

# THE NEED FOR CONSISTENT ASSESSMENTS OF WILLIAMSON ACT CONTRACT PROPERTIES

## I. INTRODUCTION

Paul Dictos successfully leveraged his business management experience in the 2010 election for the office of Fresno County Assessor-Recorder.<sup>1</sup> Both he and his main opponent, Carol Laval, criticized the poor management of the Assessor-Recorder's Office and its effect on county revenue.<sup>2</sup> When Mr. Dictos took office he made a decision to correct previous mismanagement that would dramatically affect the finances of farmers throughout Fresno County.<sup>3</sup>

In June 2011, after reviewing the tax roll, Mr. Dictos announced that 15,000 agricultural properties had not been assessed at their full value for nearly twenty years.<sup>4</sup> He then made the decision to provide an accurate assessment for these properties, which resulted in an average increase of twenty-three percent in property taxes for the property owners.<sup>5</sup> The affected properties were unique from other properties on the tax roll;<sup>6</sup> they were protected by the Land Conservation Act of 1965, commonly known as the Williamson Act.<sup>7</sup>

The Williamson Act allows owners of protected agricultural land to enter into contracts with their local government to limit the use of their

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<sup>1</sup> See John Ellis, *Following a string of losses, Dictos is sworn into office after victory*, THE FRESNO BEE NEWS BLOG (Jan. 14, 2011, 7:28 PM), [http://fresnobeehive.com/news/2011/01/following\\_a\\_string\\_of\\_losses\\_d.html#storylink=misearch](http://fresnobeehive.com/news/2011/01/following_a_string_of_losses_d.html#storylink=misearch).

<sup>2</sup> Brad Brenan, *Fresno County assessor: Newcomers square off*, THE FRESNO BEE, Sep. 30, 2010, <http://www.fresnobee.com/2010/09/30/2099315/newcomers-square-off-for-fresno.html>.

<sup>3</sup> See Kurtis Alexander, *Fresno Co. farm taxes to increase by 20%*, THE FRESNO BEE, June 24, 2011, <http://www.fresnobee.com/2011/06/24/2440935/fresno-co-farm-taxes-to-increase.html> [hereinafter Alexander I].

<sup>4</sup> *Id.*

<sup>5</sup> Kurtis Alexander, *Fresno County farm tax up an average of 23%*, THE FRESNO BEE, June 30, 2011, <http://www.fresnobee.com/2011/06/30/2448687/fresno-county-farm-tax-up-average.html> [hereinafter Alexander II].

<sup>6</sup> See *id.*

<sup>7</sup> See CAL. GOV'T. CODE §§ 51240-57 (West 2011).

property in exchange for a beneficial tax assessment.<sup>8</sup> Mr. Dictos' decision to properly assess Williamson Act Contract land caught the property owners by surprise and created substantial financial strain for many of them, as this had not been done for nearly twenty years.<sup>9</sup> As one farmer pointed out, "[o]ur margins are usually pretty tight. This is going to make it that much more difficult to farm in California."<sup>10</sup> Fresno County was not alone in its history of failing to properly assess Williamson Act Contract properties.<sup>11</sup> Other San Joaquin Valley counties also had histories of improperly assessing Williamson Act Contract properties and in 2011 decided to provide proper assessments causing substantial increases in property taxes for property owners.<sup>12</sup>

The drastic increases in property taxes caused by local governments' assessment practices expose a shortcoming of the Williamson Act; it does not guarantee consistent property assessments. This comment proposes a legislative solution to this shortcoming. By evaluating the history of the Williamson Act and its implementation, this comment will first demonstrate the purpose and value of the Act. This comment will then examine the effect of California's budget crisis on the Williamson Act and likely reasons for the history of improper assessment practices. Next it will discuss the passage of Proposition 13 and its effect on the Williamson Act. Finally, this comment will provide a recommendation to amend the Williamson Act using the conceptual framework of Proposition 13 to protect property owners and ensure proper assessment practices.

## II. THE HISTORY OF THE WILLIAMSON ACT

### A. *The Land Conservation Act of 1965*

The Williamson Act was enacted to protect California's economic infrastructure, preserve the state's scenic beauty, and discourage unnecessary urbanization.<sup>13</sup> Prior to the passage of the Williamson Act, agricultural land in California was assessed based on its fair market value.<sup>14</sup>

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<sup>8</sup> See *id.*

<sup>9</sup> Alexander I, *supra* note 3.

<sup>10</sup> *Id.*

<sup>11</sup> See Alexander II, *supra* note 5.

<sup>12</sup> *Id.* (stating that Kern County Williamson Act Contract property owners will see an average of twenty five percent in tax increases and Madera County Williamson Act Contract property owners will see an average of ten percent in tax increases).

<sup>13</sup> CAL. GOV'T. CODE § 51220 (West 2011).

<sup>14</sup> See Dale Will, *The Land Conservation Act at the 32 Year Mark: Enforcement, Reform, and Innovation*, 9 SAN JOAQUIN AGRIC. L. REV. 1, 3 (1999).

