STATE OF CALIFORNIA

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April 9, 2002

Hon. Grant W. Metzger, Assessor
Calaveras County Government Center
Office of the Calaveras County Assessor
891 Mountain Ranch Rd.
San Andreas, California 95249-9709

Attn: Dudley Meyer, Assistant Assessor

Re: ***California Land Conservation Contract No. with***

Dear Mr. Meyer:

This is in response to your letter dated January 15, 2002 in which you request our opinion on two questions relating to Parcel in Calaveras County. The two questions are: (1) Does rezoning the parcel from C2-PD (commercial) to "Agricultural Preserve District" retroactive to December 1998 make the parcel eligible for reassessment as "enforceably restricted" for 1999 and subsequent tax years?; and (2) does the Assessor have the statutory authority to make these retroactive roll corrections for 1999 and subsequent tax years?

As set forth in more detail below, it is our opinion that both the constitutional and statutory provisions governing the reduced property tax valuation afforded to "enforceably restricted" open-space lands require that the enforceable restriction be in existence (and "signed, accepted, and recorded") on or before the lien date of the tax year to which the reduced valuation is to apply. Thus, even if the proposed resolution is passed as to the purported retroactive rezoning of the commercial parcel, the parcel will not thereby become eligible for reassessment as enforceably restricted open-space land for any prior year. Furthermore, the commercial parcel was properly assessed in those prior years under the full cash value methodology set forth in section 110.1 of the Revenue and Taxation Code. Thus, if the proposed resolution passes, no error or omission can be said to have taken place with respect to such prior assessments under section 51.5 due to such purportedly retroactive resolution.

Factual Background

On December 14, 1998, the County of Calaveras entered into California Land Contract No. with and . County Resolution 98-400 established the agricultural preserve and also rezoned all but one of the parcels to "Agricultural Preserve

District." There are ten parcels with a total land area of 1,083.91 acres in the contract area, including the vacant commercial parcel that was not rezoned.[1]

This vacant commercial parcel, called Parcel , is adjacent to the Calaveras County Airport and is within the Airport Special Plan area. It is zoned C2-PD, has a land area of 82.16 acres, and is used for agricultural purposes.

Since lien date 1999, the nine agriculturally zoned parcels have been assessed as "enforceably restricted" under section 423 of the Revenue and Taxation Code. The commercial parcel, however, was judged by the Assessor to be ineligible for an "enforceably restricted" assessment because it was not zoned Agricultural Preserve. Thus, for 1999 and subsequent years, the parcel has been assessed at its adjusted base year value.

A resolution to rezone the commercial parcel to Agricultural Preserve will be presented to the Board of Supervisors. The objective is to make the zoning change retroactive to December 14, 1998 without altering the original contract, and refund the resulting overpaid property taxes on the commercial parcel. The resolution will instruct the Assessor to reassess the property as "enforceably restricted" for lien date 1999 and subsequent years, if it is legally permissible.

Law and Analysis

In general, if a standard other than "full cash value" (as defined in section 110.1 of the Revenue and Taxation Code) is to be applied to the assessment valuation of locally assessed real property, it must be prescribed by the California Constitution or a statute authorized by the Constitution. (See Cal. Const. art. XIII, § 1.)

Section 8 of article XIII provides one such exception to the ordinary full cash value standard with respect to open space lands:

> To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

Pursuant to section 8, the California Legislature enacted sections 421, et seq. of the Revenue and Taxation Code, which sections provide certain prescribed limitations on the property tax valuation of open-space land subject to an enforceable restriction. Section 52(a) confirms that: "Notwithstanding any other provision of this division, property which is enforceably restricted pursuant to Section 8 of Article XIII of the California Constitution shall be valued for property tax purposes pursuant to Article 1.5 (commencing with Section 421) …."

[1] [1] If an appeal is filed, section 80(a)(5) provides that: "Any reduction in assessment made as the result of an appeal under this section ["Application for reduction in base-year value"] shall apply for the assessment year in which the appeal is taken and prospectively thereafter."

Section 422 defines an "enforceable restriction" as follows: "For the purposes of this article and within the meaning of Section 8 of Article XIII of the Constitution, open-space land is 'enforceably restricted' if it is subject to any of the following; (a) A contract; (b) An agreement… For the purposes of this article no restriction upon the use of land other than those enumerated in this section shall be considered to be an enforceable restriction." Subdivision (b) of section 421 defines a "contract" as a contract executed pursuant to the California Land Conservation Act. Finally, section 430.5 states that:

> No land shall be valued pursuant to this article unless an enforceable restriction meeting the requirements of Section 422 is signed, accepted, and recorded on or before the lien date for the fiscal year to which the valuation would apply. To provide counties and cities with time to meet the requirement of this section, the land that is to be subject to a contract shall have been included in a proposal to establish an agricultural preserve submitted to the planning commission or planning department, or the matter of accepting an open-space easement or scenic restriction shall have been referred to that commission or department on or before October 15 preceding the lien date to which the contract, easement or restriction is to apply. (Emphasis added.)[2]

Question No. 1: Does rezoning the commercial parcel to "Agricultural Preserve District" retroactive to December 1998 make the parcel eligible for reassessment as "enforceably restricted" for 1999 and subsequent years?

