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**The California Farmland Trust: The Proposal to  
Balance the Rural and Urban Land Use  
Needs of Californians**

by

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# ARTICLES

## The California Farmland Trust: The Proposal to Balance the Rural and Urban Land Use Needs of Californians

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### *Introduction*

**T**HE UNITED STATES' great frontier is gone forever. Our expanding population requires increasing amounts of land for housing, commerce and industry. At the same time, large amounts of land are needed to feed this expanding population. Additionally, environmental pressures to protect scenic lands reduce the amount of acreage available for commercial land use. As a result, land is an increasingly scarce and valuable resource in our country.

Governments have attempted to reconcile these competing interests when forming land use programs. A major planning objective has been the preservation of farmlands.<sup>1</sup> European countries,

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\* Class of 1984.

1. See, e.g., Juergensmeyer, *Farmland Preservation: Vital Agricultural Law Issue for the 1980's*, 21 WASHBURN L.J. 443 (1982), for a comprehensive discussion of the farmland preservation issue. The article is particularly helpful in outlining the several land use planning tools available for preserving farmlands. See also NATIONAL AGRICULTURAL LANDS STUDY, AN INVENTORY OF STATE AND LOCAL PROGRAMS TO PROTECT FARMLAND (1981) (herein-

especially France, have instituted aggressive government-sponsored land use planning programs.<sup>2</sup> Canada has several provincial programs which balance effectively the needs of competing land use interests.<sup>3</sup> A few states in the eastern United States have enacted government land acquisition programs.<sup>4</sup> California, with the Williamson Act<sup>5</sup> and the California Coastal Conservancy,<sup>6</sup> has laid the tentative groundwork for a state land trust program.

In spite of legislative efforts<sup>7</sup> to the contrary, California's expanding population has stimulated rapid urban conversion of farmlands. This may undercut California's strong agricultural economy.<sup>8</sup> For this reason, there is a need to protect farmlands. In

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after cited as NALS: AN INVENTORY OF PROGRAMS), for a detailed summary of government farmland protection programs. This study shows that since Maryland enacted its differential assessment law in 1956, state and local governments have been active and inventive in attempting to conserve farmland. See also B. DAVIES & J. BELDEN, A SURVEY OF STATE PROGRAMS TO PRESERVE FARMLAND (U.S. Dep't of Commerce PB-295 991, 1979), for a discussion of state government farmland preservation programs ranging from differential assessment to land banking. See *infra* notes 63-72 and accompanying text for a discussion of public land trust programs in the United States.

2. See C. Little, *Middleground Approaches to the Preservation of Farmland* 20-22 (1980) (discussion paper presented to the American Land Forum, Washington D.C., June 5, 1980) (hereafter cited as Little), for a discussion of France's SAFER farmland preservation program. See also Note, *Public Land Banking: A New Praxis for Urban Growth*, 3 CASE W. RES. 897, 908-12 (1972) (hereafter cited as Note, *Public Land Banking*), for a survey of European land use programs; especially those of Sweden and The Netherlands. See also *infra* notes 28-41 and accompanying text.

3. See, e.g., Young, *The Saskatchewan Land Bank*, 40 SASK. L. REV. 1 (1975); see also McClaghry, *Rural Land Banking: The Canadian Experience*, 7 N.C. CENT. L.J. 73 (1975), for an overview of several Canadian farmland preservation programs. See also *infra* notes 42-56 and accompanying text.

4. See generally authorities cited at *supra* note 1 and *infra* notes 63-72 and accompanying text.

5. The Williamson Act, CAL. GOV'T CODE §§ 51200-51295 (West 1983), has been the subject of several writings. A few recent examples are: Dresslar, *Agricultural Land Preservation in California: Time for a New View*, 8 ECOLOGY L.Q. 303 (1979); Widman, *The New Cancellation Rules Under the Williamson Act*, 22 SANTA CLARA L. REV. 589 (1982); Comment, *The California Land Conservation Act of 1965 and the Fight to Save California's Prime Agricultural Lands*, 30 HASTINGS L.J. 1859 (1979) (hereafter cited as Comment, *California Land Conservation*). For further discussion of the Act, see *infra* notes 76-90, 116-44 and accompanying text.

6. CAL. PUB. RES. CODE §§ 31000-31405 (West 1977 & Supp. 1983). For further discussion of the California Coastal Conservancy, see *infra* notes 91-100 and accompanying text.

7. See, e.g., the Williamson Act, CAL. GOV'T CODE §§ 51200-51295 (West 1983), discussed *infra* notes 76-90, 116-44 and accompanying text; the California Coastal Conservancy, CAL. PUB. RES. CODE §§ 31000-31405 (West 1977 & Supp. 1983), discussed *infra* notes 91-100 and accompanying text.

8. See *infra* notes 103-15 and accompanying text for a discussion of the detrimental

spite of this overwhelming need, a government land trust program must overcome the public's perception that it is another ill-conceived, overly-intrusive and costly government program.

In recognition of this need to conserve key farmlands, this article proposes the creation of the California Farmland Trust. The legislative proposal incorporates features of foreign countries' and other states' programs which have proved successful, such as local citizen participation and the power to preempt proposed sales to developers. The proposal envisions creation of a State Farmland Commission to oversee purchases, but vests actual authority to purchase, sell and improve lands in Regional Farmland Trusts. Each of these Regional Farmland Trusts will coordinate its activities with private trusts and local governments. The California Farmland Trust, operating in conjunction with the traditional land use planning tools of zoning and differential assessment, should be able to conserve vital farmlands needed to feed future generations.

## I. CONTROLLING URBAN GROWTH

### A. *Factors Leading to Urban Conversions in California*

Approximately 150,000 acres of California farmland are urbanized every year.<sup>9</sup> This rapid rate of conversion claims approximately 20,000 to 30,000 acres of *prime agricultural land* annually.<sup>10</sup> Prime farmland, preferred by farmers, is also favored for use

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impact that urban sprawl has on California's economy.

9. This rate of conversion to urban uses is only exceeded in Florida and Texas. *Agricultural Land Protection, 1982: Hearings on AB 3379 before the Committee on Energy and Natural Resources, California Assembly 8* (April 13, 1982) (testimony of Robert J. Gray, Director of Policy Development, American Farmland Trust) (hereafter cited as Testimony of Gray).

California farmland conversion is only part of a national trend. "Each year an estimated 3 to 5 million acres of U.S. farmland are urbanized or used for other nonfarming purposes." COMPTROLLER GENERAL, REPORT TO THE CONGRESS OF THE U.S., CED 79-109, PRESERVING AMERICA'S FARMLAND—A GOAL THE FEDERAL GOVERNMENT SHOULD SUPPORT 8 (Sept. 20, 1979) (hereafter cited as REPORT TO THE CONGRESS, PRESERVING AMERICA'S FARMLAND).

10. URBAN/AGRICULTURAL RESOURCE MANAGEMENT TASKFORCE, CALIFORNIA AGRICULTURAL LAND PRESERVATION, Finding 1 (June 1977) (hereafter cited as URBAN/AGRICULTURAL TASKFORCE).

This conversion rate means that approximately 2% of California's 12.6 million acres of prime farmland is converted annually. See Comment, *California Land Conservation, supra* note 5, at 1861.

Defining the term "prime agricultural land" is not an easy task. For a discussion of the

in urban development.<sup>11</sup>

There are many factors behind the increasing demand for farmland.<sup>12</sup> One contributing to the process has been the phenomenon of ranchettes; small noncommercial farms purchased by hobby farmers. These "gentlemen farmers," more interested in the lifestyle than the economics of farming, are raising farmland prices.<sup>13</sup>

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various approaches, see Allen, *The Prime Question: Defining California's Agricultural Lands*, in OFFICE OF PLANNING AND RESEARCH, ROOM TO GROW, ISSUES IN AGRICULTURAL LAND CONSERVATION AND CONVERSION 15, 15-20 (June 1982), which outlines the three most commonly used formats for determining "prime" lands: (1) Important Farmland Inventory System, (2) USDA Land Capability Classification System and (3) Storie Index Rating System.

Under CAL. GOV'T CODE § 51201 (West 1983) "prime agricultural land" is defined as 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 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 produces an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

11. A study conducted in the 1960's showed that since World War II only a small part of urban development in California has taken place on the five least productive classes of land (classifications developed by the United States Soil Conservation Service), even though these lands are not suitable for irrigated agricultural production. The greatest expansion has taken place on the three most productive classes of land and especially on class I (prime irrigable) land. Wantrup, *The "New" Competition for Land and Some Implications for Public Policy*, 4 NATURAL RESOURCES J. 252, 253 (1964). See generally Juergensmeyer, *supra* note 1, at 444-46, for a discussion of the demand for farmland.

12. A primary factor in the increasing demand for farmland is housing. "The Department of Housing and Community Development estimates that California needs about 300,000 new housing units to keep pace with migration . . . . A recent survey by the League of California Cities found that 516,000 permits for new housing units have been approved in the last three years." Detwiler & Rikala, *A Question of Balance*, in OFFICE OF PLANNING AND RESEARCH, ROOM TO GROW, ISSUES IN AGRICULTURAL LAND CONSERVATION AND CONVERSION 1, 2 (June 1983).

13. The effect of ranchettes on land prices is exemplified in San Luis Obispo County, where rural land was once used primarily for large cattle and grain operations. It is now in the process of being divided into small parcels purchased by retirees and hobby farmers. As a result, lands valued at \$500 per acre 20 years ago now sell for up to \$25,000 per acre. Avey, *Land Use Studies in San Luis Obispo County*, CAL. FARMER, Feb. 1, 1982, at 30.

Because purchasers of these rural homesites are not concerned with making a living from this land, they often are willing to pay a premium for aesthetically-appealing features such as oak trees, streams and gently rolling hills. The disparity in property tax revenues realized from land purchased for ranchettes and that utilized for commercial farms has made it extremely difficult for local officials to resist the proliferation of ranchettes.<sup>14</sup>

At the same time, farmers are playing a role in the price increases for farmlands. For example, farms are expanding operations to maximize profits.<sup>15</sup> This expansion movement increases the demand for prime farmland, and correspondingly the price. Farmers also fuel the demand for prime farmland with the proceeds from the sale of their urban fringe acreage to developers. Such sales produce large profits and provide the means for farmers to bid on prime farmland at premium prices. With the demand for prime farmland increasing and the means to meet that demand available, the upward spiral of farmland prices is assured.

California's property tax system is an additional factor influencing the demand for land. California generally adheres to the traditional method of basing tax assessments on the land's "highest and best use."<sup>16</sup> In remote rural areas, actual "use" value is

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14. Because tax assessments are based on land values, local governments are reluctant to decrease their financial resources by preventing the subdivision of farmlands into ranchettes. As a result, these noncommercial farms have displaced commercial farms in some regions of the state. *Id.* at 30, 31.

15. The average size of a commercial farm in the United States increased from 220 acres in 1950 to over 450 acres in 1978. *Id.* at 30 (study conducted by the United States Department of Agriculture).

16. One commentator has defined "highest and best use" as "the price [the land] will bring in an open market where there is a willing seller and a willing buyer neither of whom is compelled to enter the transaction." Land, *Unraveling the Urban Fringe: A Proposal for the Implementation of Proposition Three*, 19 HASTINGS L.J. 421, 424 (1968). See, e.g., *id.* at 424 n.22 for an in depth discussion of the legal rationale supporting the "highest and best use" taxing method.

California statute provides that "[e]very assessor shall assess all property subject to general property taxation at . . . its full value." CAL. REV. & TAX CODE § 401 (West Supp. 1983) (emphasis added). Furthermore,

"full cash value" or "fair market value" means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both with knowledge of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes.

*Id.* § 110.

virtually the same as "highest and best use" value. However, in urban fringe areas there is a vast difference between the "use" value and "market" value of open land. Urban fringe land often is sold at the present value of the planned subdivision, not at the value of the land's agricultural use.<sup>17</sup> Each sale at "subdivision price" increases the market value of the remaining adjacent farmlands. A strong incentive exists to reap these available profits by selling to subdividers. As a result, property taxes for the surrounding farmlands increase and the cycle begins again.<sup>18</sup>

## B. Existing Land Trust Programs

It is generally recognized<sup>19</sup> that it is both impractical and undesirable to stop absolutely the urban development of farmlands.<sup>20</sup>

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17. See, e.g., *Sierra Club v. City of Hayward*, 28 Cal. 3d 840, 850, 623 P.2d 180, 184, 171 Cal. Rptr. 619, 623 (1981), where the court discussed the effects of the traditional taxing method: "[T]axing land on the basis of its market value compels the owner to put the land to the use for which it is valued by the market. As the urban fringe approaches, the farmer's land becomes more valuable for development. His taxes are therefore increased. . . ."

Furthermore, as one author recently noted, "[t]he assessor, under the traditional assessment system, became the county's defacto planner, and the assessments applied to open-space lands tended to become self-fulfilling prophecies." Comment, *California Land Conservation*, *supra* note 5, at 1864; see also Comment, *The Dilemma of Preserving Open Space Land - How to Make Californians an Offer They Can't Refuse*, 13 SANTA CLARA L. REV. 284, 287 (1972) (hereafter cited as Comment, *Preserving Open Space Land*) (discussing the impact of the traditional tax method on farming on the urban fringe).

18. "As houses go up, so does the value of the remaining agricultural land, and the cycle begins anew." *Sierra Club v. City of Hayward*, 28 Cal. 3d at 850, 623 P.2d at 184, 171 Cal. Rptr. at 623.

Of course, the decision to sell farmland to buyers for nonagricultural use is determined by several factors. These include:

- (1) *demographic factors*, such as the farmer's age, state of health and whether or not he has children who want to be farmers;
- (2) *economic factors*, including the fair market value of the land and the profit which can be made from the land if it is farmed;
- (3) *transitional factors*, such as the landowner's interest in pursuing a nonfarming occupation or moving to another climate; and
- (4) so-called *secondary factors*, such as nuisance complaints by nonfarm neighbors about farm odors and pesticides, decreases in the availability of farm labor, supplies, and services, and increases in government regulation of farming activities.

Juergensmeyer, *supra* note 1, at 445 (emphasis added).

19. See, e.g., Juergensmeyer, *supra* note 1, at 446 ("The quest for farmland preservation must be balanced against the needs and demands of the nonfarm public . . ."); see also Detwiler & Rikala, *supra* note 12, at 1-3 (must balance agriculture demand with housing needs).

20. Detwiler and Rikala distinguish between "preservation" and "conservation." "Preservation means to keep as is, or shut off from use." Detweiler & Rikala, *supra* note 12, at 3.

The public interest in saving farmland must be balanced against the public interest in maintaining a productive urban economy. However, some lands are so peculiarly valuable that they must be protected from urban development. The land trust concept arises from this need to protect vital farmlands.

