conservation Act, changed conditions in California have made these traditional Williamson Act contracts much less attractive to owners of California's best agricultural farmland.⁴¹ Most of California's farmland has undergone certain fundamental changes.

A steady trend toward permanent, higher-value crops, like orchards and vineyards, and the impact of Proposition 13 have combined to effectively reduce the incentive to keep lands in agricultural production that the Act was intended to provide. The calculation of property taxes for land under a Williamson Act contract is related to its agricultural production. While this "use valuation" method is beneficial for lands that support low-value field crops or grazing, it does not provide much benefit for lands that support high-value crops. Higher crop value translates into higher property value and higher taxes. As a result, the relative tax incentive for enrolling in the Williamson Act diminishes when farmland is converted from field crops to permanent, high-value crops. Proposition 13's [regressive] property tax structure has further decreased the relative advantage of the Williamson Act's alternative property valuation for many landowners while also increasing the pressure for commercial development to help fund local government services.⁴²

In 1978, California voters passed Proposition 13, which made property taxes dependent on acquisition value rather than fair market value.⁴³ "As a result, owners of farmland that had not changed hands for many years already enjoyed a low-factored base-year value, which in many cases is lower than the Williamson Act value. This is particularly true when dealing with prime row-crop lands with high rental values."⁴⁴ Consequently, these reduced incentives undermine the state's ability to maintain prime farmland.

Proponents who support land conservation policies have, therefore, consistently argued that new approaches and options are needed to make farmland preservation a viable option to landowners. Prior to the

vation in the Great Central Valley 15 (1998).

⁴⁰ CUMMINGS, *supra* note 39, at 15.

⁴¹ See Kesecker, *supra* note 24, at 1.

⁴² JIM COSTA, BULLET POINTS ON SENATE BILL 1182, 2 (1999) (report derived from the "Senate Housing and Land Use Committee Analysis and the Assembly Natural Resources Committee Analysis").

⁴³ See *Santa Clara County Local Transp. Auth. v. Guardino*, 11 Cal. 4th 220 (1995).

⁴⁴ KESECKER, *supra* note 24, at 3.

passage of Proposition 13, the Williamson Act was quite an incentive for landowners to enroll their lands. They were afforded a reduced property tax assessment for participation.⁴⁵ However, after the passage of Proposition 13, the tax incentive gradually became less significant as a result of its property tax structure.⁴⁶

Since its implementation, California's Williamson Act program has been significantly strengthened by the enactment of "Farmland Security Zone" legislation. However, the Farmland Security Zones are not intended to replace Williamson Act contracts entirely.⁴⁷ In enacting the Farmland Security Zone program, the legislature sought to expand the options currently available to local governments and landowners desiring to protect agricultural land by encouraging "the creation of longer term voluntary enforceable restrictions within agricultural preserves."⁴⁸

With this in mind, the Farmland Security Zone now provides owners whose prime agricultural land is under a Williamson Act contract, the benefit of a further reduction in property taxes in exchange for lengthening the contract commitment to twenty years.⁴⁹ For example, as a part of its incentive to attract landowners to voluntarily restrict the use of their land for a longer period, this new "enhanced" Williamson Act contract that proposes to increase protection of farmland from commercial or residential development offers a package of incentives over and above what the Williamson Act provides.⁵⁰ The most significant is that land subject to a Farmland Security Zone contract is valued for assessment purposes at sixty-five percent of the value of its Williamson Act value, or its Proposition 13 value, whichever is lower.⁵¹

In addition to the sixty-five percent financial tax incentive, the Farmland Security Zone legislation requires that new special taxes for urban-related services be levied at a reduced rate on land enrolled in a Farmland Security Zone contract, unless the tax directly benefits the land or the living improvements.⁵² However, when the Farmland Security Zone Act was first implemented, it was difficult to predict whether this incentive would provide any real benefit for a couple of reasons.

⁴⁵ CAL. REV. & TAX. CODE §§ 423, 423.3, 423.4 (West 2001).

