

# Agricultural Land Preservation in California: Time for a New View

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The disappearance of nearly two million acres of California's agricultural land is both lamentable and ominous.<sup>1</sup> Local governments, elated at the prospect of increasing the local tax base, have, since World War II, warmly greeted developers wishing to meet the housing needs of Californians. Local governments freely granted developers permission to construct sprawling housing developments in the fertile Santa Clara, Sacramento, and San Fernando Valleys with little thought to the long term environmental and economic consequences. Loosely drafted zoning regulations and the low price of rural land encouraged the wasteful "leapfrogging" of development across the countryside.<sup>2</sup>

The urban sprawl permitted by local zoning practices has produced incalculable damage to Californians' standard of living. Urban development has brought air pollution and crop disease damage to surrounding farmland.<sup>3</sup> Nearby residents have suffered from the adverse aesthetic,<sup>4</sup> environmental,<sup>5</sup> and social<sup>6</sup> consequences of the disappear-

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1. This constitutes almost a fifth of California's original prime agricultural land. CALIFORNIA LAND-USE TASK FORCE, THE CALIFORNIA LAND 47 (1975).

2. See LAND USE, OPEN SPACE AND THE GOVERNMENT PROCESS 14, 23-24 (E. Smith & D. Riggs eds. 1974) [hereinafter cited as GOVERNMENT PROCESS]; PLANNING AND CONSERVATION FOUNDATION, LAND AND THE ENVIRONMENT: PLANNING IN CALIFORNIA TODAY 10 (1975) [hereinafter cited as PLANNING IN CALIFORNIA].

3. CALIFORNIA ASSEMBLY INTERIM COMM. ON CONSERVATION, PLANNING AND PUBLIC WORKS, SUBCOMM. ON PLANNING AND ZONING, STATE GREENBELT LEGISLATION AND THE PROBLEM OF URBAN ENCROACHMENT ON CALIFORNIA AGRICULTURE 19-20 (1957); CALIFORNIA LAND-USE TASK FORCE, THE CALIFORNIA LAND 48 (1975).

4. GOVERNMENT PROCESS, *supra* note 2, at 30-31; JOINT COMM. ON OPEN SPACE LANDS, CALIFORNIA LEGISLATURE, STATE OPEN SPACE AND RESOURCE CONSERVATION PROGRAM FOR CALIFORNIA 26 (1970) [hereinafter cited as JOINT COMM. ON OPEN SPACE LAND].

5. Flooding is perhaps the predominant environmental hazard posed by the urbanization of open space lands. Water cannot percolate into soil that is covered by asphalt. See W. WHYTE, THE LAST LANDSCAPE 40 (1968).

6. For example, heavy urban development may increase the traffic burden on neighboring roads that were built for only light rural traffic. See Smith, *Plan Implementing Legislation: What's Wrong, What to Do*, in ZONING IS PLANNING 42, 47 (C. Forrest ed. 1969).

ance of open space. Moreover, by allowing developers to build on outlying agricultural land, local governments have forced farmers to move their farming operations to distant and frequently less productive farmland.<sup>7</sup> This results in increased governmental service outlays<sup>8</sup> and higher food production costs,<sup>9</sup> which may in turn produce a long-term decline in California's economy.<sup>10</sup> Lamentably, effective regulation of California's agricultural land could have prevented or minimized this damage. The ominous part of the tale is that local governments continue to succumb to developmental pressures that threaten the remainder of California's agricultural land.<sup>11</sup>

The California Legislature must act decisively to preserve California's remaining farm and range land. To meet this goal California must move away from its present locally managed land use regulations toward a stronger state program. Examination of existing local land use planning and regulation illustrates the flaws that have led to urban sprawl in California. This Article explores the California Legislature's recently enacted and proposed measures for preservation of agricultural and other open space land. Resistance to a strong state program is discussed, and the most likely weapon in defense of local control—the constitutional “municipal affairs” doctrine—is assessed. After concluding that effective protection of California's remaining farm and range land is a realistic goal, the Article proposes a statewide agricultural land preservation program based on the American Law Institute (ALI) Model Land Development Code. This proposal addresses the

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7. See generally Snyder, *A New Program for Agricultural Land Use Stabilization: The California Land Conservation Act of 1965*, 42 LAND ECON. 29, 30 (1966) [hereinafter cited as Snyder].

8. J. RECHT, OPEN SPACE AND THE URBAN GROWTH PROCESS 18-23 (1969); Comment, *Preserving Rural Land Resources: The California Westside*, 1 ECOLOGY L.Q. 330, 333 (1971).

9. Snyder, *supra* note 7, at 30-31.

10. CALIFORNIA STATE OFFICE OF PLANNING, CALIFORNIA STATE DEVELOPMENT PLAN PROGRAM: PHASE II REPORT 142 (1968) [hereinafter cited as STATE DEVELOPMENT PLAN]; Press Release from the Office of State Senator George Zenovich, Re: Senate Bill 193 at 3 (Jan. 24, 1977).

11. Development will take an estimated one million acres of prime and “potentially” prime agricultural land from productive farm use between 1974 and 1985. California Office of Planning and Research, *Prime Agricultural Lands Report 4* (1974). These estimates of urban development were derived from consultation with California local planning officials. *Id.* at 7-10. Moreover, urbanization is irreversible because the soil that developers crush is too costly to restore to farming. Kellog, *Fit Suburbia to Its Soils*, in U.S. DEPARTMENTS OF AGRICULTURE & HOUSING AND URBAN DEVELOPMENT, SOIL, WATER AND SUBURBIA 63, 68 (1968).

Many commentators have voiced concern over the impending loss of California's agricultural land. See E. WILLIAMS, OPEN SPACE: THE CHOICES BEFORE CALIFORNIA 13-16 (1969) [hereinafter cited as E. WILLIAMS]. See generally GOVERNMENT PROCESS, *supra* note 2; W. WHYTE, THE LAST LANDSCAPE (1968). But see Ellickson, *Ticket to Thermidor: A Commentary on the Proposed California Coastal Plan*, 49 S. CAL. L. REV. 715, 717-21 (1976) [hereinafter cited as *Ticket to Thermidor*].

inadequacies of the state's present land use control structure while retaining local autonomy for decisions that are of only local concern.

## I

### INADEQUATE AGRICULTURAL LAND PRESERVATION UNDER PRESENT LAND USE REGULATION

This section examines the deficiencies of California's present system of local and state land use regulation in preserving agricultural land. This evaluation reveals that the inherent inadequacy of local controls compels a transfer of regulatory authority to state government. More importantly, the analysis identifies those regulatory shortcomings that an effective proposal must address.

The primary cause of California's failure to halt wasteful urban sprawl is its reliance upon local regulation. Local governments lack the competence, perspective, and authority to assess accurately and regulate effectively the use of California's agricultural land. The inherent flaws of local land use controls suggest the need for a complete reevaluation of state government's role in agricultural land preservation.

#### *A. Inadequacy of Local Land Use Control*

California's system of land use regulation delegates primary planning and zoning responsibility to local governments. The California Constitution's grant of general police powers to local governments allows them to regulate land use without a specific grant of authority from the California Legislature.<sup>12</sup> The legislature presumes counties and cities to be better acquainted with local land use issues, and places few restrictions on local zoning practices.<sup>13</sup>

Although the California Legislature has refrained from interfering

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12. "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." CAL. CONST. art. XI, § 7. California courts first recognized this authority in *Ex parte Quong Wo*, 161 Cal. 220, 118 P. 714 (1911) (cities); *Smith v. Collison*, 119 Cal. App. 180, 6 P.2d 277 (1931) (counties). For a discussion of the history of local autonomy in lawmaking, see Sato, *'Municipal Affairs' in California*, 60 CALIF. L. REV. 1055, 1055-57 (1972) [hereinafter cited as Sato]. The legislature has since placed some restrictions on local governments' exercise of police powers. For example, counties and 'general law' cities must follow uniform procedures when adopting planning and zoning ordinances. See notes 14-21 *infra* and accompanying text.

13. In a preface to statutes governing local zoning procedures, the legislature states that "it is its intention . . . that counties and cities may exercise the maximum degree of control over local zoning matters." CAL. GOV'T CODE § 65800 (West Supp. 1979).

This deference to local judgment remains the prevalent attitude in the legislature. For example, measures giving state agencies direct land use regulatory powers are narrowly drafted to avoid intruding too far into local decisionmaking. Furthermore, the legislature enacts land use legislation only when local governments have failed to control adequately development within their jurisdictions. Interview with Spencer Hathaway, Consultant to the California State Senate Committee on Government Organization, in Sacramento (Feb. 14, 1978).

with local land use practices, it has enacted mandatory local planning and zoning procedures for counties and general law cities.<sup>14</sup> Under these procedures each local government must adopt a comprehensive general plan to guide its physical development.<sup>15</sup> The plan must be an integrated, internally consistent, and compatible statement of policies for the adopting agency.<sup>16</sup> The plan must contain various "elements," including an open space element.<sup>17</sup> Furthermore, local planning commissions must hold at least one public hearing and prepare an environmental impact report prior to adopting or amending the mandatory elements of the general plan.<sup>18</sup>

Once a county or general law city adopts a general plan, all local

14. California has two types of cities. The legislature has incorporated charter cities by granting them individual charters that serve as their "constitutions." Charter cities retain a small degree of autonomy from state governmental control. General law cities are created through general statutory procedures and are subject to general state law. For a discussion of the impact that charter city autonomy may have upon a statewide land use statute, see notes 92-126 *infra*.

15. CAL. GOV'T CODE § 65300 (West Supp. 1979). This statute applies to charter cities. CAL. GOV'T CODE § 65700 (West Supp. 1979).

16. CAL. GOV'T CODE § 65300.5 (West Supp. 1979). In 1975, a Los Angeles trial court struck down that city's general plan because its land use maps conflicted with its planning department's goals and policies, and because the city "simply made their general plan conform largely to pre-existing zoning patterns." Coalition for Los Angeles City Planning in the Public Interest v. Board of Supervisors of Los Angeles County, Civ. No. 63218, 8 ERC 1249, 1258-59 (Super. Ct. Los Angeles County, filed June 19, 1975).

17. The plan must have land use, circulation, housing, conservation, open space, seismic safety, scenic highway, noise, and safety elements. CAL. GOV'T CODE § 65302 (West Supp. 1979). The general plans of charter cities must also contain these elements. CAL. GOV'T CODE § 65700 (West Supp. 1979).

The open space element must encompass "agricultural lands and areas of economic importance for the production of food and fiber," CAL. GOV'T CODE § 65560(b)(2) (West Supp. 1979), and embody the locality's officially adopted open space goals, policies, and programs. CAL. GOV'T CODE § 65563 (West Supp. 1979). A California court of appeal recently overturned a city's grant of developmental rights because the city council failed to formulate inventory maps of available open space land and consequently failed to prepare an adequate open space element. *Save El Toro Ass'n v. Days*, 74 Cal. App. 3d 64, 141 Cal. Rptr. 282 (1977).

18. CAL. GOV'T CODE § 65351 (West 1966) (adoption and amendment); CAL. GOV'T CODE § 65356.1 (West Supp. 1979) (hearing and report). Localities may not amend their general plans more than three times in one year. CAL. GOV'T CODE § 55361 (West Supp. 1979). If the local government has no planning commission, the local legislative body must hold the hearing. CAL. GOV'T CODE § 65355 (West 1966).

The California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21000-21174 (West Supp. 1979) governs environmental impact report requirements. An impact report is required for the "enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps . . ." CAL. PUB. RES. CODE § 21080 (West Supp. 1979). The environmental impact report has a minor but growing effect upon general plan amendments. *See, e.g., People v. County of Kern*, 39 Cal. App. 3d 830, 115 Cal. Rptr. 67 (1974) (issuance of building permit enjoined for failure to adequately assess environmental impact of zoning change). *See also* A. JOKELA, SELF-REGULATION OF ENVIRONMENTAL QUALITY: IMPACT ANALYSIS IN CALIFORNIA LOCAL GOVERNMENT (1975).

zoning ordinances must be consistent with the plan.<sup>19</sup> In addition the local planning commission and the city council or board of supervisors must hold hearings before changing a zoning designation.<sup>20</sup> The planning commission may issue a variance from zoning ordinances only upon a finding that special circumstances exist that compel unique treatment of the parcel.<sup>21</sup>

This statutory scheme does not guarantee that local governments will make high quality land use decisions that consider all affected interests. If the decisionmaking process considers only local interests, the result may be detrimental to the welfare of surrounding communities and contrary to the interests of the state and nation.<sup>22</sup> Moreover, local zoning seems vulnerable to the lobbying and influence of developers and local landowners. Even if the decisionmakers are unbiased and accommodate state as well as local interests, however, the planning and zoning is only as effective as the expertise and resources of those conducting it.<sup>23</sup>

Recent experience does not justify California's continued reliance upon local regulations to preserve agricultural land. Inherent in local control is the local focus of land use decisions of elected or politically appointed officials. Planning commissioners, city council members, and county supervisors represent the interests of their electorate and political base. Thus, local officials often encourage physical development because it increases the tax base of the locality.<sup>24</sup> Although this

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19. CAL. GOV'T CODE § 65860 (West Supp. 1979). Open space ordinances must comply with the local open space plan. CAL. GOV'T CODE § 65910 (West Supp. 1979). Any local resident has standing to raise the issue of compliance. CAL. GOV'T CODE § 65860(b) (West Supp. 1979). Unlike counties and general law cities, charter cities need not comply with their general plans. CAL. GOV'T CODE § 65803 (West Supp. 1979). The Government Code provides, however, that charter cities with over two million residents, (i.e., Los Angeles), must have zoning ordinances that comply with their general plans. See CAL. GOV'T CODE § 65860(d) (West Supp. 1979).

