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No. 2005/016

March 3, 2005

TO COUNTY ASSESSORS:

CALIFORNIA LAND CONSERVATION ACT
LEGISLATIVE CHANGES

Effective January 1, 2004, two bills amended provisions of the Government Code¹ relating to the California Land Conservation Act (Williamson Act). Assembly Bill 1492 (Chapter 694, Statutes of 2003) extended section 51257 to January 1, 2009, relating to lot line provisions, and added an alternate remedy from the contract cancellation provisions for a material breach of contract. Senate Bill 1062 (Chapter 471, Statutes of 2003), among other things, corrected a cross reference in section 51203 and amended section 51283 relating to the cancellation of contracts.

Effective January 1, 2005, sections 51203 and 51283 were further amended by Senate Bill 1820 (Chapter 794, Statutes of 2004). SB 1820 also amended sections 51283.4 and 51284.1 of, and added section 51283.5 to, the Government Code.

For your reference, enclosed are Government Code sections 51203, 51250, 51257, 51283, 51283.4, 51283.5, and 51284.1 with the changes denoted by strikeout and underline.

LOT LINE ADJUSTMENTS

Section 51257 allows local officials and owners of land under contract to simultaneously rescind a contract and enter into a new contract that facilitates a lot line adjustment. AB 1492 changed the sunset date from January 1, 2004, to January 1, 2009.

**SEE LTA
2012/045**

CANCELLATION OF CONTRACT

Sections 51280 through 51285 provide for the cancellation of open-space contracts. Section 51283 requires the county assessor to determine a "cancellation value" of the land for the purpose of determining a cancellation fee. The cancellation value is the current fair market value of the land as if unrestricted by contract. The county assessor must certify this cancellation value to the county board of supervisors or city council so that the cancellation fee can be determined. The cancellation fee is 12½ percent of the current fair market value.

¹ All references are to the Government Code unless otherwise indicated.

Since the county assessor determines the cancellation value and certifies this value to the county board of supervisors or city council, Chapter 471 amended subdivision (a) of section 51283 to require that the assessor also notify the assessee of the cancellation value at the time the value is certified to the board or council. Chapter 794 further amended section 51283 to require the assessor to also notify the Department of Conservation of the cancellation value.

In addition, section 51283 requires that the notice advise the landowner and the Department of Conservation of the opportunity to request formal review by the assessor and section 51203 provides that the request must be filed within 45 days.

CANCELLATION VALUE APPEAL PROCEDURES

Prior to January 1, 2005, section 51203 provided that the cancellation valuation may be appealed to the county assessment appeals board pursuant to Revenue and Taxation Code section 1605. In addition, section 51283 required that the notice advise the assessee of the right to appeal the cancellation value of the land and that the appeal must be filed within 60 days of the date of mailing printed on the notice or the postmark date, whichever was later.

However, as of January 1, 2005, Chapter 794 repeals these provisions and replaces them with new procedures for the Department of Conservation or the landowner to request a formal review of the cancellation value within 45 days of receiving the notice from the assessor. If no request is made within 45 days, the assessor's cancellation value will be used to calculate the fee.

Upon receiving a request, the assessor is to review the cancellation value. The assessor is required to notify parties that the formal review is being undertaken and that information to aid the assessor must be submitted within 30 days of the date of the notice. Any information submitted to the assessor must also be served on the other party, who will have 30 days to provide a response to that information to the assessor. All submittals and responses to the assessor must be served on the other party by personal service or an affidavit of mailing. The assessor cannot consider any information or response that was not served on the other party.

If the response to the assessor contains new information, the party receiving that response will have 20 days to provide a response to the assessor as to the new information. The assessor should avoid ex parte contacts (one party only) during the formal review and must report any such contacts to the Department of Conservation and the landowner when the review is complete. The assessor must complete the review within 120 days of receiving the request.

At the conclusion of the review, the assessor must either (1) revise the cancellation value, or (2) determine that the original cancellation value is accurate. The assessor must notify the Department of Conservation, the landowner, and the board or council considering the cancellation petition of his/her findings. The notice must include a brief narrative of what consideration was given to the items of information and responses directly relating to the cancellation value submitted by the parties.

MATERIAL BREACH OF CONTRACT

Although this letter will not discuss material breach of contract, frequently asked questions and answers regarding the breach of contract provisions of AB 1492 may be viewed from the Department of Conservation's Web site at <http://www.consrv.ca.gov/DLRP/lca/lrcc/2004.htm>.

If you have any questions regarding California Land Conservation Act contracts or the cancellation value appeals procedures, please contact the Department of Conservation at (916) 324-0850 or dlrp@consrv.ca.gov. If you have any questions regarding the assessment of open-space land, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

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Government Code Section 51203, as amended by Chapter 471 of the Statutes of 2003:

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 ~~1604-1605~~ of the Revenue and Taxation Code.

Government Code Section 51203, as repealed and added by Chapter 794 of the Statutes of 2004:

~~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 1605 of the Revenue and Taxation Code.~~

(a) The assessor shall determine the current fair market value of the land as if it were free of the contractual restriction pursuant to Section 51283. The Department of Conservation or the landowner, also referred to in this section as "parties," may provide information to assist the assessor to determine the value. Any information provided to the assessor shall be served on the other party, unless the information was provided at the request of the assessor, and would be confidential under law if required of an assessee.

