

LAND USE RESTRICTIONS

535.0002 Assessment. Revenue and Taxation Code Section 402.1 is applicable when valuing a development wherein certain units are restricted to low-income rentals by a recorded agreement between the developer and the State Tax Credit Allocation Committee. C 11/2/94.



STATE OF CALIFORNIA

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November 2, 1994

Re: Enforceable Restrictions under California Law

Dear ---

In your letter of July 20, 1994 to Richard H. Ochsner, Assistant Chief Counsel, you enclosed a copy of the Regulatory Agreement for a multifamily rental housing project known as **Sunrise Terrace** in Madera County. You believe that the agreement is an enforceable restriction, and that projects so encumbered should be valued based upon the maximum rents chargeable under the agreement. In support thereof you also enclosed a copy of a February 18, 1994 decision of the Oregon Tax Court, Numbers 3271 and 3272, which applies ORS 308.205(2) and orders the same appraisal method that you seek in Madera County.

In California enforceable restrictions are governed by Revenue and Taxation Code, Section 402.1 which differs considerably from the above Oregon statute. It directs the assessor to consider the effect upon value based on how the restriction limits the use of the land. Our statute does not mandate any particular method of appraisal. It does require that the restriction be contained in a recorded contract with a governmental agency.

Sunrise Terrace is subject to a recorded Regulatory Agreement between the California Tax Credit Allocation Committee, a state agency organized pursuant to Section 50185 of the California Health and Safety Code, and the Madera Sunrise Terrace Limited Partnership, the entity you represent. This agreement specifies that your development qualifies and will be operated as a Low-Income Housing Project within the meaning of Section 42 of the Internal Revenue Code. As such, certain units will be

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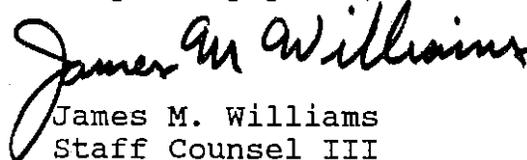
restricted to rent control and available only to certain specified low income tenants. This is the kind of restriction that prohibits operation of the development at its highest and best use. In our view it meets the requirements of Revenue and Taxation Code, Section 402.1.

Pursuant to the California statute the assessor is mandated to consider the effect upon value by your restriction. He is also required to value the property in a manner similar to other properties that have comparable restrictions. The assessor is not mandated to employ any specific method in his valuation. In that regard the Oregon statute differs and the court case is not applicable on any basis but most particularly because the Oregon Tax Court is a trial court of first instance whereby its decisions have no precedential value even within its own jurisdiction.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusions stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,


James M. Williams
Staff Counsel III

JMW:jd
precednt/restrict/94004.jmw

cc: Ms. Jennifer Willis, MIC:70
Mr. John Hagerty, MIC:62
Chief, Assessment Standards Division, MIC:64