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January 5, 2004

TO INTERESTED PARTIES:

COMMENTS ON CHANGES TO PROPERTY TAX RULE 462.500

An interested parties meeting was held on July 21, 2003, to discuss changes to Property Tax Rule 462.500, *Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings*. At that meeting, while county representatives opposed the petition by Mr. Terry L. Polley, it was acknowledged that the petition identified several issues with respect to the current rule that should be addressed and clarified. It was generally agreed that the language in the Constitution and statute is vague and that existing guidance is limited.

More specifically, the meaning of the terms "size, function, and utility" as the requirements for comparability of the replacement property were discussed and the participants indicated an interest in finding a middle ground to resolve the issues. Staff reviewed all legal opinions issued by the Board that involved the comparability issue and summarized the results in a matrix which was mailed to interested parties on October 24, 2003. With the assistance and feedback of the participants, staff drafted changes to Rule 462.500; those changes were mailed to interested parties on November 26, 2003. Here is a matrix summarizing the comments received.

An interested parties meeting will be held on **Monday, January 12, 2004**, 9:30 a.m., at the Board's headquarters in Sacramento, 450 N Street, Room 122, to discuss the draft rule. All documents concerning this project will be posted to the Board's Web site at www.boe.ca.gov/proptaxes/ptr462500.htm. The final wording is tentatively scheduled to be brought to the Property Tax Committee on March 23, 2004.

Comments regarding this issue may be submitted prior to the January 12 meeting to Ms. Glenna Schultz at glenna.schultz@boe.ca.gov or by fax at (916) 323-8765. If you have any questions, please contact either Ms. Schultz at (916) 324-5836 or Mr. Paul Steinberg at (916) 322-1057.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee, Chief
Assessment Policy and Standards Division

DRK:grs
Enclosure

Changes to Property Tax Rule 462.500
Interested Parties Comments and Proposed Alternative Language

No.	DRAFT REF		SOURCE	COMMENT/PROPOSED LANGUAGE	SBE STAFF POSITION
	PAGE	LINE			
1.	1	16	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Add for clarity – Real property includes land, land improvements, living improvements, and fixed machinery and equipment. Personal property is not entitled to relief under this section. (Easily removed trade fixtures are not fixed M & E per Contra Costa County.)	Staff agrees. However, manufactured homes should be specifically included as they are eligible for relief under section 5825.
2.	1	14-27	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Add to (b) – "Adjusted base year value" means the current roll value in this context (BYV(s) x Prop 13 factoring = adjusted base year value which when extended to the roll becomes the current roll value).	"Adjusted" base year value is wording used in section 68. "Factored" base year value is common term but is also not defined in code. Agree that definition should be added. Add: "Adjusted base year value" means the factored base year value as defined in section 69.5, subdivision (g)(2)."
3.	1	16	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Add to further clarify real property – real property is determined by the appraisal unit which is normally bought and sold in the market place.	Staff does not agree. This might be confusing since property taken may be a portion of an appraisal unit, not the entire unit.
4.	1	19-20	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Add – Award or purchase price is the amount paid for acquired property. It may or may not be reflective of full cash value or market value.	Staff agrees. Add "The award price may not reflect full cash value."
5.	1	24	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	"Appears imminent" seems like an invitation for argument.	Staff agrees. <i>See Item 7.</i>
6.	1	24-27	Craig Rustad, San Diego County Assessor's Office	No need to further define "displaced" in (b)(4)(B). This may be read that the property owner is displaced as soon as compliance with CEQA has been met, even though the property may never actually be acquired by the public entity. This alters the standards set forth in section 68. If some counties are not allowing the purchase of a replacement property then this language belongs under (g)(3)(B).	Staff agrees. <i>See Item 7.</i>

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7.	1	24-27	Tom Parker, El Dorado County Counsel	Suggested revision – “Government action is deemed to have sufficiently progressed such that it appears imminent that the property owner will be removed, expelled, or forced from the property as a result of governmental action. Governmental action has sufficiently progressed when the ‘Notice of Determination’ or ‘Notice of Exemption’ required by the California Environmental Quality Act (“CEQA”) is recorded by the public entity acquiring the taxpayer’s property and the public project has been approved.”	Staff agrees. Property must be taken before relief is available. This is a timing issue, not when relief is available. Delete BOE language. Add to or replace (g)(3)(B) with 2 nd sentence of proposed language.
8.	2	30	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Add emphasis on "and" that for relief the replacement property must meet all three of standards tests	Staff does not see any reason to emphasize "and." "And" does not mean "or."
9.	2	33	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Emphasize size is associated with value. Add size is NOT square footage or acreage.	Staff agrees. This has been an ongoing problem. Add phrase "not physical characteristics" to end of first sentence so that it reads: The size of property is associated with value, not physical characteristics."

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10.	2	47	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	"Owner occupied " does not require a homeowners' exemption. Small miscellaneous buildings are to be included with residence when used with residence.	Staff believes that usage is a criteria for comparability. A single family residence that is <i>used</i> as a principal residence is different that a single family residence that is <i>used</i> as income property. Alt A: Delete owner occupied requirement (merge Categories A and B). Alt B: Add "Owner occupied does not require a homeowners' exemption. Small miscellaneous buildings are to be included with residence when used with residence." Alt C: Add "Owner occupied may be proved by the homeowners' exemption, income tax returns, or other such documents." Alt D: Remove single family residence (2 nd sentence) from Category B. <i>See Items 11 and 18.</i>
11.	2	47	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	May be good to tie to Homeowners' Exemption or require owner to supply sufficient proof of occupancy (Ranch or alley parcel with 2 SFR and family in both???)	See Item 10 for alternatives.

