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## OFFICE OF THE ASSESSOR

April 15, 2011

The Honorable Jerome Horton  
Chairman, State Board of Equalization  
450 N Street, MIC: 72  
Sacramento, CA 95814

### **RE: Confidentiality of Possessory Interests Annual Usage Report (*Usage Report*)**

Dear Chairman Horton,

As Orange County Assessor, I write in opposition to the draft Letter to Assessors (LTA) being considered on the Possessory Interests Annual Usage Report, also known as the BOE-502-P. The LTA would direct assessors to disclose information that has long been governed by statute. As a Constitutional Officer, it is my duty to strictly enforce and carefully apply the laws that govern our work.

**Revenue and Taxation Code, § 408** states in pertinent part:

. . . any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor . . . are not public documents and shall not be open to public inspection.

The law clearly does not allow public inspection of information and records unless assessors are specifically required by law to keep or prepare them. County assessors are specifically required by law to prepare and keep certain records:

- Records relating to claims for exemptions (Rev. & Tax Code, §§251, 252, 254)
- County maps (Rev. & Tax Code, § 327)
- List of transfers (Rev. & Tax, § 408.1)
- Property characteristics (Rev. & Tax, § 408.3)
- Assessment roll containing certain specified information (Rev. & Tax §§ 601, 602)
- Index to the roll (Rev. & Tax, § 615)

Usage Reports are not specified as documents that are required by law to be prepared or kept, and as such, assessors are not required to open these documents to public inspection. This list of documents is consistent with the Assessor's Handbook Section 201 (AH 201) adopted by the Board in June 1985 and reprinted September 1997.

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**Assessors' Handbook Section 201 (AH 201), Assessment Roll Procedures**

In June 1985, the Board adopted AH 201 that sets forth the duties of assessors as follows:

The operation of an assessor's office is geared to one end: production of a property assessment roll that reflects the current status of ownerships, owners' addresses, and values. This handbook sets forth what an assessor must do to comply with the constitutional, statutory, and administrative requirements . . .

This draft LTA attempts to impose new and undefined responsibilities, stating that "county assessors have a general duty to keep Usage Reports as part of their records regarding the assessment of these properties". As a Constitutional Officer, I am bound by oath to fulfill the legal mandates of this office and am not aware of any such "general duty" to which I am obligated. I respectfully ask, where is this alleged "general duty" set forth in the law?

With respect to the confidentiality of documents, AH 201 defines confidentiality categories and associated documents as follows:

**Confidential by Law**

Property statements, Appraisal records, Completed change in ownership questionnaires, Financial arrangements and other private, unrecorded agreements, and Homeowners' exemption claims containing social security numbers

**Open to Public Inspection**

Assessment rolls, Index to rolls, Value notification forms mailed to taxpayers, Recorded documents, Office maps, Exemption affidavits except Homeowners' exemption claims, List of transfers within the preceding two-year period

**Confidentiality at the Assessor's Discretion**

Master Property Records, if Otherwise Confidential Information is Not Displayed, Miscellaneous Forms and Records Prepared and Kept for Internal Use by the Assessor's Office

The draft LTA would be in direct conflict with long standing Board guidance on the legal requirements that assessors must fulfill, and the confidentiality of documents.

**Statewide Homes, Inc. v. Eldon C. Williams as County Assessor (30 Cal.App.3d 567)**

During the second interested parties meeting on March 14, 2011, the Board's legal staff stated that the *Statewide Homes, Inc. v. Eldon C. Williams as County Assessor* Appellate Court decision had not been reviewed or considered. The Board's legal staff said the case would be reviewed, however, the outcome of the review is not mentioned in the draft LTA.

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This case summary reads in pertinent part:

The trial court denied a corporation's petition for a writ of mandate to compel a county assessor to permit inspection of documents and records so as to enable the corporation to more easily compare market values of real property with assessed values. The court found the assessor was not required by law to keep or prepare such documents and records and ruled they were not open to public inspection under Rev. & Tax. Code Section 408, subd. (a), providing "...any information and records in the assessor's office which are not required by law to be kept and prepared by the assessor are not public documents and shall not be open to public inspection.

The Court of Appeal affirmed, rejecting the corporation's contention the documents are essential to the performance of the assessor's statutory duties and the law therefore requires him to prepare them. Such an interpretation, the court held, would render the section meaningless."

This published decision further discusses and concludes:

Statewide points out the records it seeks to inspect do not contain confidential information and argues the exemption provided by Revenue and Taxation Code section 408, subdivision (a), should not be applied to prohibit inspection of documents which do not contain confidential information. . . . In any event, the statute under consideration places exemption from public inspection on the fact the law does not require the records to be kept, not upon confidentiality. . . If the section gives broader exemption to the assessor's records than is accorded generally to other public records by the Public Records Act, the cure lies in amendment of the statute by the Legislature and not in a strained and unrealistic interpretation of its provisions.

