

**Interested Parties Meeting - January 10, 2003**  
**Agricultural Conservation Easements Outline**

**I. BACKGROUND ON CONSERVATION EASEMENTS**

- A. Conservation easement
  - 1. Restricts use of land to natural, scenic, historical, agricultural, forested, or open-space condition
  - 2. Real property interest
  - 3. Perpetual in duration, running with the land
- B. Agricultural conservation easement
  - 1. Restrict land use to farming, open-space, compatible uses of commercial agriculture
  - 2. Supports permanent protection of agricultural land resources
  - 3. Subset of conservation easement

**II. TYPES OF AGRICULTURAL CONSERVATION EASEMENTS (A.C.E.)**

- A. Public Resources code section 10211 (California Farmland Conservancy Program (CFCP))
  - 1. Grants from Department of Conservation
  - 2. Acquisition of development rights in perpetuity to restrict development of land for any purpose other than agricultural production
- B. Government Code section 51256
  - 1. Simultaneous rescission of Williamson Act to place other land under A.C.E.
  - 2. Must first meet specific findings
- C. Civil code section 815.1
  - 1. All others types of conservation easements not funded by CFCP or created by Gov. Code section 51256
  - 2. Encompasses all conservation easements to retain land in natural, scenic, historical, agricultural, forested, or open-space condition

**III. ENTITIES ALLOWED TO HOLD AGRICULTURAL CONSERVATION EASEMENTS**

- A. Tax-exempt, nonprofit organizations – IRS 501 (c)(3)
- B. City, state, district, or any other local governmental entity

**IV. ASSESSMENT**

- A. Valuation of development rights and impact on value of the restrictions
  - 1. Use three approaches to value

## Interested Parties Meeting - January 10, 2003

### Agricultural Conservation Easements Outline

2. Comparative sales approach preferred
  3. “Before and after” analysis
  - B. Assessed pursuant to section 423 – capitalization of income approach
    1. Current market value
    2. Factored base year value
    3. Restricted value
    4. Assessed value shall be lesser of restricted, current market, or factored base year value
  - C. Assessed pursuant to section 402.1 – considers the effect of any enforceable restrictions
    1. All other A.C.E.s other than those under 421.5 and Gov. Code section 51256
    2. A.C.E.s in section 815.1 of Civil Code.
    3. Assessed value shall be the lower of adjusted based year value or fair market value
- V. ADJUSTMENT TO THE BASE YEAR VALUE
- A. Adjustment to the base year value of fee owned interest required if there is a CIO of easement
  - B. Adjustment for rights conveyed should be in relative proportion to the value that those rights contribute to the base year value
- VI. DOCUMENTATION
- A. Per section 430.5, easements listed in section 422 must be signed, accepted, recorded
  - B. Should also apply to those listed in 422.5
- VII. CHANGE IN OWNERSHIP
- A. Acquisition of land by fee title – Change in Ownership
    1. Per Public Resource Code 10239, for purpose of encumbering with A.C.E.
    2. Must resell to private owner w/in 3 years
  - B. Acquisition of transferable development rights (TDRs) – Change in Ownership
    1. Similar to *Mitsui Fudosan v. County of L.A.* (1990)
    2. Under special local program, development rights may be transferred from one property to another
  - C. Acquisition of A.C.E. not by fee title or TDRs – Change of Ownership determined on case by case basis
    1. Question of fact

## **Interested Parties Meeting - January 10, 2003**

### **Agricultural Conservation Easements Outline**

2. Must satisfy 3 tests of section 60
  - a. Transfer of a present interest
  - b. Transfer the beneficial use
  - c. Transfer substantially equivalent to the fee
- D. TAXABLE GOVERNMENT-OWNED PROPERTY
  1. A.C.E.s outside local government boundaries taxable if taxable when acquired

#### **VIII. WELFARE EXEMPTION**

- A. Exclusive use – section 214(a)
  1. For religious, hospital, charitable, or scientific purpose only
  2. On A.C.E.s, on-going agricultural use is not an exclusive use
  3. That portion of property not used exclusively not exempt
  4. Incidental use of 1/week or less allowed
- B. Owned and operated – section 214
  1. Requires both owner and operators be qualifying organizations
  2. Owner and operator does not have to be the same legal entity
  3. That portion of property used by non-qualifying organization not exempt
- C. For-profit and private inurement – section 214(a)
  1. Use of property may not be for profit
  2. No earnings on property may benefit anyone
- D. Section 214.02 - Property must be used exclusively for preservation of native plants or animals, open to general public subject to reasonable restrictions concerning needs of land
  1. Grantor typically retains the right to privacy and right to exclude public from trespassing, therefore property not exempt