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12.	2	50	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Add more definition to agriculture. Does agriculture include single family residential units and miscellaneous buildings? Is agriculture land plus all supporting improvements (living and miscellaneous improvements)?	Staff is unsure of this and requests that suggested language be brought to the IP meeting. Can a chicken farm be replaced with a commercial office building? "Agriculture" may include mixed-use property like the examples in lines 64-75; relief should be pro rated based on the usage of the taken property. Here is a suggested example: A taxpayer owns a 40 acre farm which includes an owner-occupied single family residence. The owner-occupied single family residence is taken along with 5 acres of row crops. To qualify for relief, the owner-occupied SFR should be replaced with another owner-occupied SFR; the crop land should be replaced with other agricultural use property.
13.	2	51	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Further clarification to identify the (B) reference.	Staff agrees. Lines 51 and 55 should read "in Category B"
14.	3	55-58	Tom Parker, El Dorado County Counsel	Suggested revision: "Restrictions that would prohibit the property taken from converting to property described in (B) such as the applicable local land use plan(s) governing use and/or development of the property or Williamson Act provisions. Current zoning restrictions are not such a restriction if the applicable land use plan governing use and/or development of the property contemplates or allows a zoning change."	Staff agrees to suggested language. Add "Category" to "B" as suggested above.

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15.	3	72-75	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Pro rata relief requires allocation of value which may create arguments. Is pro rata relief based on value contribution and on other basis?	No revision necessary. This example has been around since at least 1988. Allocation of value should be based on a reasonable method, such as square footage. Value contribution is another reasonable method that may be used. To specify a method or methods would be limiting to assessors.
16.	3	77-78	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Vacation home and rental potential? Only have to qualify once when applying for relief or reviewed annually? Can you rent infrequently and still qualify? How is it to be determined if rented out or plans to rent? Ask and sign declaration? IRS returns? Other???	Use is determined as the time of transfer. Future use changes that may not occur are not a factor in determine comparability. A single family residence is either occupied as a principal residence or it is not. If it is used as a principal residence, should it be replaced with another principal residence? Or should a taxpayer be able to replace it with a commercial structure? <i>See Item 10 for alternatives.</i>
17.	4	79	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	There could be a PR problem if: An 80 yr. old lady gives up her home for school site and decides it is time to move into assisted living apt for heath reason. In order to help pay her new rent, she buys a rental but will get no relief. If she move out of old house <u>first</u> and moves into assisted living apt, <u>rents old house for 1 month or says she plans to rent</u> , she'll get tax relief upon buying the new rental unit. Worrisome because it causes taxpayer to have to be very aware of circumstances prior to buying/selling. After it goes bad for them, they want to know why didn't someone tell them before they started the process.	Usage is a criteria for comparability. Staff believes that a single family residence that is <i>used</i> as a principal residence is different that a single family residence that is <i>used</i> as income property. <i>See Item 10 for alternatives.</i>

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18.	4	79-82	Bruce Stottlemeyer, Sutter County Assessor's Office	Proposition 3 does not specify occupancy status as a criteria to be used in ascertaining comparability between a property taken and a replacement property. Prop. 3 requires that replacement property be comparable in size, function, and utility. Occupancy status relates to the nature of a particular owner, and not necessarily to the nature of a particular class of property. A plain reading of the amendment clearly indicates that it is the characteristics of the property that need to be comparable, not whether similar property will be similarly occupied.	Staff believes that occupancy status relates to the function and utility of a single family residence. A single family residence that is <i>used</i> as a principal residence is different than a single family that is <i>used</i> as income property. If a principal residence is taken, can it be replaced with a commercial office building or any other type of commercial/industrial structure that will not be used as a principal residence? On the other hand, if three single family residences which are all rented as income property are taken, can they be replaced with a fourplex or an apartment complex or must they be replaced with 3 single family residences? <i>See Item 10 for alternatives.</i>
19.	4	90-93	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	("adjusted base year values" = Factored BYV in our terms) New base yr. (per change of ownership) New base value = current FBVY (Ok to reallocate land and imps but probably not necessary)	Added to clarify situations where improvements are constructed on previously-owned land—only improvements qualify for relief. The entire base year value of the taken property is transferred, not just the improvement value.
20.	4	90-100	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Add sample calculations for each to avoid any misunderstanding or misinterpretations by taxpayers and assessor staff	Sample calculations should not be included in a rule as this would preclude other methods. If needed, such samples could be issued via a Letter To Assessors.
21.	4-5	103-105	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	"If there is no award or sales price" – may pit assessor against another assessor in regards to classification of property and the appropriate values to be used	No change. We're not aware of any problems in this area.
22.	5	106-110	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Reallocation - This sounds a little strange but should give owner maximum relief in this example. It may be difficult to keep this in mind in dealing with this situation - land does not qualify for relief but land value can be used for relief on replacement property new BYV	No change.

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23.	5	126-130	Gary Freeman, San Joaquin County; CAA Real Property Sub-Committee	Same entity is a requirement for relief. This may be very difficult for owners to understand and may require them to manipulate ownership (step transactions) to try to take advantage of relief	No change. We're not aware of any problems in this area.
24.	7	179-182	Craig Rustad, San Diego County Assessor's Office	The requirement that the property actually be deeded to a governmental agency should not be deleted. CEQA compliance be approved by the governmental agency instead of the deed requirement does not constitute displacement as required by section 68.	Staff agrees. Delete new language (lines 179-182) and add back deleted language (line 183) <i>See Items 5, 6, and 7.</i>