210.0005

and finally, the Legislative Analyst's Digests of the bill (AB 2015) stated inter alia both on June 6, 1983 and August 19, 1983:[10]

> "This bill deletes the requirements that aliens be U.S. citizens or legally admitted as permanent residents in order to be classified as a California resident for purposes of tuition or financial aid. The bill places aliens under the same residency requirements as other out-of-state students, except for alien students who are specifically precluded from establishing U.S. residency under federal immigration law. Alien students who would not be eligible for California residency under this bill include illegal aliens and students on temporary student visas." (Emphasis added.)

Accordingly, the legislative history of section 68062, subdivision (h), demonstrates that it was intended only to implement federal law as declared by the United States Supreme Court in Toll v. Moreno, *supra*, 458 U.S. 1, and was not intended to encompass undocumented or illegal aliens. Thus, insofar as the arguments pro and con with reference to the question considered herein may have been said to have been evenly balanced before an examination of the legislative history of Assembly Bill 2015, 1983 Legislative Session, this history clearly tips the scales in favor of the conclusion that section 68062, subdivision (h), does not permit undocumented or illegal aliens to acquire residency for tuition purposes.[11]

We so conclude.

Opinion No. 83-1201—June 5, 1984

SUBJECT: WILLIAMSON ACT CONTRACT PROPERTY—A local government may not approve an alternative use of Williamson Act contract property which is not consistent with its current general plan under the "window" provisions of Ch. 1095 of the Stats. of 1981.

Requested by: MEMBER, CAIFORNIA STATE ASSEMBLY

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Rodney O. Lilyquist, Deputy

The Honorable Robert B. Presley, Member of the California Senate, has requested an opinion on the following question:

Under the "window" provisions of chapter 1095 of the Statutes of 1981, may a local government find at its option that the proposed alternative use of Williamson Act contract property is consistent with either the October 1, 1981, general plan or with

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[10] The bill was enacted on August 29, 1983 and sent to enrollment on such date.

[11] It is possible that this interpretation of the statute raises constitutional issues of equal protection. (See Plyler v. Doe, *supra*, 457 U.S. 202.) We have not been asked and have not considered such questions.

the general plan amended thereafter as a result of proceedings initiated before January 1, 1982?

CONCLUSION

A local government may not approve an alternative use of Williamson Act contract property which is not consistent with its current general plan under the "window" provisions of chapter 1095 of the Statutes of 1981.

ANALYSIS

Section 8 of article XIII of the Constitution states in part:

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

Consistent with this express constitutional grant of authority, the Legislature enacted the California Land Conservation Act of 1965 (Gov. Code, §§ 51200–51294)[1] commonly known as the Williamson Act ("Act"). In general terms, the Act authorizes cities and counties to enter into contracts with owners of agricultural lands to restrict the use of such lands for a minimum of ten years in return for favorable property tax treatment. (§§ 51240–51244.)

In Sierra Club v. City of Hayward (1981) 28 Cal. 3d 840, the Supreme Court reviewed the Act's provisions concerning the cancellation of land contracts. (§§ 51280–51286.) The court found, among other things, that the Legislature intended to impose certain requirements not expressly stated in the statutory scheme. (*Id.*, at pp. 855, 857, 860.)

In response to the Hayward decision, the Legislature enacted chapter 1095 of the Statutes of 1981. (Stats. 1981, ch. 1095, § 8, p. 4254 ["the purpose of this act is . . . to clarify and make the law workable in light of problems and ambiguities created by the California Supreme Court decision in the case of Sierra Club v. City of Hayward, 28 Cal. 3d 840"].) Among the new provisions was a one-time, short-term opportunity to cancel contracts with few conditions or requirements — the so-called "window" opportunity to "let out" dissatisfied landowners surprised by the Hayward decision. (Stats. 1981, ch. 1095, §§ 3–9, pp. 4251–4254; see Widman, The New Cancellation Rules Under the Williamsom Act (1982) 22 Santa Clara L. Rev. 589, 621–632 (hereafter "Widman").)

The question presented for resolution concerns the following "window" language:

> "The board or council may grant tentative approval for cancellation of

[1] All references hereafter to the Government Code are by section number only.

a particular parcel might not reflect the proposed development envisioned by the landowner. In such case the landowner was authorized to terminate the contract and develop the property consistent with an amended general plan. (See Widman, *supra*, pp. 608, 618, 622.)

We find nothing in the legislation, however, to suggest that a contract could be terminated and development approved which was inconsistent with the general plan applicable at the time of the governmental decision. Such a suggestion would be contrary to provisions of the statutory scheme pertaining to general plans. Governmental decisions are to be made in conformity with the current general plan. (See §§ 65567, 65860, 66473.5, 66474; City of Los Angeles v. State of California (1982) 138 Cal. App. 3d 526, 531, 534; Brownds v. City of Glendale (1980) 113 Cal. App. 3d 875, 880; Friends of "B" Street v. City of Hayward (1980) 106 Cal. 3d 988, 998; Hawkins v. County of Marin (1976) 54 Cal. App. 3d 586, 594–595.) Such requisite consistency was the obvious underlying basis for the Legislature's authorizing the amendment exception to the October general plan requirement.

Accordingly, the finding of consistency under the "window" legislation may not be based upon a prior general plan that has been discarded and is no longer in effect. The Legislature simply did not contemplate that a state of inconsistency in decision-making would prevail at the time of development approval.

In answer to the question presented, therefore, we conclude that a local government may not approve an alternative use of Williamson Act contract property which is not consistent with its current general plan under the "window" provisions of chapter 1095 of the Statutes of 1981.

Opinion No. 83-801—June 12, 1984

SUBJECT: ACCREDITATION OF AN OUT-OF-STATE INSTITUTION—Accreditation by a "regional accrediting assocation" other than the Western Association of Schools and Colleges does not satisfy the requirements of Educ. C § 94310(a).

Requested by: SPEAKER, CALIFORNIA STATE ASSEMBLY

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Ronald M. Weiskopf, Deputy

The Honorable Willie Brown, Speaker of the Assembly, has requested our opinion on the following question.

Does an accreditation conferred on an out-of-state institution by a "regional accrediting association" recognized by the United States Department of Education other than the Western Association of Schools and Colleges satisfy the requirements of subdivision (a) of section 94310 of the Education Code?