STATE OF CALIFORNIA

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January 26, 1999

Hon. Raymond L. Jerland
Humboldt County Assessor
825 5th Street
Eureka, California 95501

Dear Mr. Jerland:

This is in response to your letter of January 11, 1999 to Assistant Chief Counsel Larry Augusta, requesting our opinion as to the interpretation of the transfer of value provisions of Proposition 1, recently approved at the November 3, 1998 general election. In that letter, you inquire whether the "value to be transferred to a replacement property from a contaminated property" is the original factored base year value, or the adjusted value (current roll) of the property in a contaminated condition. We concur with you that the proper value to be transferred is the former one.

Proposition 1, among other things, added subdivision (i) to Section 2 of Article XIII A of the California Constitution. It provides, in part:

> "Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, ... that ... the following shall apply:
>
> "(A) (i) ... the *base year value* of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property *if that property were not contaminated* .. ." (Emphasis added.)

Initially, we must note that the Legislature has not yet enacted legislation implementing Proposition 1, and any opinion we render is subject to revision depending on the interpretation the Legislature may give to the above quoted language. However, it seems clear to us that the language of Proposition 1 provides that it is the contaminated property's adjusted base year value, and not its reduced fair marked value (due to a reduction in value by reason of its contaminated state) which is permitted to be transferred to a qualified replacement property.

The constitutional amendment itself specifies that it is the "base year value" "as adjusted as authorized by subdivision (b)" of Section 2 of Article XIII A, which is authorized to be

transferred. The "full cash value" limitations of subdivision (a) of that constitutional section are implemented, in part, by Revenue and Taxation Code section 110.1. Subdivision (b) of Section 110.1 defines the value determined thereunder as the "base year value." It is this value that is "adjusted as authorized by subdivision (b)" for inflation up to two percent annually, referenced in the language of the constitutional amendment. Rev. & Tax Code §§ 51, 110.1, subd. (f). Therefore, it is our view that Proposition 1 permits the transfer of the contaminated property's adjusted base year value under the circumstances set forth therein, and not a reduced assessment based upon the reduction in fair market value due to the contamination.

This interpretation is consistent with the announced purpose for Proposition 1, to allow taxpayers to replace contaminated properties with comparable new properties, without being penalized by a property tax increase, which normally would occur upon the purchase of a new property. Nothing in the language of Proposition 1 or the arguments in its favor suggests that the intent was to allow the transfer to undamaged property, the lower property tax assessment of the original, contaminated property, in its contaminated state.

Finally, the fair market value comparison test in the language of Proposition 1, where the value of the replacement property is compared to the value of the qualified contaminated property *if that property were not contaminated*, supports the conclusion that any decline in value caused by the contamination was not intended to be taken into account in interpreting the transfer of assessed value provisions enacted thereby.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Daniel G. Nauman

Daniel G. Nauman
Tax Counsel

DGN:jd
h:/property/precednt/cntamprp/1999/01dgn.doc

cc: Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70