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December 9, 2002

Hon. Raymond L. Jerland
County Assessor
County of Humboldt
525 5th Street
Eureka, California 95501

RE: *Presumption of Correctness of Deeds – Rule 462.200(b)*

Dear Mr. Jerland:

You have requested our opinion as to the propriety of the determination by your office to not recognize or process assessments from certain deeds of real property purporting to convey subdivided portions of larger properties which are subject to use restrictions, particularly those subject to Williamson Act contracts, without further proof that such conveyances are valid, legal transfers. For the reasons set forth below, it appears that such a determination is within the authority of the Assessor and is justifiable in this situation.

Specifically, your office has been presented with numerous deeds and contracts of sale representing conveyances of subdivided portions of a larger property which is in an agricultural preserve and subject to a Williamson Act contract.¹ Such conveyances have not been made pursuant to a properly filed and approved subdivision parcel map, nor have they been approved by the County Board of Supervisors. Your office and other county officials are concerned that such conveyances may not be valid or legal transfers of real property under the Subdivision Map Act,² under the Williamson Act, or possibly, under the Subdivided Lands Act.³ As a consequence, you have made a determination to not recognize or process such transfers for enrollment, until the transferees have obtained a Certificate of Compliance from the Humboldt County Planning Division as provided in section 66499.35 of the California Government Code, and until any legal problems with the purported transfers are resolved and compliance is verified by the County Counsel. Letters to this effect have been sent to each of the transferees and parties involved.

With respect to the Subdivision Map Act, we have previously observed that, merely because a property owner violates the law by conveying property without compliance with the Subdivision Map Act does not make the conveyance void or nonexistent. The consequences of a Subdivision Map Act violation are primarily use related⁴ and criminal⁵ in nature. Nevertheless,

¹ The California Land Conservation Act of 1965; Government Code section 51200 et seq.

² Government Code section 66410 et seq.

³ Business and Professions Code section 11,000 et seq.

⁴ “No local agency shall issue any permit or grant any approval necessary to develop any property which has been divided, or which has resulted from a division, in violation” of the Act. Gov’t Code section 66499.34.

such a violation makes the conveyance voidable at the sole option of the buyer within one year after the date of discovery of the violation. R&T Code section 66499.32(a). However, if the grantee elects not to utilize this remedy, or if the one-year statute of limitation expires, the property remains with the grantee. Therefore, when addressing voidable deed situations in the past we concluded that transfers already enrolled should be treated as any other change in ownership and corrections made subject to a future rescission action.

Where as here however, the assessor has been notified prior to enrollment that the deeds and the instruments underlying the transfers are not valid due to certain violations of law, misrepresentation, or similar deficiencies, he is not required to presume the deeds are correct. Evidence Code section 662⁶ and Property Tax Rule 462.200(b) provide authority for the assessor to rebutt the presumption that deeds are correct and valid. Subparagraphs (1) and (2) of subdivision (b) describe examples of extrinsic types of evidence that rebutt the presumption of correctness:

(b) Deed presumption. When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property, unless an exclusion from change in ownership applies.

In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

- (1) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.
- (2) The monetary contribution of each party. The best evidence of the existence of any factor shall be an adjudication of the existence of the factor reflected in a final judicial finding, order, or judgment. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, canceled checks, insurance policies, and tax returns.

Clearly, the evidence described in subdivision (b) includes, *but is not limited to* any written documents executed at the time of the conveyance which indicate that one or more of the parties do not have equitable ownership interests and were voidable. At the time of these purported conveyances in the Fall of 2000, the title documents submitted to your office consisted of recorded and unrecorded contracts of sale and recorded and unrecorded deeds from
and/or to various parties. Your staff questioned not only the apparent deficiencies in the form and inconsistencies inherent in the documents, but also the validity of many parcels being transferred, and the noncompliance with the statutory

⁵ Each violation punishable by imprisonment in the county jail not exceeding one year or in the state prison, by a fine not exceeding \$10,000, or by both that fine and imprisonment. Gov't Code section 66499.31.

