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TO COUNTY ASSESSORS:

LAND USE RESTRICTIONS

When determining a property's fair market value, Revenue and Taxation Code¹ section 110(a) requires the assessor to consider the effect of legally enforceable restrictions on a property's use, such as zoning or environmental constraints. Similarly, when determining land value, section 402.1 requires the assessor to consider the effect of any government-imposed restrictions on land use. Property subject to an enforceable governmental restriction must be valued based on its restricted use.

Effective January 1, 2017, Assembly Bill 2450 (Stats. 2016, ch. 300) adds section 402.2 to the Revenue and Taxation Code. Section 402.2 requires contracts with governmental agencies that restrict the use of the property to owner-occupied housing available at affordable housing cost to be recorded. This section is not to be construed to prevent an assessor from considering a contract that restricts the use of the property to owner-occupied housing available at affordable housing cost when making value determinations under sections 110(a) or 402.1.

Prior to January 1, 2016, generally the law did not allow the assessor to consider the effect of a privately-imposed restriction that may negatively impact value. The sole exception was for conservation, trail, or scenic easements granted to specified nonprofit organizations.

During the 2015-2016 legislative session, three bills amended section 402.1. Effective January 1, 2016, Assembly Bill 1251 (Stats. 2015, ch. 639) and Assembly Bill 668 (Stats. 2015, ch. 698) amended section 402.1 to require the assessor to recognize recorded greenway easement use and certain land use restrictions imposed by nonprofit organizations for affordable housing. In addition, effective September 27, 2016, Assembly Bill 2818 (Stats. 2016, ch. 701) amended section 402.1 to require the assessor to consider certain land use restrictions imposed by community land trusts. This letter discusses the statutory provisions of these three bills.

Recorded Greenway Easements

Effective January 1, 2016, AB 1251 created the Greenway Development and Sustainment Act, which authorizes certain entities to acquire easements for the purpose of developing greenways along urban waterways. As part of this Act, section 402.1(a)(8)(B) was added to require an assessor to consider the effect upon value of recorded greenway easements granted in favor of a public agency, or in favor of a nonprofit corporation whose primary purpose is to develop and preserve greenways.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise provided.

A *greenway* is defined in Civil Code section 816.52 as a pedestrian and bicycle, non-motorized vehicle transportation and recreational travel corridor that meets the following requirements:

- Includes landscaping that improves rivers and streams, provides flood protection benefits, and incorporates the significance and value of natural, historical, and cultural resources.
- Is separated and protected from shared roadways, is adjacent to an urban waterway, and incorporates both ease of access to nearby communities and an array of amenities and services for the users of the corridor and nearby communities.
- Is located on public lands or private lands, or a combination of public and private lands, where public access to those lands for greenway purposes has been legally authorized by, or legally obtained from, the fee owner of the land and, if applicable, the operator of any facility or improvement located on the land, through leases, easements, or other agreements entered into by the fee owner and the operator of any affected facility or improvement on the land.
- Reflects design standards regarding appropriate widths, clearances, setbacks from obstructions, and centerlines protecting directional travel, and other considerations, as appropriate.
- May incorporate appropriate lighting, public amenities, art, and other features.

An *urban waterway* is defined as a creek, stream, or river that crosses developed residential, commercial or industrial property or open space where the local agency's planning document designates the land as residential, commercial, or industrial.²

While section 402.1(a)(8)(A) already requires an assessor to consider any negative value impact resulting from recorded conservation, trail, or scenic easements by nonprofit corporations, the law now explicitly addresses greenway easements under the new Act.

As discussed in Assessors' Handbook Sections 501 and 502, the granting of an easement does not usually result in a change in ownership of this real property interest. However, if the granting of the greenway easement meets the three-part definition of change in ownership under section 60, then the easement becomes subject to separate assessment. Upon the granting of an assessable easement, the assessor must establish a new base year value for the easement, taking into account any negative value impact as described above. For a nonprofit corporation, the property interest may become eligible for a property tax exemption under the Welfare Exemption, if the exemption requirements are met.

If the easement does *not* trigger a change in ownership and therefore is not separately assessable to the grantee of the easement, the easement remains taxable to the property owner. Only if the easement serves to negatively impact the property's market value such that its value falls below its adjusted base year value, would the property's assessed value be reduced as of the ensuing lien date and then reevaluated every lien date thereafter.

² Civil Code section 816.52(e).

For Sale Affordable Housing: Nonprofit Corporation Imposed Use Restriction**Silent Second Mortgages**

Effective January 1, 2016, AB 668 added paragraph (10) to section 402.1(a) and requires an assessor to consider restrictions imposed by specified nonprofit corporations when determining the value of a home purchased at a below-market price from a nonprofit corporation housing program. Certain conditions must be met in order for an assessor to consider these restrictions:

- The corporation imposing the restriction must be an Internal Revenue Code section 501(c)(3) nonprofit corporation that has received the Welfare Exemption under section 214.15, which provides a property tax exemption for corporations organized and operated for the specific and primary purpose of building and rehabilitating single- or multi-family residences for sale at cost to low-income families.
- The contract must restrict the land's use for at least 30 years to owner-occupied housing available at an affordable cost, as provided in Health and Safety Code section 50052.5.
- The contract includes a deed of trust (also called a silent second mortgage) on the property in favor of the nonprofit corporation to ensure homeowner compliance with program terms that has no value unless the owner fails to comply with home sale terms, covenants, and restrictions.
- The local housing authority finds that the long-term deed restrictions in the contract serve a public purpose. If the location is not served by a housing authority, then an equivalent agency, or, if none exists, the city attorney or county counsel conclude such findings.
- The contract is recorded and a copy is provided to the assessor.