(b) Within 45 days of receiving the assessor's notice pursuant to subdivision (a) of Section 51283 or 51283.4, if the Department of Conservation or the landowner believes that the current fair market valuation certified pursuant to subdivision (b) of Section 51283 or Section 51283.4 is not accurate, the department or the landowner may request formal review from the county assessor in the county considering the petition to cancel the contract. The department or the landowner shall submit to the assessor and the other party the reasons for believing the valuation is not accurate. The assessor may recover his or her reasonable costs of the formal review from the party requesting the review, and may provide an estimate of those costs to the requesting party. The recovery of these costs from the department may be deducted by the city or county from the cancellation fees received pursuant to this chapter prior to transmittal to the Controller for deposit in the Soil Conservation Fund.

(1) If no request is made within 45 days of receiving notice of the valuation, the assessor's valuation shall be used to calculate the fee.

(2) Upon receiving a request for formal review, the assessor may formally review his or her valuation. The assessor shall notify the parties that the formal review is being undertaken and that information to aid the assessor's review shall be submitted within 30 days of the date of the notice to the parties. Any information submitted to the assessor shall be served on the other party who shall have 30 days to respond to that information to the assessor. If the response to the assessor contains new information, the party receiving that response shall have 20 days to respond to the assessor as to the new information. All submittals and responses to the assessor shall be served on the other party by personal service or an affidavit of mailing. The assessor shall avoid ex parte contacts during the formal review and shall report any such contacts to the department and the landowner at the same time the review is complete. The assessor shall complete the review no later than 120 days of receiving the request.

(3) At the conclusion of the formal review, the assessor shall either revise the cancellation valuation or determine that the original cancellation valuation is accurate. The assessor shall send the revised valuation or notice of the determination that the valuation is accurate to the department, the landowner, and the board or council considering the petition to

cancel the contract. The assessor shall include a brief narrative of what consideration was given to the items of information and responses directly relating to the cancellation value submitted by the parties. The assessor shall give no consideration to a party's information or response that was not served on the other party.

(c) For purposes of this section, the valuation date of any revised valuation pursuant to formal review or following judicial challenge shall remain the date of the assessor's initial valuation, or his or her initial recomputation pursuant to Section 51283.4. For purposes of cancellation fee calculation in a tentative cancellation as provided in Section 51283, or in a recomputation for final cancellation as provided in Section 51283.4, a cancellation value shall be considered current for one year after its determination and certification by the assessor.

(d) Notwithstanding any other provision of this section, the department and the landowner may agree on a cancellation valuation of the land. The agreed valuation shall serve as the cancellation valuation pursuant to Section 51283. The agreement shall be transmitted to the board or council considering the petition to cancel the contract.

(e) This section represents the exclusive administrative procedure for appealing a cancellation valuation calculated pursuant to this section. The Department of Conservation shall represent the interests of the state in the administrative and judicial remedies for challenging the determination of a cancellation valuation or cancellation fee.

Government Code Section 51257, as amended by Chapter 694 of the Statutes of 2003:

(a) To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and notwithstanding any other provision of this chapter, the parties may mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided that the board or council finds all of the following:

(1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.

(2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

(4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.

(5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

(6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

(7) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.

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(b) Nothing in this section shall limit the authority of the board or council to enact additional conditions or restrictions on lot line adjustments.

(c) Only one new contract may be entered into pursuant to this section with respect to a given parcel, prior to January 1, 2004.

(d) In the year ~~2002–2008~~, the department's Williamson Act Status Report, prepared pursuant to Section 51207, shall include a review of the performance of this section.

(e) This section shall remain in effect only until January 1, ~~2004–2009~~, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, ~~2004–2009~~, deletes or extends that date.

Government Code Section 51283, as amended by Chapter 471 of the Statutes of 2003, Chapter 230 of the Statutes of 2004, and Chapter 794 of the Statutes of 2004:

(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. At the same time, the assessor shall send a notice to the landowner and the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction. The notice shall advise the landowner and the Department of Conservation of the opportunity to request formal review from the assessor.

(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~~ that the landowner shall pay the county treasurer upon cancellation. That fee shall be an amount equal to 12½ 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)~~ two million thirty-six thousand dollars (\$2,036,000) of revenue paid to the Controller pursuant to subdivision (e) in the ~~1992-93~~ 2004-05 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~~ all of the following:

(1) The ~~total~~ cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 65570.

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

(3) Program support costs of this chapter as administered by the Department of Conservation.

(4) Program support costs incurred by the Department of Conservation in administering the open-space subvention program (Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2).

(e) When cancellation fees 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) It is the intent of the Legislature that fees paid to cancel a contract do not constitute taxes but are payments that, when made, provide a private benefit that tends to increase the value of the property.