The California Supreme Court interpreted the fair market value as, “the price that a property would bring to its owner if it were offered for sale on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other.”<sup>15</sup> The use of the fair market value for the assessment of agricultural land often meant farmers were paying taxes based on the value of the agricultural land for potential developmental use rather than the farmers’ actual use of the agricultural land.<sup>16</sup> As property values increased, so did the property taxes of the farmers, whose use of the agricultural land did not have an equivalent increase in profitable production.<sup>17</sup> The property taxes on the agricultural land became greater than the benefit realized from farming the agricultural land.<sup>18</sup>

The Williamson Act protected agricultural lands by allowing local governments to designate certain agricultural lands as agricultural preserves.<sup>19</sup> Owners of agricultural land within the designated preserves have the option to enter into continuously renewing contracts with their local government to limit the use of their agricultural land in exchange for a property tax assessment more beneficial than an assessment based on the agricultural land’s fair market value.<sup>20</sup> The fundamental purpose of the Williamson Act is to provide an incentive for agricultural landowners to limit the use of their agricultural land for agricultural purposes for extended periods of time.<sup>21</sup> The tax benefit received from a Williamson Act Contract eliminates the burden imposed by an assessment based on the fair market value of the agricultural land.<sup>22</sup> The local assessor has the responsibility of assessing Williamson Act Contract properties and under the California Constitution has a duty to assess the properties at their full value.<sup>23</sup>

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<sup>15</sup> *De Luz Homes Inc. v. Cnty. of San Diego*, 290 P.2d 544, 554 (Cal. 1955).

<sup>16</sup> *See Will*, *supra* note 14, at 3.

<sup>17</sup> *See id.* (“Taxes on farmland soared with indifference to the income generated by such properties, or its inherent value as agricultural land.”).

<sup>18</sup> *See id.* at 4 (“Land was being converted from agricultural uses simply to pay the taxes.”).

<sup>19</sup> CAL. GOV’T. CODE § 51230 (West 2011). An agricultural preserve is defined as “an area devoted to either agricultural use . . . recreational use . . . open space use . . . or any combination of those uses . . .” GOV’T. § 51201(d).

<sup>20</sup> *See generally* GOV’T. §§ 51240-57.

<sup>21</sup> *See* Kerry P. O’Brien, Comment, *California’s Farmland Security Zone: A New Incentive for the Preservation of Existing Farmland*, 11 SAN JOAQUIN AGRIC. L. REV. 135, 138 (2001).

<sup>22</sup> *See Will*, *supra* note 14, at 9.

<sup>23</sup> *See* CAL. CONST. art. XIII, § 1.

After passage of the Williamson Act, subsequent modifications to the law were necessary to make the Williamson Act more effective.<sup>24</sup> These modifications include Proposition 3 in 1966,<sup>25</sup> the Open Space Subvention Act (“OSSA”),<sup>26</sup> and the more recent “Farmland Security Zone” legislation.<sup>27</sup> Proposition 3 amended California’s Constitution to ensure that Williamson Act Contract properties would be taxed in compliance with the act, as some Williamson Act Contract properties were still being considered assessable based on their fair market value.<sup>28</sup> The OSSA was passed to give local governments an incentive to implement Williamson Act Contracts.<sup>29</sup> The “Farmland Security Zone” legislation allowed for the extension of some Williamson Act Contracts by creating longer-term contracts that would provide the property owner with an even more beneficial property tax assessment than normal Williamson Act Contracts.<sup>30</sup> Each of these modifications increased the effectiveness of the William-

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<sup>24</sup> See Will, *supra* note 14, at 5, 11.

<sup>25</sup> CAL. CONST. art. XIII, § 8 (“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 recreation, enjoyment of scenic beauty, use or conservation of natural resources, or 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.”).

<sup>26</sup> See CAL. GOV’T. CODE § 16141 (West 2011).

<sup>27</sup> See GOV’T. § 51296.

<sup>28</sup> See CAL. CONST. art. XIII, § 8; Will, *supra* note 14, at 5.

<sup>29</sup> See GOV’T. § 16141.

<sup>30</sup> See GOV’T. § 51296. Farmland Security Zones allowed the expansion of some Williamson Act Contracts by allowing owners of certain types of land to enter into contracts of twenty years instead of the normal ten years. See GOV’T. § 51296.1. Owners of land designated as a Farmland Security Zone can obtain a property tax valuation more beneficial than normal Williamson Act contracts in exchange for agreeing to restrict the use of their land for a longer duration of time. See CAL. REV. & TAX. CODE § 423.4 (West 2011). Only certain types of farmland can qualify for designation as a Farmland Security Zone including “prime farmland,” “farmland of statewide significant,” “unique farmland,” or “farmland of local importance.” GOV’T. § 51296.8. Prime farmland is defined as “[a]ll land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications. Land which qualifies for rating 80 through 100 in the Storie Index Rating. Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United State Department of Agriculture. Land planted with fruit- or nut-bearing trees, vines, 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 not less than two hundred dollars pre acre. Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars per acre for three of the previous five years.”

Gov’t. § 51201(c).

son Act, but it was the OSSA that had the most dramatic effect on the finances of local governments that chose to use Williamson Act Contracts.<sup>31</sup>

### *B. The Open Space Subvention Act*

The OSSA was enacted in 1972 to provide contributions from the State's General Fund to local governments to help replace revenues lost from the lower property taxes paid by Williamson Act Contract property owners.<sup>32</sup> Under the OSSA, the state would provide funds to local governments based on the number of acres under Williamson Act Contracts in the form of subvention payments.<sup>33</sup> Subvention payments are funds paid directly to a local government from the state.<sup>34</sup> Local governments would receive five dollars per acre for agricultural land designated as prime land and one dollar per acre for all other restricted land.<sup>35</sup> As of 2009, the state had "distributed over \$876 Million to counties and cities in support of the Williamson Act program" since the enactment of the OSSA.<sup>36</sup> Fresno County had for several years ranked as the highest recipient of the subvention payments.<sup>37</sup> The California State Association of Counties credits the subvention payments made under the OSSA for providing a significant incentive to local governments to continue to use Williamson Act Contracts and also to enter into new contracts.<sup>38</sup> The OSSA became an integral part of the Williamson Act by helping replace tax revenues lost by local governments.<sup>39</sup> Aside from the incentive provided by the OSSA for local governments to use Williamson Act Contracts, the OSSA also created an unintended incentive for local governments not to provide regular proper assessments of Williamson Act Con-

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<sup>31</sup> See Jenna Chandler, *Counties rally for return of Williamson Act subvention*, PORTERVILLE RECORDER, Mar. 26, 2010, <http://www.recorderonline.com/articles/subvention-44762-act-williamson.html> (discussing the importance of the subvention payments to counties).

