

SPECIAL TOPIC SURVEY

ASSESSMENT OF PROPERTIES UNDER CALIFORNIA LAND CONSERVATION ACT RESTRICTIONS

1997

CALIFORNIA STATE BOARD OF EQUALIZATION

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PREFACE

The State Board of Equalization is required by law to periodically audit the assessment programs in each of the 58 California counties. The results and recommendations arising from these field and office audits are published in assessment practices survey reports. In addition, the Board makes periodic statewide surveys limited in scope to specific topics, issues, or problems affecting local property taxation. These special topic surveys, authorized by sections 15640 and 15643 of the Government Code, are conducted as needed. The findings of these selective surveys are published and distributed to the Legislature, all county assessors, the Members of the Board, and Board staff who are involved with the particular survey issue. Copies of these surveys are also available to concerned individuals in the private sector.

The subject of this special topic survey is the Assessment of Properties Under California Land Conservation Act Restrictions. The goals of this report are to identify the laws pertaining to the assessment of these properties, present the Board's position regarding implementation of these legal provisions, and to identify and standardize county assessment practices. This special topic survey was authorized by the Members of the Board of Equalization on August 22, 1996.

In 1980, the Board conducted a special topic survey on agricultural properties under California Land Conservation Act contracts. This report supplements our earlier survey and updates legislative changes and county assessor practices that have occurred since 1980.

The primary source of information regarding current assessment practices used in the county assessors' offices was a questionnaire containing 33 questions which was sent to each of the 58 county assessors. Of the 47 counties where California Land Conservation Act properties exist, 39 of the assessors participated in this survey.

This report was written by staff of the Policy, Planning, and Standards Division of the Property Taxes Department. We wish to express our appreciation for the efforts and cooperation of Honorable John A. Winner, Assessor of El Dorado County, Chairman of the Standards Committee of the California Assessors' Association

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CHAPTER 1: INTRODUCTION

The California Land Conservation Act (CLCA) is the state's premier open-space agricultural land conservation program. CLCA contracts cover nearly 16 million acres, and include one half of the state's land in agricultural use and more than one half of its prime farmland. The contracts provide lower property taxes for agricultural lands to encourage continued agricultural operations. Local governments are reimbursed for tax losses through subvention payments of \$34 million annually.

In 1975, the Board first issued Assessors' Handbook Section 521A, *The Valuation of Open-Space Property*. The AH 521A was developed to provide guidance to county assessors with the goal of promoting statewide uniformity in the assessment of property under CLCA contracts.

Several issues have combined to warrant a statewide survey of county assessors' practices with respect to open-space property:

- Landowners are concerned about the proper administration of the preferential assessment treatment afforded them under the CLCA.
- Economic conditions impacting the valuation formula applied to property under the CLCA may impact the viability of the program itself by lessening the incentive for landowners to renew existing CLCA contracts or enroll in new ones.
- A special advisory committee, formed by the Governor primarily to review CLCA land use issues, further underscores the need for the Board to review implementation of the CLCA in the arena of local assessment practices.

In 1980 the Board conducted a special topic survey on county assessors' practices with respect to property under CLCA contracts. The stated purpose of the 1980 survey was "to help achieve a higher degree of uniformity among the county assessors' offices through improved assessment practices in the administration of the Land Conservation Act program."

Since the 1980 survey, several issues have combined to warrant a fresh look at the assessment practices being applied to open-space property in California. First, the magnitude of the tax relief that landowners receive in exchange for contracting with local planning agencies to restrict the use of their property has diminished over time. That loss in tax benefits stems primarily from a trend that has seen interest rates fall, affecting the statutorily prescribed interest component of the formula used to capitalize incomes into assessed value. Although it is reasonable to conclude that falling interest rates have *generally* reduced landowners' tax relief, policy makers need hard data in order to make well-founded decisions about the future implementation of the CLCA.

A second issue contributing to the need for a review of open-space land assessment practices is the increased risk of adequate water deliveries to major agricultural regions in the state. Since the above-mentioned capitalization formula includes a component to recognize a landowner's

risk of receiving projected rents, that issue could be expected to have a direct bearing upon assessors' valuations, and thus upon the treatment of landowners under the CLCA. However, hard data have not been gathered on the actual practices of county assessors with respect to the relationship between decreased water availability and the risk component of the statutorily prescribed capitalization rate.

Related issues deserving of review since the 1980 survey include:

- Interpretation and definition of the appraisal term "highest and best use" as it applies to CLCA properties.
- Determination of economic lives used to value perennials.
- The proper determination of a homesite both as to size and date of valuation.
- Determination of the property's value to be used in calculating the cancellation fee.
- Questions regarding application of the compatible use principle.

Additionally, in June of 1995, Governor Wilson formed the Governor's Williamson Act Advisory Committee. The committee, co-chaired by the Secretaries of the Resources Agency and the Department of Food and Agriculture, was formed to review a number of issues related to the implementation of the CLCA, including (1) qualified land uses, (2) patterns of contract termination at the local level, (3) local land division patterns, and (4) shrinking tax benefits. The formation of the Governor's committee highlights the need for a current review of all aspects of CLCA implementation, including local assessment practices.

CHAPTER 2: BACKGROUND OF CLCA PROPERTY

HISTORY

In 1965 the Legislature enacted the California Land Conservation Act (Williamson Act)¹ in an effort to preserve agricultural lands for the production of food and fiber and to discourage noncontiguous urban development. The law was an attempt to stop or at least to slow down the increase in real property taxes on farmland by providing methods for restricting land use to agricultural purposes. By itself, the original California Land Conservation Act of 1965 could not assure limitations on the assessed value of land restricted to agricultural use because the Constitution required that assessments be based upon market value. However, in the 1966 general election the electorate approved a constitutional amendment (now article XIII, section 8 of the California Constitution) that enabled the Legislature to prescribe assessment procedures not based upon market value for certain open-space lands.

Since the 1966 constitutional amendment, the Legislature has added sections to the Revenue and Taxation Code² prescribing the assessment procedures for open-space lands. Among other things, these sections define open-space enforceable restrictions, prohibit the use of sales in the appraisal of land subject to these restrictions, require that open-space lands be appraised on the basis of income, and prescribe the method for determining the applicable capitalization rate.

Under the Williamson Act, landowners may enter into contracts with participating cities and counties to restrict their lands to agricultural or open-space uses. The contract must be for a minimum term of 10 years, and contracts are automatically renewed every year unless other action is taken.³ In exchange for entering into these contracts, for property tax purposes, the owner's contracted land is valued according to a legislated formula that capitalizes the income that the land is capable of producing from agricultural and other compatible uses.⁴ The law also provides that if in any year the legislated-formula value (Williamson Act value) exceeds the value the property would have been assessed at under Proposition 13,⁵ then the Proposition 13 value becomes the taxable value for that year. In this way, landowners participating in the Williamson Act program are guaranteed that their land will never be taxed at a greater value than noncontracted land.

¹ See Appendix 2 for the complete text of the Williamson Act.

² Revenue and Taxation sections 421 through 430.5. See Appendix 2 for the text of these sections.

³ Contracts can be terminated through nonrenewal (a nine year phaseout process), cancellation (immediate with payment of a penalty), eminent domain, and city annexation under certain circumstances.

⁴ Land subject to a wildlife habitat contract is valued by way of comparable sales, not the income approach. See Revenue and Taxation Code section 423.7.

⁵ The taxable value for Proposition 13 purposes would be the lesser of the property's current market value or its factored base year value. A property's factored base year value is its market value as of the 1975 lien date, the date on which a purchase or change in ownership occurs, or the date on which new construction is completed. The base year value becomes a permanent control figure that increases annually by an inflation factor not to exceed 2 percent.

ACREAGE AND ASSESSMENT BENEFITS

As of 1994, 15.9 million acres were enrolled in the Williamson Act program.⁶ This represents about 52 percent of all farmland in California.⁷ Of this enrollment, roughly one third, 5.6 million acres, are considered prime land, and the remaining two thirds, 10.3 million acres, are considered non-prime grazing lands. The Department of Conservation's published data show that for the 1994-95 assessment year the majority of landowners participating in the program received some amount of property tax benefit. In that year, the Williamson Act value (restricted value) equaled or exceeded the Proposition 13 value on 7 percent of the prime land and on only 0.5 percent of the non-prime land.⁸

Based on Conservation's 1994-95 data, the 39 counties responding to our survey account for roughly 83 percent of all land in the state subject to Williamson Act contract. These counties contain approximately 78 percent (4,429,310 acres) of all prime land under contract statewide, and 86 percent (8,782,618 acres) of all contracted non-prime land. In 1994-95, only 422,855 acres (3.3 percent) under contract in these counties were assessed at a Proposition 13 value rather than at a Williamson Act value. In 1996-97, the amount of land in these counties assessed at a Proposition 13 value declined to just over 369,000 acres. Thus, for the 1996-97 assessment year over 97 percent of the Williamson Act acreage in these counties received an assessment benefit.

Twenty seven counties responding to our survey were able to provide data on the assessed value reduction realized in their county due to the Williamson Act.⁹ The total assessed value reduction for these counties in the 1996-97 assessment year is approximately \$7.1 billion, or a property tax revenue reduction of about \$74 million based on each county's average tax rate. The most recent comprehensive data regarding the statewide tax benefits received by Williamson Act property owners can be found in a 1989 study sponsored by the California Department of Conservation and performed by the University of California.¹⁰ The study found that for the 1988-89 fiscal year, the Williamson Act reduced property tax revenue statewide by about \$120 million--a statewide reduction in assessed value of about \$12 billion.

OPEN-SPACE SUBVENTIONS

The Open-Space Subvention Act¹¹ was passed in 1971 to provide a means for replacing a portion of the property tax revenue loss experienced by local governments participating in the Williamson Act program. Under the Act, state payments are made to local governments for

⁶ *The California Land Conservation (Williamson) Act, 1993 to 1995 Status Report*, California Department of Conservation.

⁷ Source: *California Statistical Abstract*, California Department of Finance; there are 30.6 million acres of farmland in California.

⁸ For this discussion, acreage assessed at Proposition 13 value does not include acreage undergoing nonrenewal and assessed pursuant to Revenue and Taxation Code section 426.

⁹ The value reduction being the difference between the Williamson Act value enrolled for tax purposes and the Proposition 13 value that would have been enrolled absent the property's participation in the Williamson Act program.

¹⁰ Source: *Land in the Balance: Williamson Act Costs, Benefits, and Options*.

¹¹ Sections 16140 through 16154 of the Government Code.

eligible land enrolled under Williamson Act contract. The payments are made at a rate of \$5.00 per acre for land defined as prime under the Williamson Act, and \$1.00 per acre for other (non-prime) land. Payments are made only on land assessed under sections 423, 423.3, and 423.5 of the Revenue and Taxation Code. Land assessed under Revenue and Taxation Code sections 110 (current market value) or 110.1 (factored base year value) is not eligible for subvention payments because these values are lower than the Williamson Act value. Additionally, land in the process of being removed from the Williamson Act by way of the nonrenewal process is likewise not eligible for subvention payments.

For the 1996-97 fiscal year, state subventions for Williamson Act property will approximate \$36 million. Although it is not known what percentage of foregone property tax revenue subventions replace on a statewide basis, we can derive some conclusions from our survey results. As noted earlier, foregone property tax revenue for 27 counties participating in this survey will be about \$74 million for fiscal year 1996-97. At the same time, these counties will receive about \$24.4 million in subventions from the state in fiscal year 1996-97. However, roughly \$47 million of this \$74 million loss is attributable to school districts, and this loss is reimbursed by the state pursuant to the school funding formula. Therefore, the state is subvening to these 27 counties an amount sufficient to replace approximately 90 percent of the \$27 million property tax revenue loss experienced by counties, cities, and special districts.

PARTICIPATING COUNTIES

Forty-seven of the 58 California counties have established CLCA agricultural preserves and made contracts with property owners within those preserves. The 11 counties not participating are Alpine, Del Norte, Imperial, Inyo, Los Angeles, Merced, Modoc, Mono, San Francisco, Sutter, and Yuba.

CHAPTER 3: RESULTS OF QUESTIONNAIRE

LIMITING CONDITIONS

We caution the reader that a questionnaire sometimes can be misunderstood and that inappropriate answers to questions may be unintentionally submitted. Information found to be inconsistent with information from earlier years has been rechecked to make sure the questions were understood and that the best possible answers given. In some instances, we telephoned county assessors' offices and talked with persons who had collected the data to answer the questions posed. Overall, the assessors' responses to the Board's questionnaire was candid and offered in a cooperative spirit.

There is confusion over the interchangeable use of the terms "open space," "Williamson Act," "California Land Conservation Act (CLCA)," and "contract." It is our intent to consider only land and improvements (living and nonliving) enforceably restricted in use by CLCA contracts. However, some counties offer reduced assessment to owners who agree to limit the use of land to uses specified in local open-space zoning ordinances. While these lands often are appraised according to the requirements of the California Land Conservation Act, they are not subvended by the state and we do not consider them in this report.

ASSESSMENT APPEALS

We asked assessors to indicate how many assessment appeals had been filed since 1992 on Williamson Act property in their county. Thirty-seven of 39 assessors provided responses, which are tabulated below.

Number of Counties	Number of Appeals Filed Since 1992
15	None
8	1 to 5
3	6 to 10
4	11 to 20
3	25 to 40
2	65 to 95
2	over 200*

*The majority of these appeals resulted from mass filings by tax representatives. A large number of these appeals were subsequently withdrawn.

Considering the large amount of acreage under Williamson Act contract statewide, there have been a relatively small number of appeals filed over the last five years. This tends to suggest

that, for the most part, taxpayers participating in the Williamson Act program are reasonable satisfied with the assessment practices employed by the assessors in valuing their property.

SECTION 423.3 OF THE REVENUE AND TAXATION CODE

Revenue and Taxation Code section 423.3 defines four categories of land restricted by the Williamson Act and allows a city or county to limit assessments of land in each category to a value no higher than a given percentage of the property's factored base year value as if unrestricted. In this way landowners are guaranteed some minimal level of tax benefit even in situations where their property's base year value is less than its Williamson Act value. These situations are most likely to occur for properties having older base year values and properties on which high value crops are grown.

Six of 39 assessors indicated that section 423.3 is used in their county. Reasons cited by these assessors for the implementation of section 423.3 include the erosion of tax benefits to landowners since the passage of Proposition 13, and the belief that landowners should be guaranteed some tax benefits for enrolling their land in the Williamson Act.

THE CAPITALIZATION RATE

The restricted value of Williamson Act land is indicated when the annual net income is divided by the proper capitalization rate.¹² The statutorily prescribed rate¹³ is comprised of three components: yield, an allowance for property taxes, and a risk component. A fourth component for the amortization of any investment in perennials is necessary when valuing living improvements subject to Williamson Act restrictions. The yield component is the arithmetic mean, rounded to the nearest 1/4 percent, of long-term United States government bonds as of September 1 for the five years preceding the assessment year. The tax component is the appropriate tax rate and the recapture component reflects the amount that must be recaptured annually to recover the investment in the living improvements over their economic life. The risk component is usually the property tax appraiser's best estimate of the probability that the estimated income stream will not be sustained.

¹² We refer the reader to Assessors' Handbook Section 521A, *The Valuation of Open-Space Property*, for an in-depth discussion on the capitalization of income process as it applies to open-space property.

¹³ See Revenue and Taxation Code section 423(b).

THE RISK COMPONENT

Revenue and Taxation Code section 423(b)(2) requires that a risk component be included as a portion of the capitalization rate and that this component “shall be a percentage determined on the basis of the location and characteristics of the land, the crops to be grown thereon and the provisions of any lease or rental agreement to which the land is subject.” While the statute lists the elements that must be considered in the risk component, it provides no method of measurement for this component. In actuality, a risk rate or component can only be measured from market data, and the use of market-derived rates is specifically forbidden by law; therefore, the appraiser must rely on judgment when estimating this component.

Questions 15, 16, and 17 dealt with the issue of risk. Question 15 requested information on specific risk components employed by assessors. The data were requested by land use-type (dry grazing, irrigated pasture, row crops, and trees and vines) and by type of income analysis used to determine the property’s economic income (cash rent, share rent, and owner-operator return). A summary of the responses to question 15 is displayed in the following tables. The data show a diverse array of risk rates; this survey provided no means to determine the reasons for this divergence.

Since some counties use more than one method of income analysis for a specific use-type, the number of responses in a specific table may exceed the total number of counties reporting this use-type.

RISK COMPONENT FOR GRAZING LANDS

Risk Component Used	Cash Rent (No. of Counties)	Share Rent (No. of Counties)	Owner-Operator (No. of Counties)
0.25%	6		
0.30% - 0.50%	2		
0.50%	20		3
0.75%	2	1	
1.0%	9		1

(39 counties reported this use-type)

RISK COMPONENT FOR IRRIGATED PASTURE LANDS

Risk Component Used	Cash Rent (# of counties)	Share Rent (# of counties)	Owner-Operator (# of counties)
0.25%	3		
0.30% - 0.50%	1		
0.50%	18		3
0.75%	2	1	
1.0%	10		
2%	2		1

(36 counties reported this use-type)

RISK COMPONENT FOR ROW CROP LANDS

Risk Component Used	Cash Rent (No. of Counties)	Share Rent (No. of Counties)	Owner-Operator (No. of Counties)
0.25%	2		
0.50%	13	4	2
0.75%	2	1	
1.0%	7	2	1
1.25%	1		
2.0%	2		

(30 counties reported this use-type)

RISK COMPONENT FOR TREES AND VINES

Risk Component Used	Cash Rent (No. of Counties)	Share Rent (No. of Counties)	Owner-Operator (No. of Counties)
0.25%	1		
0.50%	3	2	1
0.75%	1	1	
0.76 - 0.99%			1
1.0%	1	3	2
1.5%	1	4	1
2.0%	3	5	2
2.5%		1	1
3.0%	1	1	1
5.0%			1

(30 counties reported this use-type)

The rates shown in the above tables represent the typical risk components used in the counties. Eleven of the 39 assessors indicated there are instances when they deviate from the typical risk component established for their county. Reason cited by the assessors for these deviations include risk of flood, uncertainty of water availability, and risk of salt intrusion on the land due to its proximity to the delta. Some assessors also vary the risk component when capitalizing the income stream attributable to commodities having a high degree of production or price volatility or having an uncertain market history, such as exotic or experimental crops.

In addition to those assessors who vary the typical risk component to account for unique situations, six assessors reported they account for risk by making adjustments to a property's imputed income. Thirty-two assessors do not make any adjustments to a property's income stream to account for risk; and one assessor did not respond to the question.

Only eleven of the 39 assessors indicated instances where they use more than one method of estimating the income (cash rent, share rent, owner-operator return) for a specific use-type (grazing, irrigated pasture, row crop, living improvements). Of these eleven assessors, only one varies the risk due to the method used to determine the economic income. For comparison purposes, in our 1980 special topic survey on Williamson Act property, nine assessors reported varying the risk component on the basis of the type of rent used in the appraisal.

ESTIMATING INCOME STREAMS

There are three basic methods for determining the economic income that is to be capitalized into the restricted property value: cash rent analysis, share rent analysis, and owner-operator return analysis. Cash rent is the rent in cash that the land owner demands in exchange for the use of his or her land for a specific period of time. When sufficient rental data are available, cash rent analysis is generally the simplest and most accurate method of determining a property's

economic rent because it usually requires the fewest adjustments when determining the net income attributable to the property. Share rent is the rent in terms of the percentage of the crop that the land owner demands for the use of his or her land for a specified period of time. When using a share rent analysis, the appraiser must estimate the average production, the projected price for each crop grown, and the proper percentage share.

The owner-operator return analysis is the third method of determining a property’s economic income. This method involves estimating the economic gross return from a farm and subtracting all expenses to determine net income. The method is cumbersome to use since every item of income and expense for every farming operation (labor, material, and machinery) must be detailed. The owner-operator return analysis is the least desirable of the three methods and should only be used in situations where sufficient cash or share rent data are not available.

Questions 14, 18, 19, 20, and 21 dealt with estimating a property’s economic income. The responses to the questions revealed that cash rents are by far the most frequently used method of estimating economic income. All 39 assessors reported using some cash rents to estimate economic income for grazing properties, with 34 assessors indicating that cash rents are used exclusively. A similar situation can be seen for irrigated pasture lands; 31 of 36 assessors use only cash rents and the other five assessors use some cash rents. Twenty-one of 30 assessors with row crop land in their county reported using only cash rents for this use-type, and 8 of 30 assessors with trees or vines in their county indicated cash rent analysis was the only method used to estimate the property’s income. The following table provides a breakdown by use-type of the methods used by counties to estimate economic income.

Use-Type	Method of Estimating Income
Grazing	34 counties -- cash rents 1 county -- cash rents and share rents 4 counties -- cash rents and owner-operator
Irrigated Pasture	31 counties -- cash rents 1 county -- cash rents and share rents 4 counties -- cash rents and owner-operator
Row Crop	21 counties -- cash rents 3 counties -- share rents 3 counties -- cash rents and share rents 2 counties -- cash rents and owner-operator 1 county -- all three methods
Trees and Vines	8 counties -- cash rents 12 counties -- share rents 3 counties -- owner-operator 1 county -- cash rents and share rents 2 counties -- cash rents and owner-operator 4 counties -- share rents and owner-operator

When using cash rents to estimate the potential income attributable to land, 24 of 39 assessors project the income based on an analysis of the prior year's cash rents for comparable property. Six assessors indicated they use a straight average of several years' income, and seven assessors use a weighted average of prior years' income to estimate potential income. Two assessors indicated they compute both a straight average and a weighted average, then project a potential income to the property based on this information. Of the 11 counties using cash rents to project the potential income attributable to trees and vines, two counties project the income based on the prior year's income data, two counties use a straight average of several years' income, and 7 counties rely on a weighted average of prior years' income.

In order to use a share rent analysis to determine a property's potential income, the appraiser must estimate the average production and the projected price for each crop grown. The survey results indicated that the most frequently used method for estimating commodity price and production is with a weighted average of several years' data.

