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THE NEW CANCELLATION RULES UNDER THE WILLIAMSON ACT

Jeffrey P. Widman*

I. Introduction

Offering tax relief as an inducement to conduct deemed socially desirable is a technique of American government that has earned the allegiance of the governed and the governing alike. The California Land Conservation Act of 1965, generally referred to as the Williamson Act (the Act), belongs to this central tradition of American government. In exchange for imposing restrictions on the use of his land by contract with a local government, the landowner receives the benefit of having his land assessed according to its actual use, as op-
posed to its fair market value under its highest potential use. In the case of most agricultural lands, the result is a lower property-tax bill. In the case of lands close to existing development, the reduction can be drastic.

During a period of rapidly increasing real property values, as generally prevailed during the late 1960's and the mid-1970's, the decision to enter the Act must have come easily to landowners located near California cities, but not near enough to develop their lands immediately. The question of how to exit from the Act may not have occurred to some of those seeking shelter from increasing taxation. Others, one may speculate, may have asked the question and received reassuring answers from local officials who, in any case, had no explicit guidance from the legislature on how readily they might

This statute was enacted in 1966, a year after the Act, in order to encourage assessors to value contractual restricted farmland on the basis of its actual use as opposed to its potential land use. 1966 Cal. Stats. ch. 47, § 34.1. On the history of use valuation in California, see Note, Assessment of Farmland Under the California Land Conservation Act and the 'Breathing Space' Amendment, 55 Cal. L. Rev. 273 (1967) and Land, Unraveling the Rurban Fringe: A Proposal for the Implementation of Proposition Three, 19 Hastings L.J. 421 (1968).

4. CAL. REV. & TAX. CODE § 401 (West Supp. 1981) provides that property subject to general property taxation be assessed at its “full value.” “Full value” is synonymous with “fair market value,” which connotes the “estimated price property would bring if offered on the open market under conditions in which neither the buyer nor seller could take advantage of exigencies of the other.” Guild Wineries and Distilleries v. Fresno County, 51 Cal. App. 3d 182, 187, 124 Cal. Rptr. 96, 99 (1975); see also Dressler v. Alpine County, 64 Cal. App. 3d 557, 134 Cal. Rptr. 554 (1976).

5. This result is not as certain since the passage of Proposition 13 on June 8, 1978, now Article XIII A of the California Constitution. 1978 Cal. Legis. Serv. p. XXV (West). Because the restricted value of land under the Act depends mainly upon its agricultural income, land producing valuable crops—for example, nuts, grapes, cherries—may receive a higher valuation from the assessor than the land outside the Act and assessed under Article XIII A. This anomaly may become more pronounced if the productivity of the land increases greatly. Because § 2 of Article XIII A limits inflationary increases in base-year (1975) values to two percent per annum, it is not difficult to exceed that rate of increase in the restricted value of the land simply as a result of raising agricultural productivity. Rule 460 of the State Board of Equalization attacks the anomaly by determining restricted value as of 1975 and then limiting increases in that value to two percent per annum under Article XIII A. Statutory authority may lie in §§ 110.1 and 110.5 of the Revenue and Taxation Code. For a more detailed study of the unfortunate consequences of Proposition 13 for the land-conservation program embodied in the Act, see Note, Proposition 13: A Mandate to Reevaluate the Williamson Act, 54 S. Cal. L. Rev. 93 (1980). CAL. REV. TAX. CODE § 423.3 (West Supp. 1982) provides for an election by the county to have land assessed at no greater than 70% of what the land would be valued under the provisions of Proposition 13. Section 423.3 was added by 1980 Cal. Stat. ch. 1273 § 2; it makes the election available only for certain prime agricultural lands and open space lands of “statewide significance,” as defined in § 16142 of the Government Code.
grant "cancellation" of a contract upon the landowner's request. Did not voluntary entry imply, more or less, voluntary exit from the Act? Did not payment of the cancellation fee fully compensate government for lost taxes and so satisfy the public interest? The answer is no!

This article focuses on the two major recent developments in interpretation of the Act and particularly its cancellation provisions: First, the decision by the California Supreme Court in *Sierra Club v. City of Hayward* (the "Decision"); and, second, the California Legislature's response to the Decision by amending and revising the cancellation provisions in the Act (the revisions are hereinafter referred to as the "Bill").

The dominant purpose of this article is to recount the legislative genesis of the Bill. In this respect, the article falls into the class of historical writing, and as history, it may serve as a guide to future interpretation of the Bill.

The article has other purposes. First, this article will identify the remaining problems with the Act in its present function as a scheme for agricultural and open-space land conservation and as an adjunct to land-use planning under the Planning and Zoning Laws. Second, this article will dramatize the ongoing struggle between state-wide land-use policies, on the one hand, and local interests in autonomy and economic growth, on the other hand. This struggle clearly extends beyond the small field delineated by the Act. Finally, this article reflects, if only silently, on the unfortunate consequences of statutes being drafted with less than perfect skill, with virtually no memorials of legislative intent for specific provisions, and with no regulatory guidance from a state administrative agency. Section 51282 of the California Government Code, as it existed on the date of the Decision, suff-

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9. Prior to the Bill, **Cal. Gov't Code** § 51282 provided:
   
   The landowner may petition the board or council for cancellation of any contract as to all or any part of the subject land. The board or council may approve the cancellation of a contract only if they find:
   
   a) That the cancellation is not inconsistent with the purpose of this chapter; and
   
   b) That cancellation is in the public interest.
II. BACKGROUND TO THE DECISION: TERMINATION OF CONTRACTS

The original Act provided two primary methods of terminating contracts:11 (1) Notice of nonrenewal, available as a
matter of right to both the landowner and the local agency;"12

its own petition, except by complying with §§ 51280-86. Section 51295, however, does state: "For the purposes of this section, a finding by the board or council that no authorized use may be made of the land if the contract is continued on the remaining portion or interest in the land may satisfy the requirements of subdivisions (a) and (b) of section 51282." Use of the word "may" is curious. The word offers no assurance of satisfying the requirements for cancellation. In any event, as of January 1, 1982, § 51282 contains subparagraphs (a) - (f) on the requirements for cancellation, but the reference to subparagraphs (a) & (b) alone in § 51295 remains unchanged. Cal. Gov't Code §§ 51280, 51282, & 51295 (West Supp. 1982). A conforming amendment is now needed.

Conceivably, local government and the landowner could manage to remove the land from a contract through a carefully orchestrated partial taking—a taking of a roadway easement, for example—followed by a petition for cancellation on the remainder. Id. To be blunt, the possibility for abuse exists, whether or not it is ever exploited. Section 51295 should be reconsidered by the legislature in light of the policies embodied in the Bill.

b. Rescission. The parties may agree to rescind an existing contract for the purpose of entering a new contract, Cal. Gov't Code § 51254 (West Supp. 1982), or an open space easement agreement, Cal. Gov't Code § 51255 (West Supp. 1982). The new agreement or the easement must have an initial term of not less than ten years. The fact that either party gave notice of nonrenewal for the existing contract earlier does not prevent a rescission under those sections. Indeed, the rescission serves to reverse the effects of nonrenewal by restoring restrictions having at least a ten-year duration.

Because the new contract or the open-space easement must restrict "the same property," rescission is not a method of substituting different land, in whole or in part, for that restricted by an existing contract. The statutes seem to contemplate a change only in the kind of restriction or in the remaining term of the contract.

In essence, rescission is really a further agreement between the same parties regarding the same land. The Act limits the purposes for which the parties may agree to rescind. Nothing in the Act incorporates any common law right to rescind only in order to do away with restrictions entirely. For this reason, I do not treat rescission as a method of terminating a contract in the absolute sense.

c. Non-Succession. The usual provision in a land conservation contract binding the successors to the contract does not apply to a city that originally protested the making of the contract by a county and later annexes the land. Cal. Gov't Code § 51243 (West Supp. 1982). The right of a city to protest covers land lying within one mile of the exterior boundary of the city at the time the county intends to enter the contract. Cal. Gov't Code § 51243.5 (West Supp. 1982). Upon notice of intent given by the county, id., the city may deliver its protest to the county, thereby preserving its right not to be bound by the contract when the land is annexed. A local agency, formation commission must uphold the city's protest on the ground that the contract is "inconsistent with the publicly desirable future use and control of the land in question." Id.

Obviously these statutory provisions afford a city some protection against a county's imposing unwanted use restrictions on lands the city plans to incorporate and develop according to its general plan. But, unless a city routinely protests all contracts by the county, these provisions cannot serve to release the restrictions automatically by annexation. It is unclear whether the city's right of non-succession also exists if the county has failed to give the required notice of intent and the city for that reason failed to protest the contract.

If either the landowner or the city or county desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract upon the other party in advance of the annual renewal date of the contract. Unless such written notice is served by the landowner at least 90 days prior to the renewal date, or by the city or county at least 60 days prior to the renewal date, the contract shall be considered renewed as provided in section 51244 or section 51244.5.

Upon receipt by the owner of a notice from the county or city of nonrenewal, the owner may make a written protest of the nonrenewal. The county or city may, at any time prior to the renewal date, withdraw the notice of nonrenewal. Upon request by the owner, the board or council may authorize the owner to serve a notice of nonrenewal on a portion of the land under a contract.

The original text of Cal. Gov't Code § 51282 provided:

The cancellation of any contract shall not be effective until approved by the Director of Agriculture, upon the recommendation of the State Board of Agriculture. The director shall act only on the request of the parties to the contract as represented by the receipt of the acknowledged cancellation agreement of the landowner and a resolution of the governing body of the city or county.

The State Board of Agriculture may recommend and the Director of Agriculture may approve the cancellation of a contract only if they find:

a) The cancellation is not inconsistent with the purposes of this chapter.

b) The cancellation is in the public interest.

The existence of an opportunity for another use of the land involved shall not be sufficient reason for the cancellation of a contract. A potential alternative use of the land may be considered only if there is no proximate, noncontracted land suitable for the use to which it is proposed the contracted land be put.

The uneconomic character of an existing agricultural use shall likewise not be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.


A. Cancellation of Contracts Under the Act

Though part of the design of the original Act, the cancellation provisions underwent important revision in 1968. Such revision may have set the stage for the Decision.

The 1969 amendments changed the cancellation procedure in two important respects: First, the legislature removed the Department of Agriculture from its reviewing role in the cancellation procedure. Second, the legislature substituted a general right of administrative protest in place of the specific veto power originally held by a majority of other landowners in the agricultural preserve.


14. The removal accompanied the elimination of the distinctions between “contracts” and “agreements;” see supra note 13. Under the original Act, a “contract” could be cancelled upon “mutual agreement” of the parties, the landowner and the local agency, followed by a concurrence by the California Department of Agriculture. CAL. Gov’t Code § 51281 (West 1966). The Department would receive the cancelled contract from the parties, review the proposed findings contained in a resolution adopted by the local agency, and then, upon recommendation of the State Board of Agriculture, decide whether to approve the cancellation. CAL. Gov’t Code § 51282 (West 1966). Technically, the Department would make the findings required under § 51282; but effectively the Department reviewed a decision to cancel made by the local agency. These sections were repealed by 1969 Cal. Stats. ch. 1372, § 38. Although a stage agency did retain the power under CAL. Gov’t Code § 51283 to veto a discretionary waiver of the cancellation fee by the local agency, this function affected only the fiscal interests of local and state government, but not the basic decision to cancel a contract. CAL. Gov’t Code § 51283 (West Supp. 1982). Dorcich v. Johnson, 110 Cal. App. 3d 487, 167 Cal. Rptr. 897 (1980), sets forth criteria for waiver of a cancellation fee.

15. 1969 Cal. Stats. ch. 1372, § 38. Prior to the 1969 amendment CAL. Gov’t Code § 51285 provided that “[n]o contract may be cancelled if at the hearing, or prior thereto, the owners of 51 percent of the contracted acreage in the agricultural preserve protest such cancellation to the city or county conducting the hearing.” Id.

Amended § 51285 states that “[t]he owner of any property located in the county or city in which the agricultural preserve is situated may protest such cancellation to the city or county conducting the hearing.” CAL. Gov’t Code § 51285 (West Supp. 1982).

Whatever its effectiveness in preventing unjustified cancellation, the veto at least symbolized the community of interest among all landowners. The majority veto implied a communal decision that the removal of restrictions from one parcel would hamper the continued agricultural use of still-restricted lands by permitting urban development.

Ironically, the provision substituted in 1969 for the veto, a right of protest held by and any other property-owner in the same political jurisdiction, became virtually
The removal of the Department of Agriculture occurred in connection with the elimination of the distinction between "contracts," to which the Department was a party, and "agreements" between the local agency and landowner only. Yet the significance of the removal for decisions on cancellation ranges far beyond any fiscal explanation. For example, if one presumes that state-wide policies should permeate a decision to cancel, and especially the required findings that cancellation is "in the public interest" and consistent with the "purposes of the Act," one finds that after 1968 the task of reconciling those policies with more parochial concerns was left to the local agency.  

In this light the Decision may be seen as a judicial reassertion of the state's interest in an area that the legislature had abandoned to local administration.

B. Nonrenewal Under the Act.

The other method of terminating contracts, nonrenewal, flowed naturally from the very scheme of the Act and required no special administration.

The contract restricting use of the land has a minimum term of ten years. The contract renews each year, on its anniversary date, for a new 10-year term. While automatic under

unnecessary over the years as the California courts expanded concepts of standing to sue under the Subdivision Map Act, CAL. GOV'T CODE § 66410-66499.37 (West Supp. 1982); the California Environmental Quality Act, CAL. PUB. RES. CODE § 21000-21176 (West Supp. 1982); and a common law doctrine of "regional" land-use planning, Stocks v. City of Irvine, 114 Cal. App. 3d 520, 170 Cal. Rptr. 724 (1981).

16. Under CAL. GOV'T CODE § 51252 (as amended in 1969), the city council or county board determined, without review by the Department of Agriculture, consistency between the proposed cancellation and the purposes of the Act and then the "public interest" in cancelling. These two determinations corresponded to the two findings expressly required by the statute. It was logical to assume that if the local agency could confirm consistency with the Act's purposes as expressed in § 51220, then the determination of "public interest" would necessarily follow as a conclusion on the combined statewide and local interest in approving the cancellation. The supreme court, however, disrupted this logical relation between the two determinations. By ruling that a finding on the "public interest" could be made only if "other public concerns" outweighed the purposes of the Act, the Decision suggested that local interests giving rise to those "other public concerns" stood in conflict with the purposes of the Act—i.e. a statewide public interest. Thus, after the Decision, one could conclude that the local agency would not be able to make both of the findings at once. See also supra notes 13-14.

17. See supra notes 14-16 and accompanying text.

18. See supra note 12.

19. CAL. GOV'T CODE § 51244 (West Supp. 1982) provides:
the statute and the terms of the contract, renewal nevertheless implies an agreement by the parties to extend their contract. The parties need not so agree and notice of nonrenewal makes the absence of a new agreement explicit. Nonrenewal permits the contract to expire at the end of its existing term. Both parties have the absolute right to give notice of nonrenewal. In contrast, cancellation can be initiated only by the landowner.

For the landowner, nonrenewal has the practical consequence of causing his real-property assessments to rise gradually to a value reflecting the absence of use restrictions.\(^{20}\) For local government, nonrenewal should mean time to plan the eventual use of the land when freed from its restrictions. Put more strongly, nonrenewal should enable local government not only to plan the land's use, but also to control the time when the restrictions will be removed. However, nothing in the Act or any other California statute requires local government to give nonrenewal once the local general plan indicates development of the land within the remaining term of the contract.

C. The Decision: Sierra Club v. City of Hayward

The decision by the California Supreme Court in *Sierra Club v. City of Hayward*\(^{21}\) declared that the legislature had

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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 or such other annual date as specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in Section 51245.