⁴⁶ KESECKER, *supra* note 24, at 6.

⁴⁷ COSTA, *supra* note 42, at 1.

⁴⁸ CAL. GOV'T CODE § 51296 (West 2001).

⁴⁹ See CAL. GOV'T CODE § 51296.1 (West 2001).

⁵⁰ CAL. GOV'T CODE § 51296 (West 2001).

⁵¹ CAL. REV. & TAX. CODE § 423.4 (West 2001).

⁵² COSTA, *supra* note 42, at 1-2.

Neither "urban-related services" nor "directly benefits" [was] defined in the bill or elsewhere in the statute. Examples of "urban-related" special taxes that could be subject to reduction may be those levied by school, library, or hospital districts. A special tax that "directly benefits" the land might be one levied by an irrigation district . . . [Additionally] the bill [did] not specify either a standard, minimum, or maximum reduction in special taxes, it simply required that they be levied at a "reduced rate." Presumably, the district empowered to levy the tax would determine the appropriate reduction, if any. This provision will also be subject to local debate and interpretation. The actual benefit of this incentive would vary widely depending on these factors and the level and type of special taxes approved in a given jurisdiction.⁵³

III. RESCISSION OF WILLIAMSON ACT CONTRACTS

The Farmland Security Zone Act authorizes a landowner or a group of landowners to petition the County Board of Supervisors to rescind their existing Williamson Act contract in favor of a new Farmland Security Zone contract.⁵⁴ Under the Williamson Act, contracts were to be for at least a ten year period.⁵⁵ The new Farmland Security Zone legislation, however, provides that the contract be for at least a twenty year period.⁵⁶ This means that landowners enrolled in ten year Williamson Act contracts with a County Board of Supervisors can rescind their contracts in order to enroll in the twenty year contracts the Farmland Security Zone provides.⁵⁷ Under this new revision, the Farmland Security Zone contracts will have the same "rolling" aspect to them as the Williamson Act contracts. These "rolling" contracts are then automatically extended in one year increments for every year the landowner does not provide the County with a non-renewal notice.⁵⁸

In order to participate in this program, the land must be "designated on the Important Farmland Series maps . . . as predominantly one or more of the following: (a) Prime farmland. (b) Farmland of statewide significance. (c) Unique farmland. (d) Farmland of local importance."⁵⁹ Additionally, the landowner must have an existing Williamson Act contract before the Board can approve a Farmland Security Zone contract.⁶⁰ "For land not currently in a Williamson Act contract,

⁵³ *Id.*

⁵⁴ CAL. GOV'T CODE § 51296.1 (West 2001).

⁵⁵ CAL. GOV'T CODE § 51244 (West 2001).

⁵⁶ CAL. GOV'T CODE § 51296.1(d) (West 2001).

⁵⁷ CAL. GOV'T CODE § 51296.1 (West 2001).

⁵⁸ CAL. GOV'T CODE § 51244 (West 2001).

⁵⁹ CAL. GOV'T CODE § 51296.8 (West 2001).

⁶⁰ KESECKER, *supra* note 24, at 2.

the Board may allow enrollment of the land into a Williamson Act contract, then authorize the immediate rescission of those contracts in favor of [farmland security zone] contracts.”⁶¹ Moreover, “[n]o land shall be included in a farmland security zone unless expressly requested by the landowner.”⁶² This means that landowners who wish to enroll may do so free from any private or public interference since the process is entirely voluntary for both the landowner and the county.