SOURCES OF DATA

The assessors utilize various sources for collecting and updating the data necessary to perform the annual valuation of Williamson Act property. Most assessors indicated they refer to the local agricultural commissioner's annual crop report for commodity production and price figures. In addition, many assessors use data contained in various other published reports to update their production and price figures. Frequently cited sources included the *Final Grape Crush Report* and the *California Fruit and Nut Statistics*,¹⁴ both issued by the California Department of Food and Agriculture. Assessors also conduct interviews with local growers, local packing operations, and lending institutions to collect information.

In addition to the above sources, the majority of assessors, 32 of 39, send questionnaires to owners of property subject to Williamson Act contract seeking specific rental data necessary to perform the appraisals of these properties. The responses to our survey suggest that many assessors are having difficulty getting owners to return the questionnaires. And even when questionnaires are returned, they oftentimes are completed in such a way as to provide no useful information for the appraisal staff. This severely hampers the efforts of the assessors to perform accurate appraisals. The table below shows the percentage of questionnaires returned to assessors, and the percentage of returned questionnaires that provide data that is useful to the assessors' appraisal staff.

¹⁴ Discussions with the Department of Food Agriculture indicate that this report is now published in their *California Agricultural Resource Directory*.

Percentage of Questionnaires Returned	Percentage of Returned Questionnaires That Contain Useful Data
50% or less -- 8 counties	50% or less -- 13 counties
51% to 75% -- 16 counties	51% to 75% -- 7 counties
76% to 89% -- 5 counties	76% to 89% -- 4 counties
90% or above -- 3 counties	90% or above -- 8 counties

COMPATIBLE USE

Most of the income generated by Williamson Act properties is from agricultural enterprises, but there are many properties for which a return from a compatible use increases the income to be capitalized. Generally, the assessor must assume that any use allowed by a contract approved by the county administration is a compatible use. When income generated by a compatible use is attributable to the land, it must be capitalized in the manner specified for restricted properties.

We asked assessors to indicate if compatible use is an issue in their county, and if so, what are the issues. Fourteen of 39 assessors noted that compatible use was an issue in their county. However, only a couple of the assessors indicated that the issue with compatible use involved valuation concerns. The majority of the 14 assessors indicated their problems or concerns with compatible use stem from the uses that are being deemed compatible and therefore permitted on contracted land. Assessors cited golf courses, offices, race tracks, and airstrips as uses that are being permitted on land subject to Williamson Act contract.

The determination of what constitutes a permissible compatible use on Williamson Act land is something over which neither the Board nor assessors have control.

HIGHEST AND BEST USE

Property must be appraised on the basis of its use or uses. The principle that must be followed when making market value appraisals is that all property is appraised on the basis of the highest and best use, based on market perceptions of potential uses. A market value appraisal requires the determination of a property's highest and best use, and an appraiser must make this judgment before proceeding with the appraisal process.

Revenue and Taxation Code section 430 provides the statutory guidance concerning the application of the highest and best use concept as it applies when establishing a property's restricted value. This section states:

“There shall be a rebuttable presumption that the present use of open-space land which is enforceably restricted and devoted to agricultural use is its highest and best agricultural use.”

In other words, the present use of the land and income generated by this use must be considered appropriate for appraisal purposes unless the appraiser can demonstrate by substantial evidence that the presumption is not warranted.

Question 25 concerned the issue of highest and best use. We asked assessors to indicate how often they impute an agricultural use to Williamson Act property that is different from its actual use. The responses to this question indicated that in the overwhelming majority of cases the assessors are considering the actual use of the land to be its highest and best use when determining the property's restricted value. Only a few assessors responded that they ever impute a use to Williamson Act land that is different from its actual use.

LIVING IMPROVEMENTS

Thirty of the 39 counties participating in the survey indicated they have trees and vines in their county subject to Williamson Act contract. We asked respondents to indicate what income premise they use to value these improvements (Question 24). Eleven counties indicated the straight-line declining income premise is used, while the other 19 counties use either the inclining-level-declining income premise or the inclining-level-terminal income premise.

In capitalizing the income earned by living improvements, the appraiser should use the capitalization premise that most closely matches the shape of the income stream being capitalized. As outlined in Assessors' Handbook Section 521A, *The Valuation of Open-Space Property*, all living improvements have a similar life cycle: (1) a period of development when production initiates and rises; (2) a period of maturity when production remains relatively stable; and (3) a period of decline when production drops as the improvements near the end of their productive lives. Using a straight-line declining premise to discount such a cash flow does not reflect the actual shape of the income stream, and hence the capitalized value of the vineyard or orchard is distorted. As outlined in the handbook, the Board advocates a three-part approach for valuing living improvements: an increasing annuity, a level annuity, and finally a period of straight-line decline.

The straight-line declining income premise assumes the income (and thus the value) will decline each subsequent year until the end of the improvement's economic life. While there may be occasions when the use of this premise is proper for valuing living improvements, such as with improvements inflicted with disease or improvements in the latter part of their productive life, we do not believe that the exclusive use of this premise is appropriate. The use is, in most cases, inappropriate for the valuation of vineyards and orchards under Williamson Act contract. This is particularly true for young vineyards and orchards that are at or have not yet reached their prime. The shape of the future income stream for such living improvements is not likely to be straight-line declining.

RESIDENTIAL SITES

The statutory provisions for the treatment of residential sites (homesites) on Williamson Act lands can be found in section 428 of the Revenue and Taxation Code, which states:

“The provisions of this article shall not apply to any residence, including any agricultural laborer housing facility as provided for in Sections 51220, 51231, 51238, and 51282.3 of the Government Code, on the land being valued or to an area of reasonable size used as a site for such a residence.”

From this it is clear that homesites located on a restricted property are to be valued according to the provisions of article XIII A, rather than by the capitalization of income method. This, in turn, requires the assessor to make three determinations when a restricted property contains a residential homesite. The assessor must:

- (1) Estimate a reasonable site size for any qualifying residences
- (2) Determine the base year of the homesite
- (3) Establish a market value of each qualifying site

Questions 26 through 29 of the survey dealt with the issue of homesites. Question 26 asked respondents to indicate the typical size assigned to homesites in their county. The vast majority of assessors, 30 of the 39, indicated they assign a size of one acre to homesites. The responses of all 39 counties is summarized in the following table. These figures represent the size of a typical homesite, and it should be noted that nearly all the assessors indicated they would deviate from the typical size if the actual homesite exceeded the standard size.

Homesite Size	0.5 to 1 acre	1 acre	0.5 to 2 acres	2.5 acres	1 to 5 acres
No. of Counties Using This Size	2	30	4	1	2

When a new homesite is developed on a restricted property, the appraiser must determine the appropriate base year of the new site. The Board’s position, as expressed in AH 521A, is that the base year of the homesite will be the same as the base year of the larger parcel on which the site is located. The survey indicated that a majority of assessors are following the Board’s guidelines in this matter. Thirty-six of the 39 responding assessors indicated that newly created homesite in their county are assigned the same base year as the larger parcel on which the site is located. Three assessors assign a base year to the new site that reflects the year in which the site is completed.

Twenty-eight of 39 assessors responded that they value homesites based on the value of similar homesites in the vicinity which are separate parcels. Three assessors value homesites based on the amount indicated by the per-acre value of the larger property on which the homesite was developed. Five assessors indicated they use a discounted value of similar homesites in the area that are separate parcels. Three assessors try to determine what value the homesite contributes to the entire property by use of a sales residual technique. The assessors responses are tabulated below.

METHOD OF DETERMINING HOMESITE VALUE

Based on the Value of Homesites that are Separate Parcels	Based on the Same Per-Acre Value of the Larger Parcel	Based on the Discounted Value of Separate Parcel Homesites	Based on the Contribution Value of the Homesite Via a Sales Residual Analysis
28 Counties	3 Counties	5 Counties	3 Counties

CHAPTER 4: CONCLUSIONS

- The majority of property enrolled in the Williamson Act program continues to receive some degree of assessment benefit. For counties participating in this survey, only 2.8 percent of contracted land has a restricted value that is equal to or exceeds its Proposition 13 value for the 1996-97 assessment year.
- Twenty-seven counties were able to provide data on countywide assessed value reductions associated with Williamson Act property. The foregone property tax revenue for these counties is approximately \$74 million, of which roughly \$27 million is attributable to counties, cities, and special districts. The state subvenes about \$24.4 million to these counties via the Open-Space Subvention Act, or an amount sufficient to replace 90 percent of the revenue loss experienced by the counties, cities, and special districts.
- Considering the large amount of acreage under Williamson Act contract statewide, there have been a relatively small number of appeals filed over the last five years according to data provided by the responding counties. This tends to suggest that, for the most part, taxpayers with property in the Williamson Act program are satisfied with the assessment practices employed by the assessors in valuing their property.
- The majority of assessors send questionnaires to owners of Williamson Act property seeking specific data necessary to value these properties. However, many property owners fail to return the questionnaire, thereby denying the assessor the information necessary to accurately value these properties. One solution to this problem would be to make it mandatory for owners of restricted property to provide assessors with specific data necessary to accurately value the property. This could be accomplished by having Board staff, assessors, and property owners work together to develop one or more reporting forms, then submit the proposed form or forms to the Board of Equalization for prescription.
- Homesites on Williamson Act property are to be valued according to the provisions of article XIII A (Proposition 13), rather than by the capitalization of income method. The results of the survey indicated that all responding assessors are properly assessing homesites in this regard. This is a significant improvement since the time of our 1980 survey of properties under Williamson Act contracts, where we noted that 10 county assessors were improperly valuing homesites by the capitalization of income method.
- The Board's position is that a newly created homesite developed on Williamson Act property should receive the same base year as the larger parcel on which the site is developed. The majority of assessors (36 of 39) are conforming to the Board's position.

- Eleven of 30 assessors responding to the survey use the straight-line declining income premise when valuing trees and vines. While this premise may be proper under certain circumstances, the Board does not believe that the exclusive use of this premise to value living improvements is proper; the Board advocates an inclining-level declining-income premise.
- Cash rent analysis is the preferred method of determining the economic income that is to be capitalized into a restricted Williamson Act value. The survey responses indicated that cash rent analysis is the method most frequently used by assessors to determine the economic income attributable to Williamson Act property.

APPENDICES

**QUESTIONNAIRE FOR SPECIAL TOPIC SURVEY ON
OPEN-SPACE PROPERTIES**

GENERAL

1. How many acres of agricultural land in your county are restricted to agricultural use under a California Land Conservation Act contract for the 1996-97 fiscal year?

- a. Urban prime land _____
- b. Other prime land _____
- c. Non-prime land _____

Total _____

2. In fiscal year 1996-97, how many acres are eligible for open-space subvention pursuant to Government Code Section 16140?

- a. Urban prime land _____
- b. Other prime land _____
- c. Non-prime land _____

Total _____

3. In fiscal year 1996-97, how many acres are not eligible for subvention by virtue of being assessed pursuant to:

- a. Revenue and Taxation Code Section 426 _____
- b. Revenue and Taxation Code Section 110.1 _____
- c. Other (please specify) _____

4. What is the approximate countywide reduction in assessed value for all properties under the Williamson Act (factored based year value less restricted value)? _____

5. Approximately what percentage of the foregone property tax revenue associated with the above value reduction is attributable to the following governmental entities?

- a. The county _____
- b. School districts _____
- c. Other entities _____

6. Are notifications of amount of assessment sent out annually to owners of Williamson Act property (Section 619 of the Revenue and Taxation Code)? Yes _____ No _____

7. If notifications are sent out, do they show both the property's restricted value and its base year value? Yes _____ No _____

8. How many assessment appeals on Williamson Act property have you had since 1992?

What were some of the issues and outcomes in these appeals?

VALUATION PROCEDURES

9. Does your county use, or has it considered using, Section 423.3 of the Revenue and Taxation Code? If so, what issues were involved? _____

10. What sources do you use for collecting rental data? _____

11. If questionnaires are sent to taxpayers as a means of data collection, approximately what percentage of the questionnaires are returned? _____

12. Approximately what percentage of returned questionnaires contain data that is useful to your staff in the appraisal process? _____

13. Please provide us with a copy of the questionnaire(s) you use.

14. In the chart below, indicate the method used in establishing income for the following property types and uses. If more than one method is used for a specific type/use, breakdown each method by percentage. (For example, row crop -- 50% cash rent, 50% share rent.)

Property Type/Use	Cash Rents	Share Rents	Owner Operator
Dry Grazing			
Irrigated Pasture			
Row Crop			
Trees			
Vines			

15. In the chart below, indicate the typical risk component used for the following property types and uses. Please indicate if the risk component is varied due to the method used to establish income. (For example, row crop -- .5% risk for cash rent, 1% for share rent.)

Property Type/Use	Cash Rents	Share Rents	Owner Operator
Dry Grazing			
Irrigated Pasture			
Row Crop			
Trees			
Vines			

16. Do you ever account for risk by making adjustments to the property's imputed income?
 Yes _____ No _____
17. Do you ever deviate from the typical risk components listed above?
 a. Yes _____ No _____
 b. If yes, please give examples. _____

18. When land income is based on cash rents, how are the rents estimated?
 a. Projected from last year _____
 b. Straight average of several years (provide number of years) _____
 c. Weighted average of several years (provide number of years) _____
19. When land income is based on share rents, how are commodity prices estimated?
 a. Projected from last year _____
 b. Straight average of several years (provide number of years) _____
 c. Weighted average of several years (provide number of year) _____
20. When tree and vine income is based on cash rents, how are the rents estimated?
 a. Projected from last year _____
 b. Straight average of several years (provide number of years) _____
 c. Weighted average of several years (provide number of year) _____
21. When tree and vine income is based on share rents, how are commodity prices estimated?
 a. Projected from last year _____
 b. Straight average of several years (provide number of years) _____
 c. Weighted average of several years (provide number of year) _____
22. What is (are) your source(s) for commodity prices? _____

23. When using share rents, how do you estimate production figures? _____

24. Do you use the straight-line declining income premise when annually valuing living improvements for Williamson Act purposes?
a. Yes _____ No _____
b. If no, what type of income premise is used? _____

25. For valuation purposes, how often do you determine an agricultural use for a Williamson Act property that is different from its actual use? (Please provide examples.) _____

26. What is the typical size assigned to homesites in your county for purposes of Section 428 of the Revenue and Taxation Code? _____
27. For what reasons might you deviate from this typical size? _____

28. What base year is assigned to newly created homesites in your county?
a. The same base year as the entire property _____
b. A new base year (homesite's completion date) _____
29. How are homesites in your county valued?
a. Based on the same per-acre value as the larger unit _____
b. Based on the value of similar homesites that are separate parcels _____
c. Other (please explain) _____

30. Is compatible use an issue in your county?
- a. Yes_____ No_____
- b. If yes, what are the issues involved?_____
- _____
31. Please comment on any problem areas in the field of Williamson Act property valuation that you have encountered or foresee._____
- _____
32. Do you have any ideas or recommendations for improving the Williamson Act program?
- _____
- _____
33. Can you offer any general comments about the overall impact of the Williamson Act in your county?_____
- _____
- _____

Signed_____

Title_____

Date_____

CONSTITUTIONAL AND STATUTORY EXCERPTS

CONSTITUTION

Sec. 8. **Assessment of open space lands and property of historical significance.** To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

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

GOVERNMENT CODE

CHAPTER 7

Article 1. General Provisions

51200. **Citation of chapter.** This chapter shall be known as the California Land Conservation Act of 1965 or as the Williamson Act.

History.--Stats. 1967, p. 3214, in effect November 8, 1967, added "or as the Williamson Act" to the first sentence.

Construction.--A contract between a landowner and a county hereunder, entered into at a time when the existing zoning permitted all agricultural uses, including accessory buildings, without the necessity of obtaining a discretionary permit and providing that land would be restricted to agricultural and compatible uses, could not reasonably be interpreted as a promise by the county that the zoning would not be changed. The contract thus did not preclude the county from enacting and enforcing more restrictive zoning to conform to the California Coastal Act (Pub. Res. Code, § 30000 et seq.). *Delucchi v. Santa Cruz County*, 179 Cal.App.3d 814. This act is implemented by a city or county through the establishment of agricultural preserves consisting of agricultural and other vacant lands, and the execution of long term contracts with land owners who are willing to restrict the land uses of their property to agricultural and similar endeavors; thereafter, the lands must be assessed for city or county tax purposes according to the restricted land use, not necessarily the highest and best use. *Borel v. Contra Costa County*, 220 Cal.App.3d 521.

51201. **Definitions.** As used in this chapter, unless otherwise apparent from the context:

- (a) "Agricultural commodity" means any and all plant and animal products produced in this state for commercial purposes.
- (b) "Agricultural use" means use of land for the purpose of producing an agricultural commodity for commercial purposes.
- (c) "Prime agricultural land" means any of the following:
 - (1) All land which qualifies for rating as class I or class II in the Soil Conservation Service land use capability classifications.
 - (2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.
 - (3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.
 - (4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

(d) "Agricultural preserve" means an area devoted to either agricultural use, as defined in subdivision (b), recreational use as defined in subdivision (n), or open-space use as defined in subdivision (o), or any combination of those uses and which is established in accordance with the provisions of this chapter.

(e) "Compatible use" is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open space use of land within the preserve and subject to contract. "Compatible use" includes agricultural use, recreational use or open space use unless the board or council finds after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter.

(f) "Board" means the board of supervisors of a county which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(g) "Council" means the city council of a city which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(h) Except where it is otherwise apparent from the context, "county" or "city" means the county or city having jurisdiction over the land.

(i) A "scenic highway corridor" is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which has been officially designated by the Director of the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway has been officially designated by the Director of the Department of Transportation as an official county scenic highway.

(j) A "wildlife habitat area" is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of great importance for the protection or enhancement of the wildlife resources of the state.

(k) A "saltpond" is an area which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, has been used for the solar evaporation of sea water in the course of salt production for commercial purposes.

(l) A "managed wetland area" is an area, which may be an area diked off from the ocean or any bay, river or stream to which water is occasionally admitted, and which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, was used and maintained as a waterfowl hunting preserve or game refuge or for agricultural purposes.

(m) A "submerged area" is any land determined by the board or council to be submerged or subject to tidal action and found by the board or council to be of great value to the state as open space.

(n) "Recreational use" is the use of land by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public.

(o) "Open space use" is the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the solar evaporation of sea water in the course of salt production for commercial purposes, if the land is within:

(1) A scenic highway corridor, as defined in subdivision (i).

(2) A wildlife habitat area, as defined in subdivision (j).

(3) A saltpond, as defined in subdivision (k).

(4) A managed wetland area, as defined in subdivision (l).

(5) A submerged area, as defined in subdivision (m).

History.--Stats. 1967, p. 3214, in effect November 8, 1967, added subparagraphs (2), (3), and (4) and renumbered former subparagraph (2) as (5) in subdivision (c); substantially revised subdivision (d); and added subdivisions (e) and (f). Stats. 1968, p. 852, in effect November 13, 1968, added the second sentence to subdivision (d). Stats. 1969, p. 3018, in effect November 10, 1969, substantially revised subdivision (d), deleting the second to sixth sentence; substantially revised subdivision (f), deleting the definition of "Uniform rules"; and added subdivisions (g) to (n). Stats. 1970, p. 2317, in effect November 23, 1970, added "any of the following" to subdivision (c); expanded subdivision (d) to include "recreational use" or a combination of uses; added "recreational" to the list of compatible uses and added the second sentence to

subdivision (e); added subdivision (n); and relettered former subdivision (n) as subdivision (o). Added Stats. 1978, Ch. 1120, in effect January 1, 1979. Added in subdivision (d) the words "as defined in subdivision (b)," between "agricultural use," and "recreational use"; and after "and" added "which is established in accordance with the provisions of this chapter." Also in subdivision (i)1 and (C) deleted the words "Public Works" and inserted "Transportation". Stats. 1994, Ch. 1251, in effect January 1, 1995, hyphenated "open space" after "subdivision (n), or", and substituted "those" for "such" after "any combination of" in subdivision (d); substituted "Section 51231, 51238, or 51238.1" for "Section 51231 or Section 51238" after "pursuant to" in the first sentence; substituted "the" for "such" after "and hearing that", and hyphenated "open space" after "agricultural, recreational or" in the second sentence of subdivision (e); substituted "a manner that preserves" for "such a manner as to preserve" after "of land in" and substituted "the" for "such" after "commercial purposes, if" in the first paragraph of subdivision (o).

Note.--Stats. 1969, p. 2806, also provided: If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

The provisions of this act shall be given prospective application only and shall not be construed in a manner which would impair the obligation of any existing contract or agreement entered into pursuant to the California Land Conservation Act of 1965, prior to the effective date of this act. However, this section is not intended to prevent the provisions of this act from being incorporated by reference into existing contracts or agreements, if such existing contracts or agreements provide for incorporation by reference of amendments subsequently enacted by the Legislature; provided further, however, that this act shall not, by incorporation by reference or otherwise, invalidate any restrictions, terms, or conditions, including payments and fees, more restrictive than or in addition to those required by this chapter.

Note.--See note to Section 51201.

51203. Current fairmarket valuations subject to equalization. The current fair market valuations referred to in Section 51283, upon the request of either of the parties to the contract, shall be subject to appeal to the county board pursuant to Section 1604 of the Revenue and Taxation Code.

History.--Added by Stats. 1967, p. 3215, in effect November 8, 1967 as Section 51204. Stats. 1969, p. 2807, in effect November 10, 1969, renumbered former Section 51204 as 51203 and substituted "section" for "Section 51261.2 and". Stats. 1990, Ch. 841, in effect January 1, 1991, substituted "current fair market" for "assessed" after "The", substituted "shall" for "will" after "contract," and substituted "appeal to the county board" for "equalization" after "subject to".

51205. Inclusion within agricultural preserve; "agricultural land." Notwithstanding any provisions of this chapter to the contrary, land devoted to recreational use or land within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area may be included within an agricultural preserve pursuant to this chapter. When such land is included within an agricultural preserve, the city or county within which it is situated may contract with the owner for the purpose of restricting the land to recreational or open space use and uses compatible therewith in the same manner as provided in this chapter for land devoted to agricultural use. For purposes of this section, where the term "agricultural land" is used in this chapter, it shall be deemed to include land devoted to recreational use and land within a scenic highway corridor, a wildlife habitat area, a saltpond, a managed wetland area, or a submerged area, and where the term "agricultural use" is used in this chapter, it shall be deemed to include recreational and open space use.

