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April 29, 2011

VIA EMAIL: sherrie.kinkle@boe.ca.gov

Ms. Sherrie Kinkle
State Board of Equalization
Property and Special Taxes Department
450 N Street
PO Box 942879
Sacramento, California 94279-0064

Re: Possessory Interests Annual Usage Report (Form BOE-502-P) Interested Parties Process: Comments on Draft Letter to Assessors Released April 22, 2011

Dear Ms. Kinkle:

On behalf of Time Warner Cable, I am writing to endorse specific statements in the Draft Letter to Assessors sent to the interested parties on April 22, 2011 that support the obligation of an assessor to disclose the Possessory Interest Annual Usage Report ("Usage Report") form or any other documents sent by state and local governmental entities to assessors in compliance with their statutory obligation under Section 480.6. This advice is consistent with settled law embodied in the Constitution, the California Public Records Act ("CPRA") and the pronouncements of the California Supreme Court, and with the policies of transparency and open government that the law is designed to promote.

This interested parties' process does not concern records transmitted to assessors by taxpayers. Assessors are obligated to hold those documents confidential based on constitutional principles that protect privacy and proprietary concerns.

What this interested parties' process does concern is the disclosable nature of public records sent by governmental entities to county assessors, including but not limited to the Usage Report. Article I, Section 3 of the California Constitution gives the people a fundamental right of access to public records of public agencies. Both the documents creating possessory interests and documents prepared by state and local governmental agencies to comply with Section 480.6 are "public records" under the Constitution and the CPRA.

As "public agencies," assessors are obligated to disclose possessory interest records transmitted to them by state and local governmental entities when a person

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makes a request for them that complies with the CPRA. The CPRA defines a process assessors must follow. The CPRA also includes a statutory means by which county assessors can be reimbursed by anyone to whom it discloses a public record.

Finally, in *Commission on Peace Officer Standards and Training v. Superior Court*,¹ the California Supreme Court articulated the rationale for harmonizing Section 480.6 and 481 to avoid the “absurd result” that these public records could become confidential based on the form which they are provided to the assessor, whether they are requested by an assessor, or how an assessor keeps them.

Therefore, the Usage Report or any other communication transmitted by a state and local governmental entity to a county assessor to comply with Section 480.6 is a “public record” and must be disclosed by an assessor in response to a CPRA request no matter how it is transmitted or labeled by a state or local governmental entity, or how it is kept by the assessor, or regardless of whether the assessor requests the information from the state or local governmental entity.

Respectfully submitted,



Jeffrey Sinsheimer

JS:nxs

¹ *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal. 4th 278, 290-294.