Since localities may amend their general plans, the protection afforded by these statutes may be illusory. The prohibition against amendment of general plans more than three times per year places no restrictions on the timing or extent of such amendments.

20. CAL. GOV'T CODE §§ 65853-65854, 65856 (West 1966). Local voters, however, may amend zoning ordinances by initiative process without the formality of a prior hearing. Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore, 18 Cal. 3d 582, 557 P.2d 473, 135 Cal. Rptr. 41 (1976). Neither the fourteenth amendment of the Federal Constitution nor California legislation requires charter cities to offer a hearing to property owners before rezoning their land. San Diego Bldg. Contractors Ass'n v. City Council of San Diego, 13 Cal. 3d 205, 529 P.2d 570, 118 Cal. Rptr. 146 (1974).

21. CAL. GOV'T CODE § 65906 (West Supp. 1979).

22. See note 41 *infra* and accompanying text.

23. GOVERNMENT PROCESS, *supra* note 2, at 142-43.

24. *Id.* at 124. Local governments generally favor development because it feeds their tax base. Agricultural land does not produce tax revenues as high as developed property. Los Angeles Times, July 21, 1975, § 2, at 4, col. 1. See generally R. LINOWES & D. ALLENSWORTH, THE POLITICS OF LAND USE 40-41, 77-80 (1973) [hereinafter cited as LINOWES & ALLENSWORTH]; Sonstelic & Portney, *Property Value Maximization as a Decision Criterion*

self-interest is desirable when the locality regulates local matters, the negative impact of urban sprawl on the state and nation renders a purely local focus inadequate.<sup>25</sup>

Neighboring communities are particularly affected by urban sprawl. It decreases the size of buffer zones separating urban areas and consequently increases the likelihood that harmful effects associated with urbanization will spread to neighboring areas.<sup>26</sup> Urban development of agricultural land itself may produce harmful effects, including soil erosion, flooding, increased traffic, smog, and higher tax bills and food prices in the neighboring communities.<sup>27</sup> Local governmental officials have no political incentive to prevent these externalities.<sup>28</sup> Victimized communities and individuals have virtually no legal or political avenues to prevent neighboring communities from producing these "spillovers."<sup>29</sup> Moreover, California courts have held local governments only minimally accountable to neighboring communities for the effects of their general plans.<sup>30</sup>

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*for Local Governments*, in *ECONOMIC ISSUES IN METROPOLITAN GROWTH* 48, 66-69 (P. Portney ed. 1976).

25. See notes 3-11 *supra* and accompanying text. "[T]he dual objective of containing urban sprawl and conserving farmland . . . cannot be served by individual cities and counties acting on their own." Train, *Land Use: More and Better Choices for America*, ENV'T'L COM., Mar. 1975, at 9 (quoting Sen. George Aiken).

26. For example, a local government's decision to locate industry away from the population centers of the community increases the likelihood that industrial air pollution will reach neighboring communities. These "border conflicts" frequently arise when localities put noxious uses as far as possible from their residents—and closer to those of their neighbors. See Comment, *State Land Use Control: Why Pending Federal Legislation Will Help*, 25 HASTINGS L.J. 1165, 1168-69 (1974).

27. See generally GOVERNMENT PROCESS, *supra* note 2, at 23-34. Local governments, of course, cannot directly regulate the use of property beyond their borders.

28. PLANNING IN CALIFORNIA, *supra* note 2, at 85-86.

29. The legislature directs general plans to consider territory outside local boundaries that "in the planning agency's judgment bears relation to its planning." CAL. GOV'T CODE § 6530 (West 1966). This appears, however, only to encourage localities to plan for the development of land that may soon be annexed or affect the community adopting the general plan. California courts have never relied upon this statute to strike down a general plan. The legislature also directs localities to confer with neighboring communities when preparing their general plans, CAL. GOV'T CODE §§ 65305-65306 (West Supp. 1979), but has offered no mechanism to resolve conflicts. See PLANNING IN CALIFORNIA, *supra* note 2, at 85.

30. In *Scott v. City of Indian Wells*, 6 Cal. 3d 541, 492 P.2d 1137, 99 Cal. Rptr. 745 (1972), the California Supreme Court overturned a city's approval of a condominium project blocking the view of landowners who lived just outside the city. The court, however, emphasized procedural rather than substantive protection in ruling that the city was required to give adjoining landowners notice and a right to be heard at the planning commission and city council hearings considering the project. The court stated:

Indeed, the due process clause of the Fourteenth Amendment required 'at a minimum . . . that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing . . .' [Citations] Zoning does not deprive an adjacent landowner of his property, but it is clear that the individual's interest in his property is often affected by local land use controls, and the 'root requirement' of the due process clause is 'that an individual be given an opportunity for a

Developers also may unduly influence the local land use regulatory process. Although actual corruption may occur occasionally,<sup>31</sup> much more frequently local officials simply accede to the demands of those who appoint them or appear before them—often local landowners and developers.<sup>32</sup> This problem is exacerbated by the regulators' identification with those whom they regulate<sup>33</sup> and by the inherent flexibility of zoning.<sup>34</sup>

Developers also influence local land use regulation by providing the information local officials need to make planning decisions. Local planners frequently do not have the time, resources, or expertise to create a comprehensive, long-range open space plan.<sup>35</sup> Adequate protec-

hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest . . . justifies postponing the hearing until after the event. . . . [citations omitted].

6 Cal. 3d at 549, 492 P.2d at 1142, 99 Cal. Rptr. at 749-50.

In *Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore*, 18 Cal. 3d 582, 557 P.2d 473, 135 Cal. Rptr. 41 (1976), local voters passed an initiative declaring a moratorium on additional residential construction until the city and local school district could provide adequate services to present residents. Local homebuilders challenged the ordinance on several constitutional grounds. The California Supreme Court directed the trial court to determine whether the ordinance, in view of its exclusionary impact, bore a reasonable relationship to the welfare of the region. Any ordinance bearing such a relationship was to be upheld. For a discussion of whether a community is accepting its "fair share" of a region's growth, see D. MOSKOWITZ, *EXCLUSIONARY ZONING LITIGATION* 303-20 (1977). Deference to localities may indicate that California courts will engage in only minimal scrutiny of a local land use decision that may be detrimental to regional welfare.

31. For discussions of local corruption, see RALPH NADER TASK FORCE, *POWER AND LAND IN CALIFORNIA*, ch. VI at 100 (Preliminary Draft 1971) [hereinafter cited as RALPH NADER TASK FORCE]; B. SIEGAN, *OTHER PEOPLE'S PROPERTY* 9 (1976).

32. *PLANNING IN CALIFORNIA*, *supra* note 2, at 79; Belser, *Planning Fiasco in California*, *CRY CALIFORNIA*, Summer 1967, at 10, 11 [hereinafter cited as Belser].

33. A former county planning director in California has criticized the planning commissions' role in the land use regulatory process on the grounds that most commissioners lack planning expertise and tend to identify with development interests. See Belser, *supra* note 32, at 11. See also *STATE DEVELOPMENT PLAN*, *supra* note 10, at 259.

City and county councils suffer from the same shortcomings as planning commissions. See *GOVERNMENT PROCESS*, *supra* note 2, at 126. For example, many are too disorganized to control development effectively. See Belser, *supra* note 32, at 13. Some observers have suggested that this lack of accountability to the local electorate mocks the argument that local land use control is, at the very least, responsive to local concerns. Wood, *Let's Abolish the Planning Commissions*, *CRY CALIFORNIA*, Fall 1967, at 15, 39. See also Sussna, *Local Zoning is Obsolete*, 11 *CURRENT MUNICIPAL PROB.* 335, 335 (1969).

34. The increasing flexibility of land use regulatory systems permits zoning decisions that are inconsistent with a prior local plan, thus opening the door for special interest influences to guide land use decisionmaking. See RALPH NADER TASK FORCE, *supra* note 31, ch. VI at 53; Heeter, *Toward a More Effective System for Guiding the Use of Land*, in *ZONING IS PLANNING* 56, 60 (C. Forrest ed. 1969). "Zoning is too susceptible to economic and political pressures and is too easily altered to be an effective tool for the preservation of prime agricultural land." Ellingson, *Differential Assessment and Local Governmental Controls to Preserve Agricultural Lands*, 20 *S.D.L. REV.* 548, 571 (1975).

35. *PLANNING IN CALIFORNIA*, *supra* note 2, at 84. See *GOVERNMENT PROCESS*, *supra* note 2, at 126-27. Some local planning staffs are unable to handle complex land use issues, such as the topological or geological impact of development. *Id.* at 83. See N. WILLIAMS,

tion of agricultural land requires a complex analysis of the long-term environmental and economic effects of urbanization on watersheds, costs of governmental services, food production, and population growth.<sup>36</sup> Experience shows that most local planning departments do not possess that capability.<sup>37</sup> Many local planning staffs, therefore, base their permit and rezoning recommendations upon information and conclusions provided by developers.<sup>38</sup> The resulting general plans often are too vague to guide development decisions sensibly<sup>39</sup> and may interfere with resource preservation goals by allowing development in environmentally sensitive areas. Moreover, local officials may unknowingly undermine the plan's overall effectiveness by granting individual variances and rezonings.<sup>40</sup> Thus, the lack of adequate planning information and expertise, the influence of developers, and, most important, the parochial viewpoint of land use decisionmakers often tend to protect or enhance local property values at the expense of environmental protection or other long-range goals.<sup>41</sup>

Local governments alone are not responsible for the unnecessary urbanization of California's agricultural land. The activities of other governmental units may also undermine planning efforts. Land use decisions by state agencies or special districts may convert agricultural land to urban use and require the rezoning of surrounding land.<sup>42</sup>

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AMERICAN LAND PLANNING LAW § 160.14 (1975) [hereinafter cited as N. WILLIAMS]. Moreover, many planning staffs do not inventory prior rezonings and variances to determine the cumulative impact of such decisions upon planning goals. RALPH NADER TASK FORCE, *supra* note 31, ch. VI at 56.

36. See STATE DEVELOPMENT PLAN, *supra* note 10, at 142.

37. *Id.* at 260.

38. Expert and well financed planning departments of large developers may overwhelm the planning staffs of rural counties who must rely largely on developer-produced information. See Belser, *supra* note 32, at 11. The California Legislature now requires local governments to prepare environmental impact reports prior to major land use decisions so that they may acquire independent planning information. See note 18 *supra* and accompanying text. In many instances, however, these reports are of poor quality and tend to obscure the need for prior comprehensive planning. GOVERNMENT PROCESS, *supra* note 2, at 132.

39. See GOVERNMENT PROCESS, *supra* note 2, at 99; PLANNING IN CALIFORNIA, *supra* note 2, at 86.

40. See note 34 *supra*.

41. See GOVERNMENT PROCESS, *supra* note 2, at 99; RALPH NADER TASK FORCE, *supra* note 31, ch. VI at 51; see also I E. YOKLEY, ZONING LAW AND PRACTICE 16-17 (3d ed. 1965).

42. See RALPH NADER TASK FORCE, *supra* note 31, ch. II at 17.

Although it is impossible to determine empirically the extent to which government agencies' siting decisions undercut local governments' agricultural land use decisionmaking, one study of governmental open space policies concluded:

The siting and routing of public facilities often critically impacts the population distribution and land use patterns of the surrounding areas. Highways, schools, water projects, defense installations, and other public facilities provide important stimuli to growth and development. . . . Locational decisions do not reflect overall governmental population distribution and land use objectives.

These agencies or special districts frequently show little regard for local open space policies, while local governments have inadequate power to require them to use land in a manner consistent with the general plan.<sup>43</sup> The general plan's open space element consequently loses its comprehensiveness; wasteful urbanization of agricultural land results.<sup>44</sup>

California's local governments alone cannot adequately preserve the state's farm and range land. Even the local governments concede this point. For example, the League of California Cities supported Assembly Bill 1900, of the 1977-78 Session, which would have granted significant land use regulatory powers to the state. The County Supervisors Association of California supported a similar, though perhaps less "state-oriented," bill, Senate Bill 193, of the same Session.<sup>45</sup>

Local governments have several innovative weapons to curb urban development. One is the outright purchase of open space land;<sup>46</sup> a similar but less costly means is the acquisition of open space easements in such lands.<sup>47</sup> Neither proposal, however, has been extensively used.<sup>48</sup> Moreover, the passage of Proposition 13 has effectively doomed their use in the future.<sup>49</sup>

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GOVERNMENT PROCESS, *supra* note 2, at 131.

43. See RALPH NADER TASK FORCE, *supra* note 31, ch. VI at 43. The legislature has directed special districts to notify city or county planning commissions of proposed projects at the beginning of the fiscal year in which the district will carry out the project. CAL. GOV'T CODE § 65401 (West Supp. 1979). This is an inadequate substitute for long-range coordination.