History.--Added by Stats. 1969, p. 3023, in effect November 10, 1969. Stats. 1970, p. 2317, in effect November 23, 1970, added the provisions allowing "land devoted to recreational use" to be included within an agricultural preserve.

51205.1. **Scenic highway corridor.** Notwithstanding any provisions of this chapter to the contrary, land within a scenic highway corridor, as defined in subdivision (i) of Section 51201, shall, upon the request of the owner, be included in an agricultural preserve pursuant to this chapter. When such land is included within an agricultural preserve, the city or county within which it is situated shall contract with the owner for the purpose of restricting the land to agricultural use as defined in subdivision (b), recreational use as defined in subdivision (n), open-space use as defined in subdivision (o), compatible use as defined in subdivision (e), or any combination of such uses.

History.--Stats. 1978, Ch. 1120, in effect January 1, 1979, added by Stats. 1978.

51206. **Interpretation of chapter; Department of Conservation.** The Department of Conservation may meet with and assist local, regional, state, and federal agencies, organizations, landowners, or any other person or entity in the interpretation of this chapter. The department may research, publish, and disseminate information regarding the policies, purposes, procedures, administration, and implementation of this chapter. This section shall be liberally construed to permit the department to advise any interested person or entity regarding this chapter.

History.-- Added by Stats. 1986, Ch. 607, effective January 1, 1987.

51207. **Report to the Legislature.** (a) On or before May 1 of every other year beginning in 1996, the Department of Conservation shall report to the Legislature regarding the implementation of this chapter by cities and counties.

(b) The report shall contain, but not be limited to, the number of acres of land under contract in each category and the number of acres of land which were removed from contract through cancellation, eminent domain, annexation, or nonrenewal.

(c) The report shall also contain the following specific information relating to not less than one-third of all cities and counties participating in the Williamson Act program:

(1) The number of contract cancellation requests for which notices of hearings were mailed to the Director of Conservation pursuant to Section 51284 which were approved by boards or councils during the prior two years or for which approval is still pending by boards or councils.

(2) The amount of cancellation fees payable to the county treasurer as deferred taxes and which are required to be transmitted to the Controller pursuant to subdivision (d) of Section 51283 which have not been collected or which remain unpaid.

(3) The total number of acres covered by certificates of cancellation of contracts during the previous two years.

(4) The number of nonrenewal and withdrawal of renewal notices received pursuant to Section 51245 and the number of expiration notices received pursuant to Section 51246 during the previous two years.

(5) The number of acres covered by nonrenewal notices that were not withdrawn and expiration notices during the previous two years.

(d) The department may recommend changes to this chapter which would further promote its purposes.

(e) The Legislature may, upon request of the department, appropriate funds from the deferred taxes deposited in the General Fund pursuant to subdivision (d) of Section 51283 in an amount sufficient to prepare the report required by this section.

History.--Added by Stats. 1986, Ch. 607, effective January 1, 1987. Stats. 1989, Ch. 943, in effect January 1, 1990, added "(a)" before the former first sentence, substituted "March 1" for "December 31" in subdivision (a), added "(b)" before the former second sentence, added subdivisions (c) and (e) and added "(d)" before the former third sentence. Stats. 1993, Ch. 84, in effect January 1, 1994, substituted "May" for "March" after "On or before" in subdivision (a). Stats. 1994, Ch. 1174, in effect January 1, 1995, substituted "every other year beginning in 1996" for "each year" after "May 1 of" in subdivision (a); substituted "two years" for "year" after "during the prior" in paragraph (1), and substituted "two years" for "year" after "during the previous" in paragraphs (3), (4), and (5) of subdivision (c).

Article 2. Declaration

51220. **Legislative findings.** The legislature finds:

(a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.

(b) That the agricultural work force is vital to sustaining agricultural productivity; that this work force has the lowest average income of any occupational group in this state; that there exists a need to house this work force of crisis proportions which requires including among agricultural uses the housing of agricultural laborers; and that such use of agricultural land is in the public interest and in conformity with the state's Farmworker Housing Assistance Plan.

(c) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontinuous urban development patterns which unnecessarily increase the costs of community services to community residents.

(d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments.

(e) That land within a scenic highway corridor or wildlife habitat area as defined in this chapter has a value to the state because of its scenic beauty and its location adjacent to or within view of a state scenic highway or because it is of great importance as habitat for wildlife and contributes to the preservation or enhancement thereof.

(f) For these reasons, this chapter is necessary for the promotion of the general welfare and the protection of the public interest in agricultural land.

History.--Stats. 1968, p. 2155, in effect November 13, 1968, deleted "prime" preceding "agricultural" throughout the section. Stats. 1969, p. 3024, in effect November 10, 1969, relettered subdivision (d) as subdivision (e) and added subdivision (d). Stats. 1980, Ch. 1219, in effect January 1, 1981, added a new subdivision (b) and relettered former subdivisions (b), (c), (d) and (e) as (c), (d), (e) and (f), respectively.

Note.--Section 5 of Stats 1980, Ch. 1219, provided no payment by state to local governments because of this act; however, a local agency or school district may pursue other remedies to obtain reimbursement.

Construction.--"Urban development", as used in this section and in former Section 51282.1, has no fixed, precise definition. Whether a residential development is urban or rural must be determined by evaluating factors relating to the varying characteristics of individual projects. In determining whether cancellation of a land use contract would not result in discontinuous patterns of urban development, a required finding for a window period cancellation under former Section 51282.1, a local government had to evaluate an individual proposed project within the context of the state's conservation plan. Relevant factors included density, surrounding development, preservation of open space, traffic generated, and availability of public services like water, schools and police and fire protection. However, a requested development of 389 homes and 8 acres of commercial services proposed by a land owner seeking cancellation of a land use contract under former Section 51282.1 was, as a matter of law, an "urban development" within the meaning of a required finding thereunder that cancellation not lead to a discontinuous pattern of urban development. *Honey Springs Homeowners Assn. v. Board of Supervisors*, 157 Cal.App.3d 1122. Restriction to agricultural use provided for in the Williamson Act was created to control urban development; and to pass constitutional muster, a restriction must be enforceable in the face of imminent urban development, and may not be terminable merely because such development is desirable or profitable to the landowner. *Lewis v. City of Hayward*, 177 Cal.App.3d 103.

51220.5. Legislative finding; "compatible uses." The Legislature finds and declares that agricultural operations are often hindered or impaired by uses which increase the density of the permanent or temporary human population of the agricultural area. For this reason, cities and counties shall determine the types of uses to be deemed "compatible uses" in a manner which recognizes that a permanent or temporary population increase often hinders or impairs agricultural operations.

History.--Added by Stats. 1986, Ch. 607, effective January 1, 1987.

51221. Declaration as to expenditure of public funds; purpose and necessity. The Legislature further declares that the expenditure of public funds under the provisions of this chapter is in the public interest and is necessary to the accomplishment of the purposes herein set forth.

51222. Retaining of agricultural lands by local officials and landowners. The Legislature further declares that it is in the public interest for local officials and landowners to retain agricultural lands which are subject to contracts entered into pursuant to this act in parcels large enough to sustain agricultural uses permitted under the contracts. For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (1) at least 10 acres in size in the case of prime agricultural land, or (2) at least 40 acres in size in the case of land which is not prime agricultural land.

History.--Added by Stats. 1984, Ch. 1111, in effect January 1, 1985. Stats. 1985, Ch. 788, effective January 1, 1986, deleted "their" after "sustain", and substituted "uses permitted under the contracts" for "use" after "agricultural" in the first

sentence of the first paragraph. Stats. 1990, Ch. 841, in effect January 1, 1991, deleted the former second paragraph which provided "This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date."

Article 2.5. Agricultural Preserves

51230. Establishment of preserves; notice and hearing; procedure: Beginning January 1, 1971, any county or city having a general plan, and until December 31, 1970, any county or city, by resolution, and after a public hearing may establish an agricultural preserve. Notice of the hearing shall be published pursuant to Section 6061, and shall include a legal description, or the assessors parcel number, of the land which is proposed to be included within the preserve. The preserves shall be established for the purpose of defining the boundaries of those areas within which the city or county will be willing to enter into contracts pursuant to this act. An agricultural preserve shall consist of no less than 100 acres; provided, that in order to meet this requirement two or more parcels may be combined if they are contiguous or if they are in common ownership; and further provided, that in order to meet this requirement land zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) may be taken into account.

A county or city may establish agricultural preserves of less than 100 acres if it finds that smaller preserves are necessary due to the unique characteristics of the agricultural enterprises in the area and that the establishment of preserves of less than 100 acres is consistent with the general plan of the county or city.

An agricultural preserve may contain land other than agricultural land, but the use of any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning or other suitable means in such a way as not to be incompatible with the agricultural use of the land, the use of which is limited by contract in accordance with this chapter.

Failure on the part of the board or council to restrict the use of land within a preserve but not subject to contract shall not be sufficient reason to cancel or otherwise invalidate a contract.

History.--Stats. 1976, Ch. 176, p. 316, in effect May 24, 1976, added the balance of the fourth sentence of the first paragraph after "ownership". Stats. 1977, Ch. 853, September 17, 1977, added "preserve" after "timberland" in the fourth sentence of the first paragraph. Stats. 1982, Ch. 1489, in effect January 1, 1983, deleted "of this code" after "Section 6061" in the second sentence, substituted "The" for "Such" before "preserves" in the third sentence, and substituted "production" for "preserve" after "timberland" in the fourth sentence of the first paragraph.

Implementation of open-space law permissive--Steps taken by a board of supervisors, including making studies and preparing forms and procedures, did not irrevocably commit the board to implement the Williamson Act. Implementation of the act is permissive, not mandatory. *Kelsey v. Colwell*, 30 Cal. App. 3d 590.

51230.1. Transfer of ownership to an immediate family member. (a) Nothing contained in this chapter shall prevent the transfer of ownership from one immediate family member to another of a portion of land which is currently designated as an agricultural preserve in accordance with the provisions of this chapter, if all of the following conditions are satisfied:

(1) The parcel to be transferred is at least 10 acres in size in the case of prime agricultural land or at least 40 acres in size in the case of land which is not prime agricultural land, and otherwise meets the requirements of Section 51222.

(2) The parcel to be transferred conforms to the applicable local zoning and land division ordinances and any applicable local coastal program certified pursuant to Chapter 6 (commencing with Section 30500) of Division 20 of the Public Resources Code.

(3) The parcel to be transferred complies with all applicable requirements relating to agricultural income and permanent agricultural improvements which are imposed by the county or city as a condition of a contract executed pursuant to Article 3 (commencing with Section 51240) covering the land of which the parcel to be transferred is a portion. For purposes of this paragraph, if the contracted land already complies with these requirements, the portion of that land to be transferred shall be deemed to comply with these requirements.

(4) There exists a written agreement between the immediate family members who are parties to the proposed transfer that the land which is subject to a contract executed pursuant to Article 3 (commencing with Section 51240) and the portion of that land which is to be transferred will be operated under the joint management of the parties subject to the terms and conditions and for the duration of the contract executed pursuant to Article 3 (commencing with Section 51240).

(b) A transfer of ownership described in subdivision (a) shall have no effect on any contract executed pursuant to Article 3 (commencing with Section 51240) covering the land of which a portion was the subject of that transfer. The portion so transferred shall remain subject to that contract.

(c) For purposes of this section, "immediate family" means the spouse of the landowner, the natural or adopted children of the landowner, the parents of the landowner, or the siblings of the landowner.

History.--Added by Stats. 1983, Ch. 880, in effect January 1, 1984. Stats. 1987, Ch. 232, in effect January 1, 1988, deleted former subsections (a)(1) and (a)(2), which provided "(1) The parcel transferred conforms to the local zoning and land division ordinances." and "(2) A written agreement between the landowner and the immediate family member transferring land which is currently designated as an agricultural preserve to be operated under joint management of the agreeing parties for the duration of the terms and conditions as they relate to land as defined by this chapter"; added subsections (a)(1), (a)(2), (a)(3), and (a)(4); added "the" after "covering" in subdivision (b); and added subdivision (c).

51231. Rules governing administration and establishment of preserves. For the purposes of this chapter, the board or council, by resolution, shall adopt rules governing the administration of agricultural preserves, including procedures for initiating, filing, and processing requests to establish agricultural preserves. Rules related to compatible uses shall be consistent with the provisions of Section 51238.1. Those rules shall be applied uniformly throughout the preserve. The board or council may require the payment of a reasonable application fee. The same procedure that is required to establish an agricultural preserve shall be used to disestablish or to enlarge or diminish the size of an agricultural preserve. In adopting rules related to compatible uses, the board or council may enumerate those uses, including agricultural laborer housing which are to be considered to be compatible uses on contracted lands separately from those uses

which are to be considered to be compatible uses on lands not under contract within the agricultural preserve.

History.--Stats. 1978, Ch. 1120, in effect January 1, 1979, deleted the phrase after "preserve," and added a period and the new sentences. Stats. 1980, Ch. 1219, in effect January 1, 1981, added "including agricultural laborer housing" after the second "uses" in the fifth sentence. Stats. 1994, Ch. 1251, in effect January 1, 1995, added second sentence, and substituted "Those" for "Such" before "rules" in the third sentence. Stats. 1995, Ch. 686, in effect October 10, 1995, operative January 1, 1996, substituted "provisions of" for "principles set forth in" after "consistent with the" in the second sentence.

Note.--Section 5 of Stats. 1980, Ch. 1219, provided no payment by state to local governments because of this act; however, a local agency or school district may pursue other remedies to obtain reimbursement.

51232. Notice to owners of proposal to disestablish or alter boundaries. In the event any proposal to disestablish or to alter the boundary of an agricultural preserve will remove land under contract from such a preserve, notice of the proposed alteration or disestablishment and the date of the hearing shall be furnished by the board or council to the owner of the land by certified mail directed to him at his latest address known to the board or council. Such notice shall also be published pursuant to Section 6061 and shall be furnished by first-class mail to each owner of land under contract, any portion of which is situated within one mile of the exterior boundary of the land to be removed from the preserve.

History.--Stats. 1978, Ch. 1120, in effect January 1, 1979, inserted "be published pursuant to Section 6061 and shall" after "also" of the third sentence and in that same sentence deleted the wordage after "land" and added the remaining new language.

51233. Notice of proposed establishment. When a county proposes to establish, disestablish, or alter the boundary of an agricultural preserve it shall give written notice at least two weeks before the hearing to the local agency formation commission and to every city within the county within one mile of the exterior boundaries of the preserve.

History.--Stats. 1971, p. 713, in effect March 4, 1972, added "within the county" after "city". Stats. 1978, in effect January 1, 1979, added ", disestablish, or alter the boundary of" after "establish".

51234. Submission of proposal. Any proposal to establish an agricultural preserve shall be submitted to the planning department of the county or city having jurisdiction over the land. If the county or city has no planning department, a proposal to establish an agricultural preserve shall be submitted to the planning commission. Within 30 days after receiving such a proposal, the planning department or planning commission shall submit a report thereon to the board or council; provided, however, that the board or council may extend the time allowed for an additional period not to exceed 30 days.

The report shall include a statement that the preserve is consistent, or inconsistent, with the general plan, and the board or council shall make a finding to such effect. Final action upon the establishment of an agricultural preserve may not be taken by the board or council until the report required by this section is received from the planning department or planning commission, or until the required 30 days have elapsed and any extension thereof granted by the board or council has elapsed.

51235. Annexation, detachment, incorporation or disincorporation of land within preserve. An agricultural preserve shall continue in full effect following annexation, detachment, incorporation or disincorporation of land within the preserve.

Any city or county acquiring jurisdiction over land in a preserve by annexation, detachment, incorporation or disincorporation shall have all the rights and responsibilities specified in this act for cities or counties including the right to enlarge, diminish or disestablish an agricultural preserve within its jurisdiction.

History.--Stats. 1984, Ch. 523, in effect July 17, 1984, added "detachment" after "annexation," in the first and second paragraphs.

Note.--Section 4 of Stats. 1984, Ch. 523 provided no payment by state to local governments because of this act, however, a local agency or school district may pursue any remedies to obtain reimbursement.

51236. Removal of land from preserve as equivalent to notice of nonrenewal. The effect of removal of land under contract from an agricultural preserve shall be the equivalent of notice of nonrenewal by the city or county removing the land from the agricultural preserve and such city or county shall, at least 60 days prior to the next renewal date following the removal, serve a notice of nonrenewal as provided in Section 51245. Such notice of nonrenewal shall be recorded as provided in Section 51248.

51237. Filing of map and resolution. Whenever an agricultural preserve is established, and so long as it shall be in effect, a map of such agricultural preserve and the resolution under which the preserve was established shall be filed and kept current by the city or county with the county recorder.

History.--Stats. 1971, p. 1811, in effect March 4, 1972, deleted "and the Director of Agriculture" from the first sentence.

51237.5. Filing of map with Director of Conservation. On or before the first day of September of each year, each city or county in which any agricultural preserve is located shall file with the Director of Conservation a map of each city or county and designate thereon all agricultural preserves in existence at the end of the preceding fiscal year.

History.--Added by Stats. 1971, p. 1811, in effect March 4, 1972. Stats. 1974, Ch. 544, p. 1252, in effect January 1, 1975, substituted "Director of Food and Agriculture" for "Director of Agriculture". Stats. 1984, Ch. 851, in effect January 1, 1985, substituted "Conservation" for "Food and Agriculture" after "Director of".

51238. Facilities as compatible uses. Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities are hereby determined to be compatible uses within any agricultural preserve. No land occupied by gas, electric, water, communication, or agricultural laborer housing facilities shall be excluded from an agricultural preserve by reason of that use.

The board of supervisors may impose conditions on lands or land uses to be placed within preserves to permit and encourage compatible uses in conformity with Section 51238.1, particularly public outdoor recreational uses.

History.--Stats. 1972, p. 2687, in effect March 7, 1973, added the second paragraph. Stats. 1978, Ch. 1120, in effect January 1, 1979, deleted "utility" after "communication" in the first and second sentences of the first paragraph. Stats. 1980, Ch. 1219, in effect January 1, 1981, added "or agricultural laborer housing" after "communication" in the first and second sentences of the first paragraph. Stats. 1994, Ch. 1251, in effect January 1, 1995, substituted "that" for "such" after "by reason of" in the second sentence of the first paragraph; added "or land uses" after "conditions on lands", and substituted "uses in conformity with Section 51238.1," after "and encourage compatible" in the second paragraph.

Note.--Section 5 of Stats. 1980, Ch. 1219, provided no payment by state to local governments because of this act; however, a local agency or school district may pursue other remedies to obtain reimbursement.

51238.1. Compatible uses. (a) Uses approved on contracted lands shall be consistent with all of the following principles of compatibility:

(1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.

(2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.

(3) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.

In evaluating compatibility a board or council shall consider the impacts on noncontracted lands in the agricultural preserve or preserves.

(b) A board or council may include in its compatible use rules or ordinance conditional uses which, without conditions or mitigations, would not be in compliance with this section. These conditional uses shall conform to the principles of compatibility set forth in subdivision (a) or, for nonprime lands only, satisfy the requirements of subdivision (c).

(c) In applying the criteria pursuant to subdivision (a), the board or council may approve a use on nonprime land which, because of onsite or offsite impacts, would not be in compliance with paragraphs (1) and (2) of subdivision (a), provided the use is approved pursuant to a conditional use permit that shall set forth findings, based on substantial evidence in the record, demonstrating the following:

(1) Conditions have been required for, or incorporated into, the use that mitigate or avoid those onsite and offsite impacts so as to make the use consistent with the principles set forth in

paragraphs (1) and (2) of subdivision (a) to the greatest extent possible while maintaining the purpose of the use.

(2) The productive capability of the subject land has been considered as well as the extent to which the use may displace or impair agricultural operations.

(3) The use is consistent with the purposes of this chapter to preserve agricultural and open-space land or supports the continuation of agricultural uses, as defined in Section 51205, or the use or conservation of natural resources, on the subject parcel or on other parcels in the agricultural preserve. The use of mineral resources shall comply with Section 51238.2.

(4) The use does not include a residential subdivision.

For the purposes of this section, a board or council may define nonprime land as land not defined as "prime agricultural land" pursuant to subdivision (c) of Section 51201 or as land not classified as "agricultural land" pursuant to subdivision (a) of Section 21060.1 of the Public Resources Code.

Nothing in this section shall be construed to overrule, rescind, or modify the requirements contained in Sections 51230 and 51238 related to noncontracted lands within agricultural preserves.

History.--Added by Stats. 1994, Ch. 1251, in effect January 1, 1995.

51238.2. Compatible uses; mineral extraction. Mineral extraction that is unable to meet the principles of Section 51238.1 may nevertheless be approved as compatible use if the board or council is able to document that (a) the underlying contractual commitment to preserve prime land as defined in subdivision (c) of Section 51201, or (b) the underlying contractual commitment to preserve nonprime land for open-space use as defined in subdivision (c) of Section 51201, will not be significantly impaired.

Conditions imposed on mineral extraction as a compatible use of contracted land shall include compliance with the reclamation standards adopted by the Mining and Geology Board pursuant to Section 2773 of the Public Resources Code, including the applicable performance standards 3812 for prime agricultural land and other agricultural land, and no exception to these standards may be permitted.

For purposes of this section, "contracted land" means all land under a single contract for which an applicant seeks a compatible use permit.

History.--Added by Stats. 1994, Ch. 1251, in effect January 1, 1995.

51238.3. Pre-June 7, 1994 approved compatible uses. (a) The requirements of Sections 51238.1 and 51238.2 shall not apply to compatible uses for which an application was submitted to the city or county prior to June 7, 1994, provided that the use constituted a "compatible use" as that term was defined by this chapter either at the time the application was submitted, or at the

time the Williamson Act contract was signed with respect to the subject contract lands, whichever is later.

(b) Neither shall the requirements of Sections 51238.1 and 51238.2 apply to land uses of contracted lands in place prior to June 7, 1994, that constituted a "compatible use" as the term "compatible use" was defined by this chapter either at the time the use was initiated, or at the time the Williamson Act contract was signed with respect to the subject contract lands, whichever is later.