A nonprofit organization that uses a silent second mortgage typically requires its home buyers to enter into a contract that limits the homeowner's ability to sell, lease, refinance, encumber, or mortgage the home. The contract is recorded and could be legally enforced should the home buyer violate contract terms.

Community Land Trust

Effective September 27, 2016, AB 2818 added paragraph (11) to section 402.1(a) to add another exception related to nonprofit organization imposed use restrictions. These provisions require a county assessor to consider recorded restrictions imposed by a community land trust that negatively impact property value when determining the assessed value of homes that have a 99-year ground lease and limited equity due to resale price restrictions and that are sold to low- and moderate-income buyers.

Federal law, the Cranston-Gonzales National Affordable Housing Act, allows community land trusts to obtain organizational support, technical assistance, education, training, and community support from the government in fulfilling their housing mission.³ The Act defines *community land trust* to mean a community housing development organization not sponsored by a for-profit

³ 42 U.S.C. 12773.

organization, with a specified board membership, that is established to carry out the following activities:

1. Acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
2. Transfer ownership of any structural improvements located on the leased parcels to the lessees; and
3. Retain a preemptive option to purchase any structural improvement at a price determined by formula designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity.

Community land trusts are a new, expanding area to create more affordable housing opportunities. To date, there are at least 24 community land trusts in California.⁴

To qualify as a land use restriction under section 402.1, the following conditions are necessary:

- The contract must be recorded and provided to the assessor.
- The community land trust must be an Internal Revenue Code section 501(c)(3) nonprofit corporation that has as its primary purposes the creation and maintenance of permanently affordable single- or multi-family residences—including either rentals⁵ or for-sale homes.
- The initial sale and future resales must be to persons and families of low or moderate income.
 - The term "lower and moderate income households" is defined by cross-reference to Health and Safety Code section 50093. The Board issues an annual letter to assessors listing these income limits.⁶
 - The home must serve as the buyer's primary residence.
 - The dwelling can also be owned in the form of a limited equity housing cooperative as defined in Civil Code Section 817.
- The sale or resale price of the dwelling or unit must be determined by a formula that ensures the dwelling or unit has a purchase price that is affordable to qualified owners. There is no specified formula that must be in the contract—there merely has to be a formula.
- The community land trust has the right to repurchase the dwelling or unit to preserve the dwelling or unit as affordable to qualified owners.
- In the case of home sales, the community land trust leases the land on which the home is situated to the buyer for a 99-year term that is renewable.

⁴ National Community Land Trust Network (<http://cltnetwork.org/directory/>).

⁵ Low-income rental housing may be exempt under the Welfare Exemption. Moderate income rental housing qualifies for the Welfare Exemption if the housing is for seniors and the disabled and includes supportive services based on their special needs.

⁶ See Letter To Assessors 2016/038, www.boe.ca.gov/proptaxes/pdf/lta16038.pdf.

- A public agency or official has found that the affordability restrictions in the contract serve a public purpose to create and preserve the affordability of residential housing for persons and families of low or moderate income. A *public agency or official* includes the following:
 - The director of the local housing authority or equivalent agency
 - The county counsel or city attorney
 - The director of a county or city housing department

Section 61(c) provides that the creation of a lease for a term of 35 years or more triggers a change in ownership of the property subject to the lease. This requires the assessor to reassess the property subject to that lease to its fair market value. Thus, under existing law, the assessor is required to reassess the land when a 99-year ground lease is entered into. Moreover, section 61(c)(3) provides a conclusive presumption that all homes, except manufactured homes and floating homes, eligible for the Homeowners' Exemption have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

Previously, there was no law that directly addressed the assessment of a home sold by community land trusts with a 99-year ground lease and a formula-based resale price restriction to maintain affordability to the original buyer or any future income-qualified buyer of the home. Section 402.1(a)(11) allows the assessor to consider these restrictions when evaluating the sales price of the home.

Staff is considering the effect of these community land trust restrictions on the assessment of these homes for property tax purposes. Therefore, assessment guidelines will be issued at a later date.

Enclosed are copies of amended section 402.1 and new section 402.2. The changes to section 402.1 are in ~~strikeout~~ and *italics*. If you have any questions regarding these changes, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung for

Dean R. Kinnee
Deputy Director
Property Tax Department

DRK:grs
Enclosure

Effective September 27, 2016, Revenue and Taxation Code section 402.1 as amended by AB 668, AB 1251, and AB 2818 reads:

402.1. (a) In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. These restrictions shall include, but are not limited to, all of the following:

(1) Zoning.

