Beyond the Williamson Act: Alternatives for More Effective Preservation of Agricultural Land in California

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Agriculture is the number one industry in California. In 1982, state agricultural endeavors produced an estimated $14.3 billion in sales. California produces twenty-five percent of the table foods grown in the United States. The state is the primary national source of a wide variety of specialty crops. More than $3.3 billion in foreign exports were accounted for by California agriculture in 1982.

The continued preeminence of agriculture in the state, however, is not guaranteed. By various estimates, 55,000 to 150,000 acres of prime agricultural lands annually are being converted to urban and other uses. The best farmland is flat and drains well. This farmland, therefore, is easy and profitable to develop. As the prime acres disappear, they must be replaced by a dwindling reserve of undeveloped, potential farmland. Unfortunately, many of these acres are costly to develop. In recent years, seventy-five percent of the newly irrigated

2. Id.
4. Id. Among the products for which California is the primary source nationally are almonds, artichokes, broccoli, carrots, celery, garlic, grapes, lettuce, olives, onions, prunes, safflower, tomatoes, and walnuts. Id.
5. See SECURITY PACIFIC BANK, supra note 1, at 35.
6. CALIFORNIA DEPARTMENT OF CONSERVATION, DRAFT REPORT, CALIFORNIA SOILS, AN ASSESSMENT IV-39 (1979) (hereinafter DRAFT SOILS). The figure of 55,000 acres was derived from a survey of Resource Conservation Districts, and represents a five-year average from 1974-79. Id.
7. FELLMETH, supra note 3, at 27.
8. No single definition of prime agricultural lands is universally accepted. A workable guideline is the U.S. Soil Conservation Service Classification system, which divides land into eight classes of use capability on the basis of factors including slope, water-holding capacity, soil depth and texture. Class I-IV lands are suitable for varying types of agricultural uses, with Class I and II lands generally being considered "prime." Id. Statutory definitions of prime agricultural land vary. See infra notes 54, 209 and accompanying text.
9. See FELLMETH, supra note 3, at 28.
10. DRAFT SOILS, supra note 6, at IV-40. The reserve is estimated to be less than eight million acres. Id.
11. Id.
12. Id.
lands in California were those with a medium or low potential\textsuperscript{13} for agricultural production. These lands require significantly greater expenditures for agricultural development than do the best prime lands,\textsuperscript{14} and consume greater amounts of energy\textsuperscript{15} and water\textsuperscript{16} to achieve an adequate level of production. In addition, the availability of water is a significant barrier to the development of arid lands\textsuperscript{17} that are otherwise suitable for varying degrees of agricultural use. Urban dwellers and industries each year demand more state water resources, indicating a likelihood that less, not more, water will be available for future agriculture.\textsuperscript{18}

The shrinking reserve of prime agricultural lands and the economic and environmental costs of converting idle land to economic use illustrate a need to conserve prime farmlands.\textsuperscript{19} State government has recognized this need. The official state policy favors the conservation of prime farmland.\textsuperscript{20} State agencies are in the process of mapping prime farmland throughout the state and establishing a system for monitoring the conversion of farmland to nonagricultural uses.\textsuperscript{21} Some local governments have made important efforts to conserve prime agricultural lands wherever possible.\textsuperscript{22} The conversion of prime farmland, nevertheless, has continued.\textsuperscript{23}

The primary, longstanding state effort to slow the conversion of prime farmland has been through the use of the California Land Con-

\begin{itemize}
  \item \textsuperscript{13}See Draft Soils, supra note 6, at IV-40. Expenses include tillage, residue management, drainage improvement, and irrigation systems. Id.
  \item \textsuperscript{14}See Zinn, Exports and Energy: New Factors in U.S. Agricultural Land Policy, in Beyond the Urban Fringe, Land Use Issues of Nonmetropolitan America 193 (1983). Zinn believes energy costs show an important reason why the best farmlands, which use relatively less energy, should be preserved. Id.
  \item \textsuperscript{15}Id.
  \item \textsuperscript{16}Draft Soils, supra note 6, at IV-40.
  \item \textsuperscript{17}Id.
  \item \textsuperscript{18}Id.
  \item \textsuperscript{20}CAL. AGRIC. CODE §821(a).
  \item \textsuperscript{21}In 1982, the state legislature enacted a statute requiring the state Department of Conservation to establish a permanent mapping program to track how much agricultural land is added to cultivated acres in the state and how much is lost. See CAL. GOV'T CODE §65570.
  \item \textsuperscript{22}See infra notes 229-31 and accompanying text.
  \item \textsuperscript{23}Interview with Darwyn H. Briggs, assistant state conservationist, U.S. Soil Conservation Service, at Davis, California, Jan. 26, 1984. (notes on file at the Pacific Law Journal) [hereinafter cited as Interview].
\end{itemize}
servation Act of 1965 (hereinafter the CLCA). The CLCA, also known as the Williamson Act, attempts to preserve farmland by extracting a promise from landowners to forego development of their land, in exchange for a lower property tax assessment. History has proven, however, that the CLCA is ineffective in this respect. Although the CLCA probably has helped educate the public about the loss of prime farmlands, the Act has failed to slow the rate of farmland conversion.

This comment will outline the important provisions of the CLCA and will explore the reasons why the Act fails as a measure to protect prime agricultural lands from urbanization. A discussion of three alternatives for preserving farmland will follow. These alternatives are: (1) statewide, centralized planning and control of land-use decision-making, (2) purchase of prime lands or development rights in prime land by public or private entities, and (3) transfer of development rights. Finally, this author will argue that, although the above alternatives have potential for conserving farmland, California should adopt a fourth alternative. This alternative combines tax incentives with greater state-local cooperation in land use planning to establish a consensus for effective preservation of prime agricultural lands.

THE CALIFORNIA LAND CONSERVATION ACT

To appreciate the need for reform of California farmland conservation efforts, the deficiencies of the CLCA must be explored. These deficiencies are traceable to a limited view of farmland conversion inherent in the Act. The loss of farmland is attributable to numerous factors, including the profitability of farmland, rising property taxes at the urban fringe, government regulations, personal career decisions, urban growth pressures, the value of land, and specula-

25. The Act is named for former state Assemblyman John Williamson of Bakersfield. See id. at §51200.
26. See infra notes 50-120 and accompanying text.
27. See Interview, supra note 23.
28. See infra notes 121-71 and accompanying text.
29. See infra notes 172-85 and accompanying text.
30. See infra notes 186-207 and accompanying text.
31. See infra notes 208-31 and accompanying text.
33. Id.
34. Id.
35. Id.
36. Id.
37. Id.
tion in farmland with the expectation of future development. The CLCA directly addresses only one of these factors, rising property taxes at the urban fringe.

When urban sprawl became a dominant land-use growth pattern following World War II, concern grew as farmer after farmer sold his land to developers. Many perceived that the decision to sell was motivated in large part by rising property taxes. The traditional method of property taxation in California and other states is based on assessments related directly to the market value of the land. Lands are taxed at a percentage of their fair market value. As urban areas grow outward into farming areas, the market value of the farmlands close to developed lands increases because the land becomes attractive for development. With the increasing urbanization of American farmlands following World War II, market values and property taxes rose accordingly.

In some instances in California, property taxes rose by 1600 percent in one year. Many believed that these rising property taxes were forcing farmers to sell because the taxes cut into revenues and farmers could no longer make a profit from agriculture. The CLCA was created to counter rising property taxes as a factor contributing to urban sprawl.