20. Under the original Act (CAL. GOV'T CODE § 51262), notice of nonrenewal served to reduce the amount of payments received by the landowner under his contract during its remaining term. The schedule created a greater reduction if the landowner, rather than the local agency, served notice of nonrenewal. With the elimination of the distinction between contracts and agreements, and also of the payment program for contracts, under the 1969 amendments to the Act, the effect of nonrenewal changed to increasing assessed values and therefore taxation. CAL. REV. & TAX. CODE § 426 (West 1970) (1969 Cal. Stats. ch. 565, § 1) created a complex mathematical formula under which assessed values rise during the remainder of the contract's term. Basically, the formula finds the difference between unrestricted (full fair market) value and restricted value (based on capitalization of income), then discounts the unrestricted value to present value in the year of taxation, and finally adds the discounted value to the restricted value to derive a current assessed value. CAL. GOV'T CODE § 51262 (West 1966) (1965 version (1965 Cal. Stat. ch. 1443, § 1)); CAL. REV. & TAX. CODE § 426 (West 1970).

intended nonrenewal to be the normal method of terminating contracts, and cancellation to be an extraordinary method used only under unforeseen circumstances or in an emergency. The court left the proper situations for cancellation to be determined in future cases; however, in the case itself, the court overturned a cancellation granted by the City of Hayward. Beyond this basic holding of the Decision stand a large number of interpretive comments by the court regarding the statutory provisions for cancellation and the intent of the legislature in drafting them. The court's comments on legislative intent reveal little independent research and rely mainly on secondary sources and post-1965 legislative activities.

A brief summary of the contentions of the parties will shed light upon both the Decision and the ultimate legislative response. In the litigation, Sierra Club argued the following: (1) Cancellation is a drastic measure to be employed only in rare instances and when nonrenewal would not serve adequately to terminate the contract. (2) Nonrenewal is the preferred method. It allows the government nine years to prepare for development of the land. (3) Making cancellation too easily available would lead to abuse by landowners seeking


25. Petition for Hearing, supra note 24, at 25-26. Sierra Club had, of course, argued from the outset that cancellation is a drastic measure, to be employed only in rare situations when nonrenewal would not serve to terminate the contract.

short-term tax shelter.  

(4) The land in question, urban fringe land, was most sensitive to development pressures, and the Act was designed to protect it from premature development.  

(5) The landowner's contract affirmed agriculture as the land's highest and best use, and nothing in the administrative record proved the contrary.  

(6) Keeping the land under contract was either "necessary" or "desirable" for one or more of the express purposes of the Act.  

(7) The administrative record lacked any sufficient finding on the unavailability of "proximate noncontracted land" for the project proposed by the landowner.  

(8) Even if the City of Hayward did
have a need for housing, possibly the City could satisfy it by developing proximate land or a group of smaller parcels nearer the urban center.\textsuperscript{32}

In response, the City and real party-in-interest, Ponderosa Homes (to whom the landowner had contracted to sell the land for development), argued: (1) The Act was designed not to preserve the land permanently, but to conserve it only until it could form a rational pattern of urban development. The cancellation and proposed development were timely and sound in terms of land-use planning.\textsuperscript{33} (2) The City possessed broad discretion to cancel and its decision had the character of a legislative act.\textsuperscript{34} (3) Even if the administrative record did

Hence Sierra Club easily argued that denying cancellation in this case would, at the very least, be "desirable" for preserving open space. Indeed, denying cancellation would logically be absolutely "necessary" to "preserve" the "maximum" amount of agricultural land in the State (if such preservation in the absolutely strictest sense is considered an unqualified purpose of the Act). Petition for Hearing, supra note 24, at 36 & n.31, 37.

32. Sierra Club's attack on the "public interest" finding by the City possessed lesser force. Hayward, Cal., Resolution C. S. 79-012 (Jan. 16, 1979), referred to the City's need for housing of the type to be created by the project, and this express finding defined the City's interest in a manner consistent with the exercise of the Council's legislative discretion. Conceding that Hayward might indeed have a need for housing, Sierra Club chose to argue that the City could satisfy that need by another means—creating housing on vacant lands nearer the urban center. Petition for Hearing, supra note 24, at 28. This method is called "in-filling" in land-use jargon. In-filling spawned the interpretation of the "proximate, noncontracted land" requirement later accepted by the supreme court: Such land might consist of a number of parcels smaller than the subject land, because, when aggregated, those parcels could produce as much housing as the project proposed for the subject land. This interpretation, in other words, entails an expansive meaning for the statutory term "proximate" and a generic meaning for the term "the use proposed." In short, Sierra Club charged the City with a failure to describe its search for alternate sites in the administrative record.

33. See Respondent's Supplementary Brief and Answer by Ponderosa Homes to Petition for Hearing at 27, Sierra Club v. City of Hayward, 28 Cal. 3d 840, 623 P.2d 180, 171 Cal. Rptr. 619 (1981) [hereinafter cited as Supplementary Brief]. They argued that the Act was designed to conserve the land only until such time as, in the case of urban fringe land, it could form part of a rational pattern of urban growth. In this argument, Ponderosa Homes espoused a philosophy of temporary "conservation" rather than permanent "preservation." The words "preservation" and "conservation" are used without thoughtful discrimination in the Act. See 1965 Cal. Stat. ch. 1443 (codified at Cal. Gov't Code §§ 51200-295 (West 1966)).

34. See Supplementary Brief, supra note 33, at 8-10.

The cancellation decision possessed a quasi-legislative character; it required the local agency to declare its public interest and to disestablish part of an agricultural preserve (an act analogous to a boundary adjustment). This argument was pressed to obtain review under § 1085 rather than § 1094.5 of the California Code of Civil Procedure—a more favorable standard of review for the City. See Cal. Civ. Proc. Code §§
not expressly contain a finding on proximate, noncontracted land, section 51282 did not require such a finding.\(^3\) (4) Findings on the unavailability of proximate land and on the uneconomic character of agriculture (if required) could be implied reasonably from the record.\(^3\) (5) The City had a strong public interest in creating housing of the type proposed.\(^7\) (6) The petitioners, with the possible exception of one who owned land within the City, lacked standing to sue.\(^8\)

The Decision consists essentially of three mutually reinforcing principles: 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.

Apparently the court did not consider the emergency its Decision would create for some landowners. By interpreting the Act as a strict land-conservation scheme, the court removed much flexibility from the cancellation process, thereby inspiring a movement for legislative reform.

### III. THE INITIAL LEGISLATIVE RESPONSE TO THE DECISION

Almost immediately a number of bills were introduced in the California Legislature in response to the Decision.\(^9\) Most

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1085, 1094.5 (West 1980).

Ponderosa abandoned this argument in the court of appeal and in the California Supreme Court. Hayward apparently abandoned it too. All three courts ruled that § 1094.5 applied on review. See also infra note 39, 57, 95, 201, 208 and accompanying text.

35. Supplementary Brief, supra note 33, at 12.
36. Id. at 20-23.
37. Id. at 8, 10.

The City's decision to cancel was rational not merely because the City's economy demanded that type of housing to be created by the project, but also because the development was contiguous with, and a logical extension of, existing residential subdivisions. The legislature had left to local government the discretionary decision to cancel contracts, since the 1968 amendment of § 51282 had removed the state agency as the cancelling authority. This argument raised the familiar banner of “home rule” as a defense.

38. See Supplemental Memorandum of Points and Authorities in opposition to Petitioner's Standing to Seek Relief from this Court (Alameda County Superior Court, Hayward Branch) at 2-4, Sierra Club v. City of Hayward, 28 Cal. 3d 840, 623 P.2d 180, 171 Cal. Rptr. 619 (1981) (originally filed in trial court). See also Petition for Hearing, supra note 24, at 14.

39. A number of other bills were introduced in the California Assembly during March of 1981 but none would have amended Cal. Gov't Code § 51282 (West 1966) as extensively as A.B. 709, 1981-82 Reg. Sess., Cal. Legis. (Hannigan). Some were
of the bills would have countermanded the Decision in one

probably just "spot" bills—bills introduced in order to meet the deadline for the spring session of the legislature and then to be rewritten during the session. All shared a common purpose: To do something to counteract the Decision. They are of interest here as an indication of the approaches the legislature rejected and which it incorporated into the Bill.

Two of the bills would have subordinated the purposes of the Act to local economic needs. A.B. 1100, 1981-82 Reg. Sess., Cal. Legis. (introduced March 17, 1981) (Cortese) recited that the cancellation provisions were "not intended . . . to frustrate the needs of a city or county to provide housing and jobs for its citizens through orderly, contiguous, planned urban expansion." *Id.* at § 1. After striking the language in § 51282 on proximate, noncontracted land, A.B. 1100 substituted a new finding which by itself would establish the public interest as well as consistency between the cancellation and the purposes of the Williamson Act; namely, that "the land is needed to allow orderly expansion or infilling of existing urbanized areas . . . ." *Id.* The concept of making the process of orderly, contiguous, urban expansion an express part of the cancellation procedure eventually proved important in the evolution of the Bill.

Introduced on March 16, 1981, A.B. 991, 1981-82 Reg. Sess., Cal. Legis. (Floyd) would similarly have given local housing needs priority. Under this bill, the local agency could satisfy the finding on public interest by determining that a severe shortage of housing existed in the community and that development of the contracted land would ease that shortage. *Id.* at § 1. This determination would also have obviated any need to determine the unavailability of proximate, noncontracted land. Because the other major finding of CAL.Gov'T CODE § 51282, consistency between the cancellation and the purposes of the Act, would have remained unaffected, it is doubtful that A.B. 991 would have facilitated cancellations even for its avowed purpose of alleviating housing shortages. The Decision would have preserved a rigorous consistency finding.

Attempting a compromise between the need for new urban development, on the one hand, and the need to conserve agricultural land, on the other hand, Assemblyman Marguth introduced A.B. 1319 on March 20, 1981—the only bill to outline a scheme for partial cancellation and conversion of contracted land. A.B. 1319, 1981-82 Reg. Sess., Cal. Legis. (Marguth). Unlike A.B. 709 and A.B. 991, A.B. 1319 would not have amended § 51282 but rather would have added § 51282.1. A.B. 1319 would have given a local agency discretion to approve a "plan of limited development for land under contract" if the agency found that "the approval would encourage long-term agricultural use of the major portion of the land" left under contract. *Id.* at § 1. The contract on the undeveloped portion would have had a term of at least 15 years. Moreover, under A.B. 1319, not more than five percent of the contracted land could be converted to development within any 15-year period and none if the development conflicted with the agricultural use of the undeveloped portion. *Id.*

Clearly A.B. 1319 expressed a laudable purpose—reconciling urban development with continuing, nearby agricultural production. But the tensions—indeed, often the physical conflicts—between urban society and farming are not resolved simply by programming the rate of conversion. In reality, the rate does not, through mathematical magic, solve the conflicts between different land uses. The residents on the five percent of the land developed for housing may experience severe discomforts (noise, odors, reactions to pesticides, etc.) from farming on the 95-percent remainder. Conversely, the farmer may suffer annoyance from the residents, their vehicles, children, and pets. It is often wiser to convert the land in its entirety instead of trying to preserve a remainder in agricultural production. Moreover, for the purpose of conserving farmland, it may prove more effective to segregate and protect large, contigu-
respect or another. As the legislative session progressed, two bills emerged as leading competitors for enactment. These two will be discussed in this section. The evolution of the final compromise embodied in the final legislation (the Bill) may be best appreciated by understanding the competition between those two bills in their initial and amended versions.

A. The Attempted “Codification” of the Decision: A.B. 709

On March 2, 1981, Assemblyman Tom Hannigan, Chairman of the Assembly Energy and Natural Resources Committee, introduced A.B. 709 as an urgency measure (to become effective immediately upon passage). A.B. 709 declared, in the Legislative Counsel’s Digest, that it would codify the holding

ous blocks of viable, productive land.

The remainder of the bills introduced in response to the Decision sought to expand the discretion of local government to approve cancellation and then to weather later judicial challenge.

A.B. 1320, 1981-82 Reg. Sess., Cal. Legis., also introduced by Assemblyman Marguth, would have simply reversed the supreme court’s holding that judicial review should be had under § 1094.5 of the Code of Civil Procedure. Supra note 34 & infra notes 57 & 201 and accompanying text. A.B. 1320 deemed cancellation of any contract a legislative act, thus subjecting it to review under § 1085 instead. Legislative mandamus under § 1085 normally leads to great judicial deference to the decision of the legislative body.

Assemblyman Robinson took a similar approach in A.B. 207, 1981-82 Reg. Sess., Cal. Legis. (principal co-authors: Assemblymen Hannigan, Cortese, and Marguth, and Senator Boatwright). A.B. 207 which was introduced on April 3, 1981, was amended in the assembly, June 5 & 18, 1981, and in the senate Aug. 25, 1981. By simply inserting the phrase “in their discretion” into the statutory requirement that two findings be made to cancel contracts under CAL. GOV’T CODE § 51282, A.B. 207 (original version) presumably would have signaled a legislative intent to give local government a freer hand. Arguably, the word “may” before “cancel” in the statute already implied some discretion. Whether the bill would have given greater latitude in canceling is doubtful.

Another bill introduced in the senate also reflected an extreme liberalizing impulse. S.B. 1107, 1981-82 Reg. Sess., Cal. Legis. (O’Keefe) would have simply eliminated the cancellation fee. Apart from the fact that eliminating the fee would have done nothing to change the substantive law on cancellation, the absence of any financial cost in cancelling would have transformed the Act into a painless tax shelter. Most land conservation programs in other states using deferred taxation include a “recapture” provision analogous to the cancellation fee.

For a discussion of recapture provisions and the legal problems created by them, see Keene, Agriculture Land Preservation: Legal and Constitutional Issues, 15 GONZ. L. REV. 621, 656-62 (1980).


of the supreme court. By introducing this first bill, Hannigan assured that his Committee would hear all bills seeking to amend the Act introduced in the Assembly.

A.B. 709 could “codify” the Decision only by restating its important interpretations of Government Code section 51282. However, only a little of the reasoning, and none of the court’s dicta, appeared in A.B. 709.

To the finding that cancellation be “not inconsistent” with the purposes of the Williamson Act, A.B. 709 added the criterion that nonrenewal could not achieve the objectives to be achieved by cancellation, either in the past or at the time of cancellation. Hence the contract would not be cancelled “if the objectives to be served by cancellation could have been predicted and served by nonrenewal of the contract . . . at an earlier point in time, or if such objectives could be served by nonrenewal of the contract at the time at which cancellation is requested.” The latter part, requiring present use of nonrenewal as an alternative to cancellation, makes sense in view of a statutory scheme. Requiring nonrenewal at some unspecified earlier date seems a harsh rule—a rule that punishes for an omission discovered through hindsight. To disqualify a cancellation merely because someone—A.B. 709 did not say whom—might have predicted conversion of the land at some future date would not only punish the willful, tax-evading developer who waits until the last moment to terminate his contract, but would also punish innocent landowners caught by changing historical conditions.

To the other major findings, that cancellation be in the public interest, A.B. 709 added a supporting finding that “other public concerns substantially outweigh the objectives of [the Act].” The language came directly from the court’s opinion. The new finding would have permitted the local agency, in determining that its “public concerns” outweighed the purposes of the Act, to override those multiple state-wide, and perhaps even nationwide, purposes that the Act serves in authorizing use restrictions.

A.B. 709 began a needed elaboration of the paragraph in

41. See id. at Legis. Coun. Dig.
42. Id. at § 1 (amending CAL. GOV’T CODE § 51282(b)).
43. Id.
44. Id. at § 1 (amending CAL. GOV’T CODE § 51282(c)).
45. 28 Cal. 3d at 857, 623 P.2d at 189, 171 Cal. Rptr. at 628.
section 51282 discussing "proximate, noncontracted land." Originally, the statute required a finding under the paragraph only if the petition for cancellation were approved on the ground that "an opportunity for another use of the land" existed.46 Under local government practice, this probably meant a petition for cancellation accompanied by an application for development of the land; for example, a proposed subdivision. The original statutory language, however, did not clearly cover a cancellation followed in deliberately staggered sequence by a development proposal.47 A.B. 709 did not deal with such a "step-transaction," nor did the bill seek to make a proposed development one of the conditions to cancellation. Thus, A.B. 709 failed to deal with some of the problems inherent in the paragraph.

In expanding the paragraph, A.B. 709 began with the language of the Decision. For "proximate," it prescribed land "sufficiently close" to restricted land so that "it can serve as a practical alternative for the use which is proposed for the restricted land."48 The bill, unlike the Decision, suggested no set number of miles as the range in which proximate land might be located.49

For "suitable," A.B. 709 gave the "salient features of the proposed alternative use" as the criterion,50 as opposed to the specific design features of the project. This choice followed the Decision generally,51 but probably did not approach the generic definition of "use proposed" advocated by the Sierra

47. See id.
48. A.B. 709, reprinted infra appendix A, at § 1 (Cal. Gov't Code § 51282(d)).
49. In the Decision, the court emphasized that the meaning of "proximate" should be one which best attains the purposes of the statute. The court noted that "land several miles from the proposed development site may be near enough to serve" as a practical alternative for the use which is proposed for the restricted land. 28 Cal. 3d at 861, 623 P.2d at 191-92, 171 Cal. Rptr. at 630.