<sup>32</sup> GOV'T. § 16141.

<sup>33</sup> GOV'T. § 16142.

<sup>34</sup> See *id.*

<sup>35</sup> *Id.* See *supra* note 30 (providing definition of prime farmland).

<sup>36</sup> CAL. DEP'T. OF CONSERV., CALIFORNIA LAND CONSERVATION (WILLIAMSON) ACT STATUS REPORT 18 (2010).

<sup>37</sup> See *id.*

<sup>38</sup> See generally Letter from Karen Keene, Senior Legis. Rep., Cal. State Assoc. of Cntys., & Cara Martinson, Legis. Analyst, Cal. State Assoc. of Cntys., to Cal. State Assoc. of Cntys. Bd. of Dirs. & Cnty. Admin. Officers (Nov. 8, 2008), available at [http://www.csac.counties.org/images/users/1/CSAC%20Williamson%20Act%20Memo\\_11.18.08.pdf](http://www.csac.counties.org/images/users/1/CSAC%20Williamson%20Act%20Memo_11.18.08.pdf).

<sup>39</sup> See *id.* (discussing the significance of the funding to local governments).

tract properties.<sup>40</sup> Local governments would receive subvention payments regardless of whether its Williamson Act Contract properties were properly assessed.<sup>41</sup> These revenues, recognized as an important part to the continued success of the Williamson Act, would eventually be threatened by California's budget crisis.<sup>42</sup>

### C. California's Budget Crisis

In November of 2008, Governor Schwarzenegger declared a fiscal emergency in California due to the state's severe budget problems.<sup>43</sup> Starting with the 2008-2009 budget, subvention payments began to be reduced.<sup>44</sup> The first cut was an across the board reduction of ten percent to all subvention payments made under the OSSA.<sup>45</sup> The next fiscal year, a total of \$1000 was allotted for subvention payments, "essentially suspending subvention payments" altogether.<sup>46</sup> For the 2010-2011 budget, no funding was appropriated from the general fund to make subvention payments.<sup>47</sup> Local governments, for three years now, have lost revenues that had previously been available to use as they wished.<sup>48</sup> Although the end of the subvention payments has not been identified as the sole reason for the decision by Mr. Dictos and other San Joaquin Valley assessors to provide proper assessments in 2011, it is likely that the lack of the funds contributed to the decision.<sup>49</sup> Fresno County Supervisor Henry Perea has

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<sup>40</sup> See generally Kurtis Alexander, *Taxes on Fresno Co. Farms to increase*, THE FRESNO BEE, July 18, 2011, <http://www.fresnobee.com/2011/07/18/2468989/taxes-on-fresno-co-farms-to-increase.html> [hereinafter Alexander III] (discussing how the end of state funding for the Williamson Act forced counties to reconsider the use of Williamson Act Contracts).

<sup>41</sup> See CAL. GOV'T. CODE § 16142 (West 2011) (providing the requirements for a local government to receive subvention payments which excludes any requirement for a local government to provide proper assessments as a condition of receiving subvention funds).

<sup>42</sup> See generally John Wildermuth & Wyatt Buchanan, *Schwarzenegger declares fiscal emergency*, SAN FRANCISCO CHRONICLE, Dec. 2, 2008, [http://articles.sfgate.com/2008-12-02/news/17130470\\_1\\_special-session-fiscal-emergency-billion-budget-deficit](http://articles.sfgate.com/2008-12-02/news/17130470_1_special-session-fiscal-emergency-billion-budget-deficit).

<sup>43</sup> *Id.*

<sup>44</sup> See GOV'T. § 16142 (d).

<sup>45</sup> *Id.*

<sup>46</sup> *Open Space Subvention Payments*, CAL. DEP'T. OF CONSERV., [http://www.consrv.ca.gov/dlrp/lca/ossP/Pages/questions\\_answers.aspx](http://www.consrv.ca.gov/dlrp/lca/ossP/Pages/questions_answers.aspx) (last visited Oct. 9, 2011) [hereinafter *Open Space*].

<sup>47</sup> GOV'T. § 16148.

<sup>48</sup> See *Open Space*, *supra* note 46.

<sup>49</sup> See Alexander III, *supra* note 40 (discussing how the reduction of subvention funds has forced counties to reconsider continuing the use of Williamson Act Contracts).

stated, “[n]ow that the Williamson Act funding is actually gone, farmers should be paying their fair share.”<sup>50</sup>

Recognizing the substantial blow to local governments’ revenue streams due to the elimination of subvention payments, the California Legislature enacted legislation in 2011 to provide local governments with a method to make up for some of the lost revenue.<sup>51</sup> The new legislation allows local governments to enter into Williamson Act contracts of shorter lengths and to collect a fixed ten percent increase in tax revenue from the property owner, which the local governments can keep.<sup>52</sup> Although the new legislation alleviates some of the financial strain suffered by the affected local governments, it does not correct the shortcoming of the Williamson Act that allowed, and continues to allow, Williamson Act Contract property owners to be subject to improper assessment practices that eventually lead to substantial property tax increases.<sup>53</sup> Other California property owners do not have to worry about suffering similar unfair property tax increases; Proposition 13 prohibits it.<sup>54</sup>