### 1. *Operating Procedures of a Land Trust*

A land trust is a public or private charitable organization that acquires interests in land and holds these interests for the purpose of conserving the land.<sup>21</sup> Title is held by the trust to assure the preservation of agricultural lands. The land trust need not meet the requirements of a legal trust. Rather, the term "trust" is based on the common definition of a reliance on the character and abilities of someone or something else.<sup>22</sup> In addition to a public entity, trusts may be organized as unincorporated associations, charitable trusts or charitable corporations.<sup>23</sup>

Generally, each trust establishes its own criteria for acquiring property. Some trusts focus on environmentally unique land, others on prime farmland and still others on open space land.<sup>24</sup>

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On the other hand, "[c]onservation implies wise use of a resource." *Id.* Generally, however, most commentators use the terms interchangeably.

21. See Fenner, *Land Trusts: An Alternative Method of Preserving Open Space*, 33 VAND. L. REV. 1039, 1042 (1980). The land trust is also known as a conservancy or land conservation trust. *Id.* at 1042 n.19.

Several authorities have distinguished between public and private programs, and have termed acquisition programs by governing organizations as "land banking." See, e.g., Juergensmeyer, *supra* note 1, at 461, defining land banking as "the purchase of farmland by governmental or public organizations for the purpose of insuring that the land remains in agricultural production." (emphasis added). However, for purposes of this article's proposal, which encompasses both governing bodies and private organizations, and because public and private organizations in this area are not dissimilar, the term "land trust" will be used to include acquisition efforts made by both public and private organizations. Accord Juergensmeyer, *supra* note 1, at 462 (noting that "land banking" can be done on a private as well as a public basis).

22. Fenner, *supra* note 21, at 1047 n.49.

23. Juergensmeyer, *supra* note 1, at 463. For a discussion of these three organizational structures, see Fenner, *supra* note 21, at 1047-51.

An example of a charitable corporation is the American Farmland Trust, which was incorporated in 1980 pursuant to the District of Columbia Nonprofit Corporation Act. Juergensmeyer, *supra* note 1, at 463.

24. For example, in Massachusetts and New Hampshire the property must be used, either currently or recently, for commercial agriculture. In New Jersey the land must be "prime" with soil conservation classifications of I, II or III. In Maryland the land must be in an agricultural district. R. COUGHLIN & J. KEENE, *THE PROTECTION OF FARMLAND: A REFER-*



Trusts also may consider personal characteristics of the targeted landowner. Under existing programs in the United States, trusts cannot compel a landowner to sell.<sup>25</sup> If there is sufficient funding and a willing seller, trusts can purchase the entire fee, impose restrictions on development and then sell or lease the land subject to the restriction. Trusts also can accept donations of the fee, or the land's development rights. Additionally, trusts can purchase property development rights.<sup>26</sup> Trusts also may purchase the property at less than market value; a practice that allows the landowner to take a charitable deduction on the difference between the fair market value and the discounted price. This is known as a "bargain sale."<sup>27</sup> Finally, trusts advise landowners of the advantages of the available transaction options. In this way, the purchasing organization facilitates the permanent conservation of vital farmlands.

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ENCE GUIDEBOOK FOR STATE AND LOCAL GOVERNMENTS, NATIONAL AGRICULTURAL LANDS STUDY 152-53 (1981).

The preference is to avoid limiting purchases to prime farmlands because key lands, in terms of their strategic location in curbing urban growth, often will not be designated as prime. Interview with William Shafroth, Regional Director American Farmland Trust, in San Francisco (Sept. 7, 1983).

25. R. COUGHLIN & J. KEENE, *supra* note 24, at 153.

26. "The value of the development rights is defined as the difference between market value of the land and its value solely for agricultural purposes." *Id.* at 148. Because "[b]oth the absolute value of development rights and their value as a percent of market value increase as development pressure increases," the development rights of target lands will be the most expensive. *Id.*

27. A "bargain sale" occurs where the landowner, in effect, sells a portion of the property and donates a portion of the property. See 26 U.S.C.A. §§ 170(e)(2) (West 1978 & Supp. 1982), 1011(2) (West 1982), for the tax effects of a bargain sale. See also Fenner, *supra* note 21, at 1087-91, for a discussion of the method to determine the amount of charitable deduction allowed for a bargain sale.

The land trust must meet the requirements of 26 U.S.C.A. §§ 130(c)(2) (West Supp. 1983), 170 (West 1978 & Supp. 1983), if the donor is to qualify for the deduction. Section 170(c)(2) requires, in part, that a charitable contribution be made to an organization:

- (b) organized and operated exclusively for religious, charitable, scientific, literary or educational purposes . . . ;
- (c) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
- (d) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

*Id.* § 170 (West 1978).

## 2. *Foreign Land Conservation Programs*

Canada and the countries of Western Europe have led the way in implementing active government land acquisition programs. Western Europe's activism can be traced directly to its shortage of suitable land for both urban and agrarian needs. Assertive land use planning has been deemed necessary to ensure orderly growth. Canada, in comparison, is lightly populated and much of the country remains untouched by urbanization. The source of Canada's activism, perhaps, may lie in its close philosophical relationship with Europe. Although these foreign programs may reflect differing cultural and political orientations, they are outlined to serve as models for this article's proposal.

### a. *Europe*

Most European programs focus primarily on achieving orderly urban development. For example, Stockholm has purchased large areas of open land near the city.<sup>28</sup> Until needed for development, the land is leased out to farmers.<sup>29</sup> When mass transportation and other public facilities become available,<sup>30</sup> the government can lease the land to developers. Similarly, The Netherlands has been aggressive in planning urban development by acquiring and leasing lands to developers. The Netherlands controls urban growth by imposing specific development restrictions on its lease contracts.<sup>31</sup> Although financial constraints limit the applicability of either program to the United States, they are useful as good examples of how a government can provide for orderly urban growth.

France conserves farmland through its public acquisition pro-

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28. Under the Stockholm program, landowners must sell once the property is targeted for acquisition. Property owners are paid market value. These acquisitions are financed by funds borrowed on the open market. Once acquired, the city's boundaries are extended to include this land. Note, *Public Land Banking*, *supra* note 2, at 908-09.

29. *Id.* at 909.

30. As a result, several well-planned communities have been built on lands acquired by the land bank. *Id.* at 908.

31. "While the type of disposition varies among cities, appropriate covenants or lease specifications intricately specify the details of development to be followed by private developers for each individual parcel of land released." *Id.* at 911.

A supplemental feature of The Netherlands program is that a city legally can take possession of condemned property within three months after beginning condemnation proceedings. The expropriated landowner is liberally indemnified and is awarded current market value plus any potential value due to desirable location. *Id.* at 911-12.

gram. Sociétés d'Amenagement Foncier et d'Établissement Rural (hereafter referred to as SAFER) are local, nonprofit corporations statutorily empowered by the French government to preempt any farmland sale in their respective districts.<sup>32</sup> Authorized in 1960, a SAFER may be established for a single county or for several together.<sup>33</sup> SAFERs are financed by local farm organizations and farm lending institutions.<sup>34</sup>

The SAFER is authorized to buy and sell farmland, either through voluntary sale or through preemption. Preemption is used for approximately sixteen percent of the acquisitions and is believed to be a key operational function.<sup>35</sup> The price is based on a public appraisal when a sale is by preemption,<sup>36</sup> but the purchase price of land sold voluntarily to the SAFER is negotiated.

Once acquired, the SAFER may hold the land for up to five years while making conservation improvements and organizing tract-assembly projects.<sup>37</sup> The land is usually resold to farmers. The selling criteria are not based on the highest bidder but, rather, on who will benefit most by acquiring the new land.<sup>38</sup> The purchaser must farm the land for fifteen years.<sup>39</sup>

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32. The land is only subject to preemption if the SAFER previously had designated the land for farm use. The land cannot be in a development district nor can it be *planned* for urban use. Once the land is designated as *farmland*, any sale is void if no notice is given to the SAFER. Approximately 60% of France's agricultural land is subject to the right of preemption. Little, *supra* note 2, at 20-21.

33. The largest SAFER includes five counties (*i.e.*, Departments). SAFERs now extend to almost all French counties. *Id.* at 21.

34. The capital is put into a revolving fund. The start-up capital subscription for a SAFER is approximately \$200,000. *Id.*

35. In order to preempt a sale, the SAFER requests the local government to designate land subject to right of preemption for farm use. The local government must solicit opinions from farm organizations and submit a recommendation to the Minister of Agriculture. If the recommendation is favorable, the Minister of Agriculture publishes a decree designating the area subject to preemption. Once published, people selling farmland are deemed to have notice. The preemption right is granted for three to five years and can be renewed. *Id.*

36. "Farm organizations in France insisted on the right of preemption coupled with a public appraisal to assure that the SAFER could keep good land in agriculture and avoid a kind of hit or miss performance that might vitiate a preservation program if these authorities were not available." *Id.*

37. This is to improve the land's productivity and ensure that the farm is one which is large enough to be cultivated economically. *Id.* at 21-22.

38. Preference is given to farmers with small landholdings, farmers willing to trade their present lands for more efficient holdings, farmers with condemned lands and young farmers. *Id.* at 22.

39. *Id.*

The SAFERs' record as a land conserving organization has been impressive. Between 1964 and 1975, SAFERs purchased 2.1 million acres of land and sold 1.7 million.<sup>40</sup> A chief factor in their success is their power to preempt farmland sales. SAFERs only exercise their power on land facing imminent urban development, thus deterring potential developers from building on prime farmlands.<sup>41</sup> The SAFERs are a good example of locally organized, privately financed land conservation organizations which effectively channel urban growth by actively protecting lands in danger of urban conversion. Features of the SAFER program, including local organization, private financing and preemption, could feasibly be adopted in the United States.

### b. *Canada*

Unlike that of the United States, the Canadian federal government plays an active role in land use planning. The federal government provides financial grants for municipal land assembly projects<sup>42</sup> through the Central Mortgage and Housing Corporation. The federal government also makes loans at discounted interest rates to provincial governments assembling tracts of land for public housing.<sup>43</sup> In 1972, the federal government established the Small Farm Development Program which, in exchange for conveyance of title in the farm, grants a retiring farmer either a cash grant plus a life estate in the entire parcel or a fee simple ownership in the dwelling house.<sup>44</sup> In financing urban development, pub-

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40. *Id.*

41. Even though SAFERs purchase only approximately 12% of French farmland sold annually, the preemption right gives the SAFERs a greater land use influence than is indicated by their actual purchases. *Id.*

42. Under land assembly projects, local governments acquire, connect with municipal utilities and resell land for urban use within prescribed boundaries. Comment, *Land Banking: Development Control Through Public Acquisition and Marketing*, 6 ENVTL. L. 191, 197 (1975) (hereafter cited as Comment, *Public Acquisition*).

43. Under § 40 of the National Housing Act, the federal government finances 75% of the capital cost of the land assembly program, the provincial government 20% and the municipality the remaining 5%. McClaughry, *supra* note 3, at 74, 75.

44. Under § 42 of the National Housing Act, the federal government lends 40% of the capital cost to the province, which retains full ownership of all acquired lands. The federal government also subsidizes half of the operating losses for these housing projects. McClaughry, *supra* note 3, at 75.

44. Farmers eligible for this incentive program must have assets of less than \$60,000 (Canadian dollars). *Id.* at 81.

lic housing and small farm programs, the Canadian federal government has established a persuasive model of successful land use planning.

Canada's most publicized land acquisition program is underway in Saskatchewan.<sup>45</sup> The Saskatchewan Land Bank Commission was established in 1972 to purchase farmland and lease it back to young farmers.<sup>46</sup> The program was implemented in response to the depressed rural economy, the shortage of qualified land buyers, the disappearance of the family farm and the financial inability of young farmers to purchase farmland.<sup>47</sup> This *farm-support* program seeks to remedy these rural problems by, in effect, subsidizing certain farmers.

Although the Saskatchewan program does not address the major United States problem of urban sprawl, nevertheless it illustrates one government's efforts to conserve farmland. The program authorizes the Land Bank Commission to purchase fee simple interests in farmland, for which it pays the current market value price.<sup>48</sup> The farmlands then are leased to those farmers meeting the Commission's criteria.<sup>49</sup> The lessee is given an option to purchase the property, which, if exercised, entitles him to receive a twenty percent discount on the purchase price provided he agrees

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45. For a detailed discussion of the Saskatchewan program, see Young, *The Saskatchewan Land Bank*, 40 SASK. L. REV. 1 (1975).

46. In the first full year of operation (1972-73), the Commission purchased 168,481 acres at a total cost of \$10.9 million, and entered into 425 leases averaging approximately 404 acres apiece. McClaughry, *A Model State Land Trust Act*, 12 HARV. J. ON LEGIS. 563, 574-75 (1975) (hereafter cited as McClaughry, *Model State Land Trust*).

47. "The objective of the land bank program was to help owners of farmland dispose of their land at a fair price and to help new or young farmers get established in the industry." Little, *supra* note 2, at 18.

48. The Commission is not authorized to preempt sales or compel purchases. If offers to sell exceed available funds, the Commission prioritizes lands in the following order:

- (1) Large tracts of land that can support two or more farmers.
- (2) Complete farm units.
- (3) Property of retiring farmers who want to transfer the land to their descendants.
- (4) Lands that can be used to establish a viable farm unit.
- (5) Property from owners who need to sell, yet lack another sales alternative.

McClaughry, *supra* note 3, at 83.

49. Generally, the lessee must be a Canadian citizen or have landed immigrant status, must have declared an intent to live in Saskatchewan for the duration of the lease term, must be primarily a farmer and must have net worth of less than \$60,000 and an average annual net income for the past three years of less than \$10,000. *Id.*

Although the lessee does not hold legal title to the property he must pay property taxes. *Id.*

to continue farming the land.<sup>50</sup> This purchase option serves as sufficient incentive for lessees to maintain and improve the soil quality of their lands. By concentrating on farmlands, the Commission tailors its land acquisition program to meet the objective of rural economic revitalization.

The Prince Edward Island Land Development Corporation is the most useful Canadian model for application in the United States.<sup>51</sup> Established in 1969 in response to the frequent abandonment of small family farms, the Corporation's function is "to augment the regulatory provisions of the province's development plan by means of judiciously buying and selling properties to advance the purposes of the plan."<sup>52</sup> Its major objective is to consolidate good agricultural lands so as to increase farm profitability. To meet this goal, the Corporation is authorized to buy, hold and reorganize farm units, and then sell or lease these lands to farmers.<sup>53</sup>

Prince Edward's private citizens are active participants in the program: The Rural Development Council is a citizen's organization which works with the Land Development Corporation and the Land Use Service Center, a local planning agency.<sup>54</sup> The Rural Development Council organizes planning meetings and obtains feedback from citizens regarding planning and purchasing decisions. A Rural Development Council member works with the Land Use Service Center to identify farmers who might want to purchase or sell land.<sup>55</sup> With this community input, the Corporation can respond better to the Island's changing needs.

