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# California Farmland Conservancy Program

## Focus on Farmland



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### This edition of Focus on Farmland features:

- CFCP Grant to The Nature Conservancy Protects Farmland near Cosumnes River
- Erik Vink Leaves Division of Land Resource Protection
- Property Taxation and Conservation Easements Under Scrutiny
- 2004 "Protecting Farmland for Future Generations" calendars
- Agricultural Easement Monitoring Workbooks Available

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### CFCP Awards Grant for Vineyard Easement to The Nature Conservancy

The Nature Conservancy (TNC) closed escrow in September on a 221-acre easement in Sacramento County, with assistance from a California Farmland Conservancy Program grant. The vineyard property is in TNC's top priority area within in the Cosumnes River Preserve region -- within two miles of Elk Grove, the Sacramento County Urban Services Boundary, and a proposed shopping mall known as "Lent Ranch." Land speculators own property between the easement property and the county's Urban Services Boundary. TNC's goal is to create blocks of easement-encumbered agricultural properties to protect the larger Cosumnes River Preserve area from urban encroachment.

This project demonstrates how agricultural conservation easements can be used to further agricultural land preservation for the benefit of the public and agricultural landowners, in partnership with organizations that have traditionally had a more diverse mission. TNC has focused activities and investments within the lower floodplain of the Cosumnes River in Sacramento and San Joaquin counties, where the land -- much of it agricultural -- is particularly at risk from the threat of urban encroachment. TNC began its work in the Cosumnes Valley in 1984, purchasing 85 acres of virgin valley oak groves, to establish the Cosumnes River Preserve, which has grown to approximately 40,000 acres (62 square miles). On the last remaining undammed river on the Sierra Nevada's western slope, the broad floodplain of the lower Cosumnes River also harbors rare valley oak riparian forest and freshwater wetlands used by thousands of resident and migratory birds. In addition, TNC has created more than 1,500 acres of new wetlands, participated in reforestation projects, removed levees along the river in order to restore natural flooding processes, and worked with local farmers in developing sustainable agricultural practices.

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### Erik Vink Makes Move to Trust for Public Land

**Erik Vink**, who served as the Assistant Director for the Department of Conservation's **Division of Land Resource Protection** (DLRP) since July 2000, left DLRP in October to accept the position of Senior Project Manager for the Central Valley with the Trust for Public Land (TPL). TPL is a national land conservation organization that has extensive operations in California. At TPL, Vink will work on Central Valley land acquisition projects -- river parkways, open space, urban parks, and recreation lands. As Vink explained, "TPL's focus -- protecting land for people -- is a natural for the Central Valley. Community livability is one of



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the Valley's big challenges, especially as the population grows. There probably will also be opportunities to work on agricultural-related projects." Vink joined DLRP after working for the American Farmland Trust for more than a decade. Said Vink, "I leave DLRP with mixed emotions. I'm looking forward to starting my new job, but I'll miss working with all the top-notch people here."

Following the departure of Erik Vink, **Dennis O'Bryant**, who has served the California Department of Conservation in a variety of capacities, took over the helm as acting Assistant Director. Department of Conservation Director Darryl Young remarked, "Dennis is well-regarded by everyone in DLRP, and the Division will be in good hands through this transition," adding it was uncertain when the Governor's Office would name a permanent replacement for Vink.

O'Bryant started his career in state service in 1976 with the Department of Food and Agriculture, then the Department of Parks and Recreation. He joined DOC in 1981 to work on land conservation programs. After two years, he moved to the Department's Office of Governmental and Environmental Relations as environmental coordinator. In 1990, he was chosen to head the Office of Mine Reclamation. O'Bryant left DOC to work on the CalFED Bay-Delta Project for two years, returning to DLRP in 2000 to serve as program manager for the Williamson Act and Resource Conservation District Assistance programs. "I hate to see Erik go," O'Bryant said. "He has been a pleasure to work with. But I'm willing to accept the challenge of leading the Division of Land Resource Protection."

DLRP is comprised of a number of programs related to farmland protection, including the California Farmland Conservancy Program, the Farmland Mapping and Monitoring Program, the Williamson Act Program, and the Resource Conservation District Assistance Program.

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## Property Taxation and Conservation Easements Under Scrutiny

Earlier this year, a controversy arose regarding tax assessments on land subject to conservation easements. The controversy threatened long-established favorable taxation of land upon the sale of a conservation easement. In the eyes of the conservation community, the future of conservation easements was at stake.

The issue involved two local governments in California. In 2000, to protect the watershed feeding one of its reservoirs, East Bay Municipal Utilities District (EBMUD) acquired an easement in Calaveras County on ranch land owned by the Garamendi family. The county assessor treated the purchase of the conservation easement as a change of ownership of the property, thus triggering a new base year value and reassessment of the property under Proposition 13.

EBMUD appealed Calaveras County's decision to the California State Board of Equalization (BOE). BOE navigated largely uncharted territory as it considered the property tax consequences of conservation easement acquisitions in California. Central to the BOE decision was the question of whether the granting of a conservation easement to EBMUD resulted in a change of ownership of the property. The statutory definition of a change of ownership is defined by a transfer of present interest in real property, including the beneficial use thereof, in which the value of the interest transferred and the fee interest are substantially equal. In their May 29<sup>th</sup> decision, in a 4-0 ruling, the BOE decided in favor of EBMUD. Since the easement reserved to the landowner all the beneficial uses of the property not inconsistent with the easement, the BOE found that EBMUD did not obtain beneficial use of the property. BOE also found that the value of the interest transferred to EBMUD was not substantially equal to the value of the fee interest. The land conservation community breathed a collective sigh of relief when BOE decided that EBMUD's purchase of the conservation easement was not a change of ownership, thus leaving Calaveras County without authority to reassess the affected property.