### III. PROPOSITION 13

#### A. *California’s Tax Revolt*

In 1978, California voters passed Proposition 13 by a substantial majority.<sup>55</sup> Proposition 13, considered the symbol of a California tax revolt,<sup>56</sup> amended California’s Constitution to place limitations both on

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<sup>50</sup> *Id.*

<sup>51</sup> *See id.*

<sup>52</sup> *See* Assemb. B. 1265, 2011 Assemb. (Cal. 2011). This legislation provides counties with the ability to renew existing Williamson Act Contracts using shorter durations. Normally the Williamson Act requires contracts of ten years or twenty years. CAL. GOV’T. CODE § 16244 (West 2011). If a county has received subvention payments that amount to less than one half of the funds the county has foregone through the use of Williamson Act contracts, then the county has the option to begin renewing contracts for either nine or eighteen years. This constitutes a ten percent reduction in the length of the contracts, reducing the length of time a farmer is obligated to restrict the use of his land. In exchange for the ten percent reduction in the length of the contracts, counties can recover from landowners the difference of ten percent between the value of the land under the Capitalization of Income formula and the value of the land if it were not restricted. Assemb. B. 1265, 2011 Assemb. (Cal. 2011).

<sup>53</sup> *See* Alexander III, *supra* note 40 (discussing how the new legislation supported by the farming community it is not entirely sufficient).

<sup>54</sup> *See* CAL. CONST. art. XIII A, § 1.

<sup>55</sup> Jonathan Schwartz, Note, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S. CAL. L. REV 183, 183 (1997).

<sup>56</sup> *See id.* at 184.

property tax rates and annual increases in property taxes.<sup>57</sup> The passage of Proposition 13 dramatically altered property tax assessment in California.<sup>58</sup>

There are differing theories of what actually led to the passage of Proposition 13,<sup>59</sup> but substantial increases in California property taxes and a large state budget surplus are recognized as reasons for its widespread support.<sup>60</sup> At the time, property taxes in California were rising rapidly and without Proposition 13 would have continued to increase significantly due to housing inflation.<sup>61</sup> The passage of Proposition 13 brought immediate financial relief to homeowners throughout California,<sup>62</sup> but not everyone was pleased with the results.<sup>63</sup> Critics of Proposition 13 contend that the strict limits imposed by the law radically reduced revenues for local governments and forced them to find alternative means of raising funds.<sup>64</sup> Although Proposition 13 was meant to protect properties not subject to Williamson Act Contracts, its language applied to all real property in California.<sup>65</sup>

### *B. Proposition 13 and Williamson Act Contract Properties*

Prior to Proposition 13, tax assessment of real property in California was based on a property's fair market value.<sup>66</sup> Proposition 13 amended California's Constitution, limiting all property tax rates to one percent of the full cash value of the property and limiting annual increases of property taxes to a maximum of two percent.<sup>67</sup> At the same time, Proposition 13 redefined the full cash value of property, so it was no longer determined by a property's current fair market value.<sup>68</sup> Under Proposition

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<sup>57</sup> See CAL. CONST. art. XIII A, § 1.

<sup>58</sup> See Schwartz, *supra* note 55, at 193.

<sup>59</sup> See Kirk Stark & Jonathan Zasloff, *Tiebout and Tax Revolts: Did Serrano Really Cause Proposition 13?* 50 UCLA L. REV. 801, 808 (2003) (discussing the different theories of the root causes of the passage of Proposition 13).

<sup>60</sup> See, e.g., *id.*; Schwartz, *supra* note 55, at 185-6.

<sup>61</sup> See Schwartz, *supra* note 55, at 186.

<sup>62</sup> See *id.*

<sup>63</sup> See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equal.*, 583 P.2d 1281, 1282 (Cal. 1978) (discussing the parties challenging the constitutionality of Proposition 13).

<sup>64</sup> See Schwartz, *supra* note 55, at 197 (discussing how reductions in tax revenues caused by Proposition 13 has caused the eventual dependence of local governments on sales taxes).

<sup>65</sup> See CAL. CONST. art. XIII A § 1(a).

<sup>66</sup> See CAL. REV. & TAX. CODE § 110 (West 2011).

<sup>67</sup> CAL. CONST. art. XIII A, § 2(b).

<sup>68</sup> See REV. & TAX. § 110.1 ("For purposes of subdivision (a) Section 2 of Article XIII A of the California Constitution, full cash value of real property, including possessory

13's new definition, a property's full cash value is determined by the fair market value of a historical base year adjusted for inflation; this is known as the base year value.<sup>69</sup> This new definition protects taxpayers from significant annual increases in taxes by only using the fair market value of a property at the time it is acquired or altered.<sup>70</sup>

The provisions of Proposition 13 created confusion for the assessment of Williamson Act Contract properties.<sup>71</sup> In California, the State Board of Equalization is the agency responsible for prescribing the rules and regulations that govern local assessors and property tax assessment.<sup>72</sup> Initially, the State Board of Equalization enacted a rule for assessors to apply Proposition 13's provisions directly to the assessment of Williamson Act Contract properties.<sup>73</sup> This meant the assessment of Williamson Act Contract properties would be limited to one percent of the full cash value of the properties.<sup>74</sup> Proposition 13's new base year value caused the most significant change to the assessment of Williamson Act properties.<sup>75</sup> The full cash value of Williamson Act Contract properties, normally based on the Capitalization of Income ("COI") formula,<sup>76</sup> would incorporate the definition of full cash value provided by Proposition 13.<sup>77</sup> This meant the properties would have a base year defined by Proposition 13 where the property is assessed based on the COI formula and then adjusted for inflation.<sup>78</sup> This effectively provided a double benefit to owners of land protected by the Williamson Act; not only would they receive the beneficial COI property valuation under the Williamson Act,

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interests in real property, means the fair market value of as determined pursuant to Section 110 for either of the following: (1) The 1975 lien date. (2) For property which is purchased, is newly constructed, or changes ownership after the 1975 lien date, either of the following: (A) The date on which a purchase or change in ownership occurs. (B) The date on which new construction is completed, and if uncompleted, on the lien date.").

