Chapter 8

THE MUTABILITY OF FEDERALISM: RESHAPING THE CONTOURS OF THE WILLIAMSON ACT

The California experience suggests that we have, at best, an imperfect understanding of American federalism, both in theory and practice, when it comes to understanding the power that resides in local governments. State and local interaction in land-use matters presents an intriguing arena in which to explore the dynamics of federalism. In part, this is because the federal government has remarkably little control over private land use, and, in part, because California's history as a state is fraught with land controversies. In this respect, the history of politics and policies in relation to agricultural land development and conservation in California helps to illuminate the shadowy third corner in the triad of federalism.

Land reform was a major political issue in California during the nineteenth century. Henry George observed how swiftly a corrupt land administration system allowed public lands to pass easily into the hands of a relatively small number of people. These conditions impelled him to advocate for using the tax system as a vehicle to implement a redistributive land policy, one that would serve the general welfare rather than private, and sometimes monopolistic, interests. George's ideas influenced those who framed the 1879 Constitution, which gave the state the necessary power to adopt a classified system of property taxation. An 1896 amendment to the

Constitution granted cities the right to form charter governments which, once approved by the state Legislature, gave cities greater power over vaguely defined municipal affairs. Thus, when progressive ideas began to reshape thinking about governmental responsibilities, the California Constitution provided some hint of the pattern these ideas would embroider on the governmental system.

In 1911, California extended home rule to county governments. Since the turn of the twentieth century, the courts have determined many of the functions that constitute a rightful exercise of local power under home rule. The voters and the Legislature, however, determined that two specific powers should be reserved for all local governments. One was the power to levy and administer local property taxes to finance governmental operations directly, with minimal interference from the state. The other was the right to adopt planning policies and procedures to govern local land use. These two actions broadened the scope of home rule.

The 1911 home rule amendment, coupled with the 1910 tax amendment gave tax reform advocates the incentive to propose a series of single tax measures tied, in part, to long-standing agitation for breaking up the remaining large landholdings in the state. They were unsuccessful, but the Progressive-Era political climate spawned two state initiatives that further demonstrate a radical level of dissatisfaction with California's land policies. The Commission on Immigration and Housing, under Simon Lubin's direction, urged the state to adopt a graduated land-value tax to break up large landholdings, the first serious proposal for the state to use the property tax system to stimulate economic development that would promote the general welfare. Through the Land Settlement Board, under the direction of Elwood Mead, the state experimented with the idea of framing a land policy based on planning for agricultural development and land conservation. The goal was to promote prosperity in the small farm sector of the agricultural industry in the belief that small farm owners-operators were better stewards of the land and, hence, better citizens.

In the end, neither of these two flirtations led to a state land policy. By the early 1920s, voters had rejected the idea of using the property tax system to effect land reform, and state political leaders tended to be more conservative in thought. Although serious problems continued to plague the entire tax system, the state paid little attention to local property tax

reform until the late 1940s. The 1929 Planning Act, moreover, officially delegated land-use planning powers to local governments. Thus, by 1930, local governments in California held important powers with respect to land policies, and post-1930 legislation cemented local autonomy over land-use matters. This legislation also encouraged provincialism and territoriality among local governments. The 1937 Planning Act amendments gave county governments authority over rural land use. But the 1939 Uninhabited Territories Act gave cities the authority to ignore any land-use planning counties might have attempted under the 1937 act. Moreover, when the federal government endeavored to stimulate state and regional planning as an extension of proposed national planning, California complied in form but not in substance. Then, during the 1940s, the state transformed so-called state planning into a program designed to promote industrial development through private enterprise. California thus precluded the federal government from taking any substantive role in land-use planning during the 1930s and 1940s.

Post–World War II population and related urban growth brought matters to a head. When local government autonomy developed into urban-versus-rural fighting over annexation issues, cities and counties turned to the state looking for resolution. Despite hope in some quarters that the State Office of Planning might take on functions worthy of its name, the Legislature, after ten years of debate, settled instead on an agricultural land conservation solution entirely in accord with the state's strong tradition of home rule.

GRAPPLING WITH THE CONCEPT OF AMERICAN FEDERALISM

Until the turn of the twentieth century, the concept of dual federalism satisfactorily described the basic architecture of government in the United States, i.e., through the U.S. Constitution, The People vested different powers in two separate centers, the national government and the states, with each level of government duty-bound to maintain the limits of authority granted unto it. States had the authority to delegate powers to local governments. That skeletal concept has long been considered wholly inadequate to describe the reality of federalism. Scholars as well as political leaders

have advanced more complex concepts of American federalism to account for observed or intended changes in its practical operation.[1]

The 1960s was a particularly rich period of discussion and debate, in large part because the role of the federal government in domestic affairs expanded dramatically during the Kennedy and Johnson presidential administrations. Morton Grodzins offered a rather benign theory of *cooperative federalism*, metaphorically described as a "marble cake" in which the three planes of government share functions in a disorderly fashion. In this concept, the process, even though its complexity gives the appearance of chaos, actually renders the system more stable and keeps governments at all levels more responsive to the people. Grant-in-aid programs and the ever-increasing number of career professionals, i.e., functional bureaucrats, who administer them, were cited as the major forces stimulating greater intergovernmental collaboration. Grodzins also asserted that collaboration has been the normal state of intergovernmental relations since the nation's founding, and posited a steady, centralizing tendency in federalism.[2] The centralizing trend, i.e., power intermittently tightening at the top, was generally accepted, although other aspects of cooperative federalism were challenged or rejected.[3]

Nelson Rockefeller introduced the idea of "creative federalism," which became synonymous with President Lyndon Johnson's Great Society

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[1] See, for instance, Richard H. Leach, *American Federalism* (New York: W.W. Norton & Co., 1970), 10–14; W. Brooke Graves, *American Intergovernmental Relations* (New York: Charles Scribner's Sons, 1964), 112–126, 932–953; Daniel J. Elazar, *The American Partnership* (Chicago: University of Chicago Press, 1962), 11–21.

[2] Morton Grodzins, *The American System*, ed. Daniel J. Elazar (Chicago: Rand McNally and Company, 1966), especially 60–88. Daniel Elazar acknowledged more conflict on the playing field and modified the notion of a steady, centralizing momentum; see Elazar, "Federal–State Collaboration in the Nineteenth-Century United States" in Elazar, ed., *Cooperation and Conflict* (Itasca, Il.: F.E. Peacock Publishers, 1969), 83–108, and Elazar, "The Shaping of Intergovernmental Relations in the Twentieth Century," in Elazar, ed., *Cooperation and Conflict*, 135–142.