Another benefit is the Corporation's ability to stabilize land prices.<sup>56</sup> The Corporation's purchases help maintain a reasonable market value for land in a declining market, and effectively curb rising land prices through sales of land at reasonable prices during

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50. This 20% discount is spread out over the first five years immediately following purchase. Little, *supra* note 2, at 19.

51. For a discussion of the Prince Edward program, see C. Little, *supra* note 2, at 19-20.

52. *Id.* at 19.

53. McClaughry, *Model State Land Trust*, *supra* note 45, at 574. To acquire the land, the Corporation may buy the land outright or set up an annuity pension program for a retiring farmer/vendor. The farm owner also may be eligible for a lifetime lease of his house. Little, *supra* note 2, at 19.

54. Little, *supra* note 2, at 19.

55. *Id.* at 19-20.

56. McClaughry, *supra* note 3, at 80.

market upswings. By consolidating existing farm operations, placing formerly idle lands back into production and stabilizing farm-land prices, the Prince Edward program has been successful in revitalizing the Island's agricultural base. Again, the program does not focus on urban sprawl, but it is an example of how an integrated program of comprehensive planning, judicious buying and selling, and citizen involvement can regulate land use.

### 3. *United States Land Trust Programs*

Unlike Europe and Canada, the United States traditionally has not practiced extensive government land use planning.<sup>57</sup> However, the federal government has laid the tentative groundwork for land trust programs with the National Environmental Policy Act of 1969,<sup>58</sup> "which requires that prime farmland be considered in environmental reviews and impact statements prepared for federal projects."<sup>59</sup> Under the Rural Development Act of 1972, the Secretary of Agriculture is directed to carry out a land inventory and mapping program.<sup>60</sup> Most significantly, Congress enacted the Farmland Protection Policy Act of 1981,<sup>61</sup> which requires all fed-

57. Governments are reluctant to acquire land for any use beyond a narrow range of public purposes. Note, *Public Land Banking*, *supra* note 2, at 913. Traditionally, the public sector has been unwilling to finance land acquisitions. Instead, governing bodies have chosen to exercise the police power to acquire lands, through condemnation, at a reasonable cost. *Id.* at 913.

58. 42 U.S.C.A. §§ 4321-4370 (West 1977 & Supp. 1983).

59. REPORT TO THE CONGRESS, PRESERVING AMERICA'S FARMLAND, *supra* note 9, at 48. The Environmental Policy Act provides that:

[A]ll agencies of the Federal government shall -

.....

(c) include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on -

.....

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

42 U.S.C.A. § 4332 (West 1977) (emphasis added).

60. The Act provides in part:

[T]he Secretary of Agriculture is directed to carry out a land inventory and monitoring program to include, but not be limited to, studies and surveys of erosion and sediment damages, flood plain identification and utilization, *land use changes and trends*, and degradation of the environment resulting from improper use of soil, water and related resources.

7 U.S.C.A. § 1010(a) (West 1980) (emphasis added).

61. 7 U.S.C.A. §§ 4201-4209 (West Supp. 1983). This legislation was enacted pursuant

eral agencies except the Department of Defense to identify any adverse effects that their programs have on the preservation of farmland.<sup>62</sup> This course of legislation indicates that Congress recognizes the existence of the farmland conversion problem, and that government entities on all levels must cooperate if vital farmlands are to be saved from urban sprawl.

### a. *State and Local Land Trust Programs*

In the mid-1970's, several states on the eastern seaboard instituted programs to purchase the development rights in agricultural lands. For example, in 1977 the Massachusetts Legislature authorized the State Commissioner of Food and Agriculture to purchase and restrict the development rights of key agricultural lands.<sup>63</sup> Once in place, these restrictions can be removed only if the landowner repurchases the development rights, the governing body approves of the repurchase and the land is deemed unsuitable for farming.<sup>64</sup> Connecticut enacted a similar purchase of development rights program in 1978.<sup>65</sup> As does Massachusetts, Connecticut authorizes the Agricultural Commissioner to purchase the development rights of farmlands. The major factor in deciding to purchase the development rights of a parcel is "the likelihood that the land will be sold for non-agricultural purposes."<sup>66</sup> In addition, Maine<sup>67</sup>

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to Public Law 97-98, commonly known as the Federal Agricultural and Food Act of 1981.

62. 7 U.S.C.A. § 4202(b) (West Supp. 1983) provides:

Departments [and] agencies . . . shall use the criteria established . . . to identify and take into account the adverse effects of Federal programs on the preservation of farmland; consider alternative actions . . . ; and assure that such Federal programs, to the extent practicable, are compatible with state, units of local government, and private programs and policies to protect farmland.

63. MASS. GEN. LAWS ANN. ch. 132A, § 11A-11E; *id.* ch. 184, § 31-33 (Law. Co-op. 1982).

The program is funded with revenues realized from the issuance of state bonds. Criteria established for purchasing development rights include the land's suitability for agriculture, its fair market value and the degree to which this particular acquisition will preserve the state's agricultural potential. *Id.* ch. 132A, § 11B; B. DAVIES & J. BELDEN, *supra* note 1, at 47.

64. Even if the land is suitable for agriculture, the development rights may be repurchased if two-thirds of both branches of the general court decide that releasing the development rights would be in the public interest. B. DAVIES & J. BELDEN, *supra* note 1, at 47.

65. CONN. GEN. STAT. § 22-26aa-26hh (West Supp. 1983).

66. B. DAVIES & J. BELDEN, *supra* note 1, at 45. Other factors in purchasing decisions are productivity, soil class and purchase price. *Id.*

67. ME. REV. STAT. ANN. 36, § 1111 (1964).



and Maryland<sup>68</sup> are among some of the other states that have active programs authorizing purchases of development rights. The concentration of these acquisition programs along the eastern seaboard demonstrates that governments, when faced with a rapidly declining farmland base, will finance aggressive land use programs.

Additionally, local government programs have been successful.<sup>69</sup> The best known local program is underway in Suffolk County, New York. Instituted in 1974, the program's objective is to acquire development easements on prime farmlands, thus preserving, as farmland, lots of a minimum size of 200 acres.<sup>70</sup> With a \$21 million budget, by 1980 the county had placed fifty-one parcels, constituting 3,214 acres, under easement.<sup>71</sup> Another example is Lancaster County, Pennsylvania, which has instituted a unique deed restriction program. Under this program, a development restriction is placed in deeds of farmland within a prescribed agricultural preserve district.<sup>72</sup> Conservation leaders in Lancaster County now are lobbying for a statewide deed restriction program. These local programs are illustrative of the principle that land trust

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68. MD. AGRIC. CODE ANN. §§ 2-501-2-515 (1982).

69. In addition to the Suffolk County, New York and Lancaster County, Pennsylvania programs discussed in the text, several other local governments have established programs to purchase development rights. These include Howard County, Maryland, Burlington County, New Jersey and King County, Washington. R. COUGHLIN & J. KEENE, *supra* note 25, at 150. For a detailed discussion of existing local farmland conservation programs, see NALS: AN INVENTORY OF PROGRAMS, *supra* note 1.

70. R. COUGHLIN & J. KEENE, *supra* note 24, at 149.

71. This result was achieved despite strong political opposition to the project. The slumping land market in the late seventies may have been a key factor behind the project's early success: Only \$10 million was required to purchase the initial group of properties slated for acquisition, instead of the budgeted \$21 million. *Id.*

72. The county commissioners established an agricultural preserve board in 1980. Each township was allowed to institute its own voluntary program. The board authorized:

- (1) The development of sample deed restrictions;
- (2) The delineation of agricultural preserves, in cooperation with the county's Planning Commission;
- (3) The education of the public about the program;
- (4) The provision of assistance to farmers who wish to use deed restrictions;
- (5) The administration of necessary procedures to obtain restrictions;
- (6) The expansion of the program pending new legislation. Little, *supra* note 2, at 13-14.

programs flexible enough to meet the unique needs of the local community have a better chance for success.

### b. *Private Farmland Trusts*

A few private organizations have become active in preserving farmland. The American Farmland Trust was incorporated in 1980 to coordinate farmland conservation activities.<sup>73</sup> The Massachusetts Farmland Trust is a nonprofit organization which coordinates its activities with the state's program to purchase development rights.<sup>74</sup> The Marin Agricultural Land Trust and the Napa County Land Trust have cooperated with local governments to protect vital farmlands.<sup>75</sup> These private nonprofit organizations are effective agents of farmland conservation policies.

73. The American Farmland Trust's initial purposes were:

[T]o address the issues posed by rapid alteration and depletion of the nation's agricultural land base, . . . .

. . . .

AFT [American Farmland Trust] will inform Americans about the gravity of this threat to agricultural viability nationwide, . . . .

AFT will also participate directly in the protection of critical farm parcels through acquisition of fee title, development rights of easements, either by purchase, bargain sale or donation.

Juergensmeyer, *supra* note 1, at 463-64 (quoting American Farmland Trust, Statement of Purpose, at 1-2 (1980)).

The American Farmland Trust has been very active in California. The development rights of three parcels (located in Glenn, Santa Barbara and Santa Cruz Counties) totalling approximately 5,000 acres, were retired in 1983. Interview with William Shafroth on Sept. 7, 1983, *supra* note 24.

74. The Massachusetts Farmland Trust undertakes the following responsibilities:

(1) Acquiring farm property with capital obtained from private lending institutions. The Trust then holds the property in its own name, eventually placing ownership rights in the state of Massachusetts or the local government. A farmer then can purchase the land at a reasonable price.

(2) Upon the Department of Food and Agriculture's request, the Trust can buy the development rights of a specific farm when the owner cannot wait for the completion of the bureaucratic process.

(3) The Trust can organize private partnerships to acquire key farm properties.

(4) The Trust can serve as an interstate clearinghouse for different methods of preserving agricultural land.

(5) The Trust can assist local conservation commissions and trusts with their programs. Little, *supra* note 2, at 24.

75. See Del Pero, *Ten Years to Life: A Look at Open Space and Conservation Easements*, in OFFICE OF PLANNING AND RESEARCH, ROOM TO GROW: ISSUES IN AGRICULTURAL LAND CONSERVATION AND CONVERSION 23 (1983).

## C. Existing California Farmland Preservation Programs

### 1. The Williamson Act

Presently, the major farmland preservation method utilized in California is the Williamson Act.<sup>76</sup> Proponents of the Act sought to reduce the property taxes of farmlands, believing them to be a prime catalyst in farmland conversion. Although the legislature set up the guidelines for this differential assessment program, local governments were authorized to implement the program.

The voluntary contract is the core of the Williamson Act. Under the Act, a farmer may elect not to develop his land in return for a reduced property tax assessment. The Williamson Act is an enabling act, allowing (but not requiring) local governments to institute contract procedures in their respective counties.<sup>77</sup> However, if a city or county offers a contract to one landowner, it must offer similar contracts to all other eligible landowners.<sup>78</sup> The land must be in an agricultural preserve, established by the city or

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76. CAL. GOV'T CODE §§ 51200-51295 (West 1983). Officially named the California Land Conservation Act of 1965, the Act derives its popular name from John Williamson, then-chairman of the California Assembly Committee on Agriculture. See *id.* § 51200. For references to some of the recent articles written about the Williamson Act, see *supra* note 5.

77. In *Kelsey v. Colwell*, 30 Cal. App. 3d 590, 106 Cal. Rptr. 420 (1973), appellants (*Kelsey*), owners of agricultural land, sued to compel the county's Board of Supervisors to implement the Williamson Act in Merced County. The court stated:

[T]he decision as to whether agricultural preserves should be established in a particular county is not only dependent upon local topographical conditions, community needs and long-range community planning but it is also dependent upon the effect the creation of such preserves would have upon the stability of the economy of that city or county. It is undoubtedly for these reasons that the legislature delegated to local governments, rather than to a statewide agency, the authority to implement the act's provisions within their territorial jurisdictions and in doing so used discretionary language. *The open space law is permissive, not mandatory, legislation.*

*Id.* at 594-95, 106 Cal. Rptr. at 422-23 (emphasis added). Section 51240 of the Government Code provides that "[a]ny city or county may by contract limit the use of agricultural land." CAL. GOV'T CODE § 51240 (West 1983).

78. CAL. GOV'T CODE § 51241 provides:

If such a contract is made with any landowner, the city or county shall offer such a contract under similar terms to every other owner of agricultural land within the agricultural preserve in question . . . . [T]he provisions of this section shall not be construed as requiring that all contracts affecting land within a preserve be identified, so long as such differences as exist are related to differences in location and characteristics of the land . . . .

county, in order to be eligible for Williamson Act contracts.<sup>79</sup> Each contract has an initial term of no less than ten years,<sup>80</sup> during which time any uses other than agricultural or those compatible with agricultural are prohibited.<sup>81</sup> Under California Revenue and Tax Code section 423, the county assessor is required to assess the land to reflect actual use value rather than full market value.<sup>82</sup> Theoretically, this reduces taxes for Williamson contract lands.

A landowner can terminate his Williamson Act contract in two ways: by nonrenewal, or by cancellation. The landowner must give the city adequate notice of his intent if he chooses not to renew.<sup>83</sup> Absent notice of nonrenewal, another year is automatically added to the contract on its anniversary date.<sup>84</sup> The contract remains in effect for nine more years if notice is served.<sup>85</sup> While the contract

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79. An agricultural preserve generally can be no less than 100 acres. A city or county may establish preserves of less than 100 acres in response to the unique characteristics of the area's agricultural operations. The agricultural preserve may contain land other than farmland, but within two years after the first parcel of land in the preserve is placed under contract, use is restricted to that compatible with agriculture. *Id.* § 51230.

80. CAL. GOV'T CODE § 51244 provides: "Each contract shall be for an initial term of no less than 10 years. Each contract shall provide that on the anniversary date of the contract . . . a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in [s]ection 51245." See also *id.* § 51244.5 (contract terms for more than 10 years, automatic extension absent notice of nonrenewal).

81. CAL. GOV'T CODE § 51243 provides:

Every contract shall:

(a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract.

(b) Shall be binding upon, and inure to the benefit of, all successors in interest of the owner. Whenever land under a contract is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided land, any of the rights of the owner in the original contract, including the right to give notice of nonrenewal and petition for cancellation.

82. Under CAL. REV. & TAX CODE § 423 (West Supp. 1983), the county assessor may not consider sales data on lands in determining the value of the restricted open space land and is directed to determine the value of restricted lands by the income capitalization method. This reflects current land use instead of market value—which is based upon potential land use. Under this system of "differential assessment," restricted lands will not be taxed at "subdivision" value.

83. Adequate notice must be in writing. If nonrenewal is sought by the landowner, the city must be given at least 90 days notice prior to the renewal date. However, if nonrenewal is sought by the city, the landowner must be given 60 days notice. CAL. GOV'T CODE § 51245.