No. Section 8 only provides for limitations on the valuation of open space lands when the lands are "enforceably restricted in a manner specified by the Legislature." Thus, under section 8, it is only after land has been made subject to a Williamson Act contract that it can (and must) be assessed according to the special assessment methodology enacted by the Legislature. Section 430.5 is to the same effect, stating that:

1. "No land shall be valued pursuant to this article unless an enforceable restriction … is signed, accepted, and recorded on or before the lien date for the fiscal year to which the valuation would apply. (Emphasis added.)"
2. "[T]he land that is to be subject to a contract shall have been included in a proposal to establish an agricultural preserve … on or before October 15 preceding the lien date to which the contract, easement, or restriction is to apply." (Emphasis added.)"

The caselaw also is consistent: in order to receive the benefits of restricted valuation, land must be "enforceably restricted." (*Honey Springs Homeowners Assn. v. Board of Supervisors* (1984) 157 Cal.App.3d 1122; *Schellenberger v. Board of Equalization of San Joaquin County* (1983) 147 Cal.App.3d 510.

Based upon the above, we conclude that a purported retroactive rezoning of the commercially zoned parcel to "Agriculture Preserve District" would not make the parcel eligible

[2] As originally enacted, the statutory scheme set the former March 1 lien date as the deadline for qualification for Williamson Act treatment. Since many applicants failed to meet this deadline due to the approval procedures required by cities and counties, the legislature was besieged with annual bills to extend the time requirements for specified property owners. The enactment of section 430.5 was an attempt to stop this annual deluge of legislative relief measures.

for reduced valuation as enforceably restricted open-space land under sections 421, et seq. for any prior year. For all years prior to the rezoning, the parcel was not subject to an enforceable restriction and, thus, properly was assessed under the full cash value standard set forth in section 110.1.

While the issue was not specifically raised in you letter, it nevertheless should be noted that – even when the ascertainable indicators of legislative intent call for retroactive application – a statute should not be applied retroactively if "there is some constitutional objection thereto." (*California Emp. Etc. Com. v. Payne* (1947) 31 Cal. 2d 210, 214.) In this case, even though the proposed resolution is retroactive, there will be no constitutional due process problem, assuming it can be shown that the resolution could only serve to reduce the owner's tax liability; in other words, there is no danger of impairing any vested property right of the owner. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587.) However, unless it can be demonstrated that there is an overriding public purpose or that the parcel owner was an "unwary taxpayer" it could be argued that the proposed ordinance would violate article XVI, section 6 of the California Constitution as a gift of public funds. "As a general rule, the Legislature cannot provide relief for taxes which have become fixed and vested." (*Scott v. State Bd. Of Equalization* (1996) 50 Cal.Ap.4th 1597, 1604; *County of Sonoma v. State Bd. Of Equalization* (1987) 195 Cal.App.3d 982, 993; see also *Heather Preston v. State Board of Equalization* (2001) 25 Cal.4th 197, 225-226.) Thus, in this case, even if the open space enforceable restriction could retroactively be enrolled under the applicable constitutional and statutory provisions, questions still could be raised as to whether or not the proposed rezoning resolution could legally be given retroactive effect for property tax purposes.

Question No. 2: If the rezoning resolution passes, does the Assessor have the statutory authority to make retroactive roll corrections for 1999 and subsequent tax years?

No. A lawfully enacted statute or constitutional provision is binding on everyone within the state's jurisdiction – at least until such time as a court invalidates it on constitutional or other grounds. (*Greener v. Workers Comp. Appeals Board* (1993) 6 Cal.4th 1028; *Fenske v. Board of Equalization* (1980) 103 Cal.App.3d 590.)[3] Accordingly, the county is required to follow the terms and conditions of these provisions; including the requirement of a preexisting enforceable restriction. The authority for both base year value corrections (section 51.5) and roll corrections (section 4831) is based on the principle that property must be valued at full case value subject to any restrictions actually in existence on that lien date. Section 430.5 is particularly clear in stressing that: "No land shall be valued pursuant to this article unless an enforceable restriction…is signed, accepted, and recorded on or before the lien date for the fiscal year to which the valuation would apply. (Emphasis added.)" The clarity of this language would seem to reduce the likelihood of reaching a different interpretation in this case.

As the terms and conditions of section 8 and section 430.5 require that land be enforceably restricted prior to being subject to reduced valuation as enforceably restricted open-space land, the passage of the purportedly retroactive ordinance would have no effect on the prior assessments of the commercial parcel. As a consequence, the prior assessments of such parcel at its full cash value per section 110.1 would not constitute an "error and omission" under

[3] In this respect it should be noted that, if otherwise valid local legislation conflicts with state law, it is preempted and, therefore, void. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893.)

section 51.5 of the Revenue and Taxation Code. Given this, it is our opinion that your office would lack the authority to make the requested retroactive roll corrections.[4]

I hope the above answers your questions. Please remember that 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. If you have any questions, please call me at 916-324-6593.

Yours truly,

/s/ Robert W. Lambert

Robert W. Lambert
Senior Tax Counsel

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cc: Mr. David Gau, MIC:63
Chief of PPSD, MIC:64
Mr. Harold Hale, MIC:61
Ms. Jennifer Willis, MIC:70

[4] In addition, if an appeal were to be filed under section 80, section 80(a)(5) provides that: "Any reduction in assessment made as the result of an appeal under this section ["Application for reduction in base-year value"] shall apply for the assessment year in which the appeal is taken and prospectively thereafter."