<sup>69</sup> *See id.*

<sup>70</sup> *See id.*

<sup>71</sup> Kenneth M. Doran, Note, *Proposition 13: A Mandate to Reevaluate the Williamson Act*, 54 S. CAL. L. REV. 93, 104 (1981).

<sup>72</sup> CAL. GOV'T. CODE § 15606 (d) (West 2011).

<sup>73</sup> Doran, *supra* note 71, at 105 (discussing the passage of CAL. ADMIN. CODE Rule No. 470 (1978) (open-space)).

<sup>74</sup> *See* Cal. Const. art. XIII A, § 1.

<sup>75</sup> *See* Doran, *supra* note 71, at 106.

<sup>76</sup> *See* CAL. REV. & TAX. CODE § 423 (West 2011). The value the land according to the Capitalization of Income formula is the quotient of the annual income of the land divided by the capitalization rate. The annual income of the land can be based on the fair rental value of the land or the income the land could potentially yield. The capitalization rate is determined by four separate components: an interest component, a risk component, a component for property taxes, and a component for any investment in perennials. *Id.*

<sup>77</sup> *See* Doran, *supra* note 71, at 106 (1981).

<sup>78</sup> *See id.*

but they would also receive the benefits of Proposition 13's base year value and its two percent limit on annual tax increases.<sup>79</sup>

The legislature ultimately disagreed with the Board of Equalization's interpretation of Proposition 13's effect on the Williamson Act.<sup>80</sup> Instead, the legislature decided Williamson Act Contract properties were not subject to Proposition 13.<sup>81</sup> Williamson Act Contract properties would continue to be assessed according to their current value under the COI formula.<sup>82</sup> The legislature amended the Williamson Act to account for the existence of a property's new base year value under Proposition 13.<sup>83</sup> If the value of the properties as determined by the COI formula exceeded the base year value under Proposition 13, then the landowner could use the lower value.<sup>84</sup> This amendment created the potential for property values under the COI formula to quickly exceed the Proposition 13 base year values, as the Proposition 13 base year values have a limit on annual increases whereas the COI values do not.<sup>85</sup> Once the COI value of a Williamson Act Contract property exceeds its Proposition 13 base year value, the property owner can now choose to use the lower Proposition 13 base year value.<sup>86</sup> In such an event the owner of a Williamson Act Contract property would no longer receive any benefit from the contract, as his taxes would be the same had he not entered into the contract.<sup>87</sup> This would effectively eliminate the tax incentive provided by the Williamson Act Contracts.<sup>88</sup>

It was suggested that the Williamson Act, without changes, would become useless because of the tax benefits available under Proposition 13.<sup>89</sup> History has shown this was not the case.<sup>90</sup> Even after the 2011 assessment, ninety percent of the Williamson Act Contract properties in Fresno County are still assessed below their base year values available under

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<sup>79</sup> See *id.* at 107.

<sup>80</sup> See *id.* at 107-8 (discussing the passage of Assemb. B. 1488 (Cal. 1979)).

<sup>81</sup> *Id.* at 108 (discussing the legislature's decision that Williamson Act Contract properties should be assessed in accordance with the provisions of the contracts).

<sup>82</sup> See *id.*

<sup>83</sup> See CAL. REV. & TAX. CODE § 423(d) (West 2011).

<sup>84</sup> *Id.*

<sup>85</sup> See Doran, *supra* note 71, at 112.

<sup>86</sup> REV. & TAX. § 423(d).

<sup>87</sup> See Doran, *supra* note 71, at 113.

<sup>88</sup> See *id.*

<sup>89</sup> See *id.* at 119 ("Without substantial substantive changes in its administration, the Williamson Act will fast become an anachronism of little import due to Proposition 13.").

<sup>90</sup> See Will, *supra* note 14, at 35 (asserting that Williamson Act Contracts remain extremely popular).

Proposition 13.<sup>91</sup> Proposition 13 did not eliminate the benefit provided by the COI formula.<sup>92</sup> Contrary to some initial fears, the Williamson Act has continued to provide an incentive for landowners despite the alternative protections available under Proposition 13.<sup>93</sup> The true threat to the Williamson Act has arisen from improper assessment practices of local governments.<sup>94</sup>

#### IV. ASSESSMENT OF WILLIAMSON ACT CONTRACT PROPERTIES

Williamson Act Contract properties are considered outside the purview of Proposition 13 and are allowed to be valued on a periodic basis.<sup>95</sup> There is no statutory mandate for an assessor to provide annual valuations of Williamson Act Contract properties.<sup>96</sup> The law only requires an assessor to use periodic valuations to justify the assessed values of Williamson Act Contract properties.<sup>97</sup>

Current law provides three possible methods for determining the value of Williamson Act Contract properties.<sup>98</sup> The first method, the original method provided by the Williamson Act, is the COI formula.<sup>99</sup> This formula is based on the productive value of the land.<sup>100</sup> The second is the Proposition 13 base year value, which can be used if it is lower than the value provided by the COI formula.<sup>101</sup> In effect, the Proposition 13 base year value acts as the maximum property tax value at which a Williamson Act Contract property can be assessed.<sup>102</sup> An interesting caveat is that if the Proposition 13 base year value is used, a local government cannot receive subvention payments, if they are available.<sup>103</sup> The third formula is the fair market value if it is lower than the other two values.<sup>104</sup> Although there is no explicitly stated reason for the failure of several San Joaquin Valley counties to correctly assess Williamson Act Contract properties, the end of the subvention payments certainly provided an

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<sup>91</sup> Alexander II, *supra* note 5.