The legislature's attempt to clarify local zoning authority over other governmental agencies has been ineffective. Local agencies must comply with local zoning ordinances. CAL. GOV'T CODE § 53091 (West Supp. 1979). "However, because of strong demands of competing interests, the provisions of this law have been compromised to such an extent that they are vague and confusing. In practice the law has been largely disregarded." STATE DEVELOPMENT PLAN, *supra* note 10, at 261. Furthermore, several statutes narrow the definition of "local agency" or allow many of those agencies to render local zoning ordinances inapplicable under certain conditions. CAL. GOV'T CODE §§ 53090(a), 53091, 53094, 53096 (West Supp. 1979). See generally Johnston, *Recent Cases in the Law on Intergovernmental Zoning Immunity: New Standards Designed to Maximize the Public Interests*, 8 URB. LAW. 327 (1976).

44. For example, a general plan that has not incorporated the development of a proposed state water project will be ill equipped to guide local officials in making related land use decisions. See RALPH NADER TASK FORCE, *supra* note 31, ch. II at 17. See also California Citizens Technical Advisory Comm. on Open Space Lands, Final Report 10 (Jan. 1970) [hereinafter cited as Technical Advisory Comm.].

45. See Press Release from the Office of State Senator George Zenovich, Re: Senate Bill 193 at 2 (Jan. 24, 1977).

46. The purchase of land is authorized by statute. CAL. GOV'T CODE §§ 6950-6954 (West 1966).

47. See CAL. GOV'T CODE §§ 51050-51097 (West 1979). See generally Comment, *Easements to Preserve Open Space Land*, 1 ECOLOGY L.Q. 728 (1971).

48. *Id.* at 748; see also STATE DEVELOPMENT PLAN, *supra* note 10, at 270-71.

49. Lefaver, *Rural Planning for Rural Communities*, CRY CALIFORNIA, Winter 1978/79, at 16.

The use of transferable development rights is emerging as an alternative means of preserving agricultural open space. Unlike purchases of open space lands or open space easements, the issuance of transferable development rights has no direct impact upon local governments' treasuries. The scheme compensates those whose lands have been restricted by granting them the right to develop land in designated transfer districts. A landowner who owns no land in the transfer districts may sell its development rights to a landowner in a transfer district, thereby reaping a cash benefit similar to that of a sale of an open space easement.<sup>50</sup> Although the use of these development rights may preserve agricultural and other open space lands without unduly burdening either the landowner or the taxpayer, the scheme is plagued by administrative problems and uncertainties.<sup>51</sup> At this point, therefore, the practicality of a widespread transferable development rights scheme remains unclear.

These proposals also suffer from the shortsighted attitudes that characterize local governments' present exercise of zoning powers.<sup>52</sup> Indeed, the shortcomings of local agricultural land preservation efforts stem not from a lack of enforcement tools, but from local governments' lack of interest and ability to control urban sprawl. As a consequence, attempts to improve the regulation of agricultural land must focus initially on the creation of agricultural land policies instead of on the means by which policies are to be implemented.<sup>53</sup>

### B. Existing State Land Use Regulation

The California Legislature has consistently adhered to the view that the state's land use plans should be implemented by local governments. For this reason, urbanization continues to threaten California farmland despite the variety of proposals to protect it.<sup>54</sup> If the threat is to be eliminated, the legislature must directly address the shortcomings of local planning and zoning that have led to urban sprawl.

The legislature's major response to the disappearance of agricultural and other open space land has been the California Land Conser-

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50. See generally Peterson & Richards, *Development Rights Transfer in Livermore: A Planning Strategy to Conserve Open Space*, 5 GOLDEN GATE L. REV. 191, 192-99 (1975).

51. See GOVERNMENT PROCESS, *supra* note 2, at 148-50.

52. See notes 22-25 *supra* and accompanying text.

53. See Comment, *Preserving Rural Land Resources: The California Westside*, 1 ECOLOGY L.Q. 330, 373 (1971). See also E. WILLIAMS, *supra* note 11, at 71-72.

54. California legislators introduced 115 open space preservation measures between 1955 and 1970. R. DAVIES, PRESERVING AGRICULTURAL AND OPEN-SPACE LANDS: LEGISLATIVE POLICYMAKING IN CALIFORNIA 12 (1972). The California Legislature considered five agricultural land preservation measures in the 1977-78 Session. See Lawrence, *Land Preservation: Five Bills in Search of a Majority*, CRY CALIFORNIA, Summer 1977, at 63. It passed none of them.

vation Act of 1965, commonly known as the Williamson Act.<sup>55</sup> The Act allows a county or city to contract with landowners to restrict their land to open space, agricultural, or related uses for ten-year periods.<sup>56</sup> In return, the local government is to reduce the assessed valuation of that land to reflect its restricted value.<sup>57</sup> The legislature intended this reduction to ease property tax pressures that force many farmers to sell their land to developers and speculators whose inflated bidding for nearby farmland causes a rise in assessed valuation.<sup>58</sup>

The Williamson Act has inadequately protected agricultural land. Because of its value when developed, the land on the fringe of urban areas is most threatened by urban expansion. Unfortunately landowners profit more by selling their land to developers than by obtaining a tax break under the Williamson Act; as a result they generally elect not to contract with the local government.<sup>59</sup> Local governments can then

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55. Ch. 1443, § 1, 1965 Cal. Stat. 3377 (codified at CAL. GOV'T CODE §§ 51200-51295 (West Supp. 1979)).

56. Unless either the landowner or the local legislative body gives notice of nonrenewal at the end of each restricted year, the locality extends the initial term by one year. CAL. GOV'T CODE § 51244 (West Supp. 1979). If either declares an intention not to renew, the contract remains in effect for "the balance of the period remaining since the original execution or last renewal of the contract." CAL. GOV'T CODE § 51246 (West Supp. 1979).

57. If the parcel is bound only by a zoning ordinance, rather than a Williamson Act contract, the locality must assess the parcel based on the rebuttable presumption that the restriction will remain in force. CAL. REV. & TAX CODE § 402.1 (West Supp. 1979). In such cases, however, the reduction in valuation is generally not as great as when a Williamson Act contract restricts the land. This implies that assessors have established the temporary nature of such zoning restrictions. See STANFORD ENVIRONMENTAL LAW SOCIETY, THE PROPERTY TAX AND OPEN SPACE PRESERVATION IN CALIFORNIA: A STUDY OF THE WILLIAMSON ACT 9-14 (Feb. 1974).

58. See generally STANFORD ENVIRONMENTAL LAW SOCIETY, THE PROPERTY TAX AND OPEN SPACE PRESERVATION IN CALIFORNIA: A STUDY OF THE WILLIAMSON ACT 60-61 (Feb. 1974); Bowden, *Article XXVIII—Opening the Door to Open Space Control*, 1 PAC. L.J. 461, 492-93 (1970); Snyder, *Toward Land Use Stability Through Contracts*, 6 NAT. RES. J. 406, 419 (1966); Comment, *The Dilemma of Preserving Open Space Land—How To Make Californians an Offer They Can't Refuse*, 13 SANTA CLARA LAW. 284, 285-86 (1972).

59. "It is not uncommon to hear of development pressures causing land values to rise to five or ten times the level associated with agricultural use." Ellingson, *Differential Assessment and Local Government Controls to Preserve Agricultural Lands*, 20 S.D.L. REV. 548, 557 (1975). See also Gustafson & Wallace, *Differential Assessment as Land Use Policy: The California Case*, 41 J. AM. INST. PLANNERS 379, 383 (1975) [hereinafter cited as Gustafson & Wallace]. Since the language of the Williamson Act is permissive, local governments can not force landowners to sign contracts. CAL. GOV'T CODE § 51240 (West Supp. 1979). Moreover, most of the land under Williamson Act contract is located far from urban areas and the developmental pressures that the Act was to contain. Carman & Heaton, *Use-Value Assessment and Land Conservation*, CAL. AGRICULTURE, Mar. 1977, at 12, 13. Only 1.33% of land under Williamson Act contract in 1970 was within a mile of a city; only five per cent was within three miles of a city. RALPH NADER TASK FORCE, *supra* note 31, ch. II at 38. This indicates that rural landowners are receiving tax reductions on land that would not have been developed in any event. The Act discourages counties from offering contracts to owners of land on the fringe of urban areas by allowing cities to protest the signing of a contract restricting the use of land within one mile of the city. If the Local Agency Forma-

restrict the use of land only by enacting standard zoning regulations.<sup>60</sup> As a consequence, the Williamson Act fails to compensate for the shortcomings of local land use regulation.<sup>61</sup> The Act's effectiveness is further undercut by the legislature's failure to guide local contracting practices<sup>62</sup> and by the refusal of several local governments to offer the contracts.<sup>63</sup>

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tion Commission in the county approves the protest, the city may void the contract upon annexing the land. CAL. GOV'T CODE § 51243 (West Supp. 1979).

Legislators are critical of the Act. Some even question whether the legislature designed the Act in 1965 to do more than provide tax relief to farmers. Interview with Spencer Hathaway, Consultant to the State Senate Committee on Government Organization, in Sacramento (Feb. 14, 1978).

60. Indeed, a program such as the Williamson Act that relies upon voluntary participation may never be able to bring about adequate protection of open space land. This is the view of William H. Whyte, the co-author of a Connecticut open space statute that is similar to the Williamson Act. Whyte insists that while use-value assessment is an equitable means of apportioning property tax liability, such programs also require binding land use controls, such as zoning regulations, to be effective. W. WHYTE, *THE LAST LANDSCAPE* 102 (1968). See also G. GUSTAFSON, *CALIFORNIA'S USE-VALUE ASSESSMENT PROGRAM: PARTICIPATION AND PERFORMANCE THROUGH 1975-76*, at 13-14 (1977).

61. CALIFORNIA SENATE COMM. ON GOVERNMENTAL ORGANIZATION, *PRESERVING CALIFORNIA'S AGRICULTURAL GREEN* 65-66 (1976); Gustafson & Wallace, *supra* note 59, at 385.

62. Local governments may decide the quantity and location of agricultural land to be preserved. See CAL. GOV'T CODE § 51230 (West Supp. 1979). The legislature has defined the term "open space" very loosely. See CAL. GOV'T CODE § 51201(o) (West Supp. 1979). Thus, local governments have broad discretion to include land within their borders in their Williamson Act programs. The local legislative body may cancel a Williamson Act contract upon a landowner's request if it finds that the cancellation would be in the public interest and consistent with the purposes of the Act. CAL. GOV'T CODE § 51282 (West Supp. 1979). This allows local governments considerable flexibility because of the vagueness of the term "public interest." Gustafson & Wallace, *supra* note 59, at 383.

This latter loophole has been subject to some abuse. For example, a Ralph Nader Task Force reported that the Board of Supervisors of Tuolumne County cancelled a contract on land adjacent to a reservoir supplying three-fourths of the county's water supply so that developers could build a recreational home subdivision. The Board's proceedings contain no mention of a discussion of the "public interest" served by the cancellation. RALPH NADER TASK FORCE, *supra* note 31, ch. II at 42.

The local legislative body must charge a cancelling landowner a cancellation fee of 50 percent of assessed valuation (which is 12.5 percent of market value) of the land in question. CAL. GOV'T CODE § 51282 (West Supp. 1979). The local legislative body may waive the fee with the approval of the Secretary of the State Resources Agency if the cancellation is caused by an involuntary transfer or change in potential land use and would be in the "public interest." CAL. GOV'T CODE § 51282 (West Supp. 1979).

63. Eleven of California's fifty-eight counties do not offer Williamson Act contracts. Carman & Heaton, *Use-Value Assessment and Land Conservation*, CAL. AGRICULTURE, March 1977, at 12, 13. California voters' passage of Proposition 13 in 1978 has clouded the future of the Williamson Act. As one observer notes:

With the Jarvis-Gann Amendment in effect, there is little incentive for farmers to take advantage of the tax savings offered by a land preservation plan. There is danger, in fact, that Proposition 13 will even undermine the Williamson Act by making the tax savings it offers unattractive. Since the contracts run ten years and are renewable each year, that could mean a wholesale abandonment of the Williamson Act around 1987-88.

Jackson, *A Favored Land's Dilemma*, CRY CALIFORNIA, Winter 1978/79, at 3.

In addition to the Williamson Act, the legislature has attempted to broaden the scope of local planning by empowering local governments to form regional planning districts to harmonize the plans of each community within that region.<sup>64</sup> Regional agencies are meant to help communities avoid or reconcile major land use conflicts, such as one community's proposed location of heavy industry near a residential district in a neighboring town. These agencies, however, have no authority to bind local governments to the adopted regional plan.<sup>65</sup> Frequently, the regional plan does little more than to consolidate the plans of each community into a single, noncomprehensive package.<sup>66</sup> Moreover, regional planning districts have not displayed any real capacity to assess the long-term need for agricultural land preservation within their regions. This failure is due to the narrow, generally urban, geographic scope of regional planning and the regional agencies' reliance on the planning tools of local governments.<sup>67</sup>

To supplement local planning, the California Legislature created the Office of Planning and Research<sup>68</sup> to set long-range state planning policies, coordinate the activities of state government, and promote and assist local and regional planning.<sup>69</sup> Despite the ambitious role the legislature assigned to it, the Office of Planning and Research does not have the authority to protect the state's environment effectively. Its primary shortcoming stems from its inability to enforce its planning poli-

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64. CAL. GOV'T CODE §§ 65060-65069.5 (West 1966 & Supp. 1979).

