

The State of Agricultural Land Preservation in California in 1997: Will the Agricultural Land Stewardship Program Solve the Problems Inherent in the Williamson Act?

INTRODUCTION

For thirty years, the California Land Conservation Act of 1965,¹ commonly known as the Williamson Act, was the only government-sponsored means of preserving agricultural land in California. Critics of the Williamson Act say it is ineffective, citing the brief ten year term of land conservation contracts, inadequate financial incentives, and local authorities' failure to enforce land use restrictions created by Williamson Act contracts.²

Responding to the need for a stronger state farmland policy, Governor Wilson signed the Agricultural Land Preservation Act in October 1995.³ Once the required funding is in place,⁴ this program will pro-

¹ The California Land Conservation Act of 1965, CAL. GOV'T CODE §§ 51200-51295 (Deering 1995) [hereinafter Land Conservation Act].

² The following articles are among those that have criticized the Williamson Act. The authors point out that the Act has overbroad objectives in acting to preserve "open" lands, not just agricultural lands; it provides insufficient financial incentives; and/or it leaves too much control in the hands of local authorities:

John J. Micek, III, *The California Farmland Trust: The Proposal to Balance the Rural and Urban Land Use Needs of Californians*, 18 U.S.F. L. REV. 171 (1984).

John B. Dean, *The California Land Conservation Act of 1965 and the Fight to Save California's Prime Agricultural Lands*, 30 HASTINGS L.J. 1859 (1979).

Dan Walters, *Punching Holes in the Williamson Act*, CALIFORNIA JOURNAL (Dec. 1983).

Al Sokolow, *Urbanizing California's Farmlands - Everything's Coming Up Houses*, CALIFORNIA JOURNAL (Nov. 1990).

³ The Agricultural Land Stewardship Program of 1995, CAL. PUB. RES. CODE DIV. 10.2 (Deering 1996) and CAL. REV. & TAX. CODE §§ 421.5, 422.5 (Deering 1996).

⁴ See CAL. PUB. RES. CODE § 10240 (Deering 1996), which states that the provisions of the Act do not go into effect until minimum funding requirements are met.

vide another method of preserving agricultural land by making grants available to local governments and nonprofit organizations to purchase conservation easements.⁵

This comment will critically examine the state of agricultural land preservation in California. The Williamson Act's shortcomings will be demonstrated by following a Fresno County landowner's efforts to amend his Williamson Act contract to allow residential development on enforceably restricted land. This landowner was able to circumvent the terms of his contract in spite of the protests of local and state agricultural interests because the local government did not feel compelled to enforce the Williamson Act Contract terms.

With the shortcomings of the Williamson Act in mind, the terms of the Agricultural Land Stewardship Program will be reviewed to determine whether it provides a stronger incentive for property owners to keep land in agricultural production.

This comment concludes that while agricultural interests and the California legislature are determined to preserve agricultural land, four factors mitigate against long-term agricultural preservation measures: (1) lack of funding; (2) inadequate financial incentives for landowners; (3) the desire of local government to control land use decisions; and (4) the unwillingness of landowners to permanently restrict the use and alienability of their land.

I. ORIGIN AND IMPLEMENTATION OF THE WILLIAMSON ACT

A. *What the Williamson Act Does*

The Williamson Act (the "Act") is a comprehensive scheme created to support agricultural land preservation in California.⁶ The law is designed to help farmers maintain agricultural use of their land in the face of development pressure caused by urban encroachment.⁷ Under the Act, a land owner whose property is located in a designated agricultural preserve⁸ is permitted to enter into a contract with local gov-

⁵ See The Agricultural Land Stewardship Program of 1995, CAL. PUB. RES. CODE Div. 10.2. (Deering 1996).

⁶ Land Conservation Act of 1965, CAL. GOV'T CODE §§ 51200-51255 (Deering 1995).

⁷ CAL. GOV'T CODE § 51220 (Deering 1995) discusses the legislative findings, specifically that preservation of agricultural land is necessary to the state's economy, and that the "discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest."

⁸ An agricultural preserve is defined in CAL. GOV'T CODE § 51201 (Deering 1995) as an area devoted to agricultural use, recreational use, or open space use. Agricultural

erning authorities at either the city or county level.⁹ In return for enforceable restrictions on the use of a parcel of land, the land is valued for assessment purposes at a lower agricultural use value,¹⁰ rather than the best use value of comparable surrounding land.¹¹

The state authorizes cities and counties to establish local zoning regulations,¹² and the Act works in conjunction with this authority. In 1970, the Legislature enacted a series of specific zoning laws mandating the creation of local open space plans.¹³ The open space regulations work with the Williamson Act provisions to guide local governments in the establishment and administration of agricultural preserves. Since a city or county creates the agricultural preserve and enters into the Williamson Act contract with the landowner, it is also the body responsible for enforcing contractual restrictions on land use within an agricultural preserve.¹⁴

use is defined as use of land for the purpose of producing an agricultural commodity.

⁹ CAL. GOV'T CODE § 51240 (Deering 1995) states in part: "Any city or county may by contract limit the use of agricultural land for the purpose of preserving such land pursuant to and subject to the conditions set forth in the contract and in this chapter."

¹⁰ CAL. REV. & TAX. CODE §§ 422-423 (Deering 1996). Section 422 defines enforceable restrictions and section 423 instructs the assessor to use the income capitalization method rather than using sales data on comparable land to assess restricted land.

¹¹ CAL. CONST. art. XIII, § 8 states:

To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to . . . production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

This is in contrast to CAL. CONST. art. XIII, § 1(a) which states that all property shall be assessed at the same percentage of fair market value.

¹² CAL. GOV'T CODE § 65850 (Deering 1995) states that counties or cities may adopt ordinances (a) to regulate the use of "land as between industry, business, residences, open space, including agriculture . . . and other purposes."

¹³ CAL. GOV'T CODE § 65560(a)(2) (Deering 1995), defines open-space land to include land "used for the managed production of resources, including but not limited to forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber." CAL. GOV'T CODE § 65563 (Deering 1995) sets forth the requirement for local governments to have an open space plan for the purpose of long-range preservation of open-space lands.