Of course, “[i]f the land is not already in a Williamson Act contract, the landowner will have to apply with the county [for a Farmland Security Zone contract] on or before the date the county requires the landowner to apply for a Williamson Act contract.”⁶³ “This request can be reviewed through the same mechanism by which the county reviews the Williamson Act contract.”⁶⁴ For example, in Tulare County, “individual property owners are given the responsibility of preparing applications for Agricultural Preserves.”⁶⁵

Once an application and fees have been filed, the proposal is reviewed and, if found complete, will be scheduled for public hearing before the Board of Supervisors. The Williamson Act requires that this public hearing be held within thirty days after receiving the application. During this time, a notice of the hearing is published in a newspaper of general circulation within the county; a notice is mailed to the applicant and all interested parties. . . . Once a preserve is established by the Board of Supervisors, the Resource Management Agency will be directed to prepare legal contracts which are usually mailed to each of the applicants. . . . Once the signed contracts have been received and the filing fee paid, the matter is scheduled before the Board of Supervisors for final action. . . . After final action by the Board of Supervisors, copies of the contract are recorded at the County Recorder's Office and distributed to all interested agencies. In general, each contract provides that the property in the Preserve may not be used by the owner or their successors for any purpose other than the production of agricultural products for commercial purposes and those related uses established in the Uniform Rules of the Preserve.⁶⁶

If the property is already in a Williamson Act contract, no time is set in the legislation as to when it can be changed into a Farmland Security Zone contract.⁶⁷ However, it appears logical to have any appli-

⁶¹ *Id.* at 5.

⁶² CAL. GOV'T CODE § 51296(b)(2) (West 2001).

⁶³ KESECKER, *supra* note 24, at 5.

⁶⁴ *Id.*

⁶⁵ TULARE COUNTY RES. MGMT. AGENCY, TULARE COUNTY, THE AGRIC. PRES. PROGRAM AS IMPLEMENTED IN TULARE COUNTY 6 (1999).

⁶⁶ *Id.*

⁶⁷ CAL. GOV'T CODE § 51296 (West 2001).

cations placing land into a Farmland Security Zone contract processed with any other Williamson Act contract applications.

IV. THE EFFECTS OF NON-RENEWAL

As with other Williamson Act contracts, either the county or the landowner may provide the other with a notice of non-renewal.⁶⁸ This means that once the landowner or the county decides to initiate a Notice of Non-Renewal, the annual extension of the contract is no longer automatic; it will terminate after a nineteen year non-renewal period. The proper method for this procedure is for the landowner to serve a written notice to the local governing body at least ninety days prior to the renewal date.⁶⁹ The Farmland Security Zone contract then “winds down” over the remaining nineteen year term, with the taxes gradually rising back to the full, unrestricted rate.⁷⁰ Upon termination of the Farmland Security Zone contract, the Farmland Security Zone designation for that parcel is also terminated.

The valuation of the land following service of a non-renewal notice is treated as follows:

Step 1: Determine the Proposition 13 Base Year Value (BYV);

Step 2: Determine the Williamson Act Value (WAV);

Step 3: Subtract the WAV from the BYV;

Step 4: Establish the present net worth value of the [sic] based on the number of years remaining on the Contract, and the yield rate established by the Board of Equalization;

Step 5: Multiply the present net worth value by the difference between WAV and BYV as established in Step 3.

Step 6: Add the WAV with the number produced in Step 5 to get your taxable role value for that particular year.⁷¹

The present worth value becomes greater as the years remaining under the contract become fewer. As a result, “the amount to be added to the WAV increases every year until the expiration of the Contract, when the assessed value will equal the BYV.”⁷²

In situations where the owner serves the notice of non-renewal or fails to protest a notice of non-renewal provided by a county, city or nonprofit organization, this valuation formula applies immediately upon service of the non-renewal notice.⁷³ “If the county, city or non-

⁶⁸ CAL. GOV'T CODE § 51245 (West 2001).

⁶⁹ *Id.*

⁷⁰ CAL. REV. & TAX. CODE § 426 (West 2001).

⁷¹ KESECKER, *supra* note 24, at 5.

