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April 28, 2005

Honorable Stephen L. Vagnini  
Monterey County Assessor  
PO Box 570 - Courthouse  
Salinas, CA 93902

Attn: Mr.  
Assistant Assessor - Valuation

**Subject:** *Company - Assignment of Water Entitlement and Water Use*  
*Permits*

Dear Mr. :

This letter replies to yours dated March 15, 2005, addressed to Assistant Chief Counsel Kristine Cazadd, in which you inquire whether the assignment of a portion of a water entitlement and water use permit to a property owner constitutes assessable new construction on the benefited property. For the reasons set forth below, we believe that such an assignment does not constitute assessable new construction and, thus, a new base year would not be established for that event.

**Factual Background**

Water usage restrictions have been imposed on property on the Monterey peninsula. In order to build a new house, or make an addition involving a bathroom or plumbing fixtures, the property owner must get on a waiting list for available water usage permit or may buy a permit when one becomes available.

As a result of a water reclamation project, the Company (PBC) realized a savings of 300 acre feet of water. The Monterey Peninsula Water Management District is allowing the PBC to sell 175 acre feet; currently, the PBC wants to sell 120 acre-feet for \$200,000 per acre foot. When a property owner receives a water usage permit the price of the benefited property significantly increases.

**Legal Analysis**

Article XIII A, section 1 of the California Constitution provides in relevant part that “(a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.” Section 2, subdivision (a) of that article further provides, in relevant part, that “ ‘full cash value’ means the March 1, 1975 full cash value or, thereafter, the appraised value of real property (1) when purchased, (2) newly constructed, or (3) a change in ownership has occurred.” Revenue and Taxation Code section 110.1, subdivision (a) defines the full cash value of real property as the fair market value on the 1975 lien date or,

thereafter, the value on the date on which a purchase or change in ownership occurs or the date on which new construction is completed.

Revenue and Taxation Code section 70 generally defines "new construction" as either: (1) any addition to real property since the last lien date, or (2) any alteration of land or of any improvement since the last lien date which constitutes a major rehabilitation thereof or which converts the property to a different use. Subdivision (b) of Rule 463 further defines the term "new construction" and reflects the statutory categories of additions and alterations. Subdivision (b)(1) includes in the definition any substantial addition to land or improvements and cites as examples, landfill, retaining walls, curbs, gutters or sewers, etc. Subdivision (b)(2) refers to a substantial physical alteration of land, which constitutes a major rehabilitation or results in a change in the way the property is used. Examples of the alterations include site developments of rural land for the purpose of establishing a residential subdivision, converting rolling, dry grazing land to irrigated crop land, and preparing a vacant lot for use as a parking facility. Subdivision (b)(2)(A) also expressly states that *only the value of the alteration should be added to the base year value of the pre-existing land and that increases in land value caused by appreciation or a zoning change rather than new construction should not be enrolled*. It is important to note that these provisions define new construction in terms of a physical change to real property and do not include value increases attributable to other factors.

The Board staff provided an interpretation of these provisions in Letter to Assessors (LTA) No. 91/37 Valuation of New Construction: Property Subject to Governmental Restrictions on Water Service (May 9, 1991) which is enclosed. In that LTA, the staff concluded that the statutory and regulatory provisions for valuation of new construction "were intended to prevent enrollment of increases in market value of the type that occur as the result of the issuance of use or development permits, such as for water service, by the proper governmental authority."

Such increases are akin to those resulting from a zoning change and cannot be recognized in the base-year value until the property changes ownership.

of your office provided a copy of LTA No. 91/12 providing notification of the decision of the court of appeal in *Mitsui Fudosan v. County of Los Angeles* (1990) 219 Cal.App.3d 525 in which the court held that transferable development rights are real property interests and that the sale of those rights resulted in a change in ownership of the interests. As noted in the LTA, Board staff has been of the opinion that *Mitsui* should be read narrowly and limited to the facts therein.

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. They are not binding on any person or entity.

Very truly yours,

/s/Rafael Icaza

Rafael Icaza  
Tax Counsel

Mr.

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April 28, 2005

cc: Mr. David Gau, MIC:63  
Ms. Mickie Stuckey, MIC:64  
Mr. Dean Kinnee, MIC:64  
Ms. Lisa Thompson, MIC:64  
Ms. Colleen Dottarar, MIC: 64  
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