(c) Neither shall the requirements of Sections 51238.1 and 51238.2 apply to uses that are expressly specified within the contract itself prior to June 7, 1994, and that constituted a "compatible use" as the term "compatible use" was defined by this chapter at the time that Williamson Act contract was signed with respect to the subject contract lands, or at the time the contract was amended to include the uses, whichever is later. For purposes of this subdivision, the requirements of Sections 51238.1 and 51238.2, effective January 1, 1995, shall apply to contracts for which contract nonrenewal was initiated and was withdrawn after January 1, 1995.

History.--Added by Stats. 1994, Ch. 1251, in effect January 1, 1995.

51238.5. Owner's agreement permitting use of land for free public recreation: Indemnification against claims; absence of implied dedication. If an owner of land agrees to permit the use of his land for free public recreation, the board or council may agree to indemnify such owner against all claims arising from such public use. The owner's agreement that his land be used for free, public recreation shall not be construed as an implied dedication to such use.

History.--Added by Stats. 1972, p. 2687, in effect March 7, 1973. Stats. 1978, Ch. 1120, in effect January 1, 1979, substituted "or council may agree to" for "of supervisors may" in the first sentence.

51239. Advisory board. The board or council may appoint an advisory board, the members of which shall serve at the pleasure of the board or council and may be paid their expenses. They shall advise the board or council on the administration of the agricultural preserves in the county or city and on any matters relating to contracts entered into pursuant to this chapter.

Article 3. Contracts

51240. Authority of city or county to contract. Any city or county may by contract limit the use of agricultural land for the purposes of preserving such land pursuant and subject to the conditions set forth in the contract and in this chapter. A contract may provide for restrictions, terms, and conditions, including payments and fees, more restrictive than or in addition to those required by this chapter.

History.--Stats. 1959, p. 2806, in effect November 10, 1969, deleted provision for expenditure of public funds and limitation to "prime" agricultural lands from the first sentence and added the second sentence.

51241. Other owners of prime agricultural land to whom contract to be offered. If such a contract is made with any landowner, the city or county shall offer such a contract under similar terms to every other owner of agricultural land within the agricultural preserve in question.

However, except as required by other provisions of this chapter, the provisions of this section shall not be construed as requiring that all contracts affecting land within a preserve be identical, so long as such differences as exist are related to differences in location and characteristics of the land and are pursuant to uniform rules adopted by the county or city.

History.--Stats. 1969, p. 2806, in effect November 10, 1969, deleted "prime" from before "agricultural land" in the first sentence or the first paragraph and added the second paragraph.

51242. Lands as to which city or county may contract. No city or county may contract with respect to any land pursuant to this chapter unless the land:

(a) Is devoted to agricultural use.

(b) Is located within an area designated by a city or county as an agricultural preserve.

History.--Stats. 1969, p. 2806, in effect November 10, 1969, deleted the 100 acre restriction in subdivision (b) and deleted former subdivision (c).

51243. Contract provisions. Every contract shall:

(a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract.

(b) Shall be binding upon, and inure to the benefit of, all successors in interest of the owner. Whenever land under a contract is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided land, any of the rights of the owner in the original contract, including the right to give notice of nonrenewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land under contract shall not be imputed to the owners of the remaining parcels and shall have no effect on the contract as it applies to the remaining parcels of the divided land. On the annexation by a city of any land under contract with a county, the city shall succeed to all rights, duties and powers of the county under the contract. The amendments made to this section by Assembly Bill No. 2764 of the 1989-90 Regular Session shall not apply to any executed contract for which a valid protest was filed in accordance with applicable requirements prior to January 1, 1991.

History.--Stats. 1967, p. 3214, in effect November 8, 1967, substantially revised subdivision (b) and added subdivision (c). Stats. 1968, p. 852, in effect November 13, 1968, substantially revised subdivision (b). Stats. 1969, p. 2806, in effect November 10, 1969, substantially revised the entire section. Stats. 1971, p. 4889 (First Extra Session), in effect December 8, 1971, substituted "the city has filed and the local agency formation commission has approved a protest to" for "the city protested the execution of" in the fourth sentence of subdivision (b). Stats. 1989, Ch. 943, in effect January 1, 1990, deleted "such" before "contract" in first sentence; and substituted "the" for "such" before "contract, unless" and "city at" in fourth sentence, substituted "that" for "such" after "only to" in the sixth sentence, and added the seventh sentence to subdivision (b). Stats. 1990, Ch. 841, in effect January 1, 1991, deleted "unless the land being annexed was within one mile of the city at the time that the contract was initially executed, the city has filed and the local agency formation commission has approved a protest to the contract pursuant to Section 51243.5, and the city states its intent not to succeed in its resolution of intention to annex." after "the contract" in the fourth sentence of subdivision (b), deleted the former fifth, sixth, and seventh sentences, which provided "If the city does not exercise its option to succeed, the contract becomes null and void as to the land actually being annexed on the date of annexation. In the event that only part of the land under contract was within one mile of the city the option of the city shall extend only to that part. Within 30 days of

the city stating its intent not to succeed, the city shall deliver a notice of its action to the Director of Conservation."; and added the fifth sentence.

51243.5. Protest: record of filing. For property which was within one mile of a city boundary when a contract was executed pursuant to this article and for which the contract was executed prior to January 1, 1991, it shall be conclusively presumed that no protest was filed by the city unless there is a record of the filing of the protest and the protest identifies the affected contract and the subject parcel. It shall be conclusively presumed that required notice was given before the execution of the contract.

History.--Added by Stats. 1990, Ch. 841, in effect January 1, 1991.

51244. Term of contract. Each contract shall be for an initial term of no less than 10 years. Each contract shall provide that on the anniversary date of the contract or such other annual date as specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in Section 51245.

History.--Stats. 1967, p. 3216, in effect November 8, 1967, provided that each contract shall be for an "initial term" of ten years and that "renewal options" would provide "a year" rather than an "additional 10-year period." Stats. 1968, p. 1243, in effect November 13, 1968, substantially revised the second paragraph. Stats. 1969, p. 2811, in effect November 10, 1969, added "no less than" before "10 years" and deleted the former second paragraph.

51244.5. Term of 10 years or more; automatic renewal. Notwithstanding the provisions of Section 51244, if the initial term of the contract is for 10 years or more the contract may provide that on the anniversary date of the contract or such other annual date as specified by the contract beginning with the anniversary date on which the contract will have an unexpired term of nine years, a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in Section 51245.

History.--Added by Stats. 1969, p. 2806, in effect November 10, 1969. Stats. 1978, Ch. 1120, in effect January 1, 1979, substituted "10" for "20".

51245. Notice of nonrenewal. If either the landowner or the city or county desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract upon the other party in advance of the annual renewal date of the contract. Unless such written notice is served by the landowner at least 90 days prior to the renewal date or by the city or county at least 60 days prior to the renewal date, the contract shall be considered renewed as provided in Section 51244 or Section 51244.5.

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

Within 30 days of the receipt of a notice of nonrenewal from a landowner, the service of a notice of nonrenewal upon a landowner, or the withdrawal of a notice of nonrenewal, the city or county

shall deliver a copy of the notice or a notice of withdrawal of nonrenewal to the Director of Conservation.

No later than 20 days after a city or county receives a notice of nonrenewal from a landowner, serves a notice of nonrenewal upon a landowner, or withdraws a notice of nonrenewal, the clerk of the board or council, as the case may be, shall record with the county recorder a copy of the notice of nonrenewal or notice of withdrawal of nonrenewal.

History.--Stats. 1967, p. 3214, in effect November 8, 1967, deleted "for 10 years" following "considered renewed" in the first paragraph. Stats. 1969, p. 2806, in effect November 10, 1969, added "or Section 51244.5" in the first paragraph and added the second paragraph. Stats. 1989, Ch. 943, in effect January 1, 1990, added third paragraph. Stats. 1992, Ch. 273, in effect January 1, 1993, added the fourth paragraph.

51246. Termination of contract. (a) If the county or city or the landowner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be. Within 30 days of the expiration of the contract, the county or city shall deliver a notice of expiration to the Director of Conservation.

(b) No city or county shall enter into a new contract or shall renew an existing contract on or after February 28, 1977, with respect to timberland zoned as timberland production. The city or county shall serve notice of its intent not to renew the contract as provided in this section.

(c) In order to meet the minimum acreage requirement of an agricultural preserve pursuant to Section 51230, land formerly within the agricultural preserve which is zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) may be taken into account.

(d) Notwithstanding any other provision of law, commencing with the lien date for the 1977-78 fiscal year all timberland within an existing contract which has been nonrenewed as mandated by this section shall be valued according to Section 423.5 of the Revenue and Taxation Code, succeeding to and including the lien date for the 1981-82 fiscal year. Commencing with the lien date for the 1982-83 fiscal year and on each lien date thereafter, such timberland shall be valued according to Section 434.5 of the Revenue and Taxation Code.

History.--Stats. 1969, p. 2812, in effect November 10, 1969, added "county or city or the" before "landowner" and deleted "his" before "intent". Stats. 1976, Ch. 176, p. 316, in effect May 24, 1976, added the second and third paragraphs. Stats. 1977, Ch. 833, in effect September 17, 1977, designated the three existing paragraphs as subdivisions (a) (b) and (d) respectively and added subdivision (c). Stats. 1981, Ch. 845, in effect January 1, 1982, deleted "and succeeding until the end of the contract, such timberland shall be valued according to Section 426 of the Revenue and Taxation Code. Commencing with the lien date next succeeding the termination date of the contract," after "1982-83 fiscal year" in the former second and third sentences of subdivision (d). Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted "production" for "preserve" after "timberland" in both subdivision (b) and subdivision (c). Stats. 1989, Ch. 943, in effect January 1, 1990, added second sentence in subdivision (a).

51247. Information to city or county by landowner. The landowner shall furnish the city or county with such information as the city or county shall require in order to enable it to determine the eligibility of the land involved.

History.--Stats. 1969, p. 2812, in effect November 10, 1969, renumbered former Section 51249 as Section 51247 and deleted "and the payments which the landowner should receive under the contract" at the end of the first sentence.

51248. Recording with county recorder. No later than 20 days after a city or county enters into a contract with a landowner pursuant to this chapter, the clerk of the board or council, as the case may be, shall record with the county recorder a copy of the contract, which shall describe the land subject thereto, together with a reference to the map showing the location of the agricultural preserve in which the property lies. From and after the time of such recordation such contract shall impart such notice thereof to all persons as is afforded by the recording laws of this state.

History.--Stats. 1969, p. 2812, in effect November 10, 1969, renumbered former Section 51250 as Section 51248 and added "no later than 20 days after" before "a city or county"; "the clerk of the board or council, as the case may be," before "shall record" and deleted that portion concerned with filing with, and approval by, the director of agriculture in the first sentence.

51248.5. Filing of fictitious contracts. Whenever any city or county is required to record any contract by this chapter, it may file a fictitious contract. Thereafter, any of the provisions of such fictitious contract may be included by reference in any contract required to be filed by this chapter. The provisions of Section 2952 of the Civil Code relating to the filing, indexing, and force and effect of fictitious mortgages shall be applicable to such fictitious contracts.

History.--Added by Stats. 1978, Ch. 1120, in effect January 1, 1979.

51249. Filing sample copy of contract with Director of Conservation. Within 30 days after a form of contract is first used, the clerk of the board or council shall file with the Director of Conservation a sample copy of each form of contract and any land use restrictions applicable thereto.

History.--Added by Stats. 1969, p. 2812, in effect November 10, 1969. Stats. 1971, p. 1811, in effect March 4, 1972, changed the requirement for filing from "approval" of the form of contract to "use" of the form of contract. Stats. 1974, Ch. 544, p. 1252, in effect January 1, 1975, substituted "Director of Food and Agriculture" for "Director of Agriculture". Stats. 1984, Ch. 851, in effect January 1, 1985, substituted "Conservation" for "Food and Agriculture" after "Director of".

51251. Authority of state to bring court enforcement action. The county, city, or landowner may bring any action in court necessary to enforce any contract including but not limited to, an action to enforce the contract by specific performance or injunction. An owner of land may bring any action in court to enforce a contract on land whose exterior boundary is within one mile of his land. An owner of land under contract may bring any action in court to enforce a contract on land located within the same county or city.

History.--Stats. 1969, p. 2813, in effect November 10, 1969, renumbered former Section 51252 as Section 51252; substituted "county or city" for "state"; deleted "an action for" before "specific performance"; and deleted "relief" after "injunction" in the first sentence. Stats. 1971, p. 3850, in effect March 4, 1972, substituted ", city, or landowner" for "or city" in the first sentence. Stats. 1978, Ch. 1120, in effect January 1, 1979, added the second sentence.

51252. Assessment as open space land. Open-space land under a contract entered into pursuant to this chapter shall be enforceably restricted within the meaning and for the purposes of Section 8 of Article XIII of the State Constitution and shall be enforced and administered by the city or county in such a manner as to accomplish the purposes of that article and of this chapter.

History.--Added by Stats. 1969, p. 2813, in effect November 10, 1969. Stats. 1974, Ch. 311, p. 589, in effect January 1, 1975, substituted "Open-space land under a" for "Any", substituted "enforceably restricted" for "an enforceable restriction", and substituted "Section 8 of Article XIII" for "Article XXVIII".

51253. Amendment of prior contracts to conform to amended chapter. Any contract or agreement entered into pursuant to this chapter prior to the 61st day following final adjournment of the 1969 Regular Session of the Legislature may be amended to conform with the provisions of this act as amended at that session upon the mutual agreement of all parties. Approval of these amendments to a contract by the Director of Conservation shall not be required.

History.--Added by Stats. 1969, p. 2813, in effect November 10, 1969. Stat. 1974, Ch. 544, p. 1252, in effect January 1, 1975, substituted "Director of Food and Agriculture" for "Director of Agriculture" in the second sentence. Stats. 1984, Ch. 851, in effect January 1, 1985, substituted "these amendments . . . Conservation" for "such an amendment to a contract by the Director of Food and Agriculture or the State Board of Agriculture" after "approval of" in the second sentence.

51254. Rescission and entry into new contract. Notwithstanding any other provision of this chapter, the parties may upon their mutual agreement rescind a contract in order simultaneously to enter into a new contract pursuant to this chapter, which new contract would enforceably restrict the same property for an initial term at least as long as the unexpired term of the contract being so rescinded but not less than 10 years. Such action may be taken notwithstanding the prior serving of a notice of nonrenewal relative to the former contract.

History.--Added by Stats. 1977, Ch. 495 in effect January 1, 1978.

51255. Rescission and entry into easement agreement. Notwithstanding any other provision of this chapter, the parties may upon their mutual agreement rescind a contract in order simultaneously to enter into an open-space easement agreement pursuant to the Open-Space Easement Act of 1974, commencing with Section 51070, which easement would enforceably restrict the same property for an initial term of not less than 10 years. Such action may be taken notwithstanding the prior serving of a notice of nonrenewal.

History.--Added by Stats. 1977, Ch. 495, in effect January 1, 1978.

51256. Rescission and entry into new contract on uncontracted land. (a) Notwithstanding any other provision of this chapter, a city or county, upon petition by a landowner, may enter into an agreement to rescind a contract in order to simultaneously enter into a new contract on presently uncontracted land if the city or county makes all of the following findings:

- (1) The uncontracted land is of equal or greater value than the land subject to the contract being rescinded, based on the factors specified in Section 423 of the Revenue and Taxation Code.
- (2) The uncontracted land is of equal or greater size than the land subject to the contract being rescinded and will be used for a similar or more productive agricultural use.
- (3) The land subject to the contract being rescinded is proposed for an alternative use which is consistent with the applicable provisions of the current general plan, and the general plan

designation of that land has been changed by amendment to, or the adoption of, a general plan after the land became subject to that contract.

(4) The uncontracted land is in the same county and within a contiguous body of land in the same ownership, as the land subject to the contract being rescinded, and includes land previously under contract and still in agricultural use upon which cancellation was approved and cancellation fees paid prior to 1974.

(b) A landowner may submit a petition to the city or county requesting an agreement pursuant to this section. The city or county may impose a fee upon the landowner in order to defray its administrative costs. The landowner shall transmit a copy of the petition to the Secretary of Resources. The petition shall be accompanied by a proposal for a specified alternative use of the land upon which contracts are proposed to be rescinded, together with any other information the city or county may require to make the findings required pursuant to this section. Upon making these findings, the city or county may approve the agreement, which shall be recorded in the manner provided for certificates of tentative cancellation specified in Section 51283.4. Rescission of any contract shall not occur until any conditions and contingencies specified in the agreement shall have been satisfied, including obtaining approvals necessary to commence the project as determined in the agreement.

(c) In addition, no contract shall be rescinded pursuant to this section unless a notice of nonrenewal has been served by the landowner with respect to the land prior to 1983, or while there are more than five years remaining in the term of the nonrenewed contract. A contract made applicable to uncontracted land pursuant to subdivision (a) shall not be eligible for nonrenewal or cancellation for 10 years from the date of the contract's execution.

(d) The provisions of this section shall be applicable only to cities or counties who offered both contracts and agreements under this act prior to 1969, and landowners who entered into contracts or agreements with those cities or counties prior to 1969.

(e) This section shall remain in effect only until January 1, 1985, and on that date is repealed, unless a later enacted statute which is chaptered before January 1, 1985, deletes or extends that date.

History.--Added by Stats. 1983, Ch. 880, in effect January 1, 1984.

Note.--Section 3 of Stats. 1983, Ch. 880, provided "notwithstanding subdivision (e) of Section 51256 of the Government Code, the other provisions of that section shall continue to apply to proceedings initiated in compliance with the section before January 1, 1985, and those proceedings shall not be affected by the repeal of the section."

51257. Boundary adjustments. (a) Notwithstanding any other provision of this chapter, a city, upon petition by a landowner, may enter into an agreement amending the boundaries of an agricultural preserve to remove land presently subject to the contract and to include land not presently subject to the contract, provided the city, after a noticed public hearing, makes all of the following findings:

(1) All of the land is located within the coastal zone and the boundary adjustment has been approved by the California Coastal Commission. The California Coastal Commission shall

approve the boundary adjustment only after a noticed public hearing and only if it finds both of the following:

(A) The boundary adjustment is consistent with the purposes of the California Coastal Act of 1976.

(B) The boundary adjustment is consistent with a plan for the long-term preservation of agriculture approved by the commission as consistent with the certified local coastal program in effect as of January 1, 1985. Any amendments to the local coastal program subsequent to this date may be considered for purposes of a boundary adjustment if each of the following conditions are met:

(i) The amendments relate to the acreage to be developed under the plan.

(ii) The amendments to the local coastal program will not result in the reduction of the amount of acreage under contract as of January 1, 1985.

(2) All of the land is located in an incorporated city within a county with a population in excess of 1,500,000.

(3) At least 50 percent of the land presently subject to the contract shall remain subject to the contract.

(4) The land to be added to the contract is equal to or larger in size than the land to be removed from the contract.

(5) The land to be added to the contract is equally or more suitable for agricultural use than the land to be removed from the contract. In determining the suitability of the land for agricultural use, the city shall consider the value of the crops which can be grown on the land, the soil quality of the land, the climate or microclimate in which the land is located, the grade of the land, the drainage of the land, and any other factor the city council deems to have a bearing upon the suitability of the land for agricultural use.

(6) The fair market value of the land to be added to the contract is equal to or greater than the fair market value of the land to be removed from the contract as of the date of the proposed agreement. For purposes of determining fair market value under this section, both the land to be added and the land to be removed shall be valued as though they were free of the contractual restriction.

(7) The contract affected by the boundary adjustment shall have been in effect for at least 10 years prior to the date of the proposed agreement.

(8) The boundary adjustment is consistent with the applicable provisions of the current general plan, and the general plan designation of the land being removed from the contract has been changed by amendment to, or adoption of, a general plan after the land became subject to the contract.

(9) The land to be added to the contract is in the same county, and within a contiguous body of land either under one contract or owned by the same family as the land to be removed from the contract.

(10) The proposed agreement is consistent with the findings required by Section 51282, except that the city shall not be required to find that the boundary adjustment is for land on which a notice of nonrenewal has been served.

(b) Land which has been added to a preserve contract under the provisions of this section shall not thereafter be removed from the contract under the provisions of this section.

(c) A landowner may submit a petition to the city requesting an agreement pursuant to this section. The city may impose a fee upon the landowner in order to defray its administrative costs. The landowner shall transmit a copy of the petition to the Secretary of the Resources Agency and the Executive Director of the California Coastal Commission. The petition shall be accompanied by a proposal for an alternative use of the land together with any other information the city may require to make the findings required pursuant to this section. The agreement shall provide for an initial term at least as long as the term of the existing contract but not less than 15 years. The agreement shall further provide that for a period of five years after the effective date of the agreement, the applicant has waived the right to cancel the agreement. The city, before making the findings specified in this section, shall hold at least one public hearing for which notice shall be given in accordance with Section 51232. Upon making these findings, the city may approve the agreement, which shall be recorded in the manner provided for certificates of tentative cancellation specified in Section 51283.4. Amendment of any contract shall not occur until all conditions and contingencies specified in the agreement shall have been satisfied.

(d) It is the intent of this section to provide flexibility in the development of a local coastal program with provision for long-term preservation of agricultural lands independent of this chapter and in accordance with the provisions of the California Coastal Act of 1976 without diminishing the quality or quantity of land subject to agricultural preserve contracts and without imposing cancellation fees upon the landowners concerned.

(e) The Secretary of the Resources Agency shall report to the Legislature no later than January 1, 1988, on the statewide effect of this section.

(f) This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1989, deletes or extends that date.

History.--Added and repealed by Stats. 1985, Ch. 1405, in effect January 1, 1986.

Article 5. Cancellation

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

History.--Stats. 1981, Ch. 1095, in effect January 1, 1982, substituted "under the circumstances and conditions provided herein" for "only when the continued dedication of land under such contracts to agricultural use is neither necessary nor desirable for the purposes of this chapter".