The proposed solution to the tax plight of American farmers was to assess farmland at a percentage of the income the land produces, so that a farmer's property taxes would vary only according to the value of the agricultural goods produced, rather than according to the proximity of the farmland to development. The concept is known generally as differential or "use-value" assessment. Forty-six states, including California, employ use-value assessment in one form or another to reduce the tax burdens of farmers and to slow the rate of urbanization by reducing the number of sales motivated or forced by high taxes.

Use-value assessment alone, however, cannot ensure the preserva-

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38. Id.
40. Id. at 31.
42. See Fellmeth, supra note 3, at 32.
43. Id.
45. Id.
46. NALS Report, supra note 32, at 56. Two other states provide farmers credits or rebates on their income taxes. Id.
tion of farmland. While lower taxes may encourage some farmers to keep farming, others will sell their land because high market values may make selling the land more profitable than farming it. Critics charged that many early use-value assessment statutes actually encouraged the urbanization of farmland because speculators could buy land and keep it idle until the land was ripe for development. Lower use-value assessments merely reduced the expense of holding the land until the maximum profit could be made.

In 1965, California enacted the CLCA, a pioneering use-value assessment statute that attempted to address the concerns of the critics about use-value assessment. The CLCA required those who received the benefits of use-value assessment to give something in return, an agreement to maintain their lands in agricultural use for at least ten years. The ten year "restrictive use agreement," proponents hoped, would discourage speculation and allow local governments time during which they could make reasoned and unhurried planning decisions regarding the eventual use of encumbered lands. Weaknesses in the provisions of the CLCA, however, have prevented these hopes from being fully realized. These provisions and weaknesses now will be examined.

A. Provisions of the CLCA

The CLCA is an enabling act that gives cities and counties the authority to offer use-value assessment to owners of prime agricultural and other open-space lands in exchange for a restrictive use agree-

47. See infra notes 98-109 and accompanying text.
48. See MANDELKER & CUNNINGHAM, supra note 44, at 1271-72.
49. Id.
50. See Barlowe & Alter, Use-Value Assessment of Farm and Open Space Lands, in MANDELKER & CUNNINGHAM, supra note 44, at 1273-76.
51. See infra notes 66-70 and accompanying text.
52. See Barlowe, supra note 50, at 1273-76.
53. CAL. GOV'T. CODE §§51230-51295.
54. "Prime agricultural land" means 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 unit 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.

Id. at §51201(c).
ment. Participation in the CLCA is voluntary for both local governments and landowners. To compensate for lost property tax revenues resulting from lower tax assessments, local governments may be partially subsidized with "subvention" payments from the state. For lands to be eligible for enrollment in the CLCA, local governments must establish areas within which use-value assessment can be offered. Owners of lands within these designated areas then must sign contracts with the appropriate local government. These contracts set forth the agreement between the landowners and the governments by which use-value assessment is exchanged for restrictive use agreements.

1. Agricultural Preserves

The initial step in the process of enrolling lands in the CLCA is the establishment of an "agricultural preserve" by a city or county. An agricultural preserve is simply a designated area of land within which local governments may offer CLCA contracts. Preserves are usually established at the request of a landowner or group of landowners. Preserves may or may not correspond with those areas designated by the local general plan for agricultural use, or with those areas that are best suited for preservation. A public hearing is required before a preserve may be approved by local government. A preserve must consist of at least 100 acres unless smaller parcels are appropriate for established local agricultural uses. Preserves of less than 100 acres, unlike larger parcels, also must be consistent with the local general plan by which most land-use decisions are made. The failure of the CLCA to tie agricultural preserves to local general plans is a significant weakness of the Act. This weakness is compounded by the failure of the CLCA to mandate that preserves be

55. See infra notes 87-92 and accompanying text.
56. See infra notes 58-63 and accompanying text.
57. See infra notes 66-70 and accompanying text.
58. CAL. GOV'T CODE §§51230-51239.
59. CALIFORNIA DEPARTMENT OF CONSERVATION RESOURCE PROTECTION UNIT, EXECUTIVE SUMMARY: A REPORT ON THE WILLIAMSON ACT AND THE OPEN SPACE SUBVENTION PROGRAM 5 (October 1978) [hereinafter EXECUTIVE SUMMARY]. The Executive Summary contains the result of a survey of local officials in the counties and cities that have implemented the CLCA (Williamson Act). Id. at 1. Questionnaires were sent to elected officials, planning directors, administrative staff, tax assessors, and agricultural commissioners. About 80 percent of the questionnaires were completed and returned. Id.
60. Id. at 5.
61. CAL. GOV'T CODE §51230.
established only after a study of the appropriateness of preserving the lands within proposed preserves. Ideally, requirements of coincidence with local general plans and studies of preservation appropriateness would increase the likelihood that the conservation of farmland would be considered in the overall context of planned growth. Some prime lands necessarily must be developed as a city or county grows, but effective planning could keep the loss of prime farmland to a minimum. Since most local governments establish agricultural preserves at the request of landowners, the landowners, in effect, are making land use decisions that affect the locality, but may not always be in the best planning interests of the locality. The decisions are made on a piecemeal basis and do not enhance the effectiveness of comprehensive planning efforts.65

2. CLCA Contracts

Once an agricultural preserve has been established, all prime agricultural lands within the preserve are eligible for enrollment in CLCA contracts.66 The contracts bind the local government to a promise of utilizing use-value assessment and bind the landowner to a promise of restricting land owned to agricultural use. Contracts must contain similar terms for all parcels of land within a given agricultural preserve.67 Benefits and burdens of the contracts run with the land for the duration of the contract, regardless of changes in ownership, or subdivision of the land.68 Contracts must run for an initial term of no less than ten years.69 In the absence of action by the landowner or local government, an additional year is added automatically to the term of the contract upon the anniversary date of the contract or another date specified by the contract.70 The automatic renewal provision has the effect of giving the contract a perpetual duration, unless some action is taken to terminate the arrangement.

Contracts may be terminated in two ways, by notice of nonrenewal or by cancellation.71 Nonrenewal may be exercised by the landowner or the local government. If a notice of nonrenewal is served by the landowner or local government before the automatic renewal date,

65. See infra notes 112-20 and accompanying text.
67. See id. §51241.
68. Id. §51243.
69. Id. §51244.
70. Id.
71. Id. §51245.
the contract will remain in force for nine years following notice, assuming an initial term of ten years. For example, if a landowner exercises the option of nonrenewal five years after entering into a ten year CLCA contract, the restriction on the use of the land will not expire until nine years following notice of nonrenewal, or fourteen years after the contract was signed.

The CLCA attempts to discourage landowners from exercising the option of nonrenewal by providing for an immediate increase in property tax assessment. The assessments will reach the equivalent of fair market value assessment by the seventh year following notice of nonrenewal. Local government revenues also may suffer initially from nonrenewal because the participating local government no longer will be compensated with state subvention payments. Nonrenewal is the only way to terminate a CLCA contract when cancellation is unavailable.