¹⁴ CAL. GOV'T CODE § 51240 (Deering 1995) states "[a]ny city or county may by contract limit the use of agricultural land for the purpose of preserving such land pursuant to the conditions set forth in the contract"

Significantly, local government participation in the agricultural land preservation program created by the Williamson Act is entirely voluntary,¹⁵ as the Act authorizes but does not require local governing authorities to enter into agricultural land conservation contracts with landowners.¹⁶ Participation by landowners within an agricultural preserve is also voluntary; however, all land within an agricultural preserve containing contracted land must be restricted to a compatible use by zoning.¹⁷

B. How the Williamson Act Operates

A landowner whose property is located within an agricultural preserve and who desires to enter into a land conservation contract applies to the city council or county board of supervisors, according to the local procedure.¹⁸ The parties to the contract are the landowner and the city council or board of supervisors.¹⁹ The local assessor is notified so that the appropriate adjustment may be made to the property owner's tax bill.²⁰

The terms of a land conservation contract can be summarized as follows: a landowner agrees to keep land in agricultural or compatible use²¹ for ten years with the provision that on the anniversary date of

¹⁵ CAL. GOV'T CODE § 51230 (Deering 1995) states "any county or city, by resolution, and after a public hearing may establish an agricultural preserve."

¹⁶ In *Kelsey v. Colwell*, 106 Cal. Rptr. 420, 423 (Ct. App. 1973), the California Court of Appeals confirmed that the Williamson Act is permissive rather than mandatory legislation.

¹⁷ CAL. GOV'T CODE § 51230 (Deering 1995), notes that:

any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning or other suitable means in such a way as not to be incompatible with the agricultural use of the land

.....

¹⁸ Interview with Paul Marquez, Fresno County Department of Public Works, in Fresno, Cal. (Oct. 4, 1996). In Fresno County, the landowner submits a request for a Williamson Act Contract to the Department of Public Works, which notifies the County Assessor of the pending contract.

¹⁹ CAL. GOV'T CODE § 51240 (Deering 1995).

²⁰ CAL. GOV'T CODE § 51252 (Deering 1995): "Open space land under a contract entered into pursuant to this chapter shall be enforceably restricted within the meaning of and for the purposes of Section 8 of Article XIII of the State Constitution"

²¹ Compatible use of contracted land is set forth in CAL. GOV'T CODE §§ 51231, 51238, 51238.1 (Deering 1995). For the purposes of the contract discussed here, the compatible use provisions of § 51238.1 do not apply, since this section was enacted in 1994 and does not apply to contracts signed before June 7, 1994. However, CAL. GOV'T CODE § 51243 (Deering 1995) states that all contracts "shall (a) Provide for

the contract, another year shall be added to the term of the contract.²² The contract continues in this fashion unless the owner submits a notice of nonrenewal at least ninety days, or the government serves a nonrenewal notice at least sixty days before the anniversary date.²³ A landowner who no longer wishes to keep property enrolled in the Williamson Act contract has the option of giving notice of nonrenewal at any time during the contract²⁴ or may petition for cancellation.²⁵ Upon notice of nonrenewal, the landowner is charged a penalty and the assessor is notified.²⁶ Taxes are adjusted gradually so that by the time the term of the contract expires, the taxes return to the level they would have had if the land use had not been enforceably restricted.²⁷

Cancellation of a contract is more difficult. Only the landowner may request cancellation.²⁸ Cancellation must be either consistent with the purposes of the Act or in the public interest,²⁹ and a finding that the cancellation is consistent with the purposes of the Act can be made only if the local authority makes five specific findings.³⁰

the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract.”

²² CAL. GOV'T CODE § 51244 (Deering 1995) sets forth the ten year term of the contract, and states that “on the anniversary date of the contract or such other annual date as specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given”

²³ CAL. GOV'T CODE § 51245 (Deering 1995).

²⁴ *Id.*

²⁵ CAL. GOV'T CODE §§ 51281, 51282 (Deering 1995).

²⁶ CAL. REV. & TAX. CODE § 426 (Deering 1996).

²⁷ *Id.*

²⁸ CAL. GOV'T CODE § 51281 (Deering 1995).

²⁹ CAL. GOV'T CODE § 51282 (Deering 1995) states that “a board or council may 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.”

³⁰ The findings required by CAL. GOV'T CODE § 51282 are:

- (1) That the cancellation is for land for which a notice of nonrenewal has been served pursuant to Section 51245.
- (2) That 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.
- (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 con-

Contracted land may be sold or divided.³¹ The rights and obligations of the contract "[s]hall be binding upon, and inure to the benefit of, all successors in interest of the owner."³² Since the new owner is subject to the terms of the original contract, the land may not be divided into smaller parcels than is permitted under the contract.³³

California uses the capitalization of income method to value property restricted under the Act.³⁴ The State provides subvention payments to replace some of the property tax revenue lost as a result of relief granted under the Act; however, the subvention payments do not equal the full amount lost when property is reassessed under the Act.³⁵

II. THE WILLIAMSON ACT IN FRESNO COUNTY IN 1996: A CASE STUDY

A. *Williamson Act Participation in Fresno County*

When the Williamson Act was created in 1965, the concern was focused on agricultural lands being lost in Southern California and in the San Francisco Bay Area.³⁶ While Southern California continues to lead the state in urbanization of farmland,³⁷ the battle to save agricultural land increasingly is being waged in the Central Valley.³⁸

Fresno County produced over \$3,000,000,000 in agricultural products in 1994 and was ranked first among all counties in the United States in dollar value of agricultural production as of 1992.³⁹ Fresno County is also experiencing tremendous growth, with the population expected to nearly triple by the year 2040.⁴⁰ The population growth

tiguous patterns of urban development that development of proximate noncontracted land.

³¹ See CAL. GOV'T CODE § 51243 (Deering 1995).

³² *Id.*

³³ See CAL. GOV'T CODE § 51222 (Deering 1995).

³⁴ CAL. REV. & TAX. CODE § 423 (Deering 1996); See also 13 HARL, AGRICULTURAL LAW § 122.02 (1993) (for an explanation of the capitalization of income formula).

³⁵ CAL. GOV'T CODE § 16142 (Deering 1996).

³⁶ Alan E. Land, *Unraveling the Rurban Fringe: A Proposal for the Implementation of Proposition Three*, 19 HASTINGS L. REV. 421 (1968).

³⁷ CALIFORNIA DEP'T OF CONSERVATION, FARMLAND CONVERSION REPORT 1992 TO 1994 [hereinafter FARMLAND CONVERSION REPORT] (1996).