84. See *supra* note 80.

85. Under CAL. GOV'T CODE § 51246(a):

If the county or city or the landowner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the

remains in effect, the landowner must keep the property in agricultural use. Furthermore, property taxes gradually are increased to reflect the present value of the land's development potential.<sup>86</sup> On the other hand, a landowner must petition the appropriate governing board if he wishes to cancel his Williamson Act contract.<sup>87</sup> The council or board may give tentative approval to the cancellation if it finds that either (1) the cancellation is consistent with the purpose of the Williamson Act<sup>88</sup> or (2) the cancellation is in the public interest.<sup>89</sup> At the time the petition is tendered, the landowner must pay a cancellation fee assessed at 12.5 percent of the value of the property.<sup>90</sup> This fee, and the close scrutiny given by

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contract, as the case may be.

86. CAL. REV. & TAX CODE § 426 (West Supp. 1983).

87. CAL. GOV'T CODE § 51282(a). Unlike nonrenewal, only the landowner, and not the city, may petition to cancel a contract.

88. Under CAL. GOV'T CODE § 51282(b), the board must make all of the following findings for the cancellation to be consistent with the Williamson Act purposes:

(1) That the cancellation is for land on which a notice of nonrenewal has been served pursuant to [s]ection 51245.

(2) That cancellation is not likely to result in the removal of adjacent lands from agricultural use.

(3) That cancellation is for an alternative use which is consistent with the applicable provisions of the city or county general plan.

(4) That cancellation will not result in discontinuous patterns of urban development.

(5) That there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.

89. Prior to 1981, for cancellation to be granted, a landowner had to establish that it was (1) consistent with the purposes of the Williamson Act and (2) in the public interest. The cancellation requirements have been relaxed in response to the California Supreme Court's narrow reading of the cancellation provisions in *Sierra Club v. City of Hayward*, 28 Cal. 3d 840, 623 P.2d 180, 171 Cal. Rptr. 619 (1981).

Cancellation is in the *public interest* only if the board finds:

(1) [T]hat other public concerns substantially outweigh the objectives of this chapter; and

(2) [T]hat there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.

CAL. GOV'T CODE § 51282(c). For a discussion of the 1981 legislative changes in the Williamson Act cancellation provisions, see Widman, *supra* note 2.

90. CAL. GOV'T CODE § 51282. Under this section, a city or county can waive this cancellation fee under certain circumstances.

the council or board to the circumstances surrounding a cancellation petition, helps preserve the integrity of Williamson Act contracts.

## 2. *The California Coastal Conservancy*

A referendum known as Proposition 20 was approved by California voters in the fall general election of 1972. This referendum created the California Coastal Commission, a state body that monitors urban development on the California coast.<sup>91</sup> To augment the Commission's planning and regulatory powers, the California Coastal Conservancy was created in 1976<sup>92</sup> to protect coastal farmlands from urban development.<sup>93</sup>

The Conservancy is authorized to acquire interests in land to prevent farmland conversion.<sup>94</sup> The Conservancy also may make improvements, such as constructing drainage ditches to improve the productivity of the property, and must take all feasible action to return the land to private ownership.<sup>95</sup> In deciding where farmland interests are to be acquired, highest priority is given to urban fringe lands.<sup>96</sup> Prioritizing in this manner assures that funds will be allocated towards lands that are imminently threatened with urban conversion.

In addition to acquiring direct interests in farmland, the Conservancy may grant funds to nonprofit organizations to acquire

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91. Initially known as the California Coastal Zone Act of 1972, CAL. PUB. RES. CODE §§ 27000-27650 (*repealed by* CAL. PUB. RES. CODE § 27650), the California Coastal Act of 1976 is codified at CAL. PUB. RES. CODE §§ 30000-30900 (West 1977 & Supp. 1983). For a discussion of the California Coastal Commission, see R. COUGHLIN & J. KEENE, *supra* note 24, at 229-36.

92. CAL. PUB. RES. CODE §§ 31000-31405 (West 1977 & Supp. 1983).

93. Among its findings justifying creation of the Conservancy, the California Legislature determined that "the agricultural lands located within the coastal zone contribute substantially to the state and national food supply and are a vital part of the state's economy." *Id.* § 31050. Additionally, "agricultural lands located within the coastal zone should be protected from intrusion of nonagricultural uses, except where conversion to urban or other uses is in the long-term public interest." *Id.* § 31051.

94. "The [C]onservancy may acquire fee title, development rights, easements or other interests in land located in the coastal zone in order to prevent loss of agricultural land to other uses and to assemble agricultural lands into parcels of adequate size permitting continued agricultural production." CAL. PUB. RES. CODE § 31150 (West Supp. 1983).

95. *Id.*

96. "In acquiring interest in agricultural lands . . . the [C]onservancy shall give the highest priority to urban fringe areas where the impact of urbanization on agricultural lands is greatest." *Id.* § 31151 (West 1977).

farmland interests.<sup>97</sup> By funding private acquisitions, the Conservancy attempts to minimize the bureaucratic maze that makes many government land use projects nonresponsive to existing needs. In addition to assisting nonprofit organizations, the Conservancy awards funds to local public agencies and nonprofit organizations for land assembly projects,<sup>98</sup> coastal resource enhancement projects<sup>99</sup> and urban waterfront restoration.<sup>100</sup> Through all of these means, the Conservancy is active in seeking to shape urban development and protect prime farmlands in the coastal zone.

### 3. *Farmland Mapping and Monitoring Program*

The California Legislature enacted the Farmland Mapping and Monitoring Program in 1982<sup>101</sup> to monitor the rate and direction of urban conversion and to identify productive agricultural lands. Under this program, the Department of Conservation must provide annual information on California farmlands to the legislature, local officials and planners, and the general public. The program provides for the statewide mapping of California's commer-

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97. The nonprofit organization must enter into an agreement with the Conservancy in order to get the funding. The agreement shall provide for all of the following:

(1) The purchase price of any interest in land acquired by the nonprofit organization may not exceed fair market value as established by an appraisal approved by the conservancy.

(2) The conservancy shall approve the terms under which the interest in land is acquired.

(3) The interest in land acquired pursuant to a grant from the conservancy may not be used as security for any debt incurred by the nonprofit organization unless the conservancy approved the transaction.

(4) The transfer of land acquired pursuant to a conservancy grant shall be subject to the approval of the conservancy and a new agreement sufficient to protect the interest of the people of California shall be entered into with the transferee.

(5) If any essential term or condition is violated, title to all interest in real property acquired with state funds shall immediately vest in the state.

(6) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state unless another appropriate public agency or nonprofit organization is identified by the conservancy and agrees to accept title to all interest in real property.

*Id.* § 31116 (West Supp. 1983).

98. *Id.* §§ 31200-31215 (West 1977 & Supp. 1983).

99. *Id.* §§ 31251-31270.

100. *Id.* §§ 31200-31313 (West Supp. 1983).

101. CAL. GOV'T CODE § 65670 (West 1983); CAL. PUB. RES. CODE § 612 (West Supp. 1983).

cially important farm and grazing lands, an annual farmland data base report, county farmland reports, annual farmland conversion reports and annual farmland conversion maps.<sup>102</sup> This program should provide a land trust program with sufficient data to maximize its impact by targeting acquisitions in areas which lie in the path of urban development.

## II. SHAPING A FARMLAND TRUST PROGRAM TO MEET CALIFORNIA'S NEEDS

### A. *The Best Use for Land: Conflicts Between Urban and Rural Use*

Faced with increasing population pressures, California is confronted with a complex problem—how best to allocate its natural resources to serve adequately both present and future needs. A growing concern is the state's inability to respond effectively to the debilitating effects of urban sprawl.<sup>103</sup> Once prime land is paved over for freeways, subdivided or excavated for industry, it is lost irretrievably for agricultural use. Urban sprawl decreases local government's ability to provide adequate municipal services, is an aesthetic blight on the landscape and interferes with existing agricultural activities.<sup>104</sup>

Accordingly, there is an immediate need to develop an effective land use program. Farmland can seldom be reconverted once it has been swallowed by urban development. Economic reality ensures the permanency of urban development: The disparity in value between urban and rural land, the need to reverse subdivision and amalgamate large parcels of land into individual economic farm units, and the high energy and fertilizer costs associated with returning the soil to its former production level are the disincentives to reconversion.<sup>105</sup> As a result, farmland faces extinction

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102. CAL. GOV'T CODE § 65570; Conaty & Hays, *Mapping Sources for Agricultural Lands* in OFFICE OF PLANNING AND RESEARCH, ROOM TO GROW, ISSUES IN AGRICULTURAL LAND CONSERVATION AND CONVERSION 103, 103-04 (1983).

103. Several writers have criticized the Williamson Act and other California legislation for its inadequate response to the accelerating pace of urban sprawl. See, e.g., Dresslar, *supra* note 5; Comment, *California Land Conservation*, *supra* note 5.

104. The California Supreme Court believed that the Williamson Act was enacted in response to these problems. *Sierra Club v. City of Hayward*, 28 Cal. 3d 840, 850, 623 P.2d 180, 184 171 Cal. Rptr. 619, 623 (1981).

105. Comment, *California Land Conservation*, *supra* note 5, at 1861 (discussing the



as a natural resource.

Uncontrolled urban sprawl is a high price for society to pay to meet housing and industrial needs. The rapid expansion of a city's boundaries is often an inefficient process,<sup>106</sup> consuming large amounts of acreage. At the same time, over-expansion of the cities places heavy economic burdens on remaining farmers.<sup>107</sup> Additionally, municipal governments are stretched to the financial limit in attempting to provide utilities and government services to these developments.<sup>108</sup> Urban sprawl, which litters the landscape with billboards, tract-homes and fast food franchises, is an aesthetic blight on the countryside. At least one side effect of urban sprawl, air pollution, has had a serious effect on agricultural productivity.<sup>109</sup>

California may well lose its status as the nation's leading agricultural producer<sup>110</sup> should it prove unable to provide a lasting solution to the problem of urban sprawl. The state's preeminence in

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economic infeasibility of reconvertng urban land into agricultural land).

106. Nearly all California cities which have experienced rapid population growth could be condensed to half of their present areas without interfering with their operations. Comment, *Preserving Open Space Land*, *supra* note 17, at 285.

The Santa Clara Valley may be the most startling example of wasteful urban sprawl. At one time, 70% of the class I farmland in the entire San Francisco Bay area was in the valley. However, 200,000 acres of agricultural land was converted to suburbs between 1947 and 1962. If this development had been orderly and contiguous, a mere 26 acres would have been sufficient to house adequately these urban dwellers. Land, *supra* note 16, at 423-24; Snyder, *A New Program for Agricultural Land Use Stabilization: The California Land Conservation Act of 1965*, 42 LAND ECON. 29, 31 (1966).

107. While the farmer's taxes are increased as the urban boundaries expand, "his income is likely to shrink as more costly practices must be undertaken both to avoid interfering with his new neighbors and to protect his crops, livestock, and equipment from their intrusion." *Sierra Club v. City of Hayward*, 28 Cal. 3d at 850, 623 P.2d at 185, 171 Cal. Rptr. at 623.

108. Services that increase local governments' cost include water and gas lines, schools, sewers and highways. Land, *supra* note 16, at 424; Snyder, *supra* note 106, at 31.

109. A study by the National Crop Loss Assessment Network (NCLAN) showed that one pollutant alone, ozone, caused annual losses of between \$1.9 and \$4.5 billion in the production in corn, soybeans, wheat and peanuts. 11.5 million acres of agricultural lands would be required to make up for this lost production. Testimony of Gray, *supra* note 9, at 8.

110. California produces approximately \$14 billion a year in agricultural goods. This is about 10% of the total value of national agricultural production. *Id.* 21 of the 100 leading counties in agricultural production in the United States are in California. *Fresno Again is Top County in Ag Value*, CAL. FARMER, Jan. 2, 1982, at 16-H (citing statistics compiled from the 1978 census of agriculture by the United States Commerce Department's census bureau).

agriculture is due to its ability to grow specialty crops which can be grown in only a few places in the nation because of their unique climactic requirements.<sup>111</sup> Paradoxically, the lands best suited for specialty crops are the same lands threatened with urban sprawl.<sup>112</sup> Furthermore, a weakened California agricultural sector will effect not only the remainder of the state's economy, but also that of the entire nation. California supplies approximately twenty-five percent of all table foods and forty percent of all fresh produce consumed nationally.<sup>113</sup> California's economy depends on agriculture to provide jobs and maintain a positive trade balance.<sup>114</sup> Undermining California's strong agricultural sector could have very serious long-term effects.<sup>115</sup>

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111. Comment, *Preserving Open Space Land*, *supra* note 17, at 285. Half of all specialty crops (vegetables, fruits and nuts) produced in the United States are grown in California. "34 percent of California's agricultural output consists of these specialty crops that can be grown few other places in the nation." Testimony of Gray, *supra* note 9, at 8. For example, California leads the nation in vegetable production, producing 45% of the nation's 22 principal fresh-market vegetables and 49% of the nine major processing vegetables. *News Briefs*, CAL. FARMER, April 3, 1982, at 10-B (statistics from the California Department of Food and Agriculture).

112. 70% of California's specialty crops are grown in metropolitan counties, where there is intense conflict between agriculture and residential development. Testimony of Gray, *supra* note 9, at 8.

113. "California's agricultural industry is not only a vital part of the state's economy, it is a crucial source of nourishment for the entire nation . . ." *Sierra Club v. City of Hayward*, 28 Cal. 3d at 863, 623 P.2d at 193, 171 Cal. Rptr. at 632.

114. Approximately three additional dollars are generated from every agriculturally-produced dollar. An estimated \$54.8 billion was generated from agricultural production in California in 1981, a figure roughly corresponding to one-eighth of the state's gross product. Richardson, *A Peek Ahead After 1981's Painful Income Drop*, CAL. FARMER, Jan. 2, 1982, at 5. In 1981, California exported \$4.2 billion in farm products. *News Briefs*, CAL. FARMER, Oct. 16, 1982, at 2 (California Department of Agriculture estimates).

115. The amount of land in farms in the United States has declined steadily between 1950 and 1978, at an average decrease of 6 million acres per year. Avey, *supra* note 13, at 30. Although world agricultural production rose to record levels in 1981, population growth outpaces food production. Thus, per capita food production is declining. *News Briefs*, CAL. FARMER, Feb. 20, 1982, at 12-A (citing reports released by the United States Department of Agriculture). The problem may be worse in the future as demands for food continue to mount. It has been estimated that the United States may lose approximately 25 million acres of cropland from 1977 levels by the year 2000. If so, the cropland base will be reduced to 515 million at a time when 460 to 475 million acres will be needed just to meet domestic food demand and minimal export needs. Richardson, *supra* note 114, at 5 (citing estimate by Arthur Holland, United States Soil Conservation Service).