⁷² *Id.*

⁷³ *See* CAL. REV. & TAX. CODE § 426(a) (West 2001).

profit organization provides the notice of non-renewal, and the owner objects, then the above formula applies when less than six years remain until the termination of the period for which the land is enforceably restricted."⁷⁴

V. FARMLAND SECURITY ZONE PROHIBITIONS

Under the existing Williamson Act, a landowner may immediately terminate [as opposed to non-renew] a contract under extraordinary circumstances when the cancellation is consistent with the Williamson Act or in the public interest.⁷⁵ Landowners, however, are subject to a cancellation fee equal to twelve and one half percent of the full market value of the land.⁷⁶ However, under the Farmland Security Zone Act, there is no provision allowing contract cancellation.⁷⁷

In addition, a Williamson Act contract may also be terminated if the contracted land is acquired through annexation.⁷⁸ Under limited circumstances, contracts on property located in unincorporated territory which is then annexed to an adjacent city may be terminated at the option of the city. However, the Farmland Security Zone provides additional security for farmland by prohibiting annexation of enrolled land to a city or a special district that provides certain non-agricultural services.⁷⁹ It also forbids the acquisition of such lands by a school district through eminent domain.⁸⁰

The reasons for prohibiting the annexation of land under these circumstances are all too apparent. Placing farmland inside cities and special districts that provide urban services can induce growth and the premature conversion to development. Moreover, some agricultural groups complain that school districts sometimes acquire farmland because it is cheap land upon which to build a new school. Of course, it has been recognized time and again that the preservation of a maximum amount of the limited supply of agricultural land is not only vital to sustaining agricultural productivity, but also necessary to the conservation of the state's economic resources.⁸¹ Paving the way towards sprawl undermines the essential purpose for which the William-

⁷⁴ KESECKER, *supra* note 24, at 5.

⁷⁵ COSTA, *supra* note 42, at 2-3.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ CAL. GOV'T CODE § 51296.3 (West 2001).

⁷⁹ CAL. GOV'T CODE § 51296.4 (West 2001).

⁸⁰ CAL. GOV'T CODE § 51296.5 (West 2001).

⁸¹ CAL. GOV'T CODE § 51220(a) (West 2001).

son Act was designed. Prime farmland is ultimately replaced by new subdivisions or parceled into small lots for investment purposes. Once this is done, it is virtually impossible to reassemble the land into viable agricultural units.

VI. NEW PROVISIONS ADDED TO THE FARMLAND SECURITY ZONE

In an effort to clean up some of the technical problems associated with Farmland Security Zone contracts, Senate Bill 649, introduced by Senator Jim Costa, became effective on January 1, 2000.⁸² The bill was originally intended to clean up some of the problems with the Farmland Security Zone legislation relative to the payment of subvention during the extended 19-year non-renewal process. As applied to open-space subventions and Farmland Security Zone contracts, the law "require[d] the Controller to pay subventions to local governments at specified rates per acre to replace property tax revenues lost by reason of the required reductions in assessments of property restricted to use as open space."⁸³ "Those specified amounts were continuously appropriated from the General Fund to the Controller for that purpose."⁸⁴

The law now requires the Secretary of the Resources Agency to direct the Controller to use the funds to make an annual payment to each eligible county, city, or city and county.⁸⁵ The amount paid for each acre of land within its regulatory jurisdiction that is assessed pursuant to Section 423.4 or 426 of the Revenue and Taxation Code, if it was previously assessed under Section 423.4 of that code.⁸⁶

Specifically, counties would now receive an annual subvention of \$8 for each eligible acre of Farmland Security Zone contracted land instead of \$5 if the enrolled Farmland Security Zone land is within three miles of the outside boundary of an incorporated city's sphere of influence.⁸⁷ It is important to note, however, that this approach to encourage acceptance of the new program would not penalize any county for enrolling lands further out from cities. Lands outside the three-mile area would still qualify for the annual \$5 per acre subvention payment during the first ten years of non-renewal.⁸⁸ In any event, local governments are now entitled to continue to receive Open Space Subvention

⁸² CAL. GOV'T CODE §16142.1 (West 2001).

⁸³ See S.B. 649 § 1, *Legislative Counsel's Digest*, Reg. Sess. (Cal. 1999).

⁸⁴ See *id.*

⁸⁵ CAL. GOV'T CODE § 16142(a) (West 2001).