[3] Harry Scheiber, for instance, pointed out that Grodzins failed to "consider the basic issue of power as it was distributed relatively among levels of government." See Harry N. Scheiber, "The Condition of American Federalism: An Historian's View," A Study Submitted by the Subcommittee on Intergovernmental Relations to the Committee on Government Operations, United States Senate, October 15, 1966, published in Frank Smallwood, ed., *The New Federalism* (Hanover, N.H.: Public Affairs Center, Dartmouth College, 1967), 19–55.

initiatives.[4] Impatient with states that seemed unwilling to or incapable of responding adequately to problems of civil rights, poverty, and urban decay, Johnson's solution was to channel categorical grants-in-aid through the states to cities and community organizations to alleviate what were considered foremost to be urban problems. Increased federal spending in the 1960s to solve what largely were considered local problems reflected a notion that all socio-economic problems are national concerns. Local administration of federal categorical grants generally strengthened city governments as well as quasi-governmental civic agencies created to administer federally funded programs.[5] As Harry Scheiber has observed, creative federalism was a deliberate strategy to strengthen the tripartite architecture of federalism by making cities a more active third partner, although the more enduring characteristic was continued centralization of governmental power.[6]

The Johnson Administration's categorical grants programs increased the number of functional bureaucrats at all levels government, lending credence to what Terry Sanford characterized as "picket fence federalism."[7] His metaphor aptly conveys the nature of competition between program professionals, who often display little or no allegiance to any level of government, and elected government officials, whose public responsibilities are tied to local or state governmental powers and functions. Thus, although the "pickets" of grant programs are officially attached to the three "rails" of government, they have often been administered in ignorance, isolation, or defiance of local and state politics. The tremendous increase in the number of federal grant programs since World War II prompted the suggestion that all those administrative officials who make

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[4] Nelson A. Rockefeller, *The Future of Federalism* (Cambridge: Harvard University Press, 1962).

[5] Roscoe Martin, *The Cities and the Federal System* (New York: Atherton Press, 1965), 72–75, 109–115, 171–175.

[6] Harry N. Scheiber, "Redesigning the Architecture of Federalism — An American Tradition: Modern Devolution Policies in Perspective," *Yale Law and Policy Review/Yale Journal of Regulation* [Symposium Issue] 13 (1996): 269–275.

[7] Terry Sanford, *Storm Over the States* (New York: McGraw–Hill Book Co., 1967), 80; see also Deil S. Wright, "Revenue Sharing and Structural Features of American Federalism," *Annals AAPSS* 419 (May 1975): 109–111.

the day-to-day decisions represent a fourth partner in the American governmental system.[8]

After taking office in 1969, Richard Nixon proposed that Washington replace the "welfare state" with "a new partnership . . . in which we entrust the states and localities with a larger share of the Nation's responsibilities."[9] Under the slogan of New Federalism, the Nixon Administration sought to centralize income security and natural resources programs, and, through general revenue sharing and "block" grants, decentralize human resources services (manpower training, education, law enforcement) and community development programs. Fiscal measures proved initially to be a powerful tool for accomplishing decentralization goals inasmuch as the block grant distribution process favored traditional governmental units. Thus, federal revenues flowed to states, counties, and municipalities, strengthening both state and local governments.[10]

States and local units, however, exercised more discretion over how block grants and shared revenues were spent than many Congressional leaders ever intended. When powerful interest groups began to complain of discrimination in the way funds were distributed, the federal government responded by imposing restrictive rules on spending. Community development, manpower training (CETA), mass transit, and general revenue sharing programs were subject to the greatest increases in federal control, leading Donald Kettl to conclude that "if there had been any doubt about whether the federal, state, or local government was the major partner in the union, the new [Nixon Administration] programs stifled it."[11]

Since the 1930s, presidents have demonstrated a growing political awareness of how the federal system can be manipulated, chiefly through fiscal means, to achieve economic or social goals that are considered to be

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[8] Samuel P. Hays, "Political Choice in Regulatory Administration" in Thomas K. McCraw, ed., *Regulation in Perspective* (Cambridge: Harvard University Press, 1981), 124–154.

[9] Richard M. Nixon, "State of the Union Address," January 21, 1971, *Congressional Record*, v. 117, 165–169.

[10] Richard P. Nathan, "The New Federalism Versus the Emerging New Structuralism," *Publius* 5, no. 3 (Summer 1975): 111–125; Wright, 111–119.

[11] Donald F. Kettl, *The Regulation of American Federalism* (Baton Rouge: Louisiana State University, 1983), 33–41.

for the good of the nation.[12] The terms "creative," "picket fence," and "new" not only describe models that challenge the relatively benign concept of cooperative federalism but also expose the degree of chaos and conflict the federal system can accommodate.

Successive presidents have sought to gain greater control over intergovernmental relations, or, alternatively, check the centralizing trend. President Eisenhower determined to decentralize the federal system during the 1950s, and three different bodies worked toward that end: the second Hoover Commission on Executive Organization, the Kestenbaum Commission on Intergovernmental Relations, and the Joint Federal–State Action Commission. None was successful. During the 1960s and 1970s several more bodies emerged to cope with the increasing complexity of intergovernmental ties. Congress established a permanent Advisory Commission on Intergovernmental Relations in 1959. Voluntary state- and regional-level Councils of Government (COGs), which began forming during the 1950s, increased rapidly in number during the 1960s. The Nixon Administration experimented with several new agencies and organizations, beginning with the short-lived Office of Intergovernmental Relations, established in the Executive Office in 1969; followed by the White House Domestic Council, established in 1970; and ten Federal Regional Councils. An informal New Coalition of governors, state legislators, county officials, and mayors began to take shape in 1973. Offices of intergovernmental relations appeared in most federal agencies during the 1970s. In 1981, President Reagan established two more advisory boards independent of the Advisory Commission on Intergovernmental Relations: a cabinet-level Task Force, under Vice President George Bush, and a forty-member Presidential Federalism Advisory Commission, under the direction of Senator Paul Laxalt of Nevada.[13]

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[12] Deil S. Wright argues that fiscal federalism spawned yet another phase of modern intergovernmental relations. He calls this the "calculative" phase, a term with multiple inferences. See "Intergovernmental Relations in the 1980s: A New Phase of IGR" in Richard H. Leach, ed., *Intergovernmental Relations in the 1980s*, Annals of Public Administration, no. 4 (New York: Marcel Dekker, Inc., 1983), 21–30.

[13] Grodzins, 307–316; "The Intergovernmental and Territorial Dimension of National Policy: Discussion Paper," Intergovernmental Task Force Advisory Committee on National Growth Policy Processes, August 23, 1976, 16–27; Charles W. Harris, "COGs, A Regional Response to Metro–Urban Problems," *Growth and Change* 6 (July 1975): 9–15; George S. Blair, "Changing Federal–Local Relations" in Leach (1983), 41.

By the late 1970s at least a few observers wondered whether the system manipulations perpetrated by the Johnson and Nixon administrations had "intergovernmentalized" American federalism to the point of impending malfunction. David Walker, for instance, noted that "an eagerness to legislate high moral principles, on the one hand, and an abiding capacity to tolerate a wide gap between these principles and actual practice, on the other," had produced enormous "tension between the centralizing and noncentralizing forces inherent in the system." In his estimation, the system had been "marbleized" to the extent that "clear lines of accountability" were "nearly obliterated."[14] Scheiber counters that there was a marked dualism to Nixon's New Federalism. In some respects, the legislative record either left the New Deal–Great Society legacy largely intact or, as in environmental policy, extended the arc of centralization. But Nixon's New Federalism also set the stage for another round of New Federalism under President Reagan, which focused on deregulation, reducing the volume of administrative rules governing federal programs, and reorganizing the federal bureaucracy. Reaganism also spawned the neoconservative movement that increasingly came to influence the Republican agenda.[15]

Scholars of federalism, however it is conceptualized, have amply demonstrated its mutability in response to political, ideological, and judicial forces that pertain to intergovernmental relations at the national and state levels. From this perspective, local governments tend to be characterized more or less as pawns on the chessboard of federal and state players. For the most part, the power of local governments in intergovernmental relations is widely ignored.