³⁸ AMERICAN FARMLAND TRUST, ALTERNATIVES FOR FUTURE URBAN GROWTH IN CALIFORNIA'S CENTRAL VALLEY: THE BOTTOM LINE FOR AGRICULTURE AND TAXPAYERS 2 (Oct. 1995) [hereinafter ALTERNATIVES].

³⁹ *Id.* at 1, Table 1.

⁴⁰ *Id.* at 2, Table 2.

and accompanying urban sprawl, if not controlled through careful zoning and land management, is projected to have an impact on over 275,000 acres of agricultural land, in either actual loss of farmland or disruption of agricultural activities due to non-agricultural use of nearby land.⁴¹ The most desirable agricultural land is threatened because the level valley land vital to agriculture is also the most attractive to developers.⁴²

In the 1994-1995 lien year, Fresno County had 1,586,615 acres enrolled in agricultural land conservation contracts⁴³ and received \$5,900,869 from the State in subvention payments (\$5 per acre for 1,077,539 prime acres and \$1 per acre for 482,792 acres of non-prime acres).⁴⁴

Localities which fail to follow the laws governing the execution and administration of Williamson Act contracts risk loss of subvention payments.⁴⁵ Furthermore, individual farmers and ranchers who depend on the reduced taxes may lose the right to participate in the program if the State determines the local government is not requiring compliance with the restrictions it sets forth in its own contracts.⁴⁶

B. George Beal Attempts to Subdivide

1. The Attempt to Reduce Minimum Parcel Size

In 1992, George Beal purchased "non-prime" farmland in Fresno County.⁴⁷ The property is located within an agricultural preserve in the

⁴¹ *Id.* The projected loss of 275,000 acres of agricultural land is for Fresno County alone. This study notes that Los Angeles County was transformed from the top-producing agricultural county in the nation to an almost continuous megalopolis in only 45 years. The study uses the year 2040 in its analysis both to set a long term planning horizon and to provide an example of how rapidly the character of an area can change.

⁴² See Sokolow, *supra* note 2, at 10; Micek, *supra* note 2, at 195.

⁴³ DEP'T OF CONSERVATION, THE CALIFORNIA LAND CONSERVATION (WILLIAMSON) ACT 1993 TO 1995 STATUS REPORT 34 (1996) [hereinafter WILLIAMSON ACT STATUS REPORT].

⁴⁴ *Id.* at 50.

⁴⁵ The authority to make subvention payments and the amount of payments is set forth in CAL. GOV'T CODE § 16142 (Deering 1996). However, the land must be enforceably restricted within the meaning of CAL. CONST. art. XIII, § 8 (Deering 1995) to receive the tax break which creates the authority for subvention payments.

⁴⁶ CAL. GOV'T CODE § 16146 (Deering 1996) grants the Secretary of Resources the authority to deny subvention payments to a county as a whole if a pattern of laxity in county policies is established.

⁴⁷ Barbara DeLollis & Angela Valdivia Rush, *Vote Angers Farmers; Decision to Allow Subdivision Threatens Tax Break on Undeveloped Land, They Say*, FRESNO BEE,

Eastside Rangeland of the Sierra North Regional Plan.⁴⁸ The 824 acre parcel is subject to Agricultural Land Conservation Contract 1238 (ALCC 1238), which was executed on January 14, 1970.⁴⁹

As successor in interest to ALCC 1238, Mr. Beal became subject to the terms of the contract as it was originally executed.⁵⁰ The land Mr. Beal purchased is zoned AE40 under Fresno County Zoning Regulations for Exclusive Agricultural District.⁵¹ According to section 816 of Fresno County's Zoning Regulation,

[t]he AE District is intended to be an exclusive district for agriculture and for those uses which are necessary and an integral part of the agricultural operation. This district is intended to protect the general welfare of the agricultural community from encroachments of non-related agricultural uses which by their nature would be injurious to the physical and economic well-being of the agricultural district.⁵²

The AE40 designation restricts the size of parcels within the district to a minimum of 40 acres.⁵³ In addition, ALCC 1238 which placed the land under Williamson Act restrictions also recites that "minimum acreage for new parcels [which may be created within the contracted parcel] shall be 40 acres."⁵⁴

George Beal wished to subdivide a 340 acre portion of his land into 20 acre parcels and ultimately have the land rezoned to allow rural residential development.⁵⁵ The first step to realizing this plan required

Aug. 8, 1996, at A1.

⁴⁸ See Memorandum from Richard D. Welton, Director, Public Works & Development Services Department to Board of Supervisors Exhibit 1, ALCC Location Map (August 8, 1995) [hereinafter Welton Memorandum](discussing George Beal's request to reduce the contract minimum parcel size requirement)(copy on file with the *San Joaquin Agricultural Law Review*).

⁴⁹ Agricultural Land Conservation Contract 1238, executed January 14, 1970 between Fillmore C. Sample and the Board of Supervisors, Fresno County, recorded February 26, 1970, as Instrument No. 13495, Book 5763, Page 935, in the Office of the Fresno County Recorder [hereinafter ALCC 1238].

⁵⁰ CAL. GOV'T CODE § 51243 (Deering 1995) states the contract "[s]hall be binding upon, and inure to the benefit of, all successors in interest of the owner."

⁵¹ COUNTY OF FRESNO, CAL., ZONING ORDINANCE § 816 (1980).

⁵² *Id.*

⁵³ COUNTY OF FRESNO, CAL., ZONING ORDINANCE § 816 (1980) states as follows:

The "AE" District shall be accompanied by an acreage designation which establishes the minimum size lot that may be created within the District. Acreage designation of 640, 320, 160, 80, 40, 20, 5 are provided for this purpose. Parcel size regulation is deemed necessary to carry out the intent of this District.

⁵⁴ ALCC 1238, *supra* note 49.