## **B. The Failure of Existing California Programs to Halt Urban Expansion onto Prime Farmlands**

California's farmland preservation programs, specifically the Williamson Act, have failed to channel urban development away from prime farmlands. Urban demand for undeveloped acreage has led to a rapid rise in land prices. The increased value of farmland has encouraged its conversion to urban uses in spite of what has been perceived as strong legislation. Amendments to strengthen existing farmland conservation programs or create progressive programs have been diluted or have failed entirely—largely due to a strong pro-development lobby. At best, existing programs only slow the inevitable conversion of farmlands.

### **1. The Williamson Act: Protecting the Wrong Lands**

#### **a. Failure to Limit the Act's Scope and Difficulty of Enforcement**

The Williamson Act has expanded far beyond its initial focus. As enacted, the Williamson Act was limited to prime agricultural lands;<sup>116</sup> but the term "prime" has been given a broader definition than that under the original Act.<sup>117</sup> Prior to 1969, when the restriction was removed, land eligible for the Williamson Act had to be prime or contained in an agricultural preserve of at least 100 acres.<sup>118</sup> Open space land, used either for recreation purposes or as a wildlife habitat, has been eligible for Williamson Act contract

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116. Originally, the Act provided:

No city or county may contract with respect to any land pursuant to this chapter unless the land:

(a) Is devoted to agricultural use.

(b) Is located within an area designated by a city or county as an agricultural preserve containing not less than 100 acres.

(c) Is classified as prime agricultural land.

CAL. GOV'T CODE § 51242 (West 1966). Portions of (b), requiring that the preserve be at least 100 acres and all of (c) were repealed in 1969.

117. Originally, prime agricultural land was defined as: "(1) land which is rated as Class I or Class II in the Soil Conservation Service land use capability classifications, or (2) land which has returned an agricultural value of not less than \$200 per acre for 3 of the last 5 years." CAL. GOV'T CODE § 51201(c) (West 1966).

By 1982, "prime" was expanded to include: land with a Storie Index Rating from 80 to 100, land which supports one animal unit per acre and land which supports fruit trees, vines or crops with an annual return of not less than \$200 per acre. CAL. GOV'T CODE § 51201 (West 1983). See also *supra* note 10 for a discussion of prime farmland.

118. CAL. GOV'T CODE § 51242 (West 1983); see *supra* note 116.

since 1970,<sup>119</sup> and scenic highway corridors were deemed eligible for the Williamson Act in 1978.<sup>120</sup> As a result, it is unclear whether the Williamson Act remains an *agricultural* land conversion act.

The Williamson Act is unfocused<sup>121</sup> and its primary purpose has been unclear from the start.<sup>122</sup> Initially, the California Legislature sought to preserve prime agricultural lands. It also wanted to protect urban fringe lands. At the same time, the legislature recognized that farmlands should be preserved because of their value as "open space." By seeking to accomplish too many things, the legislature made demands for farmland preservation beyond the administrative capacity of local governments. It is still unclear whether the Williamson Act is a farm subsidy program<sup>123</sup> or an urban growth program.<sup>124</sup> If the former, its necessity is doubtful in light of the numerous federal farm support programs available to the farmer. If the latter, the existing mechanics of the Williamson Act have proved unable to reach this objective. Moreover, the legislature's finding that "agricultural lands have value as open space"<sup>125</sup> further shifts the focus away from *economical* land use planning and toward "aesthetic" planning. While all are worthwhile objectives, the feasibility of attaining them through the Wil-

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119. Under CAL. GOV'T CODE § 51205 (West 1983), agricultural land "is deemed to include land devoted to recreational use and within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area or a submerged area, and where the term 'agricultural use' is used in this chapter, it shall be deemed to include recreational and open space use."

120. *Id.* § 51205.1 (defining a scenic highway corridor).

121. This lack of direction is apparent from an examination of the "legislative findings" incorporated into the Act. *Id.* § 51220.

122. Initially, the legislature found that: (a) it is necessary to preserve prime agricultural lands, (b) it is in the public's interest to discourage premature conversion of prime agricultural lands, (c) agricultural lands' value as open space must be preserved and (d) that this legislation promotes the public's general welfare. *Id.* § 51220 (West 1966) (amended in 1968, 1969 and 1980).

123. The legislature found: "That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation." *Id.* § 51220(a) (West 1983).

124. The legislature found: "That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontinuous urban development patterns which unnecessarily increase the cost of community services to community residents." *Id.* § 51220(c).

125. *Id.* § 51220(d).

Williamson Act is questionable.

Presently, the Williamson Act encompasses all open space lands. Widening the scope of the Act has increased dramatically the total acreage subject to restrictive agreements.<sup>126</sup> However, due to vague guidelines determining contract eligibility of lands, large amounts of low quality lands are under contract<sup>127</sup> while lands of higher quality often are not.<sup>128</sup> As a result, prime agricultural land is often the first to be converted to urban uses. Furthermore, the Williamson Act has little impact on lands on the urban fringe.<sup>129</sup> Lands under Williamson Act contracts are concentrated in areas far from urban centers.<sup>130</sup> Lands located on the periphery of incor-

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126. For example, over 16 million acres were under contract in 1980. R. COUGHLIN & J. KEENE, *supra* note 24, at 207. In contrast, 2,061,936 acres were under contract by March, 1968. Carman & Polson, *Tax Shifts Occurring as a Result of Differential Assessment of Farmland: California 1968-69*, 24 NAT'L TAX J. 449, 450 (1971).

127. Agricultural economists compared the estimated average market value of Williamson Act land, if *not* under contract, with the estimated average market value for all open space land. 18 counties were included in the study. The study showed that, except for Placer, Riverside and San Benito Counties, the average value of land placed under Williamson Act contracts was below the average value of open space land. This study indicates that the land initially placed under the Williamson Act was of inferior quality. Carman & Polson, *supra* note 126, at 451.

For example, landowners in Contra Costa County generally enroll low yield or grazing lands under the Williamson Act. Likewise, most of the land under contract in Alameda County is nonprime range land. Comment, *California Land Conservation*, *supra* note 5, at 1873-80. Enrolling these marginal lands does not prevent prime farmland conversion. These marginal lands are not in danger of conversion. Interview with Will Shafroth, Regional Director of American Farmland Trust, in San Francisco (Oct. 13, 1982).

128. Approximately 60% of California's 12,621,700 acres of prime land is not under contract, nor is approximately 50% of eligible *urban* prime land. These statistics indicate that "this voluntary program does not result in effective protection to lands near urban centers that are most likely to be converted to urban uses." R. COUGHLIN & J. KEENE, *supra* note 24, at 207. For example, in Contra Costa County virtually none of the approximately 260,000 acres in agricultural use are under contract. Comment, *California Land Conservation*, *supra* note 5, at 1874. Further, a 1976 study showed that of the 15 million acres under Williamson Act contracts at that time, roughly 6% was prime land in rural/urban transition zones, 24% was prime farmland in rural areas and 70% was nonprime land. REPORT TO THE CONGRESS, PRESERVING AMERICA'S FARMLAND, *supra* note 9, at 27.

129. A study on the distribution of land under contract showed:

(1) The pattern of land under contract is spatially discontinuous and unsystematic.

(2) Little land is under contract in the coastal zone, an area of intense land-use conflict.

(3) A minimal amount of land was under contract in urban areas. Gustafson & Wallace,

*Differential Assessment as Land Use Policy: The California Case*, 41 J. AM. INSTITUTE OF PLANNERS 379, 381 (1975).

130. Initial sign-ups under the Act were concentrated in land located in excess of 10 miles distance from cities. Approximately 2.5% of the land located in areas up to three miles from an urban center was under contract, 3.9% of land three to ten miles from cities

porated areas are much less likely to be placed under contract than are outlying lands.<sup>131</sup> As a result, land in greatest danger of urban conversion is not protected by the Act.

Williamson Act contracts are voluntary for both local governments and landowners.<sup>132</sup> The very fact that they are voluntary may be a prime cause of the Williamson Act's failure to meet its objectives. Experience has shown that owners of land on the urban fringe, seeking to maximize the potential profitability of the land, elect not to contract.<sup>133</sup> Logical targets of development are bypassed in favor of noncontract lands, thus accelerating leapfrog development.<sup>134</sup>

Another source of Williamson Act deficiencies may be in the Act's grant to local government of the responsibility to implement and enforce its provisions. Local governments are faced with the possibility of a shrunken tax base if they choose to enforce actively the Williamson Act. As a result, land use programs often are pursued passively. Williamson Act programs are enforced unevenly and in a manner suggesting an indifference to the effects on neighboring communities.<sup>135</sup> By giving local governments flexibility to tailor land use programs to the peculiar circumstances of their

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was under contract and 14.2% of land over 10 miles away from cities was under contract. Carman & Polson, *supra* note 126, at 451.

131. Gustafson & Wallace, *supra* note 129, at 381 (examining contracting patterns of 11 central valley counties).

132. See *supra* note 77 and accompanying text for discussion of voluntary contracts.

133. See *supra* notes 129-31 and accompanying text. Various reasons have been put forward to explain this result. For example, landowners have been reluctant to contract due to the lengthy 10 year contract period and the meager tax benefits. Comment, *California Land Conservation*, *supra* note 5, at 1875. The contracts limit a landowner's ability to sell to developers. Comment, *Preserving Open Space Land*, *supra* note 17, at 292.

134. Because the Williamson Act is voluntary, lands are placed randomly under contract. The result is discontinuous urban development. Gustafson & Wallace, *supra* note 129, at 385.

135. Dresslar, *supra* note 5, at 308 (discussing the indifference of local governments toward neighboring communities in developing land use programs). Even those cities within a single county do not enforce the Williamson Act uniformly. For example, in Alameda County, the cities of Livermore and Hayward strictly interpret the Williamson Act, while Fremont is liberal in issuing contracts and allowing cancellations. Comment, *California Land Conservation*, *supra* note 5, at 1879.

However, the court in *Sierra Club v. City of Hayward*, 28 Cal. 3d 840, 623 P.2d 180, 171 Cal. Rptr. 619 (1981), recognized that the Williamson Act must expand beyond its local emphasis. "Any decision to cancel land preservation contracts must therefore analyze the interest of the public as a whole in the value of the land for open space and agricultural use." *Id.* at 856, P.2d at 188, 171 Cal. Rptr. at 627 (emphasis added).

communities, the legislature sacrificed the opportunity to develop a comprehensive and effective farmland conservation program.

### b. *Court Construction and Legislative Response*

The California Supreme Court narrowly construed the Williamson Act's cancellation provisions in *Sierra Club v. City of Hayward*.<sup>136</sup> To avoid the restrictive standard embodied in the opinion, the California Legislature greatly relaxed cancellation requirements in 1981.<sup>137</sup> Recognizing that the cancellation provisions of the Williamson Act may have been applied inconsistently in the past, the legislature enacted Assembly Bill 2074.<sup>138</sup> This legislation provided a one-time opportunity, from January 1, 1982 to May 31, 1982, for parties to petition for cancellation of Williamson Act contracts without having to meet the requirements of California Government Code section 51282.<sup>139</sup> This "window" provision opened

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136. 28 Cal. 3d 840, 623 P.2d 180, 181 Cal. Rptr. 619 (1981). In *Sierra Club*, the Sodas (the landowners) petitioned the city for cancellation of their Williamson Act contract on 93 acres. At the same time, Ponderosa Homes (the developer) requested that the 93 acres be rezoned from agriculture to planned development. The Hayward City Council cancelled the contract and granted the requested zoning change. The California Supreme Court, in reviewing the findings made by the city council, held that the "Hayward City Council incorrectly applied the cancellation provisions of the Williamson Act." *Id.* at 864, 623 P.2d at 193, 171 Cal. Rptr. at 632.

Three main principles were set forth by the supreme court in *Sierra Club*. "First, assure a complete and adequate administrative record on cancellation as a means of preventing unnecessary conversions of contracted land; second, prefer termination through nonrenewal; third, cancel only under 'strictly emergency situations.'" Widman, *supra* note 5, at 601. The supreme court held:

[T]hat cancellation is inconsistent with the purposes of the act if the objectives to be served by cancellation should have been predicted and served by nonrenewal at an earlier time, or if such objectives can be served by nonrenewal now. Although the city took into consideration the statutory purposes of preserving open space and achieving orderly development, as we think it must, it did not consider the legislature's intent to limit cancellation to the extraordinary cases in which nonrenewal is inappropriate.

28 Cal. 3d at 855, 623 P.2d at 187-88, 171 Cal. Rptr. at 627.

137. See *supra* notes 88-89 and accompanying text. See also CAL. GOV'T CODE §§ 51280-51289 (West 1983) (enacted in response to *Sierra Club*). For an in depth discussion of legislative activities after the *Sierra Club* decision, see Widman, *The New Cancellation Rules Under the Williamson Act*, 22 SANTA CLARA L. REV. 589 (1982).

138. CAL. GOV'T CODE § 51282.1 (West Supp. 1982) (repealed by 1981 Cal. Stats., c. 1095, § 9, operative Jan. 1, 1983); see also *Selected 1981 Legislation; Property; Agricultural Use of Land - Cancellation of Contracts*, 13 PAC. L.J. 749 (1982) (overview of the 1981 legislative changes in the cancellation provision).

139. CAL. GOV'T CODE § 51282.1(f) (West Supp. 1982) provided:

up large amounts of previously protected land for urban development.<sup>140</sup>

### c. Proposition 13

The limited impact that the Williamson Act's preferential assessment had on California land use decisions disappeared after Proposition 13<sup>141</sup> was approved by California voters in 1978. In response to Proposition 13's passage, the legislature allowed Williamson Act landowners to choose between paying taxes based on the Act's income capitalization method, or on Proposition 13's modified traditional market value assessment.<sup>142</sup>

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The board or council may grant tentative approval for cancellation of a contract pursuant to this section only if it makes all of the following findings:

(1) That the cancellation and alternative use will not result in discontinuous patterns of urban development.

(2) That the alternative use is consistent with applicable provisions of the city or county general plan which either was in effect on October 1, 1981, or was amended after October 1, 1981, as a result of proceedings which were formally initiated by the landowner or local government as provided in Article 6 (commencing with [s]ection 65350) prior to January, 1982.

These requirements were easier to meet than those under the recently amended CAL. GOV'T CODE § 51282 (West 1983), which requires cancellations to be consistent with the purposes of the Williamson Act and in the public's interest.

140. By May 1, 1983, 122 Williamson Act "window" cancellation requests had been approved, 132 requests were pending action and 53 requests had been denied. Local governments released 20,524 acres of Williamson Act lands from contract, but denied cancellation for 9,788 acres. As of May 1, 1983, 68,214 acres awaited local review. Letter from M.G. Mefferd, Interim Director Department of Conservation, to James Van Maren, California Chamber of Commerce (May 12, 1983) (including a statistical study conducted by the California Department of Conservation in March, 1983, on the effect of Williamson Act window cancellations).

