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October 25, 2006

Honorable Thomas Kidwell
Madera County Assessor
Attn: Mr.
209 W. Yosemite Avenue
Madera, CA 93637

Re: Madera Irrigation District – Section 11 Property

Dear Mr. :

This is in response to your October 18, 2006 e-mail to Chief Counsel Kristine Cazadd requesting our opinion as to whether a portion of the 13,000 acre parcel of property (the Property) purchased by the Madera Irrigation District (MID), in order to create a water bank, is subject to a previously executed California Land Conservation Act (Williamson Act) contract. Because the mere purchase of property subject to a Williamson Act contract, by a public agency, if not by eminent domain or in lieu of eminent domain, does not cancel the Williamson Act contract, in our view, such acquisition of property, to the extent it is outside the public agency’s boundaries, would be subject to tax under section 11, article XIII of the California Constitution (Section 11), subject to the Williamson Act.¹

In your e-mail, you stated that of the 13,000 acres, approximately 2,000 acres is within MID boundaries and 11,000 acres are outside the MID boundaries but located in Madera County. Prior to MID’s purchase, the entire Property was subject to a Williamson Act contract. The MID’s position, outlined in a letter from its attorney that you have provided, is that the acquisition by the MID does not cancel the Williamson Act contract because the Property was purchased and not taken by eminent domain or in lieu of eminent domain.

As you know, the Williamson Act allows counties to enter into contracts with landowners to preserve agricultural land that restrict the use of the land while conferring certain property tax benefits.² Government Code section 51295 provides one method of nullifying a Williamson Act contract. That section provides:

¹ The Board of Equalization does not administer the Williamson Act program; however, the California Department of Conservation’s Division of Land Resource Protection, which oversees the administration of the Williamson Act, has provisionally advised the Board staff that the purchase of a property by a public agency does not cancel the Williamson Act contract. Thus, this opinion is expressly based on our understanding that the Williamson Act contract remains enforceable after purchase by a government agency without the exercise of its eminent domain powers or in lieu of its eminent domain powers.

² Gov. Code, § 51200 et seq.

When any action *in eminent domain* for the condemnation of the fee title of an entire parcel of land subject to a contract is filed, or when that land is acquired *in lieu of eminent domain* for a public improvement by a public agency or person, . . . the contract shall be deemed null and void as to the land actually being condemned, or so acquired as of the date the action is filed, and for the purposes of establishing the value of the land, the contract shall be deemed never to have existed. [Emphasis added.]

The Courts have interpreted this section as requiring the public entity to acquire the land either through or in lieu of eminent domain. The mere fact that an acquisition could have been by eminent domain or by threat of eminent domain is not enough. (See *Friends of Willits Valley v. County of Mendocino* (2002) 101 Cal.App.4th 191.) Thus, Government Code section 51295 would not apply where the record indicates that a public agency and a willing seller voluntarily transacted a sale for land without the exercise of or in lieu of the exercise of the public agency's eminent domain powers.

We are aware that our Letter To Assessors (LTA) No. 2000/037 states that for taxable government-owned lands subject to a Williamson Act contract when acquired:

. . . pursuant to Government Code section 51295, the Williamson Act contract becomes null and void when the fee title to an entire parcel of land is condemned or acquired by a public agency for a public improvement.

This statement, however, should be read consistently with Government Code 51295, to only apply in instances where property is acquired *by eminent domain or in lieu of eminent domain* by a public agency for a public improvement.

Section 11 provides that the following local government-owned property is subject to tax:

Lands owned by a local government that are outside its boundaries, including rights to use or divert water from surface or underground sources and any other interests in lands, are taxable if (1) they are located in Inyo or Mono County and . . . or (2) they are located outside Inyo or Mono County and *were taxable when acquired by the local government*. [Emphasis added.]

This authorization to tax local government property located outside of its boundaries is an exception to the general exemption for property owned by a local government, founded upon two principal conditions: (1) that the situs of the property acquired is outside of the boundaries of the local government, and (2) that the property purchased was taxable when acquired.

As you know, pursuant to *City and County of San Francisco v. County of San Mateo*,³ assessors are required to establish base year values for Section 11 properties and to assess those properties at the lowest of: (1) the current fair market value, (2) the factored base year value, or (3) the Phillips factor value. However, where Section 11 property is also subject to an enforceable restriction such as a Williamson Act contract, the property must be valued in accordance with section 8, article XIII of the California Constitution and the statutory sections

³ (1995) 10 Cal.4th 554.

which implement it. In that regard, section 52, subdivision (d) of the Revenue and Taxation Code⁴ provides:

Notwithstanding the provisions of this division, property subject to valuation pursuant to Section 11 of Article XIII of the California Constitution shall be valued for property tax purposes in accordance with this section.

Section 52, subdivision (a) requires that all property, which is enforceably restricted must be valued pursuant to sections 421 et seq., including the restrictions on fair market value prescribed in section 423.

In this case, MID acquired property that was both within and without its boundaries. Thus, that portion of the Property outside MID's boundaries is subject to tax pursuant to Section 11 because the Property acquired by MID was taxable subject to the conditions of the Williamson Act. Since the Williamson Act contract remains in force even after the purchase of the Property by the MID, in our view, the portion of the Property outside of MID boundaries is subject to tax under the terms and conditions of the existing Williamson Act contract and subject to valuation in accordance with section 8, article XIII of the California Constitution, section 52 and sections 421 et seq. In regard to the portion of the Property within MID's jurisdiction, that portion is exempt pursuant to section 3, article XIII of the California Constitution.

The views expressed in this letter are only advisory in nature. 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,



Richard S. Moon
Tax Counsel

RM:jlh
Prec/EmDomain/06/588.RM
Pre/GovProp/06/588.RM

cc:	Mr. David Gau	MIC:63
	Mr. Dean Kinnee	MIC:64
	Ms. Mickie Stuckey	MIC:62
	Mr. Todd Gilman	MIC:70

⁴ All further statutory references are to the Revenue and Taxation Code unless otherwise specified.