⁵⁵ See Welton Memorandum, *supra* note 48.

an amendment to his ALCC, reducing the minimum parcel size from 40 to 20 acres. In 1995, Beal submitted a request to Fresno County to "reduce the Agricultural Land Conservation Contract minimum parcel size requirement for [his] property located east of the Friant-Kern Canal."⁵⁶ The Fresno County Board of Supervisors (the Board) policy adopted in 1969 limits the size of agricultural land conservation contract parcels east of the Friant-Kern canal to 40 acres.⁵⁷ This policy was amended in 1977 to allow 20 acre parcels in areas otherwise requiring 40 acre parcels only if "1) [m]ore than 70 percent of the property, excluding the homesite, is devoted to irrigated agriculture; and 2) [t]he use of the land proposed for a contract conforms to the General Plan."⁵⁸

Beal's request for a change to the Board's policy was reviewed by the Fresno County Land Conservation Committee (FCLCC) on July 13, 1995. The FCLCC recommended that Mr. Beal's request be denied based on its interpretation that Williamson Act "contracts should apply only to farmers, not to owners of large home sites."⁵⁹ Based upon its study and the recommendation of the FCLCC, the Fresno County Public Works and Development Services Department (PWDS) recommended the Board "[d]eny the request by George Beal to reduce the Agricultural Land Conservation Contract minimum parcel size requirement for property located east of the Friant-Kern Canal."⁶⁰ In addition, the Department of Conservation notified the PWDS that subdivision of the land into smaller than forty acre parcels "would not meet the intent and purpose of the Williamson Act"⁶¹

The reasons for recommending denial of Mr. Beal's request were outlined in the memorandum from the PWDS to the Board of Supervisors.⁶² To summarize, only prime agricultural land parcels enrolled in a land conservation contract may be smaller than 40 acres.⁶³ To be designated prime land as defined in the Act, one of five criteria must be met.⁶⁴ According to the PWDS, only 44% of the land Mr. Beal

⁵⁶ See Welton Memorandum, *supra* note 48.

⁵⁷ See Welton Memorandum, *supra* note 48.

⁵⁸ See Welton Memorandum, *supra* note 48.

⁵⁹ See Welton Memorandum, *supra* note 48.

⁶⁰ See Welton Memorandum, *supra* note 48.

⁶¹ Letter from Patricia Gatz, Office of Land Conservation, Dep't of Conservation to Roy Kubley, Fresno County Public Works and Development Services Department (Aug. 8, 1995) (copy on file with the *San Joaquin Agricultural Law Review*).

⁶² See Welton Memorandum, *supra* note 48.

⁶³ See Welton Memorandum, *supra* note 48.

⁶⁴ CAL. GOV'T CODE § 51201(c)(Deering 1995) defines prime agricultural land as

wished to have redesignated to 20 acre parcels properly met the soil requirements for prime agricultural land. Neither could the land meet the requirements for grazing or crop productivity.⁶⁵

The PWDSO submitted its recommendation to deny Beal's request to the Board on August 8, 1995.⁶⁶ On that same date, the Board, while acknowledging the recommendations of the PWDSO, decided, nevertheless, that the "aforementioned 340 acre area shown on Exhibit 'A' meets the intent of the Williamson Act and is consistent with the policy established by this Board related to contract minimum parcel sizes"⁶⁷ On a 3-2 vote, the Board approved Beal's request to reduce the minimum parcel size requirement for ALCC 1238 from 40 to 20 acres.⁶⁸

2. The Effort to Change the General Plan

Although ALCC 1238 had been amended to permit reduction of the minimum parcel size from 40 to 20 acres, the process to permit development of the land was not complete. The current exclusive agricultural designation of the land limited the use of the land to "those uses which are necessary and an integral part of the agricultural opera-

any of the following:

(1) All land which qualifies for rating as class I or class II in the Soil Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

⁶⁵ See Welton Memorandum, *supra* note 48.

⁶⁶ See Welton Memorandum, *supra* note 48.

⁶⁷ Fresno County Board of Supervisors Resolution 95-520 Amending the Terms of Agricultural Land Conservation Contract No. 1238, with Respect to Minimum Parcel Size for Land Located East of the Friant-Kern Canal [hereinafter Resolution 95-520] (Aug. 8, 1995). (Copy on file with the *San Joaquin Agricultural Law Review*).

⁶⁸ *Id.*

tion”⁶⁹ George Beal’s plan to develop the land required rezoning the land to rural residential use, and rezoning required a change to the County’s general plan. To effect the zoning change, Beal submitted General Plan Amendment Application No. 422 to the Fresno County Board of Supervisors.⁷⁰ The Fresno County Planning Commission held a hearing on July 11, 1996, to consider its Staff Report regarding George Beal’s application to amend the Sierra North Regional Plan portion of the General Plan.⁷¹ According to the report, the General Plan’s objective for Eastside Rangeland is to “discourage activities and uses that could endanger the quality and character of open space and rangeland areas . . . [and] to limit the expansion of intensive non-agricultural development onto productive or potentially productive grazing and other agricultural lands.”⁷² The report also noted, however, that the Board had granted Beal’s request to reduce the parcel size from 40 to 20 acres in 1995. Noted in the report were “[r]ecently approved General Plan Amendments in the foothill areas [which] have resulted in modification to the Goals and Objectives that are more accommodating to foothill rural residential development *especially on land not feasible for farming*].”⁷³

In a move which was clearly contrary to its actions of a year ago, the Planning Commission Staff recommended that George Beal’s land be rezoned from exclusive agricultural to rural residential zoning.⁷⁴ This recommendation was made in spite of the fact that the land had been reclassified from non-prime to prime farmland a year earlier due to its supposed potential for commercial agricultural use.⁷⁵ The Planning Commission’s stated reason for its recommendation was that “[c]ommercial farming is generally not feasible in this area because of difficulty in securing a reliable water source”⁷⁶ The Commission also found the land not suitable for commercial grazing because of the small 20 acre parcel sizes which, notably, the Board of Supervisors had created only a year earlier.⁷⁷ Based on the findings of its Staff Re-

⁶⁹ COUNTY OF FRESNO, CAL., ZONING ORDINANCE § 816 (1980).

⁷⁰ Memorandum from the Planning Commission to the Board of Supervisors (August 6, 1996) [hereinafter Planning Commission Memorandum] (copy on file with the *San Joaquin Agricultural Law Review*).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* (emphasis added).

⁷⁴ *Id.*

⁷⁵ See Resolution 95-520, *supra* note 67.

⁷⁶ See Planning Commission Memorandum, *supra* note 70.