THE STATE–LOCAL DIMENSION IN CALIFORNIA

Most students of American federalism agree that "in the early 1930s, the depression all but submerged the states."[16] There is less agreement on the

[14] David B. Walker, "A New Intergovernmental System in 1977," *Publius* 8 (Winter 1978): 112–115.

[15] Scheiber, "Redesigning the Architecture of Federalism," 290–296.

[16] Sanford, 20. James Patterson is a notable exception. His study of federal activity in the areas of work relief, social welfare, labor, and regional planning, shows the degree

degree to which states have recouped power stripped from them during the New Deal and World War II years. Common wisdom nonetheless links state weaknesses and failures with the centralizing trend evident in the federal system during the twentieth century. The litany of weaknesses is lengthy. Excessively detailed constitutions reflected outdated, conservative, even agrarian values, and hampered states from taking decisive action to address urban problems. State legislatures were characterized by malapportioned representation until *Baker v. Carr* (1962), which tended to reinforce a provincial mindset among state officials. Until about 1940, state administrative systems generally were organized inefficiently. And throughout the twentieth century, states were reluctant to expand revenue sources to the degree necessary to carry out substantive new programs or services.[17]

As a result, according to this view, states generally were incapable, by design or default, of responding to the needs of American society as it shifted from predominantly rural to predominantly urban. Between roughly 1900 and 1930, states failed to exercise their proper responsibilities in the federal system, thus setting the stage for the forfeiture of power that followed. The Great Depression merely gave the federal government the opportunity to accomplish the inevitable. If states could not or would not respond to urban and metropolitan problems, then the federal government should. Few scholars point out the historic role that states played as policy experimenters in the first half of the twentieth century.[18]

Johnson's Great Society and Nixon's New Federalism sought to strengthen the federal system, although in different ways, and the states may have benefited appreciably. Harry Scheiber points to the 1970s as a decade of

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to which states forced the Roosevelt Administration to modify policies as they were implemented. Rather than usurp power during the 1930s, he argues, the federal government roused many states from their torpor, and, as a result, states generally maintained a high degree of autonomy throughout the 1930s; see James T. Patterson, *The New Deal and the States* (Princeton: Princeton University Press, 1969), especially 24–25, 207.

[17] Sanford, 17–38; Martin 47–82. By 1980, state administrations were more efficiently organized, state legislatures more representative of populations, and state budgets based on sounder fiscal arrangements; see Advisory Commission on Intergovernmental Relations (ACIR), *State and Local Roles in the Federal System* (Washington, D.C.: U.S. Government Printing Office, 1982), Chapter 3, and David B. Walker, "A Perspective on Intergovernmental Relations" in Leach (1983), 7–9 ; *Baker*, 369 U.S. 186.

[18] In addition to Patterson, see Sanford at 53–67.

"renaissance" for the states. He argues that tax reform and economic growth gave states the means to modernize governmental structures, and that administering new federal-aid initiatives of the Johnson and Nixon administrations also served to reinforce a trend that was already underway.[19]

This certainly was true of California, which experienced phenomenal population and economic growth in the post–World War II era. The modernization of California's state government began with Governor Edmund (Pat) Brown (1959–1967). His legacy includes the massive California State Water Project, which boosted agriculture in the Central Valley and funneled water to Los Angeles; creation of the 1960 Master Plan for Higher Education along with an expansion of the state's college and university systems; and various political reforms including creation of the Constitutional Revision Commission in 1962, which began the process of revising the state's Constitution.[20] As this study has shown, postwar population growth prompted local governments and ultimately the state to seek a measure of control over rampant urban sprawl. Passage of the 1965 Williamson Act thus stands as another significant legislative achievement in California's path of modernization under Pat Brown. Importantly, the Williamson Act placed implementation in the hands of local governments.

The role of local governments in the federal system is the least understood, and the literature tends to treat home rule as an arcane legal facet of federalism.[21] This is understandable to a point because, legally, local units are creatures of the states.[22] But, during the late nineteenth century and continuing steadily until the mid-1920s, many states sought "to reproduce on the state–local level some form of the constitutional federal–state division of power."[23] Some observers of intergovernmental relations have acknowledged that the home rule movement changed American federalism, but there is little agreement as to the significance of that change. One

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19 Scheiber, "Redesigning the Architecture of Federalism," 285.

20 See Ethan Rarick, *California Rising: The Life and Times of Pat Brown* (Berkeley: University of California Press, 2006).

21 I am speaking here of the broader home rule movement, not the narrowly conceived California movement to enact single tax amendments under the guise of home rule.

22 See Daniel R. Mandelker, et al., *State and Local Government in a Federal System*, Eighth Edition (Durham: Carolina Academic Press, 2010), 75–142.

23 George C.S. Benson, *The New Centralization* (New York: Farrar and Rinehart, Inc., 1941), 117.

opinion holds that whatever significance the movement once had has been lost in the massive governmental bureaucracy encasing fiscal federalism, which has rendered local governments nearly powerless to govern many areas of American life.[24]

Charles Abrams, however, argues that home rule proved to be the nemesis of New Deal public housing and town planning programs. Lower courts repeatedly challenged the federal government's power under the general welfare clause to undertake community building projects. The Roosevelt administration, moreover, opted not to appeal lower court rulings for fear that any negative high court ruling would undermine other New Deal social programs. To keep public housing and community planning programs from total failure, New Dealers retreated from the idea of direct federal control. The New Deal, according to Abrams, actually set the precedent for subsequent decentralized federal public housing programs with the 1937 Wagner–Steagall Act, which established a program "with the federal government now posited as the financier and subsidizer and the local housing authorities as the acquirers of land and the actual builders and managers."[25]

Similarly, the New Deal effort to establish state and sub-state regional planning, as well as the great experiment to establish multistate regional planning with the Tennessee Valley Authority, are silent testimony to the strength of state and local governments. The Roosevelt administration, in the end, enjoyed greater success with the Soil Conservation Service, which had only narrow resource conservation goals and which allowed local units to control implementation. The federal government provided technical support as well as financial assistance, but participation was strictly voluntary and subject to the commitment demonstrated by local soil conservation districts.[26]

The states have played a considerable role in keeping the system noncentralized in certain policy areas. Abrams, on the one hand, considers the

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[24] John G. Grumm and Russell D. Murphy, "Dillon's Rule Reconsidered," *Annals AAPSS* 416 (November 1974): 120–132.

[25] Charles Abrams, *The City is the Frontier* (New York: Harper and Row, 1965), 211–212, 238–249.

[26] See Douglas Helms, *Readings in the History of the Soil Conservation Service*, Historical Notes Number 1 (Washington, D.C.: U.S. Department of Agriculture, Economics and Social Sciences Division, 1992).

states as antagonizers who have displayed a willful disregard for the general welfare: "under the cloak of home rule and local autonomy, the state has passed down much of its own sovereign responsibilities to a myriad of local (mostly suburban) governments, each of which is concerned with its own welfare to the exclusion of its neighbor's."[27] Terry Sanford, on the other hand, agrees that states must take the blame for creating "municipal havoc," but not because they ceded too much power to local governments. From his point of view, as one-time governor of North Carolina, the states were "slow to cede to the cities adequate powers to tax, zone surrounding areas, regulate housing, provide or require mass transportation, and acquire open space."[28] Perhaps Joseph McGoldrick came the closest to capturing its essence when he wrote, in 1933, "The municipal home rule movement has never been aimed against the current tendencies toward centralizing and uniformity. It ignores them."[29] In retrospect, the home rule movement assumed greater import than its adherents ever anticipated. Their initial concerns were narrow, often limited to freeing cities and states from organized corruption. State legislatures, moreover, often spent too much time deciding strictly local matters, some of them no more significant than determining the operating budget for some city's fire department.

