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450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Office No. (916) 322-0050
Fax No. (916) 323-3387

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May 25, 1995

Honorable Glenn E. Gray
Ventura County Assessor
Government Center
800 South Victoria Avenue
Ventura, CA 93009

Attn: Mr. Jim Dodd

Dear Jim:

This is in response to your letter to me of April 13, 1995 in which you request our opinion regarding calamity claims under the following facts described in your letter:

The residents of La Conchita, a small beach hamlet at the extreme northwest corner of Ventura County, are requesting a calamity claim adjustment to the 1994/95 roll based on a landslide that occurred March 4, 1995.

The Assessor agreed to a Proposition 8 review for 1995/96, and has also processed 1994/95 calamity claims on those homes that were physically damaged by the March 4, 1995 landslide. The issue is the allowance of calamity claims on the remainder of the undamaged homes that have been posted with a "Warning: Geologic Hazard Area" sign which further stated: "Enter At Your Own Risk."

Following is a chronology of events.

1. September 1994: County issued a public notice of potential slide.
2. March 4, 1995: Slide destroyed nine homes. Two homes were red-tagged. ("No occupancy or entry of any kind by anybody.") Three houses were yellow-tagged. ("No occupancy, restricted entry only to remove personal property.")
3. March 5, 1995: Original hazard zone established. Sheriff sealed off entire community area with fence. Residents were still allowed into the community.

4. March 23, 1995: Another slide occurred in a different area. Eleven more homes were yellow-tagged.
5. April 15, 1995: All La Conchita homes were posted with geologic hazard notices and the Sheriff established an evacuation area. Community fencing was removed. This fencing had been erected around the community by the Sheriff's Department to limit access.

It is not disputed that the nine destroyed homes and 14 yellow-tagged homes qualify for a calamity claim. The question is with respect to those homes remaining in La Conchita that are physically undamaged, but posted with the hazard notices. The owners contend that they qualify for a calamity claim adjustment for the balance of the 1994/95 roll, March 4 to June 30. Certainly, a Proposition 8 is in order for March 1, 1995. The Assessor is uncertain whether a calamity adjustment for 1994/95 is legally proper.

For purposes of this letter, we assume (1) that Ventura County has adopted an ordinance pursuant to Revenue and Taxation Code section 170; (2) that the area in question was proclaimed by the Governor to be in a state of disaster as a result of the landslide; and (3) that Ventura County lacks the authority to force evacuation of the homes other than those which are red-tagged or yellow-tagged.

Revenue and Taxation Code section 170, subdivision (a) provides in relevant part:

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph "damage" includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.

The objective of section 170 (as well as section 51, subdivision (d)) "is to afford financial relief to the owners of property physically damaged or destroyed by an unforeseeable

occurrence beyond their control." T.L. Enterprises Inc. v. County of Los Angeles (1989) 215 Cal.App.3d 826, 880. (Emphasis added.)

As we understand the facts, it seems clear that the nine destroyed homes, two red-tagged homes and fourteen yellow-tagged homes were damaged or destroyed within meaning of the foregoing quoted provision. With respect to the remaining homes, however, it is clear that there was no physical damage to the land or improvements caused by the landslide. The only question, therefore, seems to be whether, as to those homes, there was damage resulting from "a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity."

The only evidence possibly concerning restricted access provided in your letter was with respect to the fence erected by the Sheriff on March 5, 1995 and removed by April 15, 1995. Notice of the fence removal was given by Ventura County in a letter dated April 6, 1995.

As we understand it, this fence did not restrict the access of the residents of the fenced area who were still allowed into the area. Material submitted with your letter indicates that mail delivery and trash service were affected during the period that the area was fenced to the extent that residents had to carry their trash to dumpsters and collect their mail at designated locations nearby. In our view, it is doubtful if the fence, which was in place for little more than a month, could be considered to cause restricted access to the property within the meaning of section 170. Even if it could, any diminution of value would appear to be so minimal as to be incapable of measurement. We are not suggesting that there has been no diminution in value as a result of the landslide, but only that there is probably no measurable value decline as a result of the temporary fence.

Posting of the homes with the geologic hazard warning notices, in our view, would not restrict or have any effect on access to the homes posted with such notices because Ventura County has no authority to face evacuation of these homes.

Accordingly, we don't believe section 170 applies to the homes in question.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Eric F. Eisenlauer
Senior Staff Counsel

EFE:ba

cc: Mr. John Hagerty - MIC:63
Mr. Dick Johnson - MIC:64
Ms. Jennifer Willis - MIC:70

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