⁸⁶ *Id.*

⁸⁷ CAL. GOV'T CODE § 16142.1(a) (West 2001).

⁸⁸ CAL. GOV'T CODE § 16142 (West 2001).

Funds for ten years from the date that non-renewal was initiated on lands enrolled under a Farmland Security Zone contract.⁸⁹ State appropriation of these funds, however, is not to exceed \$100,000 per year until 2005.⁹⁰

In addition to the technical problems associated with the 1998 legislation relative to the payment of subventions during the extended nineteen year process, this legislation imposes "additional specified requirements for the cancellation of Farmland Security Zone contracts."⁹¹ For example, existing law provides certain procedures for cancellation or nullification of contracts for the establishment of agricultural preserves and for the rescission in order to place the land under a Farmland Security Zone contract.⁹² Under the Farmland Security Zone, "a petition for cancellation of a Farmland Security Zone contract . . . may be filed only by the landowner within the city or county within which the contracted land is located. The city or county may grant a petition only in accordance with the procedures provided for in Article 5" of the California Government Code.⁹³ This means that once the landowner petitions for cancellation of any contract,

"the board or council may then grant tentative approval for cancellation of a contract only if it makes one of the following findings:

- (1) That the cancellation is consistent with the purposes of this chapter;
or
- (2) That cancellation is in the public interest."⁹⁴

Consistent with the cancellation process, the board or council must make all of the following findings:

- (1) that the cancellation is for land on which a notice of non-renewal has been served pursuant to Section 51245; (2) that the cancellation is not likely to result in the removal of adjacent lands from agricultural use; (3) that cancellation is for an alternative use which is consistent with the applicable provisions of the city or county general plan; (4) that cancellation will not result in discontinuous patterns of urban development; and (5) that there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncon-

⁸⁹ CAL. GOV'T CODE § 16142.1(b) (West 2001).

⁹⁰ *Id.*

⁹¹ S.B. 649 § 2, *Legislative Counsel's Digest*, 1st Sess. (Cal. 1999).

⁹² See CAL. GOV'T CODE § 51296 for a discussion on cancellation of contract procedures for both the Williamson Act and Farmland Security Zone.

⁹³ CAL. GOV'T CODE § 51296(k) (West 2001).

⁹⁴ CAL. GOV'T CODE § 51282(a) (West 2001).

tracted land.⁹⁵

For purposes of finding that the cancellation of a contract is in the public interest, the council or board must make the following findings:

(1) that other public concerns substantially outweigh the objectives of this chapter; and (2) that there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.⁹⁶

However, once the county or board makes both of the findings specified in California Government Code section 51282, there is a second step process the board or county must resolve.

In its resolution tentatively approving cancellation of the Farmland Security Zone contract, the city or county shall find all of the following:

- (A) That no beneficial public purpose would be served by the continuation of the contract.
- (B) That the uneconomic nature of the agricultural use is primarily attributable to circumstances beyond the control of the landowner and the local government.
- (C) That the landowner has paid a cancellation fee equal to twenty-five percent of the cancellation valuation calculated in accordance with subdivision (b) of § 51283.⁹⁷

Once this task is completed by the city or board, cancellations must then be approved by the Director of Conservation.⁹⁸ After reviewing the record of the tentative cancellation provided by the city or county, the director may approve the cancellation only if substantial evidence in the record supports the decision and continuation of the contract would serve no beneficial public purpose.⁹⁹

The new "Open-Space Subvention" statute¹⁰⁰ now imposes additional requirements under certain conditions. First, for those Farmland Security Zone contracts in existence prior to January 1, 2000 which incorporated the Williamson Act cancellation provisions, the contract shall revert to the form in which it previously existed under the Williamson Act prior to its conversion to a contract under Section 51296 unless both parties agree to conform it to Chapter 1019's Farmland Se-

⁹⁵ CAL. GOV'T CODE § 51282(b) (West 2001).

⁹⁶ CAL. GOV'T CODE § 51282(c) (West 2001).

⁹⁷ CAL. GOV'T CODE § 51297(b) (West 2001).