But home rule grew in ectopia. Between 1875 and 1924, sixteen states constitutionally granted home rule powers to municipal governments. The movement languished during the 1930s, then resumed during the 1960s. By 1980, most states allowed municipal home rule, and forty-three states allowed county home rule.[30] Legislators who framed earlier home rule

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[27] Abrams, 211; for a similar view, see Lyle E. Schaller, "Home Rule — A Critical Appraisal," *Political Science Quarterly* 76 (September 1961): 402–415.

[28] Sanford, 24.

[29] Joseph D. McGoldrick, *Law and Practice of Municipal Home Rule, 1916–1930* (1933; New York: AMS Press, Inc., 1967), 300.

[30] For good discussions of the home rule movement, see, in addition to McGoldrick, Frank J. Goodnow, *Municipal Home Rule: A Study in Administration* (New York: Macmillan and Co., 1895), Howard Lee McBain, *The Law and The Practice of Municipal Home Rule* (New York: Columbia University Press, 1916), and Lane W. Lancaster, *Government in Rural America,* second edition (New York: D. Van Nostrand Co., 1952), 309–310, and Benson, 116–123. For information on the number of states which have adopted home rule provisions, see National Municipal League, *Digest of County Manager Charters and Laws*, tenth edition (New York: National Municipal League, 1967); and ACIR, *State and Local Roles*, 156.

constitutional provisions, however, "never faced the problem of determining what matters [could] be best handled by local authority and what require[d] state action."[31] In short, home rule constituted a grant of power, but that power was, at best, vaguely conceived and described. As a practical result, local governments had the power to experiment with new forms of organization and administration, but courts often decided what constituted a legitimate exercise of local power. Case law surrounding home rule thus developed more-or-less independently in each state where city and/or county home rule is allowed. To be sure, not all cities or counties opt for a charter government if the choice is offered, but the existence of that constitutional privilege in many states spawned the *custom* of home rule, which "has played an important role in maintaining and developing the principle of decentralization."[32]

California courts determined that the municipal affairs of charter cities include the election and pay of municipal officials; the provision of water supplies and facilities, sewer facilities, fire protection, streets, parking, libraries, and public hospitals; the establishment of revenue bond procedures; and the right to impose business and other miscellaneous taxes.[33] These responsibilities constitute the sort of responsibilities for which municipalities logically should have authority. But the California Legislature also granted all city and county governments authority over two, more substantive, areas. The 1910 tax amendment not only mandated that the property tax would be reserved as the principal source of revenue for local government operations but, as implemented, gave local governments almost complete control over property tax administration until the early 1950s. The 1929 Planning Act, as amended in 1937, gave both city and county governments a mandate to assume authority over private land use. Most important, these home rule powers evolved outside a theoretical framework of American federalism, which accords local governments a fairly narrow sphere of power in the governmental system. The net effect of this legislation, however, was that, in California, it expanded home rule over local affairs for some local governments into local autonomy over private land use for all local governments.

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31 McGoldrick, 3, 310–312.

32 Benson, 117.

33 League of California Cities, 1965 report, 2.

Those who subscribe to the "quiet revolution in land-use controls" believe that federal and state legislation, beginning with the 1969 National Environmental Protection Act, represented a significant step toward centralizing control over land use and development.[34] Indeed, the environmental impact review process required for public, and some private, development projects; federal and state pollution control laws; and federal and state laws protecting environmentally sensitive areas such as wetlands, prairies, and coastlines, have helped to slow the pace of development. Environmental review processes also have helped to reshape the way in which American society collectively thinks about land development. The general public no longer considers it axiomatic that outlying shopping centers, sprawling suburban residential tracts, and vast industrial parks represent progress. But the "quiet revolution" is, to a very large degree, dependent on the actions of local governments and the courts.

As of the mid-1980s, the hope for a centralizing trend in land-use controls rested largely on developments in a handful of states. Hawaii, Oregon, Vermont, Florida, Wyoming, and Maine had enacted regulatory land development laws that attempted, in one fashion or another, to establish land policies framed in terms of state welfare and, in some cases, to forge links between fragmented local, state, and federal jurisdictions as well as goals. But none of these states enacted anything approaching a comprehensive land policy.[35] The California Land Conservation Act was, furthermore, emulated far more widely than state-level attempts to establish regulatory land-use controls. The CLCA, and all land conservation programs based on tax-relief incentives, represent what has been called the "unofficial system of land use control" which is more powerful than any official regulatory system so far devised.[36]

The unofficial system of land conservation evolved with little historical connection to the older conservation movement, with its emphasis on efficient use and sustained yield, and it developed independently of the post–World War II environmental movement, which had a decided survivalistic

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34 See Don Hagman and Dean Misczynski, "The Quiet Federalization of Land Use Controls," *Real Estate Appraiser* (September–October 1974): 5–9.

35 Ibid., passim.

36 Norman Williams, "The Three Systems of Land Use Control," *Rutgers Law Review* 25 (1970): 80–82.

thrust with its emphasis on environmental protection and human-scale technologies. Although environmentalists and planners endorsed tax incentives for land conservation, they had little to do with devising such programs. Yet land conservation became an item on environmentalists' political agenda.

There is considerable evidence, Samuel Hays argues, that "environmental values have expanded steadily [since World War II] in American society."[37] David Vogel concurs, observing that the "level of public consciousness about environmental, consumer, and occupational hazards" since the mid-1960s, "appears to be of a different order of magnitude" than that which prevailed during either the Progressive Era or the New Deal.[38] Grassroots activism surely has presented a formidable political challenge to all levels of government as well as to large-scale managerial systems in the private sector. Many environmental battles have been fought on the federal level; many more have been fought on the local and state levels. In a conclusion that echoes the view of Harry Scheiber, Hays posits that the "enhancement of state power and authority over local government was a major legacy of the environmental controversies of the 1960's and 1970's."[39]

RESHAPING THE LEGAL CONTOURS OF THE WILLIAMSON ACT

If this is so, it is worth considering how this strengthening happened. Again, the Williamson Act is instructive, and it points to more than battles over what we think of as environmental controversies. A review of the legal

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[37] Samuel P. Hays, "From Conservation to Environment: Environmental Politics in the United States Since World War II," *Environmental Review* 6, no. 2 (1982): 14–41.

[38] David Vogel, "The 'New' Social Regulation" in McGraw, *Regulation in Perspective*, 160.

[39] Samuel P. Hays, "The Political Structure of the Environmental Movement Since World War II," *Journal of Social History* 14 (Summer 1981): 729. Speaking more generally, Catherine H. Lovell notes that increases in federal grant-in-aid programs, in the conditions of aid, and in regulatory interventions (crosscutting regulations) have been accompanied by "increasingly active participation by state and local officials in political processes and in negotiations about the programs that affect them." She favors "working toward reforms in our system which empower the lowest levels of government, yet developing systems of articulated variety as needed to pursue broader policy objectives." See "Some Thoughts on Hyperintergovernmentalization" in Leach (1983), 95.

and legislative history pertaining to the Williamson Act since 1965 reveals a complex process that has incrementally shifted bits of power from the local to the state level. This final section attempts to fathom that process and its meaning by examining legal cases that percolated up to the appellate and supreme court levels along with significant amendments passed by the state Legislature. In some cases, court decisions directly influenced legislative action. This 30,000-foot view necessarily ignores scores of lower court rulings and minor legislative amendments, but it does enable one to discern an evolutionary process that transformed a purported state land-use policy from rhetoric to reality. It also enables one to discern the wrinkles of federalism in practice at the local and state levels.

