STATE OF CALIFORNIA

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October 5, 1999

Joseph F. Pitta
Monterey County Assessor
P.O. Box 570 - Courthouse
Salinas, California 93902

Re: Application of Revenue and Taxation Code Section 70, subdivisions (b) and (c)

Dear Mr. Pitta:

This is in reply to your letter of August 17, 1999 addressed to Assistant Chief Counsel Larry Augusta in which you request a legal opinion concerning application of Revenue and Taxation Code section 70, subdivisions (b) and (c) in a case of repair and restoration of golf course property damaged by reclaimed water with a high sodium content. The property owner, Country Club (Club), contends that the repair and restoration were necessitated by the "damage or destruction" caused by the use of the water and thus, should be excluded from reappraisal as "new construction" pursuant to subdivision (c) of section 70. For the reasons set forth below, the new construction exclusion is not applicable because the event that caused the damage does not qualify as a misfortune or calamity within the meaning of that provision.

Factual Background

In 1994, property owners in the Pebble Beach Area of Monterey County began using reclaimed water to irrigate golf courses and open space areas. It was soon determined that the reclaimed water contained a high level of sodium which was damaging to the golf courses. Thus, golf course owners took measures to mitigate the damage to their courses, although your office is unaware of any other golf courses that undertook the extensive repairs and rehabilitation that the Club did. As of lien date 1999, the Club has spent over $2,700, 000 on extensive rehabilitation, renovation and modernization including a new drainage and irrigation system, new cart paths and path bridges, tree removal, and a complete reworking of course tees, fairways, bunkers and greens. The Club has not filed for disaster relief pursuant to section 170 or relief for a decline in value pursuant to section 51, subdivision (a)(2).

Law and Analysis

For property tax purposes, subdivision (a) of section 70 defines "new construction" as any addition to land, improvements or fixtures since the last lien date and any alteration to land, improvements or fixtures since the last lien date that constitutes a major rehabilitation thereof or converts the property to a different use. Subdivision (b) defines a major rehabilitation as "[a]ny rehabilitation, renovation, or modernization which converts an improvement or fixture to the substantial equivalent of a new improvement or fixture . . ." "New construction" in progress on the lien date is subject to reappraisal at its full value on the lien date, unless another provision excludes it from reappraisal.

Notwithstanding the provisions of subdivisions (a) and (b), subdivision (c) of section 70 excludes as "new construction" the reconstruction of real property that has been damaged or destroyed as result of misfortune or calamity. That subdivision provides in relevant part that

> where the real property has been damaged or destroyed by misfortune or calamity, "newly constructed" or "new construction" does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction.

In *T.L. Enterprises, Inc. v. County of Los Angeles* (1989) 215 Cal.App.3d 876, the court of appeal interpreted misfortune or calamity as intended by section 51, subdivision (c) as an extraordinary, unforeseeable event beyond the control of the property owner. The court further inferred that, in terms of the time element, a distinct occurrence of damage or destruction, and not gradual damage over time, was required. Therefore, the court held that structural damage to a building caused by foundation settlement over a period of years was not the result of a misfortune or calamity because the settling was a gradual process which the property owner could have taken steps to remedy.

Based on the foregoing, the ongoing irrigation of the Club's golf course with the reclaimed water was not a "misfortune or calamity" within the meaning of subdivision (c) and *T.L. Enterprises, Inc. v. County of Los Angeles, supra*. Under the facts presented, the damage occurred gradually over a period of time as the sodium accumulated in the soil; thus, the damage resulted from the ongoing watering and not from a single, distinct occurrence. You state that other golf courses did not incur the same level of damage and/or were able to mitigate the damage caused by the reclaimed water by taking measures such as flushing the soil with nonreclaimed water. Hence, alleviating the gradual damage to the property was similarly within the control of the Club. Therefore, any reconstruction necessary to restore or rehabilitate the damage to the property would constitute "new construction" and would not be excluded by subdivision (c). Additionally, the extensiveness of the "rehabilitation, renovation and modernization" indicates new construction well in excess of that limited to tees, fairways, and greens, the Club's assertion to the contrary notwithstanding.

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.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

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cc: Mr. Richard C. Johnson (MIC:63)
Mr. David J. Gau (MIC:64)
County Property Tax Division (MIC:62)
Ms. Jennifer L. Willis (MIC:70)