Cancellation is available only to the landowner and will result in the immediate termination of tax benefits and restricted use if the cancellation application is approved by the local government. Cancellation, like nonrenewal, results in a penalty to the landowner. Upon cancellation, the landowner must pay to the state a fee equal to 12.5 percent of the fair market value of the land as of the date of cancellation. This fee may be waived by the local government, however, if waiver would be in the public interest. Waiver must be approved by the State Secretary of Resources. In addition to the cancellation fee, if any, the landowner must pay back to local government any tax savings gained while the enrolled land was burdened by the contract.

Nonrenewal and cancellation point to another weakness of the CLCA. The Act fails to provide for long-term preservation of prime farmlands. Even though a particular parcel may be appropriate for preservation and is enrolled in the CLCA, a landowner may remove any protection the act may give simply by cancelling the contract or

73. CALIFORNIA DEPARTMENT OF CONSERVATION, LAND RESOURCES PROTECTION UNIT, SPECIAL SERVICES FOR RESOURCE PROTECTION, WILLIAMSON ACT BRIEFING SUMMARY 5 (May, 1981) [hereinafter BRIEFING SUMMARY].

74. Id.

75. Id.

76. Id.

77. Cal. Gov't Code §51281; see also BRIEFING SUMMARY, supra note 73, at 6.

78. Id. §51283.

79. Id. §51283(c).

80. Id. §51283(c)(3).

81. Id. §51283.1
serving notice of nonrenewal. The landowner’s decision also is more likely to be motivated by the chances for individual profits rather than by the public need for the conservation of farmland. A further weakness of the CLCA is evidenced by the patterns of enrollment in the Act. While large numbers of landowners have entered into CLCA contracts, few of the lands enrolled are located in areas subject to development pressure of urban sprawl.

3. Participation

As of May 1981, forty-eight of fifty-eight California counties offered CLCA contracts to eligible landowners.82 About 16,000,000 acres, constituting thirty percent of the privately owned land in the state, were enrolled in the program.83 Unfortunately, only about 580,000 of these acres were “urban prime” lands,84 those most subject to development pressures. Another 4,500,000 acres were nonurban prime lands.85 The remaining were nonagricultural open space lands.86 Although much of the land in the nonurban and open space categories certainly is worth preserving, most of these lands are subject to little or no development pressure. Whether these lands need the protection of use-value assessment is questionable.

Land enrolled in the CLCA is subject to generally lower property taxes than non-enrolled land. Consequently, the CLCA represents not only a tax break to landowners but also a tax loss to local governments. This tax loss is partially compensated by the state through subvention payments.

4. Subvention

To minimize complaints of lost revenue from use-value assessment, and possibly to encourage local government participation in the CLCA, the state enacted the Open Space Subvention Act87 in 1971. By this statute, the state partially compensates local governments for tax revenue lost because of the CLCA. Compensation is paid according to the relative agricultural value of enrolled lands, and the proximity of enrolled lands to urban areas. Subvention payments are disbursed annually at a rate of $8 per acre for urban prime lands located within three miles of an incorporated city with a population of 25,000 or

82. Briefing Summary, supra note 73, at 3.
83. Id.
84. Id.
85. Id.
86. Id.
87. CAL. GOV'T CODE §§16140-16153.
more, $5 per acre for prime lands adjacent to smaller incorporated cities, and $1 per acre for nonurban prime lands. For the 1982-83 fiscal year, more than $13.4 million was paid to local governments in subvention payments.

The availability of subvention payments apparently has not encouraged local governments to extend the use of the CLCA. A 1978 state survey of local governmental officials indicated the subvention program had little effect on local government use of the CLCA. Some officials expressed the view that the entitlements were inadequate to compensate for tax revenues lost because of CLCA contracts and therefore, subvention payments should be increased. Officials, however, did indicate that subvention payments increased political support for the CLCA by minimizing local criticism of tax shifts to CLCA enrollment.

B. The CLCA is Ineffective

Although political support for the CLCA has increased, the effectiveness of the program as a tool for preserving prime land has not. The CLCA has been criticized as a disguised tax dodge for large corporations that own huge tracts of enrolled lands in areas not subject to development pressure and as a measure that has little, if any effect on the rate of urbanization of prime farmlands. The most significant problems with the CLCA are threefold: (1) a lack of enrollment of prime agricultural land near urban areas, (2) the temporary nature of protection provided by CLCA contracts, and (3) the failure of the CLCA to provide for comprehensive and long-term planning for the preservation of prime farmlands.

A major purpose claimed for the CLCA is the prevention of

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88. BRIEFING SUMMARY, supra note 73, at 2-3. Subventions are paid for “open-space” lands at the rate of 40 cents per acre. Id.
89. CALIFORNIA DEPARTMENT OF CONSERVATION, OPEN SPACE SUBVENTION ENTITLEMENTS, 1982-83 FISCAL YEAR. This one-page, annual release lists the amounts received pursuant to the subvention program by all cities and counties that participate in the CLCA. See id.
90. EXECUTIVE SUMMARY, supra note 59, at 2.
91. Id. at 3.
92. Id. at 2. When the CLCA was first being used by local governments, tax revenues lost by enrollment in CLCA contracts were often recouped by increasing the burdens of nonenrolled landowners. See Walters, Punching Holes in the Williamson Act, 14 CAL. J. 459, 459-61 (December, 1983).
93. FELLMETH, supra note 3, at 41-42.
94. EXECUTIVE SUMMARY, supra note 59, at 2. See also FELLMETH, supra note 3, at 41-42.
95. See infra notes 98-109 and accompanying text.
96. See infra notes 110-11 and accompanying text.
97. See infra notes 112-20 and accompanying text.
premature and unnecessary urbanization of agricultural lands. Experience has shown, however, that the owners of lands most subject to development pressures, prime lands on the urban fringes, are the least likely landowners to enter into CLCA contracts. The probable reason for this reluctance is that the CLCA provides landowners with an inadequate incentive to forego development or sale of their farmlands. Fewer than one million of the sixteen million acres enrolled in the CLCA statewide are within three miles of an urban area. Many of the acres enrolled within these three mile circles are located in areas where the existence of development pressures is debatable. Local planning directors have indicated that few CLCA contracts have been signed in areas where the probability of development exists and that less than fifteen percent of the enrolled acreage will face development within twenty years, notwithstanding contractual restrictions. These same officials have indicated the CLCA has had little effect on the rate of conversion of prime lands.

Numerous researchers have concluded the minimal enrollment of lands subject to development pressure is due to the insufficiency of CLCA incentives. Urban-fringe landowners will not forego the prospects of selling their lands to developers for a substantial profit. Prior to the passage of Proposition 13, a 1978 voter initiative which reduced property taxes statewide, the average property tax reduction for enrolled urban prime lands was about eighty percent. After the passage of Proposition 13, tax savings have been reduced to about sixty percent. For most owners of prime urbanlands, the tax advantages of CLCA enrollment should be attractive, notwithstanding the Proposition 13 effects. The profits to be made by selling to