As a published Appellate Court decision, it is binding upon county assessors statewide. This decision is identical to the issue at hand, while the *Gallagher v. Boller* cited in the draft LTA is off-point, as it addresses claims for Welfare Exemption.

**Option to Report on Annual Usage Report, Preliminary Change of Ownership Reports (PCOR) and Change of Ownership Statements (COS)**

SB 657 (Stats. 1995, Ch. 498) was adopted in October 1995, and became effective **January 1, 1996**, and states in part:

Existing property tax law requires the filing of preliminary change in ownership reports and change in ownership statements with respect to transfers of real property.

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This bill would exclude a holder of a possessory interest in property owned by a state or local governmental entity from this requirement with respect to any renewal of a possessory interest as so described. This bill would instead require the relevant governmental entity that owns the fee interest in the property in which the possessory interest has been created to file the required report or statement with respect to a transfer of that interest. By imposing new filing duties upon local governmental entities, this bill would impose a state-mandated local program.

SB 713 (Stats. 1996, Ch. 171) was an omnibus property tax bill that took effect **July 16, 1996** and amended reporting requirements to provide an alternative means of reporting:

This bill would, as an alternative to complying with this filing requirement, allow a local governmental entity to annually file with the county assessor a real property usage report, containing specified information.

Possessory interest reporting requirements and optional filing methods are established in the law, however the draft LTA seeks to usurp the powers of the Legislature by restricting and narrowing filing options. Page 4 of the draft LTA states:

. . .county assessors should encourage state and local governmental entities to report their taxable possessory interests on *Usage Reports* or in another format that complies with the provisions of section 480.6. Where governmental and local entities submit taxable possessory interests information to county assessors on PCORs and COSs, the county assessor should notify the public entity that such information should be filed on a Usage Report (or in another appropriate format) unless these public entities can establish that the information is exempt from disclosure pursuant to an express statutory provision.

**Confidentiality of Preliminary Change of Ownership Reports (PCOR) and Change of Ownership Statements (COS)**

Page 4 of the draft LTA implicitly concedes that preliminary change of ownership reports (PCOR) and change of ownership statements (COS) are confidential and cannot be disclosed in response to a Public Records Act request. Yet, the LTA draft claims a Usage Report or any other information submitted to an assessor under Revenue and Taxation Code § 480.6 must be provided under the Public Records Act.

This in direct contradiction to Revenue and Taxation Code § 480.1(f), which states:

Pursuant to Section 481, the assessor shall not include information on the list which was furnished in the change in ownership statement by the transferee and is not otherwise public information.

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The draft LTA's opinion leads to the discordant result that the determination of the confidentiality of the information submitted under § 480.6 is dependent upon the form on which the information is submitted. The better result, I believe, is a consistent approach that unless there is an identifiable legal requirement for an assessor to keep or prepare a record, that record is not open to public inspection. This consistent approach is harmonious with § 408 and the Public Records Act.

**Intended Use and Disclaimer for Information Submitted on Usage Reports**

Usage Reports are a means by which possessory interest information is gathered for property assessment and taxation purposes. If the law is amended to make these reports open to public inspection, a disclaimer similar to Revenue and Taxation Code § 480.3(d) would be required.

Assessors do not prepare Usage Reports, and therefore could not attest to or be held liable for the validity of any information reported thereon.

**Conclusion**

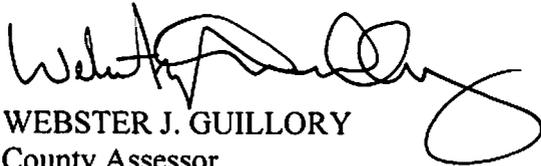
Government entities create taxable and reportable possessory interests by leasing property to private parties. These government entities are subject to the Public Records Act, and are the appropriate responsive parties for these records. Assessors gather information from government entities solely for property assessment and taxation purposes.

Statewide, county assessors have suffered significant and ongoing reductions in budgets and staffing, and are under considerable pressure to keep up with mandated workloads. This LTA would impose an undue burden on assessors and expose them to potential penalties for violating Public Record Act deadlines.

In closing, I strongly object to this draft LTA in its current form. It is inconsistent with existing law, contradicts long-standing established Board guidelines, attempts to subject county assessors to a "general duty" standard that is not codified and would impose a substantial unfunded mandate.

The Usage Report may not need to be confidential, however, it is not a special category document. The Usage Report can and should be managed by existing laws.

Sincerely,



WEBSTER J. GUILLORY  
County Assessor

cc: Sherrie Kinkle, BOE, Property and Special Taxes Department  
Doug Wacker, President, California Assessors' Association