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INSIDE THIS ISSUE...

Letter from the Chair 3
By Jean Bertrand

A Modern Perspective on the Williamson Act: Conservation, Confusion, and Controversy 4
By Michael Patrick Durkee, David H. Blackwell, and Thomas P. Tunny
The Williamson Act was enacted 40 years ago to protect agricultural lands from premature development. This article examines how the Williamson Act works, and it explains why the Act should be implemented in a manner that is consistent with the local general plan and related land use regulations.

Williamson Act MCLE Test 13

Complying with EPA's 404(b)(1) Guidelines in Obtaining a 404 Permit: Determining the Least Environmentally Damaging Practicable Alternative . .16
By Jon Schutz
To obtain a 404 permit, an applicant must conduct an analysis to demonstrate that, among other things, the proposed project is the least environmentally damaging practicable alternative (LEDPA), which is often one of the steepest hurdles in obtaining a 404 permit. This article will help a 404 permit applicant understand and successfully navigate the LEDPA determination process.

Calculating and Recovering 502(b)(6) Commercial Lease Rejection Damages in a California Bankruptcy 24
By Alain M. R'bibo
When lessees breach their leases and file for bankruptcy relief, lessors are faced with the challenge of recovering early termination damages from the bankruptcy estate. This article explains how to calculate the damages afforded lessors under the Bankruptcy Code, and how to prove up those damages adequately to avert objection by the bankruptcy trustee and ensure the maximum possible recovery.

The Fair and Accurate Credit Transactions Act and Its Implications on the [illegible] Housing Industry 30
By [illegible]. Rubin
On December [illegible] into law the Fair and Accurate Credit Transactions Act. The Fair and Accurate Credit Transactions Act [illegible] the Fair and Accurate Credit Transactions Act [illegible]

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THE REAL PROPERTY LAW SECTION OF THE STATE BAR OF CALIFORNIA

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

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

After reading this article, you can earn one-hour free MCLE credit by completing the test on page 13.

I. INTRODUCTION

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

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

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

This article serves four purposes:

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

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

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

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

II. HISTORIC OVERVIEW

A. Background and Purpose of the Williamson Act

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

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

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

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

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

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

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

B. Williamson Act Contracts

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

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

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

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

C. Termination of Williamson Act Contracts

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

1. Nonrenewal

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

2. Public Acquisition

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

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

3. 2004 Legislation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. THE FUTURE OF THE WILLIAMSON ACT

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

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

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

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

VI. CONCLUSION

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

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