Presumably the "practical alternative" criterion would set the range in a more flexible manner—in the context of demographics, transportation facilities, and other real physical limitations.

The court, however, also suggested that other courts in defining the term "adjacent," had considered locations as far distant as seven and one half miles. 28 Cal. 3d at 861-62, 623 P.2d at 891-92, 171 Cal. Rptr. at 630-31; see also Oro Madre Unified Sch. Dist. v. Amador County Bd. of Educ., 8 Cal. App. 3d 408, 87 Cal. Rptr. 250 (1970).
50. A.B. 709, reprinted infra appendix A, at § 1 (amending Cal. Gov't Code § 51282(d)).
51. See 28 Cal. 3d at 862, 623 P.2d at 192, 171 Cal. Rptr. at 631.
Club in the litigation. 52 "Salient features" might well include some aspects of design in addition to just the generic classification of uses. A.B. 709, however, did follow the Decision strictly on the aggregation of parcels to make up a project as large as the one proposed: "Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels." 53 A.B. 709 left to local decision the problem of deciding whether the aggregated parcels must serve as a "practical alternative" to the proposed project individually or only as an aggregate and, if the latter, how "practical" equivalency should be measured.

A.B. 709 did not fully elaborate a definition for the proximate, noncontracted land paragraph. 54 For example, the statutory term "suitable" has potential meaning beyond that given by A.B. 709. The term embraces not only receptivity to the "salient features" of the proposed use, but also physical and economic suitability. Thus, to determine suitability one may ask whether the project can be built on the alternate site given its topography and location and, if so, whether the cost of construction remains comparable to that for the land under contract. While local legislators and land-use planners may think first of zoning classification and general-plan designation when contemplating "suitable" in light of "salient features," in actual situations land development demands a more complete and practical analysis of suitability.

Finally, A.B. 709 expanded the paragraph on agricultural use at the end of then existing Government Code section 51282. 55 Under A.B. 709, the uneconomic character of the land in agriculture could justify a cancellation only if, in addition to the absence of other reasonable or comparable uses, "the petitioning landowner has demonstrated that changed conditions, irrespective of the increased value of the land for development purposes, make continued agricultural use of the land uneconomic." 56 This, again, would have required the landowner, in effect, to demonstrate the change in conditions af-

52. See Petition for Hearing, supra note 24, at 27-28.
53. Compare 28 Cal. 3d at 862, 623 P.2d at 192, 171 Cal. Rptr. at 631 with A.B. 709, reprinted infra appendix A, at § 1 (amending CAL. GOV'T CODE § 51282(d)).
54. CAL. GOV'T CODE § 51282 (West 1966), reprinted supra note 9.
55. Id.
56. See A.B. 709, reprinted infra appendix A, at § 1 (amending CAL. GOV'T CODE § 51282(e)).
fecting agriculture since the time he signed the contract and technically affirmed agriculture as the highest and best use of the land. A.B. 709 did not make a finding on agricultural economics mandatory in all cancellations. The Decision arguably did.\(^57\)

A.B. 709, as the first bill introduced, was destined to serve as the stock onto which the compromise provisions were grafted during the evolution of the Bill.\(^58\)

B. **Senate Bill 836: An Effort to Countermand the Decision**

The most important of the bills seeking to blunt the force of the Decision, and the only bill of importance introduced in the senate to amend Government Code section 51282, was Senate Bill 836 by Senator Dan Boatwright.\(^59\)

The original version of S.B. 836 would have made several major changes in section 51282. First, cancellation was characterized as a legislative, as opposed to a quasi-judicial, determination.\(^60\) In this fashion, S.B. 836 took an approach similar to other bills designed to overturn the Decision by limiting judicial review of cancellations. Judicial review would occur under California Code of Civil Procedure section 1085.\(^61\) S.B. 836, however, went much farther by eliminating the need for written findings by the local agency. The bill added that “no special circumstances to justify a cancellation need be shown.”\(^62\)

Thus, S.B. 836 would have transformed cancellation into a routine, informal, and virtually unreviewable legislative de-

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57. 28 Cal. 3d at 863, 623 P.2d at 192, 171 Cal. Rptr. at 631-32.

58. See supra note 39.


60. Id. § 1 (amending Cal. Gov't Code § 51282(b)).

61. See supra note 39.

62. S.B. 836, supra note 59, at § 1 (amending Cal. Gov't Code § 51282(b)).
cision. It is difficult to argue that cancellation, so transformed, would have remained consistent with the rest of the statutory scheme.

Second, S.B. 836 would have required only one of the two major findings, instead of both as under the then existing version of section 51282. The bifurcation of the public-interest and the consistency-with-the-Act findings represents a significant change that became law in the Bill.

Third, S.B. 836 expressly subordinated the decision to cancel to general-planning and zoning decisions made by the local agency in its legislative capacity. The original version of S.B. 836 treated the two findings in section 51282 as satisfied "if the land under contract was generally planned and zoned for development since the land was placed under contract." The version, as amended in the senate on May 14, 1981, by contrast, authorized cancellation as proper "if the lands under contract are designated in the applicable general plan for nonagricultural use at the time any cancellation is approved." Thus the original version simply legitimized the kind of cancellation disapproved by the Decision; but the amended version subordinated cancellation to land-use determinations made in the local general plan at some time before cancellation.

63. Id.
S.B. 836 deleted the conjunctive "and" and inserted the disjunctive "or" between the two findings, (a) and (b), in § 51282. See supra note 10. This was eventually done in A.B. 2074 though supporters of the Decision complained that the disjunctive greatly weakened the permanent rules for cancellation. The Decision itself had created the rationale for taking an either-or approach to the two findings. The supreme court's discussion of the "public interest" finding had suggested that if cancellation were in the "public interest" of the local agency, the cancellation would not also be consistent with the purposes of the Act.

64. See infra notes 164-66 and accompanying text.
65. S.B. 836, reprinted infra appendix B, at § 1 (amending Cal. Gov't Code § 51282(b)).
67. Id.
68. Id. at § 1 (amending Cal. Gov't Code § 51282(b)).
69. Because the version of S.B. 836 (as amended in the senate on May 14, 1981) allowed consistency with the local general plan to be determined "at the time of cancellation," the local agency could change the general plan at that time to create consistency. In this sense, contractual restrictions under the Act would give way to a general-plan amendment at the legislative discretion of the local agency. Supporters of the Decision criticized S.B. 836 as inviting landowners to seek general-plan changes as a means of facilitating cancellation. The criticism had merit. Indeed, the criticism
Finally, S.B. 836 cut out the core of the supporting findings required under Government Code section 51282. The bill would have deleted altogether the sentence on proximate, noncontracted land. The bill also would have struck the sentence on the uneconomic character of the existing, or any other comparable, agricultural use. Together, these deletions would have made it easier to rely upon both an alternate use and an uneconomic agricultural use as reasons for cancelling.

The amended version of S.B. 836 contained one additional provision: If environmental review had already occurred, or would later be undertaken, in connection with "any entitlement to actually use the land for other than agricultural purposes," then an environmental impact report need not be prepared for the decision to cancel. That the decision to cancel constitutes a "project" within the meaning of the California Environmental Quality Act represents an interpretation given by the State Office of Planning and Research. Thus, exempting cancellations would theoretically eliminate a redundant environmental clearance and encourage a single comprehensive environmental report on the project, if one assumes that a report will be prepared at a later stage. The exemption proposed in S.B. 836 would, however, have gone against the statutory policy that environmental assessment occur at the earliest stage of a project. Moreover, the decision to cancel, considered in isolation, can affect the environ-

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70. The deleted sentence read: "A potential alternative use of the land may be considered only if there is no proximate, noncontracted land suitable for the use to which it is proposed the contracted land be put." See Cal. Gov't Code § 51282 (West Supp. 1980) reprinted supra note 9.

71. The deleted sentence read: "The uneconomic character of an existing agricultural use shall likewise not be sufficient reason for cancellation of the contract." Id.

72. S.B. 836 supra note 67, at § 1 (amending Cal. Gov't Code § 51282(b)).

73. Id.


ment through either the cessation of agricultural use or the change in local land-use policy, even without immediate development of the land.66

S.B. 836 received strong support from the building industry, including labor, and from local government.77 Naturally, the bill received strong opposition from the Sierra Club.78 Just as A.B. 709 would have preserved most of the Decision in statutory form, S.B. 836 would have destroyed most of the Decision and some important requirements for cancellation in Government Code section 51282. Neither bill was fated to survive in its original form. The adversaries were too strong to do anything but stalemate or compromise.

C. Genesis of a Compromise

After the Senate Local Government Committee heard and passed S.B. 836 in early May of 1981, the bill went to the senate floor. It passed in the senate with ease on May 14.79 Its passage signalled the need for compromise if any legislation were to be passed by both houses. The Assembly Committee on Natural Resources which received S.B. 836 from the senate had all the bills in the assembly under consideration.

By June 5, 1981, the Committee had produced a compromise bill by writing a completely new text for Assemblyman Hannigan's A.B. 709, now designated A.B. 2074.80 The form of the new bill reflects the spirit of the compromise. Amended

76. Any effect on the environment would, of course, occur indirectly. For example, the administrative record on the cancellation might reflect a new policy favoring urban uses in the vicinity, and the adoption of that policy might encourage other landowners, both those engaged in agriculture and those not, to propose immediate development of their lands. Presumably the proposals would receive approval under the new policy. In recognition of such indirect effects, an environmental impact report usually addresses "growth-inducing impacts" of a project. See Cal. Admin. Code tit. 14 § 15143(g) (1972). For similar reasons, a general-plan amendment, which in essence changes a land-use policy, requires environmental review. See generally Environmental Planning and Informational Council v. County of El Dorado, 131 Cal. App. 3d 350, 182 Cal. Rptr. 317 (1982).


78. See San Francisco Bay Chapter, Sierra Club statement of position on various bills to amend the Act (undated) (on file with the Santa Clara Law Review).


80. See supra note 58.
A.B. 2074\textsuperscript{81} would codify the main holding of the Decision. It would also grant latitude in local land-use planning and offer a “window” open only once for easy exit from the Act by certain landowners who had been surprised by the court’s strict interpretation of Government Code section 51282.\textsuperscript{82} The co-authors of amended A.B. 2074 included not only Assemblyman Hannigan but also Assemblymen Robinson, Cortese, and Marguth, all of whom had introduced bills designed to counteract the Decision and enhance local discretion in cancelling.\textsuperscript{83} Assemblyman Robinson carried A.B. 2074 as the principal author—an assignment symbolizing the success of the Decision’s opponents in at least neutralizing its more restrictive effects.

Significantly, even supporters of the Decision came to accept the “window” as a device for correcting the essentially retroactive impact of the Decision upon existing contracts entered into under a different sense of the law years earlier.\textsuperscript{84} The alternative of wholesale nonrenewals by landowners frightened or confused by the Decision appeared far less palatable. Opening the “window” would at least let out the discontented before the new permanent rules for cancellation became the only path to cancellation.

Whatever the considerations of fairness and policy behind amended A.B. 2074, the danger that S.B. 836 might actually gain support in the assembly created pressure that secured this initial compromise. A final compromise produced the senate amendments to A.B. 2074 on August 25, 1981.\textsuperscript{85} These amendments in the senate added a measure of strictness to the Bill, chiefly by adding the “proximate, noncontracted land” finding to the “public interest” ground for cancellation.\textsuperscript{86} Senator Boatwright, author of S.B. 836, then became


\textsuperscript{83} See supra note 39.

\textsuperscript{84} See SENATE DEMOCRATIC CAUCUS REPORT, supra note 79, at 2 (Sierra Club neutral on final version of A.B. 2074).


\textsuperscript{86} See id.
co-author of A.B. 2074 and withdrew S.B. 836.

IV. THE NEW CANCELLATION PROVISIONS OF THE BILL

A.B. 2074 in its final form (the Bill) reflects the legislative compromise between those who supported the Decision philosophically and hence favored strict rules on cancellation, and those who opposed the Decision philosophically, deplored its judicial activism, and predicted adverse consequences that the Decision might produce. The significance of this polarity in views does not lie in saying which view was right and which was wrong. Rather, the significance lies in the legislature's more-or-less thorough reconsideration of the cancellation provisions of the Act as a result of the controversy ignited by the Decision.

A. Redefining the Function of Cancellation: Revised Section 51280

Perhaps the most significant change in the cancellation statutes occurred in the introductory section itself, Government Code section 51280. The Bill struck the language permitting cancellation only when keeping the land under contract is "neither necessary nor desirable" for achieving the purposes of the Act. That phrase had proven a lethal weapon for Sierra Club during the litigation. Keeping land under contract is inevitably "desirable" at minimum for some purpose of the Act. Instead, the Bill repeated the intent that

87. These predictions included: interference with local land-use planning, halting development projects already in planning, aggravating housing shortages, depressing local economies, and even inadvertent "leap-frog" development (i.e., jumping over contract land that could not be cancelled).


89. CAL. GOV'T CODE § 51220 (West Supp. 1982) provides in part:

a) 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....

   ....

   c) 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 discontiguous urban development patterns which unnecessarily increase the
cancellation exists "to provide relief from the provisions of contracts," and substituted a more narrow reference to the express statutory requirements: "under the circumstances and conditions provided herein."\textsuperscript{90}

The effect of this revision to section 51280 should not be underestimated. Rather than subordinating cancellation to the achievement, in the more amorphous sense, of the "purposes" of the Act as a whole, purposes that have actually expanded and shifted historically, new section 51280 makes cancellation available upon satisfaction of the express requirements of the statute. Although it is true that cancellation remains within the discretion of the local agency, and that the landowner acquires no right to cancel simply by meeting the statutory requirements,\textsuperscript{91} revised section 51280 precludes a far-ranging excursion through the diverse purposes of the Act in search of a determination whether to cancel a given contract.

B. \textit{Precluding Implied Findings: A Barrier to Statutory Revision through Judicial Review}

The Bill contained an express limitation on the findings required for cancellation: "In approving a cancellation pursuant to this section, the board or council shall not be required to make any findings other than or in addition to those expressly set forth in this section, and, where applicable, in Section 21081 of the Public Resources Code."\textsuperscript{92} This provision appears in revised section 51282 and in a parallel provision in new section 51282.1.\textsuperscript{93} It again underscores the exclusivity of the requirements for cancellation signaled by the new intro-

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\textsuperscript{90} CAL. Gov't Code § 51280 (West Supp. 1982).
\textsuperscript{91} See CAL. Gov't Code § 51282 (West Supp. 1982) which continues to use the verb "may" in connection with the local agency's action.
\textsuperscript{92} A.B. 2074, reprinted infra appendix C, at § 2; CAL. Gov't Code § 51282(f) (West Supp. 1982).
\textsuperscript{93} A.B. 2074, reprinted infra appendix C, at § 3; CAL. Gov't Code § 51282.1(h) (West Supp. 1982).
\end{flushleft}
ductive language in section 51280: "under the circumstances and conditions provided herein." 94

This limitation obviously relieves the local agency, in granting cancellation, from making any "findings" of any kind, express or implied, not literally required by the statute. 95 In this respect, the limitation checks any incursion by a creative judiciary into the domain of the legislature. A reviewing court may no longer, in the spirit of "judicial vigilance" animating the Decision, effectively impose a requirement of findings not otherwise imposed by the legislature. The dissent by Justice Richardson to the Decision, arguing that the majority was requiring more than the Act demanded, was finally vindicated. 96

95. In another respect, the limitation conflicts with the codification of the supreme court's holding that judicial review of cancellation occur under § 1094.5 of the California Code of Civil Procedure. 28 Cal. 3d at 849, 623 P.2d at 183-84, 171 Cal. Rptr. at 623. Clearly the court's majority had employed § 1094.5 and the Topanga decision to require the City to "bridge the analytic gap" between raw evidence and ultimate conclusion in granting cancellation. Id. at 858-59, 623 P.2d at 189-90, 171 Cal. Rptr. at 628-29. Bridging the gap, as Justice Mosk described it, involved creating an administrative record containing much intermediate reasoning. Depending upon one's definition, one could call that intermediate reasoning "findings" or at least "subfindings." The limitation on findings in A.B. 2074 at least provides a basis for arguing that the more formal of those intermediate steps ("implied" findings) are unnecessary.