<sup>92</sup> *Contra* Doran, *supra* note 71, at 123.

<sup>93</sup> *Contra id.*

<sup>94</sup> See discussion *supra* Part. I.

<sup>95</sup> See CAL. REV. & TAX. CODE § 405.5 (West 2011).

<sup>96</sup> See *id.*

<sup>97</sup> See *id.*

<sup>98</sup> See REV. & TAX. § 423(d).

<sup>99</sup> See REV. & TAX. § 423.

<sup>100</sup> See Doran, *supra* note 71, at 99.

<sup>101</sup> REV. & TAX. § 423(d).

<sup>102</sup> See REV. & TAX. § 423(d).

<sup>103</sup> CAL. GOV'T. CODE § 16140 (West 2011).

<sup>104</sup> REV. & TAX. § 423(d).

incentive for the counties to properly assess the properties to maximize the revenue received from the properties.<sup>105</sup>

The California State Board of Equalization provides guidelines in the *Assessor's Handbook* for assessment of Williamson Act Contract property using the COI formula.<sup>106</sup> The guidelines articulated in the *Assessors' Handbook* demonstrate the complexity of using the formula.<sup>107</sup> Substantial amounts of data are necessary in order to make an accurate assessment and the variables can fluctuate greatly from year to year.<sup>108</sup> The *Assessors' Handbook* acknowledges there is no statutory mandate to provide an annual valuation of all Williamson Act Contract land, but that it is important to review valuations in order to ensure compliance with the law.<sup>109</sup> The complexity of the appraisal process makes annual valuation of all Williamson Act Contract land a daunting administrative task for any locality with large amounts of Williamson Act Contract land.<sup>110</sup> Kern County assessors attributed their failure to properly assess Williamson Act Contract land to limited staffing, reflecting the difficulty of providing proper assessments.<sup>111</sup> Prior to the election of Mr. Dictos, the Fresno County Assessor-Recorder's office also suffered from limited staffing and budget problems.<sup>112</sup> The previous Assessor-Recorder, Bob Werner, acknowledged that there was a great deal of revenue being lost because of the limitations of the office.<sup>113</sup>

The improper assessment practices of San Joaquin Valley counties have created substantial financial uncertainty for Williamson Act Contract property owners.<sup>114</sup> The COI formula is meant to reflect the current productive value of a piece of agricultural land.<sup>115</sup> The lack of a statutory mandate for assessors to provide annual valuations of Williamson Act Contract properties allows for improper assessments that fail to reflect

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<sup>105</sup> See generally Chandler, *supra* note 31 (discussing how the end of subvention payments has forced counties to reconsider budget decisions).

<sup>106</sup> See CAL. STATE BD. OF EQUALIZATION, ASSESSOR'S HANDBOOK SECTION 521 ASSESSMENT OF AGRICULTURAL AND OPEN-SPACE PROPERTIES PART II 4 (2003).

<sup>107</sup> See *id.* at 14.

<sup>108</sup> See *id.*

<sup>109</sup> *Id.* at 68.

<sup>110</sup> See generally Alexander II, *supra* note 5 (discussing how limited staffing affected Williamson Act Property assessment).

<sup>111</sup> See *id.*

<sup>112</sup> See Brad Branan, *Assessor cuts cost Fresno County tax revenue*, THE FRESNO BEE, Aug. 7, 2010, <http://www.fresnobee.com/2010/08/07/2034007/assessor-cuts-cost-fresno-county.html>.

<sup>113</sup> *Id.*

<sup>114</sup> See Alexander II, *supra* note 5.

<sup>115</sup> See Doran, *supra* note 71, at 99.

the actual productive value of the property.<sup>116</sup> As one farmer stated, “[i]n farming, we see a lot of fluctuation from year to year, when my [property] value goes down, I’m not sure my taxes will.”<sup>117</sup> The lack of tax certainty due to improper assessment practices threatens the ability of farmers to operate.<sup>118</sup> Williamson Act Contracts are meant to provide a tax incentive for property owners to restrict the use of their property to agricultural purposes, not to create tax uncertainty or to subject these property owners to unfair substantial increases in taxes.<sup>119</sup> The only existing protection that Williamson Act Contract property owners have from improper assessment practices are the protections of Proposition 13, protections a property owner could obtain without having to restrict the use of his property through a Williamson Act Contract.<sup>120</sup> Furthermore, the provisions of Proposition 13 have not protected Fresno County farmers from the substantial increases in taxes caused by the failure of the local government to provide proper assessments.<sup>121</sup> This lack of financial certainty undermines the incentive provided by Williamson Act Contracts and their continued successful use.<sup>122</sup>

## V. RECOMMENDATION TO AMEND THE WILLIAMSON ACT

### A. *Required Assessment Procedures*

This comment proposes amending the Williamson Act to provide a statutory mandate to provide proper assessments of Williamson Act Contract property. Under the Williamson Act’s current framework, there is no mandate for assessors to provide updated annual property assessments,<sup>123</sup> but there is a constitutional duty for assessors to assess all land at its full value.<sup>124</sup> The failure to provide proper annual assessments of Williamson Act Contract properties was not only unfair to the property owners, but was also a violation of the assessors’ duties under California’s Constitution.<sup>125</sup> The California Constitution reads:

All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is pre-

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<sup>116</sup> See Alexander I, *supra* note 3.