Note.--Section 7 of Stats. 1981, Ch. 1095, provided that an application for cancellation filed prior to the effective date of this act shall be reviewed and decided upon pursuant to the provisions of law applicable prior to the effective date, unless the applicant elects in writing to proceed under Section 51282 or 51282.1 of this act. Sec. 8 thereof provided that the Legislature finds and declares that the purpose of this act is not to weaken or strengthen the Williamson Act but simply to clarify and make the law workable in light of problems and ambiguities created by the California Supreme Court decision in the case of *Sierra Club v. City of Hayward*, 28 Cal 3d 840. Sec. 10 thereof provided that notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

Construction.--The unconstitutional and inconsistent window period cancellation provision temporarily permitting cancellation for a one-year period under former Section 51282.1 of the Government Code, as added by Stats. 1981, Ch. 1095, was severable from the rest of the Williamson Act. Thus, the surviving provisions of Stats. 1981, Ch. 1095 served to codify and explain the findings necessary for cancellation and were still complete and valid as to permanent cancellation rules. *Lewis v. City of Hayward*, 177 Cal.App.3d 103.

51280.1. Cancellation; alternative use. As used in this chapter, the finding of a board or council that "cancellation and alternative use will not result in discontinuous patterns of urban development" authorizes, but does not require, the board or council to cancel a contract if it finds that the alternative use will be rural in character and that the alternative use will result within the foreseeable future in a contiguous pattern of development within the relevant subregion. The board or council is not required to find that the alternative use will be immediately contiguous to like development. In rendering its finding, the board or council acts in its own discretion to evaluate the proposed alternative use according to existing and projected conditions within its local jurisdiction.

The provisions of this section shall apply only to those proceedings for the cancellation of contracts which were initiated pursuant to Section 51282.1, and, consistent with the provisions of Section 9 of Chapter 1095 of the Statutes of 1981, shall apply to the same extent as the provisions of Section 51282.1, notwithstanding their repeal.

History.--Added by Stats. 1983, Ch. 1296, in effect January 1, 1984.

Note.--Section 1 of Stats. 1983, Ch. 1296, provided that the Legislature finds and declares that possible misinterpretations of Stats. 1981, Ch. 1095, with regard to applications which have been approved by a county board of supervisors or city council and which are subject to litigation might wrongfully result in the denial of cancellations under that chapter. The Legislature therefore declares that the findings requirements of that chapter were and are satisfied if a local board or council has acted in accordance with Section 51280.1 of the Government Code, as added by this act.

51281. Request by landowner. A contract may not be canceled except pursuant to a request by the landowner, and as provided in this article.

History.--Stats. 1969, p. 2813, in effect November 10, 1969, added "not" after "contract may" and substituted "except pursuant to a request by the landowner, and" for "on the mutual agreement of all parties to the contract, and the state," in the first sentence.

51281.1. Payment of application fee. The board or council may require the payment of a reasonable application fee to be made at the time a petition for cancellation is filed.

History.--Added by Stats. 1978, Ch. 1120, in effect January 1, 1979.

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

- (1) That the cancellation is consistent with the purposes of this chapter; or
 - (2) That cancellation is in the public interest.
- (b) For purposes of paragraph (1) of subdivision (a) cancellation of a contract shall be consistent with the purposes of this chapter only if the board or council makes all of the following findings:
- (1) That the cancellation is for land on which a notice of nonrenewal has been served pursuant to Section 51245.
 - (2) That cancellation is not likely to result in the removal of adjacent lands from agricultural use.
 - (3) That cancellation is for an alternative use which is consistent with the applicable provisions of the city or county general plan.
 - (4) That cancellation will not result in discontinuous patterns of urban development.
 - (5) That there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

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

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

(c) For purposes of paragraph (2) of subdivision (a) cancellation of a contract shall be in the public interest only if the council or board makes the following findings: (1) that other public concerns substantially outweigh the objectives of this chapter; and (2) that there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

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

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

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

(e) The landowner's petition shall be accompanied by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use, and the provisions and requirements of Section 51283.4 shall be fully applicable thereto. The level of specificity required in a proposal for a specified alternate use shall be determined by the board or council as that necessary to permit them to make the findings required.

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

History.--Added by Stats. 1969, p. 2813, in effect November 10, 1969. Stats. 1978, Ch. 1120, in effect January 1, 1979, added the fourth paragraph. Stats. 1981, Ch. 1095, in effect January 1, 1982, added the subdivision letters; substituted "grant tentative approval for cancellation of a contract only if it makes one of the following findings" for "approve the cancellation of a contract only if they find" in the second sentence of subdivision (a), and substituted "is consistent" for "is not inconsistent" and "; or" for "; and" in subdivision (a)(1); deleted the former second paragraph; added subdivisions (b), (c), and (f); lettered the former third paragraph as subdivision (d), added "For purposes of subdivision (a)," at the beginning of the first sentence thereof, and substituted "not by itself" for "likewise not" in the first sentence thereof; and lettered the former fourth paragraph as subdivision (e), substituted "shall be accompanied by" for "may be accompanied with" in the first sentence thereof, added the balance of the second sentence after "alternative use," and added the third sentence.

51282.2. Exception; parcel of 300 acres or less. (a) In the event that a city has within its boundaries on the effective date of this section 300 acres or less of land which are under contract, or an application for annexation to a city has been filed with that city and a petition for cancellation has been filed with the county within the time period set forth in subdivision (c) of

Section 51282.1, which application, if approved, will result in the city having within its boundaries 300 acres or less of land which are under contract, the provisions and requirements of subdivisions (e), (f), (g) and (h) of Section 51282.1 shall not apply within that city and a petition for cancellation of a contract shall be approved as otherwise provided in Section 51282.1. If the annexation, if approved, will result in the city having more than 300 acres of land under contract, the provisions and requirements of subdivisions (e), (f), (g), and (h) of Section 51282.1 shall apply.

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

History.--Added by Stats. 1981, Ch. 1095, in effect January 1, 1982. Stats. 1982, Ch. 1469, in effect September 28, 1982, substituted "are" for "is" after "which" and added "or an application . . . contract," after "contract" in the first sentence of subdivision (a), and added the second sentence thereto.

51282.5. Cancellation; land zoned as timberland preserve. The owner of any land which has been zoned as a timberland production pursuant to Section 51112 or 51113, and that zoning has been recorded as provided in Section 51117, may petition the board or council for cancellation of any contract as to all or part of the land. Upon petition, the board or council shall approve the cancellation of the contract.

The provisions of Section 51283 shall not apply to any cancellation under this section, and no cancellation fee shall be imposed.

History.--Added by Stats. 1976, Ch. 176, in effect May 24, 1976. Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted "production" for "preserve" after "timberland," "that" for "such" before "zoning" and "the" for "such" after "part of" in the first sentence, and deleted "such" after "Upon" and substituted "the" for "such" after "cancellation of" in the second sentence of the first paragraph.

51283. Cancellation fee; amount; waiver or extension of time. (This section operative until July 1, 1993.) (a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee.

(b) Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee which the landowner shall pay the county treasurer as deferred taxes upon cancellation. That fee shall be an amount equal to 12 1/2 percent of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so, the board or council may waive any payment or any portion of a payment by the landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been cancelled, if all of the following occur:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner.

(2) The board or council has determined it is in the best interests of the program to conserve agricultural land use that the payment be either deferred or not required.

(3) The waiver or extension of time is approved by the Secretary of the Resources Agency. The secretary shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the board or council is consistent with the policies of this chapter and that the board or council complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the board or council, the evidence in the record of the board or council, and any other evidence the secretary may receive concerning the cancellation, waiver, or extension of time.

(d) The first nine hundred eighty five thousand dollars (\$985,000) of revenue paid to the Controller pursuant to subdivision (e) in the 1992-93 fiscal year , and any other amount as approved in the final Budget Act for each fiscal year thereafter shall be deposited in the Soil Conservation Fund, which is continued in existence. The money in the fund is available, when appropriated by the Legislature, for the support of both of the following:

(1) The total cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 66570.

(2) The soil conservation program identified in Section 614 of the Public Resources Code.

(e) When deferred taxes required by this section are collected, they shall be transmitted by the county treasurer to the Controller and be deposited in the General Fund, except as provided in subdivisions (d) and (f). The funds collected by the county treasurer with respect to each cancellation of a contract shall be transmitted to the Controller within 30 days of the execution of a certificate of cancellation of contract by the board or council, as specified in subdivision (b) of Section 51283.4.

(f) An additional two hundred forty thousand dollars (\$240,000) of revenue paid to the Controller pursuant to subdivision (e) in the 1992-93 fiscal year shall be deposited in the Soil Conservation Fund and shall be available to contribute toward the completion of the modern soil survey program identified in Section 612.5 of the Public Resources Code.

(g) This section shall remain operative only until July 1, 1993, and as of January 1, 1994, is repealed, unless a later enacted statute, which is enacted before July 1, 1993, deletes or extends that date.

History.--Added by Stats. 1969, p. 2813, in effect November 10, 1969. Stats. 1971, p. 4890 (First Extra Session), in effect December 8, 1971, deleted "and" after "to the owner;" in subdivision (c)(1); added "and" after "not required;" in subdivision (c)(2); added subdivision (c)(3); and substantially revised subdivision (d). Stats. 1971, p. 5139 (First Extra Session), in effect December 30, 1971, substituted "Secretary of the Resources Agency" for "State Office of Planning and

Research" in subdivision (c)(3). Stats. 1980, Ch. 585, in effect January 1, 1981, added the second and third sentences in subsection (3) of subdivision (c). Stats. 1981, Ch. 261, in effect January 1, 1982, deleted "shall multiply such value by the most recent county ratio announced pursuant to Section 401 of the Revenue and Taxation Code, and" after "assessor", deleted "the product" after "certify", and deleted "as" after "council" in the second sentence of subdivision (a); substituted "12 1/2" for "50" in the second sentence of subdivision (b), and deleted the balance thereof after "property"; and deleted "State" before "Controller" and before "General Fund" in subdivision (d). Stats. 1983, Ch. 864, in effect September 16, 1983, substituted "extend the time for making" for "make" after "or may" in the first sentence of subdivision (c), and added "or extension of time" after each "waiver" in the first, second, and third sentences of subsection (3) thereof; added the second sentence in subdivision (d); and added subdivision (e). Stats. 1985, Ch. 1342, effective January 1, 1986, added a comma after "so", deleted "such" after "any", substituted "of a payment by the landowner" for "thereof" after "portion", substituted "the" for "such" after "making", substituted "of the payment" for "thereof" after "portion", and substituted "if all the following occur" for "provided" in subdivision (c); substituted a period for a semicolon after "owner" in subsection (1), and substituted "the" for "such" after "that", and substituted a period for "; and" in subsection (2), and deleted "the provisions of" after "complied with" in the second sentence of subsection (3) of subdivision (c); and added subdivision (f). Stats. 1987, Ch. 1308, in effect January 1, 1988, substituted "current fair market" for "full cash" after "determine the" in the first sentence of subdivision (a); deleted former subdivisions (d), (e), and (f); and added subdivisions (d), (e), (f), and (g). Stats. 1991, Ch. 216, in effect January 1, 1992, substituted "it finds" for "they find" after "If" in the first paragraph of subdivision (c); substituted "board or council" for "local agency" after "by the", "that the", and "of the", in paragraph (3) of subdivision (c); substituted "nine hundred eighty five" for "seven hundred" after "The first", substituted "(\$985,000)" for "(\$700,000)" after "dollars", substituted "(e)" for "(f)" after "subdivision", substituted "1992-93" for "1987-88" after "in the", added ", and any other . . . thereafter" after "fiscal year", substituted "deposited" for "paid to the State Treasury to the credit of Farmlands Mapping Account", after "shall be", and substituted "Soil Conservation" for "General" after "in the", in the first paragraph of subdivision (d); deleted the former second sentence of the first paragraph in subdivision (d), and deleted the former paragraphs (1) and (2) of that sentence of subdivision (d); deleted the former first sentence of the former subdivision (e) and established the first portion of the former second sentence thereof as paragraphs (1) and (2) of subdivision (d); relettered former subdivision (f) as subdivision (e); substituted "(e)" for "(f)" after "(d) and" in the first sentence, and deleted "board's or council's" after "days of the" and added "by the board or council" after "contract," in the second sentence of subdivision (e); and added new subdivision (f).

Note.--Section 3 of Stats. 1983, Ch. 864, provided no payment by state to local governments because of this act; however, a local agency or school district may pursue other remedies to obtain reimbursement.

Construction.--In amending subdivision (d) (Stats. 1971, p. 4890, First Ex. Sess.), the Legislature intended that taxes deferred under both a contract between a city or county and a landowner and an agreement between such parties were covered by the subdivision. It did not intend to except agreements between a city or county and a landowner entered into prior to 1971 from the application thereof. *Orange County v. Cory*, 97 Cal. App. 3d 760.

51283. Cancellation fee; amount; waiver or extension of time. (This section operative July 1, 1993.) (a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee.

(b) Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee which the landowner shall pay the county treasurer as deferred taxes upon cancellation. That fee shall be an amount equal to 12 1/2 percent of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so, the board or council may waive any payment or any portion of a payment by the landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the land and its economic return

to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been canceled, if all of the following occur:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner.

(2) The board or council has determined that it is in the best interests of the program to conserve agricultural land use that the payment be either deferred or is not required.

(3) The waiver or extension of time is approved by the Secretary of the Resources Agency. The secretary shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the board or council is consistent with the policies of this chapter and that the board or council complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the board or council, the evidence in the record of the board or council, and any other evidence the secretary may receive concerning the cancellation, waiver, or extension of time.

(d) The first nine hundred eighty-five thousand dollars (\$985,000) of revenue paid to the Controller pursuant to subdivision (e) in the 1992-93 fiscal year, and any other amount as approved in the final Budget Act for each fiscal year thereafter, shall be deposited in the Soil Conservation Fund, which is continued in existence. The money in the fund is available, when appropriated by the Legislature, for the support of both of the following:

(1) The total cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 66570.

(2) The soil conservation program identified in Section 614 of the Public Resources Code.

(e) When deferred taxes required by this section are collected, they shall be transmitted by the county treasurer to the Controller and deposited in the General Fund, except as provided in subdivision (d). The funds collected by the county treasurer with respect to each cancellation of a contract shall be transmitted to the Controller within 30 days of the execution of a certificate of cancellation of contract by the board or council, as specified in subdivision (b) of Section 51283.4.

(f) This section shall become operative on July 1, 1993.

History.--Added by Stats. 1987, Ch. 1308, in effect January 1, 1988, operative July 1, 1993. Stats. 1991, Ch. 216, in effect January 1, 1992, added "is" after "deferred or" in paragraph (2) of subdivision (c); substituted "board or council" for "local agency" after "by the", "that the", and "of the", in paragraph (3) of subdivision (c); substituted "nine" for "eight" after "first", substituted "eighty-five" for "seventy" after "hundred", substituted "(\$985,000)" for "(\$870,000)" after "dollars", substituted "1992-93" for "1993-94" after "(e) in the", added "any other . . . Act for" after "year, and", substituted "continued in existence" for "hereby created" after "which is", in the first sentence of subdivision (d); substituted "The money in" for "Moneys from" before "the fund", substituted "is" for "are" after "the fund", substituted "for the support . . . the following:" for "to support" after "Legislature", in the second sentence of subdivision (d); created paragraph (1) of the second sentence of subdivision (d) from the remainder of the second sentence in subdivision (d); deleted "When additional revenues are available for deposit in the fund up to two hundred fifty thousand dollars

(\$250,000) shall be available for appropriation by the Legislature for support of" from the former third sentence of subdivision (d), and created paragraph (2) of the second sentence of subdivision (d) from the remainder of the former third sentence of subdivision (d); substituted "as provided in subdivision (d)." for "that up to eight hundred seventy thousand dollars (\$870,000) per year shall be deposited in the Soil Conservation Fund." after "Fund, except" in the first sentence, and deleted "board's or council's" after "days of the", and added "by the board or council" after "contract", in the second sentence of subdivision (e).

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

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

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

History.--Added by Stats. 1978, Ch. 1120, in effect January 1, 1979. Stats. 1981, Ch. 1095, in effect January 1, 1982, added "the fee is paid, or" after "unless" in the second sentence of subdivision (a), substituted "necessary to commence the project" for "required by any governmental agency relative to the proposed alternative use of the land" after "permits" in the fourth sentence thereof, and added the fifth sentence; and added the third sentence to subdivision (c).

51284. Public hearing; notice and publication. No contract may be canceled until after the city or county has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be published pursuant to Section 6061 and shall be mailed to every owner of land

under contract, any portion of which is situated within one mile of the exterior boundary of the land upon which the contract is proposed to be canceled. In addition, at least 10 working days prior to the hearing, a notice of the hearing and a copy of the landowner's petition shall be mailed to the Director of Conservation. Within 30 days of the tentative cancellation of the contract, the city or county shall publish a notice of its decision, including the date, time, and place of the public hearing, a general explanation of the decision, the findings made pursuant to Section 51282, and a general description, in text or by diagram, of the land under contract, as a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the city or county. In addition, within 30 days of the tentative cancellation of the contract, the city or county shall deliver a copy of the published notice of the decision, as described above, to the Director of Conservation. The publication shall be for informational purposes only, and shall create no right, standing, or duty that would otherwise not exist with regard to the cancellation proceedings.

History.--Stats. 1970, p. 826, in effect November 23, 1970, expanded the notice requirement to land which is situated within one mile of the exterior boundary of land upon which the contract is proposed to be canceled. Stats. 1983, Ch. 864, in effect September 16, 1983, substituted "the Director of Conservation" for "each" after "mailed to" in the second sentence. Stats. 1985, Ch. 106, effective January 1, 1986, deleted "of the Government Code" after "6061" and deleted "and" after "contract," in the second sentence. Stats. 1989, Ch. 943, in effect January 1, 1990, deleted "within the same agricultural preserve and" after "situated" in the second sentence and added the third, fourth, and fifth sentences. Stats. 1991, Ch. 125, in effect January 1, 1992, deleted "the Director of Conservation and" after "mailed to" in the second sentence, added the third sentence, added "tentative" after "days of the" in the fourth sentence, added the fifth sentence, and deleted the former seventh sentence which provided, "Within 30 days of the cancellation of the contract the city or county shall deliver a notice of cancellation to the Director of Conservation." Stats. 1993, Ch. 89, in effect January 1, 1994, added "at least 10 working days prior to the hearing, a" after "In addition", and added "hearing and a copy of the" after "notice of the" in the third sentence.

Note.--Section 3 of Stats. 1983, Ch. 864, provided no payment by state to local governments because of this act; however, a local agency or school district may pursue other remedies to obtain reimbursement.

51285. Same: Protest by other owners within preserve. The owner of any property located in the county or city in which the agricultural preserve is situated may protest such cancellation to the city or county conducting the hearing.

History.--Stats. 1969, p. 2813, in effect November 10, 1969, revised this section.

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

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

History.--Added by Stats. 1981, Ch. 1095, in effect January 1, 1982. Stats. 1985, Ch. 106, effective January 1, 1986, added a comma after "void", and deleted "the provisions of" after "pursuant to" in the first paragraph and substituted "on a" for "and" after "acting" in the second paragraph.

51287. Fee to recover cost of services. The city or county may impose a fee pursuant to Chapter 8 (commencing with Section 66016) of Division 1 of Title 7 for recovery of costs under

this article. The fee shall not exceed an amount necessary to recover the reasonable cost of services provided by the city or county under this article.

History.--Added by Stats. 1989, Ch. 943, in effect January 1, 1990. Stats. 1995, Ch. 686, in effect October 10, 1995, operative January 1, 1996, substituted "Chapter 8 (commencing with Section 66016) of Division 1 of Title 7" for "Chapter 13 (commencing with Section 54990) of Part 1 of Division 2" after "fee pursuant to" in the first sentence.

Article 6. Eminent Domain or Other Acquisition

51290. State or local public improvements within preserve. (a) It is the policy of the state to avoid, whenever practicable, the location of any state or local public improvements and any improvements of public utilities, and the acquisition of land therefor, in agricultural preserves.

(b) It is further the policy of the state that whenever it is necessary to locate such improvement within an agricultural preserve, such improvement shall, whenever practicable, be located upon land other than land under a contract pursuant to this chapter.

(c) It is further the policy of the state that any agency or entity proposing to locate such an improvement shall, in considering the relative costs of parcels of land and development of improvements, give consideration to the value to the public, as indicated in Article 2 (commencing with Section 51220), of land (and particularly prime agricultural land) within an agricultural preserve.

51290.5. "Public improvement." As used in this chapter "public improvement" means facilities or interests in real property owned by a public agency or person as defined in subdivision (a) of Section 51291.

History.--Added by Stats. 1994, Ch. 1158, in effect January 1, 1995.

51291. "Public agency." (a) As used in this section, Section 51292, and Section 51295 "public agency" means the state, or any department or agency thereof, and any county, city, school district, or other local public district, agency, or entity; and "person" means any person authorized to acquire property by eminent domain.

(b) Whenever it appears that land within an agricultural preserve may be required by a public agency or person for a public use, the public agency or person shall advise the Director of Conservation and the local governing body responsible for the administration of the preserve of the intention to consider the location of a public improvement within the preserve. In accordance with Section 51290, the notice shall include an explanation of the preliminary consideration of Section 51292, and give a general description, in text or by diagram, of the agricultural preserve land proposed for acquisition, and a copy of any applicable contract created under this chapter. The Director of Conservation shall forward to the Director of Food and Agriculture a copy of any material received from the public agency or person relating to the proposed acquisition.

Within 30 days thereafter the Director of Conservation and the local governing body shall forward to the public agency or person concerned their comments with respect to the effect of the

location of the public improvement on the land within the agricultural preserve and those comments shall be considered by the public agency or person. In preparing those comments, the Director of Conservation shall consider issues related to agricultural land use, including, but not limited to, matters related to the effects of the proposal on the conversion of adjacent or nearby agricultural land to nonagricultural uses, and shall consult with, and incorporate the comments of, the Director of Food and Agriculture on any other matters related to agricultural operations. Failure of any public agency or person to comply with the requirements of this section shall not invalidate any action by the agency or person to locate a public improvement within an agricultural preserve. However, the failure by any person or any public agency other than a state agency to comply with the requirements of this section shall be admissible in evidence in any litigation for the acquisition of that land or involving the allocation of funds or the construction of the public improvement. This subdivision does not apply to the erection, construction, alteration, or maintenance of gas, electric, water, or communication utility facilities within an agricultural preserve if that preserve was established after submission of the location of those facilities to the city or county for review or approval.