(2) Recorded contracts with governmental agencies other than those provided in Sections 422, 422.5, and 422.7.

(3) Permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments, including the California Coastal Commission and regional coastal commissions, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency.

(4) Development controls of a local government in accordance with any local coastal program certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

(5) Development controls of a local government in accordance with a local protection program, or any component thereof, certified pursuant to Division 19 (commencing with Section 29000) of the Public Resources Code.

(6) Environmental constraints applied to the use of land pursuant to provisions of statutes.

(7) Hazardous waste land use restriction pursuant to Section ~~25240~~ 25226 of the Health and Safety Code.

(8) (A) A recorded conservation, trail, or scenic easement, as described in Section 815.1 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

(B) A recorded greenway easement, as described in Section 816.52 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the developing and preserving of greenways.

(9) A solar-use easement pursuant to Chapter 6.9 (commencing with Section 51190) of Part 1 of Division 1 of Title 5 of the Government Code.

(10) *A contract where the following apply:*

(A) The contract is with a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(B) The contract restricts the use of the land for at least 30 years to owner-occupied housing available at affordable housing cost in accordance with Section 50052.5 of the Health and Safety Code.

(C) *The contract includes a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale.*

(D) *The local housing authority or an equivalent agency, or, if none exists, the city attorney or county counsel, has made a finding that the long-term deed restrictions in the contract serve a public purpose.*

(E) *The contract is recorded and provided to the assessor.*

(11) (A) *A contract where the following apply:*

(i) *The contract is a renewable 99-year ground lease between a community land trust and the qualified owner of an owner-occupied single-family dwelling or an owner-occupied unit in a multifamily dwelling.*

(ii) *The contract subjects a single-family dwelling or unit in a multifamily dwelling, and the land on which the dwelling or unit is situated that is leased to the qualified owner by a community land trust for the convenient occupation and use of that dwelling or unit, to affordability restrictions.*

(iii) *One of the following public agencies or officials has made a finding that the affordability restrictions in the contract serve the public interest to create and preserve the affordability of residential housing for persons and families of low or moderate income:*

(I) *The director of the local housing authority or equivalent agency.*

(II) *The county counsel.*

(III) *The director of a county housing department.*

(IV) *The city attorney.*

(V) *The director of a city housing department.*

(iv) *The contract is recorded and is provided to the assessor.*

(B) *For purposes of this paragraph, all of the following definitions shall apply:*

(i) *"Affordability restrictions" mean that all of the following conditions are met:*

(I) *The dwelling or unit can only be sold or resold to a qualified owner to be occupied as a principal place of residence.*

(II) *The sale or resale price of the dwelling or unit is determined by a formula that ensures the dwelling or unit has a purchase price that is affordable to qualified owners.*

(III) *There is a purchase option for the dwelling or unit in favor of a community land trust intended to preserve the dwelling or unit as affordable to qualified owners.*

(IV) *The dwelling or unit is to remain affordable to qualified owners by a renewable 99-year ground lease.*

(ii) *"Community land trust" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that satisfies all of the following:*

(I) *Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.*

- (II) *All dwellings and units located on the land owned by the nonprofit corporation are sold to a qualified owner to be occupied as the qualified owner's primary residence or rented to persons and families of low or moderate income.*
- (III) *The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years.*

(iii) "Limited equity housing cooperative" has the same meaning as that term is defined in Section 817 of the Civil Code.

(iv) "Persons and families of low or moderate income" has the same meaning as that term is defined in Section 50093 of the Health and Safety Code.

(v) "Qualified owner" means persons and families of low or moderate income, including persons and families of low or moderate income that own a dwelling or unit collectively as member occupants or resident shareholders of a limited equity housing cooperative.

(b) There is a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses.

(c) Grounds for rebutting the presumption may include, but are not necessarily limited to, the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land. The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

(d) In assessing land with respect to which the presumption is un rebutted, the assessor shall not consider sales of otherwise comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal effect upon value.

(e) In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable lands that are not under restriction but upon which natural limitations have substantially the same effect as restrictions.

(f) For the purposes of this section the following definitions apply:

(1) "Comparable lands" are lands that are similar to the land being valued in respect to legally permissible uses and physical attributes.

(2) "Representative sales information" is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

(g) It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction in order to ensure the accurate assessment

of that land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and Section 1630 is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land that legally are not available to the owner and not contemplated by government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. This statute shall not be construed as requiring the assessment of any land at a value less than as required by Section 401 or as prohibiting the use of representative comparable sales information on land under similar restrictions when this information is available.

Effective January 1, 2017, Section 402.2 is added to the Revenue and Taxation Code:

402.2. Contracts with government agencies restricting the use of property for owner-occupied housing available at affordable cost shall be recorded. Nothing in this section shall be construed to prevent the assessor from considering a contract that restricts the use of the property to owner-occupied housing available at affordable housing cost, including under any locally adopted inclusionary housing program, for purposes of applying Section 402.1 or subdivision (a) of Section 110.