<sup>117</sup> *Id.*

<sup>118</sup> See Alexander II, *supra* note 5.

<sup>119</sup> See Will, *supra* note 14, at 6.

<sup>120</sup> See discussion *supra* Part III.B.

<sup>121</sup> See Alexander II, *supra* note 5.

<sup>122</sup> See *id.*

<sup>123</sup> See CAL. STATE BD. OF EQUALIZATION, *supra* note 106, at 68.

<sup>124</sup> See CAL. CONST. art. XIII, § 1.

<sup>125</sup> See *id.*

scribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value. All property so assessed shall be taxed in proportion to its full value.<sup>126</sup>

The California Supreme Court has interpreted this provision of the constitution as imposing a mandatory duty on the local assessor to assess all properties that are taxable at their full value and not to allow any property to escape assessment.<sup>127</sup> Under a Williamson Act Contract, a property's full value is its value based on the COI formula.<sup>128</sup> In the event that a property has escaped assessment, a new assessment must be levied that takes into account the value of the property from the date that it was originally under-assessed.<sup>129</sup> The California Tax and Revenue Code reflects this requirement: "[i]f any property belonging on the local roll has escaped assessment, the assessor shall assess the property on discovery at its value on the lien date for the year which it has escaped assessment."<sup>130</sup> Under this legal framework, an assessor has the duty not only to provide proper assessments of Williamson Act Contract land, but also to impose retroactive taxes for any years a property has been previously under-assessed.<sup>131</sup>

Mr. Dictos acknowledged that his decision to properly assess Williamson Act Contract properties in 2011 was based on his duties under the constitution.<sup>132</sup> The failure of previous assessors to provide proper assessments of Williamson Act Contract properties represented a failure to fulfill their constitutional duty to assess properties at their full value.<sup>133</sup> The law requires Mr. Dictos to assess the properties at their full value and levy an assessment for the years that the properties have been not properly assessed.<sup>134</sup> Williamson Act Contract property owners are being subjected to unexpected and substantial tax increases caused by the mistakes of the previous assessors, even though the landowners were not at

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<sup>126</sup> *Id.*

<sup>127</sup> See *Baur-Schweitzer Malting Co. v. City and Cnty. of S.F.*, 506 P.2d 1019, 1021 (Cal. 1973) (holding that the assessor is under a duty not to allow anyone to escape assessment).

<sup>128</sup> See discussion *supra* Part IV.

<sup>129</sup> See *Baur-Schweitzer*, 506 P.2d at 1021.

<sup>130</sup> CAL. REV. & TAX. CODE § 531 (West 2011).

<sup>131</sup> See *Baur-Schweitzer*, 506 P.2d at 1021.

<sup>132</sup> See Paul Dictos, *Assessing farm values*, THE FRESNO BEE, Aug. 12, 2011, <http://www.fresnobee.com/2011/08/12/2496381/assessing-farm-values.html> (“When market rents change, the law states that your assessor has to adjust farm land values to reflect the change.”).

<sup>133</sup> See CAL. CONST. art. XIII, § 1.

<sup>134</sup> See *Baur-Schweitzer*, 506 P.2d at 1021.

fault themselves.<sup>135</sup> The court has held that not even the criminal conduct of an assessor causing a property to be under-assessed will relieve a landowner from the obligation to pay taxes based on a proper assessment of the land.<sup>136</sup> The amendment proposed here ensures that assessors fulfill their constitutional duty to assess Williamson Act Contract properties at their full value and protects property owners from unfair increases in their property taxes.

Staffing and budget problems have primarily been blamed for causing counties to fail to provide proper annual assessments of Williamson Act Contract land.<sup>137</sup> The complexity of the COI formula makes fulfillment of the constitutional duty to assess Williamson Act Contract properties at their full value difficult for assessors with a limited staff and budget.<sup>138</sup> The inability of previous assessors in Fresno County and other San Joaquin Valley counties to provide proper assessments under the Williamson Act's COI formula demonstrates the need to amend the law to augment its administrative feasibility.<sup>139</sup> Using the conceptual framework of Proposition 13, this comment's proposed amendment simplifies the assessment of Williamson Act Contract properties.<sup>140</sup> Unlike the previous recommendation to apply Proposition 13's base year value provision to the COI formula, the amendment proposed here operates independently of any of the provisions of Proposition 13.<sup>141</sup> The amendment has two main components. The first component establishes the assessment procedure required for the assessment of Williamson Act Contract properties under the COI formula and the second component creates a new COI base year value with limits on annual tax increases to be used when the procedure has been violated.

Under the amendment, a property owner entering a Williamson Act Contract will initially have the property assessed according to the COI formula upon entering the contract. The continued use of the COI formula will require the assessor to provide a current annually updated assessment of the property. This ensures the COI formula can only be used when the assessor has provided a proper assessment of the property, fulfilling his constitutional duty.<sup>142</sup>

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<sup>135</sup> See Alexander II, *supra* note 5.

<sup>136</sup> See *Baur-Schweitzer*, 506 P.2d 1019 at 1021.

<sup>137</sup> See Alexander II, *supra* note 5.

<sup>138</sup> See generally CAL. STATE BD. OF EQUALIZATION, *supra* note 106, at 14.

<sup>139</sup> See generally Alexander II, *supra* note 5.

<sup>140</sup> See *infra* Part V.B.

<sup>141</sup> See Doran, *supra* note 71, at 120-1.

<sup>142</sup> See CAL. CONST. art. XIII, § 1.