⁷⁷ Resolution 95-520, *supra*, note 67.

port, the Planning Commission recommended approval of General Plan Amendment No. 422.⁷⁸

C. *The California Farm Bureau Federation Steps In*

When the Board of Supervisors initially approved the request to reduce parcel sizes under Beal's contract, it heard testimony from owners of adjacent properties,⁷⁹ and there is no record of any objections aside from the FCLCC's and PWDS's recommendations for disapproving the contract amendment. In contrast to the request to amend the contract, the Fresno County Farm Bureau (FCFB) learned of the proposed amendment to the General Plan.⁸⁰ On August 6, 1996, prior to the scheduled Board meeting, FCFB President Shawn Stevenson met with Supervisors Deran Koligian and Tom Perch. Stevenson requested a continuance on the matter of the proposed amendment to allow the Farm Bureau to present its case regarding the implications of the Board's action to the Williamson Act.⁸¹ According to Stevenson, the two Supervisors said they would consider the Farm Bureau's request, but made no guaranty that a continuance would be granted.⁸² Later that same day, the Board, on the same 3 to 2 vote that was cast to approve amendment of ALCC 1238, tentatively approved General Plan Amendment Application No. 422.⁸³ This action constituted only a tentative amendment to the General Plan; the actual amendment would have to wait until September.⁸⁴

In the face of this threat to the integrity of the Williamson Act, the FCFB alerted the Office of the General Counsel of the California Farm Bureau Federation (CFBF) to the events taking place in Fresno County.⁸⁵ Nancy McDonough, General Counsel to the CFBF, re-

⁷⁸ Planning Commission Memorandum, *supra*, note 70.

⁷⁹ Resolution 95-520, *supra* note 67.

⁸⁰ Interview with Shawn Stevenson, President of the Fresno County Farm Bureau, in Clovis, Cal. (Oct. 1, 1996) [hereinafter Stevenson interview] (copy on file with the *San Joaquin Agricultural Law Review*).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Board Action Approving Resolution No. 11131, Fresno County Board of Supervisors (Aug. 6, 1996). This action "approved the negative declaration and general plan amendment application" and directed the county "to prepare [a] resolution to amend the general plan" (Copy on file with the *San Joaquin Agricultural Law Review*).

⁸⁴ CAL. GOV'T CODE § 65358(b) (Deering 1995) states, in part, "no mandatory element of a general plan shall be amended more frequently than four times during any calendar year."

⁸⁵ Stevenson interview, *supra*, note 80.

sponded that the events transpiring in Fresno County appeared to provide "a good case to challenge the redesignation to rural residential on land under a Williamson Act contract . . ." and recommended "local political effort" combined with a letter from the CFBF "stating our concerns with the Beal proposal and stating our legal position"⁸⁶

Wishing to avoid legal action unless it was deemed absolutely necessary to protect the integrity of the Williamson Act,⁸⁷ the FCFB and the CFBF addressed letters to Deran Koligian, Chairman of the Board of Supervisors, stating their objections to the tentative amendment to the General Plan.⁸⁸ Writing on behalf of the FCFB, Stevenson pointed out the apparent inconsistency of the Board's action: in 1995 the Board permitted amendment of ALCC 1238 because of the great agricultural usefulness of the land, and then a year later proposed amending the General Plan to allow residential development on the same contractually restricted land because agricultural uses are supposedly impractical.⁸⁹ Stevenson also advised the Board that if Beal's intention was to use his land for purposes other than commercial agriculture, he would be required under the terms of his ALCC to file a notice of non-renewal for the property.⁹⁰

Carolyn Richardson, Director of the CFBF's Department of Environmental Advocacy, provided a detailed analysis of the legal issues raised by the Board's conduct in approving the amendment to the ALCC and to the General Plan.⁹¹ First, she pointed out the threat the County's action posed to the very viability of the Williamson Act in Fresno County. "If a pattern of laxity in county policies is established, such as a failure to enforce land use restriction, the Secretary of Resources is empowered to deny state subventions to a county Williamson Act program as a whole."⁹² She further noted that the California Constitution requires that land be enforceably restricted to receive

⁸⁶ Letter from Nancy McDonough to Shawn Stevenson (Aug. 21, 1996)(discussing proposed amendment to Fresno County General Plan). (copy on file with the San Joaquin Agricultural Law Review).

⁸⁷ Stevenson interview, *supra* note 80.

⁸⁸ Letter from Shawn Stevenson to Deran Koligian (Sept. 12, 1996) [hereinafter Stevenson Letter](Copy on file with the *San Joaquin Agricultural Law Review*); Letter from Carolyn Richardson to Deran Koligian (Sept. 12, 1996) (regarding proposed general plan amendment)[hereinafter Richardson Letter] (copy on file with the San Joaquin Agricultural Law Review).

⁸⁹ Stevenson Letter, *supra* note 88.

⁹⁰ CAL. GOV'T CODE § 51245 (Deering 1995); *See also* Welton Memorandum, *supra* note 48.

⁹¹ Richardson Letter, *supra* note 88.

⁹² Richardson Letter, *supra* note 88.

preferential tax valuation. A zoning change to rural residential would eliminate the enforceable restriction, in turn eliminating the availability of land conservation contracts to Fresno County landowners.⁹³

Second, Richardson argued, the County breached the Williamson Act contract by reclassifying non-prime land which does not meet any of the criteria of prime agricultural land, and by allowing residential subdivision of the contracted land.⁹⁴ Citing California Government Code section 51242, Richardson pointed out that any housing on ALCC land must be merely incidental to commercial agricultural activity.⁹⁵ She noted that a rural residential subdivision does not meet the legal criteria for housing incidental to commercial agriculture.⁹⁶

Finally, Richardson noted that the zoning change violates Fresno County's General Plan.⁹⁷ The Board's act of declaring the 340 acre parcel to be productive agricultural land and then using the approval of reduced parcel sizes "to permit a dense rural residential development designation which is expressly prohibited by the general plan on 'productive' land" is inconsistent with the County's own land use policies.⁹⁸

D. A Compromise is Reached?

The FCFB informed the CFBF that it approved taking legal action if the Board ratified the Amendment to the General Plan. At this point, Supervisor Koligian, who had formerly voted in favor of the Amendment, became amenable to reaching a solution which would satisfy the local Farm Bureau.⁹⁹ Beal and the County proposed changing the zoning from AE40 to AE20 rather than RR20 (rural residential 20 acre parcels), while allowing residential development on the land.¹⁰⁰ The Farm Bureau was not satisfied with this offer, since its position remained that residential development violates the Williamson Act. The FCFB counter-proposed that the land be zoned AE20 and that Beal be required to submit a notice of non-renewal, with the caveat that the land remain under the ALCC until the contract terminated by

⁹³ Richardson Letter, *supra* note 88.

⁹⁴ Richardson Letter, *supra* note 88.

⁹⁵ Richardson Letter, *supra* note 88.

⁹⁶ Richardson Letter, *supra* note 88.