The State Office of Planning and Research suggests that the local agency may make additional, nonstatutory findings to deny cancellation, although it is not required to do so: "In short, a board or council clearly has to make the listed findings to approve a cancellation, but it can disapprove a cancellation if it fails to meet other local tests." Letter from Deni Greene, Director of Office of Planning and Research, to colleagues with attached memorandum: Opening the Williamson Act Window: Implementing A.B. 2074, at 8 (Dec. 1, 1981) (emphasis added) (on file with the Santa Clara Law Review) [hereinafter cited as O.P.R. Letter].

96. In his dissenting opinion, Justice Richardson noted that the majority conceded that Hayward took into consideration the required statutory purpose of the Act in cancelling the contract at issue. He further explained that the majority found error in the city council's failure to "consider the Legislature's intent to limit cancellation to the extraordinary cases in which nonrenewal is inappropriate." 28 Cal. 3d at 868, 623 P.2d at 196, 171 Cal. Rptr. at 635. Justice Richardson concluded that no such intent appeared in the Act and "[i]n declaring that 'there must be substantial evidence that awaiting the normal termination of the contract would fail to serve the purposes that purport to justify cancellation', the majority makes the very error of which it accuses the council; it 'thereby read[s] into the statute a refinement neither explicit nor implicit in its provisions.' " Id. at 868, 623 P.2d at 196, 171 Cal. Rptr. at 635 (citations omitted).
C. Tentative and Final Cancellation: The Two-Step Exit from the Act

In adding a requirement that a proposal for an alternate use of the land accompany the application for cancellation, the Bill also made the “tentative” cancellation procedure found in section 51283.4 universal. Under the Act prior to the Bill, section 51283 provided that the landowner who successfully petitioned for cancellation without proposing any alternate use could obtain a final certificate of cancellation immediately upon payment of the cancellation fee. The Bill eliminated immediate, final cancellation. Instead, as a prerequisite to final cancellation, the landowner must carry out his development project to some extent. Unfortunately, the Bill does not define exactly the stage to which the development must advance for final cancellation.

As added to the Act in 1978, the tentative cancellation procedure in section 51283.4 served to tie final cancellation to the granting of discretionary land-use approvals by the local agency. Unless the landowner receives the approvals, he will

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97. A.B. 2074, reprinted infra appendix C, at § 2; Cal. Gov't Code § 51282(e) (West Supp. 1982). The subsection provides in pertinent part:
   
   (e) The landowner's petition . . . shall be accompanied . . . by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use, and the provisions and requirements of Section 51283.4 shall be fully applicable thereto. The level of specificity required in a proposal for a specified alternative use shall be determined by the board or council as that necessary to permit them to make the findings required.

   One may perhaps see in this new requirement an additional discouragement to cancellation. The combination of engineering fees, high interest rates, multifarious state and local land-use regulations, and prickly local legislators can easily cause some landowners to hesitate to apply for cancellation. A landowner can no longer cancel simply in order to enhance the value of his land and then to sell. He also must be willing to develop or to sell for immediate development.


100. Id.

101. See A.B. 2074, reprinted infra appendix C, at § 6; Cal. Gov't Code § 51283.4 (West Supp. 1982). A final certificate of cancellation of contract will not be issued until “specified conditions and contingencies are satisfied.” Id. For example, a landowner must “obtain all permits . . . necessary to commence the project” before cancellation is final. Id. See infra notes 117-22 and accompanying text (discussion of the meaning of “all permits”).

102. After the 1978 amendment the section required only the following: “contingencies to be satisfied shall include all permits required by any governmental
not want to pay the cancellation fee. The statute recognized this economic fact of life.

The Bill preserves this basic procedure. When the local agency approves an application for cancellation accompanied by the new mandatory proposal for alternate use of the land, the local agency records a tentative certificate of cancellation stating the “specified conditions and contingencies” to be satisfied as a prerequisite to final cancellation. One of those conditions, of course, must be the landowner’s paying the cancellation fee calculated at the time the application is approved.

The Bill changed section 51283.4, first, by giving the landowner the option of paying the cancellation fee within one year, even if he has not yet met the other conditions to final cancellation, and thereby at least avoiding recalculation of the fee. Unfortunately, this amendment tends to blur the deadline by which the landowner must satisfy the other conditions after paying the fee.

The Legislative Counsel has interpreted the Bill as leaving discretion to the local agency to withdraw a tentative cancellation after one year, despite the fact that the landowner has paid the fee, under subsection (g) of section 51282.1. This interpretation applies only to tentative cancellations through the “window.” The Legislative Counsel did not see


After amendment by A.B. 2074, the section reads: “Contingencies to be satisfied shall include a requirement that the landowner obtain all permits necessary to commence the project.” Cal. Gov’t Code § 51283.4(a) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 6(a).


104. Id.

105. Cal. Gov’t Code § 51283.4(a) provides in pertinent part: “Conditions to be satisfied shall include payment in full of the amount of the fee computed under the provisions of Section 51283 and 51283.1, together with a statement that unless the fee is paid, or a certificate of cancellation of contract is issued within one year from the date of the recording of the certificate of tentative cancellation, such fee shall be recomputed . . . .” Id.

106. See Letter from Cal. Legis. Counsel to Assemblyman Robinson (Dec. 21, 1981) (on file with the Santa Clara Law Review). In contrast, the League of California Cities interpreted A.B. 2074 as allowing the landowner to pay the cancellation fee within a year after tentative cancellation and then to enjoy “an indefinite period of time within which to proceed with the project.” See Letter from League of California Cities (Russell Selix) to Planning Directors (Dec. 9, 1981) (on file with the Santa Clara Law Review) [hereinafter cited as League Letter].
the clause "unless the landowner has paid the required cancellation fee"107 as precluding withdrawal of a tentative cancellation. Instead, Counsel reasoned that, because the local agency has authority to grant an extension of the one-year period, the agency must also have discretion to withdraw cancellation after one year. Paying the fee or exercising due diligence, Counsel concluded, gives the landowner only a basis for requesting the extension.108

Besides this uncertainty in tentative cancellation through the "window," other problems of fairness arise from section 51283.4 containing the general procedures for tentative cancellation.109

Another uncertain aspect of the new tentative cancellation procedure is the omission from the Bill of any parameters for the "proposal for a specified alternate use"110 of the land. Clearly the legislature required the landowner to designate a "specified alternate use;" but in the very same provision the legislature drew the blood out of "specified" by permitting the local agency to demand only that "level of specificity [that may be] necessary to permit them to make the findings required."111 This language appeared in the final version of A.B. 2074. By contrast, the version as amended on June 5, 1981 required the proposal to "indicate the population density and the building intensity" resulting from the proposed use "at a

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108. See Letter from Cal. Legis. Counsel to Robinson, supra note 106. It is doubtful that this interpretation corresponds to what the draftsmen of subsection (g) intended. At any rate, a landowner who has cancelled through the "window" would be wise not to pay the cancellation fee unless he first receives assurance that he will obtain (if he needs it) a reasonable extension of time to fulfill other conditions to final cancellation. A similar problem of interpretation should not arise under revised § 51282 for cancellations under the new permanent rules because the one-year limit on tentative approvals does not appear there.
109. For example, in amending § 51283.4, the Bill foreclosed any demand for a refund of the cancellation fee. After the landowner has notified the local agency of his inability to satisfy the contingencies and conditions, and in response the local agency has withdrawn its tentative approval of cancellation, "the landowner shall not be entitled to the refund of any cancellation fee paid." Cal. Gov't Code § 51283.4(c) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 4. In addition, the local agency may not waive the fee for a cancellation under the "window." This fee goes directly to the state in its entirety, not to the county. Cal. Gov't Code § 51282.1(i) (West Supp. 1982); cf. § 51283(c).
111. Id.
In effect, the need to find consistency with the local-general plan will determine the level of specificity. In addition, the need to satisfy the conditions to final cancellation within only one year may force the landowner to design his project in greater detail at an early date. No finding of consistency is required for “public-interest” cancellation under the new permanent rules. The local agency remains free to accept any manner of description for the proposed alternate use.

In the case of “window” applications, the Bill authorized the local agency to request and receive additional information regarding the alternate use after the landowner has filed. This permission to supplement recognizes that some landowners will have received very short notice of the five-month filing period and so could not prepare any detailed land-use proposal before the end of May, 1982.

The Bill apparently allows the landowner to alter his project while the tentative cancellation remains pending. An amendment to subsection (a) of section 51283.4, applicable to both the “window” and the permanent provisions, enables the local agency to “amend a tentatively approved specified alternate use,” upon the landowner’s request, if the altered project remains “consistent” with the findings for cancellation. Conceivably, a later change in the general plan could preserve consistency for an altered project. But it is not certain that the amended version of the general plan would preserve consistency for a project approved after a cancellation through the “window” because there consistency is deter-

113. The required specificity might well be a very low level indeed. For example, to approve a tentative cancellation through the “window,” the local agency need only consistency with the general plan and no resulting pattern of discontiguous urban development. See Cal. Govt Code § 51282(b)(3)-(4) (West Supp. 1982). In supplying his proposal, the landowner might easily comply by giving a brief written description of the land-use by type (according to the land-use element of the local general plan) and a vicinity map showing the state of development of nearby lands.
116. Both sections provide that the “provisions and requirements of Section 51283.4 shall be fully applicable thereto.” Cal. Govt Code §§ 51282(e), 51282.1(e) (West Supp. 1982).
minded as of a certain date—October 1, 1981 in most cases.

D. The Scope of "All Permits" Necessary to Commence the Project

The revisions of section 51283.4 did not touch the original "conditions and contingencies" language. The Bill did, however, add the requirement that one of the contingencies to final cancellation must be "that the landowner obtain all permits necessary to commence the project." A more embracing term than "permits" could not have been chosen in this age of layer-cake land-use regulation.

The Legislative Counsel has attempted to interpret the terms "commence" and "all permits" but failed to provide more guidance than either common sense or a dictionary can offer. For "commence," the Counsel literally concluded with the dictionary's definitions, "to begin" or "to start." With regard to the "number and type of permits" required to "commence" the project, the Legislative Counsel suggested that the answer "generally depends on the type, size, and scope of a particular project and the number of the governmental entities which have jurisdiction over projects within that geographic area." To answer that the project defines its own "permits" is merely to reason in a circle and not to advance anyone's understanding. Nevertheless, by stressing the comprehensiveness of "all permits" obtainable from all agencies having jurisdiction, Counsel did hint that a project may "commence" only at a fairly advanced stage.


118. Obviously, the meaning of "all permits" may depend upon the nature of the project; that is, upon the regulatory mechanism brought into operation by virtue of the project's nature. Thus the broad sweep of the term has the virtue of affording flexibility of interpretation. That virtue bears a fault on its reverse side in the case of a typical land-use proposal, such as a residential subdivision. The "permits necessary to commence the project" might consist of only those approvals up to the zoning stage or, alternatively, all approvals up to the issuance of the last building permit for the last residence within the subdivision. The difference between these two choices is, in practical terms, enormous.

119. See Letter from Cal. Legis. Counsel to Assemblyman Robinson (Jan. 6, 1982) (defining "commerce" and discussing "all permits") (on file with the Santa Clara Law Review).

120. See id. Indeed, the analysis states that "a city or county may require a landowner to obtain several permits prior to commencing a project, such as, for exam-
Late in 1981, the State Office of Planning and Research circulated a memorandum interpreting "all permits" in the more inclusive sense of building permits for construction of the final improvements. 121 Unfortunately, such an interpretation places a tremendous burden on the landowner proposing a large subdivision or multi-phased project. How, given the slowness of government processes and the high cost of borrowed capital, can the landowner draw down a hundred building permits, for instance, within the one year following tentative cancellation or even within any reasonable period of extended time? More moderate interpretations are available. 122

In the June 5, 1981 version of A.B. 2074, the landowner receiving tentative cancellation through the "window" had three years in which to remove the "conditions and contingencies" to final cancellation. The August 25, 1981 version reduced the period to one year. 123 Any landowner ready to develop at the time of the Decision would presumably have little difficulty removing the contingencies within one year, because he had been in a position to develop his land at the time of the Decision. Moreover, by proceeding with "due diligence"

121. The Office of Planning and Research has no statutory authority to issue regulations under the Act; and so its memoranda are neither legally binding nor authoritative. Nevertheless, many local agencies may look to the Office for sound guidance.

In interpreting "all permits," the Office of Planning and Research concluded that the landowner must "obtain all discretionary and ministerial permits needed to commence the project, but not necessary to complete the project. These may include tentative subdivision maps, use permits, building permits, and grading permits." O.P.R. Letter, supra note 95, at 8. Legislative Counsel then took a similar view. See supra notes 119-20.

122. For example, a tentative subdivision map represents the last discretionary approval under the Subdivision Map Act. See Youngblood v. Board of Supervisors, 22 Cal. 3d 644, 586 P.2d 556, 150 Cal. Rptr. 242 (1978). At that point the landowner may "commence the project" by constructing the improvements required as conditions to a final map. Normally, only a grading permit for subdivision improvements will be needed and its issuance will involve no discretionary decision. In any event, any reasonable interpretation should take into account local government's need for a degree of certainty that the landowner will, in fact, build the project he originally proposed and thereby substantiate in historical fact the findings made at the time of tentative cancellation. Stated another way, a reasonable interpretation should be based upon identifying those permits whose issuance authorizes work irrevocably committing the land to development.

123. CAL. GOV'T CODE § 51282.1(g) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 3.
and showing "circumstances beyond his control," the landowner may qualify for a "reasonable" extension of the one-year period. However, nothing in the Bill protects the landowner against regulatory changes during his pursuit of "all permits." Likewise, nothing in the Bill addresses the problem of what to do when a landowner fails and loses his tentative cancellation, leaving an otherwise "contiguous pattern of urban development" with a green hole in its middle. Until consummated, development has risks both for the landowner and for local government in its planning activities.

E. The "Window" Open During the First Five Months of 1982

The purpose of the "window" was "to provide a one-time opportunity for cities and counties, acting in concert with affected landowners, to correct inconsistent applications of the provisions of this chapter and thereby to alleviate present and potential hardships, both for affected cities and counties and for affected landowners." The "inconsistent" applications of the cancellation provisions, one may infer, arise from the Decision, on the one hand, and the historical practice of local agencies in granting cancellations under far less strict requirements, on the other. In relying upon local practice, many landowners may have entered the Act in the expectation that cancellation would not become the "strictly emergency" affair that the supreme court later made it. The "window" provisions were apparently intended to compensate for that disparity between landowners' expectations for cancellation and the

124. Id.
125. CAL. GOV'T CODE § 51282.1(a) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 3.
126. Local entities have been lenient historically in approving cancellations, even over the recommendations of their staff. See LAND USE RESEARCH GROUP supra note 22, at 64-65. Kern County approved a cancellation based upon clerical error. The land under contract was erroneously listed as "future developable area" and therefore the landowner based his petition for cancellation on the erroneous listing. Fresno County approved a cancellation in which the landowner simply stated he was misinformed by another county regarding the ease of cancellation. Fresno County also granted cancellation notwithstanding the fact that suitable, proximate, noncontracted land was available for the proposed use. The above examples were all situations where the planning commission did not favor cancellation. Finally, Santa Clara County approved a cancellation in which the landowner simply stated that he needed cash. Id. at 64-65.
reality of the Decision. Nowhere in the Bill did the legislature say directly that it intended to override the Decision.

1. Opening and Shutting the "Window": Problems of Timing

Some landowners may not have been able to take advantage of the "window," if only because they lacked a headstart. One of the two findings required for cancellation concerns consistency of the proposed alternate use with the local general plan. In an effort to alleviate the "hardship" only for those caught near the point of development by the court's restrictive interpretation, the legislature fixed that date for determining consistency at October 1, 1981.127

The October 1, 1981 date was made subject to one exception. A general plan amendment formally initiated before January 1, 1982 could serve as the basis for determining consistency.128 This exception accommodated the practice in some jurisdictions (e.g., Orange County) under which the amendment to the general plan accompanies, instead of precedes, the development proposal.

In an effort to inform landowners under the Act who may not have heard of the Bill, the legislature directed local governments to mail notice of the "window" to all landowners under contract during the first 60 days of 1982.129 The notice could not have helped any landowner needing to amend the


128. CAL. GOV'T CODE § 51282.1(f)(2) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 3. The Bill did not precisely define the meaning of "proceedings which were formally initiated . . . prior to January 1, 1982." Id. The initiation of a general-plan amendment can occur in a variety of ways under local practice; for example, a letter from a landowner or a decision by a local agency to re-examine its land use policy for a given parcel or land area. In this respect, the word "formally" used in the Bill may be somewhat misleading as a description of the procedure. See League Letter, supra note 106, at 3.