141. Proposition 13 provides "[t]he maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property." CAL. CONST. art. XIII A, § 1.

"Full cash value" is defined as:

[T]he county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.

*Id.* § 2(a). Furthermore, "[t]he full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year." *Id.* § 2(b). Finally, "[a]ny changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds . . . the Legislature." *Id.* § 3.

142. The income capitalization calculation must be made pursuant to CAL. REV. & TAX CODE § 423 (West Supp. 1983). Another assessment is made pursuant to CAL. CONST. art.



Proposition 13 imposes the same property tax ceiling for restricted and unrestricted lands. If Proposition 13 assessment is chosen, the Williamson Act landowner loses *preferential* assessment status—the sole benefit he received in exchange for agreeing to restrict property use.<sup>143</sup> By reducing all property taxes, Proposition 13 restricts local governments' ability to shift the tax burden onto noncontract landowners. As a result, the benefits of differential assessment under the Williamson Act have been reduced drastically. Since the passage of Proposition 13 and AB 2074, the power and tax advantages of the Williamson Act have been reduced significantly. Farmlands are being removed from the Williamson Act at an increasing rate.<sup>144</sup>

## 2. *Assembly Bill 3379: The Doomed Agricultural Land Trust*

California Assemblyman Richard Robinson introduced AB 3379 in 1982, a proposal which would have established the California Agricultural Land Trust.<sup>145</sup> The California Coastal Conservancy<sup>146</sup> was used as the model for this proposal. AB 3379 would have authorized the Trust to purchase interests in agricultural land and lease or sell these lands back to farmers.<sup>147</sup> Further, the Trust was to assist local public agencies and nonprofit land trusts

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XIIIA restrictions. The latter calculation is used to determine taxes only if assessment from this method is lower than assessment by the income capitalization method. Note, *Proposition 13: A Mandate to Reevaluate the Williamson Act*, 54 S. CAL. L. REV. 93, 109 (1981).

143. "The legislature has put the contracting landowner at an economic disadvantage relative to non-contracting landowners who benefit more substantially by the enactment of Proposition 13." Note, *Proposition 13*, *supra* note 142, at 112. *But see* CALIFORNIA DEP'T OF CONSERVATION, *THE WILLIAMSON ACT AFTER PROPOSITION 13: STILL A BARGAIN* (1983) (this report concludes that, even though the Williamson Act tax incentive has been reduced by about 20% since the passage of Proposition 13, the Act is still a tax benefit for landowners).

144. Until 1975-76, the removal rate was about 2,000 acres per year. It has dramatically increased. In 1976-77, 3,884 acres were removed. In 1977-78, 5,589 acres were removed. And, in 1978-79, 11,837 acres were removed, including 3,137 acres of urban prime land. R. COUGHLIN & J. KEENE, *supra* note 24, at 207.

145. AB 3379, 1982 Cal. Legis.

146. *See supra* notes 91-100 and accompanying text.

147. One section of the proposal authorized the Trust to:

[A]cquire real property by negotiation, purchase, exchange, gift, dedication, lease, or eminent domain, or any interest therein . . . pursuant to regulations adopted by the trust which assures that land acquisition, leasing, options to purchase, land disposal and other property transactions are carried out efficiently and equitably and with proper notice to the public.

AB 3379, 1982 Cal. Legis. (proposed CAL. GOV'T CODE § 51185).

acquire interests in land.<sup>148</sup> Initial funding for the program was to come from cancellation fees paid to terminate Williamson Act contracts.<sup>149</sup>

In spite of being heralded as a very creative farmland protection proposal,<sup>150</sup> AB 3379 died in committee. A major problem with AB 3379 was that it was established to protect *all* agricultural land. This overbroad focus ignored the real purpose of farmland conservation: The protection of lands with superior soils in areas where agriculture has the best chance for success.<sup>151</sup> Furthermore, the proposal failed to establish criteria to guide the Trust in selecting lands.<sup>152</sup> At the same time, the Trust's power to exercise eminent domain was subject to criticism. Finally, the earmarking of money to a program that had not demonstrated a sufficient need for state involvement was criticized heavily.<sup>153</sup> The weaknesses of the proposal, coupled with a lack of support from the agricultural community, doomed AB 3379 to failure.

### ***C. The Land Trust: Public Perceptions and Legal Difficulties***

The public must be convinced that a land trust will succeed. Commonly used farmland preservation methods such as differential assessment, restrictive agreement and zoning, are not effective in directing urban sprawl away from prime lands.<sup>154</sup> The shortcomings of the Williamson Act illustrate that tax incentives fail to prevent development on prime lands. Zoning is ineffective as a long-

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148. *Id.* (proposed CAL. GOV'T CODE § 51190).

149. AB 3379, 1982 Cal. Legis. (proposed CAL. GOV'T CODE § 51183); see *supra* notes 138-40 (increased cancellations due to AB 2074's "window provision"); see also Letter from M.G. Mefferd, *supra* note 140 (as of May 12, 1983, an estimated \$7 million was due the State General Fund from cancellations already approved).

150. The American Farmland Trust supported the purposes and approach of AB 3379. Testimony of Gray, *supra* note 9, at 13.

151. Because of housing and industrial needs, open space *per se* should not be the focus of a trust. *Id.* at 11.

152. Establishing priorities for land acquisitions are essential. "[Conservation] priorities must be set at some point, given the fact of life that we cannot protect all agricultural land. *Id.* at 12.

153. Interview with William Shafroth, Sept. 7, 1983, *supra* note 24.

154. See *supra* notes 116-44 and accompanying text. Minimizing tax burdens does not prevent the landowner from selling the property. Eventually, the profits realized from a sale will outweigh the benefits of farming—including tax incentives. McClaughry, *Model State Land Trust*, *supra* note 46, at 576.

term planning tool due to its notorious variances.<sup>155</sup> Restrictive agreements have failed to protect lands because of their voluntary features. Without active land use planning tools, prime farmlands will continue to be paved over to satisfy the insatiable needs of housing and industry.

Although development rights programs implemented through organizations such as land trusts have the advantage of permanently protecting vital farmlands, problems exist. The American public is reluctant to endorse the idea of governing bodies holding interests in large amounts of once privately owned land.<sup>156</sup> Additionally, local governments' interest in preserving the tax base may be too receptive to political and financial pressures encouraging development.<sup>157</sup> Further, many people view urban sprawl as a function of supply and demand. Based on this theory, government intervention is not needed because urban sprawl is not a problem.<sup>158</sup>

There are additional criticisms of land trust programs. In depleting local property tax bases and restricting urban growth arbitrarily, land trusts may find themselves in conflict with government policies on urban development.<sup>159</sup> Financial constraints

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155. See, e.g., Little, *supra* note 2, at 9-10.

156. "[A]ccording to a recent nationally projectable survey . . . nearly two-thirds of respondents said that 'the owner's right to do what he wants to with his property' is more important than 'the public's right to make sure that the best farmland is used only for producing food.'" Little, *supra* note 2, at 9 (citing Louis Harris & Assoc., Inc., Survey of the Public's Attitudes Toward Soil, Water and Renewable Resources Conservation Policy 8 (1980)).

Concern exists that government acquisition programs will make the government a competitor with the private sector, thus serving to increase farmers' cost-price problems. Interview with William Shafroth, Oct. 8, 1982, *supra* note 127. There is a strong belief that the private sector is more economically efficient in land use decisions and is entitled to any gains caused by inflationary real property price increases. These gains, arguably, go to the public sector under a land trust program. Young, *supra* note 3, at 24.

157. See *infra* note 171, 217, *supra* note 135 and accompanying text.

158. This laissez-faire approach views the urban sprawl phenomenon as strictly the result of economical land use decisions. Supporters of this view believe that it is impractical for governments to interfere in land use decisions. Young, *supra* note 3, at 20.

Admittedly, a government program established to encourage and support small, unprofitable and outdated family farms would irreparably drain a state government's economic resources, without offering the possibility of economic return. A poorly planned government program could result in farmers becoming the victims, by being denied an opportunity to reap "developer profits," of legislation that was designed to protect them.

159. Land trust programs are criticized for their inability to influence greatly orderly land development, to control the growth of government services and to control growth outside of the city limits. Fenner, *supra* note 21, at 1098; Note, *Public Land Banking*, *supra* note 2.

within the program itself may restrict land purchases.<sup>160</sup> This may result in scattered "preserved lands" and will encourage, rather than diminish, leapfrog development. Haphazard, inconsistent and irresponsible actions by the trust's administrators may undermine a land trust's chance of success.<sup>161</sup> Further, by removing the incentive of "development profits," the quality of the agricultural land base could decline.<sup>162</sup> Unless some of these problems are addressed, the acceptance of the land trust by the public is doubtful.

### III. CREATION OF THE CALIFORNIA FARMLAND TRUST

The California Legislature, as indicated by enactments governing water use, may be ready to recognize the importance of natural resource conservation.<sup>163</sup> Like water, land is in finite supply and landowners' decisions must incorporate the resource needs of all Californians.<sup>164</sup> Farmers, who have long clung to their rights to make autonomous land use decisions, are now faced with the reality that these decisions cannot be made independently.<sup>165</sup> As with its interest in guaranteeing an adequate water supply for future generations, the state has an equally strong interest in ensuring the

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160. While the high development value of the property necessitates the purchasing of development rights, it often makes acquisition of these rights financially impossible. Little, *supra* note 2, at 10.

161. Juergensmeyer, *supra* note 1, at 464. For example, the land trust will be doomed to failure if it succumbs to developer pressures.

162. A farmer may not maintain the soil adequately without the incentive of "development profits." This is a chief concern of programs that purchase land and lease it back to farmers. Young, *supra* note 3, at 21; Interview with William Shafroth, Oct. 8, 1982, *supra* note 127.

163. For example: "All water within the State is the property of the people of the State . . ." CAL. WATER CODE § 102 (West 1971). The California Legislature also mandated the state's water resources be put to their *highest* and *best* use for the benefit of the people of the state. See CAL. CONST. art. XIV, § 3; CAL. WATER CODE § 100 (West 1971).

164. As illustrated by current attitudes toward water usage, farmers may have to change their farming practices to conserve water. "High-water-use crops such as rice may have to give way to less demanding crops . . . . Some lands may have to be abandoned simply because they are so saline or shallow that water use on them is relatively wasteful." Warren, *Agricultural Land: Ownership in Fee Simple or Held in Trust?*, U.C.D. L. Rev. 65, 68 (1978). Furthermore, farmers must act responsibly to minimize water pollution problems resulting from pesticides and fertilizers, livestock waste, soil erosion and salts leeching into the water. *Id.* at 70.

165. "The concern is not for the farmer as such, but rather for the preservation of farmlands for the good of all citizens . . . . The 'home is a castle' theory has lost its protective moat." *Id.* at 66.

availability of farmland to future Californians. To serve adequately this strong interest, the California government must participate actively in farmland conservation.

### A. *Farmland Trusts: Effective Conservation of Vital Farmlands*

Land trust programs can be effective in conserving important farmlands. Unlike the restrictive agreements of the Williamson Act, once the land trust has acquired the development rights the landowner cannot develop the land unless they are reacquired.<sup>166</sup> Unlike zoning, land trusts are not subject to constitutional problems such as taking without just compensation.<sup>167</sup> The permanency of the acquisition eliminates a major problem of zoning, namely variances.<sup>168</sup> Public land acquisition programs place local government in direct control of land use decisions. The government can regulate the time, type and location of development. Further, land acquisition programs actually may reduce the costs of farmland and government services.<sup>169</sup> By acquiring farmland interests, governing bodies can attack directly the problems of urban sprawl. This direct control should result in the permanent channeling of urban growth onto nonprime lands.

Private land trusts offer additional advantages. To begin with,

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166. This is in contrast to a restrictive agreement where a unilateral breach results in no more than the landowner having to pay a penalty. McClaughry, *Model State Land Trust*, *supra* note 45, at 576.

167. It is doubtful that even a zoning ordinance, assuming that it is reasonable in relation to the public purpose, will constitute a taking requiring just compensation. For example, in *Agins v. City of Tiburon*, 24 Cal. 3d 266, 598 P.2d 25, 157 Cal. Rptr. 372 (1979), *aff'd*, 447 U.S. 255, 259 (1980), the United States Supreme Court held that a Tiburon, California zoning ordinance was not a taking requiring "just compensation" because the owner was not deprived of *reasonable use* of the property.

Since the Trust is only focusing on preserving existing agricultural use on prime farmlands, and therefore, affords the landowner the opportunity to make a "reasonable profit" on the property, just compensation is not required. In any event, this proposal requires that property acquired by the Trust be "justly compensated for."

168. Fenner, *supra* note 21, at 1097-98.

169. As a byproduct of controlling urban sprawl, land trusts can reduce the speculation that causes increased farmland prices and farmland conversion. See *supra* notes 9-18 and accompanying text. The retiring of development rights in vital farmlands should result in orderly and efficient urban growth. Retiring prime farmlands will channel development onto lands contiguous with urban areas. This will reduce the cost of providing municipal services to new, widespread developments. Comment, *Public Acquisition*, *supra* note 42, at 193-94; see *supra* note 108 and accompanying text.

when working in cooperation with the government, private organizations can minimize the public bodies' bureaucratic weaknesses.<sup>170</sup> Private foundations are not hampered by the public's phobia of excessive government involvement. Further, a private land trust can act more quickly than a public agency in acquiring property interests. Finally, private trusts are better able to respond to local needs. The flexibility of private land trusts make them an attractive alternative in land use planning.

### **B. California Farmland Trust: A Legislative Proposal**

The California Farmland Trust, as proposed, is only one part of a comprehensive farmland conservation/land use planning program. Acquiring development rights in farmland is a viable *long-term* solution to farmland conversion. Short-term solutions such as the Williamson Act and municipal zoning are essential components of a successful multi-dimensional land use plan. California's mapping project should be able to provide vital information by designating the rate and direction of urban conversion. Of course, what is desperately needed is a strong policy framework: an affirmative recognition by the California Legislature that *vital farmlands must be saved*. Only then will the time be ripe for the California Farmland Trust.

The California Farmland Trust, as proposed, utilizes both private and public sectors in its program. Unlike the statewide character of AB 3379<sup>171</sup> and the local character of the Williamson Act, the California Farmland Trust is organized regionally. As under the Williamson Act, county governments need not participate.<sup>172</sup> The Regional Trust is authorized to purchase interests in lands meeting criteria established by the California Farmland Commission. The Commission is empowered to establish guidelines and procedures for the Trust, while the latter is responsible for actual administration. Each Regional Trust coordinates its purchasing activities with local governments. The regional agencies have the power to preempt sales of designated farmland and can exercise

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170. These partnerships have worked well in acquiring interest in land for conservation and recreation purposes. R. COUGHLIN & J. KEENE, *supra* note 24, at 182-83.

