



STATE BOARD OF EQUALIZATION  
PROPERTY TAX DEPARTMENT  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064  
1-916-274-3350 • FAX 1-916-285-0134  
www.boe.ca.gov

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No. 2016/031

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TO COUNTY ASSESSORS AND INTERESTED PARTIES:

**PROPERTY TAX RULE 51, AGREEMENTS QUALIFYING LAND FOR  
ASSESSMENT AS OPEN-SPACE LANDS**

Board staff has initiated a project to amend Property Tax Rule 51, *Agreements Qualifying Land for Assessment As Open-Space Lands*. Enclosed is a draft of Rule 51 showing the proposed amendments in strike-out and underscore format.

Prior to the passage of Proposition 13 on June 6, 1978, annual assessments of real property were based on current fair market value, and the assessment ratio was less than 100 percent. A succession of amendments to Revenue and Taxation Code<sup>1</sup> section 401 from 1966 through 1971 provided for various assessment ratios of between 20 to 25 percent of the value of real property and Rule 251, *Notice and Application of Assessment Ratio*, required each county to prominently post a notice of that county's assessment ratio in the assessor's office. However, the reference to an assessment ratio was removed from section 401 operative January 1, 1981, and Rule 251 was repealed in 1982 because it was no longer necessary.

Under section 421, real property qualifies for restricted-use assessment pursuant to sections 423 and 426 if the property is subject to an "agreement," pursuant to the California Land Conservation Act of 1965 (Government Code, sections 51200 et seq.), that was entered into prior to November 10, 1969, and that, taken as a whole, provides restrictions, terms, and conditions that are substantially similar or more restrictive than those required by statute for a "contract" executed pursuant to the California Land Conservation Act. Rule 51 implements section 421 by prescribing the provisions that a pre-November 10, 1969, agreement is required to contain for the agreement to provide the required restrictions, terms, and conditions. As relevant here, Rule 51, subdivisions (c) and (d), respectively require that an agreement include a cancellation provision and that the provision require the owner to pay a "cancellation fee" as deferred taxes "which is at least 50 percent of the full market value of the land when relieved of the restriction, as found by the assessor, multiplied by the latest assessment ratio that had been published pursuant to section 251 of this code [(Rule 251)] when the agreement was initially entered into."

As a result, Rule 51, subdivision (d), is being amended to revise the language requiring the cancellation fee to be at least 50 percent of the full market value of the land when relieved of the restrictions multiplied by the "latest assessment ratio that had been published pursuant to

<sup>1</sup> All further statutory references are to the Revenue and Taxation Code, unless otherwise specified.

section 251 of this code when the agreement was initially entered into" and replace the reference to Rule 251 with a reference to Revenue and Taxation Code section 401. The amendments do not affect the calculation of the cancellation fee required under Rule 51, subdivision (d).

Interested parties are encouraged to participate in the rulemaking process for Rule 51. Suggested revisions to the draft, in the form of alternative text, should be provided to Glenna Schultz at [glenna.schultz@boe.ca.gov](mailto:glenna.schultz@boe.ca.gov) or mailed to the above address by Friday, October 14, 2016. Upon reviewing the submitted suggestions, it is anticipated that this project will proceed as follows:

- If necessary, staff will meet with interested parties to discuss the language for the rule.
- The Board will hear presentations on issues regarding the language for the rule and vote to place the rule into the formal rulemaking process.

All documents regarding this project will be posted on the Board's website at [www.boe.ca.gov/proptaxes/otherprojects16.htm](http://www.boe.ca.gov/proptaxes/otherprojects16.htm). If you have questions regarding this project, you may contact Ms. Schultz at 1-916-274-3362.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee  
Deputy Director  
Property Tax Department

DRK:grs  
Enclosure

## **Rule 51. Agreements Qualifying Land for Assessment As Open-Space Lands.**

*Authority:* Section 15606, Government Code.

*Reference:* Article 1.5, Chap. 3, Part 2, Div. 1 Section 401, Revenue and Taxation Code.

An agreement made pursuant to the Land Conservation Act of 1965 prior to November 10, 1969, qualifies for restricted-use assessment pursuant to sections 423 and 426 of the Revenue and Taxation Code if, taken as a whole, it provides restrictions, terms, and conditions which are substantially similar to or more restrictive than those which were required by such act for a contract at the time the agreement became effective or which have subsequently been made less restrictive by the Legislature.

**(a) MANDATORY PROVISIONS.** The agreement must contain provisions at least as restrictive as the following:

(1) An initial term of years sufficient to make the agreement effective for ten successive lien dates and an annual renewal date at which time another year is automatically added to the term unless a notice of nonrenewal is given prior to such date.

(2) An exclusion of uses for the duration of the agreement other than agricultural uses and compatible uses as defined by the Land Conservation Act, the agreement, or the resolution establishing the agricultural preserve in which the property is located.