⁹⁸ CAL. GOV'T CODE § 51297(c) (West 2001).

⁹⁹ CAL. GOV'T CODE § 51297(c) (West 2001).

¹⁰⁰ CAL. GOV'T CODE §§ 16142, 16142.1 (West 2001).

curity Zone cancellation provisions.¹⁰¹

Secondly, Farmland Security Zone contracts in existence prior to January 1, 2000, which contain no cancellation provisions or prohibition of cancellation, may remain in effect unmodified. Under this new piece of Williamson Act legislation, local governments can rescind portions of an underlying Williamson Act contract for the purpose of immediately enrolling the land in a Farmland Security Zone, provided the remaining land is retained in a Williamson Act contract and the local government determines that its action would improve the conservation of agricultural land.¹⁰²

VII. QUESTIONS ASSOCIATED WITH FARMLAND SECURITY ZONES

As with any new legislation, there will be questions regarding its validity and implementation. For example, an opinion was requested by the Honorable Michael H. Krausnick, County Counsel, County of Stanislaus, as to whether Revenue and Taxation Code section 423.4 is unconstitutional in authorizing property to be assessed at sixty-five percent of a specified restricted-use value.¹⁰³

Section 423.4 provides:

Land subject to a Farmland Security Zone contract specified in Section 51296 of the Government Code shall be valued for assessment purposes at sixty-five percent of the value under Section 423 or sixty-five percent of the value under Section 110.1, whichever is lower.¹⁰⁴

However, pursuant to section 8 of article XIII of the California Constitution, when land is enforceably restricted, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.¹⁰⁵ The Attorney General's Office ultimately determined, however, that "the Legislature has enacted section 423.4 pursuant to the mandate of section 8 of article XIII of the Constitution."¹⁰⁶ On March 10, 1999, the Attorney General's Office concluded that Revenue and Taxation Code section 423.4 is constitutional because "land subject to a Farmland Security Zone contract is under more use re-

¹⁰¹ CAL. GOV'T CODE § 51296.1 (West 2001).

¹⁰² CAL. GOV'T CODE § 51297.4 (West 2001).

¹⁰³ 82 Cal. Op. Att'y Gen. 52 (1999).

¹⁰⁴ *See id.* A contract specified in Government Code section 51296 must contain numerous restricted use provisions including that it "be for an initial term of no less than 20 years," with a yearly roll-over provision.

¹⁰⁵ CAL. CONST., art. XIII, § 8 (West 2001).

¹⁰⁶ 82 Cal. Op. Att'y Gen. 52, 54 (1999).

strictions than land subject to a Williamson Act contract.”¹⁰⁷ Hence, Farmland Security Zones must be valued less for property tax purposes than Williamson Act contracts “because the Constitution prohibits the same valuation for lands subject to different restrictions.”¹⁰⁸

One might think that local governing associations whose primary emphasis is toward urban development might be opposed to implementation of the Farmland Security Zone, but the Building Industry Association actually supports this new piece of legislation.¹⁰⁹ This seemingly paradoxical conclusion is due in large part to two benefits. “First, Farmland Security Zones provide predictability to Fresno County businessmen, both farmers and developers” because they will know which land is for sale and which land is not.¹¹⁰ Such predictability is especially important to all participating groups whose long-term capital investment decisions are affected.¹¹¹ “[T]he predictability will also undoubtedly reduce land speculation that unnecessarily drives up land prices and increases County home prices.”¹¹²

Second, for purely long-term economic development reasons, it makes sense for . . . County officials to assist the economic engine of agriculture in any way possible. Currently, the best available tool to assist production agriculture is by offering property tax relief through the new state-authorized mechanism of Farmland Security Zones. This is especially important today because, the economic viability of American agriculture will be severely tested in the coming decade . . . [E]normous new acreages of tree fruit, vines, field crops and row crops will be coming into production soon in South America. Under the terms of NAFTA, these cheaply grown commodities will enjoy direct access to markets previously dominated by American . . . growers . . . [E]lected officials can, and should, provide economic support to . . . growers that are forced to compete on a world-wide basis.¹¹³