98. CAL. GOV'T CODE §51220. Section 51220 sets out the legislative findings underlying the CLCA. Id. §51220(a)-(e).
99. See BRIEFING SUMMARY, supra note 73, at 3.
100. EXECUTIVE SUMMARY, supra note 59, at 4.
101. Id.
102. Id.
103. See Carmen, California Landowners' Adoption of a Use-Value Assessment Program, 53 LAND ECONOMICS 275, 285-86 (1977); Hansen & Schwartz, Prime Land Preservation: The California Land Conservation Act, 31 JOURNAL OF SOIL AND WATER CONSERVATION 198, 202 (1976). "Since the CLCA uses tax inducements, the economic incentives provided under the act are fundamental to any evaluation of the program's effectiveness." Id. See also FELLMETH, supra note 3, at 41.
104. CAL. CONST. art. XIII, §7. Proposition 13, a voter's initiative, reduced property taxes for all real property owners statewide by rolling back assessments to the 1975 level. See California Department of Conservation, Division of Land Resources Protection, THE WILLIAMSON ACT AFTER PROPOSITION 13: STILL A BARGAIN iii (1983) (hereinafter STILL A BARGAIN). This report is the result of a survey of CLCA tax advantages in 19 counties. Id. at 1.
105. See STILL A BARGAIN, supra note 104, at iii.
106. Id.
developers, however, are even more attractive. For example, an acre of prime land may sell for $4,000 as farmland, but could bring $40,000 or more if sold for development.107

At least one study indicates that most urban prime landowners who decide against enrolling in the CLCA in order to have the option of selling to developers are being unrealistic.108 Their lands will not be attractive to developers until years later when development has grown closer. Nevertheless, given the choice between tax advantages and speculation, the chance of a large profit appears to be the overriding consideration109 for a landowner making a decision regarding enrollment in the CLCA. Even if the landowner does decide to enroll, the CLCA will not guarantee that participation will endure because CLCA contracts provide only short-term protection for prime farmlands.

The CLCA also is criticized because the Act fails to provide long-term preservation of agricultural lands.110 At present, any enrolled land will remain under contract only so long as the contract is advantageous economically to the landowner. When tax savings are outweighed by the profits to be made by selling the land, farmers can opt for nonrenewal or cancellation. The penalties incurred by exercising these options will reduce only partially the profits landowners can make if they sell their lands for development.111 While the CLCA may provide a needed tax break to farmers, the restrictive use agreements required by the Act provide only a feeble and temporary barrier to development.

The lack of urban fringe enrollment and the temporary nature of CLCA contracts might be less important if the CLCA provided for more coordinated and thoughtful planning for the conservation of agricultural lands. Although the CLCA mandates agricultural preserves, the Act fails to require that preserves be formed only after a study has been conducted to determine whether the land within a proposed preserve area should be protected. The CLCA also fails to tie in with the local general plan to ensure that agricultural preserves are established in a manner consistent with local planning priorities. Thus, the Act does nothing to discourage piecemeal land use decision-making, which is one of the roots of the urban sprawl problem.

Part of the problem may be that the CLCA operates within the

107. See Interview, supra note 23.
110. See Fellmeth, supra note 3, at 41-2.
111. See NALS REPORT, supra note 32, at 208.
context of land use decision-making as it exists in California and much of the United States. Land use decisions in California are primarily the responsibility of local government. The state has mandated that land use decisions be made pursuant to a general plan and that the environmental impacts of land use decisions be considered. These mandates, however, do not require that local decisions reflect regional and state interests. Most often, decisions reflect local interests alone. Local officials are representative of their communities. They make decisions that are advantageous to the community, either by increasing the local tax base through development that brings in high taxes but requires little in the way of services, or by pleasing the developers and others in the development process who are among the local officials' strongest constituents.

This local focus can prove detrimental to the interests of neighboring communities, the state and the nation. In the case of agricultural land preservation, a local focus may result in the weighing of the local benefits of agricultural lands against the benefits of development. While farmlands require little in the way of local services, farmland does not provide new tax revenues or jobs for the construction industry. Depending on community priorities, the importance of prime agricultural lands as a state and national resource may be ignored. An additional problem is that local governments often may lack the expertise and funding necessary to study the local lands and formulate plans to direct development to the most appropriate areas, while retaining prime farmland in an undeveloped state. The lack of funding and expertise, along with the local focus of land use decision-making, may contribute to what has been criticized as inconsistent and varying administration of the CLCA.
The foregoing analysis has shown the reasons that the CLCA is not an effective means of preserving prime farmlands in California. The lands most in need of protection are not enrolled in CLCA contracts. Even if these lands were enrolled, the restrictive use agreements embodied in CLCA contracts provide little in the way of long-term protection from urbanization. The most significant weakness of the CLCA is the failure to encourage more effective planning for farmland retention. This comment now will examine alternative methods of preserving farmlands in California. Available alternatives include the following: (1) statewide, centralized planning, (2) land trust or conservancy options, and (3) transfer of development rights.

**ALTERNATIVES TO THE CLCA**

Some critics of the CLCA have suggested that California agricultural land could be protected from urbanization if the state would establish a centralized planning structure in which the state is more directly involved.\(^{121}\) Hawaii and Oregon provide examples of these plans. In California, certain regional areas have centralized planning bodies. A substantial controversy exists, however, whether more extensive centralized planning structures would be politically acceptable in California. Hawaii and Oregon have successfully implemented statewide planning programs that preserve prime farmland. Political considerations, however, make the implementation of statewide programs in California doubtful. Consequently, centralized planning in California may be limited to a few regional efforts.

**A. The Hawaiian Experience**

In Hawaii, passage of the Land Use Law\(^{122}\) in 1961 gave state agencies greater control of land use planning and decision-making than in any other state.\(^{123}\) The law resulted from concerns about rapid growth due to an economic upsurge that followed statehood.\(^{124}\) The legislation was supported by the owners of prime agricultural land who grew lucrative specialty crops.\(^{125}\) The law was aimed, in large part, at protecting prime farmlands from the expansion of Honolulu.\(^{126}\) At the time of passage, Hawaii, unlike mainland states, had no strong

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121. See Dresslar, supra note 19, at 303-04; Fellmeth, supra note 3, at 42-43.
123. See Boselman & Callies, supra note 116, at 5.
124. Id. at 6.
125. Id. at 13.
126. Id. at 6.
history of local land use control.\textsuperscript{127} Hawaii had become a state only recently and was accustomed to a centralized, territorial government.\textsuperscript{128}

Under Hawaiian law, land use authority is shared by four state governmental bodies\textsuperscript{129} that oversee planning and development decision-making for all island lands, which are divided into four districts:\textsuperscript{130} urban, rural, agricultural, and conservation. While these governmental bodies, of course, are subject to lobbying from special interest groups, decisions over the years have displayed a substantial consensus for the policy of preserving prime agricultural lands that support the state pineapple and sugar industries.\textsuperscript{131} Hawaii is unique in being the only state to establish land use zoning at the state level. A consensus for the preservation of prime farmlands, however, apparently also has been reached in Oregon.

