



(916) 445-3076

November 20, 1978

Dear Mr.

You requested our opinion on the status of property that would be placed under a voluntary easement to ensure its present use as a duck club in return for the Department of Interior furnishing water in perpetuity. You inquired whether such an arrangement would constitute a change of ownership or whether the agreement would possess the characteristics of a possessory interest. Our answer to both questions is no, assuming the facts are as stated below.

This type of arrangement has the characteristics of zoning and, therefore, may affect the value of the property when the highest and best use of the property to the agreement is greater than duck club use. As long as the highest and best use remains duck club use, there would be no change. We have taken the position that a change of zoning does not constitute a basis of reappraisal under Proposition 13. It would appear that Proposition 8 on the November ballot may cause us to modify that position in that down-zoning, causing a loss in value, could be recognized by the assessor. However, this last point is still under consideration and has not been acted upon by the members of the Board of Equalization.

Assuming the duck clubs are privately owned and are located on privately owned land, this arrangement would not constitute a possessory interest. The only way a possessory interest could be created is when the land is owned by the Department of Interior and this does not seem to be the case in your example.

I hope this answers your question.

Very truly yours,

Robert D. Milam  
Tax Counsel

RDM:fr  
cc: Prop. 13 Master File