129. The notice had to contain explanations of the "window" procedures and deadlines, eligibility for use of the "window," and the other methods of terminating contracts—that is, nonrenewal and cancellation under the revised permanent provisions. CAL. GOV'T CODE § 51282.1(b) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at §§ 3, 6.
general plan during 1981 in order to establish consistency. Moreover, since the deadline for filing petitions through the “window” arrived 150 days after January 1, 1982, some landowners may have effectively had as few as 90 days in which to prepare their application. Normally, one would think that to be a sufficient amount of time for the small paperwork involved. Yet because the decision to use the “window” entails a commitment to development, and many landowners may not have confronted earlier the economic and engineering considerations raised by any development proposal, three or four months may scarcely have been time enough.

Filing a petition through the “window” within the first 150 days of 1982 was mandatory. Processing, however, is another matter. The Bill directed each city and county to establish “a schedule for acting on” petitions and also to comply with the “Permit Streamlining Act.” In other words, the local agency must act within one year. A three-month extension is available, however.

Again, there is an exception and an ambiguity. A county may hold a petition without action, pending completion of annexation proceedings for the land, and then transfer the petition to the annexing city for action by the city. Presumably the one-year period will not begin to run until the city receives the petition for cancellation and succeeds the county under the contract. The Bill, however, does not say so expressly.

2. The Two Findings Necessary

In granting cancellation through the “window,” the local agency must find at least that “the cancellation and alterna-
tive use will not result in discontiguous patterns of urban development; [and that] the alternative use is consistent with applicable provisions of the city or county general plan as of the designated date in 1981. Each of these findings offers some pitfalls to a hasty board or council.

One would normally approach the consistency finding essentially in terms of the land-use element of the general plan. The statute, however, uses the plural: "applicable provisions of the city or county general plan." Clearly more than the land-use element alone may come into play. Other mandatory elements may represent "applicable provisions," for example, the open-space element in the case of unimproved land or the circulation element in the case of a proposed shopping center generating heavy traffic flows. Indeed, any policy on land-use expressed anywhere in the general plan may arguably have bearing upon a given proposal.

And these requirements might well accomplish more. By co-ordinating the Williamson Act with the Planning and Zoning Law, CAL. GOV'T CODE §§ 65000-66499.58 (West 1966 & Supp. 1982), the legislature could assure that contracts become a consciously-deployed means of accomplishing the goals expressed in local general plans for whatever value those goals may have for the state as a whole. Without addressing the details of such requirements, I would submit that co-ordination with the Planning and Zoning Law will strengthen the Williamson Act significantly.

The Act does little to assure that large, contiguous blocks of agricultural land, necessary for both efficient farming and resisting the incursion of intensive development, come together under contracts at roughly the same time. The open-space element of the local general plan could delineate blocks of agricultural land and the zoning power exercised consistently with the plan, subject to constitutional limitations, could serve as a powerful inducement to the making of contracts.

135. CAL. GOV'T CODE § 51282.1(f)(1), (2) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 3. The finding on consistency with the local general plan at the time of cancellation holds special fascination for anyone concerned with the logic behind California's patchwork statutes on urban growth-management. For example, why not require consistency at the time the contract is made as well? After all, making a contract on land that local government plans (or is about to plan) for urban use represents the very sort of situation that gave rise to the Decision. In contrast, requiring that agricultural or open-space plan-designation and then zoning precede or immediately follow the making of a contract would at least render the Act symmetrical. The contract would begin and end in a state of consistency with other local land-use controls. Indeed, requiring local government to give notice of nonrenewal when the land receives an urban land-use designation would likewise complement the logic of general-plan consistency.

136. See CAL. GOV'T CODE § 65302 (West Supp. 1982).


138. If all that is required to defeat a finding of "consistency" is a perception of some conflict between the proposal and an expressed policy of the general plan, then, given the multiplicity of policies in the plan, an opponent of the cancellation may not
The second finding, "that the cancellation and alternative use will not result in discontiguous patterns of urban development,"\textsuperscript{139} derives from the "purposes" section of the Act.\textsuperscript{140} Virtually every one of the words in the second finding cries out for definitive interpretation.\textsuperscript{141} The Bill does not attempt

experience much difficulty in orchestrating a successful attack. On the requirement of consistency between a proposed governmental project and all mandatory elements of the local general plan, see Friends of "B" Street v. City of Hayward, 106 Cal. App. 3d 988, 165 Cal. Rptr. 514 (1980) (street-improvement project).


140. \textsc{Cal. Gov't Code} § 51220(b) (West 1966).

141. Any interpretation offered in isolation from any actual situation cannot prove definitive. This caution applies to the interpretation presented here.

"Development" carries its ordinary meaning and the one expressed by that word as used in other contexts in the California Government Code: The physical improvement of land, including grading the earth and erecting structures. See \textsc{Cal. Gov't Code} § 65927 (West Supp. 1982). While there may be other activities on land to which "development" might apply, they are probably few and too specialized to be of concern. In connection with the word "patterns," "development" also embraces the final product of development activity.

The descriptive term "urban," however, has no fixed, objective meaning. Looking to its opposite, "rural," serves only to introduce a second term without fixed, objective meaning. One may become tempted to a subjective interpretation by saying "I know it when I see it."

This approach is not satisfactory either. In another effort to provide local agencies with some guidelines for making the finding, the Office of Planning and Research identified a number of land uses that the Office considered "urban," including residential use at any density greater than one dwelling unit per acre. See O.P.R. Letter, supra note 95, at 6. The Office of Planning and Research noted that the following additional land uses can be considered "urban development:" Commercial, industrial, public facilities and services, and resource extraction.

One practical approach to defining "urban" begins with the local general plan or other statement of policy. Another practical approach is for local agencies to adopt their own definition of "urban" before acting on cancellation applications. This was suggested by the Office of Planning and Research. \textit{Id.} For example, a county may list in its general plan those land uses considered "urban" and therefore appropriate only for lands annexed into a city.

A local agency formation commission may maintain a corresponding policy on urban uses. In short, local policy may control the definition, if only for reasons of precedent and consistency.

Another possible approach is to take the statutory phrase as a whole—"discontiguous patterns of urban development"—and then to apply it in a study of a map of land uses in the vicinity of the subject land. Under this approach, the perception of "urban development pattern" will depend not so much upon the particular uses on individual parcels as upon the overall character of the land uses in the vicinity.

This approach does not, of course, eliminate the element of subjectivity. The characterization of the land uses will depend upon someone's perception. Nevertheless, by taking a broad geographic perspective, one at least avoids placing too much stress upon the character of the use on individual parcels.
to give it. The Bill leaves the interpretation of that second

The approach is essentially ad hoc. For example, a multi-story office building standing in the midst of two hundred acres of open space might appear to be an "urban development" if one focuses upon the building alone, but it might appear "rural" not only in its immediate setting but also in the context of uses in the vicinity.

The phrase "discontiguous patterns" seems to favor taking the broader perspective in making the finding. Taken alone, the word "pattern" implies a form or shape of "urban development;" that is, the product of a number of adjacent land uses. "Pattern" also implies rationality in the form or shape. This interpretation is clearly consistent with one evident purpose of the Act—to prevent irrational urban growth or "sprawl." 28 Cal. 3d at 851, 623 P.2d at 185, 171 Cal. Rptr. at 624.

Thus reading the entire phrase at once, one may conclude that "discontiguous patterns" describes a cluster of land uses in a broad geographic area, rather than uses in the immediate vicinity of the contracted land only, and further that the local agency should make the finding only if the cluster of land uses forms a coherent pattern including the contracted land. Contrariwise, if any cluster remains, and will remain in the foreseeable future, detached and surrounded by lands that will not be developed, the finding should not be made.

The Bill included both the terms "discontiguous" and "contiguous," the latter appearing in revised § 51282(b)(5). No important difference in meaning emerges from the different forms of the words in their context.

Regarding the basic meaning of "contiguous," the Office of Planning and Research has suggested that contiguous development consists of lands touching at one point and, if not developed, at least having the last discretionary approvals necessary for development.

The office arrived at this conclusion from statutory and dictionary definitions of "contiguous:" "In general, dictionaries define 'contiguous' to mean 'being in actual contact,' 'touching,' and 'adjoining,' with nothing similar intervening." O.P.R. Letter, supra note 95, at 6. CAL. GOV'T CODE §§ 35033, 36033.5 (West Supp. 1982).

But the concept of "touching" or being in actual contact should not be taken too literally. Common sense suggests that some intervening features should not destroy contiguity; for example, roadways or railroad rights-of-way, utility easements, and natural divisions (rivers, narrow gullies, mountain peaks). This list might well be expanded to include any portion of land that will never be improved. Indeed, it may well be wise to disregard permanent open space in determining contiguity, in order that the open space find its place within the final pattern of urban development.

Perhaps the controlling term for the finding is "result in." In other words, the stress should probably fall upon the ultimate result of approval of cancellation and the alternative use. Of course, the statute does not say at what point in time the "result" should be assessed—whether at the time of cancellation or some time in the future. The phrase "will not result in" appears, however, to give the local agency some latitude in gauging the ultimate result of its land-use decision. For example, the local agency need not determine the resulting pattern of urban development by looking solely at lands already developed or approved for development, as the Office of Planning and Research has suggested; rather, the agency might look also to its general plan or other policies to delineate the resulting pattern within the foreseeable future. Of course, sheer prophecy could violate the basic intent of the finding. Likewise, basing the finding upon the occurrence of events over which the agency has little control would leave the decision to cancel with little support in credible evidence or rational analysis.

The League of California Cities understood the legislative intent as follows: "The Legislature's intent was that if the local government could find that the skipped over
finding largely to local agencies in light of their policies and physical and demographic circumstances. To the extent that the interpretation remains objective and supported by substantial evidence, the courts may defer to the local agency. Nevertheless, since the critical identification of resulting “patterns” may arise from a subjective vision, the courts may place a different interpretation on the statutory language and overrule the local agency’s decision. One can predict litigation, if not the outcome.

The legislative history of the Bill reveals a reduction, from four to two, in the number of findings required for cancellation through the “window.” An early draft of the “window” amended into A.B. 70942 during late May of 1981, before A.B. 2074 became the vehicle for all amendments, contained two findings in addition to those on general-plan consistency and contiguous development patterns. Those two others were: “That the cancellation and alternative use will not result in premature or unnecessary conversion of agricultural land to urban uses. . . . That the alternative use will not adversely affect the agricultural use of nearby land which remains under contract.”

The second of these findings never appeared in the “window” provisions of A.B. 2074; however, it did re-emerge in slightly altered form among the five findings for “consistency” cancellation under the permanent rules in the Bill. By contrast, the first of those additional findings did appear in the first compromise version of A.B. 2074 (as amended in Assembly on June 5, 1981) among the “window” provisions. The senate finally deleted it in the amendments to A.B. 2074 on August 25, 1981.

parcel would eventually be developed, the local government could approve a cancellation of a non-contiguous parcel as long as eventually patterns of development would be contiguous.” See League Letter, supra note 106, at 2. This interpretation gives emphasis to “resulting patterns” rather than immediate contiguity with existing development. The League’s interpretation, however, places no definite time limit on “eventually.”

142. A.B. 709, reprinted infra appendix A.
144. CAL. GOV’T CODE § 51282(b)(2); A.B. 2074, reprinted infra appendix C, at § 2.
The deletion is significant not only because the number of findings were reduced, but also because the elimination of the language on "premature or unnecessary conversion" closed a broad avenue for challenge to the cancellation. The Sierra Club litigation had demonstrated how easy it is to argue that conversion of agricultural land, even if not "premature," is at least "unnecessary" because some alternative to the cancellation may exist. To have left that finding in A.B. 2074 would have served, perhaps, to reintroduce the "proximate-land" requirement indirectly into the "window."\(^\text{147}\)

Whether the degree of leniency contained in the "window" is so great as to destroy any enforceable restriction on the land under existing contracts and so violate that requirement of article XIII of the California Constitution represents a question that might be raised by those dissatisfied with the legislative compromise embodied in the Bill.\(^\text{148}\)

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\(^\text{147}\) For example, it might have been possible to argue that the conversion of the land would be premature and/or unnecessary because other lands not under contract remained available for development. The argument, if accepted, would have produced the same effect as a requirement to investigate the suitability of proximate, noncontracted land.

\(^\text{148}\) Article XIII, § 8 of the California Constitution provides as follows:

To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

To promote the preservation of property of historical significance the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

\(\text{CAL. CONST., art. XIII, § 8.}\)

Section 8 was added by ballot initiative on November 5, 1974. At the same time, former Article XXVIII, its predecessor, was repealed. Originally adopted by the voters at the November 1966 election (as Proposition 3), Article XXVIII provided:

Section 1. The people hereby declare that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence open space lands for the production of food and fiber and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The people further declare that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes, and it is the intent of this article to so provide.
F. The 300-Acre Porthole in the Window

In a further gesture of leniency, the legislature set an open porthole within the "window."\(^{149}\) The porthole allows cities having 300 or fewer acres of contracted land within their boundaries to cancel according to the provisions of the "window"—but without compliance with subsections (e), (f), (g), and (h) of section 51282.1.\(^{150}\) Those subsections contain, respectively, the requirement for a proposed alternative land use, the two mandatory findings, the tentative cancellation procedure, and the limitation on other findings.\(^{151}\) In short, section 51282.2 cuts out the core of the requirements for can-
cancellation through the "window."

Thus a qualifying city may simply adopt a resolution for cancellation for any or all of the 300 acres. Even the need for a public evidentiary hearing appears doubtful. The only remaining substantive requirement of the "window" is that the landowner file an application within 150 days after January 1, 1982. Section 51282.2 does not apply, however, to land within the coastal zone.

Section 51282.2 is available to cities having 300 acres or less of contracted land on January 1, 1982. Literally, the statute qualifies the cities, not the land under contract. May a qualifying city, therefore, annex contracted land after January 1, 1982 and promptly cancel upon a petition through the "window?"

The purpose of section 51282.2 is obscure. It appeared among the August 25, 1981 senate amendments to A.B. 2074 and so was probably something of an afterthought. Section 51282.2 serves no discernible public policy. On its face it simply allows some cities having minimal amounts of contracted land to be rid of the Act with virtually no formality.

G. The Mechanism for Opening and Closing the "Window"

Government Code section 51282.1 contains other provisions of a procedural nature that carry out the liberal spirit behind the "window." First, the legislature committed the state to pay the costs incurred by cities and counties in preparing and mailing notices concerning the availability of the "window." The reimbursement of costs comes out of the state's share of the cancellation fees generated by the "window" and received by the state.

Second, the legislature gave alert landowners a triple option on the rules for cancellation. Those landowners filing for cancellation before the effective date of A.B. 2074, January 1, 1982, would normally fall under prior law, essentially the Decision. But the Bill allows those landowners to elect to convert

154. See supra note 146.
in writing to either the "window" or the new permanent provisions.\footnote{Id. at § 7.} For those aware of A.B. 2074 after its passage on September 30, 1981, a petition for cancellation filed during the last three months of 1981 offered an excellent opportunity to test the waters politically before committing either to a proposal for alternative use of the land or even to the precise grounds for cancellation.

As of January 1, 1983, section 51282.1 will be repealed and will no longer appear in the California Government Code.\footnote{Id. at § 9.} But the provisions of the section "shall continue in full effect relative to proceedings initiated in compliance with it as enacted, and shall not be affected by its repeal."\footnote{Id.} Section 9 of A.B. 2074 repeals section 3, containing only section 51282.1 of the code, effective January 1, 1983. Logically, section 3.5, containing section 51282.2 (the "porthole" in the "window"), should also have been repealed simultaneously. The Bill does not do this.

The repeal of the "window" provisions seems somewhat unusual since many petitions filed during the first 150 days of 1982 will remain in process after 1982—especially those petitions held by a county pending annexation into a city.\footnote{For example, a contested annexation might well require over a year of time and would not be complete by January 1, 1983. Additionally, an annexation may require preparation of an environmental impact report (EIR) and approval by a local agency formation commission (LAFCO). See, e.g., Bozung v. Local Agency Formation Comm., 13 Cal. 3d 263, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975).} Moreover, subsection (g) of section 51282.1, which describes the tentative cancellation procedure for the "window," will also remain applicable in 1983 and perhaps for one or two years more.\footnote{For example, assuming a tentative cancellation during the second half of 1982, one would expect that the landowner will remain in pursuit of the permits necessary to commence the project well into 1983, and perhaps beyond.} It would have been helpful to continue those provisions in the code a while longer.

