


Memorandum

To: Mr. Benjamin Tang
Acting Chief
County-Assessed Properties Division (MIC: 64)

Date: July 2, 2015

From: Mengjun He 
Tax Counsel III (Specialist)
Tax & Fee Programs Division (MIC: 82)

Subject: *Assessment of Lands within the Natomas Basin Habitat Conservation Plan
Assignment No. 14-352*

This is in response to your request for our opinion regarding the proper assessment of certain lands owned by the Natomas Basin Conservancy (Conservancy), which are within the area encompassed by the Natomas Basin Habitat Conservation Plan (NBHCP) and also subject to Williamson Act contracts (Subject Property). Specifically, the question is whether the Subject Property can be valued based on its historical use for rice production where such use is no longer permissible due to use restrictions imposed by NBHCP and its attendant Implementation Agreement (IA).¹ As discussed below, the Subject Property cannot be valued based on its historical use for rice production. Instead, the Subject Property can be valued based only on its present use as allowed under the NBHCP and IA.

Facts

It is our understanding that the Subject Property is subject to Williamson Act contracts and it is also located within the area subject to the NBHCP and IA. The NBHCP is "a cooperative federal, state, and local program" to conserve specified plant and animal species and their habitats in the Natomas Basin. (IA, July 2003, section 1.1, p. 1.) Parties to the NBHCP and IA are the California Department of Fish and Game, the City of Sacramento, County of Sutter, the U.S. Fish and Wildlife Service, and the Conservancy. (NBHCP, April 2003, p. I-3; IA, p. 1.) Under the NBHCP and IA, the Subject Property is restricted to be used 25 percent in managed marsh, 50 percent in rice production, and 25 percent in upland habitats. (NBHCP, p. I-19.) The Subject Property is to be established for habitat conservation in perpetuity. (See IA, section 8.2.5, p. 24.) The IA states that the parties "shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of [the IA]." (IA, section 7.4, p. 22.)

¹ In the opinion request, you originally asked four specific questions. However, you recently confirmed by email that this is the core question for which you request our opinion and that you no longer need us to respond to the original four questions.

You indicate that the Sutter County Assessor currently values the Subject Property using the income approach prescribed in Revenue and Taxation Code section² 423 for lands subject to Williamson Act contracts, based on its historical use for rice production. According to you, the Conservancy, however, argues that, since much of the Subject Property can no longer be used to grow rice under the NBHCP and IA, those portions of the Subject Property should be valued with the income to be capitalized based on a much lower agricultural use (i.e., not rice production).

Law and Analysis

The Williamson Act, formally known as the California Land Conservation Act, authorizes cities and counties to enter into voluntary contracts with landowners to restrict the use of their lands to agricultural and open space use for a minimum of 10 years in exchange for a more favorable property tax assessment. (Gov. Code §§ 51200 - 51297.4.)

Section 423 generally provides that the County assessor shall value land subject to Williamson Act contracts by the capitalization of income method. (Rev. & Tax. Code, § 423.) Under section 423, the annual income to be capitalized is determined by rental information, where available, based on rent actually received for the land by the owner and upon typical rentals received in the area for similar land in similar use, where the owner pays the property tax. (Rev. & Tax. Code, § 423, subd. (a)(1).) If sufficient rental information is not available, the income shall be what the land reasonably can be expected to yield under prudent management and subject to applicable provisions under which the land is enforceably restricted. (Rev. & Tax. Code, § 423, subd. (a)(2).) In either situation:

Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, which the land can be expected to yield to an owner-operator annually on the average from any use of the land *permitted under the terms by which the land is enforceably restricted*

(Rev. & Tax. Code, § 423, subd. (a)(3) (Emphasis added.); see also Assessors' Handbook 521 (AH 521), October 2003, p. II-7 ["property must be appraised on the basis of its use or uses"].)

This is consistent with the fundamental legal principle that all property be appraised at its highest and best use since "[h]ighest and best use is that use, among the alternative uses that are *legally permissible*, physically possible, market supportable, and most economically feasible, that produces the highest residual land value." (AH 521, pp. II-7, II-8. (Emphasis added).)

Since the income to be capitalized under section 423 depends on the use of the land and all property must be appraised at the highest and best use, it naturally follows that the income determination under section 423 must be based on the highest and best use of the land. (See AH 521, p. II-7.) Here, the use of the Subject Property is restricted under the NBHCP and IA to habitat conservation and the Subject Property is to be used 25 percent in managed marsh, 50 percent in rice production, and 25 percent in upland habitats. (NBHCP, p. I-19.) The Subject Property is to be established for habitat conservation in perpetuity. (See IA, section 8.2.5, p. 24.) Also, the IA provides remedies for the breach of the terms of the IA (IA, section 7.4, p. 22), which would cover breach by the Conservancy of its obligation to maintain the lands for habitat

² All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

conservation in specifically allocated uses. In other words, the land use restrictions under the NBHCP and IA are contractually enforceable and the restrictions will remain in perpetuity. Most importantly, the current restricted use of the Subject Property is the only legally permissible use since the restrictions under the NBHCP and IA are based upon agreements with federal, state and local governments and those governments do not allow any other use of the Subject Property. (See NBHCP, p. I-3; IA, p. 1; see also AH 501, p. 48.) Based on these factors and the information available, we conclude that the value of the Subject Property must be determined based on its present use for managed marsh, rice production, or upland habitats, consistent with the NBHCP and IA. As a result, in calculating the value of the Subject Property using the capitalization of income method under section 423, the appraiser must use the income generated by such a present use of the Subject Property as is allowed under the NBHCP and IA. Further, where applicable, the appraiser must base the comparable rent analysis only on rents received in the area for similar lands in uses similar to such a present use of the Subject Property. (See Rev. & Tax Code, § 423.)

In view of the above, in our opinion, the Subject Property can be valued based only on its present use, as is allowed and allocated in accordance with the NBHCP and IA. More specifically, the portions of the Subject Property that are allocated in accordance with the NBHCP and IA for rice production can be valued based on their use for rice production since such use is legally permissible under the NBHCP and IA. However, the same is not true for those portions of the Subject Property that are allocated in accordance with the NBHCP and IA for other than rice production. Instead, the portions that are allocated for other than rice production should be valued based on their present use as either managed marsh or upland habitats. These portions cannot be valued based on their historical use for rice production because that historical use is neither their present use nor is such use legally permissible due to the permanent use restrictions imposed by the NBHCP and IA.

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cc: Mr. Dean Kinnee MIC:63
Mr. Todd Gilman MIC:70