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August 22, 2003

TO: INTERESTED PARTIES:

REVISION OF ASSESSORS' HANDBOOK SECTION 521, ASSESSMENT OF  
AGRICULTURAL AND OPEN-SPACE PROPERTIES (AH 521)

Last year staff began a project to update the AH 521. The main objective was to reflect changes in the law since the last revision, published in September 1997. A revised draft was distributed to interested parties in September 2002. As the revisions consisted of non-controversial changes, interested parties raised no issues. The September 2002 draft is accessible from the Board's Web site at <http://www.boe.ca.gov/proptaxes/pdf/ah521draft.pdf>.

As an offshoot of the update project, staff and interested parties met in January 2003 and began discussions about the treatment of agricultural conservation easements. By the time of the meeting, it became known that a hearing on the assessment of an agricultural conservation easement was pending before the Board. The parties agreed that the development of any guidance for the handbook section should await the Board's findings and decision in the pending appeal. (*East Bay Municipal Utility District v. County of Calaveras*)

The Board heard the appeal and made its findings earlier this year. The issues on appeal were (1) whether the conveyance of the easement constituted a change in ownership and (2) if so, how to value the easement. The Board found that the conveyance of the easement did not meet the criteria for a change in ownership; thus, the valuation question became moot.

Given the Board's decision, staff proposes the enclosed language regarding conservation easements for incorporation into the September 2002 draft. In order that the revised AH 521, including the revisions pertaining to easements, may be presented to the Board's Property Tax Committee at its meeting in Sacramento on October 15, 2003, please provide any comments on this language to David Yeung (916 324-2812, [David.Yeung@boe.ca.gov](mailto:David.Yeung@boe.ca.gov)) or Mark Nisson (916 324-0295, [Mark.Nisson@boe.ca.gov](mailto:Mark.Nisson@boe.ca.gov)) by September 12, 2003.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee, Chief  
Assessment Policy and Standards Division

DRK:ls  
Enclosures

## Staff's 1<sup>st</sup> Suggested Modification to September 2002 Draft of Revised AH 521

(To be inserted at page I-17, line 13, of draft at <http://www.boe.ca.gov/proptaxes/pdf/ah521draft.pdf> )

One legal tool for environmental preservation is the conveyance of a conservation easement, the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.<sup>5</sup> By law, a conservation easement is an interest in real property voluntarily created and freely transferable in whole or in part.<sup>6</sup> The particular characteristics of a conservation easement are those granted or specified in the instrument creating or transferring the easement.<sup>7</sup>

Despite a conservation easement's legal status as an interest in real property, the conveyance of such an interest does not generally constitute a change in ownership of the property subject to the easement, where the primary purpose of the easement is the mere right to enforce *restrictions* (i.e., negative covenants) against the grantor. This is because, in such a case, with respect to the property subject to the easement, the conveyance would constitute neither a transfer of the beneficial use nor a transfer of an interest with a value substantially equivalent to that of the fee. Revenue and Taxation Code section 60 requires that a conveyance satisfy both conditions in order for a change in ownership to occur.

While an easement created pursuant to Civil Code section 815.1 may not give rise to a change in ownership, the restrictions on use are considered enforceable restrictions for purposes of section 402.1, which provides that the assessor must consider the effect upon value of such restrictions.<sup>8</sup> As a practical matter, the majority of conservation easements will be treated for assessment purposes in accordance with section 402.1.

Under section 402.1, the creation of a conservation easement does not result in an automatic reduction in the assessed value of the property subject to the easement. Instead, the assessor must enroll the lower of (1) the existing factored base year value or (2) the current market value considering the restrictions on use imposed by the easement. Only upon a subsequent change in ownership would the assessor establish a new base year value that accounts for the restrictions under the easement.

That treatment differs from properties subject to *agricultural conservation easements* under section 421.5 and Government Code section 51256. Properties encumbered by agricultural conservation easements are subject to assessment pursuant to section 423, which mandates that enforceably restricted open-space lands are to be valued by a

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<sup>5</sup> Civil Code section 815.1

<sup>6</sup> Civil Code section 815.2

<sup>7</sup> Civil Code section 815.2

<sup>8</sup> Civil Code section 815.10

## Staff's 1<sup>st</sup> Suggested Modification to September 2002 Draft of Revised AH 521

(To be inserted at page I-17, line 13, of draft at <http://www.boe.ca.gov/proptaxes/pdf/ah521draft.pdf> )

prescribed capitalization of income method, rather than by reference to data on sales of otherwise comparable lands.<sup>9</sup>

Apart from conservation easements, federal and state environmental laws have a tremendous effect on agriculture because numerous activities on farms produce wastes or emissions that are potentially detrimental to the environment. Environmental regulations have altered numerous traditional cultural practices and forced agricultural producers to adopt new and, in some cases, extremely expensive practices. Two legislative acts, the Clean Air Act of 1970 and the Clean Water Act of 1972, identified specific environmental concerns and focused public attention on agricultural practices. Agricultural producers are no longer permitted to allow unrestricted water runoff from chemically treated fields, and burning of farm residues or use of smudge pots for frost protection are now subject to regulation by the Environmental Protection Agency (EPA). Potentially toxic discharges of chemically contaminated water runoff from farming operations are now subject to close scrutiny, and chemical fertilizers and pesticides essential for many farming operations can now only be applied in strict accordance with EPA regulations. In addition, the federal Endangered Species Act of 1973 and the California Endangered Species Act are environmental regulations that affect California agriculture. These acts impact the ability of agricultural producers to carry out many long-standing, routine agricultural practices or to maximize the productive capability of the land due to land use restrictions designed to protect threatened and endangered wildlife species.

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<sup>9</sup> Effective January 1, 2003, Revenue and Taxation Code section 421.5 was amended to clarify that, for purposes of valuing open-space land subject to an enforceable restriction, the term "agricultural conservation easement" has the same meaning as defined in section 10211 of the Public Resources Code. (Statutes of 2002, Chapter 616 (Senate Bill 1864))

**Staff's 2<sup>nd</sup> Suggested Modification to September 2002 Draft Revision of AH 521**

(To be inserted at page II-4, line 20, of draft at <http://www.boe.ca.gov/proptaxes/pdf/ah521draft.pdf> )

In 2002, Revenue and Taxation Code section 421.5 was amended to clarify that, for purposes of valuing open-space land subject to an enforceable restriction, the term “agricultural conservation easement” has the same meaning as defined in section 10211 of the Public Resources Code.<sup>20</sup>

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<sup>20</sup> Statutes of 2002, Chapter 616 (Senate Bill 1864)