H. A Reflection on the "Window"

In historical perspective, the "window" does represent a reassertion of legislative prerogative in response to what Justice Richardson's dissent in the Decision described as "judicial
redrafting of the Williamson Act."\textsuperscript{162} In the Decision, the court attempted a thorough interpretation of the cancellation provisions while vacating the city's administrative determination on the facts presented. In his dissent, Justice Richardson criticized the majority for reading into the statute requirements that the legislature had never written.\textsuperscript{163} Whether or not one supports the Decision, and for that matter, whether or not one believes that the legislature truly "codified" the Decision, one can see that the legislature at least reasserted its right to write the rules on cancellation, be they strict, lenient, or to some other degree of rigor. The doing is fully as significant as what was done. In creating the "window," the legislature let it be known that the California Supreme Court had delivered an interpretation of the Act that was inconsistent with either local practice, the legislature's original intent, or both.

I. The New Permanent Provisions for Cancellation: Revised Section 51282

1. Cancellation as Consistent With the Act: The Five Findings

The Bill divorced the two major findings in section 51282\textsuperscript{164}—probably the most radical change in the permanent cancellation provisions. Revised section 51282 permits the local agency to approve tentative cancellation based solely upon \textit{either} the public interest \textit{or} consistency with the Act.\textsuperscript{165}

The latter ground requires five findings.\textsuperscript{166} Three of the findings—that cancellation will not result in discontiguous patterns of urban development, that cancellation be consist-

\begin{itemize}
\item \textsuperscript{162} 28 Cal. 3d at 871, 623 P.2d at 197, 171 Cal. Rptr. at 636.
\item \textsuperscript{163} Id. at 868, 623 P.2d at 194-95, 171 Cal. Rptr. at 634.
\item \textsuperscript{164} The two major findings required by original § 51282 were "that the cancellation is not inconsistent with purposes of this chapter; and the cancellation is in the public interest." \textsc{Cal. Gov't Code} § 51282(a) \& (b) (West Supp. 1980); see supra note 9 (text of § 51282 prior to A.B. 2074).
\item \textsuperscript{165} \textsc{Cal. Gov't Code} § 51282(a) (West Supp. 1982); A.B. 2074, \textit{reprinted infra} appendix C, at § 2.
\item \textsuperscript{166} Id. at § 51282(b). By making the five required findings for cancellation on the "consistency" ground, the local agency may ignore the multifarious purposes of the Act stated in section 51220. With the findings, the cancellation is deemed consistent with the purposes of the Act. In a backhand manner, A.B. 2074 may have redefined the purposes of the Act—or at least the major purposes—more narrowly in the context of cancellation.
\end{itemize}
tent with the local general plan, and that cancellation is not likely to result in the removal of adjacent lands from agricultural use—do not derive directly from the Decision.

a. Discontiguous Patterns of Urban Development and Consistency with the General Plan. One of the five findings, "that cancellation will not result in discontiguous patterns of urban development," is nearly identical to one of two findings under the "window."\textsuperscript{167} The same is basically true of a second of the five findings—that the alternate use of the land "is consistent with the applicable provisions of the city or county general plan."\textsuperscript{168} The only difference in the latter consists in the omission of any date for determining consistency, because obviously under the permanent rules only the time of approving tentative cancellation can serve as the appropriate date in all future cases.

The earlier analysis of these two findings need not be repeated here.\textsuperscript{169} The parallel, however, between the findings for the "window" and two of the findings for consistency cancellation deserves recognition. The parallel suggests that the legislature designed the "window" as a truncated cancellation on the theory of consistency with the Act. It is in this respect that the liberality of the "window" most clearly appears.

b. Removal of Adjacent Lands from Agricultural Use. The third required finding “that cancellation is not likely to result in the removal of adjacent lands from agricultural use”\textsuperscript{170} has no direct antecedent in the Decision. The finding first appeared in the August 25, 1981 revision of A.B. 2074.\textsuperscript{171} It replaced the more difficult finding “that cancellation will encourage preservation of the maximum amount of agricultural land”—a virtual paradox, equivalent to “less is more.”

The new finding does not lack its own problems. The

\textsuperscript{167} CAL. GOV'T CODE §§ 51282(b)(4) (cancellation generally), 51282.1(f) (window) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at §§ 2, 3; cf. CAL. GOV'T CODE § 51282, supra note 9 (pre-A.B. 2074).


\textsuperscript{169} See supra notes 139-41 and accompanying text.

\textsuperscript{170} CAL. GOV'T CODE § 51282(b)(2) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 2.


\textsuperscript{172} Id.
phrase "adjacent lands" recalls the discussion of "adjacent" in the Decision and so evokes an unmanageably large seven-and-one-half mile radius. Choice of the adjective "nearby" would have proven a more neutral alternative. Nor does the language of the finding indicate that the removal of other lands also under contract is the sole concern, as did the language in A.B. 709. The A.B. 2074 finding covers any land in "agricultural use" as defined by California Government Code section 51201(b).

Thus, despite the qualifying effect of "unlikely" and "adjacent," any actual possibility that the cancellation will "result in removal of adjacent lands from agricultural use" could pose an obstacle.

This finding carries out the strategy of limiting the "domino effect" of converting agricultural land. The original Act allowed a majority of the landowners in the same agricultural preserve to veto a cancellation on any land within the preserve. In contrast, the Bill gives no veto to neighboring landowners, but instead requires the local agency to consider the effect of cancellation upon lands not necessarily in a preserve or under contract, so long as the lands remain in "agricultural use"—i.e., produce crops for commercial purposes.

c. Prior Notice of Nonrenewal: Section 51282(b)(1).
The fourth finding, that "the cancellation is for land on which a notice of nonrenewal has been served pursuant to section 51245," captures a major theme of the court's reasoning in the Decision.

Under section 51245 both the landowner and local gov-

173. 28 Cal. 3d at 862, 623 P.2d at 192, 171 Cal. Rptr. at 630-31. See supra note 49 and accompanying text.
175. See Cal. Gov't Code § 51201(b) (West Supp. 1982). It defines agricultural use as "use of land for the purpose of producing an agricultural commodity for commercial purposes." Id.
176. For example, a neighboring farmer might, for any reason, complain that development of the subject land will impair his agricultural use. Similarly, an opponent of the development might plausibly argue that the development will increase the value of adjacent lands for more intensive use and thereby sorely tempt other landowners to convert from agriculture. In the face of such testimony, the local agency may have difficulty making the finding on a sound basis of fact and analysis.
ernment have the right to serve notice of nonrenewal. For purposes of this finding, it apparently makes no difference which party gave the notice or when. The Bill omitted any “waiting period” after nonrenewal and before tentative cancellation. Hence nothing in section 51282 prohibits the landowner from giving notice of nonrenewal just one day before the hearing on cancellation.

Had the legislature desired to adhere more closely to the spirit of the Decision, the Bill would presumably have required the landowner to give notice of nonrenewal as soon as development of the land became predictable. Likewise, the Bill would have included a finding on the impracticality of using nonrenewal as an alternative method at the time of cancellation. Indeed, the Bill would have extended the finding on nonrenewal to “public interest” cancellation—and perhaps also to the “window.” Yet the legislature did none of these. Not even a reaffirmation of nonrenewal as the “normal means” of terminating contracts sounds anywhere in the Bill as a sympathetic chord to the Decision.

If the legislature had created a duty to give notice of nonrenewal, the legislature might also have had to alter the calculation of the cancellation fee. Taxes on the land rise gradually after nonrenewal to the level of taxation at unrestricted land value. The landowner would have little incentive to give notice of nonrenewal and then to seek cancellation, unless he received some credit against the cancellation fee for increased taxes paid after the notice. Perhaps the decreased tax relief

181. It should be noted that in response to A.B. 2074, as amended in the assembly June 5, 1981, the California Department of Conservation proposed a requirement that a notice of nonrenewal be served two years prior to a finding for cancellation. See Robinson letter, supra note 127. The final Bill, however, omitted what one might call the “waiting period” after nonrenewal and thereby makes it possible for a landowner to serve his notice of nonrenewal and immediately seek cancellation.

182. The majority in the Decision held that if the landowner and local agency are able to predict when the land is capable of being developed, “the purposes of the act are defeated if the owner is nonetheless allowed to continually renew his contract and extend his commitment year after year, then cancel whenever development becomes most profitable.” 28 Cal. 3d at 854, 623 P.2d at 187, 171 Cal. Rptr. at 626.


184. Cal. Rev. & Tax. Code § 426 (West Supp. 1982) provides for the valuation of contracted land immediately after notice of nonrenewal has been served. The following steps outline the formula by which the value of the restricted land increases to
available under the Act after Proposition 13 makes non-renewal so much less expensive that the landowner will, even without a duty, give notice of nonrenewal once he expects future development. But it is human nature to postpone commitments.

d. Discontiguous Patterns and Proximate Land and Two Overlapping Findings. The fifth finding has two alternate parts: "That there is no proximate noncontracted 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 noncontracted land." 

In contrast with original section 51282, the revised statute gives definitions of both "proximate, noncontracted land" and "suitable," for purposes of the finding. The

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CAL. REV. & TAX. CODE § 426(b) (West Supp. 1982).


187. "Proximate, noncontracted land" is defined as "land not restricted by contract pursuant to (the Act), which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land." CAL. GOV'T CODE § 51282(c) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 2.

188. "Suitable" means that the salient features of the proposed use can be
Decision provided the content of these definitions. In reversing the court of appeal's holding that the record at least "reasonably implied" the absence of proximate land, the supreme court suggested the two criteria that revised section 51282 now incorporates in defining the statutory terms: "proximate" land and the "use . . . proposed." Significantly, the fifth finding for consistency cancellation reads in the alternative. If the local agency cannot make a finding on proximate land, then it may instead find that development of the contracted land is nevertheless desirable from a planning viewpoint, in order to produce "more contiguous patterns of urban development than development of proximate noncontracted land." The alternate finding not only moderates the rigor of the proximate-land requirement, but also addresses a specific problem created by any inflexible adherence to the requirement.

In those situations where proximate, noncontracted land lies more remote from the core of urban development than the contracted land proposed for development, preferring development on the noncontracted land might actually produce "leapfrogging," one of the acknowledged evils in land use. In giving local government a choice not to develop proximate, noncontracted land, even though such land is available, the Bill responds to one criticism of the Decision—its holding that local government rule out alternate sites before cancelling contracted land. Inflexibly applied, that holding might have authorized the creation of irrational development patterns.

J. Cancellation in the Public Interest: An Alternate Ground

Revised section 51282, in making the "public interest" an

served by land not restricted by contract pursuant to (the Act). Such non-restricted land may be a single parcel or may be a combination of contiguous or discontinuous parcels. Id. at § 51282(c). See supra text accompanying notes 50-54.


independent ground for cancellation rather than one of the two required findings,\textsuperscript{193} implies that some cancellations should be approved even though not consistent with the purposes of the Act. Subsection (c) of the revised statute says as much: "cancellation of a contract shall be in the public interest only if the council or board makes the following findings: (1) that other public concerns substantially outweigh the objectives of this chapter . . . ."\textsuperscript{194} The Decision contained the same reasoning.\textsuperscript{195}

The function of the "public interest" as an independent ground for cancellation received some debate in the legislature. At a hearing of the Assembly Committee on Energy and Natural Resources, proponents of A.B. 2074 explained that the "public interest" ground essentially enables local government to make a statement of "overriding concern" and to approve a development on contracted land notwithstanding the purposes of the Act.\textsuperscript{196} Opponents of A.B. 2074, including some members of the Committee, expressed concern with that possibility.\textsuperscript{197} After all, the City of Hayward had relied upon its parochial economic needs in granting cancellation.\textsuperscript{198} What was to prevent other cities from doing the same under the proposed legislation?

In a final, critical compromise, a finding on proximate noncontracted land—identical to the fifth one for consistency cancellation—was added to the bare finding on the public interest.\textsuperscript{199} The added finding appeared among the amendments made in the senate on August 25, 1981.\textsuperscript{200} By mandating an inquiry into proximate, noncontracted land, or alternatively, contiguous patterns of urban development, the added finding restricts the local agency's ability simply to assert its public


\textsuperscript{194} \textit{Cal. Gov't Code} § 51282(c) (West Supp. 1982); A.B. 2074, reprinted infra appendix C, at § 2.

\textsuperscript{195} 28 Cal. 3d at 857, 623 P.2d at 188-89, 171 Cal. Rptr. at 628.


\textsuperscript{198} The court noted this in discussing the City's finding on the "public interest." See 28 Cal. 3d at 857, 623 P.2d at 189, 171 Cal. Rptr. at 628.

\textsuperscript{199} \textit{Cal. Gov't Code} § 51282(c) (West Supp. 1982); A.B. 2074, \textit{reprinted infra} appendix C, at § 2.

\textsuperscript{200} A.B. 2074, \textit{reprinted infra} appendix C, at § 2.
interest and to ignore all other considerations.

In rural areas, remote from any city or any development that might be called "urban," the public interest ground may present the only basis for future cancellations. The finding on patterns of urban development will probably preclude use of the other ground, consistency with the Act. If, however, virtually all proximate land in a rural area happens to be contracted land also, then the county board would have little difficulty satisfying the requirements for a public interest cancellation.

The question raised during the legislative process remains: Does the public-interest ground for cancellation offer an "easy" way out of the Williamson Act? There are arguments on both sides of that question. In any case deciding whether a procedure is "easy", or "too easy" if one dislikes it, involves comparing the alternatives and assessing them according to both objective standards and subjective preferences.201

The constitutional requirement of an "enforceable" restriction may restrain future laxness.202 Clearly a contractual

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201. On the one hand, public-interest cancellation requires two substantial findings. First, the finding that "other public concerns" outweigh the purposes of the Act cannot be made too casually in view of possible judicial review under Cal. Civ. Proc. Code § 1094.5 (West 1980). A proceeding brought under the provisions of § 1094.5 requires a more exacting judicial review than given under § 1085, ordinary mandamus. The local agency may well have to go through a process of reasoning corresponding to that found in the Decision and beginning with substantial evidence on those "other public concerns." Second, even if the local agency passes the proximate-land finding and chooses to find on "more contiguous patterns" instead, the record must still support the determination that development of the contracted land will, in fact, produce more contiguous patterns; that is, will represent the more rational land-use decision. Again, given the scope for plausible argument to the contrary, the local agency would be wise not to make the finding casually.

Yet, on the other hand, the public-interest ground requires only two findings as opposed to the five for consistency cancellation. Moreover, a local legislature is apt to feel more comfortable with, and to prove more adept at, making a finding on the public interest—a frequent subject of legislative declaration. One may therefore conjecture that the public-interest ground will appear more attractive to most local agencies.

202. See supra note 148. The court noted that making cancellation too readily available might result in a failure to comply with the constitutional requirement and thereby deprive the Act of its authority for assessments based on actual use. 28 Cal. 3d at 855, 623 P.2d at 187, 171 Cal. Rptr. at 626-27.

In discussing the rebuttability of the presumption of permanency in use restrictions, Cal. Rev. & Tax. Code § 402.1 refers to evidence from the "past history of like use restrictions in the jurisdiction in question." Of course, this statute only guides the valuation practices of assessors; it does not offer a test of when the constitutional
restriction is not enforceable if one party, here the local agency, has virtually acknowledged in advance its willingness to release the other party, the landowner, from his contract. At what point in the course of its rulings on cancellation the local agency "signals" such an acknowledgement to landowners under contract is a matter that defies precise definition. Rigor in analyzing the grounds for cancellation and in making findings would leave no room for charges of habitual laxness; the "signal," in short, would not be given. There is cause for local agencies to make the effort. The supreme court has once perceived the signal from a distance. Given its dedication to "judicial vigilance," the court may perceive the signal again and find a way to restore strictness to cancellation proceedings.203

K. The Untouched Finding: Economic Viability of Agriculture

The Bill did virtually nothing to the subparagraph of section 51282 concerning "the uneconomic character of an existing agricultural use" on the contracted land as a reason for cancellation.204 In deleting the word "alone" and substituting "not by itself," the legislature merely emphasized a meaning that the statute already expressed clearly enough to a careful reader: The local agency may not rely solely upon the unprofitable agricultural use to justify cancellation.