(c) When land in an agricultural preserve is acquired by a public entity, within 10 working days the public entity shall notify the Director of Conservation. The notice shall include a general explanation of the decision, and the findings made pursuant to Section 51292. If different from that previously provided pursuant to subdivision (b), the notice shall also include a general description, in text or by diagram, of the agricultural preserve land acquired, and a copy of any applicable contract created under this chapter.

(d) If, after giving the notice required under subdivisions (b) and (c) and before the project is completed within an agricultural preserve, the public agency or person proposes any significant change in the public improvement, it shall give notice of the changes to the Director of Conservation and the local governing body responsible for the administration of the preserve. Within 30 days thereafter, the Director of Conservation and the local governing body may forward to the public agency or person their comments with respect to the effect of the change to the public improvement on the land within the preserve and the compliance of the changed public improvements with this article. Those comments shall be considered by the public agency or person, if available within the time limits set by this subdivision.

(e) If the notices and findings required by this section and Section 51292 are given and contained within documents prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) those documents may be used to meet the notification and findings requirements of this section and Section 51292, as long as they are provided no later than the times set forth in this section.

Any action or proceedings regarding notices or findings required by this article filed by the Director of Conservation or the local governing body administering the agricultural preserve shall be governed by Section 51294.

History.--Stats. 1967, p. 3221, in effect November 8, 1967, added the last sentence of the second paragraph. Stats. 1974, Ch. 544, p. 1253, in effect January 1, 1975, substituted "Director of Food and Agriculture" for "Director of Agriculture" in subdivision (b) and in the first sentence of the second paragraph. Stats. 1975, Ch. 1240, in effect January 1, 1976, deleted "by Section 1001 of the Civil Code" after "authorized" in subdivision (a). Stats 1984, Ch. 851, in effect January 1, 1985,

substituted "Conservation" for "Food and Agriculture" after "Director of" in the first sentence and added the second sentence to the first paragraph of subdivision (b); and substituted "conservation" for "Food and Agriculture" after "Director of" in the first sentence and added the second sentence to the second paragraph thereof. Stats. 1994, Ch. 1158, in effect January 1, 1995, added the second sentence in the first paragraph of subdivision (b); added "to comply with the requirements of this section" after "a state agency" in the fourth sentence of the second paragraph of subdivision (b); and added subdivisions (c), (d), and (e).

51292. Conditions under which public improvement may not be located within preserve.

No public agency or person shall locate a public improvement within an agricultural preserve unless the following findings are made:

(a) The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve.

(b) If the land is prime agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.

History.--Stats. 1968, p. 1339, in effect November 13, 1968, added "or agreement" after "contract" in subdivision (b), Stats. 1969, p. 2816, in effect November 10, 1969, deleted "or agreement" which was added in 1968. Stats. 1994, Ch. 1158, in effect January 1, 1995, deleted the subdivision letter designation "(a)" before "No pulic agency", and added "unless the following findings are made:" after "an agricultural preserve" in the first paragraph; created new paragraph and added subdivision designation "(a)" and "The location is not" before "based primarily on" which had previously been part of the former subdivision (a); substituted "If the land is" for "No public agency or person shall acquire" after "(b)", substituted ", that" for "if" after "any public improvement", and added "no" after "there is" in subdivision (b).

51293. Same; special exceptions. Section 51292 shall not apply to:

(a) The location or construction of improvements where the board or council administering the agricultural preserve approves or agrees to the location thereof, except when the acquiring agency and administering agency are the same entity.

(b) The acquisition of easements within a preserve by the board or council administering the preserve.

(c) The location or construction of any public utility improvement which has been approved by the Public Utilities Commission.

(d) The acquisition of either (1) temporary construction easements for public utility improvements, or (2) an interest in real property for underground public utility improvements. This subdivision shall apply only where the surface of the land subject to the acquisition is returned to the condition and use that immediately predated the construction of the public improvement, and when the construction of the public utility improvement will not significantly impair agricultural use of the affected contracted parcel or parcels.

(e) The location or construction of the following types of improvements, which are hereby determined to be compatible with or to enhance land within an agricultural preserve:

(1) Flood control works, including channel rectification and alteration.

- (2) Public works required for fish and wildlife enhancement and preservation.
- (3) Improvements for the primary benefit of the lands within the preserve.
- (f) Improvements for which the site or route has been specified by the Legislature in a manner that makes it impossible to avoid the acquisition of land under contract.
- (g) All state highways on routes as described in Section 301 to 622, inclusive, of the Streets and Highways Code, as those sections read on October 1, 1965.
- (h) All facilities which are part of the State Water Facilities as described in subdivision (d) of Section 12934 of the Water Code, except facilities under paragraph (6) of subdivision (d) of that section.
- (i) Land upon which condemnation proceedings have been commenced prior to October 1, 1965.
- (j) The acquisition of a fee interest or conservation easement for a term of at least 10 years, in order to restrict the land to agricultural or open space uses as defined by subdivisions (b) and (o) of Section 51201.

History.--Stats. 1969, p. 2816, in effect November 10, 1969, substituted "board or council" for "Director of Agriculture or the local governing body", deleted a provision concerning the local governing body, and deleted a provision requiring public utilities commission approval from subdivision (a); added subdivision (b) and (c); and relettered subdivisions (b) through (f) as subdivisions (d) through (h). Stats. 1994, Ch. 1158, in effect January 1, 1995, added ", except when the . . . the same entity" after "the location thereof" in subdivision (a); added new subdivision (d) and relettered former subdivisions (d), (e), (f), (g), and (h) as (e), (f), (g), (h), and (i), respectively; substituted "a manner that makes" for "such a manner as to make" after "the Legislature in" in subdivision (f); substituted "those" for "said" after "Highways Code, as" in subdivision (g); substituted "subdivision (d) of that section" for "said subdivision (d)" after "paragraph (6) of" in subdivision (h); and added subdivision (j).

51293.1. Establishment of preserve prior to location of public utility improvement. Any public agency or person requiring land in an agricultural preserve for a use which has been determined by a city or county to be a "compatible use" pursuant to subdivision (e) of Section 51201 in that agricultural preserve shall not be excused from the provisions of subdivision (b) of Section 51291 if the agricultural preserve was established before the location of the improvement of a public utility was submitted to the city, county, or Public Utilities Commission for agreement or approval and that compatible use shall not come within the provisions of Section 51293 unless the location of the improvement is approved or agreed to pursuant to subdivision (a) of Section 51293 or the compatible use is listed in Section 51293.

History.--Stats. 1983, Ch. 101, in effect January 1, 1984, substituted "subdivision (e) of Section 51201" for "Section 51201 (e)" after "to", substituted "subdivision (b) of Section 51291" for "Section 51291 (b)" after "of", substituted "that" for "such" after "approval and", substituted "the" for "such" after "location of", and substituted "subdivision (a) of Section 51293" for "Section 51293 (a)" after "to".

51294. Enforcement. Section 51292 shall be enforceable only by mandamus proceedings by the local governing body administering the agricultural preserve or the Director of Conservation.

However, as applied to condemners whose determination of necessity is not conclusive by statute, evidence as to the compliance of the condemner with Section 51292 shall be admissible on motion of any of the parties in any action otherwise authorized to be brought by the landowner or in any action against the landowner.

History.--Stats. 1970, p. 825, in effect November 23, 1970, added "on motion of any of the parties" after "admissible" and substituted "in any" for "by way of defense in an" in the second sentence. Stats. 1974, Ch. 544, p. 1253, in effect January 1, 1975, substituted "Director of Food and Agriculture" for "Director of Agriculture" in the first sentence. Stats. 1984, Ch. 851, in effect January 1, 1985, substituted "Conservation" for "Food and Agriculture" after "Director of" in the first sentence, and substituted "the landowner" for "him" after "action against" in the second sentence.

51294.1. Water transmission facilities within preserve; local agency's approval. After 30 days have elapsed following its action, pursuant to subdivision (b) of Section 51291, advising the Director of Conservation and the local governing body of a county or city administering an agricultural preserve of its intention to consider the location of a public improvement within such agricultural preserve, a public agency proposing to acquire land within an agricultural preserve for water transmission facilities which will extend into more than one county, may file the proposed route of the facilities with each county or city administering an agricultural preserve into which the facilities will extend and request such county or city to approve or agree to the location of the facilities or the acquisition of the land therefor. Upon approval or agreement, the provisions of Section 51292 shall not apply to the location of the proposed water transmission facility or the acquisition of land therefor in any county or city which has approved or agreed to the location or acquisition.

History.--Added by Stats. 1970, p. 825, in effect November 23, 1970. Stats. 1974, Ch. 544, p. 1253, in effect January 1, 1975, substituted "Director of Food and Agriculture" for "Director of Agriculture" in the first sentence. Stats. 1984, Ch. 851, in effect January 1, 1985, substituted "Conservation" for "Food and Agriculture" after "Director of" in the first sentence.

51294.2. Same; validation proceedings. If any local governing body administering an agricultural preserve within 90 days after receiving a request pursuant to Section 51294.1 has not approved or agreed to the location of water transmission facilities as provided in Section 51294.1 or in subdivision (a) of Section 51293, the public agency making such request may file an action against such local governing body in the superior court of one of the counties within which any such body has failed to approve the location of facilities or the acquisition of land therefor, to determine whether the public agency proposing the location or acquisition has complied with the requirements of Section 51292. If the court should so determine, the provisions of Section 51292 shall not apply to the location of water transmission facilities, nor the acquisition of land therefor, in any of the counties into which they shall extend, and no writ of mandamus shall be issued in relation thereto pursuant to Section 51294. For the purposes of this section, the county selected for commencing such action is the proper county for the trial of such proceedings. In determining whether the public agency has complied with the requirements of Section 51292, the court shall consider the alignment, functioning and operation of the entire transmission facility.

Courts shall give any action brought under the provisions of this section preference over all other civil actions therein, to the end that such actions shall be quickly heard and determined.

History.--Added by Stats. 1970, p. 825, in effect November 23, 1970.

51295. Contract automatically void by condemnation. When any action in eminent domain for the condemnation of the fee title of an entire parcel of land subject to a contract is filed or when that land is acquired in lieu of eminent domain for a public improvement by a public agency or person or whenever there is any action or acquisition by the federal government or any person, instrumentality or agency enacting under authority or power of the federal government, such contract shall be deemed null and void as to the land actually being condemned or so acquired as of the date the action is filed and for the purposes of establishing the value of the land, the contract shall be deemed never to have existed.

Upon the termination of the proceeding, the contract shall be null and void for all land actually taken or acquired.

When an action to condemn or acquire less than all of a parcel of land subject to a contract is commenced, the contract shall be deemed null and void as to the land actually condemned or acquired and shall be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to contract will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the contract.

When an action to condemn or acquire an interest which is less than the fee title of an entire parcel or any portion thereof, of land subject to a contract is commenced, the contract shall be deemed null and void as to that interest and for the purpose of establishing the value of that interest only shall be deemed never to have existed, unless the remaining interests in any of the land subject to the contract will be adversely affected, in which case the value of that damage shall be computed without regard to the contract.

The land actually taken shall be removed from the contract. Under no circumstances shall land be removed that is not actually taken for public improvement, except that when only a portion of the land or less than a fee interest in the land is taken or acquired, the contract may be canceled with respect to the remaining portion or interest upon petition of either party and pursuant to the provisions of Article 5 (commencing with Section 51280)

For the purposes of this section, a finding by the board or council that no authorized use may be made of the land if the contract is continued on the remaining portion or interest in the land may satisfy the requirements of subdivision (a) of Section 51282.

If, after acquisition, the acquiring public agency determines that it will not for any reason actually locate on that land or any part thereof, the public improvement for which the land was acquired, before returning the land to private ownership the public agency shall give written notice to the Director of Conservation and the local governing body responsible for the administration of the preserve and the land shall be reenrolled in a contract, or encumbered by an enforceable deed restriction with terms at least as restrictive as those provided by this chapter. The duration of the restriction shall be determined by subtracting the length of time the land was held by the acquiring public agency or person from the number of years that remained on the original contract at the time of acquisition.

History.--Stats. 1967, p. 3221, in effect November 8, 1967, enlarged the section's applicability to a federal action or acquisition. Stats. 1969, p. 2816, in effect November 10, 1969, substituted "an entire . . . to a " for "any land under contract", substituted "shall be deemed" for "is" and substituted "and for the purposes . . . never to have existed" for "or so acquired and thereafter the contract shall not be binding on any party to it" in the first sentence of the first paragraph; and added the second, third and fourth paragraphs. Stats. 1971, p. 2123, in effect March 4, 1972, added the fourth and sixth paragraphs and substituted all after "not actually taken," for "except as otherwise provided in this chapter." in the fifth paragraph. Stats. 1984, Ch. 415, in effect January 1, 1985, deleted "of this chapter" after "51280)" in the second sentence of the fifth paragraph, and substituted "subdivision" for "subdivisions" after "requirements of", and deleted "and (b)" after "(a)" in the sixth paragraph. Stats. 1994, Ch. 1158, in effect January 1, 1995, added "for public improvement" after "not actually taken" in the second sentence of the fifth paragraph; and added the seventh paragraph.

Note.--Stats. 1971, p. 2123, also provided: When it meets all other requirements under the California Land Conservation Act of 1965 provided for in Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code, a contract, which at the time of its execution contained any or all of the phrases quoted in this section, shall be deemed an enforceable restriction pursuant to Section 422 of the Revenue and Taxation Code.

(a) If such contract provides for its nullification upon the filing of a "condemnation of an interest in all or any part of the subject property" or a "condemnation of all or a portion of subject property" and the board of supervisors of the county or city council of the city having jurisdiction over the land subject to such contract passes an ordinance stating that in administering such portion of the contract it will apply Section 51295 of the Government Code; or

(b) If such contract provides that the remaining portion of land after an action or acquisition by condemnation is determined by the board of supervisors of the county or city council of the city having jurisdiction over the land subject to the contract to be "impaired to such extent as to make it unsuitable for those uses legally available to the owner under terms of his contract" or provides that "such remaining land would no longer be eligible for contract under Section 51242 of the Government Code" and the board of supervisors of the county or city council of the city having jurisdiction over the land subject to such contracts passes an ordinance stating that in administering such portion of a contract it will apply Section 51295 of the Government Code; or

(c) If such contract provides for any waiver of a cancellation payment "provided that such waiver is in the best interest of the program to conserve agricultural land" and the board of supervisors of the county or city council of the city having jurisdiction over the land subject to such contract passes an ordinance stating that in administering such portion of a contract, it will apply subdivision (c) of Section 51283 of the Government Code.

(d) Each landowner affected by an ordinance referred to in subdivisions (a) to (c), inclusive, of this section shall be given personal notice of such ordinance by registered mail, or if mail is not delivered to such person, by notice posted on the affected property.

Article 7. Demonstration Land Preservation Project

51296. Legislative intent. The Legislature finds and declares that agricultural land trusts represent a promising method of preserving productive agricultural lands without the direct intervention of state or local land use regulations. The Legislature further finds and declares that the County of Marin has adopted local policies, including its general plan and local coastal plan, which promote the preservation of productive agricultural lands and has encouraged the development and operation of agricultural land trusts capable of undertaking a demonstration project to preserve productive agricultural lands. The Legislature further finds and declares that it is in the public interest to enhance these efforts to preserve productive agricultural lands in Marin County by supporting the efforts of agricultural land trusts.

51296.5. Agreements between the State Coastal Conservancy and Marin County. The State Coastal Conservancy may enter into an agreement with the County of Marin to operate a

demonstration project for the purpose of determining the feasibility of preserving productive agricultural lands through the acquisition of nonpossessory interests in these lands by an agricultural land trust. The agreement between the county and the conservancy shall specify the methods of carrying out the demonstration project, selecting the lands to be preserved, and establishing standards for the operation of the project.

51297. Marin County projects. The County of Marin may enter into agreements and make payments to a properly constituted agricultural land trust from any grant made to the county by the conservancy to carry out the purposes of this article. Before entering into an agreement, the board of supervisors shall conduct a public hearing on the issue after giving appropriate public notice to landowners, taxpayers, local agencies, and other interested parties.

51297.5. State Coastal Conservancy reporting. Commencing July 1, 1985, and annually thereafter, the State Coastal Conservancy shall report annually to the Legislature concerning the progress of the demonstration project created pursuant to this article. The conservancy shall issue a final comprehensive report to the Legislature on July 1, 1989, which evaluates the prospects for using agricultural land trusts to preserve productive agricultural lands in other counties.

51298. Termination date. This article shall remain in effect only until January 1, 1990, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1990, deletes or extends such date. The County of Marin shall retain the authority, however, to enforce the provisions of any agreement entered into pursuant to Section 51297.

REVENUE AND TAXATION CODE

52. Valuation of restricted property. (a) Notwithstanding any other provision of this division, property which is enforceably restricted pursuant to Section 8 of Article XIII of the California Constitution shall be valued for property tax purposes pursuant to Article 1.5 (commencing with Section 421) and Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2.

(b) Notwithstanding any other provision of this division, property restricted to timberland use pursuant to subdivision (j) of Section 3 of Article XIII of the California Constitution shall be valued for property tax purposes pursuant to Article 1.7 (commencing with Section 431) of Chapter 3 of Part 2.

(c) Notwithstanding any other provision of this division, property subject to valuation as a golf course pursuant to Section 10 of Article XIII of the California Constitution shall be valued for property tax purposes in accordance with such section.

(d) Notwithstanding the provisions of this division, property subject to valuation pursuant to Section 11 of Article XIII of the California Constitution shall be valued for property tax purposes in accordance with such section.

Construction.--In enacting subdivision (c) of this section, the Legislature did not effectively remove golf course property from the provisions of Article XIII, Section 2 of the Constitution, and the values of plaintiffs' properties are their respective 1975-76 "golf course" values subject to the 2 percent per year increases authorized by Article XIII, Section 2(b). *Los Angeles Country Club v. Pope*, 175 Cal.App.3d 278.

In enacting subdivision (d) of this section, the Legislature did not remove lands owned by local governments and located outside their boundaries from the provisions of Article XIII of the Constitution, even though the subdivision states that property subject to valuation pursuant to Article XIII, Section 11 must be valued for property tax purposes according to that section. That section only sets a ceiling for the valuation of extra-territorial lands that the taxing body cannot exceed. Any valuation below the limits set by that section thus accords with the section. *San Francisco v. San Mateo County*, 10 Cal. 4th 554.

53. Base year value for fruit, nut trees and grapevines. (a) Except as provided in subdivision (b), the initial base year value for fruit and nut trees and grapevines subject to exemption pursuant to subdivision (i) of Section 3 of Article XIII of the California Constitution shall be the full cash value of those properties as of the lien date of their first taxable year.

(b) A county board of supervisors may, after consulting with affected local agencies within the county's boundaries, provide by ordinance that the initial base year value for replacement grapevines that are planted to replace grapevines less than 15 years of age that were removed solely as a result of phylloxera infestation, as certified in writing by the county agricultural commissioner, shall be the base year value of the removed vines factored to the lien date of the first taxable year of the replacement vines. The assignment of base year replacement value is limited to replacement grapevines that are substantially equivalent to the vines that were replaced, and are planted on the same parcel as the replaced vines. For purposes of this subdivision, replacement vines are substantially equivalent to the vines they replace if the replacement vines are of a similar type and are planted at a similar density.

History.--Stats. 1992, Ch. 413, added "(a). . . the" at the beginning of the first sentence of subdivision (a); deleted the comma after "XIII", and substituted "those" for "such" after "value of" in subdivision (a); and added subdivision (b). Stats. 1993, Ch. 589 in effect January 1, 1994, substituted "consulting" for "consultation" after "may, after" in the first sentence of subdivision (b); added "assignment of" after "The" , and added "replacement" after "limited to" in the second sentence of subdivision (b); and added "replacement" after "subdivision,", added "the" after "equivalent to", added "they" after "vines", substituted "replace" for "replaced" after "vines", added "replacement" after "if the", and added "of" after "are" in the third sentence of subdivision (b).

ARTICLE 1.5. VALUATION OF OPEN-SPACE LAND SUBJECT TO AN ENFORCEABLE RESTRICTION

421. **Definitions.** For the purposes of this article:

(a) "Agricultural preserve" means an agricultural preserve created pursuant to the California Land Conservation Act of 1965 (Williamson Act) (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code).

(b) "Contract" means a contract executed pursuant to the California Land Conservation Act.

(c) "Agreement" means an agreement executed pursuant to the California Land Conservation Act prior to the 61st day following the final adjournment of the 1969 Regular Session of the Legislature 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.

(d) "Scenic restriction" means any interest or right in real property acquired by a city or county pursuant to Chapter 12 (commencing with Section 6950) of Division 7 of Title 1 of the Government Code, where the deed or other instrument granting such right or interest imposes restrictions that, through limitation of their future use, will effectively preserve for public use and enjoyment, the character of open spaces and areas as defined in Section 6954 of the Government Code.

A scenic restriction shall be for an initial term of 10 years or more, and shall provide for either of the following:

(1) A method whereby the term may be extended by mutual agreement of the parties.

(2) That the initial term shall be subject to annual automatic one-year extensions as provided for contracts in Sections 51244, 51244.5, and 51246 of the Government Code, unless notice of nonrenewal is given as provided in Section 51245 of the Government Code.

A scenic restriction may not be terminated prior to the expiration of the initial term, and any extension thereof, except as provided for cancellation of contracts in Sections 51281, 51282, 51283 and 51283.3 of the Government Code, and subject to the provisions therein for payment of the cancellation fee.

(e) "Open-space easement" means an open-space easement granted to a county or city pursuant to Chapter 6.5 (commencing with Section 51050) of Part 1 of Division 1 of Title 5 of the

Government Code if the easement is acquired prior to January 1, 1975, or an open-space easement granted to a county, city, or nonprofit organization pursuant to Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1 of Title 5 of the Government Code if the easement is acquired after January 1, 1975, or an open-space easement granted to a regional park district, regional park and open-space district, or regional open-space district under Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of the Public Resources Code.

(f) "Wildlife habitat contract" means any contract or amended contract or covenant involving, except as provided in Section 423.8, 150 acres or more of land entered into by a landowner with any agency or political subdivision of the federal or state government limiting the use of lands for a period of 10 or more years by the landowner to habitat for native or migratory wildlife and native pasture. These lands shall, by contract, be eligible to receive water for waterfowl or waterfowl management purposes from the federal government.

(g) "Open-space land" means any of the following:

(1) Land within an agricultural preserve and subject to a contract or an agreement.