65. "A regional plan shall be advisory only and shall not have any binding effect on the counties and cities located within the boundaries of the regional planning district for which the regional plan is adopted." CAL. GOV'T CODE § 65060.8 (West 1966). See STATE DEVELOPMENT PLAN, *supra* note 10, at 260; Comment, *State Land Use Control: Why Pending Federal Legislation Will Help*, 25 HASTINGS L.J. 1165, 1172 (1974).

66. See ALI MODEL LAND DEV. CODE 343, Comment on art. 8 (Proposed Official Draft, Apr. 1975.)

67. Cf. GOVERNMENT PROCESS, *supra* note 2, at 129-33 (dealing with the lack of coordination in land use policy in the San Francisco Bay Area). The principal advantage of voluntary regional cooperation is the increased availability of federal grants for planning under, for example, the Housing Act of 1954, 40 U.S.C. § 461(a) (1976), the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. §§ 3301-3374 (1976), and the Intergovernmental Cooperation Act of 1968, 42 U.S.C. §§ 4201-4244 (1976). For a general discussion of regional planning see 1 ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, SUBSTATE REGIONALISM AND THE FEDERAL SYSTEM (1973).

68. The legislative mandate of the Office of Planning and Research is set out in CAL. GOV'T CODE §§ 65025-65049 (West Supp. 1979). The Office of Planning and Research is the successor to the State Office of Planning. See CAL. GOV'T CODE § 65037 (West Supp. 1979).

69. CAL. GOV'T CODE § 65040 (West Supp. 1979). The legislature has directed the Office of Planning and Research to give priority to the development of land use policy. CAL. GOV'T CODE § 65041 (West Supp. 1979). This policy is to be formulated and published in a State Environmental Goals and Policy Report, which the Office of Planning and Research is to update every four years. CAL. GOV'T CODE § 65048 (West Supp. 1979). The most recent revision of the Report is OFFICE OF PLANNING AND RESEARCH, AN URBAN STRATEGY FOR CALIFORNIA (1979).

cies;<sup>70</sup> state and local agencies are not bound by the Office's proposals and have shown little willingness to subordinate their planning objectives to those of the state.<sup>71</sup> Thus, the Office is destined for a minor role in the preservation of California's agricultural land.<sup>72</sup>

### C. Recent State Legislative Proposals

The inadequacy of local and state preservation efforts has prompted the California Legislature to consider changing the state's system for protecting agricultural land. In recent years, the legislature has considered several proposals to slow the urbanization of farmland, but has passed none of them.<sup>73</sup> Each of these measures has encountered strong opposition to its central element—a state agency with substantial power to direct the use of the state's agricultural land.

The most ambitious proposal was Assembly Bill 15 of the 1975-76 Session, introduced by Charles Warren.<sup>74</sup> The measure would have prevented local governments from permitting development on prime agricultural land without the approval of a state Agricultural Resources Council.<sup>75</sup> The bill drew heated opposition from groups opposed to its anti-growth and anti-local control orientation,<sup>76</sup> and, though watered down by legislative compromise, the bill was killed in the Senate Finance Committee.

After Assemblymember Warren left the legislature to head the Federal Council on Environmental Quality in 1977, attention turned to two proposals similar to Assembly Bill 15: Senate Bill 193 and Assembly Bill 1900, both of the 1977-78 Session.<sup>77</sup> These measures, like Assembly Bill 15, were passed by their houses of origin but died in the other house of the legislature.<sup>78</sup> The bills would have given state agen-

70. PLANNING IN CALIFORNIA, *supra* note 2, at 21-24. See also, GOVERNMENT PROCESS, *supra* note 2, at 133.

71. See generally Roberts, *Urban Strategy*, 9 CAL. J. 183, 185-86 (1978). "It is not the intent of the Legislature to vest in the Office of Planning and Research any direct operating or regulatory powers over land use, public works, or other state, regional, or local projects or programs." CAL. GOV'T CODE § 65035 (West Supp. 1979).

72. PLANNING IN CALIFORNIA, *supra* note 2, at 23; Roberts, *Urban Strategy*, 9 CAL. J. 183, 186 (1978).

73. See note 54 *supra*.

74. A.B. 15, Cal. Reg. Sess. (1975) (Warren, D-Los Angeles).

75. *Id.*, § 1, ch. 5 (as introduced, Dec. 2, 1974).

76. Among those cited as opposing the original bill were realtors, developers, organized labor, local governments, farmers, and grower groups. Kircher, *The Legislative Battle Over Preserving Agricultural Land*, 7 CAL. J. 155, 156 (1976).

77. S.B. 193, Cal. Reg. Sess. (1977) (Zenovich, D-Fresno); A.B. 1900, Cal. Reg. Sess. (1977) (Calvo, D-Mt. View).

78. The State Senate passed S.B. 193 by a vote of 28-6 on January 30, 1978, but the bill languished in the Assembly Land Use, Resources, and Energy Committee, which is chaired by Assemblymember Calvo. The California Assembly passed A.B. 1900 by a vote of 41-36 on January 30, 1978, but the bill died in the State Senate. See generally D. Hansen, *An Analysis of Existing and Proposed Land Use Legislation in California* (paper presented to

cies significant authority to review local agricultural land preservation programs. This legislation, however, would not have solved the basic problems inherent in present regulation of agricultural land.

Senate Bill 193 would have required local governments to include an agricultural element in their general plans.<sup>79</sup> The bill would have allowed the Office of Planning and Research to challenge agricultural land plans that it felt conflicted with statewide interests.<sup>80</sup> A newly created state appeals council would have heard and decided such challenges.<sup>81</sup> The measure would have attached a strong presumption of validity to the local plans<sup>82</sup> and allowed local governments considerable discretion to exclude from their plans any land the locality felt was needed to meet expected population growth.<sup>83</sup>

Assembly Bill 1900 would have permitted a slightly stronger state role in agricultural land preservation. The proposal would have directed a state agricultural resources agency to supply local governments with prime agricultural land maps and advisory guidelines to steer the creation of local agricultural resources programs.<sup>84</sup> The local programs would have been required to zone and assess all mapped land as agricultural land, with the exception of land needed to absorb anticipated urban growth.<sup>85</sup> The state agency then would have reviewed all programs for statutory compliance and could have suggested ways in which local governments should revise their agricultural resources proposals.<sup>86</sup>

Although they would have improved California's system of agricultural land regulation, both Senate Bill 193 and Assembly Bill 1900 would have perpetuated many of the inadequacies and abuses they purported to eliminate. Each proposal failed to provide comprehensive

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the Commonwealth Club of California, Study Section on Agriculture, June 16, 1977) (on file in the U.C. Davis Agricultural Economics Library) [hereinafter cited as Hansen]; J. Reganwold & M. Singer, *Defining Prime Agricultural Land in California I* (1978) [hereinafter cited as Reganwold & Singer].

The future of California agricultural land preservation legislation is uncertain. An aide to Assemblymember Victor Calvo, sponsor of A.B. 1900, relates that the "political climate" is against the creation of new state agencies and that new legislation probably would call only for economic incentives to preserve agricultural land. Telephone interview with Tom Willoughby, Consultant to the Assembly Land Use, Resources, and Energy Committee (Feb. 26, 1979).

79. S.B. 193, Cal. Reg. Sess. § 10, ch. 3 (1977) (as amended Jan. 26, 1978).

80. *Id.*

81. *Id.* ch. 9.

82. *Id.* ch. 3. "[A] conclusive presumption exists that local conditions and circumstances shall have precedent (*sic*) over guidelines developed by the [State] Office of Planning and Research."

83. *Id.* ch. 6.

84. A.B. 1900, Cal. Reg. Sess. § 4, ch. 3-5 (1977) (as amended Jan. 25, 1978).

85. *Id.* ch. 6.

86. *Id.* ch. 7.

state planning before the adoption of the local agricultural land preservation proposals.<sup>87</sup> Any review of the local programs, therefore, would have been based primarily upon the goals and environmental evaluations of the local governments under review. This reliance on local evaluations would not have eliminated existing shortsighted local planning.<sup>88</sup> Both measures called for the cooperation of state and local government agencies to implement the proposal,<sup>89</sup> but neither provided a structure to coordinate the activities of agencies that may threaten agricultural land.

The measures also would have failed to give the state substantial authority to overturn local agricultural land regulations. Observers criticized Senate Bill 193 for its strong presumption that local planning conclusions are valid.<sup>90</sup> In requiring that local programs comply with the broad policies of the proposed statute,<sup>91</sup> Assembly Bill 1900 appeared to give the state a more significant role in the review process. Yet, while preventing glaring abuses, this statute probably would have continued predominantly local control of the regulation of agricultural land.

The inadequacy of present land use regulation compels the conclusion that the California Legislature must transfer significant planning and decisionmaking authority to the state in order to protect the state's agricultural land from urbanization. Local governments appear neither willing nor able to assess or control the detrimental long-range impact of their agricultural zoning regulations. Present state laws, furthermore, do not effectively address these local shortcomings. The Williamson Act has failed to protect agricultural lands that are most subject to development pressure. Regional agencies have neither the expertise nor the authority to create effective agricultural land preservation programs. Moreover, present statewide planning has no authority to bind state and local governments to a comprehensive preservation proposal. Recent proposals in the California Legislature moved toward stronger state regulation of agricultural land use, but

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87. Prior comprehensive planning is essential to any statewide land use control program. American Institute of Planners, California Chapter, Position Paper on State Planning for California 1-2 (1970). See note 144 *infra*.

88. For a discussion of local planning, see notes 14-41 *supra* and accompanying text.

89. S.B. 193, Cal. Reg. Sess. § 10, ch. 1 (1977); A.B. 1900, Cal. Reg. Sess. § 4, ch. 1 (1977).

90. Interview with Spencer Hathaway, Consultant to the State Senate Committee on Government Organization, in Sacramento (Feb. 14, 1978).

91. A rebuttable presumption shall exist that a local agricultural resources program . . . complies with the provisions of this title. The presumption may be rebutted and the council may disapprove a local . . . program, in whole or in part, only if it finds that one or more specific provisions thereof raise a substantial issue as to compliance with the provisions of this title.

A.B. 1900, Cal. Reg. Sess. § 4, ch. 7 (1977) (as amended Jan. 25, 1978).

they failed to provide the comprehensive state planning and clear authority that would insure the protection of the statewide interest in agricultural land. The time has come for California to adopt a comprehensive statutory program to regulate the use of California agricultural land throughout the state.

## II

### A STATE CONSTITUTIONAL BARRIER: THE "MUNICIPAL AFFAIRS" DOCTRINE

The United States has a longstanding tradition of local control over land use planning and regulation.<sup>92</sup> This policy is based upon the presumption that local governments are most acquainted with local planning problems,<sup>93</sup> interested in their resolution,<sup>94</sup> and able to attract the grassroots support needed to carry out land use regulation successfully.<sup>95</sup> Armed with these arguments, proponents of local land use control might be able to block the passage of a measure proposing pervasive state regulation of agricultural land use.<sup>96</sup>

If a state legislature nonetheless passed a strong state agricultural land preservation program, the courts may overturn the legislature's usurpation of local powers based upon the "home rule" provisions of many state constitutions, including that of California.<sup>97</sup> These provisions reflect the judgment that municipalities should be free from unwarranted state interference.<sup>98</sup> In general, they deny state legislatures the authority to override local ordinances on matters of local concern.<sup>99</sup> Thus, a comprehensive agricultural land preservation measure would be seriously undermined if a court were to hold that the state's direct regulation of land within a municipality violates such home rule provisions.

92. See generally O. BROWDER, R. CUNNINGHAM & J. JULIN, *BASIC PROPERTY LAW* 1106-09 (2d ed. 1973).

93. See note 159 *infra* and accompanying text.

94. See F. BOSSELMAN & D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* 320 (1972) [hereinafter cited as *REVOLUTION IN LAND USE CONTROL*].

95. LINOWES & ALLENSWORTH, *supra* note 24, at 33. See also note 163 *infra* and accompanying text.

96. Note, for example, the political obstacles faced by A.B. 15 in the California Legislature in the 1975-76 Regular Session. See note 76 *supra* and accompanying text. These hurdles are not limited to California. One observer notes, "[S]tate land use programs that preempt local controls are apparently politically untenable in the long run. . . . When aroused, the interest groups who want to retain local control over development are able to wield decisive political influence over the contents of state land use legislation." *Ticket to Thermidor*, *supra* note 11, at 731.

97. See generally 2 McQUILLIN *MUN. CORP.* § 4.82 (3d ed. rev. 1966). The text of the California Constitution's home rule provisions is set out in note 100 *infra*.

98. See Rose, *Conflict Between Regionalism and Home Rule: The Ambivalence of Recent Planning Decisions*, 31 *RUTGERS L. REV.* 1, 1 (1978); Sato, *supra* note 12, at 1065-66 (discussing California's home rule policy).

99. 2 McQUILLIN *MUN. CORP.* § 4.83 (3d ed. rev. 1966).