In the event that the assessor fails to provide an updated assessment of the property according to the COI formula, the new COI base year value will automatically be used.<sup>143</sup> The COI base year value then becomes the full value of the land. This guarantees the property is assessed at its full value even if the assessor has not provided an updated COI assessment of the property. However, if the COI formula would provide a lower assessment of the property, the property owner would be entitled to the lower assessment. In the event that the COI base year value is used and the property owner believes the COI formula will yield a lower assessment of the property, the owner can submit an application challenging the assessment to the Board of Equalization under existing regulations.<sup>144</sup> The existing regulations protect the owner from receiving a detrimental assessment under the amendment's COI base year value.<sup>145</sup>

Property owners will still be able to use the Proposition 13 base year value or the fair market value if either is lower than the value provided by the COI formula or the amendment's COI base year value.<sup>146</sup> The use of a COI base year value simply insulates the assessment of Williamson Act Contract properties from the limitations of the local assessor's office and ensures that the properties are assessed at their full value.<sup>147</sup>

### *B. Capitalization of Income Base Year Value*

The proposed amendment creates a new valuation method for Williamson Act Contract properties called the COI base year value. Similar to Proposition 13, the amendment also creates a limit on tax increases for Williamson Act Contract properties.<sup>148</sup> The base year under the amendment's COI base year value is the last year that a proper COI assessment was provided. Like Proposition 13, the COI base year value will be the full value of the property at the time of the base year adjusted for inflation.<sup>149</sup> When the assessor does provide an updated COI assessment, that year will become the new base year for the COI base year value. Unlike Proposition 13's base year value, this provides a dynamic base year independent of the time a property was acquired or altered.<sup>150</sup> This is congruent with the decision by the legislature not to apply Proposition 13's provisions to the COI formula as it allows the base year to be updated by

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<sup>143</sup> See *infra* Part V.B.

<sup>144</sup> See CAL. CODE REGS. tit. 18, § 305 (2011).

<sup>145</sup> See *id.*

<sup>146</sup> See CAL. REV. & TAX. CODE § 423(d) (West 2011).

<sup>147</sup> See CAL. CONST. art. XIII § 1.

<sup>148</sup> See CAL. CONST. art. XIII, § 2.

<sup>149</sup> See REV. & TAX. § 110.1.

<sup>150</sup> Compare with REV. & TAX. § 110.1.

a current COI assessment, keeping the productive value of the property as the primary determinant of its property tax value.<sup>151</sup>

The amendment will also create a two percent limit on annual increases in property taxes while the COI base year value is used. This limit will remain in effect for the year an updated COI assessment is made. This provides a one-year buffer for landowners, whose land has been assessed under the amendment's COI base year value, from a substantial increase in their property taxes. This directly responds to the circumstances that led to the sudden increases in Williamson Act Contract property taxes seen in Fresno County.<sup>152</sup> The combination of the COI base year value and the limit on annual increases provides Williamson Act Contract property owners with tax certainty and guarantees that local governments receive tax revenues based on up-to-date assessments.

## VI. CONCLUSION

Mr. Dictos' decision to properly assess Williamson Act Contract land exposed the susceptibility of the Williamson Act to the failures of local elected officials.<sup>153</sup> Mr. Dictos did nothing but properly execute the duties of his office, but in doing so caused substantial financial strain for farmers.<sup>154</sup> As it currently exists, the law allows for the assessment of Williamson Act Contract land to be subject to the whims of the local assessors, even when the assessors are derelict from their duties.<sup>155</sup> This reality ultimately caused an unfair tax burden to farmers who depend on the benefit provided by the Act to stay in business.<sup>156</sup> When farmers can no longer depend on the benefit received under the Act, the law becomes useless.<sup>157</sup>

California's agricultural industry has seen a substantial benefit from the Williamson Act and local governments continue to support its use.<sup>158</sup> However, it has been necessary to reevaluate and amend the Act to bolster its effectiveness and usefulness in light of the reality of its implementation.<sup>159</sup> Preserving the original purpose of the Williamson Act re-

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<sup>151</sup> See Doran, *supra* note 71, at 108.

<sup>152</sup> See Alexander II, *supra* note 5.

<sup>153</sup> See discussion *supra* Part IV.

<sup>154</sup> See CAL. CONST. art. XIII, § 1; See also Dictos, *supra* note 132.

<sup>155</sup> See discussion *supra* Part V.A.

<sup>156</sup> See discussion *supra* Part IV.

<sup>157</sup> See Doran, *supra* note 71, at 121.

<sup>158</sup> See Kurtis Alexander, *Fresno County keeps tax break for farmers*, THE FRESNO BEE, Sept. 27, 2011, <http://www.fresnobee.com/2011/09/27/2556202/fresno-county-retains-tax-break.html>.

<sup>159</sup> See discussion *supra* Part II.

quires continued innovation.<sup>160</sup> The Williamson Act was a forward thinking piece of legislation, but did not account for the improprieties of elected officials.<sup>161</sup> The amendment proposed here is necessary in light of the unfair tax increases seen by farmers due to the failures of local assessors.<sup>162</sup> The amendment does not fundamentally alter the functioning of Williamson Act Contracts, but enhances the feasibility of their administration and preserves the benefit they provide.<sup>163</sup>

Ideally, assessors would properly execute their duties making this amendment unnecessary. History, however, has shown that this is often not the case.<sup>164</sup> This amendment simplifies the fulfillment of the assessor's constitutional duty and protects struggling farmers from unfair financial strain.<sup>165</sup>

GEORGE VASQUEZ

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<sup>160</sup> See discussion *supra* Part V.

<sup>161</sup> See discussion *supra* Part IV.

<sup>162</sup> See discussion *supra* Part V.

<sup>163</sup> See discussion *supra* Part V.

<sup>164</sup> See discussion *supra* Part V.A.

<sup>165</sup> See discussion *supra* Part V.