Government Code Section 51283.4, as amended by Chapter 794 of the Statutes of 2004:

(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 the time that 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 Section 51283, 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, the fee shall be recomputed as of the date ~~of notice described in subdivision (b)~~ the landowner requests a recomputation. A landowner may request a recomputation when he or she believes that he or she will be able to satisfy the conditions and contingencies of the certificate of cancellation within 180 days. The board or council shall request the assessor to recompute the cancellation valuation. The assessor shall recompute the valuation, certify it to the board or council, and provide notice to the Department of Conservation and landowner as provided in subdivision (a) of Section 51283, and the board or

council shall certify the fee to the county auditor. Any provisions related to the waiver of the 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 the amendment is consistent with the findings made pursuant to subdivision (a) of Section 51282.

(b) The landowner shall notify the board or council when he or she has satisfied the conditions and contingencies enumerated in the certificate of tentative cancellation. Within 30 days of receipt of the 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 the certificate to be recorded, and send a copy to the Director of Conservation.

(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 or she is unable to satisfy. Within 30 days of receipt of the 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.

Government Code Section 51283.5, as added by Chapter 794 of the Statutes of 2004:

(a) The Legislature finds and declares that cancellation fees should be calculated in a timely manner and disputes over cancellation fees should be resolved before a city or county approves a tentative cancellation. However, the city or county may approve a tentative cancellation notwithstanding an assessor's formal review or judicial challenge to the cancellation value or fee.

(b) If the valuation changes after the approval or a tentative cancellation, the certificate of tentative cancellation shall be amended to reflect the correct valuation and cancellation fee.

(c) If the landowner wishes to pay a cancellation fee when a formal review or an independent appraisal has been requested, he or she may pay the fee required in the current certificate of cancellation and provide security determined to be adequate by the Department of Conservation for 20 percent of the cancellation fee based on the assessor's valuation. The board or council shall hold the security and release it immediately upon full payment of the cancellation fee determined pursuant to Section 51203.

(d) The city or county may approve a final cancellation notwithstanding a pending formal review or judicial challenge to the cancellation valuation or fee. The certificate of final cancellation shall include the following statements:

(1) That formal review or judicial challenge of the cancellation valuation or fee is pending.

(2) That the fee may be adjusted, based upon the outcome of the review or challenge.

(3) The identity of the party who will be responsible for paying any additional fee or will receive any refund.

(4) The form and amount of security provided by the landowner or other responsible party and approved by the Department of Conservation.

(e) Upon resolution, the landowner or the party identified in the certificate shall either pay the balance owed to the county treasurer, or receive from the county treasurer or the controller any amount of overpayment, and shall also be entitled to the immediate release of any security.

(f) (1) If a party does not receive the notice required pursuant to Section 51203, 51283, 51283.4, or 51284, a judicial challenge to the cancellation valuation may be filed within three years of the latest of the applicable following events:

(A) The board or council certification of the fee pursuant to subdivision (b) of Section 51283, or for fees recomputed pursuant to Section 51283.4, the execution of a certificate of cancellation under that section.

(B) The date of the assessor's determination pursuant to paragraph (3) of subdivision (b) of Section 51203.

(C) The service of notice to the Director of Conservation of the board or council's recorded certificate of final cancellation.

(2) If a party did receive the required notice pursuant to Section 51203, 51283, 51283.4, or 51284, a judicial challenge to the cancellation valuation may be filed only after the party has exhausted his or her administrative remedies through the formal review process specified in Section 51203, and only within 180 days of the latest of the applicable following events:

(A) The board or council certification of the fee pursuant to subdivision (b) of Section 51283 or for fees recomputed pursuant to Section 51283.4, the execution of a certificate of cancellation under that section.

(B) The date of the assessor's determination pursuant to paragraph (3) of subdivision (b) of Section 51203.

(C) The service of notice to the Director of Conservation or the board or council's recorded certificate of final cancellation.

Government Code Section 51284.1, as amended by Chapter 794 of the Statutes of 2004:

(a) When a landowner petitions a board or council for the tentative cancellation of a contract and when the board or council accepts the application as complete pursuant to Section 65943, the board or council shall immediately mail a notice to the Director of Conservation. The notice shall include all of the following:

(1) A copy of the petition.

(2) A copy of the contract.

(3) A general description, in text or by diagram, of the land that is the subject of the proposed cancellation.

(4) The deadline for submitting comments regarding the proposed cancellation. That deadline shall be consistent with the Permit Streamlining Act (Chapter 4.5 (commencing with

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Section 65920) of Division 1 of Title 7), but in no case less than 30 days prior to the scheduled action by the board or council.

(b) The board or council shall send that information to the assessor that is necessary to describe the land subject to the proposed cancellation. The information shall include the name and address of the landowner petitioning the cancellation.

(c) The Director of Conservation shall review the proposed cancellation and submit comments to the board or council by the deadline specified in paragraph (4) of subdivision (a). Any comments submitted shall advise the board or council on the findings required by Section 51282 with respect to the proposed cancellation.

(d) Prior to acting on the proposed cancellation, the board or council shall consider the comments by the Director of Conservation, if submitted.

(e) The board or council may include the cancellation valuation, if available, of the land as part of the completed petition sent to the director.