Highlights of BOE's ruling appear in the box on pages 3 and 4.

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## Highlights of the Board of Equalization Decision

The California State Board of Equalization (BOE) considered a number of aspects in reviewing the case between EBMUD and Calaveras County. Highlights of the issues considered for the ruling, as stated in a BOE decision letter, are excerpted below:

### ***Does the grant of a conservation easement result in a change in ownership?***

“Revenue and Taxation Code section 60 provides the statutory definition of a ‘change in ownership’, in terms of three elements. For a transaction to become a ‘change in ownership,’ it must:

- (1) transfer a present interest in real property;
- (2) including the beneficial use thereof; and,
- (3) the value of the interest is substantially equal to the value of the fee interest.

If any aspect of a transaction fails to meet all three parts of this test, it does not qualify as a change in ownership and no reappraisal should occur.”

### ***(1) Does the easement transfer a present interest in real property?***

“Subdivision (a) of Civil Code section 815.2 provides that a conservation easement is:

...an interest in real property voluntarily created and freely transferable in whole or in part.

By statutory definition, the Applicant's purchase resulted in the transfer of an interest in real property. The agreement creating the conservation easement made that interest a present interest when it immediately vested that interest in the applicant:

This easement constitutes a real property interest immediately vested in Grantee...”

### ***(2) Is there a beneficial use transferred as part of the property transaction?***

“Under the Conservation Easement ..., the Applicant obtained primarily negative covenants and the right of access to the property for the purposes of enforcing those covenants.

[The owners], by express reservation, retained the following beneficial uses in the property:

- (a) Exclusive access to the property subject to the conservation easement;
- (b) Right to prohibit public access to the property subject to the conservation easement;
- (c) Continue moderate livestock grazing and permitted agricultural activities;
- (d) Control non-native plants and wildlife;
- (e) Development and usage of all water rights associated with the easement area; and,
- (f) Subsurface mining for gravel, ore, rock or other minerals, below a minimum depth of 100 feet;
- (g) The right to perform ‘any act not specifically prohibited or limited by the Conservation Easement.’ “

The BOE found “that the above enumerated rights constitute a reservation of every incident of beneficial ownership not inconsistent with the easement. We further find that the mere right to enforce restrictions (negative covenants) granted to the Applicant as set forth in the Conservation Easement ... is not a ‘beneficial use’ of this real property. Thus, the purchase did not result in a change in ownership because the Applicant did not obtain beneficial use of the real property when it purchased this conservation easement.”

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**(3) Is the value of the easement purchase substantially equal to that of the fee interest?**

“Upon purchasing this conservation easement, EBMUD acquired primarily negative rights ... the transfer of negative rights does not constitute a ‘transfer of value substantially equivalent to the fee’ to EBMUD.”

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Thus, the board concluded that since the grant of the easement did not transfer to EBMUD any beneficial use of the property and since the value of the easement was not substantially equal to the fee interest, EBMUD’s purchase of the conservation easement failed to meet two of the three tests of a change of ownership contained in section 60 of the Revenue and Taxation Code.

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**In Brief:**

**2004 “Protecting Farmland for Future Generations” Calendars Available:** As in years past, the California Farmland Conservancy Program has produced a calendar featuring agricultural conservation easements and other farmland conservation tools. Multiple copies are available to organizations such as land trusts, farm bureaus, ag commissioners and cooperative extension offices for distribution to agricultural landowners. If your organization would like to distribute bulk copies to that audience, email Deanna Dobrinen at [ddobrine@consrv.ca.gov](mailto:ddobrine@consrv.ca.gov) (or call 916-324-0850) including the number of calendars requested and your mailing address.

**Agricultural Easement Monitoring Workbooks Available:** Through a grant from the California Farmland Conservancy Program, the Bay Area Open Space Council has compiled an Agricultural Easement Monitoring Workbook. Designed specifically for organizations that hold agricultural conservation easements, the workbook includes a monitor’s handbook, an annotated monitoring report, and a coordinator’s manual that provides examples to guide your own organization’s stewardship program. To receive a complementary copy, contact Darla Guenzler at the Bay Area Open Space Council: [darla@openspacecouncil.org](mailto:darla@openspacecouncil.org) or 707-469-0926.

**Change of Address -- CFCP Moves to a New Location:** The Division of Land Resource Protection has moved to a new floor in the same building. Please update our address in your records (note that the only change is the mail stop number, which has changed from MS 13-71 to MS 18-01):

California Farmland Conservancy Program  
Department of Conservation  
801 K Street, MS 18-01  
Sacramento, CA 95814

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We hope you’ve found this issue of *Focus on Farmland* useful and informative. Feel free to forward this email to other interested parties. *If you wish to be added or removed from this mailing list, please reply to [cfcpc@consrv.ca.gov](mailto:cfcpc@consrv.ca.gov).*

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