Presumably, the legislature originally included that proscription in the Act in order to prevent the landowner from relying upon a poorly run agricultural operation or upon a single bad year for a crop as a reason for insisting that cancellation would be consistent with the purposes of the Act. The statute told the landowner, in essence, to keep at the job of trying to make money farming.

Original section 51282205 also contained the additional limitation, continued by the Bill, that "the uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the

203. 28 Cal. 3d. at 86, 623 P.2d at 191, 171 Cal. Rptr. at 630.
land may be put.”

A similar purpose probably lay behind this limitation: to preclude a facile, short-sighted, or even dissembling economic rationale for cancellation.

At any rate, neither the original statute nor the revised statute absolutely requires the local agency to say anything about the economics of agriculture. Under the original statute one might have been tempted to include some evidence on agricultural uses, if only to bolster the consistency finding. Under the revised version of section 51282, in contrast, one might wish to do the same in order to bolster a “public interest” cancellation. If a farm loses money, its value as agricultural land diminishes, and “other public concerns” will more readily outweigh its preservation. A cautious local agency might skip over the topic altogether under the revised Act.

The legislature passed over an opportunity to elaborate on the requirements for the uneconomic character of the land under agriculture. Hence, subsection (d) remains open to future judicial interpretation. The interpretation may not arrive quickly because subsection (d) contains no required finding and, indeed, has been cut off from the rest of section 51282. The local agency is free to ignore it for both consistency and public-interest cancellations. The subsection has a vestigial quality.

V. A STATUTE OF LIMITATIONS, AT LAST

The Bill, after requiring review under section 1094.5 of the California Code of Civil Procedure, overrode the general ninety-day period of limitations for administrative mandamus. The Bill fixes 180 days and measures the period from

207. The open issues on the uneconomic character of agriculture are easy to identify. First, one faces all the problems inherent in any economic analysis of what is economic and what is not. The analysis necessarily entails debatable assumptions about investment expectations, reasonable rate of return, income tax effects, and the like. Second, the definition of a “reasonable” or “comparable” agricultural use as an alternative to the existing use will predictably raise other debatable assumptions regarding the adaptability of the land to other crops, the ability of the landowner to implement the alternate agricultural use, and future markets. In litigation, subsection (d) will leave an open field to experts on agronomy.
208. CAL. CIV. PROC. CODE § 1094.6(g) (West 1980). Before the Decision, one had to guess at the period of limitations for challenging a decision to cancel. The original Act contained no specific statute of limitations. In searching for an applicable statute, some may have turned to section 65907 of the California Government Code—a statute setting 180 days as the period in which to challenge decisions on
the date of the local agency's "order"—that is, resolution or other official action—on the petition for cancellation.\textsuperscript{209} Presumably the legislature meant the order containing the discretionary decision to cancel or not to cancel along with any required findings, as opposed to some earlier administrative action on the petition or the subsequent recordation of a certificate of tentative cancellation. The language of the Bill might, however, have been more carefully chosen.

VI. THE DECISION AND THE BILL IN THE FUTURE: WHICH IS THE LAW?

The Bill was the legislature's response to the Decision. That much stands as indisputable historical fact. Whether the response was sympathetic, hostile, or ambiguously neutral, however, represents a question that will probably receive attention in the courts in the future.

The Bill itself contained two statements addressed to that question. The first, of course, is the Legislative Counsel's Digest. The Legislative Counsel refers to the Decision as having ruled that "cancellation of a Williamson Act contract shall be reviewable by administrative and not legislative mandamus, and the Court narrowly construed the circumstances under which a contract may be canceled."\textsuperscript{210} Then Counsel advised that "this bill would codify the holding . . . that cancellation of a Williamson Act contract shall be reviewable by administrative mandamus and not legislative mandamus."\textsuperscript{211} This is literally true. But what about the remainder of the court's holding, especially its restrictive construction of the cancellation rules? The Legislative Counsel does not clearly assert a codification of the entire holding.

The Digest contains one further reference to the Decision which was added after amendment of A.B. 2074 in the senate on August 25, 1981:

This bill would expand the ability of a local agency to cancel a Williamson Act contract by permitting the board


\textsuperscript{210} Id.

\textsuperscript{211} Id.
or council to grant tentative approval for the cancellation if it makes one of the above findings. In addition, the bill specifies various findings, which are delineated in the Sierra Club case, which the board or council is required to make in order to find that the cancellation is consistent with the purposes of the Williamson Act or the cancellation is in the public interest.\(^2\)

On the one hand, it is possible to read this last statement as an invitation to return to the text of the Decision for a more complete "delineation" of the findings for cancellation. On the other hand, the word "expand" in the preceding sentence suggests a liberalization of the Decision and all prior law.

Some portions of the Digest derive ultimately from the Legislative Counsel's Digest for A.B. 709—the first bill introduced in March of 1981 and clearly supported by those favoring enforcement of the Decision. It was there that the Legislative Counsel first made the categorical statement that: "[t]his bill would codify the holding of the California Supreme Court. . . ."\(^3\) While that statement was never abandoned as A.B. 709 underwent transformation into A.B. 2074 with its "window," and later as A.B. 2074 underwent numerous revisions adding, deleting and modifying required findings, the statement did grow less and less applicable to those provisions of the Bill that did not derive from A.B. 709. The final version of the Digest gives but a garbled account of what the Bill does.

A second statement is located within one of the uncodified sections of the Bill, section 8:

The Legislature finds and declares that the purpose of this act is not to weaken or strengthen the Williamson Act but simply to clarify and make the law workable in light of problems and ambiguities created by the California Supreme Court decision in the case of Sierra Club v. City of Hayward, 28 Cal. 3d 840.\(^4\)

On its face, this declaration of legislative purpose presents yet another problem and ambiguity for the student of legislative history. Section 8 clearly implies that the Decision, by creat-

\(^{212}\) Id.
\(^{213}\) See Legislative Counsel's Digest, A.B. 709, 1981-82 Reg. Sess., Cal. Legis., reprinted infra appendix A.
\(^{214}\) A.B. 2074, reprinted infra appendix C, at § 8.
ing its "problems and ambiguities," did threaten the operation of the Act in general and, to that extent, required legislative correction. If this is the tone of the statement, it is mildly critical of the Decision. The language of the statement has its closest analogy in the introductory sentence to the "window" in section 51282.1: "to correct inconsistent applications of the provisions of this chapter. . . ."215

Interpretation of section 8 is impossible without an understanding of its genesis. It appeared among the last amendments to A.B. 2074 in the senate on August 25 as part of the final compromise.216 In an effort to allay the concerns of John Williamson, one of the draftsmen of the original Act and the man whose name had become permanently associated with it, supporters of A.B. 2074 drafted section 8 as a disavowal of any intent to "gut" the cancellation provisions.217 This helps explain the ambiguous language "not to weaken or strengthen," and also the declaration of an intent to "clarify"

217. See letter from Russ Selix (of the League of California Cities) to John Williamson (July 9, 1981), on file with the Santa Clara Law Review.

The Department of Conservation, one of the supporters of the Decision, predicted that the Bill would weaken the Act. In its Enrolled Bill Report dated September 29, 1981, the Department wrote: "AB 2074 would reverse the Court's interpretation of cancellation requirements and could have the long-term impact of increasing annual withdrawal activity by an estimated five to ten times. These amendments therefore weaken the original Act, and could be construed as reducing protection currently afforded to farmland on the urban fringe." Notwithstanding this alarm, the Department recommended that the Governor allow the Bill to become law without signature—a neutral position. The report concluded: "As part of our agreement in negotiating amendments to AB 2074, the Department committed to a neutral position on the bill." That agreement was "to compromise on AB 2074 in return for SB 838's withdrawal." Clearly the Department of Conservation feared the Bill would, in practice, weaken the Act, even if the Bill was not explicitly intended to do so.

The Office of Planning and Research shared the Department's fears, but recommended that the Governor sign the Bill. In its Enrolled Bill Report dated September 25, 1981, the Office reasoned that "AB 2074 is a reasonable compromise that generally retains the integrity of the Sierra Club decision without granting excessive concessions." As a second reason, the Office consoled itself that the "window" would at least "purge speculators from the Act, denying them the chance to use contracts as a tax shelter," while "serious farmers" could still seek protection under the Act. The hope is perhaps too fervent. Departure from the Act through the "window" remained voluntary, not forced.

Only history will report whether these hopes and fears possess any substance. (These Enrolled Bill Reports are on file with the Santa Clara Law Review.)
the Act and make it "workable." The Act did face a real
danger as a consequence of the Decision: the threat of whole-
sale nonrenewals from both landowners and cities, not to
mention a refusal by landowners to volunteer to enter con-
tracts in the future.

By specifying the "circumstances and conditions" under which cancellation would be available in the future, the
Bill sought to eliminate the uncertainty about the practical availability of cancellation created by the restrictive philoso-
phy of the Decision. At least those parties who might choose
to nonrenew now rather than remain uncertain about cancel-
lation in the future might be kept under the Act by legislation
fixing the rules once and for all.

In another sense, whether the Bill is more or less restric-
tive than the Decision is beside the point. Certainty about the
rules for cancellation counts more heavily in practical reckon-
ing. One can begin to plan effectively once one knows that the
rules, however severe, will not shift during one's execution of
the plan.

In this author's opinion, it will prove difficult to argue
persuasively in the future that the Bill simply codifies the De-
cision and therefore that the Bill and the Decision compose a
unitary body of law on cancellation. The differences are all too
palpable. First, the Bill limits the "consistency" ground to five
specified findings, while the Decision looks back to the miscel-
naneous general purposes expressed in California Government
Code section 51220. Second, the Bill requires prior notice of
nonrenewal only on the "consistency" ground, while the Deci-
sion exalts nonrenewal to the role of a universal test for the
genuineness of a claimed need to cancel. Third, the Bill au-
thorizes cancellation if specific findings can be made, while
the Decision reserves cancellation for strictly emergency situ-
ations that no one can recognize before they occur (or until a
court confirms, after the fact, that the emergency did exist).
There are many other differences of smaller import.

Still, the Decision will play a role in the interpretation of
revised section 51282 mainly in two areas: First, those particu-
lar findings or definitions of statutory terms drawn from the

219. Cal. Gov't Code § 51281.1(a) (West Supp. 1982); A.B. 2074, reprinted in-
fra appendix C, at § 3.
language of the Decision and, second, those portions of original section 51282 left untouched by the Bill. Within the first area are, for example, the definitions given for the finding on proximate, noncontracted land. Yet even here, the interpretive authority of the Decision may remain clouded because the Bill, rather than importing in gross everything the majority opinion said, clearly selected some language only. Can one say with assurance that "proximate" land may be located as far as seven and one-half miles away, as the Decision suggests, when the Bill simply describes such land in terms of its serving as a practical alternative site for the development?

Within the second area falls, for example, the paragraph on uneconomic agricultural use left virtually unamended by the Bill. New litigation will arise simply because, though given the opportunity, the legislature did not rewrite section 51282 as thoroughly as an academic critic might wish. But legislators work under conditions of intensive lobbying and inescapable compromise—conditions that an academic critic would never tolerate.

VII. Conclusion

Unfinished business is the only label one can stamp upon the legislature's efforts to conserve agricultural lands. This article has already described some work remaining to be done with the Act. To summarize, the legislature should address the following:

1) Coordinating the making, nonrenewal, and, of course, the cancellation of contracts fully with the Planning and Zoning Law. Making a contract on land designated for urban use offends ordinary logic; so, too, does failure to give notice of nonrenewal once agricultural land is redesignated for intensive development.

2) Further enlarge the property-tax reduction available under the Act from the level set by Article XIII A of the Constitution (Proposition 13) and give a cancelling landowner a credit for increased taxes paid after notice of nonrenewal.

3) Either fully integrate section 51282(d) on agricultural use and economics into the permanent rules on cancellation or repeal it.

4) Either reconsider the effectiveness and functioning of the Act at regular intervals or give some regulatory authority to a state agency—logically, the Department of Conservation.
5) If the Act does not serve California’s need to conserve agricultural land, enact a different program—one not based upon voluntarily-imposed use restrictions.

This last item on the “to-do” list will surprise no one who has studied the Act and alternate schemes of farmland conservation. One could conclude that, after the Bill, the Act has perhaps an even more tenuous connection with the state’s actual, and perhaps changing, need for agricultural land. That need does not dictate how much land goes under contract, and when, and for how long. As now framed, the Act contains no standard for measuring how much land should be placed under contract. Worse yet, the Act generally conserves contracted lands only until they can form a part of a contiguous pattern of urban development. While this latter criterion for terminating contracts serves well in land-use planning for cities, it does nothing to plan for the nourishment of future generations. It is as though the legislature created an elaborate device for metering the consumption of agricultural lands by cities, while forgetting that people may starve for lack of the farmland that cities so rationally consumed.
APPENDIX A

AMENDED IN ASSEMBLY MAY 22, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL No. 709

Introduced by Assemblyman Hannigan
(Principal coauthor: Assemblyman Lehman)

March 2, 1981

An Act to amend Section 51282 of and to add Sections 51282.1 and 51286 to the Government Code relating to agricultural land, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

AB 709, as amended, Hannigan. Agricultural use of land: cancellation of contracts.

Existing law, in the California Land Conservation Act of 1965 (also known as the Williamson Act), declares that preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources. Agricultural use for purposes of the act is defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes. The law provides for restricting the use of land to open-space purposes by means of contracts and allows cancellation of contracts only under specified circumstances.

Moreover, the California Supreme Court held in the case of Sierra Club v. City of Hayward, 81 Daily Journal DAR 378, that cancellation of a Williamson Act contract shall be reviewable by administrative and not legislative mandamus, and the court narrowly construed the circumstances under which a contract may be canceled.

This bill would codify the holding of the California Supreme Court in the case of Sierra Club v. City of Hayward.
The bill would also expand the ability of a local agency to cancel the contract, as specified, for a limited time period.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

The bill would take effect immediately as an urgency statute.


The people of the State of California do enact as follows:

SECTION 1. Section 51282 of the Government Code is amended to read:

51282. (a) The landowner may petition the board or council for cancellation of any contract as to all or any part of the subject land. The board or council may approve the cancellation of a contract only if they find all of the following:

(1) That the cancellation is not inconsistent with the purposes of this chapter; and as specified in Section 51220.

(2) That cancellation is in the public interest.

(b) For purposes of subdivision (a) cancellation of a contract shall be inconsistent with the purposes of this chapter if the objectives to be served by cancellation could have been predicted and served by nonrenewal of the contract, as provided by this chapter, at an earlier point in time, or if such objectives could be served by nonrenewal of the contract at the time at which cancellation is requested.

(c) For purposes of subdivision (a) cancellation of a
contract shall be in the public interest only if the city council or board finds that other public concerns substantially outweigh the objectives of this chapter, as specified in Section 51220.

(d) For purposes of subdivision (a) the existence of an opportunity for another use of the land involved shall not be sufficient reason for the cancellation of a contract. A potential alternative use of the land may be considered only if there is no proximate, noncontracted land suitable for the use to which it is proposed the contracted land be put.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed alternative use means that the salient features of the proposed alternative use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels.

(e) For purposes of subdivision (a) the uneconomic character of an existing agricultural use shall likewise not be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if (1) there is no other reasonable or comparable agricultural use to which the land may be put, and (2) the petitioning landowner has demonstrated that changed conditions, irrespective of the increased value of the land for development purposes, make continued agricultural use of the land uneconomic.

(f) The landowner's petition may be accompanied with a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use.

SEC. 2. Section 51282.1 is added to the Government Code, to read:

51282.1 (a) The purpose of this section is to provide a one-time opportunity for cities and counties, acting in
concert with affected landowners, to correct previous inconsistent applications of the provisions of this chapter and thereby to alleviate present and potential hardships, both for affected cities and counties and for affected landowners. The provisions of this section are alternative to the provisions for cancellation of contracts contained in Section 51282 and the provisions of Section 51282 shall not apply to cancellation of contracts as provided in this section.

(b) Within 60 days from the effective date of this section, each city and county which elects to use the provisions of this section shall provide notice by first class mail to each landowner whose land is under contract pursuant to this chapter. The notice shall include the following:

(1) The eligibility criteria for the special contract cancellation procedures authorized by this section.

(2) The deadlines for filing a petition, pursuant to the special contract cancellation procedures authorized by this section, for cancellation of a contract.

(3) An explanation of the procedures for cancellation or nonrenewal of contracts which will apply to situations to which this section is not applicable.