Statewide coordination and oversight of the Williamson Act program rests with the California Department of Conservation, while local governments administer the program and retain discretionary power to establish more stringent program rules. Participation in the Williamson Act program also is voluntary, and, as of 2016, fifty-two of California's fifty-eight counties were participating.[40] Under the act's provisions, participating local governments must first establish agricultural preserves, within the boundaries of which landowners may take advantage of preferential property tax assessment based on the land's actual use for agriculture (using a capitalization of income formula) instead of the land's potential market value. To receive preferential assessment, a landowner must enter into a contract with the appropriate county or city and agree to maintain the land in agricultural use or related open space for a minimum of ten years. Contracts self-renew annually unless and until the landowner or the local government gives notice of non-renewal. In this event, a ten-year phase out period begins, during which time the use restrictions remain in place but the tax advantage is gradually withdrawn. In 1998, the Legislature added new provisions to the Williamson Act enabling landowners to receive even greater preferential tax advantages by placing land in a Farmland Security Zone and entering into twenty-year contracts.[41]

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[40] *2016 California Land Conservation Act Status Report* (California Department of Conservation, Division of Land Resource Protection, December 2016), 1. Status reports, published every two years, hereafter are cited as *CLCA Status Report* with the relevant year.

[41] *California Government Code*, Section 51296 et seq.

After the Williamson Act went into effect, land enrollments were steady and reached a total of approximately six million acres in 1970. Enrollments jumped a bit after passage of the Open Space Subvention Act in 1971, which authorized the state to partially reimburse local governments through subventions for lost property tax revenue from agricultural land under contract.[42] The figures then climbed steadily throughout the 1970s, reaching a plateau of roughly sixteen million acres in 1980. This figure represents about half of the state's agricultural land. Since then, the total acreage under contract has fluctuated from year to year as some contracts expire and other lands are placed under contract, but sixteen million acres was a stable approximate figure until 2009, when the state suspended, then eliminated, subvention payments because of revenue shortfalls produced by the Great Recession that began in 2008.[43] For the period 2010–2016, the total acreage figures are less reliable because several counties stopped reporting enrollment data on a regular basis. Nonetheless, the estimated statewide average enrollment figure from 1990 to 2015 held at nearly sixteen million acres.[44] Importantly, when subvention payments were ended, the state Legislature modified the basic program structure by reducing the minimum rolling contract period from ten to nine years for the regular Williamson Act program, and from twenty to eighteen years for land in the Farm Security Zone program.[45] This change appears to have mitigated the loss of subvention payments, at least in the short term.[46]

The Williamson Act is constantly challenged in court, although relatively few cases reach the higher courts. Likewise, in every session the state

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42 *California Government Code*, Section 16141 et seq.

43 *California Statutes*, 2008, Chapter 751 (AB 1389) suspended subvention funding as part of overall cuts to the state budget; *California Statutes*, 2009, Chapter 1 (AB X-4) made the suspension permanent.

44 *1990–91 CLCA Status Report*, 17–18; table entitled "Land Conservation (Williamson) Act Enrollment, 1990–2015," California Department of Conservation website, under Current and Historic Data About Land Conservation (Williamson) Act Status, www.conservation.ca.gov/dlrp/lca/stats_reports/Pages/index.aspx.

45 *California Statutes*, 2010, Chapter 722 (SB863) created an option for participating jurisdictions to recapture a portion of foregone tax revenue by decreasing the contract length by one year; *California Statutes*, 2011, Chapter 90 (AB 1265) renewed that option until January 2016; *California Statutes*, 2014, Chapter 322 (SB 1353) made the option permanent.

46 *2014 CLCA Status Report,* 2.

Legislature considers bills to amend the law in minor as well as major ways. Overall, litigation has served to strengthen the act and, in general, make local administration more consistent from county to county and with the state policy goals articulated in the original legislation.

Early court cases upheld the discretionary power of local governments. In *Kelsey v. Colwell* (1973), the first case to reach the appellate court level, the Fifth District Court of Appeal upheld the discretionary intent of the law with respect to county participation. Horace Kelsey and other agricultural landowners had sought to compel the Merced County Planning Director, Hal F. Colwell, to establish an agricultural preserve and implement the Williamson Act. The court ruled that the permissive language of the law — i.e., that any county or city *may establish* agricultural preserves — was intentional, and that local governments were not mandated to implement the provisions of the Williamson Act. The appellate court also noted that in 1970 and again in 1971, the state Legislature had rejected proposed amendments that would have substituted the word "shall" for "may" in two pertinent sections of the law.[47]

In the 1980s, however, higher courts began to define the limits of local discretionary power inscribed in the legislation. In 1981, the California Supreme Court ruled, in *Sierra Club v. City of Hayward*, that local governments must take the "public interest" into account in considering landowner requests for Williamson Act contract cancellations. The Sierra Club and others filed suit after the City of Hayward granted landowners Charles and Helen Soda a partial contract cancellation to develop a residential subdivision on a 93-acre portion of their cattle ranch, situated in the foothills on the eastern edge of the City of Hayward. The cancellation allowed the landowners to escape the property tax consequences that would have ensued had they given notice of nonrenewal and gone through the ten-year phase out period. Trial proceedings exposed lax planning on the part of the city, including the dismissal of alternative development sites identified in a pertinent environmental review document, but the Supreme Court's ruling called particular attention to a section of the Williamson Act that addressed the term "public interest" in relation to contract cancellation provisions. Acknowledging that "public interest" is an imprecise term, the

47 *Kelsey v. Colwell*, 30 Cal. App. 3d 590 (1973).

court went on to point out that the Legislature had anticipated disputes over its meaning and thus provided reasonably clear guidance for determining "which 'public' and what 'interests' [were] to be considered" in making contract cancellation decisions. Specifically, the court emphasized that the Legislature justified the need for the Williamson Act "in part by a concern for 'the agricultural economy of the state . . . [and] for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.'" This led the court to stipulate that "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." In a split decision, the majority opinion held that the city had not considered the interests of the public as a whole and not followed either the spirit or letter of the law, which was written to assure that contracts met the constitutional requirement of an "enforceable restriction" so that landowners could not escape their contractual obligations whenever an opportunity for more profitable land use came along.[48]

Sierra Club v. City of Hayward touched off a new round of legislative and judicial action. The 1981 Robinson Act affirmed the restrictive language of the Williamson Act but authorized a one-year "window" to "correct inconsistent applications" of the contract cancellation provisions, during which time landowners could ask for cancellation under relaxed criteria. The California Farm Bureau Federation, League of California Cities, California Association of Realtors, County Supervisors Association, California Building Industry Association, and California Council for Environmental and Economic Balance vigorously supported passage of the Robinson Act. Under the window provision, requests for contract cancellations had to meet only two criteria: that urban development was contiguous to a parcel under Williamson Act contract and that a proposed alternative use was consistent with the applicable general plan. In 1983, the Legislature passed another amendment to require that notices of cancellation be given to the Department of Conservation.[49]

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[48] *Sierra Club v. City of Hayward*, 28 Cal.3d 840 (1981).