The California Constitution gives the state's charter cities the authority to supersede general state laws with respect to matters that are municipal affairs.<sup>100</sup> Studying California's municipal affairs doctrine is a useful method to evaluate the doctrine in other states since California's size and use of innovative land use controls has brought the issue before courts more frequently in California than in most other states. Moreover, California has one of the country's strongest traditions of local home rule.<sup>101</sup>

The extent of the autonomy that the municipal affairs doctrine gives to charter cities depends upon vague judicial notions of the proper role of state government. California courts have not explicitly defined the term municipal affairs but have relied on case-by-case adjudication to develop a definition.<sup>102</sup> This flexibility allows the definition to change "with the changing conditions upon which it is to operate."<sup>103</sup>

As the extraterritorial effects of local decisionmaking become more widely recognized, courts may be reluctant to find many issues to be municipal affairs.<sup>104</sup> Although California courts have stated that zoning is a municipal affair,<sup>105</sup> in recent years they have upheld the state's power to interfere with local land use practices affecting a statewide interest. In the 1971 decision of *People ex rel. Younger v. County of El Dorado*,<sup>106</sup> the California Supreme Court rejected a local government's

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100. It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supercede all laws inconsistent therewith.

CAL. CONST. art. XI, § 5(a).

By comparison, California's general law cities and all of its counties are subject to general state law. The California Constitution grants each the authority to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." CAL. CONST. art. XI, § 7. See note 14 *supra*.

101. California Governor's Commission on the Law of Pre-emption, Report & Recommendations, Exhibit A at 1 (1967). See also 2 MCQUILLIN MUN. CORP. § 4.83 (3d ed. rev. 1966).

102. *Bishop v. City of San Jose*, 1 Cal. 3d 56, 62-63, 460 P.2d 137, 141, 81 Cal. Rptr. 465, 469 (1969); *Professional Fire Fighters, Inc. v. City of Los Angeles*, 60 Cal. 2d 276, 294, 384 P.2d 158, 169, 32 Cal. Rptr. 830, 841 (1963); *Butterworth v. Boyd*, 12 Cal. 2d 140, 147, 82 P.2d 434, 438 (1938). See also Comment, *Land-Use Control, Externalities, and the Municipal Affairs Doctrine: A Border Conflict*, 8 LOY. L.A.L. REV. 432, 436-42 (1975) [hereinafter cited as *A Border Conflict*].

103. *Pacific Tel. & Tel. Co. v. City and County of San Francisco*, 51 Cal. 2d 766, 771, 336 P.2d 514, 517 (1959).

104. See *A Border Conflict*, *supra* note 102, at 455.

105. See, e.g., *O'Loane v. O'Rourke*, 231 Cal. App. 2d 774, 42 Cal. Rptr. 283 (1965); *Fletcher v. Porter*, 203 Cal. App. 2d 313, 21 Cal. Rptr. 452 (1962). See also *A Border Conflict*, *supra* note 102, at 451.

106. 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971).

challenge to the authority of a state agency to regulate zoning in an environmentally sensitive region.<sup>107</sup> The court found that the agency was protecting a valid state interest, the Lake Tahoe Basin, and therefore was not violating the municipal affairs doctrine. Three years later in *CEED v. California Coastal Zone Conservation Commission*,<sup>108</sup> a state appellate court applied the *Younger* ruling to uphold the power of a state commission to plan, zone, and issue permits regarding land development along California's coastline.<sup>109</sup>

In *City of Los Angeles v. Department of Health*,<sup>110</sup> another appellate court upheld a state statute directing communities to allow small homes or foster homes for the handicapped in areas zoned for residential use.<sup>111</sup> The court found that the treatment of the handicapped was a matter of statewide concern.<sup>112</sup> The court refused to speculate whether the legislature could have carried out its objective less intrusively<sup>113</sup> but considered only "whether the legislation implements a

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107. In that case, the counties defended their refusal to pay their share of the costs of the Tahoe Regional Planning Agency by alleging that the Agency violated the municipal affairs provision of the California Constitution. The court redefined "municipal affairs" as those that are "purely local." *Id.* at 492, 487 P.2d at 1200, 96 Cal. Rptr. at 560. The court noted the regional nature of the threat to the Lake Tahoe basin and concluded that "[o]nly an agency transcending local boundaries can devise, adopt and put into operation solutions for the problems besetting the region as a whole." *Id.* at 494, 487 P.2d at 1201, 96 Cal. Rptr. at 561. Because the matter was clearly one of state concern, the legislature possessed the power to preempt local authority.

108. 43 Cal. App. 3d 306, 118 Cal. Rptr. 315 (1974).

109. The plaintiffs, construction trade associations and trade unions, challenged the authority of the Coastal Commission on constitutional grounds, including the municipal affairs doctrine. The court stated that the doctrine would not insulate from state authority any "activity, whether municipal or private, . . . which can affect persons outside the city . . ." The state could "prohibit or regulate the externalities." *Id.* at 321, 118 Cal. Rptr. at 326, quoting Sato, *supra* note 12, at 1085. The court distinguished earlier statements as only "strong dicta to the effect that zoning is a municipal affair . . . ; the actual holdings in those cases pertained to the method of enacting zoning ordinances." *Id.* at 323, 118 Cal. Rptr. at 327. The court ruled that the interests of the people of California in preserving the state's shoreline and the necessity of state control to protect it brought the Coastal Act within the holding of *People ex. rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971). The court rejected the assertion that the Act violated CAL. CONST. art. XI, § 5. *Id.* at 324, 118 Cal. Rptr. at 328.

110. 63 Cal. App. 3d 473, 133 Cal. Rptr. 771 (1976).

111. The plaintiff city challenged a state statute permitting homes for mentally disabled persons in residentially zoned areas. The city alleged that the statute was merely a state attempt to regulate land use by zoning. *Id.*

112. "The consequences of placement, treatment, and hopefully, return of the handicapped to a productive and respected place in society is a subject that transcends municipal boundaries." *Id.* at 480, 133 Cal. Rptr. at 774. For a partial list of subjects declared to be municipal affairs and for the judicial standards used in making those determinations, see Comment, *The Traffic Congestion Bottleneck: City Police Power, Municipal Affairs and Tax Solutions*, 10 U. CAL. D.L. REV. 207, 217-18 (1977).

113. "The state legislative power over matters of statewide concern necessarily includes the Legislature's right to frame the terms of legislation exercising the power. . . . The question is not whether the purpose of the statewide legislation may conceivably have been ac-

purpose which should bind equally both charter and general law cities."<sup>114</sup> Any doubt as to whether a specific regulation relates to municipal or state concerns would be resolved in favor of the state.<sup>115</sup> This interpretation of the municipal affairs doctrine would allow the legislature considerable flexibility in designing a statewide agricultural land preservation proposal.

These decisions indicate that to avoid violating the municipal affairs doctrine, one must establish both a legitimate statewide interest in the land or land use to be regulated and the need for state involvement. Several factors serve to prove the existence of a statewide concern that transcends municipal affairs: first, the existence of significant externalities indicates that the matter is not strictly local;<sup>116</sup> second, legislative and voter intent to regulate land use uniformly statewide suggests that state government's interest is warranted;<sup>117</sup> and third, the inability of local governments to protect the statewide interest adequately validates the need for the state's assertion of authority.<sup>118</sup>

California courts will probably hold agricultural land preservation to be a matter of statewide concern. The externalities of agricultural land use are well documented.<sup>119</sup> Both the legislature and California voters recognize the statewide importance of agricultural land and have enacted statewide proposals to encourage its preservation.<sup>120</sup> The in-

complished by means less intrusive upon the power of cities . . . ." 63 Cal. App. 3d 473, 481, 133 Cal. Rptr. 771, 775 (1976).

114. *Id.*

115. *Id.* at 480, 133 Cal. Rptr. at 77, citing *Abbot v. City of Los Angeles*, 53 Cal. 2d 674, 349 P.2d 974, 3 Cal. Rptr. 158 (1960). "When there is a doubt as to whether an attempted regulation relates to a municipal or to a state matter, or if it be the mixed concern of both, the doubt must be resolved in favor of the legislative authority of the state." *Id.* at 681, 394 P.2d at 979, 3 Cal. Rptr. at 163.

116. *See also A Border Conflict*, *supra* note 102, at 455-62.

117. "The courts will of course give great weight to the purpose of the Legislature in enacting general laws which disclose an intent to preempt the field to the exclusion of local regulation." *Bishop v. City of San Jose*, 1 Cal. 3d 56, 63, 460 P.2d 137, 141, 81 Cal. Rptr. 465, 469 (1969).

The Court of Appeal in *CEED* stated "[T]he fact that the [Coastal Initiative] was proposed as a statewide initiative and passed by the voters at a statewide election is evidence that the preservation and protection of the coastal resources are matters of concern to all the people of the state." 43 Cal. App. 3d at 322-23, 118 Cal. Rptr. at 327.

118. *People ex. rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 493 n.15, 487 P.2d 1193, 1200, 96 Cal. Rptr. 553, 560 (1971).

119. *See* notes 3-10 & 26 *supra* and accompanying text.

120. The legislature has stated its belief in the statewide interest in protection of California farmland in the state's open space planning statute:

[T]he preservation of open-space land . . . is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources.

CAL. GOV'T CODE § 65561(a) (West Supp. 1979).

Furthermore, California voters' 1966 passage of the Williamson Act, CAL. CONST. art. XXVIII, discussed at notes 54-63 and accompanying text *supra*, which called for the protec-

herent inadequacy of local zoning to assess and protect the statewide interest in preventing urban sprawl also requires the state to intercede in local land use regulation.<sup>121</sup>

The existence of the statewide interest, however, does not absolutely immunize a state agricultural land use program from the municipal affairs doctrine. The state program must protect statewide interests by controlling only those land use practices that have regional or statewide effects.<sup>122</sup> It would be difficult, for example, for the legislature to establish a statewide interest in such procedural matters as minor zoning issues or the size, selection, and duties of local planning agencies.<sup>123</sup> Presumably, a charter city could ignore those portions of a state agricultural land program that regulate such matters unless abuses of those procedures had resulted in violations of substantive laws or rights.<sup>124</sup>

Even if California courts gave limited effect to the municipal affairs doctrine, it would continue to highlight the possible political dangers of enacting an overly exhaustive state land use statute. The doctrine serves a practical role in emphasizing to California legislators the importance of drafting statewide measures with an eye to traditional local autonomy. This discourages unnecessary transfers of authority from local government to the state. Adherence to the spirit of the municipal affairs doctrine in drafting a statewide agricultural land use proposal would reduce much of the local political hostility to it.<sup>125</sup> This, in turn, might lead to greater local cooperation in implementing

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tion of the state's open space land through reductions in property taxes, displayed their strong interest in the protection of agricultural and open space land from development. In the general election held November 5, 1974, California voters transferred that article to article XII, § 8, of the California Constitution. A recent statewide poll indicated that 71% of all Californians were concerned enough about the disappearance of agricultural land to favor controlling the growth of the state's cities. Over 80% felt that agricultural uses should be given a higher priority than residential uses on productive agricultural land. Field Institute, California Public Opinion about Controlling Urban Spread and Rebuilding Central Cities No. 77-007 (Dec. 1977) (cited by permission of the Field Institute).

121. See notes 35-44 *supra* and accompanying text.

122. The statewide concern empowers the state to "prohibit or regulate the externalities" of local activity. *CEED v. California Coastal Zone Conservation Comm'n*, 43 Cal. App. 3d 306, 321, 118 Cal. Rptr. 315, 326 (4th Dist. 1974), citing Sato, *supra* note 12, at 1085 (emphasis added).

123. Section 5(b) of article XI of the California Constitution indicates that the concept of municipal affairs is related to the internal matters of local government, such as local governments' selection, hiring, employment, compensation, and removal of local officials, agencies, and employees. See Sato, *supra* note 12, at 1090-91; Comment, *The Traffic Congestion Bottleneck: City Police Power, Municipal Affairs and Tax Solutions*, 10 U. CAL. D.L. REV. 207, 217.

124. Cf. Sato, *supra* note 12, at 1081-82 (discussing the applicability to charter cities of state statutes prohibiting secret meetings of governmental agencies).

125. See Godwin & Shepard, *State Land Use Policies: Winners and Losers*, 5 ENV'T'L L. 703, 712-17 (1975).

the proposal.<sup>126</sup>

### III

#### A PROPOSAL FOR STATEWIDE AGRICULTURAL LAND REGULATION

The preceding discussion serves as both an impetus and a guide for a statewide agricultural land preservation program that corrects the defects in California's present preservation efforts. The proposal suggested in this Article borrows liberally from statewide land use planning and regulation statutes enacted in other states,<sup>127</sup> the American Law Institute's Model Land Development Code,<sup>128</sup> and land use regulatory agencies that the California Legislature has created.<sup>129</sup>

This Article proposes that the California Legislature create a state agricultural land use agency to conduct long-range agricultural land use planning<sup>130</sup> by inventorying present resources and establishing planning goals. The Article further proposes a regulatory structure to carry out the planning goals that the agency adopts. Finally, the Arti-

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126. See Bowden, *Hurdles in the Path of Coastal Plan Implementation*, 49 S. CAL. L. REV. 759, 767-68 (1976).

127. For a survey of state land use laws, see N. WILLIAMS, *supra* note 35, § 160; Sussna, *Recent Developments in Land Use Control*, in INSTITUTE ON PLANNING, ZONING, AND EMINENT DOMAIN 29 (1977); Comment, *State Land Use Statutes: A Comparative Analysis*, 45 FORDHAM L. REV. 1154 (1977).