⁹⁷ Richardson Letter, *supra* note 88.

⁹⁸ Richardson Letter, *supra* note 88.

⁹⁹ Stevenson interview, *supra* note 80.

¹⁰⁰ Stevenson interview, *supra* note 80.

non-renewal.¹⁰¹

This agreement did not thoroughly please the Farm Bureau, since Beal would be allowed to retain the 20 acre parcel size on land that clearly did not meet the legal requirements for prime agricultural land.¹⁰² Still, the critical element of the Williamson Act land conservation contract, namely the requirement that land be restricted to agricultural use in exchange for tax relief, would be upheld under the compromise. The FCFB believed it had an agreement to be adopted in December as part of the next General Plan Amendment.¹⁰³

E. The Battle Rages On

The agreement the FCFB thought it had reached with George Beal never went into effect. The Fresno County Planning Commission met on November 7, 1996 to consider George Beal's application to amend the General Plan.¹⁰⁴ This latest request sought to redesignate the zoning of the disputed 340 acre parcel to Foothill Rural Residential and simultaneously to add the AE20 designation "as an implementing zone within the Foothill Residential designation for lands under the Williamson Act Contract."¹⁰⁵ Beal wanted to zone the parcel for rural residential development and retain the land in an agricultural preserve (AE20) under Williamson Act contract.

The Planning Commission Staff Report summarized testimony from Beal's representative and from others, most notably the FCFB.¹⁰⁶ After reviewing the staff report, the Planning Commission considered a motion to approve the General Plan Amendment Applications. This motion failed, while the subsequent motion to disapprove the Applications passed.¹⁰⁷

The Planning Commission's action was appealed to the Board of Supervisors at their December 10, 1996 meeting at which the Board upheld Beal's appeal and voted 3 to 2 to approve the Negative Decla-

¹⁰¹ *Id.* See also Memorandum from Planning Commission to the Board of Supervisors (Dec. 10, 1996) [hereinafter December 1996 Memorandum] (discussing 1) General Plan Amendment Request Application No. 422 submitted by George Beal and 2) Rezoning the 340 acres from AE40 to AE 20) (copy on file with the San Joaquin Agricultural Law Review).

¹⁰² See CAL. GOV'T CODE § 51201(c) (Deering 1995), *supra* note 64, for definition of prime agricultural land.

¹⁰³ Stevenson interview, *supra* note 80.

¹⁰⁴ December 1996 Memorandum, *supra*, note 101.

¹⁰⁵ December 1996 Memorandum, *supra* note 101.

¹⁰⁶ December 1996 Memorandum, *supra* note 101.

¹⁰⁷ December 1996 Memorandum, *supra* note 101.

ration and General Plan Amendment.¹⁰⁸ Beal did not submit a notice for nonrenewal of his contract, the FCFB filed suit against Fresno County on January 9, 1997,¹⁰⁹ and the battle to protect the integrity of the Williamson Act in Fresno County rages on.

III. THE AGRICULTURAL LAND STEWARDSHIP PROGRAM

A. *A Summary of the Program*

In October 1995, Governor Wilson signed Senate Bill 275, creating the Agricultural Land Stewardship Program of 1995 (the Program).¹¹⁰ The Program recognizes the importance of a long-term agricultural land conservation program¹¹¹ and cites the need for funding to "better address the needs of conserving agricultural land near urban areas."¹¹² It gives California another state-sponsored approach to preserving agricultural land by authorizing creation of a fund which local governments and nonprofit organizations may use to purchase agricultural conservation easements.¹¹³

The conservation easement is defined as "an interest in land, less than fee simple, which represents the right to prevent the development or improvement of the land . . . for any purpose other than agricultural production."¹¹⁴ To qualify for funding, the applicant and seller must agree "to restrict the use of the land in perpetuity, subject to review after 25 years."¹¹⁵

The Department of Conservation (Department), which has only monitoring and reporting duties under the Williamson Act, is responsi-

¹⁰⁸ Board Action Approving Resolution No. 96-662, Fresno County Board of Supervisors (Dec. 10, 1996) (copy on file with the *San Joaquin Agricultural Law Review*).

¹⁰⁹ *Fresno County Farm Bureau v. County of Fresno*, No. S-0580195-6 (Super. Ct. of the State of California, County of Fresno, filed Jan. 9, 1997). In the complaint, the Farm Bureau requests the court issue a Preemptory Writ of Mandate commanding the County to 1) set aside Resolution No. 95-520 amending ALCC 1238; 2) set aside Resolution No. 96-662 amending the General Plan; and 3) suspend enforcement of the Resolutions. The complaint also seeks judgment that the adoption of the two Resolutions "were illegal and are therefore null and void."

¹¹⁰ The Agricultural Land Stewardship Program of 1995, CAL. PUB. RES. CODE Div. 10.2 and CAL. REV. & TAX. CODE §§ 421.5 and 422.5 (Deering 1996).

¹¹¹ CAL. PUB. RES. CODE § 10201(e) (Deering 1996).

¹¹² CAL. PUB. RES. CODE § 10201(f) (Deering 1996).

¹¹³ CAL. PUB. RES. CODE § 10230 (Deering 1996).

¹¹⁴ CAL. PUB. RES. CODE § 10211 (Deering 1996).

¹¹⁵ CAL. PUB. RES. CODE § 10237 (Deering 1996).

ble for administering the Program.¹¹⁶ Instead of having landowners enter into a contractual agreement with the local government, the local government or a nonprofit organization¹¹⁷ (the Applicant) applies to the Department for a grant to purchase an easement from the fee title holder of agricultural land.¹¹⁸ The Applicant selects an appraiser who determines the value of the easement by calculating the difference between the fair market value of the property and the value of the property as restricted to agricultural use.¹¹⁹ The land under conservation easement is then taxed at the lower agricultural use rate rather than the best use rate, since it is now enforceably restricted.¹²⁰

The Program sets forth eligibility criteria, which require that land must be suitable for commercial agriculture, that the use is compatible with the local general plan, and that the conservation easement proposal is approved by the governing body of the local city or county.¹²¹ Once eligibility requirements are met, the Department then judges the proposal based upon a rather lengthy list of selection criteria.¹²²

A landowner must wait at least twenty-five years after the creation of an easement to request that the Department review the easement for possible termination.¹²³ While the Department decides whether termination is approved based on six specific findings,¹²⁴ the local govern-

¹¹⁶ CAL. PUB. RES. CODE § 10250 (Deering 1996), states "the department shall determine whether the agricultural conservation easement meets the eligibility and selection criteria set forth in this chapter."