[49] Dale Will, "The Land Conservation Act at the 32 Year Mark: Enforcement, Reform, and Innovation," *San Joaquin Agricultural Law Review* 9, no. 1 (1999): 28–9; "Historical Background" section of *Honey Springs Homeowners Assn v. Board of Supervisors*, 157 Cal. App. 3d 1122 (1984); *California Statutes*, 1981, Chap. 1095; *California*

A highly controversial lawsuit involving so-called window cancellations quickly followed. After the San Diego County Board of Supervisors cancelled three Williamson Act contracts to allow the development of a clustered community of 389 high-end homes with an eight-acre commercial district and a seventeen-acre artificial lake, Honey Springs Homeowners Association, Inc. and the Sierra Club sued, charging that the Board of Supervisors, by cancelling the contracts, was promoting discontiguous patterns of urban development. Of note here, the proposed development was located eight miles southeast of the "urban limit line" for the San Diego metropolitan area in the county's general plan, but the supervisors approved the cancellations because the development project was categorized as "rural" — as allowed under the general plan — and the land itself was properly categorized as rural. Thus, the supervisors held that the proposed alternative use, i.e., a clustered residential–commercial development, was consistent with the general plan and with the relaxed cancellation criteria in effect during the one-year window of the Robinson Act amendments.[50] Although the California Office of Planning and Research called the proposed project "leap-frog urban development," a term long used by planners, San Diego County, through its general plan, was allowing the same effect under the disingenuous category of "rural" development.

Because the proposed project was consistent with the county's general plan, the appellate court addressed a narrower legal question: whether the Honey Springs project, "defined as rural development under [a] general plan enacted to control county developmental growth patterns . . . necessarily could not create a discontiguous pattern of urban development as that term is used in the Williamson Act, an enactment involving different far-reaching statewide concerns."[51] In a lengthy opinion, the appellate court held that the proposed development could only be construed as "urban." Although the residential density was quite low, approximately five

Statutes, 1983, Chap. 864. See also Dan Walters, "Punching Holes in the Williamson Act," *California Journal* 14 (December 1983): 459–461 and Ann Foley Scheuring, "The Rising Power of the Farm Lobby," *California Journal* 13 (November 1982): 411–413.

50 "Factual and Procedural Background," section of *Honey Springs Homeowners Assn. v. Board of Supervisors*, 157 Cal. App. 3d 1122 (1984).

51 "The Legal Controversy" section of *Honey Springs Homeowners Assn. v. Board of Supervisors.*

acres per home site, and the development would include abundant dedicated open space, the proposed development also called for "approximately 15 miles of roads, a fire station, equestrian facilities . . . and a commercial service center approved without limitation as to the size or number of commercial buildings." Additionally, the project would require "importing water through a 12-mile main, with attendant pumping facilities and storage tanks, and a sewage treatment plant with the capacity to process .12 million gallons per day." In addition to placing a burden on existing public services and school districts, the court called attention to the adverse environmental effects of excavation for 389 home sites and fifteen miles of roadways, the visual impact of a sewage plant to be constructed along Honey Springs Road, the likelihood of runoff causing downstream erosion, the traffic and pollution impacts of an estimated 2,700 daily automobile trips, and unintended impacts on wildlife.[52]

Two years later, in *Lewis v. City of Hayward* (1986), the First District Court of Appeal buttressed the *Honey Springs* decision by ruling that "the window provisions must be construed narrowly and against cancellation in accordance with the objectives of the Williamson Act" to meet the constitutional requirement for enforceable contract restrictions.[53] These two cases sent a strong signal to counties and cities that the higher courts stood ready to make local governments uphold the Williamson Act to stem the tide of leap-frog residential subdivisions.

Two other cases in the 1980s involved assessment actions. Under the 1971 Open Space Subvention Act, which provided partial replacement of tax revenues to local governments, the secretary of the Resources Agency was given authority to review local agency decisions to waive or reduce contract cancellation fees. In *Dorcich v. Johnson* (1980), a landowner in Santa Clara County challenged this provision, arguing that with the 1971 amendment, the Legislature intended to give local agencies the authority to make unfettered decisions regarding the local tax base. The First District Court of Appeal disagreed, holding that "the state has a direct financial interest in the cancellation fees" and, further, that the Legislature intended

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[52] "The Honey Springs Project is 'Urban' Development" section of *Honey Springs Homeowners Assn. v. Board of Supervisors*.

[53] *Lewis v. City of Hayward*, 177 Cal. App. 3d 103 (1986); Will, "The Land Conservation Act at the 32 Year Mark," 24.

for the secretary to act on behalf of the state to "insure that the statewide purpose of conserving agricultural land is fulfilled."[54]

Another lawsuit addressed the effect of Proposition 13 on tax assessment of agricultural land removed from the Williamson Act program. Passage of Proposition 13 in 1978 altered the state Constitution to allow differential property taxation for the purpose of protecting a class of existing property owners from the tax consequences of an upward spiraling real estate market. The lawsuit in question stemmed from actions taken by the City of Stockton in 1977, when it annexed four parcels (approximately 120 acres) under Williamson Act contracts and rezoned the land for residential use. Under the provisions of Proposition 13, the tax assessor reassessed the land at its earlier fair market value, which resulted in a substantial property tax increase. The landowner appealed to the Board of Equalization, claiming that under the rollback provision of Proposition 13, the assessor should have used the use value in effect when the land was placed under contract. The Board of Equalization granted the landowner's appeal, in response to which the tax assessor sought redress from the appellate court. The Third District Court of Appeal reversed the board's decision, holding that even though Proposition 13 intentionally altered the principle of equitability in property taxation, there was "nothing in the background of Proposition 13 either pro or con" to suggest that "such disparity was intended to result from artificially depressed assessments pursuant to Williamson Act contracts no longer in existence."[55]

From the very beginning, annexation actions plagued effective administration of Williamson Act contracts covering land on the urban fringe. Very few complaints reached the higher courts, but the Legislature attempted to address these issues in the 1990s.[56] When the law was passed in

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54 *Dorcich v. Johnson*, 110 Cal. App. 3d 487 (1980).

55 *Shellenberger v. Board of Equalization*, 147 Cal. App. 3d (1983). Passage of Proposition 13 in 1978 had raised concerns that it would greatly limit the tax relief available to agricultural landowners under the Williamson Act, and the number of enrolled acres would drop precipitously, but the effect turned out to be negligible.

56 One exception is an unpublished case, *Irval W. Carter et al., v. City of Porterville*, Nos. F016777, F017555, and F018190, Court of Appeal, Fifth District, August 19, 1993. In this case, which turned on other legal issues, the appellate court incidentally held that a Williamson Act contract remained in effect even though the City of Porterville had filed a blanket protest when the contract was executed.