\textbf{B. Oregonian Planning}

Oregon, in contrast with Hawaii, attempts to preserve prime farmland and control growth in general by providing stronger mandates to local decision-makers. In 1973, following a recent upsurge in growth throughout the state, the state enacted the Oregon Land Use Act (hereinafter the OLUA).\textsuperscript{132} According to one federal study, the OLUA established the most comprehensive land use planning and regulation system in the United States.\textsuperscript{133} The Act specifically protects twelve types of environmentally sensitive lands. The necessity of protecting prime farmlands, however, was the foremost concern leading to the adoption of the program.\textsuperscript{134}

The OLUA created a state agency, the Land Conservation and Development Commission (hereinafter the LCDC) to head the planning structure.\textsuperscript{135} The primary duty of the LCDC is to develop statewide planning goals and regulations.\textsuperscript{136} These regulations are to be used

\begin{footnotesize}
\textsuperscript{127} Id.
\textsuperscript{128} Id.
\textsuperscript{129} Id. The boards are: the Hawaiian Land Use Commission, the Department of Planning and Economic Development, the Department of Land and Natural Resources, and the Board of Land and Natural Resources. Id.
\textsuperscript{130} Id. at 7.
\textsuperscript{131} Id. at 13. Bosselman and Callies list two other policies that have guided Hawaiian land use decision-making: (1) Tourist-attracting development should be encouraged without disturbing the attractions of the natural landscape, and (2) "compact and efficient urban areas should be preserved where people can live at reasonable cost." Id.
\textsuperscript{132} ORE. REV. STAT. §§197.000-197.650.
\textsuperscript{133} NALS REPORT, supra note 32, at 239.
\textsuperscript{134} Id.
\textsuperscript{135} Id.
\textsuperscript{136} Id.
\end{footnotesize}
by state agencies and local governmental entities in preparing and ad-
ministering comprehensive land use plans. The LCDC has the authority to review
all plans for compliance and to issue enforcement orders if the
guidelines are not followed.

As of 1981, the LCDC had adopted nineteen mandatory goals and
accompanying guidelines for use in the adoption of land use plans. Some of these goals deal specifically with the preservation of
agricultural land. One important mandate is that all towns and cities
with a population of 2500 or more must establish urban growth
boundaries. These boundaries, which allow for some future growth,
mark the effective limits of urban expansion. Another mandate is
the creation of exclusive farm use zones, which are comprised of
lands that are declared off limits to most development. The zones
are created and administered by local governments according to state
guidelines. Farmers in these zones receive the benefits of lower prop-
erty taxes and protection from local ordinances that might interfere
with farming activities.

Apparently, the OLUA enjoys widespread public support. The pro-
gram twice has won more than sixty percent of the votes cast when
the OLUA was challenged in statewide referenda in 1976 and 1978. Support also has grown among local governments. In addition, a
strong public interest organization has proved to be successful in en-
forcing OLUA mandates in the state courts. The efforts of this
organization apparently have helped ensure local governmental
adherence to the intent of the program. The programs of Oregon
and Hawaii have proved successful because those states have reached
a working consensus for centralized control of land-use planning and
for the preservation of prime farmlands. California has been able to
reach a similar consensus only regarding a few specific resource areas.

137. Id.
138. Id.
139. Id.
140. Id.
141. See Fletcher & Little, supra note 19, at 35.
142. See id.
143. See id.
144. See id.
145. NALS REPORT, supra note 32, at 243.
146. Id.
147. Id. at 239. The public interest group calls itself 1000 Friends of Oregon. Id.
148. Id.
C. California Regional Planning

Of three major regional planning efforts by California, two have nothing to do with the preservation of farmland. One is aimed at the conservation of the San Francisco Bay. In 1965, the California Legislature created the San Francisco Bay Conservation and Development Commission.149 This agency attempts to ensure that filling and development of San Francisco Bay does not destroy the value of the bay for water-oriented uses,150 for recreation,151 as a breeding ground for fish and wildlife,152 and for aesthetic benefits.153 The other regional planning effort in California is aimed at the preservation of Lake Tahoe. In 1970, an interstate compact between California and Nevada created the Tahoe Regional Planning Agency to regulate development in the Lake Tahoe basin.154 The goal of the agency is to ensure that the clarity of the lake waters and the quality of the surrounding environment will not be unavoidably diminished.155

The most extensive centralized planning program in the state, the California Coastal Act of 1972,156 was mandated by a voter initiative. A new state agency, the California Coastal Commission, was created pursuant to the voter mandate.157 The Commission is charged with regulating planning and development along the California coast. The agency has responsibilities analogous to the LCDC in Oregon158 and has shown concern for the preservation of important coastal agricultural lands159 by denying permits for numerous proposed developments that would have encroached on prime coastal farmland.160

While centralized planning has been accepted for specific areas of California, achieving a greater degree of state control over the fate of agricultural lands throughout California could be much more difficult. One state study indicates that eighty percent161 of the California public favors more effective preservation of farmland, but this

151. Id.
152. Id.
153. Id.
157. Id.
158. See NALS Report, supra note 32, at 229-36.
159. Id.
160. Id.
161. See Draft Soils, supra note 6, at IV-41. According to the report, the public also favors the protection of timberlands from the pressures of urbanization. Id.
apparent public consensus has not been reflected by the actions of
the state legislature.\textsuperscript{162} Members of the California Legislature have
consistently rejected greater state involvement in this area and have
even lessened that involvement.\textsuperscript{163} For example, the CLCA originally
required that contract cancellations receive state approval. The
legislature removed this provision in 1969,\textsuperscript{164} possibly evidencing a
conviction that the preservation of farmland is a local matter. The
current Governor of California, George Deukmejian, has stated
expressly that preservation decisions should be made exclusively at
the local level.\textsuperscript{165}

The hesitancy of the legislature to enact comprehensive planning
in California is probably attributable to two main factors. First,
California is a large state with great diversity. The tradition in the
state is that decisions affecting localities are best left to local
government.\textsuperscript{166} Secondly, certain interest groups have a stake in main-
taining a relatively weak system of land use control.\textsuperscript{167} When fewer
restrictions are placed on the use of land, landowners and developers
have a greater variety of choices regarding land sale and
development.\textsuperscript{168} The construction industry is supportive of this freedom
of choice because more potential job opportunities are created for
the industry. The environmental restrictions inherent in statewide plan-
ing schemes adversely affect options that are viewed as the tradi-
tional "rights" of the property owner.\textsuperscript{169}

Programs like the Land Use Act in Hawaii and the OLUA in Oregon
would be difficult to enact in California. Hawaii, unlike California,
has no tradition of local control of land use decision-making. The
Hawaiian system has been centralized since before Hawaii became
a state. In California, local control is the rule, and this control is
even guaranteed to an extent in the state constitution.\textsuperscript{170} While the
Oregonian centralized planning system retains much in the way of
local control, a recent history of strong environmentalism\textsuperscript{171} has en-

\textsuperscript{162} See Dresslar, supra note 19, at 316-19.
\textsuperscript{163} See Fellmeth, supra note 3, at 39. In 1969 the CLCA was amended to allow for
the use-value assessment of open-space lands that were nonagricultural. The amendments also
removed a provision requiring approval of contract cancellations by the state. Id.
\textsuperscript{164} Id.
\textsuperscript{165} See California Senate Committee on Local Government, Local Efforts to Con-
serve Agricultural Land 3 (Oct. 20, 1983).
\textsuperscript{166} See Dresslar, supra note 19, at 305.
\textsuperscript{167} See Godwin & Shepard, State Land Use Policies: Winners and Losers, 5 Envtl. L.
703,713 (1975).
\textsuperscript{168} See Clawson, supra note 117, at 102-104.
\textsuperscript{169} See NALS Report, supra note 32, at 247.
\textsuperscript{170} See supra note 112 and accompanying text.
\textsuperscript{171} An example of Oregonian environmentalism is a statute requiring deposits on all beverage

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sured that local decision-making is made with great deference to the interests of the state as a whole. While the OLUA has been attacked in two referenda, advocates of the OLUA have prevailed at the polls, indicating that environmentalism is strong enough in Oregon to control parochial interests. In California, however, local interests and special interest groups are strong enough to prevent enactment of centralized planning by the state legislature.