128. ALI MODEL LAND DEV. CODE, Commentary on art. 8 (Proposed Official Draft, Apr. 1975). See Bosselman, Raymond and Persico, *Some Observations on the American Law Institute's Model Land Development Code*, 8 URB. LAW. 474 (1976) [hereinafter cited as *Observations on the Model Code*].

129. In several instances the California Legislature has empowered regional agencies to review land use decisions of local governments in environmentally sensitive regions. For example, developers must obtain an additional permit, either from California's regional coastal zone commissions or from local governments with certified local coastal plans, before building on the coast. CAL. PUB. RES. CODE §§ 30600-30602 (West 1977) (California Coastal Zone Conservation Commission); CAL. GOV'T CODE § 66632 (West Supp. 1979) (similar permit from the San Francisco Bay Conservation and Development Commission). The Regional Coastal Commissions were created by voter initiative in the general election held November 7, 1972. See 1972 Cal. Stats. A-181. The original act was repealed by a "sunset" provision in the act on January 1, 1977. 1972 Cal. Stats. A-181, § 27650. The California Coastal Act now regulates coastal development. CAL. PUB. RES. CODE §§ 30000-30900 (West Supp. 1979). The statutory structure of the San Francisco Bay Conservation and Development Commission is set out in CAL. GOV'T CODE §§ 66600-66661 (West Supp. 1979).

The California Tahoe Regional Planning Agency regulates land use in the Lake Tahoe Basin through a general regional plan, CAL. GOV'T CODE § 67070 (West Supp. 1979), which sets standards for local governmental action. CAL. GOV'T CODE § 67072 (West Supp. 1979).

130. The planning portion of this proposal does not rely as heavily upon any one of the proposals listed in notes 127-129 *supra* as the implementation portion relies upon the Model Land Development Code. Although the American Law Institute included a state planning provision in that Code, the planning scheme is too complex for a single-purpose endeavor such as a California agricultural land planning program. See ALI MODEL LAND DEV. CODE art. 8 (Proposed Official Draft, Apr. 1975).

cle suggests that the legislature place limitations on the agency's planning and regulatory functions to ensure its adherence to statutory objectives.

The proposal that the state agricultural land agency retain an active role throughout the decisionmaking process will encounter opposition from those who prefer that state government have only limited authority to control land use. Many commentators contend that land use decisions should be made at the lowest appropriate governmental level and that state intervention should be restricted to the minimum needed to protect nonlocal interests.<sup>131</sup> This argument is forceful in California, which has a strong system of local government home rule.<sup>132</sup> This view reflects the belief that local governments, if given technical assistance and guidance with sophisticated land use problems, will adequately and conscientiously carry out statewide policies.<sup>133</sup>

A limited system of state direction and review of local agricultural land preservation efforts, however, would be inadequate to implement state preservation goals. Fragmentation of responsibilities may lead to inconsistent policies.<sup>134</sup> Even commentators who are critical of highly centralized land use decisionmaking nonetheless argue that complex land use decisions—such as those related to growth control and open space preservation—must be made or reviewed at a higher level of government.<sup>135</sup> More importantly, the aggressive prodevelopment policies of many local governments<sup>136</sup> indicate they would use their authority to evade the policies of the program.<sup>137</sup> Without further review of local regulations, a local government could render the state planning process ineffective. A statute that limits state review to local land use regulations can be undermined by local governments that establish locally oriented planning objectives and definitions.<sup>138</sup>

The proposal suggested in this Article would prevent local governments from undermining state agricultural land use policies by mandating comprehensive state guidance and monitoring of local land use planning and regulation. Conversely, it limits state usurpation of local authority by requiring legislative review of the decisions of the pro-

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131. See, e.g., R. HEALY, *LAND USE AND THE STATES* 191-93 [hereinafter cited as HEALY]; LINOWES & ALLENSWORTH, *supra* note 24, at 161-65; Technical Advisory Comm., *supra* note 44, at 22.

132. California Governor's Comm. on the Law of Pre-emption, Report and Recommendations, Exhibit A at 1 (1967).

133. HEALY, *supra* note 131, at 193; Technical Advisory Comm., *supra* note 44, at 11.

134. See note 180 *infra*.

135. HEALY, *supra* note 131, at 193; D. MANDELKER, *ENVIRONMENTAL AND LAND CONTROLS LEGISLATION* 8-10 (1976) [hereinafter cited as MANDELKER].

136. See note 24 *supra* and accompanying text.

137. *Id.*

138. See MANDELKER, *supra* note 135, at 32.

posed state agricultural land agency. Admittedly, this program would have a higher economic cost than one that would transfer only a few specified land use powers to the state, but a locally controlled program might be less of a bargain if local intractability made the program ineffective.

### A. *Planning Through a State Agricultural Land Agency*

A comprehensive understanding of agricultural land use is needed to reconcile conflicting governmental interests. The California Legislature's first step in creating an agricultural land preservation program, therefore, must be to establish a state agricultural land agency to ascertain and protect the state's interest in agricultural land preservation. Putting the agency in the Governor's office would prevent any one state agency from impressing its own goals upon the planning process.<sup>139</sup> Furthermore, remoteness from local influences would reduce the likelihood that it would develop strong prodevelopment attitudes due to self-interest or a wish to increase the local tax base.<sup>140</sup> This autonomy would give the agency more freedom to make the difficult and possibly unpopular decisions that long-range planning might require.<sup>141</sup>

The agency's ongoing role should improve long-range planning. State planners could avoid the piecemeal amendments and rezoning that result from the vagaries of the constant turnover and shortsightedness of local governments.<sup>142</sup> State planners could also incorporate changes compelled by unpredictable developmental needs with minimal alteration of overall planning objectives.

The agency's first job would be to formulate a farsighted and inter-

139. R. Cornett, *State Planning*, in *THE BOOK OF STATES 1970-71* at 438, 440 (1970).

140. See E. WILLIAMS, *supra* note 11, at 29.

141. Commentators recommend the Governor's Office as the home of a state land use planning agency, because such a location also gives the agency a political base and allows some political control of its actions. See Schroeder, *Implementing the Coastal Plan: A New Test for the Concept of State Control for Areas of Critical State Concern*, 49 S. CAL. L. REV. 772, 781 (1976) [hereinafter cited as Schroeder]; Comment, *Oregon's New State Land Use Planning Act—Two Views*, 54 OR. L. REV. 203, 220 (1975).

This Article rejects the suggestion that the California Legislature create a system of regional planning bodies to preserve the state's agricultural land. Such regional agencies are described in note 129 *supra*. Regional boundaries would be arbitrary because the environmental and economic effects of a land use decision concerning agricultural land flow across regional boundaries as easily as within. See notes 3-10 *supra* and accompanying text. A regional agency's lack of knowledge or concern about the effect of its decisions upon its neighbors becomes a significant shortcoming. This is, of course, a risk in any proposal setting jurisdictional limits with political boundaries. To some extent the economic effects of agricultural land use may extend beyond state borders as well, but political realities prevent the creation of a national or interstate agricultural land use program. At some point a line prescribing the geographic scope of land use authority must be drawn. Even local governments agree that the line should be drawn at the state level. See note 45 *supra* and accompanying text.

142. GOVERNMENT PROCESS, *supra* note 2, at 126-27; RALPH NADER TASK FORCE, *supra* note 31, ch. VI at 53.

nally consistent state agricultural land use plan to guide the formulation of agricultural land use regulations.<sup>143</sup> The philosophy that comprehensive planning must precede the creation and implementation of land use regulations pervades Californian and American planning.<sup>144</sup> Moreover, the complexities of determining the seemingly remote yet detrimental effects of agricultural land urbanization make prior planning particularly essential to an agricultural land use program.<sup>145</sup>

After inventorying California's agricultural lands, the agency must determine the state's need for these lands by establishing their relative importance as farm and range lands, watersheds, urban buffer zones, flood plains, and visual relief.<sup>146</sup> The state must make this assessment because only a state agency could afford to hire planning specialists for sophisticated land use problems, such as watershed protection and revenue analysis.<sup>147</sup> Statewide evaluation increases the economies of scale of planning that would make hiring such specialists possible. The availability of this expertise would lead to a more accurate and consistent balancing of all the environmental and fiscal consequences of agricultural land use.<sup>148</sup>

Armed with this information, the agency can balance California's need to preserve its best agricultural land against the land use goals of local governments, state agencies, and special districts that have an impact upon agricultural land use.<sup>149</sup> Each of these governmental entities would submit a list of its anticipated projects or development needs

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143. PLANNING IN CALIFORNIA, *supra* note 2, at 22.

144. See, e.g., Mandelker, *The Role of a Comprehensive Plan in Land Use Regulation*, 74 MICH. L. REV. 899 (1976). The California Legislature has codified this policy into a requirement that all local governments formulate comprehensive plans. CAL. GOV'T CODE § 65300 (West 1966). For a discussion of the development of local planning in California, see STATE DEVELOPMENT PLAN, *supra* note 10, at 257.

This requirement is not met by consolidating local plans as a substitute for comprehensive statewide planning. Many of the shortcomings of present agricultural land preservation efforts stem from the inexpert and parochial planning of local governments. See notes 35-39 *supra* and accompanying text. Most statewide land use regulatory schemes enacted recently have required comprehensive planning. N. WILLIAMS, *supra* note 35, § 160.22. California statewide land use programs deserve no less. CALIFORNIA ASSEMBLY, SELECT COMM. ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL BILL OF RIGHTS 23 (Reg. Sess. 1970).

145. Consequently, local officials are unlikely to recognize the long-range consequences of their decisionmaking. See STATE DEVELOPMENT PLAN, *supra* note 10, at 142.

146. See JOINT COMM. ON OPEN SPACE LAND, *supra* note 4, at 35-36.

147. For example, most of the few soil scientists available for a project to define and map California's agricultural land presently work for the state. Reganwold & Singer, *supra* note 78, at 24. See also *Hearings on Current Status of Long-range Statewide Planning Before the California Senate Subcomm. on Land Use Planning*, 1973-74 Reg. Sess. 33 (Oct. 18, 1974) (statement of Marin County Supervisor Michael Wornum).

148. Cf. C. ROSS, THE URBANIZATION OF CALIFORNIA x-xi (1975) (discussing the superiority of statewide planning in assessing the state's recreational subdivision "needs").

149. Conflicts between communities are more effectively resolved through legislation than through individual appeals to the judicial system. Rose, *Conflict Between Regionalism*

that would use agricultural land.<sup>150</sup> By distributing those uses among available lands of little agricultural value, the agency could prevent governmental bodies from undermining comprehensive planning with autonomous and unplanned development on agricultural land.<sup>151</sup> The agency would decide which of those governmental interests should prevail in the event of irreconcilable conflicts.<sup>152</sup>

Granting broad planning duties to a statewide agency poses the danger that the agency would extend its planning jurisdiction to encompass matters that are properly of only local concern.<sup>153</sup> This interference might result in wasteful duplication of local planning already conducted. Furthermore, such meddling could upset the delicate balance of power between state and local government in California<sup>154</sup>—which could cause local governments to undermine the state plan by refusing to adhere to state goals and objectives. It would also violate the spirit, if not the letter, of the California Constitution's municipal affairs doctrine. In order to prevent this "overplanning," the California Legislature should institute several constraints on the agency's planning process.

The legislature's statutory mandate to the agency should restrict the agency's planning to that necessary to assess the statewide interest in agricultural land.<sup>155</sup> Thus, the legislature could require the agency to find, based on a record, that development of agricultural land will have a substantial impact outside the community before it may prevent such development.<sup>156</sup> For example, this may require the agency to correlate the amount of agricultural land protected to the state's agricul-

*and Home Rule: The Ambivalence of Recent Planning Decisions*, 31 RUTGERS L. REV. 1, 21 (1978).

150. This is not entirely unprecedented in California land use control. For example, all governmental agencies must submit to the planning and regulatory control of the San Francisco Bay Conservation and Development Commission. CAL. GOV'T CODE § 66632(a) (West Supp. 1979). See also note 43 *supra*.

151. See note 44 *supra* and accompanying text. See also PLANNING IN CALIFORNIA, *supra* note 2, at 20.

152. The resolution of these conflicts may be the agency's most important function. This is evidenced by Nevada's statewide land use controls. The only binding authority that the Nevada Legislature has conferred upon the Nevada Land Use Planning Agency is the power of its Executive Council to arbitrate conflicts between governmental bodies in the states. NEV. REV. STAT. § 321.761 (1977). See also WYO. STAT. § 9-19-203(a)(xiii) (1977).

153. See generally Schroeder, *supra* note 141, at 777.

154. Cf. Comment, *Oregon's New State Land Use Planning Act—Two Views*, 54 OR. L. REV. 203, 206 (discussing a similar political obstacle in Oregon).

155. Cf. JOINT COMM. ON OPEN SPACE LANDS, *supra* note 4, at 38 (stating that a clear legislative mandate would increase the stature of a state open space plan in the eyes of local government, which suggests that the mandate's clarity may be more important than its restrictions).

156. *Id.* at 36 (suggesting that the test of statewide concern be a determination of whether eighty per cent of those affected by the issue in question are not represented by a lower level of government.)

tural production needs.<sup>157</sup>

The legislature should require the agency to incorporate local land use policies and expertise into the planning process.<sup>158</sup> By holding public hearings and taking testimony from citizens and local planning officials—those who are most familiar with and affected by controls on local land—the agency could balance state and local interests more fairly and improve the quality of the state plan.<sup>159</sup> In incorporating local policies, the agency must attempt to reconcile the goals of the open space element<sup>160</sup> of each local general plan with statewide agricultural land needs.<sup>161</sup> The agency must respond in its record to detailed planning recommendations submitted by local and regional planning groups.<sup>162</sup> This process might improve the eventual implementation of the state plan since local officials would be more likely to understand and support a land use plan they helped to create.<sup>163</sup> Local input will

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157. Cf. Schroeder, *supra* note 141, at 774 (discussing the agricultural land provisions of the California Coastal Plan).