1965, Assemblyman Williamson had deflected an eleventh-hour attempt to insert a provision giving cities the right to block the enrollment of agricultural lands within three miles of their incorporated borders. However, a 1968 amendment permitted cities to protest the execution of Williamson Act contracts within *one mile* of their borders. Filing a protest enabled a city, if it decided to annex enrolled land, to terminate Williamson Act contracts.[57] In 1990, the Legislature then repealed the 1968 amendment because cities were interpreting the provision with excessive liberality, and landowners on the urban fringe were reaping tax windfalls.[58] This was allowed to happen when a city or county cancelled a Williamson Act contract but did not require the landowner to pay property taxes retroactively based on market-value assessment. Despite the repeal, according to Dale Will, former staff counsel for the Department of Conservation, cities continued, at least through the 1990s, to annex lands in the Williamson Act program and allow development without going through proper contract termination procedures. The reason for this state of affairs, in Will's opinion, was that city planning departments, unlike county planning departments, were generally unaware of Williamson Act requirements and often failed to check for the possible existence of contracts. As a result, the Legislature passed further amendments in 1998 to establish administrative procedures for proper handling of Willliamson Act contracts when cities annexed land.[59]

The matter of determining "compatible use," largely undefined in the Williamson Act, *was* the object of both litigation and legislation in the 1990s.[60] During the 1980s, the Department of Conservation reportedly was "besieged with review of 'compatible use' proposals including race tracks, hotels, country clubs, large scale mining, and concrete plants." The department thus initiated legislation to establish limits on what constituted

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57 *California Statutes*, 1968, Chapter 413, Section 2.

58 *California Statutes*, 1998, Chapter 841 (AB 2764); Will, "The Land Conservation Act at the 32 Year Mark," 11–12.

59 Will, "The Land Conservation Act at the 32 Year Mark," 13–14.

60 *California Government Code*, Section 51238, simply specified that the "erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities" were deemed "compatible uses" and that land so used could not be excluded from agricultural preserves.

compatibility. Bills introduced in 1991 and 1992 failed.[61] In the meantime, the Stanislaus Audubon Society filed suit against Stanislaus County after the Board of Supervisors approved a huge recreational complex proposed for development on 600 acres of the 2,500-acre Willms Ranch, much of which was under Williamson Act contract. The proposed project included a twenty-seven-hole golf course, four tennis courts, a swimming pool and cabana, a clubhouse with meeting facilities, proshop, and a restaurant, and a maintenance facility. Although the county planning department initially had determined that the project would have significant environmental effects and the Department of Conservation had determined that the project was inconsistent with Williamson Act requirements, both the planning department and ultimately the Board of Supervisors approved the project, and a full environmental assessment was never conducted.[62]

After Stanislaus County denied an appeal by the Stanislaus Audubon Society, the Audubon Society took its grievance to the Fifth District Court of Appeal. The appellate court considered two related matters: whether the county had failed to meet its obligations under the California Environmental Quality Act (CEQA) and whether the development project was compatible with the Williamson Act. After finding ample evidence that the county had knowingly circumvented the preparation of an environmental impact report, the court reversed the county's decision "pending certification of a legally sufficient EIR." Because the weight of evidence concerning the county's breach of law under CEQA was so great, the court held that it was not necessary to consider the question of compatible use under the Williamson Act.[63]

The appellate court's decision not to consider compatible use in *Stanislaus Audubon Society v. County of Stanislaus* prompted the Department of Conservation to initiate another bill, AB 2663, which passed the Legislature in 1994. AB 2663 amended the Williamson Act to stipulate, in the negative, that compatible uses cannot harm soil fertility, obstruct or displace potential agricultural operations, or induce non-agricultural development of surrounding enrolled lands.[64]

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61 Will, "The Land Conservation Act at the 32 Year Mark," 15.

62 *Stanislaus Audubon Society, Inc. v. County of Stanislaus et al. and Willms Ranch,* 33 Cal. App. 4th 144 (1995).

63 Ibid.

64 Will, 16–18; *California Statutes*, 1994, Chapter 1251.

Another 1990s case involving the Stanislaus County tax assessor led to new legislation significantly enhancing the intent of the Williamson Act. In 1993, the Diablo Grande Limited Partnership submitted an application to Stanislaus County requesting cancellation of Williamson Act contracts covering approximately 5,000 acres of grazing land to develop a luxury town site which included a destination resort complex, a winery, 2,000 homes, and associated commercial uses. After the Board of Supervisors approved the cancellation, the tax assessor calculated the cancellation fee on the value on the land's use value for dry-land farming rather than its fair market value, a clear violation of statutory law. The California Resources Agency first brought suit in the Stanislaus County Superior Court seeking to force the county to follow the law. When the Superior Court dismissed the case on technical grounds and also ruled that the Resources Agency did not have standing to sue, the agency took its case to the Fifth District Court of Appeal, which affirmed its standing to bring suit on behalf of the State of California. Stanislaus County surely recognized that it had overstepped its discretionary powers under the Williamson Act because, before the case went to trial, the county and Diablo Grande settled out of court. Under the terms of settlement, Diablo Grande agreed to place 3,500 acres under a permanent conservation easement to be administered by the West Stanislaus Resource Conservation District.[65]

The Diablo Grande settlement, along with passage of the Agricultural Lands Stewardship Program Act (ALSP) in 1994, emboldened the Resources Agency to seek another amendment to the Williamson Act. SB 1240, which passed in 1997, stipulated that lands enrolled in the Williamson Act program and that qualified for contract cancellation could be removed if comparable lands were placed under a permanent conservation easement.[66] A year later, the Legislature passed SB 1182, which authorized local governments to create farmland security zones (FSZ) within which agricultural landowners with existing Williamson Act contracts could convert them to twenty-year

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[65] *People ex rel. Department of Conservation v. David Triplett and Diablo Grande Limited Partnership*, 55 Cal. Rptr. 2d 620, 625 (Ct. App. 1996); Will, 30–31.

[66] Will, 31–33; *California Statutes*, 1997, Chapter 485. Since 2009, conservation easements have been monitored by the California Farmland Conservancy Program, separate from the Williamson Act Program but still within the Department of Conservation, Division of Land Resource Protection.

contracts. Landowners with twenty-year contracts, in return, receive greater preferential tax treatment. Sometimes called the Super Williamson Act, SB 1182 also included restrictions designed to prohibit local governments and special districts from annexing enrolled lands in farmland security zones.[67] As of 2015, a total of 866,355 acres of land were under FSZ contracts. Another 60,493 acres were protected by conservation or open space easements. These combined figures, less than one million acres, represent approximately six percent of all land enrolled in the Williamson Act program.[68]

More recently, appellate courts have heard cases revealing the sometimes difficult choices that must be made in determining which land uses are in the best public interest. *Friends of East Willets Valley v. County of Mendocino* (2002) raised several legal issues, including whether the county acted improperly in cancelling a Williamson Act contract to allow the Sherwood Valley Rancheria (a Pomo Indian tribe) to construct badly needed low-income housing on a small, upland portion of a 160-acre parcel. In return for contract cancellation, Sherwood Valley Rancheria signed a covenant with the county agreeing to comply with the terms of the former Williamson Act contract covering agricultural use on fifty-three acres of prime bottomland until September 30, 2007, when the contract would have expired. The First District Court of Appeal, in reversing a trial court, ruled that the county had "made the necessary findings and its findings were supported by substantial evidence" in reaching its decision that another public concern, i.e., public housing, outweighed public interest as expressed in the Williamson Act and contract cancellation was therefore justified.[69]

In *County of Colusa v. California Wildlife Conservation Board* (2006), the Third District Court of Appeal observed that "there may be environmental costs to an environmentally beneficial project." In this case, Colusa County challenged the legality of actions taken by the California Department of Fish and Game, through the California Wildlife Conservation Board (CWCB),

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[67] Will, 33–34; *California Statues*, 1998, Chapter 353. As of January 1, 2000, non-contracted land may go directly into an FSZ contract.