The foregoing analysis has indicated that centralized planning can be an effective tool for the preservation of prime agricultural lands. While California has demonstrated some success with the preservation of farmlands on the coast through regional planning, the enactment of a comprehensive statewide land conservation system is unlikely. Statewide planning is more restrictive than voluntary programs like the CLCA and, therefore, is likely to encounter substantial political resistance. A consensus of opinion strong enough to overcome the opposition of special interest groups is necessary for the enactment of centralized planning. This consensus has not been reached in California. Other alternatives to the CLCA, however, may not encounter the same degree of resistance that has been encountered by centralized planning. These alternatives include transfer of development rights and land trusts.

D. Land Trusts and Conservancies

One alternative to the CLCA that could provide for long-term preservation of prime croplands, but may not encounter the same political resistance as statewide planning, is the land “trust” or conservancy system. By this method, private, charitable organizations, or governmental entities, take effective control over the development of farmlands by purchasing them. These lands then may be leased back to farmers. Alternatively, the lands may be resold, but only after being burdened with a restrictive “easement” that forecloses the right to develop.

172. See generally Fenner, Land Trusts: An Alternative Method of Preserving Open Space, 33 Vand. L. Rev. 1039, 1039-43 (1980) (an in-depth exploration of the land trust option); speech by Donald Hagman, Public Acquisition and Disposal of Land as a Means of Development Control: Policies for the 70s, UCLA Institute of Government and Public Affairs (1970) (provides a general exposition of the option of government-operated land trusts); Newton & Boast, Preservation by Contract, Public Purchase of Development Rights in Farmland, 4 Colum. J. Environmental L. 189, 189-93 (shows that the goals of land trusts can also be met by direct governmental purchase of development rights).

173. See Fenner, supra note 172, at 1064-69.
The land trust arrangement has significant advantages over the CLCA. First, the purchasing organization can select the lands that are to be preserved. That decision is left to landowners by the CLCA, and landowners may not make the most objective decision possible. Secondly, the land may be preserved for as long as the purchasing organization wishes. Protection can be of longer duration than under a CLCA contract. Thirdly, land trust arrangements should be politically acceptable because landowners are compensated for any loss of development rights. In addition, the arrangements can provide tax benefits. Since the fair market value of the land without the right to develop is less than the value of land with development rights, property tax assessments may be less for landowners who repurchase the land from the trust organization or who agree to pay the property taxes as part of a leasing arrangement. Major short-term income tax savings may accrue to landowners who either donate land to the trust or who sell land to the trust at a price below market value.

Land trust arrangements already are available in California. Local governments are specifically authorized to acquire real property, easements, or other less than fee interests in land. Also, private land trusts exist in various areas of the state. In the context of coastal lands, a state funded land trust, the California Coastal Conservancy, is authorized to purchase agricultural and other sensitive lands within the jurisdiction of the Coastal Commission. Although land trusts have been established in California, and although the state has the tools to expand this method of land preservation, the cost of the technique has limited the usefulness of land trusts.

The experience of the Coastal Conservancy illustrates how high costs hamper land trusts. The problem is that the relatively high value of agricultural lands, like those in the coastal zone or on the urban fringe, is a result of the development potential of these lands. If a landowner is not willing to donate the land to the trust or to sell the
land at a bargain price, the trust may have to pay fair market value for the land it wishes to acquire. When a trust resells land absent the right to develop, the trust is selling land that is much less valuable than the land the trust purchased. Consequently, the Coastal Conservancy has only been able to recoup about half of every dollar spent on acquisition of environmentally sensitive lands. For example, a parcel of land might cost the Conservancy $500,000 to purchase, but could be sold absent the right to develop for only about $250,000. Moreover, budget constraints have prevented the Conservancy from buying tracts of prime agricultural land. Desired tracts would have cost the Conservancy about $1.5 million each, a price that is beyond the budget of the Conservancy. Land trusts also have other weaknesses.

One weakness is that leaseback arrangements may be too inflexible to be attractive to realistic farmers. Another is that private land trusts lack the power of eminent domain. Purchase programs lacking the power of eminent domain are subject to a landowner’s willingness to sell. Without the power of eminent domain, a land trust cannot guarantee participation in a preservation program, or guarantee that preservation will be accomplished on anything but a piecemeal basis. The leaseback and eminent domain weaknesses are relatively minor and probably can be solved. The high cost of land trusts, however, cannot be avoided. In the absence of a large outlay of money by the state, land trusts are probably not going to be a very useful tool for a comprehensive farmland preservation program in California. What the state needs is a politically acceptable method, one that compensates landowners for the loss of development rights, and which will not require large outlays of state or local funds. One method might be a transferable development rights program.

E. Transferable Development Rights

A third possible alternative to the CLCA for the preservation of California farmlands is the adoption of a system of transferable development rights (hereinafter TDR). TDR, like land trusts, in-
corporates the modern view that development rights are severable from
the physical location of the land. TDR is an extension of “cluster zoning” and “planned unit development” concepts that provide for
the relatively dense development of one portion of a parcel of land,
while leaving the remaining portion as open space. TDR has been
proposed as a method of preserving open space and historic sites,
and even as a substitute for traditional zoning. In the context of
the preservation of agricultural lands, unfortunately, the method has
not met with much success. Only a few jurisdictions have experimented
with a TDR program to prevent the development of farmlands, and
the response has been less than overwhelming. Nevertheless, TDR is
a potentially effective method of development control, and more ex-
perimentation is needed before a determination can be made about
whether the concept should be discarded. Since farmland is extremely
important to California, and since the CLCA is ineffective, as
previously discussed, this state should try all feasible alternatives to
preserve prime croplands. TDR is one alternative that should be studied
and perhaps adopted in California.

The concept of TDR is relatively simple, although in practice a
TDR program might be quite complex. As a method of preserving
prime agricultural lands, a TDR program could resemble the follow-
ing. First, a local government designates a “planning district” com-
prised of an area of undeveloped land that is subject to development
pressure. Within the planning district are two other designated areas,
a “conservation” zone and a “transfer” zone. The conservation
zone consists of prime farmland that is appropriate for preservation.
As part of the TDR program, land within the conservation zone is
restricted to agricultural uses. The transfer zone consists of land that
is either not prime or is in some way more appropriate for
development.

LAND USE 966, 966-73 (2d. Ed. 1976) (giving an overview of the concept of TDR); Hansen
& Schwartz, Two Methods for Preserving Agricultural Land at the Urban Fringe: Use-Value
Assessment and Transferable Development Rights, 2 AGRICULTURE AND ENVIRONMENT 165,
172-180 (1975); Merriam, Making TDR Work, 56 N.C.L. REV. 76, 81-84 (1978). Schnidman,
Transferable Development Rights: An Idea in Search of Implementation, 11 LAND & WATER

187. The right is treated as one of the “bundle” of rights incident to land ownership, and
in the TDR concept is treated as a marketable item. See Beuscher, Gitelman & Wright, supra
note 186, at 966.