(2) Land subject to a scenic restriction.

(3) Land subject to an open-space easement.

(4) Land that has been restricted by a political subdivision or an entity of the state or federal government, acting within the scope of its regulatory or other legal authority, for the benefit of wildlife, endangered species, or their habitats.

(h) "Typical rotation period" means a period of years during which different crops are grown as part of a plant cultural program. Typical rotation period does not mean the rotation period of timber.

(i) "Wildlife" means waterfowl of every kind and any other undomesticated mammal, fish, or bird, or any reptile, amphibian, insect, or plant.

(j) "Endangered species" means any species or subcategory therefore, as defined in the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), that has been classified and protected as an endangered, threatened, rare, or candidate species by any entity of the state or federal government.

History.--Added by Stats. 1969, p. 1702, operative March 1, 1970. Stats. 1973, Ch. 1165, p. 2424, in effect January 1, 1974, added subdivision (f), relettered former subdivision (f) to (g) and former subdivision (g) to (h), and added subdivision (i). Stats. 1974, Ch. 1003, p. 2159, in effect January 1, 1975, added the balance of subdivision (e) after first "Government Code". Stats. 1977, Ch. 1178, in effect January 1, 1978, added "nonprofit organization" in subdivision (e), and substituted "Landowner" for "Landowners" and "or" for "of" after "10" in the first sentence of subdivision (f). Stats. 1982, Ch. 71, in effect March 1, 1982, added ", or an open-space easement granted to a regional park district regional park and open-space district, or regional open-space district under Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of the Public Resources Code" after "after January 1, 1975" in subdivision (e).

Note.--Stats. 1971, p. 130, in effect May 25, 1971, provided:

Section 1. (a) For purposes of subdivision (c) of Section 421 of the Revenue and Taxation Code, an agreement, when taken as a whole, shall be deemed to provide restrictions, terms and conditions which are substantially similar to, or more restrictive than, those required by statute for a contract if at the time of its execution:

- (1) The agreement had an initial term of seven years or more.
- (2) The agreement could be canceled only by reason of condemnation of all or part of the property subject to the agreement or by reason of the death of an owner of the property subject to the agreement.
- (3) The agreement provided that cancellation of the agreement must be approved by the board of supervisors or city council.

(b) The provisions of this section shall not be construed to provide the exclusive terms of validation for agreements executed pursuant to the California Land Conservation Act and shall apply to assessments for the 1971-1972 fiscal year only. The provisions of this section shall not be deemed to permit any reduction in the restrictions, terms, and conditions heretofore imposed by agreement.

Sec. 2. Notwithstanding any other provision of law to the contrary, the assessment procedures specified under Section 423 of the Revenue and Taxation Code shall be effective with respect to land subject to taxation for the 1971-1972 fiscal year only, if such land is subject to an instrument meeting the requirements set by Section 1 of this act.

Note.--Section 10 of Stats. 1974, Ch. 1003, p. 2161, provided no payment by state to local governments because of this act. Sec. 11 thereof provided that the provisions of this act shall be given prospective application only and shall not be construed in a manner which would impair the obligation of any existing open-space easement or scenic restriction entered into prior to January 1, 1975. Land subject to any such easement or restriction on such date shall continue to be assessed under Article 1.5 (commencing with Section 421) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code so long as such land otherwise qualifies for assessment under such article and qualifies under Chapter 6.5 (commencing with Section 51050) of Part 1 of Division 1 of Title 5 of, or under Chapter 12 (commencing with Section 6950) of Division 7 of Title 1 of, the Government Code.

421.5. Definitions. For purposes of this article, the following terms have the following meaning:

- (a) "Agricultural conservation easement" shall have the same meaning as a conservation easement, as defined in Section 815.1 of the Civil Code.
- (b) "Open-space land" includes land subject to an agricultural conservation easement.

History.--Added by Stats. 1995, Ch. 931, in effect January 1, 1996.

422. Enforceable restriction defined. For the purposes of this article and within the meaning of Section 8 of Article XIII of the Constitution, open-space land is "enforceably restricted" if it is subject to any of the following:

- (a) A contract;
- (b) An agreement;
- (c) A scenic restriction entered into prior to January 1, 1975;

- (d) An open-space easement; or
- (e) A wildlife habitat contract.

For the purposes of this article no restriction upon the use of land other than those enumerated in this section shall be considered to be an enforceable restriction.

History.--Added by Stats. 1969, p. 1703, operative March 1, 1970. Stats. 1973, Ch. 1165, p. 2425, in effect January 1, 1974, added subsection (e). Stats. 1974, Ch. 1003, p. 2160, in effect January 1, 1975, added the balance of subsection (c) after "restriction". Stats. 1975, Ch. 224, p. 603, in effect January 1, 1976, substituted "Section 8 of Article XIII" for "Article XXVIII", deleted "State" before "Constitution", and substituted "open-space land is 'enforceably restricted' if it is subject to" for " 'enforceable restriction' " in the first sentence of the first paragraph.

Note.--Stats. 1971, p. 1446, in effect August 24, 1971, provided:

Section 1. A contract which at the time of its execution contained any or all of the requirements contained in this section shall be deemed to provide an enforceable restriction for purposes of Section 422 of the Revenue and Taxation Code and shall be entitled to assessment under Section 423, 423.5 or 429 of such code, provided that such contract otherwise conforms to the statutory requirements of the California Land Conservation Act of 1965, as contained in Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code.

(a) If such contract provides for its nullification upon the filing of a condemnation of an interest in all or any part of the property subject to the contract and the board of supervisors of the county or city council of the city having jurisdiction over the land subject to such contract passes an ordinance interpreting such provision, in the case of a condemnation of less than a fee interest, to mean the nullification operates for purposes of establishing value for condemnation purposes but that any termination of the contract is to be pursuant to Article 5 (commencing with Section 51280) of Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code; or

(b) If such contract provides that the remaining portion of land after an action or acquisition by condemnation is determined by the board of supervisors of the county or city council of the city having jurisdiction over the land subject to the contract to be impaired to such extent as to make it unsuitable for those uses legally available to the owner under terms of his contract and the board of supervisors of the county or city council of the city having jurisdiction over the land subject to such contracts passes an ordinance stating that in administering such portion of a contract it will apply Article 5 (commencing with Section 51280) of Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code; or

(c) If such contract provides for any waiver of a cancellation payment provided that such waiver is in the best interest of the program to conserve agricultural land and the board of supervisors of the county or city council of the city having jurisdiction over the land subject to such contract passes an ordinance stating that in administering such portion of a contract, it will apply subdivision (c) of Section 51283 of the Government Code.

Note.--Stats. 1971, p. 23, in effect March 25, 1971, provided:

Section 1. Notwithstanding any other provision of law to the contrary, the assessment procedures specified under Sections 423 and 423.5 of the Revenue and Taxation Code shall be effective with respect to land subject to taxation for the 1971-1972 fiscal year, if such land is subject to an instrument meeting the requirements of Section 422 of the Revenue and Taxation Code and such instrument is signed or accepted and recorded on or before May 15, 1971; provided, that prior to 5 o'clock p.m. on March 1, 1971, either the land which is subject to a contract was included in a proposal to establish an agricultural preserve submitted to the planning commission or planning department or the matter of accepting an open-space easement or scenic restriction had been referred to such commission or department.

Note.--Stats. 1971, p. 258, in effect June 25, 1971, contained substantially identical provisions.

Note.--Stats. 1972, p. 866, in effect July 28, 1972, provided:

Notwithstanding any other provision of law to the contrary, the assessment procedures specified under Sections 423 and 423.5 of the Revenue and Taxation Code shall be effective with respect to land subject to taxation for the 1972-1973 fiscal year, if such land is subject to an instrument meeting the requirements of Section 422 of the Revenue and Taxation Code and such instrument is signed and recorded on or before May 25, 1972; provided, that prior to 5 o'clock p.m. on March 1, 1972, either the land which is subject to a contract was included in a proposal to establish an agricultural preserve submitted to the planning commission or planning department or the matter of accepting an open-space easement or scenic restriction had been referred to such commission or department.

Generally.--Agreements concluded under the Land Conservation Act of 1965 will not be invalid under later amendments to the act if the restrictive conditions are substantially similar to the amended provisions. *Marin County v. Assessment Appeals Board*, 64 Cal. App. 3d 319.

422.5. Open-space land; "enforceably restricted". For the purposes of this article, open-space land is "enforceably restricted" within the meaning of Section 8 of Article XIII of the California Constitution if it is subject to an agricultural conservation easement.

History.--Added by Stats. 1995, Ch. 931, in effect January 1, 1996. 1792.

423. Factors to be considered in valuation. Except as provided in Sections 423.7 and 423.8, when valuing enforceably restricted open-space land, other than land used for the production of timber for commercial purposes, the county assessor shall not consider sales data on lands, whether or not enforceably restricted, but shall value these lands by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available the income shall be the fair rent which can be imputed to the land being valued based upon rent actually received for the land by the owner and upon typical rentals received in the area for similar land in similar use, where the owner pays the property tax. Any cash rent or its equivalent considered in determining the fair rent of the land shall be the amount for which comparable lands have been rented, determined by average rents paid to owners as evidenced by typical land leases in the area, giving recognition to the terms and conditions of the leases and the uses permitted within the leases and within the enforceable restrictions imposed.

(2) Where sufficient rental information is not available, the income shall be that which the land being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the land is enforceably restricted. There shall be a rebuttable presumption that "prudent management" does not include use of the land for a recreational use, as defined in subdivision (n) of Section 51201 of the Government Code, unless the land is actually devoted to that use.

(3) Notwithstanding any other provision herein, if the parties to an instrument which enforceably restricts the land stipulate therein an amount which constitutes the minimum annual income per acre to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For the purposes of this section, income shall be determined in accordance with rules and regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, which the land can be expected to yield to an owner-operator annually on the average from any use of the land permitted under the terms by which the land is enforceably restricted, including, but not limited to, that from the production of salt and from typical crops grown in the area during a typical rotation period, as evidenced by historic cropping patterns and agricultural commodities grown. When the land is planted to fruit-bearing or nut-bearing trees, vines, bushes, or perennial plants, the revenue shall not be less than the land would be expected to yield to an owner-operator from other typical crops grown in the area during a typical rotation period, as evidenced by historic cropping patterns and agricultural commodities grown. Proceeds from the sale of the land being valued shall not be included in the revenue from the land.

Expenditures shall be any outlay or average annual allocation of money or money's worth that has been charged against the revenue received during the period used in computing that revenue. Those expenditures to be charged against revenue shall be only those which are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the land, interest on funds invested in trees and vines valued as land as provided by Section 429, property taxes, corporation income taxes, or corporation franchise taxes based on income. When the income used is from operating the land being valued or from operating comparable land, amounts shall be excluded from the income to provide a fair return on capital investment in operating assets other than the land, to amortize depreciable property, and to fairly compensate the owner-operator for his operating and managing services.

(b) The capitalization rate to be used in valuing land pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year which is the arithmetic mean, rounded to the nearest 1/4 percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to each of the four immediately preceding assessment years. The interest component defined by this paragraph shall be implemented in phases and shall be:

(A) For the 1993-94 assessment year, the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, rounded to the nearest 1/4 percent.

(B) For the 1994-95 assessment year, the arithmetic mean, rounded to the nearest 1/4 percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rate for those bonds, as most recently published by the Federal Reserve Board as of the September 1 immediately prior to the 1993-94 assessment year.

(C) For the 1995-96 assessment year, the arithmetic mean, rounded to the nearest 1/4 percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to the 1993-94 and 1994-95 assessment years.

(D) For the 1996-97 assessment year, the arithmetic mean, rounded to the nearest 1/4 percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to the 1993-94, 1994-95, and 1995-96 assessment years.

(E) For the 1997-98 assessment year, and each fiscal year thereafter, the arithmetic mean, rounded to the nearest 1/4 percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to the four immediately preceding assessment years.

(2) A risk component which shall be a percentage determined on the basis of the location and characteristics of the land, the crops to be grown thereon and the provisions of any lease or rental agreement to which the land is subject.

(3) A component for property taxes which shall be a percentage equal to the estimated total tax rate applicable to the land for the assessment year times the assessment ratio. The estimated total tax rate shall be the cumulative rates used to compute the state's reimbursement of local governments for revenues lost on account of homeowners' property tax exemptions in the tax rate area in which the enforceably restricted land is situated.

(4) A component for amortization of any investment in perennials over their estimated economic life when the total income from land and perennials other than timber exceeds the yield from other typical crops grown in the area.

(c) The value of the land shall be the quotient for the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b).

(d) Unless a party to an instrument which creates an enforceable restriction expressly prohibits such a valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

In determining the 1975 base year value under Article XIII A of the California Constitution for any parcel for comparison, the county may charge a contractholder a fee limited to the reasonable costs of such determination not to exceed twenty dollars (\$20) per parcel.

(e) If the parties to an instrument which creates an enforceable restriction expressly so provide therein, the assessor shall assess those improvements which contribute to the income of land in the manner provided herein. As used in this subdivision "improvements which contribute to the income of the land" shall include, but are not limited to, wells, pumps, pipelines, fences, and structures which are necessary or convenient to the use of the land within the enforceable restrictions imposed.

History.--Stats. 1969, p. 1703, operative March 1, 1970, completely revised this section. Stats. 1970, p. 1591, in effect November 23, 1970, added the rebuttable presumption in subsection (a)(2). Stats. 1971, p. 3617, in effect March 4, 1972, substituted "the following" for "three" in subdivision (b) of the fourth paragraph and added (4) to subsection (b). Stats. 1972 p. 2191, in effect March 7, 1973, combined the second and third paragraphs in subsection (b)(2). Stats. 1973, Ch. 1165, p. 2425, in effect January 1, 1974, added "Except as provided in Section 423.7" at the beginning of the first paragraph, Stats. 1974, Ch. 311, p. 604, in effect January 1, 1975, substituted "enforceably restricted open-space land" for "open-space land subject to an enforceable restriction", and substituted "enforceably restricted" for "subject to an enforceable restriction" in the first sentence of the first paragraph; substituted "provisions under which the land is enforceably restricted" for "enforceable restrictions" in the second sentence of subsection (a)(1) and in the first sentence of subsection (b)(1); and substituted "by which the land is enforceably restricted" for "of the enforceable restriction" in the second sentence of the second paragraph. Stats. 1976, Ch. 423, p. 1083, in effect July 1, 1976, added subsection (a)(3), and deleted the former fourth paragraph which required that the board and the assessor impute income to land in certain cases. Stats. 1978, Ch. 1120, in effect January 1, 1979, substituted the second sentence for the former second sentence of subdivision (a)(1) which read "When the land being valued is actually encumbered by a lessee, any cash rent or its equivalent considered in determining the fair rent of the land shall be the amount for which the land would be expected to rent were the rental payment to be renegotiated in the light of current conditions including applicable provisions under which the land is enforceably restricted", substituted "5120" for "51201" after "Section" in subdivision (a)(2), substituted "as evidenced by historic cropping patterns and agricultural commodities grown" for "not to exceed six years including the tax year and the next succeeding five years" after "period" in the second and third sentences of the second paragraph, deleted "expected to be" after "revenue" in the first sentence of the third paragraph, added the second sentence to subsection (b)(3), and added subdivisions (e) and (f). Stats. 1979, Ch. 1075, in effect September 28, 1979, applicable to the 1979-80 fiscal year and thereafter substituted "51201" for "5120" in the second sentence of the subdivision (a)(2), substituted subdivision (e) for the former subdivision (e), and substituted "subdivision" for "subsection" in the second sentence of subdivision (f). Stats. 1981, Ch. 261, in effect January 1, 1982, deleted "one-quarter" before and the parentheses surrounding "1|B2" in subsection (1) of subdivision (b), deleted subdivision (d), and relettered former subdivisions "(e)" and "(f)" as "(d)" and "(e)", respectively. Stats. 1984, Ch. 678, in effect January 1, 1985, deleted "the board for purposes of surveys required by Section 1815 of this code . . . and " after "purposes," in the first sentence. Stats. 1987, Ch. 144, in effect January 1, 1988, substituted "these" for "such" after "value" in the first sentence; substituted "that" or "the" for "such" in paragraphs (a)(2), (a)(3) and (d); in (a)(3) substituted "." for "; and" after "subject" in subdivision (b)(2); added "the lesser of either" after "exceed" and added "by calculation under Section 110, or the valuation that would have resulted" after "resulted" in the first sentence of the first paragraph of subdivision (d), deleted the former second paragraph thereof, which provided that "The county assessor shall notify annually the parties to an instrument which creates an enforceable restriction that unless either party expressly prohibits such a valuation, the valuation resulting from the capitalization of income method shall not exceed the valuation that would have resulted by calculation under Section 110.1, as though such property was not subject to an enforceable restriction in the base year", and substituted "contractholder" for "contract holder" after "charge a" in the first sentence of the third paragraph thereof. Stats. 1992, Ch. 247, in effect January 1, 1993, substituted ", which is the . . . 1/4 percent, of" for "and which was" after "assessment year", and substituted "and the corresponding yield rates . . . preceding assessment years" for "rounded to the nearest 1/4 percent" after "Federal Reserve Bank" in the first sentence of paragraph (1) of subdivision (b); added the second sentence of paragraph (A) of subdivision (b), and added subparagraphs (A), (B), (C), (D), and (E) to paragraph (1) of subdivision (b).

Note.--Stats. 1968, p. 875, in effect June 28, 1968, provides that the assessment procedures specified under Section 423 shall be effective with respect to land for the 1968-69 fiscal year if the land is subject to an instrument, meeting the requirements of Section 422, which was signed and recorded on or before June 15, 1968. Stats. 1969, p. 60, in effect February 25, 1969, and Stats. 1970, p. 14, in effect February 27, 1970, similarly provide for the 1959-70 and 1970-71 fiscal years respectively. Section 4 of Stats. 1979, Ch. 1075, provided that notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act pursuant to these sections because local government

entities have the option to prohibit computation of the lower of Williamson Act values determined according to capitalization rates or Article XIII A, and thus, this act does not itself impose additional duties or result in loss of revenues.

423.3. Valuation of enforceably restricted lands. Any city or county may allow land subject to an enforceable restriction under the Williamson Act or a migratory waterfowl habitat contract to be assessed in accordance with one or more of the following:

(a) Land specified in subdivision (a) or (b) of Sections 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 70 percent.

(b) Land specified in subdivision (c) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 75 percent.

(c) Prime commercial rangeland shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 80 percent.

For purposes of this subdivision "prime commercial rangeland" means rangeland which meets all of the following physical-chemical parameters:

- (1) Soil depth of 12 inches or more.
- (2) Soil texture of fine sandy loam to clay.
- (3) Soil permeability of rapid to slow.
- (4) Soil with at least 2.5 inches of available water holding capacity in profile.
- (5) A slope of less than 30 percent.
- (6) A climate with 80 or more frost-free days per year.
- (7) Ten inches or more average annual precipitation.
- (8) When managed at potential, the land generally requires less than 17 acres to support one animal unit per year.

Property owners of land specified in this subdivision, shall demonstrate that their land falls within the above definition when requested by the city or county.

(d) Land specified in subdivision (d) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

(e) Waterfowl habitat shall be assessed at the value as provided in Section 423.7 but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

History.--Added by Stats. 1980, Ch. 1273, in effect January 1, 1981. Stats. 1982, Ch. 1366, in effect January 1, 1983, substituted "a uniformly applied percentage" for "70 percent" in subdivision (a), for "75 percent" in subdivision (b), for "80 percent" in subdivision (c), and for "90 percent" in subdivisions (d) and (e) after "exceed", added the second sentence to the first paragraphs of subdivisions (a) through (e), and deleted former subdivisions (f) and (g).

Note.--Section 2 of Stats. 1980, Ch. 1273, provided the Board of Equalization shall conduct a study of the costs associated with this act and shall report to the Legislature on or before December 31, 1982. Section 3 thereof provided no payment by state to local governments because of this act, however, a local agency or school district may pursue other remedies to obtain reimbursement.

423.5. Valuation of timberland. When valuing open-space land which is enforceably restricted and used for the production of timber for commercial purposes, the county assessor shall not consider sales data on lands, whether or not enforceably restricted, but shall determine the value of such timberland to be the present worth of the income which the future harvest of timber crops from the land and the income from other allowed compatible uses can reasonably be expected to yield under prudent management. The value of timberland pursuant to this section shall be determined in accordance with rules and regulations issued by the board. In determining the value of timberland pursuant to this section, the board and the county assessor shall use the capitalization rate derived pursuant to subdivision (b) of Section 423. The ratio prescribed in Section 401 shall be applied to the value of the land determined in accordance with this section to obtain its assessed value.

For the purposes of this section, the income of each acre of land shall be presumed to be no less than two dollars (\$2), and the present worth of this income shall not be reduced by the value of any exempt timber on the land.

There shall be a rebuttable presumption that "prudent management" does not include use of the land for recreational use, as defined in subdivision (n) of Section 51201 of the Government Code, unless the land is actually devoted to such use.

History.--Added by Stats. 1969, p. 1705, operative March 1, 1970. Stats. 1970, p. 2877, in effect November 23, 1970, added "and the present worth of the income attributable to other allowed compatible uses of the land" to the first sentence and added the third paragraph. Stats. 1973, Ch. 369, p. 811, in effect January 1, 1974, added "and the income from other allowed compatible uses" after "timber crops from the land", deleted "and the present worth of the income attributable to other allowed compatible uses of the land" and added "under prudent management" after "yield" in the first paragraph; and substituted the second paragraph for the former second paragraph dealing with conditions for imputing a two-dollar-per-acre minimum income. Stats. 1974, Ch. 311, p. 606, in effect January 1, 1975, substituted "which is

enforceably restricted" for "subject to an enforceable restriction", and substituted "enforceably restricted" for "subject to an enforceable restriction" in the first sentence of the first paragraph. Stats. 1984, Ch. 678, in effect January 1, 1985, deleted "the board, for purposes of surveys required by section 1815, and "after "purposes" in the first sentence.