[68] *2014 CLCA Status Report*, 2–3; *2016 CLCA Status Report*, 16–17. It is not clear how many acres of farmland, total, were converted from Williamson Act contracts to conservation or open space easements, which are now monitored by the California Farmland Conservancy Program; see note 66.

[69] *Friends of East Willits Valley v. County of Mendocino (Sherwood Valley Rancheria)*, 123 Cal. Rptr. 2d 708 (2002).

when the state agency purchased a conservation easement on 225 acres of prime agricultural land owned by Leroy Traynham. He had previously entered into a Super Williamson Act contract with Colusa County, which required that land use be restricted to the "production of food and fiber for commercial purposes and uses compatible thereto" for a period of twenty years. Conversely, CWCB's conservation easement, which was for creating a managed wildlife habitat, expressly prohibited the cultivation of agricultural crops for commercial purposes. Colusa County charged that the CWCB had violated procedures required under both CEQA and the Williamson Act. Before the case was fully adjudicated, however, the landowner and the CWCB negotiated a settlement with the county whereby the CWCB conservation easement was amended to allow livestock grazing on the property, which brought the proposed new use into compliance with the compatible use provision of the Williamson Act.[70]

In a case that augered well for the solar energy industry, *Save Panoche Valley v. San Benito County,* the Sixth District Court of Appeal ruled that the public benefit of a proposed solar farm outweighed the public benefit of livestock grazing land. After San Benito County approved cancellation of Williamson Act contracts on approximately 7,000 acres of grazing land for a solar farm, the Santa Clara Valley Audubon Society and the Santa Clara Sierra Club (as "Save Panoche Valley") sued the county, challenging the adequacy of its findings under both the Williamson Act and CEQA. In this instance, the appellate court determined that the county had followed legally required review protocols and the findings of such — which resulted in scaling back the project scope to satisfy environmental concerns and creating agricultural conservation easements around the project site — amply justified the county's decision.[71] Corresponding legislation, which took effect in 2013, now allows counties to cancel a Williamson Act contract on land that is contaminated or otherwise environmentally compromised and replace it with a solar-use easement.[72] As of 2016, approximately twenty-five solar-use cancellation petitions had been submitted statewide,

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70 *County of Colusa v. California Wildlife Conservation Board, et al.,* 145 Cal. App. 4th 637 (2006).

71 *Save Panoche Valley, et al. v. San Benito County*, 217 Cal. App. 4th 503 (2013).

72 *California Statutes*, 2011, Chapter 596 (SB 618).

although only three projects had been completed.[73] The good news is that California has an abundance of agricultural and open-space lands available for siting solar farms. The not-so-good news is that solar-production companies want level sites, which often means prime agricultural land.

Although this review of higher court decisions covers only a fraction of the court cases pertaining to the Williamson Act, it is sufficient to conclude that fifty years of litigation and related legislative amendments have allowed the principle of home rule to stand but significantly constrained the power of local governments to weaken state policy. As the Department of Conservation's biennial status reports have stated since 2012, "a three-way relationship between private landowners, local governments, and the State is central to the success of the Program."[74] This was not the case in 1965 when the Legislature passed the Williamson Act. At that time, the role of the state was limited to statewide coordination and minimal oversight. Now the Department of Conservation speaks of the Williamson Act program as a "partnership" to administer what has become a complex set of statutes and regulations.

Over the decades, the state's role has changed considerably. Importantly, passage of the 1971 Open Space Subvention Act gave the state a financial stake in administering the Williamson Act program. Up until 2009, when the state suspended, then abandoned, subvention payments, the total cumulative value of subventions to counties and cities participating in the Williamson Act program was more than $863 million, averaging at $1.48 per acre per year.[75] Additionally, the 1970 California Environmental Quality Act and other environmental laws and regulations have required tremendous growth in the state bureaucracy for administrative purposes. The Division of Land Resource Protection of the Department of Conservation, which has administrative responsibility for the Williamson Act program, also administers other programs to conserve farmland and open space, including the Agricultural Land Mitigation Program, the Sustainable Agricultural Lands Conservation Program, and the California Farmland Conservancy Program. The effect, over time, has been to re-cast the

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73 *2016 CLCA Status Report*, 8.

74 *2012 CLCA Status Report*, 3; *2014 CLCA Status Report*, 5.

75 *2016 CLCA Status Report*, 8.

purposes of the Williamson Act more broadly to include the preservation of open space.[76]

The courts also have helped to strengthen the state's role by serving as watchdogs for the broader public interest. In this respect, it should be noted that two environmental groups, the Sierra Club and the Audubon Society, have played important roles in litigation that has helped to reshape the contours of the Williamson Act. *Sierra Club v. City of Hayward* led to a brief period when contract cancellation restrictions were loosened, but, more importantly, it upheld the constitutional requirement of an enforceable restriction in Williamson Act contracts to justify preferential tax treatment. The *Honey Springs* and *Lewis v. City of Hayward* decisions added bricks to this wall; they also sent a strong message to local governments about complying with the intent of the Williamson Act when it came to formulating and administering their own general plans. The *Diablo Grande* settlement provided a model for establishing conservation easements and led to legislation authorizing Super Williamson Act contracts in farm security zones. In the aggregate, litigation and legislative amendments have substantially increased the state's oversight responsibility.

Still, the long-term viability of this three-way partnership may rely, at least in part, on the power of the purse. Following the suspension of subvention payments, Imperial County gave notice of nonrenewal for all Williamson Act contracts in its jurisdiction. When these contracts expire, approximately 138,500 acres will leave the program. Imperial County is not one of the state's leading agricultural producers, and so far no other county has announced wholesale withdrawal from the program, but there are other signs that the loss of subvention funding has driven a wedge in the supposed partnership. After the state pulled subvention funding, a number of counties either stopped reporting data to the Department of Conservation for the required biennial reports or began reporting data inconsistently. As of 2015, the number of non-reporting counties stood at ten, nearly one-fifth of participating counties with a combined estimate of 1.3 million acres under Williamson Act contract.[77] While this does not mean these counties plan to drop out of the program, which after all is voluntary, it does signal a

[76] See California Department of Conservation website at http://www.conservation.ca.gov/dlrp/lca/basic_contract_provisions/Pages/wa_overview.aspx.

[77] *2016 CLCA Status Report*, 8.

push-back of sorts at the local level. Without the carrot of subvention payments, a sizeable number of counties apparently are protesting the loss of subvention funds or are disinclined to comply with program requirements that now seem burdensome in some way, or both.

To be clear, the Williamson Act program seems to be working as well as it ever has to conserve agricultural land despite the loss of subvention funds to counties and cities. Eleven counties have taken advantage of the option to reduce the length of contracts by one year, indicating that there is still reasonably strong support for agricultural land conservation at the local level and that local governments will work around the loss of property tax revenues from lands under Williamson Act contracts. What has changed is the state's financial stake in the program, and without this the relative power of the Department of Conservation to monitor the program effectively has been diminished. The power balance has once again shifted a bit, and local governments have started to flex their muscles.

In the larger picture, the current status of the Williamson Act program points once again to the significance of local governments in the federal system and underscores the mutability of federalism. It also points to the importance of the judicial system in the dynamics of intergovernmental relations. Over the past five decades, the courts have played a significant role by interpreting the law in ways that have strengthened the intent of the Williamson Act and elevated its standing as state policy. California seems to be reaching a crossroads in terms of how vigorously its agricultural land conservation policy will be implemented in the future, but surely the courts will continue to play a role in forging the path forward.

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