188. See Schnidman, supra note 186, at 342; Merriam, supra note 186, at 86-87.

189. See Schnidman, supra note 186, at 348-51.

190. Id.

191. Id. at 341.

192. Id. at 350.

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As compensation for bearing the burdens of preservation, landowners in the conservation zone are issued a number of “development rights.” These rights may then be sold to a government operated development rights “bank,” or directly to developers or other landowners in the transfer zone. Although transfer zone lands are designated for development, these lands are restricted so that only a minimal level of density can be achieved without the purchase of development rights from the conservation zone. To develop transfer zone lands beyond the “base level” of density, developers are compelled to purchase development rights. This provision ensures that conservation landowners will be compensated for the loss of their rights. For example, a person desiring to develop transfer zone lands might be limited to building two single family homes per acre, unless that person buys extra development rights from conservation zone landowners. To achieve increasing levels of density, more development rights will be required.

The strengths of a TDR program are threefold. First, lands in the conservation zone can be restricted to provide enduring preservation. Second, landowners receive compensation in the form of development rights which, theoretically, can be exchanged for money between landowners and developers. Third, money paid to conservation landowners comes from the other landowners or developers, not from public funds. The public receives the benefits of agricultural preservation without having to pay large sums of money for the privilege.

In practice, a TDR program would be more complex than the above scenario might suggest. To begin with, a planning district must be established and decisions made as to the number of development rights to be issued. Also, a determination of how development rights will be allocated and who will receive them must be made. Finally, a process must be created by which development rights may be bought and sold.

Creation of the planning district cannot take place in a vacuum.

193. See Hansen & Schwartz, supra note 186, at 175. Ideally, a development rights bank would have the power of eminent domain in order to purchase development rights from reluctant owners. Id.
194. Id.
195. Id. “For example, a district may require no development rights for two units per acre of residential housing, but have a density bonus that permits construction of up to eight units per acre if landowners (purchase) the TDRs (development rights) needed for the additional units.” Id.
196. Id. at 174.
197. Id. at 174-75.
198. Id. at 175.
Aside from determining which lands should be developed and which should be preserved, the development market must be analyzed carefully to ensure that a demand for development exists in the area, and that the demand for development is sufficient to obtain the desired density in the transfer district. These market considerations are vital to the success of a TDR program.\textsuperscript{199} Without an adequate demand for development, comprehensive plans regarding the transfer district cannot be fulfilled. In addition, development demand must be sufficient to ensure that conservation zone landowners will be able to sell their development rights and be compensated for the restrictions imposed on their lands.

The next step in implementing a TDR program is the allocation of development rights to landowners in the conservation zone.\textsuperscript{200} The market value of these lands undoubtedly will vary according to their development potential.\textsuperscript{201} The number of rights issued to a given landowner, then, probably should depend on the size and development potential of the landowner’s parcel. A more simple method might be to issue development rights according to acreage owned. For example, a landowner with 100 acres of prime land would be issued 100 development rights. Either method, of course, could elicit political opposition from landowners who feel they are being treated unfairly compared with their neighbors. The choice, therefore, might be a difficult one to make.

The final component in the adoption of a TDR planning system is the creation of a process by which development rights are bought and sold. Rights might be transferred on the open market, or through a government operated development rights “bank” that would buy and sell the rights as a middleman.\textsuperscript{202} The open market option would require no outlay of government funds, but would be more difficult to regulate. The bank option would require the government initially to pay conservation zone landowners for their development rights, but would allow developers easy access to those rights without having to negotiate sales with individual conservation zone landowners. In either case, a working market must be ensured, otherwise the entire scheme may collapse.

\textsuperscript{199} See Merriam, \textit{supra} note 186, at 131.
\textsuperscript{200} See Hansen \& Schwartz, \textit{supra} note 186, at 174-75.
\textsuperscript{201} \textit{Id.} Land closer to services and major roads, for example, would be more valuable for development than more isolated lands that would require substantial initial investments to prepare for development. \textit{Id.}
\textsuperscript{202} \textit{Id.} at 175.
F. Experience With TDR

TDR programs are attractive because in theory they can provide long-term preservation of agricultural lands, compensate landowners for a loss of rights without a huge outlay of government funds and provide a new tool for sound land use planning at the local level.\textsuperscript{203} The implementation of a TDR proposal similar to the one outlined above, however, could prove quite complex. One great difficulty in establishing a TDR system is predicting the future. The system is based on a gamble that the interest in developing the transfer district will be sufficient to induce the purchase of development rights to the extent that landowners will be compensated and the desired density for the transfer zone will be reached.

The difficulty in predicting the future may be an important factor underlying the limited experimentation with TDR. The concept of transferable development rights has existed for more than two decades; yet, only about a dozen jurisdictions have enacted TDR ordinances aimed at preserving agricultural or other open-space lands.\textsuperscript{204} In addition, none of those proposals effectively forecloses the possibility of development in the conservation zone.\textsuperscript{205} Perhaps because of political considerations, landowners instead are given the option of developing at a low density or selling some of their development rights.\textsuperscript{206} After forty-seven years of collective experience with TDR by these jurisdictions, only 107 development rights had been transferred and 184 acres preserved by 1981.\textsuperscript{207}

The scope and ambition of TDR ordinances have been limited, however, and a possibility remains that TDR yet could prove to be an effective method of preserving agricultural lands. TDR is too attractive to be eliminated as an alternative to the CLCA, but more experience with the method is needed before the true potential can be assessed. Although uncertain, TDR should be considered seriously in light of the long-term consequences of the loss of prime farmlands, and must be weighed against the options discussed here and against other proposals that have been made.

G. Assessing the Alternatives

The proposals discussed to this point all have the potential of being
more effective than the CLCA for the conservation of prime agricultural lands in California. Each proposal, however, has drawbacks. Statewide, centralized planning apparently lacks sufficient support to be enacted in California. Land trust programs suffer from an unavailability of funds. Transferable development rights proposals suffer from complexity and economic uncertainty.

This author proposes that, while a strong statewide planning program may not be adopted in California, the state can do more to encourage comprehensive and effective planning for the preservation of farmland. An example is provided by the state of Wisconsin. Wisconsin has provided not only tax benefits to farmers, but also has been successful in helping to create a consensus of opinion by which better planning is possible.

INCENTIVES TOWARD BETTER PLANNING:
THE FARMLAND PRESERVATION ACT

The Farmland Preservation Act208 (hereinafter the FPA), enacted by Wisconsin in 1977, may provide an example for effective and politically acceptable agricultural land preservation in California. The FPA, like the CLCA, is an enabling act that allows counties to offer owners of prime agricultural lands209 a tax advantage in return for a restrictive use agreement. FPA contracts last five years,210 and, unlike the CLCA, do not contain automatic renewal or cancellation provisions. The FPA is similar in some respects to the CLCA, and a program like the FPA may be adoptable in California without undue upheaval. The two programs, however, contain significant differences.

One important difference between the FPA and the CLCA is in the form of tax advantage. Instead of reducing property tax assessments, the FPA offers farmers state income tax credits or rebates.211 The size of the credit or rebate varies according to how burdensome a farmer's property taxes are in relation to farm income.212 Those farmers having the lowest income and the highest property taxes receive the greatest benefits. In other words, farmers with relatively

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209. The FPA does not define prime agricultural lands per se. Lands eligible for enrollment must be in parcels of 35 acres or more, and must produce average annual gross profits of at least $6,000 from their agricultural use, which can include such things as beekeeping, fish or fur farming, floriculture, and sod farming, as well as growing table crops and raising livestock. Id. §91.01.
210. Id. §91.13.
211. Id. §71.09(11). This statute contains the tax provisions of the FPA. Id.
212. Id. §71.09(11)(a)7(am).
small-scale operations on the urban fringe generally will have the highest property taxes compared to income. These farmers will receive larger rebates or credits than farmers with large-scale operations outside the urban fringe, where property taxes should be lower. Unlike the CLCA, this arrangement not only focuses incentives toward those farmers who are most susceptible to development pressure, but also avoids a direct loss of income by local governments. Local governments do not lose revenue because property taxes are not reduced. This result could increase the chances for local government support.