(c) A petition for cancellation of a contract pursuant to this section shall be filed with the city or county no later than 120 days after the effective date of this section. Each city or county shall establish a schedule for acting on the petitions, and all petitions shall be approved or disapproved no later than 120 days from the final date, established by this section, for submitting the petitions.

(d) The provisions of Section 51284 shall apply to all petitions for cancellation of contracts filed pursuant to this section.

(e) Each petition for cancellation of a contract filed pursuant to this section shall be accompanied by a proposal for a specified alternative use of the land and the provisions and requirements of Section 51283.4 shall be fully applicable thereto, except as otherwise provided in this subdivision.

The board or council shall 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 premature or unnecessary conversion of agricultural land to urban uses.

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

(3) That the alternative use conforms to applicable provisions of the city or county general plans which were in effect on October 1, 1981.

(4) That the alternative use will not adversely affect the agricultural use of nearby land which remains under contract.

A tentative approval of a petition to cancel a contract shall be valid for three years from the date of recordation as provided in Section 51283.4. If the landowner has been unable to satisfy all the conditions and contingencies within that period, the provisions of subdivision (c) of Section 51283.4 shall apply and the tentative approval of the cancellation of the contract shall be withdrawn.

In granting tentative approval for cancellation of a contract pursuant to this section, the board or council shall not be required to make any determination or finding other than those expressly required by this section.

SEC. 3. Section 51286 is added to the Government Code, to read:

51286. Any action or proceeding which, on the grounds of alleged noncompliance with the requirements of this chapter, seeks to attack, review, set aside, void or annul a decision of a board of supervisors or a city council to cancel a contract shall be brought pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.

SEC. 4. The Legislature hereby finds that the provisions of Sections 1 and 3 of this act are intended to promote the uniform application of existing law by codifying the significant holdings in Sierra Club v. City of Hayward (—) and that consequently such sections are hereby found to be declaratory of existing law.

SEC. 4.
SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 Division 1 of that code.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for uniform administration of the contract cancellation provisions of the Williamson Act, it is necessary that this act take effect immediately.
AMENDED IN SENATE MAY 14, 1981

SENATE BILL No. 836

Introduced by Senator Boatwright

March 23, 1981

An act to amend Section 51282 of, or to add Section 51282.1 to, the Government Code, relating to agricultural land.

LEGISLATIVE COUNSEL'S DIGEST

SB 836, as amended, Boatwright. Agricultural use of land: cancellation of contracts.

Existing law, in the California Land Conservation Act of 1965 (also known as the Williamson Act), declares that preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources. Agricultural use for purposes of the act is defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes. The law provides for restricting the use of land to open-space purposes by means of contracts and allows cancellation of contracts only under specified circumstances.

Moreover, the California Supreme Court held in the case of Sierra Club v. City of Hayward, 81 Daily Journal DAR 378, that cancellation of a Williamson Act contract shall be reviewable by administrative and not legislative mandamus, and the court narrowly construed the circumstances under which a contract may be canceled.

This bill would expand the ability of a local agency whose population is over 500,000 persons to cancel a land conservation contract, as specified, if the land is designated in the applicable general plan for a nonagricultural use at the time the cancellation is approved, and would provide that the cancellation by a that local agency is a legislative determination.

The people of the State of California do enact as follows:

SECTION 1. Section 51282 of the Government Code is amended to read:

Section 51282. Notwithstanding any other provision of law to the contrary, the landowner

SECTION 1. Section 51282.1 is added to the Government Code, to read:

51282.1. Notwithstanding the provisions of Section 51282, any owner of lands lying within any city or any county with a population of over 500,000 persons as of the last census may apply to the board or council for cancellation of any contract as to all or any part of the subject land under the procedures provided in this section. The board or council may approve the cancellation of a contract only if they determine either:

(a) That the cancellation is not inconsistent with the purposes of this chapter; or

(b) That cancellation is in the public interest.

(b) The cancellation is intended to facilitate development of the subject property which is consistent with the local general plan and which will not result in discontinuous patterns of urban development.

The mere existence of an opportunity for another use of the land involved shall not alone be sufficient reason for the cancellation of a contract. The uneconomic character of an existing agricultural use shall likewise not alone be sufficient reason for cancellation of the contract.

The landowner’s application may be accompanied with a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use.

The Legislature finds that a cancellation approved by a city or county under this section shall be proper under this section if the lands under contract are designated in the applicable general plan for nonagricultural use at the time any cancellation is approved.

The determination by the local agency to cancel or not to cancel all or part of a land conservation contract under the provisions of this section is a legislative determina-
tion; and judicial review of any determination made under this section shall be under Section 1085 of the Code of Civil Procedure.

The determination to cancel or not to cancel a particular land conservation contract under this section shall not require an Environmental Impact Report as provided in the California Environmental Quality Act (C.E.Q.A.) if the same property was or is to be evaluated by an environmental impact report related to any entitlement to actually use the land for other than agricultural purposes.
WILLIAMSON ACT

APPENDIX C

AMENDED IN SENATE AUGUST 25, 1981
AMENDED IN ASSEMBLY JUNE 18, 1981
AMENDED IN ASSEMBLY JUNE 5, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL No. 2074

Introduced by Assemblyman Robinson
(Principal coauthors: Assemblymen Hannigan, Cortese, and Marguth)
(Principal coauthor: Senator Boatwright)

April 3, 1981

An act to amend Sections 51280, and 51282 and 51283.4 of, and to add Sections 51282.1 and 51286 to, and to add and repeal Section 51282.1 of, the Government Code, relating to agricultural land.

LEGISLATIVE COUNSEL’S DIGEST

AB 2074, as amended, Robinson. Agricultural use of land: cancellation of contracts.

Existing law, in the California Land Conservation Act of 1965 (also known as the Williamson Act), declares that preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources. Agricultural use for purposes of the act is defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes. The law provides for restricting the use of land to open-space purposes by means of contracts and allows cancellation of contracts only under specified circumstances.

Moreover, the California Supreme Court held in the case of Sierra Club v. City of Hayward, 81 Daily Journal-DAR 378 28 Cal. 3d 840, that cancellation of a Williamson Act contract shall be reviewable by administrative and not legislative man-
This bill would codify the holding of the California Supreme Court in the case of Sierra Club v. City of Hayward that cancellation of a Williamson Act contract shall be reviewable by administrative mandamus and not legislative mandamus.

Present statutory and decisional law requires the board or council to make findings that (1) cancellation is consistent with the purposes of the Williamson Act and (2) cancellation is in the public interest, in order to approve cancellation of a Williamson Act contract.

This bill would expand the ability of a local agency to cancel a Williamson Act contract by permitting the board or council to grant tentative approval for the cancellation if it makes one of the above findings.

In addition, the bill specifies various findings, which are delineated in the Sierra Club case, which the board or council is required to make in order to find that the cancellation is consistent with the purposes of the Williamson Act or that cancellation is in the public interest.

The bill would also expand the ability of a local agency to cancel the contract, as specified, for a limited time period.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.


The people of the State of California do enact as follows:

SECTION 1. Section 51280 of the Government Code is amended to read:

51280. It is hereby declared that the purpose of this ar-
article is to provide relief from the provisions of contracts entered into pursuant to this chapter under the circumstances and conditions provided herein.

SEC. 2. Section 51282 of the Government Code is amended to read:

51282. (a) The landowner may petition the board or council for cancellation of any contract as to all or any part of the subject land. The board or council may grant tentative approval for cancellation of a contract only if it makes one of the following findings:

(1) That the cancellation is consistent with the purposes of this chapter; or

(2) That cancellation is in the public interest.

(b) For purposes of paragraph (1) of subdivision (a) cancellation of a contract shall be consistent with the purposes of this chapter only if the board or council makes all of the following findings:

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

(2) That cancellation will encourage preservation of the maximum amount of agricultural land.

(3) That cancellation will discourage premature and unnecessary conversion of agricultural land to urban uses.

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

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

(6) That cancellation will not result in discontiguous patterns of urban development.

(7) That there is no proximate noncontracted 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 noncontracted land.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed
use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels.

(c) For purposes of paragraph (2) of subdivision (a) cancellation of a contract shall be in the public interest only if the council or board finds makes the following findings: (1) that other public concerns substantially outweigh the objectives of this chapter; and (2) that there is no proximate noncontracted 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 noncontracted land.

As used in this subdivision “proximate, noncontracted land” means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision “suitable” for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels.

(d) For purposes of subdivision (a), the uneconomic character of an existing agricultural use shall not by itself be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(e) The landowner's petition shall be accompanied by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use, and the provisions and requirements of Section 51283.4 shall be fully applicable thereto. The level of specificity required in a proposal for a specified alternate use shall be determined by the board or council. In each instance, however,
a proposal for a specified alternate use shall, at a minimum, indicate the population density and the building intensity which will result from the proposed use. as that necessary to permit them to make the findings required.

(f) In approving a cancellation pursuant to this section, the board or council shall not be required to make any findings other than or in addition to those expressly set forth in this section, and, where applicable, in Section 21081 of the Public Resources Code. All findings required by this section shall be supported by a preponderance of evidence in the record.

SEC. 3. Section 51282.1 is added to the Government Code, to read:

51282.1 (a) The purpose of this section is to provide a one-time opportunity for cities and counties, acting in concert with affected landowners, to correct inconsistent applications of the provisions of this chapter and thereby to alleviate present and potential hardships, both for affected cities and counties and for affected landowners. The provisions of this section are alternative to the provisions for cancellation of contracts contained in Section 51282 and the provisions of Section 51282 shall not apply to cancellation of contracts as provided in this section.

(b) Within 60 days from the effective date of this section, each city and county shall provide notice by first class mail to each landowner whose land is under contract pursuant to this chapter. The notice shall include the following:

1. The eligibility criteria for the special contract cancellation procedures authorized by this section.

2. The deadlines for filing a petition, pursuant to the special contract cancellation procedures authorized [by] this section, for cancellation of a contract.

3. An explanation of the procedures for cancellation and nonrenewal of contracts which will apply to situations to which this section is not applicable.

4. A petition for cancellation of a contract pursuant to this section shall be filed with the city or county no later than 150 days after the effective date of this section. Each city or county shall establish a schedule for acting on the petitions, and all petitions shall be approved or disapproved in accordance with the provisions of Section
65950 and following, except that a county may hold a petition without action pending the completion of annexation proceedings, and transfer the petition to the annexing city upon completion for its action.

(d) The provisions of Section 51284 shall apply to all petitions for cancellation of contracts filed pursuant to this section.

(e) Each petition for cancellation of a contract filed pursuant to this section shall be accompanied by a proposal for a specified alternative use of the land and the. Additional material requested by the board or council necessary to document or otherwise complete the petition, including additional information regarding the specified alternative use, may be filed after the deadline provided in subdivision (c). The provisions and requirements of Section 51283.4 shall be fully applicable thereto, except as otherwise provided in this subdivision. The level of specificity required in a proposal for a specified alternate use shall be determined by the board or council. In each instance, however, a proposal for a specified alternate use shall, at a minimum, indicate the population density and the building intensity which will result from the proposed use: by the board or council as necessary to permit them to make the findings required.

(f) 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 premature or unnecessary conversion of agricultural land to urban uses.

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

(3) 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 Section 65350) prior to January 1, 1982.

(g) A tentative approval of a petition to cancel a con-
tract shall be valid for three years one year from the date of its recordation pursuant to Section 51283.4. If the landowner has been unable to satisfy all the conditions and contingencies within that period, the provisions of subdivision (c) of Section 51283.4 shall apply and the tentative approval of the cancellation of the contract shall be withdrawn; provided however that, unless the landowner has paid the required cancellation fee. However, the board or council may also extend the three year one-year time period for a reasonable period upon a finding that the landowner has proceeded with due diligence and has been prevented from satisfying the conditions and contingencies by circumstances beyond his control.

(h) In granting tentative approval for cancellation of a contract pursuant to this section, the board or council shall not be required to make any determination or finding other than, or in addition to, those expressly required by this section, and, where applicable, by Section 21081 of the Public Resources Code. All findings required by this section shall be supported by a preponderance of evidence in the record.

(i) The provisions of subdivision (c) of Section 51283 shall not apply to cancellations approved pursuant to this section.

SEC. 3.5. Section 51282.2 is added to the Government Code, to read:

51282.2 (a) In the event that a city has within its boundaries on the effective date of this section 300 acres or less of land which is under contract, the provisions and requirements of subdivisions (e), (f), (g) and (h) of Section 51282.1 shall not apply within that city and a petition for cancellation of a contract shall be approved as otherwise provided in Section 51282.1.

(b) The provisions of this section shall not apply to any contract which is applicable to land located within the coastal zone as described and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code.

SEC. 4. Section 51283.4 of the Government Code is amended to read:

51283.4 (a) Upon tentative approval of a petition accompanied by a proposal for a specified alternative use of
the land, the clerk of the board or council shall record in the office of the county recorder of the county in which is located the land as to which the contract is applicable a certificate of tentative cancellation, which shall set forth the name of the landowner requesting the cancellation, the fact that a certificate of cancellation of contract will be issued and recorded at such time as specified conditions and contingencies are satisfied, a description of the conditions and contingencies which must be satisfied, and a legal description of the property. Conditions to be satisfied shall include payment in full of the amount of the fee computed under the provisions of Sections 51283 and 51283.1, together with a statement that unless the fee is paid, or a certificate of cancellation of contract is issued within one year from the date of the recording of the certificate of tentative cancellation, such fee shall be recomputed as of the date of notice described in subdivision (b). Any provisions related to the waiver of such fee or portion thereof shall be treated in the manner provided for in the certificate of tentative cancellation. Contingencies to be satisfied shall include a requirement that the landowner obtain all permits necessary to commence the project. The board or council may, at the request of the landowner, amend a tentatively approved specified alternative use if it finds that such amendment is consistent with the findings made pursuant to subdivision (f) of Section 51282.1 or subdivision (a) of Section 51282, whichever is applicable.

(b) The landowner shall notify the board or council when he has satisfied the conditions and contingencies enumerated in the certificate of tentative cancellation. Within 30 days of receipt of such notice, and upon a determination that the conditions and contingencies have been satisfied, the board or council shall execute a certificate of cancellation of contract and cause the same to be recorded.

(c) If the landowner has been unable to satisfy the conditions and contingencies enumerated in the certificate of tentative cancellation, the landowner shall notify the board or council of the particular conditions or conti-
gencies he is unable to satisfy. Within 30 days of receipt of such notice, and upon a determination that the landowner is unable to satisfy the conditions and contingencies listed, the board or council shall execute a certificate of withdrawal of tentative approval of a cancellation of contract and cause the same to be recorded. However, the landowner shall not be entitled to the refund of any cancellation fee paid.

SEC. 5. Section 51286 is added to the Government Code, to read:

51286. Any action or proceeding which, on the grounds of alleged noncompliance with the requirements of this chapter, seeks to attack, review, set aside, void or annul a decision of a board of supervisors or a city council to cancel a contract shall be brought pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.

SEC. 6.

The action or proceeding shall be commenced within 180 days from the council or board order acting and petition for cancellation filed under this chapter.

SEC. 6. The cost of preparing and mailing the notice required by subdivision (b) of Section 51282.1 as added to the Government Code by this act shall be deducted from any cancellation fees collected pursuant to Section 51283 of the Government Code for land upon which a contract has been canceled as provided in Section 51282.1. The amount of money so deducted shall be retained by the county treasurer and shall not be transmitted to the Controller as would otherwise be required pursuant to Section 51283 of the Government Code. From the amount of money so retained, the treasurer shall pay to each city an amount sufficient to reimburse it for the cost of preparing and mailing the notice required by Section 51282.1. The treasurer shall deposit the remaining money in the county general fund to reimburse the county for those costs.

SEC. 7. An application for cancellation filed prior to the effective date of this act shall be reviewed and decided upon pursuant to the provisions of law applicable prior to the effective date, unless the applicant elects in writing to proceed under Section 51282 or 51282.1 of this act.
SEC. 8. The Legislature finds and declares that the purpose of this act is not to weaken or strengthen the Williamson Act but simply to clarify and make the law workable in light of problems and ambiguities created by the California Supreme Court decision in the case of Sierra Club v. City of Hayward, 28 Cal. 3d 840.

SEC. 9. Section 3 of this act shall be repealed as of January 1, 1983, unless a later enacted statute extends that date. The provisions of Section 3 of this act shall continue in full effect relative to proceedings initiated in compliance with it as enacted, and shall not be affected by its repeal.

SEC. 10. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.