VIII. CONCLUSION

Before the establishment of the Williamson Act, farmers and ranchers were embroiled in a severe property tax crisis. The rapid post-World War II population growth raised potential real estate values to

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Letter from Jeffrey B. Harris, Chief Executive Officer, Building Industry Association, to Supervisor Sharon Levy, Chairperson, Fresno County Board of Supervisors (June 7, 1999) (on file with the *San Joaquin Agricultural Law Review*).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

an all-time high.¹¹⁴ In addition, the California Constitution required all real property to be assessed on its highest and best use.¹¹⁵ Consequently, California farmers and ranchers saw their property taxes skyrocket.¹¹⁶ This encouraged farmers and ranchers to abandon their businesses and promote premature urbanization of land.¹¹⁷ As a result, prime agricultural farm land was being replaced by sprawling growth patterns throughout the state.¹¹⁸

Once the California Agricultural Land Conservation Act was established, farmers and ranchers who enrolled their land in Williamson Act contracts were given preferential tax treatment based upon the actual use of the land for agricultural purposes, as opposed to its unrestricted market value.¹¹⁹ Proponents of the Williamson Act believed that this additional tax break would provide the needed incentive for farmers to withhold from converting their prime farmland to urban uses.¹²⁰

Since its enactment, the Williamson Act has become the state's principal policy for the preservation of agricultural and open-space land.¹²¹ To date, nearly seventy percent of California's prime growing soil is protected by the Williamson Act's limited duration contracts.¹²² However, until recently, "a steady trend towards permanent, higher-value crops . . . and the impact of Proposition 13 have combined to effectively reduce the incentive to keep lands in agricultural production that the Williamson Act was intended to provide."¹²³

With this in mind, the Legislature sought to expand the options currently available to local governments and landowners desiring to protect agricultural land by encouraging "the creation of longer-term voluntary enforceable restrictions within agricultural preserves."¹²⁴ The new Farmland Security Zone Act now provides the owners of agricultural land a thirty-five percent property tax reduction in the valuation of their land by enrolling it into Farmland Security Zone contracts.¹²⁵ Most believe this will be the much-needed incentive to place prime

¹¹⁴ MILLER, *supra* note 13, at 1.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 3.

¹¹⁹ KESECKER, *supra* note 24, at 2.

¹²⁰ *Id.*

¹²¹ CUMMINGS, *supra* note 39, at 5.

¹²² *Id.*

¹²³ COSTA, *supra* note 42, at 6.

¹²⁴ CAL. GOV'T CODE § 51296 (West 2001).

¹²⁵ KESECKER, *supra* note 24, at 5.

agricultural land into Farmland Security Zones. This, in turn, will promote California's long-standing policy of preserving its agricultural lands. After all, "the preservation of a maximum amount of the limited supply of agricultural land is necessary to conserve the state's economic resources, and [it] is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of an adequate, healthful and nutritious food for future residents of this state and nation."¹²⁶

Currently, the Farmland Security Zone has only enjoyed limited success due to some of the technical problems associated with this new piece of legislation.¹²⁷ It is the author's opinion that with the addition of California Government Code section 16142.1, Farmland Security Zones will benefit all participating groups equally and will consequently enjoy better enrollment. This is because, until recently, land enforceably restricted by either a Williamson Act contract or Farmland Security Zone contract did not receive any subventions during the non-renewal period of the contract as use valuation of the land was gradually replaced by the Proposition 13 value.¹²⁸ As a result, city and county officials were reluctant to enroll all who applied due to the concern about the potential overall loss to the General Fund.¹²⁹

For example, in Fresno County, the Assessor-Recorder submitted a Board Briefing Report on May 12, 1999, outlining the fiscal impact of implementing Farmland Security Zones.¹³⁰ The Assessor estimated that if the Act were implemented in Fresno County and all eligible land owners applied throughout the County, the amount of taxes paid by property owners subject to Farmland Security Zone contracts would be reduced by \$3,800,000.¹³¹ The estimated annual impact on the General Fund from this total reduction would equal 13.7 % or roughly \$520,000 assuming every acre of prime agricultural land in the county would enroll in the program.¹³² In order to alleviate these harsh effects

¹²⁶ CAL. GOV'T CODE § 51220 (West 2001).