158. See JOINT COMM. ON OPEN SPACE LANDS, *supra* note 4, at 35. Local governmental officials facing the prospect of statewide planning have often demanded that such planning incorporate local policies. See, e.g., *Hearings on Current Status of Long-Range Statewide Land Use Planning Before the California Senate Subcomm. on Land Use Planning 1973-74* Reg. Sess. 60 (Nov. 26, 1974) (statement of Charles Gibson, legislative analyst for the City of Los Angeles); *id.* at 31 (Oct. 18, 1974) (statement of Eileen Weinreb, Mayor of the City of the City of Hayward).

159. The American Law Institute has noted that at least ninety per cent of the land use decisions made by local governments have no major impact on statewide interests and can "be made intelligently only by people familiar with the local social, environmental and economic conditions." ALI Model Land Dev. Code, Commentary on art. 7 (Tent. Draft No. 3, 1971). See also HEALY, *supra* note 131, at 191-92.

160. See note 17 *supra*.

161. See JOINT COMM. ON OPEN SPACE LANDS, *supra* note 4, at 35.

162. By involving these governmental bodies in planning, the agency is more likely to influence their later actions. See generally JOINT COMM. ON OPEN SPACE LANDS, *supra* note 4, at 37.

163. See Bowden, *Hurdles in the Path of Coastal Plan Implementation*, 49 S. CAL. L. REV. 759, 761, 768 (1976).

California's experience with environmental impact reporting under the California Environmental Quality Act, *supra* note 18, suggests a means of compelling the agency to consider fully locally submitted planning information. The Act requires governmental agencies to prepare environmental impact reports detailing the probable effects of proposed governmental projects upon the environment before those agencies can approve such projects. CAL. PUB. RES. CODE § 21000 (West 1977). As a means of assuring that these agencies actually consult this document before deciding the merits of the proposed project, the state's Resources Agency has issued guidelines concerning the preparation and adoption of the report. Like the proposal in this Article, the guidelines require the decisionmaking agency to consider comments by interested parties and public agencies. CAL. ADMIN. CODE tit. 14, § 15146 (Dec. 14, 1973). To monitor this requirement, the guidelines require, "[i]n particular the major issues raised when the . . . [a]gency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions." *Id.* Courts have overturned land use decisions that were made without complying with these requirements. See *City of Carmel-by-the-Sea v. Monterey County Bd. of Supervisors*, 71 Cal. App. 3d 86, 94, 139 Cal. Rptr. 215, 220

serve to balance the state agency's tendency to find a state interest in minor land use decisions, particularly where the breadth of aesthetic and environmental values makes it difficult to distinguish state from local interests.<sup>164</sup>

As a check on the agency's discretion, the legislature should review the final state agricultural land plan for compliance with the purposes of the statute. Commentators are legitimately concerned that a state agency might misconstrue its statutory mandate and improperly balance competing interests.<sup>165</sup> Review of the plan before it takes effect might ease that fear since the legislature is the best judge of whether a state agency has exceeded its mandate.<sup>166</sup> This review would not only serve to check overly intrusive state planning, but would permit a general review of the plan as well.<sup>167</sup> Because approval of subsequent amendments of the plan would be extraordinarily cumbersome, they should be subject only to a legislative veto.<sup>168</sup>

A centralized planning program, such as the one described above, would increase the effectiveness of agricultural land use regulation by giving decisionmakers a clear picture of California's farm and range

(1977); *Society for California Archaeology v. County of Butte*, 65 Cal. App. 3d 832, 839-40, 135 Cal. Rptr. 679, 683 (1977). California courts could enforce a similar requirement that the State Agricultural Land Agency consider and respond to local agricultural planning suggestions.

164. Schroeder, *supra* note 141, at 780.

165. See ALI MODEL LAND DEV. CODE § 8-406, Note (1975); see also Schroeder, *supra* note 141, at 775-76.

166. See *Ticket to Thermidor*, *supra* note 11, at 736. See also ALI MODEL LAND DEV. CODE § 8-406, Note (1975).

167. This is the policy in a number of states that have statewide planning and land use regulation. For example, California voters required the state's Coastal Commission to submit its final California Coastal Plan to the California Legislature for its approval. See Coastal Zone Conservation Act, 1972 Cal. Stats. A-186, § 27320(c). See generally Comment, *California Coastal Plan*, 49 S. CAL. L. REV. 710 (1976). Florida's State Land Planning Agency must be approved by the Governor and his cabinet. FLA. STAT. ANN. §§ 380.05(1)(a), .031(1) (West 1974). Vermont's capability and development plan became effective only upon the approval of both Vermont's Governor and Legislature. VT. STAT. ANN. tit. 10, § 6046 (Supp. 1978).

168. The Model Land Development Code suggests that the initial plan be adopted by the legislature's failure to reject the plan within ninety "legislative days." ALI MODEL LAND DEV. CODE § 8-406(2) (1975). The California Legislature is likely to demand, however, that the plan not take effect until the legislature has actively approved it, as it was required to do with the California Coastal Plan. The Model Code recognizes that some legislatures may wish to take an active role in the planning process and suggests as an alternative to the "approval by inaction" provision that a state legislature's affirmative approval be necessary for the plan to take effect. ALI MODEL LAND DEV. CODE § 8-406, Alternative (2) (1975).

The "approval by inaction" provision is more justified when it is applied to amendments of the plan. First, it protects the legislature from being required to vote on every minor change in the plan. Second, "legislative participation in the planning process will be more meaningful if it is directed to those matters brought to the attention of the legislature for purposes of disapproval as distinguished from approval." ALI MODEL LAND DEV. CODE § 8-406, Note (1975).

land needs. This scheme would transfer planning decisions requiring sophisticated and professional evaluation to the state. Only with this comprehensive planning could state and local governments fully understand and control the long term impact of their land use decision-making. Without a centralized evaluation, regulation of agricultural land use is left to rely upon shortsighted local governmental planning.

### B. Implementation

The California Legislature must bind local governments and other public agencies to the policies expressed in the state agricultural land plan.<sup>169</sup> Because few governmental bodies would submit to regional or state planning authority that conflicts with their self-interest,<sup>170</sup> a plan relying upon voluntary compliance would fail.

The legislature, however, should not replace or duplicate local land use controls with direct state zoning. Direct regulation would increase development costs<sup>171</sup> and run counter to state policy granting local governments maximum control over zoning,<sup>172</sup> and might violate the municipal affairs doctrine of the California Constitution.<sup>173</sup> The legislature must find a less costly and less intrusive means of carrying out state agricultural land policies.

The compulsory guidelines derived from the state plan should leave local governments with primary authority to control land use, but in conformity with the policies expressed in the state agricultural land plan. A review mechanism could ensure that local land use ordinances conform to the agency's guidelines.<sup>174</sup> Though complex, this scheme could protect the statewide interest in the preservation of agricultural land. The generality of the guidelines, on the other hand, would permit local discretion on matters that are not of statewide concern.

The California Legislature should model its program for implementation of the statewide plan upon the recently adopted American Law Institute Model Land Development Code.<sup>175</sup> Article 7 of the Model Code presents a unitary and comprehensive state land use regulatory structure through which a state agency may direct local govern-

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169. JOINT COMM. ON OPEN SPACE LANDS, *supra* note 4, at 37. See also GOVERNMENT PROCESS, *supra* note 2, at 167; PLANNING IN CALIFORNIA, *supra* note 2, at 122; Reganwold & Singer, *supra* note 78, at 27.

170. This has been the experience of California's present statewide planning agency, the Office of Planning and Research. See note 71 *supra* and accompanying text.

171. ALI MODEL LAND DEV. CODE § 7-101, Note 1 (1975); REVOLUTION IN LAND USE CONTROL, *supra* note 94, at 320-21.

172. See note 13 *supra*.

173. See generally notes 92-126 *supra* and accompanying text.

174. See notes 189-98 *infra* and accompanying text.

175. ALI MODEL LAND DEV. CODE (1975).

ments to carry out statewide land use policy objectives.<sup>176</sup> This structure, with some modification, fulfills the needs of a California agricultural land preservation program.<sup>177</sup> Furthermore, because the Model Code is highly respected and is frequently used as a model<sup>178</sup> it might be politically more acceptable than an untested program to wary local governments.<sup>179</sup>

### 1. State Guidelines

The Model Code proposes that a State Land Planning Agency designate "Areas of Critical State Concern" requiring the protection of state government.<sup>180</sup> Until approved regulations for the area are established, the state would prohibit new development permits.<sup>181</sup> The Model Code directs the agency to specify its reasons for making the designation, the dangers that might result from uncontrolled development within the region, and general guidelines for the development of the area.<sup>182</sup>

The Code's shortcomings, when applied to agricultural land, stem

176. Article 7 follows the principle that land use policies should be established by the state and enforced by local governments, subject to some state review. ALI MODEL LAND DEV. CODE § 7-101, Note 1 (1975).

177. The Code's drafters contemplated that it could be used to regulate the use of agricultural land. *Observations on the Model Code*, *supra* note 128, at 484. Other commentators have recommended the Model Code as a guide for regulating agricultural land use in other states. *See, e.g.*, Tomain, *Land Use Controls in Iowa*, 27 DRAKE L. REV. 254, 317-18 (1977-78). Many of its provisions are similar to those recommended by a committee of the California Legislature for the protection of California open space lands. *See* JOINT COMM. ON OPEN SPACE LANDS, *supra* note 4, at 43.

178. The Model Code has been called "the premier piece of legal thinking about state land use planning." *Ticket to Thermidor*, *supra* note 11, at 727. The enactment of at least seven statewide land use measures similar to Article 7 of the Model Code attests to its popularity. *See* Comment, *State Land Use Statutes: A Comparative Analysis*, 45 FORDHAM L. REV. 1154, 1163 n.70 (1977).

179. The Code attempts to continue local control of land use whenever possible. ALI MODEL LAND DEV. CODE § 7-101, Note 1 (1975). By adopting the basic provisions of this code, the California Legislature would demonstrate that the controls were not a temporary prelude to a complete usurpation of local zoning powers. The stability of Model Land Development Code imitations in other states might assuage such fears.

180. ALI MODEL LAND DEV. CODE § 7-201 (1975). The Model Code intends that a single state agency conduct both planning and regulation, *id.* §§ 8-101, 7-201, so this proposal's state agricultural land agency would also implement the proposal. Recent experience in Maine suggests that the separation of planning and regulatory bodies may lead to fragmentation and inconsistent land use policies. *See* Comment, *State Land Use Statutes: A Comparative Analysis*, 45 FORDHAM L. REV. 1154, 1169 (1977).

Effectiveness of the designation would generally not have to wait upon actual completion of the statewide plan. ALI MODEL LAND DEV. CODE § 7-201, Note 1 (1975). Article 8 of the Model Code proposes that the agency engage in comprehensive statewide land use planning, but the Code's drafters feel that effective regulation of land is too important to delay until the plan is completed. ALI MODEL LAND DEV. CODE § 7-201, Note 1 (1975).

181. *Id.* § 7-202, -207(1).

182. *Id.* § 7-201(1). The use of state guidelines to steer the land use decisionmaking of local governments is a common feature of state land use statutes. *See, e.g.*, FLA. STAT. ANN.

from the subtle differences between the goals of a general land use proposal, such as the Model Code, and those of a program regulating the use of agricultural land. A primary concern of the Model Code is the designation of a small, ecologically fragile region as one of critical state concern.<sup>183</sup> This designation would signal local governments that their local plans should steer all nonessential development away from that area. The primary value of the agency's guidelines would be to help local governments discourage such development.

This exclusionary approach to development, however, is too harsh to guide the regulation of California's agricultural land. The continuing growth of the state's population requires the development of some agricultural land.<sup>184</sup> Under the Model Code's "all-or-nothing" approach, the state agricultural land agency would sharply restrict development on designated agricultural land and leave the remainder under local control. Such an approach poses two dangers. First, the agency would abdicate to local governments all control over the use of nondesignated agricultural land, even though some of that land may be of considerable public value if maintained in agricultural use. Second, this approach constrains local discretion more than necessary. Much of the state's interest in the preservation of farmland is in maintaining a high aggregate level of agricultural production.<sup>185</sup> Consequently, the agency should to some extent be concerned with the total amount of agricultural land each community preserves, rather than the specific location of protected land.

Accordingly, the state agricultural land agency's primary task should be to create sophisticated guidelines detailing the state's relative degree of environmental and economic concern in all of California's agricultural lands.<sup>186</sup> The guidelines could allocate urban growth to

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§ 380.05(1)(a), (4), (5), (6) (West 1974); MINN. STAT. ANN. § 116G.06(2)(b) (West 1977); OR. REV. STAT. § 197.230 (1977).