The most important aspect of the FPA is not the form of the tax advantage, however. The important component is the FPA requirement that participating counties enact either (1) agricultural preservation plans,\(^213\) if the county is primarily rural, or (2) exclusive agricultural zoning,\(^214\) if the county is primarily urban. During the initial five years after the enactment of the FPA, contracts were temporary.\(^215\) If the participating counties did not enact zoning or preservation plans by five years after enactment of the statute, the contracts would automatically terminate, and all credits or rebates received by farmers would have to be repaid.\(^216\) This provided an incentive for enrolled farmers to support vigorously the adoption of preservation plans or zoning.\(^217\) As an additional incentive, credits and rebates doubled upon adoption of preservation plans and zoning.\(^218\) In addition to incentives for the farmers, the FPA provides incentives for effective local governmental participation.

The FPA mandated that plans and zoning conform with state guidelines for structure and administration.\(^219\) Careful studies were required to determine which agricultural lands should be preserved.\(^220\) The FPA provided for state funding of the study process,\(^221\) so that the expense would not deter counties from participating, and so that counties might be able to employ outside help to compensate for any lack of expertise or manpower on the county planning staffs.

From all indications, the Wisconsin program has effectively enrolled

\(^{213}\) Id. §§91.51-.56.
\(^{214}\) Id. §§91.71-.79.
\(^{215}\) Id. §§91.35-.41. In the language of the statute, these are "initial agreements" that last until preservation plans or zoning are adopted or until the deadline is past. Initial agreements can be entered into at any time during the first five years the FPA is in effect, and might or might not last five years. Id.
\(^{216}\) Id.
\(^{217}\) See Fletcher & Little, supra note 19, at 17-20.
\(^{219}\) Id. §§91.51-.79.
\(^{220}\) Id. §§91.05, 91.53, 91.73.
\(^{221}\) Id.
farmers and provided the opportunity for effective planning. The genius in the FPA is in the use of tax advantages not only to obtain restrictive use agreements, but to create support for stricter and more comprehensive planning for the preservation of farmlands than that which existed previously. The FPA also avoids providing an incentive to local governments to refrain from using the act. A local government will have fewer worries about tax losses, and may be more inclined to administer the preservation measure effectively. The avoidance of a financial disincentive to local governments and the use of tax incentives to create a consensus for effective planning give the FPA an advantage over the CLCA. California should adopt a similar measure.

Follow the Example of Wisconsin

Any attempt to replace the CLCA with a farmland conservation measure similar to the FPA undoubtedly would face opposition. The owners of large landholdings removed from the urban fringe have vested interests in the CLCA and tax benefits provided by the Act. The beneficiaries of the CLCA have the resources to mount substantial political opposition to proposals that may affect their interests adversely. In addition, developers and construction industry groups have a stake in the current, relatively weak system of land use planning and decision-making, and certainly would oppose a measure that might make the system more strict.

A program modeled after the FPA might also be opposed as being too costly. The state of Wisconsin annually pays an estimated seven to ten dollars in tax credits for each acre of land protected by the FPA. At first glance, this looks like a substantial drain on the state budget. The CLCA, however, may cost participating local governments more than $30 million in lost tax revenues each year. Of this total, the state annually reimburses local governments about $13.5 million. Fewer than one million acres of urban prime lands are enrolled in the CLCA. The state, therefore, is paying substantially more than $7 to $10 per acre for a dubious degree of protection for the lands most in danger of being developed. The FPA, which focuses

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222. See Fletcher & Little, supra note 19, at 17-21.
223. See Fellmeth, supra note 3, at 41 (listing top ten beneficiaries of the CLCA).
224. See supra notes 167-68 and accompanying text.
225. See Fletcher & Little, supra note 19, at 19.
226. See id. at 20; NALS Report, supra note 32, at 210.
227. See supra note 89 and accompanying text.
228. See supra note 84 and accompanying text.
on urban fringe lands and contains planning provisions lacking in the CLCA, is a bargain by comparison.

Effective administration of a program like the FPA also could be a problem. The FPA relies on local planning and zoning to achieve its purposes, and the act works no profound changes in the structure or enforcement of planning and zoning. In the past, many local governments have not used zoning and planning to the advantage of farmland preservation. Indications are present, however, that local governments are becoming more responsive to the idea that the best agricultural lands should be conserved. About half the counties in California have adopted urban “limit” zones that of themselves cannot halt urban sprawl, but which at least evidence a policy of containing sprawl. Some counties, without state compulsion, have used all available means to keep development out of agricultural areas. Other counties and cities, through local government action or voter initiative, have shown a willingness to try innovative methods of limiting growth or channeling that growth to nonagricultural areas.

A program similar to the FPA could encourage and accelerate what might be an emerging consensus in favor of preserving prime farmlands and provide a focus for efforts now being made by California localities. Despite inevitable political opposition and concerns about cost, the California Legislature should show some fortitude and replace the CLCA with a program that follows the essential provisions of the FPA. A preservation program like the FPA could enlist as allies both urban fringe farmers, who would have a stake in the adoption of preservation plans and exclusive agricultural zoning, and local governments, that are losing property tax revenues because of the CLCA. If the legislature can communicate the importance of preserving agricultural land to the voters and convince them to favor farmland preservation measures, the state could have a coalition strong enough to overcome the short-sighted provincialism and special interest influence that dominates current land use policy making.

CONCLUSION

The CLCA has proved ineffective in preserving prime agricultural lands in California. The state legislature should replace the CLCA with a measure similar to the FPA enacted by Wisconsin in 1977.

229. See LOCAL EFFORTS, supra note 165, at 3.
230. Id.
231. Id.
This comment has explored four alternatives, any one of which could, if used to full potential, be more effective than the CLCA. Probably the strongest method of farmland preservation would be statewide, centralized land use planning. This alternative, however, is not likely to be adopted in California because of political opposition. Another option is the extensive use of land trusts. Land trusts are politically acceptable, but would require a large outlay of funds, and these funds are probably not going to be forthcoming. A third alternative is the widespread use of transferable development rights programs. Although TDR programs have the potential of being effective methods of preserving farmlands, they require a prediction of future local development markets, and considerably more experimentation may be needed before TDR can be utilized effectively.

The final alternative is the one chosen by Wisconsin. The Farmland Preservation Act gives enough deference to local decision-makers to be politically acceptable; yet, the Act contains guidelines for effective farmland preservation. The strength of the FPA lies in the potential of the Act to build a consensus for the preservation of important farmlands. The benefits of the Act are focused on urban fringe croplands and are tied to comprehensive preservation planning at the local level. California should follow the lead of Wisconsin and adopt a program substantially similar to the FPA. This state cannot afford to let an unfettered land market control the future of California agricultural lands. Prompt and effective action is required to ensure that the bountiful diversity of agriculture in California will not be someday only an irretrievable memory.

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