¹²⁷ COSTA, *supra* note 42.

¹²⁸ CAL. GOV'T CODE § 51200 (West 2001).

¹²⁹ Letter from Carolina Jimenez-Hogg, Director, Public Works & Development Services Department, County of Fresno, to Board of Supervisors, Fresno County (May 18, 1999) (on file with the San Joaquin Agricultural Law Review) [hereinafter Jimenez-Hogg].

¹³⁰ Letter from William C. Greenwood, Assessor-Recorder, County of Fresno, to Board of Supervisors, Fresno County (May 12, 1999) (on file with the San Joaquin Agricultural Law Review).

¹³¹ *Id.*

¹³² *Id.*

to the General Fund, it was suggested by staff members from the Fresno Planning & Resource Management Department that only allowing a certain amount of prime agricultural land to be enrolled during the first year of the program would limit the financial exposure to the General Fund.¹³³

However, new provisions to the Farmland Security Zone solves this problem since counties will now receive subventions during the first ten years of non-renewal on Farmland Security Zone contracted land as well as an increase in state subventions or incentives within certain targeted areas, thus relieving any county of the potential loss to its General Fund.¹³⁴ For example, the Open-Space Subventions legislation allows for additional subvention payments for properties entering a Farmland Security Zone if those properties are in or within three miles of the city spheres of influence.¹³⁵ Subvention payments for these properties would increase to \$8 per acre in fiscal year 2000-2001.¹³⁶ Therefore, if all eligible properties were to enter into Farmland Security Zone contracts, the subvention funds from this legislation would supply an additional \$350,304 to \$461,802 which would, as one might conclude, reduce or virtually eliminate the potential loss on the General Fund.¹³⁷

Moreover, when the Farmland Security Zone was first enacted, the only mechanism for exiting the twenty year contracts was through the process of non-renewal.¹³⁸ Cancellation was not an option for farmers as it was under general Williamson Act contracts.¹³⁹ Significant higher restrictions on Farmland Security Zone land placed many farmers in the awkward position of deciding whether this measure was in fact favorable towards their best interests. However, with the addition of the Open-Space Subventions Act, cancellation is once again an option for farmers.¹⁴⁰ Landowners may now petition the Board to enter directly into a Farmland Security Zone contract without first entering a Williamson Act contract.¹⁴¹

Of course, entering into a Farmland Security Zone contract does not come without a price. Landowners give up their development rights

¹³³ Jimenez-Hogg, *supra* note 129.

¹³⁴ CAL. GOV'T CODE § 16142.1 (West 2001).

¹³⁵ CAL. GOV'T CODE § 16142.1 (West 2001).

¹³⁶ *Id.*

¹³⁷ Jimenez-Hogg, *supra* note 129.

¹³⁸ MILLER, *supra* note 13, at 3.

¹³⁹ *Id.*

¹⁴⁰ CAL. GOV'T CODE §§ 16142, 16142.1 (West 2001).

¹⁴¹ CAL. GOV'T CODE §§ 16142, 16142.1 (West 2001).

and some speculative value in the property for the benefit of additional property tax relief.¹⁴² Local governments give up a portion of their property tax base for the purpose of promoting a continuity of farming and the state provides open-space subventions to participating counties to replace lost property tax revenue.¹⁴³ The end result, however, is that each partner in this program receives the benefits of agricultural land conservation which is so necessary and vital to the sustainment of California's agricultural productivity.¹⁴⁴

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¹⁴² KESECKER, *supra* note 24, at 5.

¹⁴³ *Id.*

¹⁴⁴ CAL. GOV'T CODE § 51200 (West 2001).