(3) A provision making the agreement binding upon and inuring to the benefit of all successors in interest of the owner.

**(b) DISQUALIFYING PROVISIONS.** An agreement in order to qualify for restricted use assessment must not contain any of the following:

(1) A provision purporting to bind the assessor to a particular assessment formula.

(2) A provision nullifying the agreement by reason of the owner's death or factors arising because of his death.

**(c) CANCELLATION.** The agreement may contain a cancellation provision as to all or part of the land if the following procedures are required under the terms of the agreement:

(1) Cancellation by mutual agreement, which may consist of a request by the owner and the approval by the board of supervisors or city council of the cancellation.

(2) A public hearing before the board or council.

(3) Notice of hearing by mail to each owner in the agricultural preserve of land under contract or agreement and publication of notice pursuant to section 6061 of the Government Code, provided, however, that a county or city may provide for such notice by ordinance instead of incorporating this requirement in the agreement.

(4) Findings by the board or council that cancellation is not inconsistent with the purposes of the Land Conservation Act of 1965 and is in the public interest.

The existence of an opportunity for another use of the land shall not be sufficient reason for cancellation. A potential alternative use of the land may be considered only if there is no proximate land not subject to a Land Conservation Act contract or agreement suitable for the use to which it is proposed the subject land be put. The uneconomic character of an existing agricultural use shall not be sufficient reason for

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cancellation. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

**(d) CANCELLATION FEE-WAIVER OR DEFERRAL.** A provision for cancellation of the agreement must carry with it a cancellation fee payable by the owner to the county treasurer as deferred taxes which is at least 50 percent of the full market value of the land when relieved of the restriction, as found by the assessor, multiplied by the ~~latest~~ assessment ratio in effect, pursuant to Revenue and Taxation Code section 401, on the date that had been published pursuant to section 251 of this code when the agreement was initially entered into. The determination of unrestricted value may be made the subject of an equalization hearing.

The agreement may provide for waiver or deferral by the board of supervisors or city council and may authorize the board or council to make the waiver or deferral contingent upon future action of the landowner if the agreement provides for a lien on the subject land securing the performance of the act upon which the waiver or deferral is made contingent. Waiver or deferral of the cancellation fee or a portion thereof may be allowed by the agreement if the waiver is subject to these findings by the board or council:

(1) It is in the public interest and the best interests of the program to conserve agricultural land that such payment be waived or deferred.

(2) The reason for the cancellation is an involuntary transfer or involuntary change in the use of the land and the land is not suitable and will not be immediately used for a purpose which produces a greater economic return to the owner.

**(e) OTHER PROVISIONS.** If an agreement contains a clause relating to any of the following subjects, it may do so only under the conditions stated:

(1) A provision nullifying the agreement at or immediately before the time an action in eminent domain is filed or land is acquired in lieu of eminent domain (a) if the fee title, or other interest less than fee which would prevent the land from being used for agricultural or compatible uses, is being condemned and (b) if the agreement is nullified only as to land actually condemned or acquired or as to such land and a remaining portion that is rendered unsuitable for agricultural or compatible uses.

(2) A provision requiring the payment of liquidated damages by the landowner in case of breach of the agreement if this remedy does not impair enforcement of the agreement by injunction or specific performance.

(3) A provision cancelling or terminating an agreement upon annexation of the subject land by a city if the land was within one mile of the city at the time the agreement was initially executed, the city protested the execution of the agreement pursuant to section 51243.5 of the Government Code, and the city states its intent not to succeed in its resolution of intention to annex.

**(f) SUBSTANTIAL SIMILARITY.** An agreement having a provision which is more restrictive than required by the Land Conservation Act of 1965 for a contract may qualify even though it is deficient in some other respect. The mandatory provisions of subparagraph (a), however, are minimum requirements which if deficient cannot be compensated for from some other source. Similarly, the disqualifying provisions of subparagraph (b) are such a substantial departure from the statutory provisions for a contract that their existence cannot be offset by other more restrictive provisions. A deficiency in the procedures set forth in subparagraphs (c) and (d) or in the conditions in subparagraph (e) may be compensated for by other more restrictive provisions except that, with respect to subparagraphs (c) and (d), an agreement that contains a cancellation provision cannot dispense with basic requirements of (1) a public hearing on a

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cancellation request of which the public is given notice and (2) findings by the board or council based on the evidence.

An agreement that does not allow a county or city to waive the cancellation fee under any circumstances is more restrictive than the requirements of the Land Conservation Act for a contract. Such an agreement is substantially similar to a contract even though it also allows a reduction of the cancellation fee after notice of nonrenewal has been given by the proportion that the number of whole years remaining until expiration of the agreement bears to ten.

**(g) EFFECTIVE DATE.** This rule shall be effective from and after March 1, 1971.

*History:* Adopted February 17, 1970, effective March 26, 1970.