171. AB 3379 proposed a single, statewide land trust responsible for administering the program. AB 3379, 1982 Cal. Legis.; see *supra* notes 145-53 and accompanying text.

172. See *supra* notes 77, 132 and accompanying text.

eminent domain. By combining public and private sectors and reaching a middleground between state and local administration, the California Farmland Trust should be able to conserve permanently designated farmlands.

### 1. *The Proposal*

Before the California Farmland Trust can become reality, comprehensive legislation must be enacted. The following proposal balances the competing land use interests while establishing the legislative framework to conserve vital farmlands.

#### **Article 1 - General Provisions**

##### **SECTION 101. CITATION OF CHAPTER**

This chapter shall be known as the California Farmland Trust Act.<sup>173</sup>

##### **SECTION 102. DEFINITIONS**

(a) *Prime agricultural land* means either of the following:

(1) All land rated by the soil conservation service as Class I or Class II; or

(2) All land rated 80 to 100 by the Storie Index.<sup>174</sup>

(b) *Development rights* means the rights to develop land for nonagricultural purposes.

(c) *Farming* means the business of farming, as in the producing of agricultural products for profit.

(d) *Interests in land* include, but are not limited to:

(1) Fee simple;

(2) Fee simple subject to the right of occupancy and use;<sup>175</sup>

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173. See *supra* note 145 and accompanying text. AB 3379 was entitled *The California Agricultural Land Trust*. AB 3379, 1982 Cal. Legis. The title change emphasizes the primary goal of the Act: to conserve *prime* farmlands.

174. Unlike the Williamson Act's definition of "prime land," the Trust's definition is more narrow. See *supra* notes 116-17 and accompanying text. This is to eliminate the possibility of marginal farmlands being purchased by the Trust even though the lands would be at their optimal use if converted to a nonfarm use. To purchase marginally productive lands would defeat the Trust's purpose of conserving prime farmland.

Nonprime (following the definitions of the Soil Conservation Service and Storie Index) agricultural lands forced into commercial production could meet the Williamson Act's classifications of prime land. Because a "prime" designation (following criteria of the Soil Conservation Service and Storie Index) is given to lands of superior soil quality which have suffered little erosion, these nonprime lands, *already inferior*, will continue to deteriorate due to inappropriate use. The Trust, as a long-term farmland conservation program, should seek to preserve only high quality farmlands.

175. *I.e.*, full and complete title to the property is vested in the grantor (in this case, the Regional Farmland Trust) subject, to the right of occupancy and use for agricultural

(3) Fee simple and resale of rights and interests;<sup>176</sup>

(4) Fee simple and leaseback;<sup>177</sup>

(5) Less than fee simple;

(6) Option to purchase.

(e) *Commission* means the California Farmland Commission.

(f) *Trust* means the Regional Farmland Trust.

(g) *Committee* means the County Farmland Committee.

(h) *Fund* means the California Farmland Preservation Fund.

## Article 2 - Declarations

### SECTION 111. ECONOMIC VALUE OF PRIME FARMLANDS

The legislature finds and declares that California's prime agricultural lands contribute to food supplies of both the state and the nation, and are a vital component of California's economy.

### SECTION 112. PUBLIC INTEREST IN FARMLAND CONVERSION

The legislature further finds and declares that the premature and unnecessary conversion of prime agricultural land is a matter of public interest, the curtailment of which is a benefit to both urban and rural dwellers.<sup>178</sup>

### SECTION 113. PROTECTION FROM NONAGRICULTURAL USES

The legislature further finds that prime agricultural lands should be protected from the intrusion of nonagricultural uses, except where conversion to urban uses is in the public interest.

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purposes. McClaghry, *Model State Land Trust*, *supra* note 46, at 585. This type of provision may be particularly useful when the Trust seeks to induce soon-to-retire farmers to convey their property. By granting the farmer the right to continue using the property, the Trust does not force the farmer into premature retirement and ensures that the land will remain in agricultural use.

176. *I.e.*, acquisition of the land in fee simple with reconveyance of rights and interests in such property. *Id.* at 585. It is envisioned that this will be a common transaction method utilized by the Trust, which will reconvey interests in the land yet retain the development rights. This will ensure that land is not converted to a nonagricultural use.

177. *I.e.*, acquisition of the land in fee simple with a subsequent leaseback subject to use restrictions. The lease's terms will be subject to the Act's provisions. In all probability, development restrictions will be imposed to eliminate conflicts between use and the Act's purposes. *See id.* at 585.

These leases are expected to be short-term, with a maximum lease term of three years. Interview with William Shafroth, Oct. 8, 1982, *supra* note 127. This short-term period should give the Trust enough time to make conservation improvements and find a suitable buyer. Limiting the time of the lease term minimizes several potential problems. Primarily, although lessees in general do not exercise the same degree of care for the soil as do landowners, this limited holding period forces the Trust to return the land quickly to private ownership. Secondly, the time limit should help to minimize farmers' fears that the Trust is competing with commercial agriculture.

178. By recognizing that the curtailment of the debilitating effects of urban sprawl is in the public interest, the California Legislature can justify spending funds to combat the problem.



**SECTION 114. INADEQUACY OF EXISTING PRESERVATION PROGRAMS**

The legislature further finds and declares that existing California farmland preservation programs are unable to preserve farmland permanently and that the preservation of prime farmland is of paramount importance to agricultural land protection policies and programs.<sup>179</sup>

**SECTION 115. PROMOTE GENERAL PUBLIC WELFARE**

For all of these reasons, the legislature finds that this Act is necessary for the promotion of the general welfare and the protection of the public interest in prime agricultural land.<sup>180</sup>

**Article 3 - Creation of the California Farmland Trust****SECTION 120. ESTABLISH TRUST**

The California Farmland Trust is hereby established.

**SECTION 121. ESTABLISH COMMISSION**

The California Farmland Commission is hereby established. The Commission shall consist of the following seven members:<sup>181</sup>

- (a) The Secretary of the Resources Agency or a designated representative;
- (b) The Director of Food and Agriculture or a designated representative;
- (c) The Director of Finance or a designated representative;
- (d) One public member appointed by the Speaker of the Assembly;
- (e) One public member appointed by the Senate Rules Committee;<sup>182</sup>

179. This section of the Act is based on proposed Government Code § 51171, AB 3379, 1982 Cal. Legis., which stated that the permanent protection of agricultural land justified the dedication of "monies generated by the conversion of other lands to this purpose." Model § 114 sets forth legislative policy that the acquisition of property interest is an urgent necessity if prime farmlands are to be preserved. By recognizing the inadequacy of existing preservation programs, the legislature can justify spending public funds on the Trust.

180. The Connecticut Legislature made an even more dramatic declaration, finding that: "[U]nless there is a sound, statewide program for its preservation, remaining agricultural land will be lost to succeeding generations and that the conservation of certain arable agricultural land and adjacent pastures, woods, natural drainage areas and open space areas is vital for the well-being of the people of Connecticut." CONN. GEN. STAT. ANN. § 22-26aa (West Supp. 1983).

181. Because this is an "umbrella" agency responsible for monitoring the Regional Trusts' activities and is not an active participant in transactions, independence from the state government is not needed.

182. Both of the members appointed by the Speaker of the Assembly and the Senate Rules Committee should be from the private sector and should have a strong background in California agriculture.

(f) Two members representing local governments.<sup>183</sup>

#### SECTION 122. CONDUCT OF THE COMMISSION

(a) The Commission's chairperson shall be elected by the members of the Commission.

(b) Any vacancy on the Commission shall be filled in the same manner as were the original appointments.

(c) All of the Commission's meetings shall be subject to the state open meeting law. A majority of the nonagency members appointed shall constitute a quorum for the transaction of official business.<sup>184</sup>

#### SECTION 123. ADDITIONAL APPOINTMENTS

(a) The Commission shall appoint a Land Value Advisory Committee<sup>185</sup> consisting of five members, all of which shall be persons experienced in agricultural land appraisal.<sup>186</sup>

(b) The Commission shall appoint other staff as may be necessary to carry out the powers and functions set forth in this Act.<sup>187</sup>

#### SECTION 124. CREATION OF A REGIONAL FARMLAND TRUST

(a) Any two or more counties may by agreement jointly establish a Regional Farmland Trust.<sup>188</sup>

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183. AB 3379 proposed that one of these representatives be appointed by the Speaker of the Assembly from nominations submitted by the League of California Cities, and the other representative be appointed by the Rules Committee of the Senate from nominations submitted by the County Supervisors' Association of California. AB 3379, 1982 Cal. Legis. Even though the Commission does not actually administer the program, local representation is required to ensure the support of local government. Because it is within local governments' discretion to set up the Regional Trusts, their participation is needed at all levels.

184. The quorum provision allows the four representatives selected by the Assembly and Senate to conduct all of the Commission's business, thus shifting power away from state agencies. Furthermore, representatives of the private sector and local governments have direct influence on the Commission, thus protecting their interest.

185. Cf. McClaughry, *Model State Land Trust*, *supra* note 46, at 589 (model establishes advisory committee to help determine fair market value of lands).

186. This requirement is necessary because the Committee must draft specific guidelines and appraisal methods to be used in determining farmland interest values. *See id.* at 589-90.

187. This enabling clause authorizes the Commission to appoint staff for specific purposes, e.g., developing a map system or publicizing the program.

Legislative involvement was deleted intentionally to limit potential "politizing" of the Commission. Cf. McClaughry, *Model State Land Trust*, *supra* note 46, at 587.

188. This is based on CAL. GOV'T CODE § 6502 (West 1980), which provides: "[I]f authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties . . ." The joint exercise of powers "has been used by units of local governments to serve more efficiently the needs, and to solve the problems of larger geographic areas, while at the same time retaining local control over those area wide activities." SEDWAY/COOKE, LAND AND THE ENVIRONMENT,

(b) The agreeing counties must meet all of the statutory requirements set out by the state (California Government Code sections 6500-6517) for the joint powers agreement to be deemed valid.<sup>189</sup>

#### SECTION 125. SELECTION OF TRUSTEES

(a) Each participating county's board of supervisors shall select two individuals to serve as regional trustees.<sup>190</sup> At least one of the representatives shall be a private citizen. Trustees are to be selected on the basis of their knowledge of farmland conservation issues.

(b) An additional trustee from each participating county shall be elected by the County Farmland Committee,<sup>191</sup> a committee composed of active farmers in the participating county. This trustee shall serve a term of four years.

(c) All trustee vacancies shall be filled in the same manner as were the original appointments.

#### Article 4 - Powers and Duties of the Trust

##### SECTION 131. POWERS OF THE COMMISSION

The California Farmland Commission is empowered to:

(a) Establish the criteria for selecting farmlands to purchase. Factors to be weighed by the Commission shall include:

(1) The probability that the land will be sold for nonagricultural purposes;<sup>192</sup>

(2) Whether the land is prime farmland;<sup>193</sup>

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#### PLANNING IN CALIFORNIA TODAY 65 (1975).

189. Several requirements must be met in order to form a valid Regional Farmland Trust. The agreement must state that its purpose is the permanent conservation of prime farmlands. See CAL. GOV'T CODE § 6503 (West 1980). In addition, the agreement must outline the procedures for acquiring and disposing of property interests. *Id.* Because a separate regional organization is created, participating counties must file notice of the joint powers agreement with the Secretary of State. *Id.* § 6503.5.

190. This provision gives local governments effective input into the Trust's decisions.

191. This citizen's committee is modeled on Prince Edward Island's Rural Development Council. Little, *supra* note 2, at 19; see *supra* notes 54-55 and accompanying text.

192. The Trust should give high priority to purchasing prime farmlands in danger of imminent urban conversion. For example, Coastal Conservancy guidelines require that it "give the highest priority to urban fringe areas where the impact of urbanization on agricultural lands is greatest." CAL. GOV'T CODE § 31151 (West 1977).

193. For a definition of prime farmland, see *supra* text accompanying note 174. Restricting the Trust's scope to prime farmland avoids AB 3379's failure to recognize housing and industrial needs. Testimony of Gray, *supra* note 9, at 11. The proposal follows the tenets of the American Farmland Trust, which "is not interested in farmland as open space *per se*, but concentrates on those agricultural lands with the best soils, generally in areas where farming has the best chance of survival as an industry if it is protected from urban encroachment." *Id.*

(3) The current productivity of the land and the likelihood of continued productivity;

(4) The degree to which the acquisition will contribute to preserving California's full agricultural potential;

(5) Existing encumbrances, easements and deed restrictions on the property which might impinge or negate the impact of the Trust's purchases;

(6) The cost of acquiring interest in the land.<sup>194</sup>

(b) Establish criteria for selecting buyers and lessees of the acquired land. In general, purchasers or lessees must be committed to agriculture and be able to demonstrate an intent to use the land for agricultural purposes.

(c) Establish specific methods and guidelines for appraising property interests through the Land Value Advisory Committee.<sup>195</sup>

(d) Act as an information clearinghouse in order to further the purposes of the Act. The Commission is authorized to:

(1) Draft model legal documents and explanatory materials;

(2) Publicize the existence of the Trust;

(3) Collect reports from the Regional Farmland Trusts and prepare maps detailing lands under the authority of the Trust;

(4) Make annual reports of the Trust's progress to the California Legislature.

(e) Solicit funds from state and federal agencies for the Trust.

(f) Adopt such regulations as are deemed necessary to carry out the purposes of the Act.

(g) Disperse funds to Regional Farmland Trusts meeting the requirements of this Act.

#### SECTION 132. JOINT POWERS AGREEMENT

Pursuant to section 124 of the Act, each Regional Farmland Trust has the authority to act according to the joint powers agreement of the participating counties.

#### SECTION 133. POWERS OF REGIONAL TRUST

Each Regional Farmland Trust shall have the power to contract, borrow on assets and apply for grants.

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194. Inclusion of this price criterion ensures that the maximum amount of prime farmland will be protected. However, "[p]arcels whose [sic] development rights are inexpensive are not likely to be in danger of imminent development." R. COUGHLIN & J. KEENE, *supra* note 24, at 153.

195. See *supra* notes 185-86 and accompanying text. By approving certain appraisal methods, the problem of subjective and uneven valuation methods should be avoided. McClaghry, *Model State Land Trust*, *supra* note 46, at 589-90.

**SECTION 134. AUTHORITY OF REGIONAL TRUST TO AWARD GRANTS**  
Each Regional Farmland Trust shall have the authority to award grants to nonprofit land trusts so long as the private land trusts' acquisition programs:

- (a) Meet the purchasing criteria set forth under section 131(a);
- (b) Do not conflict with the local government's General Plan.