183. MANDELKER, *supra* note 135, at 123. Much of Article 7 of the Model Code discusses the criteria by which the state agency chooses areas of critical state concern. The tone of Article 7 suggests that it anticipates that the major source of controversy surrounding the Code will be the designation, rather than the regulations subsequently adopted. The importance of the designation is highlighted further by the Florida Legislature's decision to constrain the authority of that state's Land Planning Agency by limiting the amount of land that it could designate as areas of statewide concern, and consequently make subject to state regulation, to five per cent of the state's land area. FLA. STAT. ANN. § 380.05(17) (West 1974).

184. See E. WILLIAMS, *supra* note 11, at 21.

185. See notes 7-10 *supra* and accompanying text. The drafters of the Model Code would probably intend that the designation include all of a state's agricultural land. *Observations on the Model Code*, *supra* note 128, at 484.

186. Cf. Tomain, *Land Use Controls in Iowa*, 27 DRAKE L. REV. 254, 306 (1977-78) (discussing the protection of Iowa farmland). See also JOINT COMM. ON OPEN SPACE LANDS, *supra* note 4, at 35.

The complexity of the agency's task in establishing priorities to guide local agricultural land preservation efforts makes it difficult to specify the form of the guidelines the agency

agricultural land that is of little statewide value or that can absorb urban use with little damage to other areas.<sup>187</sup> Furthermore, ranking lands would allow local governments some flexibility in choosing which agricultural land they wish to preserve so long as their preservation efforts remained consistent with statewide goals.

To create these guidelines, the agency must determine the priorities that should guide local governments' developmental decisions by extensively assessing the relative statewide benefits of each community's agricultural land. The agency would refer to the state agricultural land plan to discover those projects that local governments or other governmental agencies expect to approve in each community. The agency would then coordinate development with preservation goals on the basis of the policies expressed in the state plan.

The agency would provide each local government with maps detailing the location of local agricultural land and with guidelines specifying the priorities local government should follow in issuing development permits.<sup>188</sup> These guidelines should be detailed enough to give local governments clear directions for the creation of local agricultural land plans that conform to the state plan.

## 2. Local Programs

This proposal incorporates the Model Code's suggestion that local governments be permitted to adopt developmental regulations that are consistent with the State Land Planning Agency's guidelines.<sup>189</sup> These local regulations would direct the local land use activities of private entities as well as those of state agencies and special districts, which are otherwise largely immune from local governments' land use controls.<sup>190</sup>

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would produce. The vagueness of statutory direction as to the content of state-created guidelines is common in statewide planning legislation. *See, e.g.*, OR. REV. STAT. §§ 197.225, 197.230 (1977). In fact, this inability to specify highlights the benefits of the flexibility of this type of land use regulation. For example, the state plan may indicate that agricultural land near periodically flooding rivers must remain undeveloped to serve as flood plains. Guidelines adopted pursuant to the plan consequently would list the specific parcels best suited to perform that function. Aggregate statewide agricultural production goals, on the other hand, would lead to vague guidelines to local governments designating little more than the quality and total amount of local agricultural land that should remain undeveloped.

187. Reganwold & Singer, *supra* note 78, at 26. *See also* MANDELKER, *supra* note 135, at 124 ("The ALI Code is not fully sensitive to the growth control problem.").

188. *See* JOINT COMM. ON OPEN SPACE LANDS, *supra* note 4, at 37.

189. ALI MODEL LAND DEV. CODE § 7-203(1) (1975).

190. *Id.* §§ 7-101. For a discussion of the dangers of uncoordinated developmental activity of these agencies and districts, see notes 42-44 *supra* and accompanying text. *See also* note 150 *supra*. This provision of the Model Code is similar to the authority of the San Francisco Bay Conservation and Development Commission over other governmental bodies. Most local governments, however, have little or no power to regulate other governmental agencies' land use decisions. ALI MODEL LAND DEV. CODE § 12-201, Note (1975). This Article's proposed extension of local authority would compensate local governments for

If the agency approved the proposed regulations, they would become effective immediately.<sup>191</sup> If the agency did not approve local regulations within six months, it could adopt its own zoning regulations to guide development until it approves local governmental regulations.<sup>192</sup> Once the agency has approved the local program, the local government would be free to handle routine regulation of local agricultural land uses without the need for further agency approval.

The advantage of permitting local governments to retain primary authority to control land use would be two-fold. First, local governments would avoid state governmental meddling in purely local matters. Second, both state government and landowners would be freed from the expense of debating land use issues in a forum that would duplicate local regulatory functions. Statewide agricultural land use interests would be protected by the use of statewide policies to direct these local efforts.

### 3. *Review of Local Implementation and of the State Agricultural Land Agency*

The agency's role in the implementation of state agricultural land policies does not end with approval of the local agricultural land plan. The complexity of agricultural land preservation requires continuous review of local governments' implementation of agency-approved regulations and ordinances.<sup>193</sup> Local governmental officials often do not appreciate the fine nuances of comprehensive planning and might be tempted to permit development that substantially complies with the local agricultural land plan. Loose reading of planning documents has diminished the effectiveness of present local general plans and could undermine local agricultural land plans.<sup>194</sup>

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their loss of autonomy on other agricultural land use matters, and, consequently, might lead to greater local cooperation in carrying out the measure. *Cf.* Bowden, *Hurdles in the Path of Coastal Plan Implementation*, 49 S. CAL. L. REV. 759, 768 (1976) (discussing how local cooperativeness in implementing state land use policies increases when local governments are given a substantial role in decisionmaking).

191. ALI MODEL LAND DEV. CODE § 7-203(3) (1975).

192. *Id.* § 7-204. Some states are wary of allowing a state agency to have unfettered authority to make land use decisions in areas of critical state concern until that same agency decides it will relinquish the power to a local government. Consequently, the Florida Legislature requires the State Land Planning Agency to submit its proposed regulations for the area designated as of critical state concern to the Governor and his cabinet for approval. FLA. STAT. ANN. § 380.05(6)-(8) (West 1974). The Wyoming Legislature requires the State Land Use Planning Commission to utilize local governmental planning goals in adopting these regulations. WYO. STAT. § 9-19-301(e) (1977). These proposals could complement the Model Code's appellate procedures to prevent stalling or over-regulation by the agency during this interim period. *See* ALI MODEL LAND DEV. CODE § 7-501(1) (1975).

193. *See* E. WILLIAMS, STATE CONTROL OF LAND USE IN THE UNITED STATES TODAY 12 (paper presented to the American Institute of Planners Confer-In West, Oct. 24-28, 1971).

194. *See* notes 33-34 *supra* and accompanying text.

The Model Code requires the State Land Planning Agency to review local regulations only when an appeal is brought or a local development plan has yet to be approved.<sup>195</sup> Thus, for example, if a county permitted one-acre "ranchettes" on agriculturally zoned land, the Model Code provides no assurance that the agency would ever review the decision, especially since it is unlikely that any individual would be concerned enough to appeal the decision.<sup>196</sup> Direct monitoring is needed to prevent a local government from dismantling its local agricultural land program piece by piece.

This proposal suggests that the state agricultural land agency conduct more extensive monitoring than that provided by the Model Code by requiring each local government to notify the agency of all locally approved permits to develop land restricted by the local agricultural land plan.<sup>197</sup> The agency could demand that the local government submit an amendment to the local agricultural land plan incorporating the proposed development.<sup>198</sup> Until the agency approved the amendment as consistent with the state plan, the local government could not grant permission to develop that land. This ongoing process could prevent the piecemeal dissolution of the local plan that local officials' unskillfulness or hostility might produce.

A statewide land use regulatory program must also contain a provision for the review of actions taken by the state land use agency. Without some checks on its authority, the agency might violate state policy by basing its guidelines and other actions upon criteria that are inconsistent with the state plan. Furthermore, if not subject to review, a state land use agency might be tempted to intrude upon local governmental authority in matters of strictly local concern.<sup>199</sup> Under the Model Code, an independent State Land Adjudicatory Board<sup>200</sup> would decide appeals from the decisions of local governments permitting or forbidding development in areas of critical state concern.<sup>201</sup> At such an appeal, an appellant could raise objections to any underlying decisions of the agency<sup>202</sup> on the grounds that the action is inconsistent with either the adopted developmental regulations or the enacting statute.<sup>203</sup>

Although this provision of the Model Code would permit some

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195. ALI MODEL LAND DEV. CODE §§ 7-203, -208, -502 (1975).

196. See MANDELKER, *supra* note 135, at 20-21.

197. The Model Code would not require such notice if the state agency had approved the local land use regulations. ALI MODEL LAND DEV. CODE § 7-208.

198. This is basically the procedure that the Model Code suggests. ALI MODEL LAND DEV. CODE § 7-206 (1975).

199. Schroeder, *supra* note 141, at 779-80.

200. ALI MODEL LAND DEV. CODE § 7-501(1) (1975).

201. *Id.* § 7-502(1). This is similar to the appeals board proposed in S.B. 193, Cal. Reg. Sess. § 10, ch. 9 (1977) (as amended Jan. 26, 1978).

202. ALI MODEL LAND DEV. CODE § 7-502(1)-(2) (1975).

203. See *id.* §§ 7-502(1), 9-103.

review of the agency's decisions, it fails to require ongoing and institutionalized review of the agency's actions. For example, it is possible that no local residents would disagree with the agency's decision to permit development or be willing to undertake the expense of an appeal. This effectively insulates local decisionmaking.

California's policy favoring local land use control<sup>204</sup> would be better served by more complete review by a State Land Adjudicatory Board. Ongoing review of the agency would help to prevent it from intruding on land use matters of purely local concern and from regulating inconsistently with the state agricultural land plan. The legislature should provide this review by permitting the State Land Adjudicatory Board to initiate its own evaluations of the agency's proposed developmental guidelines and of the agency's review of local developmental plans.<sup>205</sup> This check on the agency's authority should prevent the agency from taking a stronger role in the preservation of the state's agricultural land than the legislature has directed.<sup>206</sup>

This proposal should effectively regulate California's agricultural land to further statewide interests. The state agricultural land agency would create a state agricultural land plan and translate it into workable guidelines directing the creation of local preservation programs. Recognizing that both local governments and the agency may deviate from established state policies, the proposal suggests procedures to review their actions. The result should be the formation of local programs that would carry out the goals of the state agricultural land plan without undue state involvement in individual land use decisions.

#### CONCLUSION

The continuing wasteful and hazardous development of Califor-

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204. See Schroeder, *supra* note 141, at 777-83. See also note 13 *supra*.

205. S.B. 193, Cal. Reg. Sess. § 10, ch. 9 (1977) (as amended Jan. 26, 1978), similarly suggests that an agricultural land regulatory system's appellate body be permitted to initiate appeals.

206. Cf. Hansen, *supra* note 78, at 13 (discussing a similar provision suggested by the California State Board of Food and Agriculture Land Use Subcommittee).

The possibility remains that the appellate board, being a state agency, would give undue weight to the statewide interests sought to be protected by the State Agricultural Land Agency. Thus, the board might uphold state regulations that impinge upon local zoning authority to a greater extent than the statewide interest would justify. To reduce the likelihood that the board would "rubber stamp" such intrusive decisions, the California Legislature should require that local governmental officials constitute a substantial proportion of the board's membership. For example, S.B. 193 suggested that its appeals council be composed of three local officials, three representatives of production agriculture, and three members of the general public. S.B. 193, Cal. Reg. Sess. § 10, ch. 9 (1977) (as amended Jan. 26, 1978). This mix would probably result in decisions more favorable to local government and farming interests than if the council were composed entirely of state officials, planners, or environmentalists. The legislature frequently directs the composition of state boards to ensure the representation of all affected interests.

nia's agricultural land and the persistent failure of the state's local governments to preserve this irreplaceable resource compel the state to take a stronger role in the regulation of agricultural land. The key to a successful program is to tie every state regulatory provision to a specific inadequacy in California's present system of local land use regulation. Any greater state regulation risks wasteful duplication of planning efforts, unnecessary litigation of possible state constitutional obstacles, and resistance of local governments that could prevent the successful implementation of state planning policies.

The agricultural land preservation program that this Article proposes does not solve all of California's agricultural land use problems.<sup>207</sup> Effective protection of Californian farm and rangeland, however, is a realistic goal. The recent efforts of the state Office of Planning and Research indicate that a state agency could conduct comprehensive planning if given adequate financial and political support.<sup>208</sup> Furthermore, each of the provisions that this proposal suggests as a means of implementing state policies have been adopted or proposed in California or other states.

The California Constitution's municipal affairs doctrine will not restrict the implementation of this proposal. The broad impact of agricultural land use decisions and the failure of local governments to control adequately urban sprawl make agricultural land use regulation a matter of statewide interest. The proposal's limitation of the State Agricultural Land Agency's policymaking role through a limited statutory mandate, involvement of local planning policies, and legislative review of the state agricultural land use plan prevents the usurpation of local planning authority on local issues. Moreover, the proposal leaves local governments considerable discretion to carry out local land use policies through local zoning ordinances. Finally, the proposal's appeals board can review the agency's actions to prevent the intrusive overregulation of local zoning that courts might consider an encroachment upon charter cities' municipal affairs.

The inherent shortsightedness and parochialism of local land use policies requires a statewide perspective to assess agricultural needs and solutions. This Article's proposed machinery is designed to ensure that local governments adhere to that perspective.

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207. For example, debate over the manner in which previously agricultural land is developed will continue on the local level.

208. See Roberts, *Urban Strategy*, 9 CAL. J. 183 (June 1974).