¹¹⁷ CAL. PUB. RES. CODE § 10221 (Deering 1996) defines nonprofit organization as "any private nonprofit organization which has among its purposes the conservation of agricultural lands, and holds a tax exemption as defined under Section 501(c)(3) of the Internal Revenue Code, and further qualifies as an organization under Section 170(b)(1)(A)(vi) or 170(h)(3) of the Internal Revenue Code."

¹¹⁸ See CAL. PUB. RES. CODE §§ 10211-12 (Deering 1996) (definitions of "easement" and "Applicant.") See also CAL. PUB. RES. CODE § 10230(c) (Deering 1996) which discusses "grants made by the department pursuant to this division"

¹¹⁹ CAL. PUB. RES. CODE § 10260 (Deering 1996).

¹²⁰ CAL. REV. & TAX. CODE § 422.5 (Deering 1996).

¹²¹ CAL. PUB. RES. CODE § 10251 (Deering 1996).

¹²² CAL. PUB. RES. CODE § 10252 (Deering 1996).

¹²³ CAL. PUB. RES. CODE § 10270 (Deering 1996).

¹²⁴ CAL. PUB. RES. CODE § 10273(a)(Deering 1996) states:

For the department to approve the termination of the agricultural easement, all of the following findings shall be made:

- (1) The termination is consistent with the purposes of this division.
- (2) The termination is in the public interest.
- (3) The termination is not likely to result in the removal of adjacent lands form commercial agricultural production.
- (4) The termination is for an alternate use which is consistent with the appli-

ment is required to make an "inquiry to determine the feasibility of profitable farming on the subject land."¹²⁵

B. Impediments to Implementation

1. Adequate Funding Requirement

The Program was not funded when it was created, and does not go into effect until at least one million dollars have been deposited in the fund.¹²⁶ Funding can come from "gifts, donations, proceeds from the sale of general obligation bonds, funds appropriated . . . by the legislature, federal grants or loans, or other sources . . ."¹²⁷ The State hopes to receive grants from a special fund created in the federal government's 1996 Farm Bill,¹²⁸ specifically through the Farmland Protection Program which was created as part of the 1996 Farm Bill.¹²⁹

While proponents of conservation easements point to the popularity and success of conservation easement programs in other states,¹³⁰ the scale of farming in California is so much larger than in those states, that a comparison to their programs is dubious. For example, Maryland, the largest participant in a conservation easement program, has

cable provisions of the city or county general plan.

- (5) The termination will not result in discontinuous patterns of urban development.
- (6) There is no land that is available and suitable for the use to which it is proposed that the restricted land be put to, or that development of the restricted land would provide more contiguous patterns of urban development than development of proximate unrestricted land.

¹²⁵ CAL. PUB. RES. CODE § 10271 (Deering 1996).

¹²⁶ CAL. PUB. RES. CODE § 10240 (Deering 1996).

¹²⁷ CAL. PUB. RES. CODE § 10230 (Deering 1996).

¹²⁸ See WILLIAMSON ACT STATUS REPORT, *supra* note 43, at 21 (discussion of The Federal Agricultural Improvement and Reform Act, commonly known as the 1996 Farm Bill).

¹²⁹ The Farmland Protection Program, Pub. L. No. 104-127, 110 Stat. 1020 (1996) states:

The Secretary of Agriculture shall establish and carry out a farmland protection program under which the Secretary shall purchase conservation easements or other interests in not less than 170,000, nor more than 340,000, acres of land with prime, unique, or other productive soil that is subject to a pending offer from a State or local government for the purpose of protecting topsoil by limiting nonagricultural uses of the land.

¹³⁰ WILLIAMSON ACT STATUS REPORT, *supra* note 43, at 28-30; AMERICAN FARMLAND TRUST, SAVING THE AMERICAN FARMLAND TRUST, SAVING THE FARM: A HANDBOOK FOR CONSERVING AGRICULTURAL LAND at 4-13, (January 1990).

only 100,000 plus acres enrolled in its program.¹³¹ In contrast, Fresno County alone has over 950,000 acres which qualify for enrollment as a conservation easement.¹³² This disparity illustrates the enormous cost the Program must incur to have a significant impact in California.

2. Insufficient Incentives for Landowners

Another shortcoming of the Program is that farmers who own land the program is designed to protect¹³³ consider the incentives inadequate. According to a leading advocacy group for farmers in California, for an agricultural preservation program to be successful, "[t]he primary focus . . . must be to increase the profitability of farming and thus help to maintain the business of agriculture, not just preserve the land base."¹³⁴ The CFBF recommends "a state income tax credit equivalent to the property tax liability if landowners agree to donate agricultural conservation easements"¹³⁵ Other measures, such as allowing a fully deductible Individual Retirement Account for up to ten percent of a farmer's Schedule F net income¹³⁶ and allowing income from the sale of farm assets to be rolled over into self-directed IRAs are recommended.¹³⁷ These measures are intended to provide retirement security for farmers who often put most of their income back into their operations, and then are forced to sell land to support their retirement.¹³⁸

These measures all beg the question, how much relief are taxpayers willing to grant farmers in order to preserve farmland? Much of the Congressional debate over the 1996 Farm Bill, which is notably titled

¹³¹ WILLIAMSON ACT STATUS REPORT, *supra* note 43 at 29, Table of Major Agricultural Easement Programs funded by State Governments.

¹³² CAL. PUB. RES. CODE § 10213 (Deering 1996) defines agricultural land which qualifies for agricultural conservation easements as "prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, and commercial grazing land"; *See also* FARMLAND CONVERSION REPORT, *supra* note 37 (Table A-5, Fresno County 1992-1994 Land Use Conversion).

¹³³ CAL. PUB. RES. CODE § 10252(d) notes that in order to be eligible for participation, "the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future."

¹³⁴ John R. Gamper, Address at California Farm Bureau Federation Governmental Affairs Div. to the Land Use Conference (Nov. 20, 1996) [hereinafter Gamper address] (emphasis added).

¹³⁵ *Id.*

¹³⁶ IRS Schedule F is the form farmers use to report income, which is then reported on IRS Form 1040.

¹³⁷ Gamper address, *supra* note 134.