⁶ Evidence Code section 662 provides: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

requirements for terminating, canceling and non-renewing Williamson Act Contract restrictions which encumbered the parcels. In response to your concerns, the Deputy County Counsel directed you not to process the transfers for enrollment until compliance with relevant law was insured.

Given the written documents provided to your office from the County Counsel, the Planning Department, the State Department of Conservation, as well as subsequent rescissions of some of the purported transfers by the transferees; your determination that the presumption of correctness should not apply to these conveyances appears to be well supported and entirely consistent with Rule 462.200(b). While the intent of the Board in adopting the rule was to provide the assessor with a presumption of correctness in order to prevent "title searches" by the assessor every time a title document is recorded, it also allows assessors to disregard title instruments whenever it is clear that based on other evidence – the information shown on the title documents is not entirely correct and such mistakes or misrepresentations could result in errors on the assessment roll.⁷

As you are aware, it is the assessor's duty under section 616 to attest to the correctness of the roll each year and to thereby avoid the inclusion of known erroneous assessments. Obviously further inquiry, as well as evidentiary and administrative review seems highly justified here in order for you to be able to truthfully subscribe to the required affidavit on the property tax roll, in which you swear:

that between the lien date and July 1, 19, I have made diligent inquiry and examination to ascertain all the property within the county subject to assessment by me, and that it has been assessed on the roll, according to the best of my judgment, information, and belief, at its value as required by law; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice, ill will, or otherwise; nor allowed anyone to escape a just and equal assessment through favor, reward, or otherwise. Rev. & Tax Code section 616.

With respect to the breach of the Williamson Act Contract we note that, with the very limited exception of transfers to immediate family members (Gov't Code § 51230.1), and for purposes of agricultural laborer housing (Gov't Code § 51230.2), the subdivision of property under a Williamson Act Contract requires termination and cancellation of the Contract and notice of nonrenewal and notice to the Director of the Department of Conservation. (Gov't Code § 351245 et seq.) Subdivision (a) of Government Code section 66474.4 requires that the legislative body of a city or county *shall deny* approval of a tentative subdivision map, or a parcel map for which a tentative map was not required, "if it finds that the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 . . . and that either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land. . . ." We further understand that pursuant to

⁷ It is apparent, for example, that had your office processed the purported transfers made by contracts of sale, enrollment errors would have occurred, as these were rescinded by the parties in the Fall of 2001.

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Government Code section 51240, the form of contract utilized in Humboldt County requires Board of Supervisors' approval for transfers of any property under a Williamson Act Contract.

We are advised by your office that agricultural preserve land in Humboldt County is zoned for 160 acre minimum parcel size, and that, for agricultural economic viability purposes, the official Williamson Act Guidelines which govern the creation of agricultural preserves in the county require, among other things, a minimum preserve size of 600 acres for the type of preserve land at issue here (commercial production class B preserve). Given this zoning and the requirements under the Guidelines, and the fact that the Department of Conservation could bring an action in court in order to enforce any contract, per Government Code section 512251, the assessor is on notice that these transfers of property subject to Williamson Act Contract violate the minimum acreage requirements, as well as numerous procedural requirements, and are not in conformity with the findings required by Government Code section 664474.4, quoted above.⁸ As such, the assessor is well within his discretionary authority to question the legality of the creation and transfer of such parcels, and to determine that the presumption of correctness of the title documents has been rebutted pursuant to Rule 462.200(b).

The views expressed in this letter are advisory only; 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,

/s/ Daniel G. Nauman

Daniel G. Nauman
Senior Tax Counsel

DGN:tr

prop/prec/restrict/02/03dgn

cc: Mr. David Gau, MIC: 63
Mr. Dean Kinnee, MIC: 64
Ms. Mickie Stuckey, MIC: 62
Ms. Glenna Schultz, MIC: 61
Ms. Jennifer Willis, MIC:70

⁸ Such properties would almost by definition be "too small to sustain their agricultural use."