**SECTION 135. ACQUISITION POWERS AND DUTIES OF THE TRUST**  
The acquisition powers and duties of the Regional Farmland Trust shall include the authority to:

- (a) Acquire interests in eligible prime farmland in California, except for that prime farmland located in the coastal zone;<sup>196</sup>
- (b) Acquire interests in eligible land through negotiation, purchase, installment sales contract,<sup>197</sup> option to purchase,<sup>198</sup> exchange, gift, dedication or lease;
- (c) Preempt the sale of previously designated prime farmland,<sup>199</sup> provided that such land meets the criteria enumerated in section 131(a) of this Act, is under a Williamson Act contract (pursuant to California Government Code sections 51200-51295)<sup>200</sup> and further provided owners of adjoining lands have petitioned the Trust through the County Farmland Committee to acquire such land;<sup>201</sup>
- (d) Exercise, as the last available option to keep prime farm-

196. The California Coastal Conservancy is authorized to purchase agricultural land interests in the coastal zone. CAL. PUB. RES. CODE §§ 31000-31405 (West 1977 & Supp. 1983). For a discussion of the Coastal Conservancy, see *supra* notes 91-100 and accompanying text.

197. In Connecticut, whenever the purchase price of the interest exceeds \$10,000 the state and the landowner may agree to spread the payment over two or three installments. However, Connecticut does not have to pay interest on the unpaid balance. CONN. GEN. STAT. ANN. § 22-26cc(d) (West Supp. 1983). Installment purchases allow the Trust to acquire the land immediately on terms that require little initial capital outlay. They also allow the seller to postpone his tax liability—a strong bargaining feature. Note, *Public Land Banking*, *supra* note 2, at 973.

198. The California Coastal Conservancy provides that "the conservancy may enter into an option to purchase the lands designated in [s]ection 31150 if the total cost of any such option does not exceed one hundred thousand dollars (\$100,000), when the [l]egislature appropriates funds for purposes of carrying out the objectives of this division." CAL. PUB. RES. CODE § 31150.1 (West Supp. 1983). This option provision enables the Trust to postpone development until financing is obtained.

199. See *supra* notes 32-41 and accompanying text (discussion of France's SAFER program—especially the use of the right of preemption to deter development).

200. The selling landowner is deemed to have been given adequate notice that his sale may be preempted by the Trust if his land is under the Williamson Act.

201. This safeguard gives neighboring landowners "a more central role in determining how and when farmland should be protected for the good of agriculture." Testimony of Gray, *supra* note 9, at 13.

land in agricultural use,<sup>202</sup> powers of eminent domain<sup>203</sup> over eligible prime farmlands if express formal approval is secured from the majority of adjoining landowners.<sup>204</sup>

#### SECTION 136. PROCEDURE FOR ACQUIRING INTERESTS IN LAND

(a) The Regional Farmland Trust shall act on the recommendations of the County Farmland Committee concerning the availability and desirability of acquiring interests in particular farmlands.

(b) The Trust shall evaluate each recommended parcel according to the criteria issued by the California Farmland Commission pursuant to section 131(a) of this Act.

(c) If the parcel meets the Commission's criteria, the Trust is empowered to offer, at the maximum, the fair market value for the rights.<sup>205</sup> If the landowner disagrees with the price offered by the Trust, he may have the property independently appraised. This appraisal will be considered for price-setting purposes if it complies with standards established by the Land Value Advisory Committee.

(d) If the landowner accepts the Trust's offer, then the Trust must give notice and details of the pending acquisition to the governing local planning commission.<sup>206</sup>

(1) The governing planning commission may request that the Trust announce and hold a hearing regarding the proposed acquisition.

(2) The governing planning commission shall have legal standing to seek an injunction against a proposed acquisition on the ground that the procedures of the Act have been

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202. *Accord id.* at 12.

203. This requires amendment of §§ 51290-51295 of the Government Code to allow the Trust to exercise eminent domain on Williamson Act lands. Currently, the Williamson Act expressly disallows the condemnation of agricultural lands. CAL. GOV'T CODE §§ 51290-51295 (West 1983).

As part of the Coastal Conservancy, the power of eminent domain was conferred on the California Public Works Board in order to meet the purposes of the California Coastal Act. CAL. PUB. RES. CODE § 31106 (West 1977).

204. The approval provision gives local farmers the power to assess potential harmful effects of the proposed conversion on their lands. *Accord* Testimony of Gray, *supra* note 9, at 12.

205. The appraisal method will be determined by the Land Value Advisory Committee, appointed by the California Farmland Commission pursuant to § 123(a) of this Act. This fair market value ceiling prevents special interest groups from appropriating trust funds.

206. Because a Trust acquisition may effect the local tax base, local governments should be informed of each acquisition by the Trust. McLaughry, *Model State Land Trust*, *supra* note 46, at 592-93.

disregarded.<sup>207</sup>

(3) The governing planning commission shall forward its comments and recommendations regarding the pending acquisition within thirty days of receipt of notice of pendency of action by the Trust.

(e) Before the transaction is finalized, the Trust shall coordinate the proposed acquisition with the General Plan drafted by the local government. If the acquisition is in direct conflict with these existing local plans, the local planning commission may veto the proposed acquisition only if the acquisition directly conflicts with the General Plan.

#### SECTION 137. POST ACQUISITION POWERS AND DUTIES OF THE TRUST

(a) After having acquired an interest in property, the Trust shall file notice of its acquisition in the appropriate land records.<sup>208</sup>

(1) If the Trust acquires only the development rights to the property, the landowner shall be relieved of any duty to pay taxes based on any other measure but the land's agricultural value.

(2) If the Trust acquires development rights alone, the landowner shall retain all other rights and privileges of private ownership.<sup>209</sup>

(b) If the Trust acquires a fee simple interest in the property, the Trust shall have three years, absent exigent circumstances, to transfer the acquired interest to a private owner.

(1) While holding the fee simple interest in the land, the Trust may authorize conservation improvements so as to further the purposes of the Act.

(2) The Trust is authorized to enter into lease agreements for property held by the Trust provided that the lease terms do not contradict the purposes of this Act.<sup>210</sup>

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207. This ensures that the Trust does not abuse its discretion and that it acts within its statutory authority.

208. Properly recording acquired interests is particularly important when the Trust only acquires development rights to the land. Recording the deed restriction gives notice of the development restrictions to all subsequent purchasers of the property. Further, once recorded, the landowner cannot develop the land. Deed restrictions can vary with each transaction, depending on the circumstances. Restrictions can limit excavation, dredging, the removal of soil or simply any acts detrimental to the agricultural use of the land. MASS. ANN. LAWS ch. 184, § 31 (Law. Co-op. Supp. 1983).

209. This reassures the landowner that he has not relinquished his privacy rights and can continue to pursue his farming business.

210. Because the Trust can hold title to land for only three years, the lease terms gen-

(c) The Trust is authorized to restrict development rights on the deed<sup>211</sup> and record such restrictions in the appropriate public records before reconveying the land to private parties.

(d) Development restrictions shall be enforceable if property is held by the Regional Farmland Trust or a private land trust in compliance with the requirements of section 134 of this Act. These restrictions may be enforced by an injunction or any other proceeding, and shall entitle representatives of the Regional Trust to enter onto the land in a reasonable manner and at reasonable times to ensure that the restrictions have not been violated.<sup>212</sup>

#### SECTION 138. REMOVING DEVELOPMENT RESTRICTIONS

A current landowner can reacquire the development rights of the property by paying to the Trust the then fair market value of the development rights, provided:

(a) The county board of supervisors approves of removing the restrictions; and

(b) Both the County Farmland Committee and the Regional Trust independently determine that the deed restriction is no longer in the public interest.

#### Article 5 - Funding of the California Farmland Trust

##### SECTION 141. CREATION OF FUND

There is hereby created in the State Treasury the California Farmland Preservation Fund. Monies in the fund shall be appropriated annually by the legislature to carry out the purposes of this Act.

##### SECTION 142. CREATION OF REGIONAL FUND

Each Regional Farmland Trust is authorized to create a separate trust fund so as to carry out the purposes of this Act. The proceeds from sales and leases of land acquired by the Trust shall be deposited in the fund.<sup>213</sup>

erally will be less than three years.

211. The development rights will be held in the name of the Regional Farmland Trust.

212. Unlike Massachusetts, this proposal provides that enforceable deed restrictions need not be approved by either the city council or the Director of California Department of Food and Agriculture. See MASS. ANN. LAWS Ch. 184, § 32 (Law Co-op Supp. 1983).

213. For example, under the Coastal Conservancy:

Proceeds from the sale or lease of lands acquired under the provisions of [s]ection 31150 shall be deposited with the [C]onservancy and, after transmission of any payments required by [s]ection 31154, shall be available for expenditure when appropriated by the Legislature for the purpose of funding the programs specified in this division.

CAL. PUB. REV. CODE § 31155 (West 1977). Pursuant to 26 U.S.C.A. § 115 (West 1978), Regional Trusts will be excused from paying income tax on monies acquired from sales and



**SECTION 143. FUNDING FROM WILLIAMSON ACT CANCELLATIONS**

The fees required to cancel Williamson Act contracts shall be deposited in the fund pursuant to California Government Code section 51283.<sup>214</sup>

**SECTION 144. FUNDING FROM BONDS**

The California Farmland Commission is empowered to issue negotiable bonds to further the purposes of this Act.

**2. Comments on the California Farmland Trust**

A regional organization is a novel yet logical solution to the debate over centralized versus localized control of the land trust.<sup>215</sup> California's diverse interests and needs preclude the establishment of a *single statewide trust*,<sup>216</sup> yet, as critics of the Williamson Act have shown, local governments are unable to cope with complex land use problems.<sup>217</sup> Regional Trusts achieve a balance between

leases of land.

214. This proposal requires that § 51283 of the California Government Code be amended to read: "When deferred taxes required by this section are collected, they shall be transmitted by the County Treasurer to the controller and be deposited in the *California Farmland Preservation Fund*."

As a result of AB 2074, which released large amounts of land from Williamson Act contracts, an excess of \$7 million is due from cancellations approved as of May 1, 1983. Another \$12.8 to \$25.8 million in cancellation fees may be deposited in the General Fund. Letter from M.G. Mefferd, *supra* note 140.

215. California's existing farmland preservation programs exemplify the confusion surrounding the degree of centralization required to preserve farmland effectively. For example, the California Coastal Conservancy is administered by a single state agency. CAL. PUB. RES. CODE §§ 31100-31117 (West 1977 & Supp. 1983). In contrast, the administration of the Williamson Act is left entirely to local governments. CAL. GOV'T CODE §§ 51230-51239 (West 1983).

216. Its "unlocal" character is cited as one of the reasons for AB 3379's death in committee. Interview with William Shafroth, Oct. 8, 1982, *supra* note 127. Similarly, the major criticism of the Coastal Conservancy is that it is "unlocal (and) . . . does not operate within any kind of predetermined area in which farmland values are specifically identified." Little, *supra* note 2, at 28. California's size and diverse climate characteristics preclude establishing a single purchasing organization such as those instituted in Massachusetts and Connecticut. Finally, a centralized administration would not enjoy a local government's superior vantage point on local farmland preservation. Testimony of Gray, *supra* note 9, at 9-10.

217. This is because a local government's land use policies may have a detrimental "spill-over" effect on neighboring regions. As a result, "matters such as zoning and subdivision controls; control of air, water and noise pollution; designation of transportation corridors; development of low and moderate income housing, and planning for balanced growth increasingly are well beyond the present capabilities of local government." SEDWAY/COOKE, *supra* note 188, at 14. Because a local government's planning and control powers extend only as far as its geographical boundaries, it often undermines interlocal and regional land use needs. *Id.* The Williamson Act is an example of the uneven results stemming from dele-

local and state control. As are SAFERs,<sup>218</sup> these Regional Trusts are limited to the geographical boundaries of the participating counties. By permitting, but not mandating, the establishment of the Regional Farmland Trust, this proposal combines the flexibility of local control with the long range planning of a more centralized authority.

With both local governments and private citizens represented on the Board of Trustees, the possibility of self-serving interests defeating the purposes of the Trust is minimized. Citizen representation is not a tradition embodied in existing regional agencies in California. However, the success of Prince Edward Island's program, especially its private citizens' Rural Development Council, indicates that citizen involvement is crucial to the Trust's success if California's disappearing farmlands are to be preserved.<sup>219</sup>

Giving each Regional Farmland Trust power to preempt designated lands is expected to be a great aid to the Trust's effectiveness. Because the Trust will exercise this right only on land threatened with imminent development, the development of prime farmlands should be deterred. Developers are expected to channel urban growth onto lands not subject to the Trust's authority.

The ultimate success of the Trust will depend on its ability to coordinate activities with local government's development plans. The Trust does not have the power to preempt local plans. However, local governments do not have veto power over proposed acquisitions except in cases of clear conflict over intended use. Close interaction, based on continuing communication, is needed to balance the Trust's power with local government's traditional authority in land use decisions.

Trust financing remains the chief obstacle to success. Permitting each Regional Farmland Trust to establish a separate fund helps to remove the Trust's actual administration from state control. Of particular importance is the Regional Trust's ability to act without having to depend on annual legislative appropriations.<sup>220</sup>

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gating the administration of a farmland preservation program to local government. See *supra* note 135 and accompanying text.

218. See *supra* notes 32-41 and accompanying text for a discussion of SAFERs.

219. See *supra* notes 51-56 and accompanying text for a discussion of the Prince Edward program.

220. A land banking program dependent on yearly legislative appropriations would, in all likelihood, act too cautiously to be effective. Note, *Public Land Banking*, *supra* note 2, at

Earmarking funds derived from cancelling farmland preservation restrictions for the Trust is the most logical and acceptable means of funding. The 1981 passage of AB 2074<sup>221</sup> and the increased rate of removal of lands under the Williamson Act contracts<sup>222</sup> indicates that this should be a quite lucrative funding source.<sup>223</sup> Finally, the proposal authorizes the Trust to issue bonds as a means of providing for the Trust's stability, in that funding from several sources will help ensure the political independence of the Trust. Bonds need be issued only in the event that cancellation fees from the Williamson Act should prove insufficient to meet the needs of a particular acquisition project planned by one of the Regional Farmland Trusts.

### ***Conclusion***

California needs to pursue an aggressive conservation policy if its prime farmlands are to survive as an important food source in the twenty-first century. Passive conservation programs are inadequate to channel urban development away from prime farmlands. The California Farmland Trust provides a means for the state to achieve permanent conservation of these essential lands. It is but one part of a complex land use planning program which utilizes a variety of growth control tools. It is also a culmination of a growing awareness by our citizens that urban conversion of prime farmlands is a problem of immediate concern to all Californians.

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941.

221. See *supra* notes 138-40 and accompanying text.

222. See *supra* note 144 and accompanying text.

223. See *supra* note 216.