¹³⁸ *Id.*

the Agricultural Reform and Improvement Act,¹³⁹ dealt with turning away from a history of subsidizing farming and toward a free market economy for farming.¹⁴⁰ With that trend in mind, the question is whether Californians wish to subsidize farming through the measures suggested by the CFBF, or instead, should market forces be allowed to determine the future of agricultural land preservation?

3. Local Control of Land Use Decisions

Although the Program seems to reduce the role of local government,¹⁴¹ there are still ways for local authorities to affect the success and enforceability of the program. Local government must certify that easements meet the eligibility criteria and must approve applications for conservation easements before they can go to the Department.¹⁴² The local government is also required to provide a summary of goals, objectives, policies and implementation measures it has instituted to support the Program.¹⁴³

It is important to note that local government still has the ultimate decision-making power about land use, and it can execute this power by changing zoning. In *Environmental Council of Sacramento v. Board of Supervisors of Sacramento County*,¹⁴⁴ the appellate court found that the Board of Supervisors did not act inconsistently with the general plan when it reclassified property from agricultural to agricultural residential.¹⁴⁵ The court held that the decision to amend the general plan to allow residential development was not arbitrary because “ ‘the fact that the Legislature provided for amendments of a general plan indicated that it recognized the need for review, updating and correcting.’ ”¹⁴⁶

One of the criteria for determining if land is suitable for a conservation easement is that “[t]he city or county demonstrates a long-term commitment to agricultural land conservation demonstrated by . . . the

¹³⁹ The Agricultural Reform and Improvement Act of 1996, Pub. L. No. 104-127 (Oct. 2, 1996).

¹⁴⁰ See, e.g., 142 CONG. REC. H3147, 3160 (1996) (statement of Rep. Farr discussing “Freedom to farm” and “market-driven agriculture”).

¹⁴¹ CAL. PUB. RES. CODE § 10250 (Deering 1996).

¹⁴² CAL. PUB. RES. CODE § 10234 (Deering 1996).

¹⁴³ CAL. PUB. RES. CODE § 10244 (Deering 1996).

¹⁴⁴ *Environmental Council of Sacramento v. Board of Supervisors of Sacramento County*, 135 Cal. Rptr. 3d 482, 440 (1982).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 440, citing *Karlon v. City of Camarillo*, 161 Cal. Rptr. 260, 267 (Ct. App. 1980).

general plan and related land use policies."¹⁴⁷ In view of the decision in *Environmental Council of Sacramento*, a general plan is not necessarily an indicator of a long-term commitment to a specific land use policy.

In addition, the local government role in termination proceedings also allow the local authorities to play an important role in that process. Before the Department considers a termination request the local authority must determine in its inquiry¹⁴⁸ that profitable farming on land is no longer feasible. Finally, the incentive for the local government participation is small. The local authority, in recommending approval, is giving up a higher tax basis on land which gives up development rights in favor of a conservation easement.¹⁴⁹

4. Resistance to the Easement Term

There are already signs of resistance to the minimum twenty-five year term for conservation easements. Senate Bill 1627, introduced in February 1996,¹⁵⁰ was the first effort to chip away at the twenty-five year to perpetuity term of the Program's conservation easements. This bill was introduced to amend the Agricultural Land Stewardship Program by allowing the Department of Conservation to "implement" alternative agreements to those set out in the original act.¹⁵¹

Proponents of the amendment argued that farmers and ranchers need more flexibility than the current law provides.¹⁵² Opponents argued that terms and conditions of alternative agreements should be spelled out in the bill before any action is taken to change the law.¹⁵³ The bill failed passage, but efforts to send another bill to modify terms of the Program are underway.¹⁵⁴

¹⁴⁷ CAL. PUB. RES. CODE § 10252(c)(1) (Deering 1996).

¹⁴⁸ CAL. PUB. RES. CODE § 10271 (Deering 1996).

¹⁴⁹ CAL. REV. & TAX. CODE § 422.5 (Deering 1996).

¹⁵⁰ S. 1627, 1995-96 Leg., Reg. Sess. (Cal. 1996).

¹⁵¹ *Id.* The proposed amendment would have changed the language of CAL. PUB. RES. CODE § 10240 in pertinent part by adding the language in brackets: "The department may examine [AND IMPLEMENT] alternative agreement for the purpose of evaluating the substantive and fiscal benefits of proposals under this [strike THIS and substitute THE] program."

¹⁵² Information for Public Affairs, Inc., California Committee Analysis, Statenet, Senate Committee on Housing and Urban Affairs Bill No. SB 1627 (copy on file with the *San Joaquin Agricultural Law Review*).

¹⁵³ *Id.*

¹⁵⁴ Telephone Interview with Alfreda Sebasto, Aide to Sen. Cal. Jim Costa, (Jan. 24, 1997).

CONCLUSION

Current efforts to preserve agricultural land are tied to the willingness of landowners to voluntarily restrict land use in return for tax incentives. As demonstrated recently in Fresno County, lack of diligence in enforcing an agricultural land conservation contract turns the Williamson Act tax break into a temporary subsidy for land developers, while rendering the Act powerless as an enforcement tool for preserving agricultural land.

The new Agricultural Land Stewardship Program, while providing for permanent restriction of land to agricultural use, has its own limitations. First, and foremost, it is limited by a lack of funding. Even when funding becomes available, the tax incentives provided in the program are not sufficient in the view of many landowners to make the program effective. Local government is still in the position to stack the deck in favor of termination if it makes a finding that agricultural use of the land is no longer feasible. Finally, the permanency of easements scares potential participants away.

There is no easy solution to this dilemma. Before any real solution is possible, the State must address the forces that encourage sprawl in the first place.

On November 20, 1996, a Land Use Conference was held in Fresno to discuss the future of the Central Valley, specifically addressing ways to slow the urban sprawl which prompted the creation of both the Williamson Act and the Agricultural Land Stewardship Program. At the meeting, conferees told tales of gloom about the future of the Central Valley if urban sprawl is not halted. Fresno will become the next Los Angeles County, "[u]nless, they all said, you draw growth-limit lines around your cities, double the number of houses per acre and push everybody back toward older areas that everybody is afraid of because they're deteriorating. (Because of sprawl, of course) . . . Platitudes. Platitudes."¹⁵⁵

Everybody talks about the problem, but nobody is willing to make the hard choices to do something about it.

KATHLEEN A. MCGURTY

¹⁵⁵ Jim Wasserman, *Sprawl Runs Rampant, but Platitudes a Close Second*, FRESNO BEE, Nov. 24, 1996, at B1.