423.7. Valuation of land subject to a wildlife habitat contract. (a) When valuing open-space land subject to a wildlife habitat contract, as defined in subdivision (f) of Section 421, the board, for purposes of surveys required by Section 15640 of the Government Code, and all assessors shall value that land by using the average current per-acre value based on recent sales including the sale of an undivided interest therein, of lands subject to a wildlife habitat contract within the same county. Whenever ownership of open-space land is held by a corporation and the principal underlying asset of that corporation is represented by those lands, the price received for each bona fide sale of shares of stock in those corporations or certificates of membership in nonprofit corporations shall be treated as a sale of open-space land by the assessor in determining average value for open-space lands within the meaning of this section.

(b) In the valuation of open-space land subject to a wildlife habitat contract as defined in subdivision (f) of Section 421, irrespective of the number of parcels represented by a single ownership, the assessor shall use sales of less than 150 acres in determining the average value of those lands only if the sale is of an undivided interest of land subject to a wildlife habitat contract as defined in subdivision (f) of Section 421. The assessor shall not use any other sale of less than 150 acres of land.

(c) In the event of sales of corporate stock or membership, as referred to in subdivision (a), the assessor shall determine the average per-acre sales price and multiply such sales price by the number of acres held under the single ownership from which the land was sold, in order to determine the current total value of the single ownership.

(d) The assessor shall then determine the average current per-acre value of that land subject to a wildlife habitat contract, as defined in subdivision (f) of Section 421, by adding the current value of all those lands including corporate sales as set forth in subdivision (c), of which there has been a recent sale, and then dividing the total current value by the total number of acres of all that land of which there has been a recent sale.

(e) Whenever less than 10 years remain to the expiration of a wildlife habitat contract, the value of land determined under subdivision (a) shall be modified pursuant to this subdivision. If the full cash value of that land as determined under Section 110.1 is greater than the value determined under subdivision (a) of this section, a pro rata share of the amount of that difference shall be added in annual equal installments to the value determined pursuant to subdivision (a) over the remaining term of the wildlife habitat contract.

(f) Owners of open-space land subject to a wildlife habitat contract which has been used exclusively for habitat by native or migratory wildlife, recreation, and native pasture shall report the sale of that land, or an interest therein, to the county assessor within 30 days of the sale.

(g) In the event that a wildlife habitat contract is canceled upon the application of an owner of the land covered by the contract, a penalty equal to 6 percent of the full cash value of the land as

determined under Section 110.1 on the lien date next following cancellation shall be imposed. The penalty shall become delinquent on the December 10 next following that lien date and shall be treated in all respects as a delinquent penalty imposed under Section 2617 or 2704. This subdivision shall not apply when a wildlife habitat contract is canceled without the consent of an owner of the land affected.

(h) The provisions of Section 426 shall not apply to any lands valued for assessment purposes pursuant to the provisions of this section.

(i) The assessor shall not value any land under a single ownership under this section unless the owners of that land have provided the assessor with a schedule of sales of that land that have occurred during the previous four years.

(j) If there are no prior sales within the county of open-space land subject to a wildlife contract and used exclusively for habitat by native or migratory wildlife, recreation, and native pasture, the assessor shall value the land pursuant to Section 110.1.

(k) Unless a party to an instrument which creates an enforceable restriction expressly prohibits such a valuation, the valuation resulting from the method described in this section shall not exceed the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

History.--Added by Stats. 1973, Ch. 1165, p. 2427, in effect January 1, 1974, Sec. 5 thereof provided for state payment to local government for revenue lost because of this act. Stats. 1980, Ch. 802, in effect January 1, 1981, added subdivision (l). Stats. 1982, Ch. 1465, in effect January 1, 1983, in addition to making a number of grammatical changes throughout the section, substituted "110.1" for "405" after "Section" in the second sentence of subdivision (e), in the first sentence of subdivision (g), and in the first sentence of subdivision (j); deleted former subdivision (g); and renumbered former subdivisions "(h)" as "(g)," "(i)" as "(h)," "(j)" as "(i)," "(k)" as "(j)," and "(l)" as "(k)", respectively. Stats. 1983, Ch. 1281, in effect September 30, 1983, substituted "section 15640 of the Government Code" for "Section 1815" after "required by" in the first sentence of subdivision (a), and substituted "that" for "such a" after "prohibits" in subdivision (k).

423.8 (a) Notwithstanding the acreage requirement specified in subdivision (f) of Section 421, both of the following apply with respect to enrollment in a wildlife habitat contract:

(1) Any open-space land that has been restricted as wildlife or endangered species habitat by a political subdivision of the state or entity of state government shall, upon the request of the owner of that land, be enrolled in a wildlife habitat contract with the political subdivision of the state or entity of state government that has so restricted the subject open-space land.

(2) Any open-space land that has been restricted as wildlife or endangered species habitat by an agency of the federal government, shall, upon the request of the landowner, be enrolled in a wildlife habitat contract with the city or county having jurisdiction over the restricted open-space land.

For any open-space land eligible for valuation under Section 422.5, 423, 423.3, 423.5, 426, or 435, that has also been enrolled in a wildlife habitat contract pursuant to this section, the controlling value of the land shall, except as otherwise provided in the following sentence, be the

lower of the values determined for that land pursuant to those sections or Section 402.1. Other lands enrolled in a wildlife habitat contract pursuant to this section shall be assessed at the value determined as provided in Section 402.1.

(b) In no event shall this section or Section 421 be construed to authorize a political subdivision or any entity of the state or federal government to restrict the otherwise lawful use of property by designating all or part of that property as wildlife habitat or endangered species habitat without the consent of the owner of that property.

(c) It is the intent of the Legislature in adding this section to establish a nonexclusive alternative method of recognizing, for purposes of property taxation, the existence of certain governmental restrictions on the use of property. Neither this section nor Section 402.1 shall be construed or applied to require the existence of a wildlife habitat contract, as described in this section, as a necessary condition for recognizing the effect upon the taxable value of property of any enforceable restriction that is recognized under Section 422 or 402.1 and is legally established by statute, regulation, or any action or classification by a governmental entity, for the benefit of wildlife, endangered species, or their habitats.

423.9. Valuation of land zoned as timberland production. Land which is zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code and which is not under an open-space contract pursuant to Section 51240 of the Government Code shall be valued pursuant to Section 435.

History.--Added by Stats. 1976, Ch. 176, p. 319, in effect May 24, 1976. Stats. 1982, Ch. 1489, in effect January 1, 1983, substituted "production" for "preserve" after "timberland."

424. Modification of existing agreements and deeds. Parties to existing agreements and scenic easement deeds may modify such agreements and deeds to the requirements of Section 422.

426. Valuation where restriction will be terminated. Notwithstanding any provision of Section 423 to the contrary, if either the county, city, or nonprofit organization or the owner of land subject to contract, agreement, scenic restriction, or open-space easement has served notice of nonrenewal as provided in Section 51091 or 51245 of the Government Code, and the county assessors shall, unless the parties shall have subsequently rescinded the contract pursuant to Section 51254 or 51255 of the Government Code, value the land as provided in this section.

(a) If the owner of land serves notice of nonrenewal or the county, city, or nonprofit organization serves notice of nonrenewal and the owner fails to protest as provided in Section 51091 or 51245 of the Government Code, subdivision (b) shall apply immediately. If the county, city, or nonprofit organization serves notice of nonrenewal and the owner does protest as provided in Section 51091 or 51245 of the Government Code, subdivision (b) shall apply when less than six years remain until the termination of the period for which the land is enforceably restricted.

(b) Where any of the conditions in subdivision (a) apply, the board or assessor in each year until the termination of the period for which the land is enforceably restricted shall do all of the following:

(1) Determine the value of the land pursuant to Section 110.1 of the Revenue and Taxation Code. If the land is not subject to Section 110.1 of the Revenue and Taxation Code when the restriction expires, the value shall be determined pursuant to Section 110 of the Revenue and Taxation Code as if it were free of contractual restriction. If the land will be subject to a use for which the Revenue and Taxation Code provides a special restricted assessment, the value shall be determined as if it were subject to the new restriction.

(2) Determine the value of the land by capitalization of income as provided in Section 423 and without regard to the existence of any of the conditions in subdivision (a).

(3) Subtract the value determined in paragraph 2 of subdivision (b) by capitalization of income from the full value determined in paragraph (1) of subdivision (b).

(4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 423, discount the amount obtained in paragraph (3) of subdivision (b) for the number of years remaining until the termination of the contract, agreement, scenic restriction, or open-space easement.

(5) Determine the value of the land by adding the value determined by capitalization of income as provided in paragraph (2) of subdivision (b) and the value obtained in paragraph (4) of subdivision (b).

(6) Apply the ratio prescribed in Section 401 to the value of the land determined in paragraph (5) of subdivision (b) to obtain its assessed value.

History.--Added by Stats. 1969, p. 1191, in effect November 10, 1969. Stats. 1974, Ch. 1003, p. 2160, in effect January 1, 1975, substituted the first paragraph and subdivision (a) for the former first sentence and subdivision (a)(1), (2), (3), (4), and (5). Stats. 1975, Ch. 224, p. 603, in effect January 1, 1976, added "scenic restriction," after "agreement," in the first sentence of the first paragraph, substituted "the termination of the period for which the land is enforceably restricted" for "the expiration of the enforceable restriction" in the second sentence of subdivision (a), substituted "the period for which the land is enforceably restricted" for "the enforceable restriction" in subdivisions (b) and (b)(4), and substituted "enforceably restricted" for "subject to enforceable restriction" in subdivision (b)(1). Stats. 1977, Ch. 1178, in effect January 1, 1978, added "nonprofit organization" and deleted "s" from "Section" before "51091" in the first paragraph and in subdivision (a), added ", unless the parties have subsequently rescinded such contract pursuant to Section 51254 or 51255 of the Government Code," to the first paragraph, and deleted "subject to" after "not" in subdivision (b)(1). Stats. 1982, Ch. 1366, in effect January 1, 1983, in addition to making a number of grammatical changes throughout this section, added "do all of the following" after "shall" in the first sentence of subdivision (b), deleted "full cash" before "value" and substituted "pursuant to Section 110.1 of the Revenue and Taxation Code" for "as if it were not enforceably restricted" after "land" in the first sentence, and added the second and third sentences in paragraph (1), deleted "cash" after "full" in paragraph (3), and deleted "of this section" before "for the", and substituted "contract, agreement, scenic restriction, or open-space easement" for "period for which the land is enforceably restricted" in paragraph (4) of subdivision (b). Stats. 1984, Ch. 678, in effect January 1, 1985, deleted "the board, for purposes of surveys required by Section 1815," after "51245 of the Government Code." in the first paragraph.

427. Consideration of minerals, etc. Nothing in this article shall prevent the board or the assessor, in valuing open-space land for assessment purposes from taking into consideration the

existence of any mines, minerals and quarries in or upon the land being valued, including, but not limited to oil, gas, and other hydrocarbon substances.

History.--Added by Stats. 1969, p. 1705, operative March 1, 1970.

428. Not applicable to residence or site. The provisions of this article shall not apply to any residence, including any agricultural laborer housing facility as provided for in Sections 51220, 51231, 51238, and 51282.3 of the Government Code, on the land being valued or to an area of reasonable size used as a site for such a residence.

History.--Added by Stats. 1969, p. 1705, operative March 1, 1970. Stats. 1985, Ch. 186, effective January 1, 1986, added", including any . . . Code," after "residence" and added "a" after "such."

429. Valuation of trees and vines. Notwithstanding the provisions of Section 105(b) of this code, in valuing land enforceably restricted pursuant to this article, fruit-bearing or nut-bearing trees and vines on the land and not exempt from taxation shall be valued as land. Any income shall include that which can be expected to be derived from such trees and vines and no other value shall be given such trees and vines for the purpose of assessment.

History.--Added by Stats. 1969, p. 1705, operative March 1, 1970. Stats. 1974, Ch. 311, p. 607, in effect January 1, 1975, substituted "enforceably restricted" for "subject to an enforceable restriction" in the first sentence.

430. Rebuttable presumption; agricultural usage. There shall be a rebuttable presumption that the present use of open-space land which is enforceably restricted and devoted to agricultural use is its highest and best agricultural use.

History.--Added by Stats. 1970, p. 1896, in effect November 23, 1970. Stats. 1974, Ch. 311, p. 607, in effect January 1, 1975, substituted "open-space land which is enforceably restricted" for "open land subject to an enforceable restriction". Stats. 1976, Ch. 176, p. 320, in effect May 24, 1976, renumbered the section which was formerly numbered 431.

430.5. Enforceable restriction required. No land shall be valued pursuant to this article unless an enforceable restriction meeting the requirements of Section 422 is signed, accepted and recorded on or before the lien date for the fiscal year to which the valuation would apply. To assure counties and cities time to meet the requirement of this section, the land which is to be subject to a contract shall have been included in a proposal to establish an agricultural preserve submitted to the planning commission or planning department, or the matter of accepting an open-space easement or scenic restriction shall have been referred to such commission or department on or before December 15 preceding the lien date to which the contract, easement or restriction is to apply.

History.--Added by Stats. 1974, Ch. 253, p. 468, in effect May 15, 1974, operative with respect to assessments for the 1975-76 fiscal year and thereafter. Stats. 1976, Ch. 176, p. 320, in effect May 24, 1976, renumbered the section which was formerly numbered 432.

Note.--Section 2 thereof provided that notwithstanding any other provision of law to the contrary, the assessment procedures specified under Sections 423 and 423.5 of the Revenue and Taxation Code shall be effective with respect to land subject to taxation for the 1974-1975 fiscal year, if such land is subject to an instrument meeting the requirements of Section 422 of the Revenue and Taxation Code and such instrument is signed and recorded on or before May 15, 1974; provided, that prior to 5 o'clock p.m. on March 1, 1974, either the land which is subject to a contract was included in a

proposal to establish an agricultural preserve submitted to the planning commission or planning department or the matter of accepting an open-space easement or scenic restriction had been referred to such commission or department. This section does not apply to land valued pursuant to Section 423.7 of the Revenue and Taxation Code. Section 4 thereof provided that land assessed pursuant to the provisions of Section 2 shall be included for purposes of computing subventions to local government pursuant to Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2 of the Government Code for losses due to such assessment procedures for the 1974-1975 fiscal year. Such subventions to local government satisfy the requirements of Section 2229 of the Revenue and Taxation Code.

PROPERTY TAX RULES

Title 18, Public Revenue California Code of Regulations

Rule 51. Agreements Qualifying Land For Assessment As Open-Space Lands.

Reference: Section 421, 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 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 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 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 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.

Rule 52. Valuation Of Perennials Other Than Timber As Open Space Lands.

Reference: Section 423, Revenue and Taxation Code.

(a) Minimum Value. Land planted to fruit-bearing trees, nut-bearing trees, vines, bushes, or other perennials except timber, and the perennials thereon, when eligible for assessment under section 423 of the Revenue and Taxation Code, shall be valued by capitalizing the larger of (1) the net income that the land and such perennials can be expected to yield under prudent management and subject to the applicable restrictions or (2) the net income that the land can be expected to yield over a typical rotation period, not to exceed six years including the year for which the assessment is

made, if planted to typical annuals grown in the area. "Typical annuals grown in the area" means annual crops that are actually grown in substantial quantities on land that is comparable to the subject property within the meaning of section 402.5 of the Revenue and Taxation Code.

(b) Capitalization Of Rental Income. In estimating such net income, property tax appraisers shall consider the rental income from recently consummated leases, negotiated at arms' length, for comparable plantings and the net income from owner-operated comparable plantings, giving more weight, other things equal, to the former than to the latter. Leases, however, must be for the full life of the perennials, or multiples thereof, if the rental income is to be used without adjustment for variations in expected yields as young perennials mature and older perennials decline. Allowance must also be made, when using rental income, for amortization of the landlord's investment in perennials and other depreciable property used in the enterprise.

(c) Capitalization Of Owner-Operator's Income. When estimating the value of a planting of perennials by capitalizing the income it is expected to yield a prudent owner-operator, property tax appraisers shall first estimate the annual net income from the total operating unit over and above the income required to provide a fair return on capital invested in operating assets other than the land and perennials and to amortize such investments if they are depreciable. Such net income shall then be segregated into (1) the net income that can be fairly attributed to the land, which shall not be less than the net income the land could be expected to yield if planted to typical annual crops grown in the area, and (2) the balance, which shall be considered the income from the perennials. The income attributed to the land shall be capitalized in perpetuity by dividing it by the capitalization rate prescribed in section 423(b) of the Revenue and Taxation Code. The income from perennials shall be capitalized by dividing it by a rate which is the sum of the capitalization rate prescribed in section 423(b) of the Revenue and Taxation Code and an amortization rate. The present worths of the income streams thus imputed to the land and the perennials shall be added to derive the full value of the land and perennials.

The income attributable to the land shall be estimated by one of the following procedures:

- (1) Estimate the amount of net income the land would yield if planted to typical annual crops grown in the area. This procedure is particularly appropriate where comparable lands are commonly planted to annual crops.
- (2) Estimate the amount of net income required under current market conditions to justify an investment equal to the replacement cost of the perennials with a life equal to the estimated total economic life of the perennials and subtract this amount of net income from the estimate of the total net income from the land and perennials. This procedure is particularly appropriate where bare land sales are uncommon and comparable land is seldom planted to annuals.
- (3) Estimate the market value of the land by the comparative sales approach and multiply this estimate by a market-derived rate of return. Sales used for comparative purposes shall not include those materially influenced by the possibility of non-agricultural uses. The market value thus derived for the land shall be used only for the purpose of allocating income between the land and perennials.

(d) Enrollment Of Taxable Values. The land value thus derived by the assessor shall be converted to an assessed value by multiplying it by 25 percent, and this assessed value shall be listed in the land column of the roll, together with the value of taxable perennials other than date palms over eight years old, other fruit- and nut-bearing trees, grapevines and other vines. The value thus derived by the assessor for taxable date palms over eight years old, other fruit- and nut-bearing trees four years of age or older, grapevines three years of age and older, and other vines shall be converted to an assessed value by multiplying it by 25 percent, and this assessed value shall be listed in the improvements column of the roll.

(e) Effective Date. This rule shall be effective from and after March 1, 1971.

History: Adopted February 17, 1970, effective March 26, 1970.
Amended January 6, 1971, effective February 18, 1971.

Rule 54. Valuation Of Land Under A Land Conservation Act Agreement That Fails To Qualify Under Rule 51.

Reference: Sections 402.1, 421, 423, Revenue and Taxation Code.

Land (other than timberland), fruit- or nut-bearing trees, and vines subject to an enforceable Land Conservation Act agreement that, according to the criteria set out in Section 51 of this chapter, do not qualify for assessment under Section 423 of the Revenue and Taxation Code shall be appraised at market value, pursuant to Section 402.1 of that Code. Any conflicting assessment provisions in the agreement are unconstitutional and shall be disregarded.

The market value of such land, or of such land and perennials, shall be estimated by using either the comparative sales method or the income method or both.

(a) The Comparative Sales Approach. If the comparative sales method is used and the restrictions imposed by the agreement have more than a minimal effect on the value of the property, the recently sold properties to which the subject property is compared shall be those similarly restricted as to use and preferably so restricted for a similar remaining period. If there is substantial evidence, however, that the restrictions on the subject property will be removed or materially modified in the predictable future, the subject property may also be compared with recently sold properties which have natural limitations on their use that are adjudged to have substantially the same effect as the legal limitations on the subject property. The sold properties shall also have the characteristics described in Section 402.5 of the Revenue and Taxation Code.

(b) The Income Approach. If the income method is used and the restrictions imposed by the agreement have more than a minimal effect on the value of the property, the appraiser shall proceed as follows:

(1) Estimate, preferably by reference to sale prices of comparable properties not subject to Land Conservation Act agreements or contracts, the market value that the land, or the land and

perennials, would have on the current lien date if the property were not subject to the agreement but were subject to any other applicable restrictions and assume that this will be the value of the land, or of the land and perennials, when free of the agreement restrictions;

(2) Using a market-derived capitalization rate (including an appropriate property tax component), find the present worth of the value derived in step 1 deferred by the number of years or fractions thereof until the land, or the land and perennials, will be freed of the agreement restrictions by a notice of nonrenewal that has already been given or by a notice that could be given prior to the agreement's next anniversary date;

(3) Using the capitalization rate prescribed by section 423(b) of the Revenue and Taxation Code or a capitalization rate otherwise derived that is appropriate for an income stream which does not include capital appreciation, estimate the present worth of the income (including any amenities not represented by money income) from the restricted use of the land, or of the land and perennials, during the period between the lien date and the date to which the value derived in step 1 is deferred;

(4) Add the present worths derived in steps 2 and 3.

History: Adopted March 24, 1971, effective April 25, 1971.

Rule 466. Valuation And Enrollment Of Trees And Vines.

Reference: Article XIII A, Sections 1, 2, California Constitution.

All fruit and nut trees and vines when planted respectively in orchard or vineyard form shall be exempt as provided by law. Upon becoming subject to tax, previously exempt trees and vines shall be valued for the 1979 date and thereafter as follows:

(a) Those planted in land enforceably restricted shall be annually valued pursuant to the provisions of Section 470 herein without regard to the provisions of Section 2 of Article XIII A of the California Constitution.

(b) Those planted in land not enforceably restricted shall be enrolled at their base year value appropriately adjusted to reflect annual increases in the consumer price index not to exceed two percent or at their full value for the current lien date, whichever is less.

(1) The base year for trees and vines planted in land not enforceably restricted shall be the year they became subject to taxation unless that year was prior to 1975 in which case the base year is 1975.

(c) Perennials, other than trees and vines, planted for their commercial production on enforceably restricted land shall be valued annually as provided in Section 470. If they are planted on land not enforceably restricted, they shall be valued and have the same base year as the land unless planted after lien date 1975 in which case their value as of the date of planting shall be their original base year value.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.

Rule 470. Enforceably Restricted Property.

Reference: Article XIII A, Sections 1, 2, California Constitution.

Commencing with the 1979 lien date, all property enforceably restricted pursuant to Section 8 of Article XIII of the California Constitution shall be valued for property tax purposes pursuant to Article 1.5, Open Space Land (commencing with Section 421) and Article 1.9, Historical Property (commencing with Section 439) of Chapter 3 of Part 2 of the Revenue and Taxation Code.

When enforceable restrictions are cancelled or terminated by nonrenewal as provided by the Government Code or the Revenue and Taxation Code, the full cash value referred to therein shall be the base year value as modified annually by the inflation rate.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.

