



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: CEO
Department No.: 012
For Agenda Of: 4/7/09
Placement: Departmental
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Legislative Program Committee
Director(s)
Contact Info: Terri Nisich, Assistant CEO, 568.3412

SUBJECT: Senate Bill 170 (Cancellation of Williamson Act contracts)

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form:

Recommended Actions:

That the Board of Supervisors:

- (A) Receive a presentation on Senate Bill 170 regarding the cancellation of Williamson Act contracts.
- (B) Determine whether the County of Santa Barbara will take a position on Senate Bill 170.
- (C) Direct County staff to take action as necessary if a position is determined.

Summary Text:

Senator Dean Florez, Chair of the Senate Agricultural Committee, has introduced Senate Bill (SB) 170 pertaining to the cancellation of Williamson Act contracts into the 2009-2010 session of the State Legislature. Specifically, SB 170, as amended on March 25, 2009, would add Section 51282.15 to the Government Code to establish a rebuttable presumption that where a federal recognized Indian tribe has petitioned for the cancellation of a Williamson Act contract that tribal cultural centers, infrastructure and housing are alternative uses that are public concerns that substantially outweigh the objectives of the Williamson Act and that for tribal cultural centers, infrastructure, and housing, land contiguous to an existing Indian reservation, as defined by Section 151.2 of the Title 25 of the Code of Federal Regulations, would provide more contiguous patterns of urban development than development of proximate non-contracted land. (See attached text of Senate Bill 170.)

The Williamson Act is a State program that allows landowners to sign contracts with counties to restrict the use of the property to agriculture, open space or other compatible uses for ten years. A rebuttable

presumption is considered to be true unless an individual/entity comes forward to contest the presumption and prove the presumption not to be true. As it pertains to SB 170, a Williamson Act contract may be cancelled, upon petition by a federally recognized Indian tribe, to allow land contiguous to an existing Indian reservation to be used for tribal cultural centers, infrastructure and housing unless a county board of supervisors or a city council rebuts the presumption and proves that other public concerns substantially outweigh the use of Williamson Act land for these stated purposes and/or the proposed land does not result in contiguous urban development.

A Williamson Act contract may end through renewal (landowner or governing body does not renew the contract and waits nine years for the contract to expire); cancellation (cancelled by governing body at the request of the landowner based upon certain findings as articulated below); rescission (governing body cancels contract, but landowner simultaneously puts an agricultural conservation easement on other land of equal or greater value) or eminent domain (public agency takes private land for use as a public improvement).

A county board of supervisors or city council may cancel a Williamson Act contract at a landowner's request and allow the landowner to use the property for another specified use if the cancellation is consistent with the Williamson Act's purpose or in the public interest. Consistency with the purpose of the Act, as referenced in both Government Code Section 51282 and the attached analysis prepared by the Senate Local Government Committee consultant, includes such provisions as:

- the contract is already in non-renewal,
- the cancellation is not likely to result in the removal of adjacent lands from agricultural use,
- the proposed new use is consistent with a county or city general plan;
- cancellation will not result in discontinuous patterns of urban development; and,
- there is no proximate non-contracted land both available and suitable for the proposed new use

The Santa Ynez Band of Chumash Indians ("Chumash") is the sponsor of SB 170. The bill would create a process, a rebuttal presumption, to make it easier for a tribe to cancel a Williamson Act contract. Currently, a tribe may purchase contiguous contracted land, give notice of non-renewal and wait for the nine years for the contract to end. Under the federal fee-to-trust process, federally recognized tribes may expand reservations by purchasing land and bringing the land under tribal control. However, in order for a tribe to take property into trust, the property must be free of encumbrances. Property under Williamson Act contract is likely to be considered as an encumbrance by the federal government. As stated under comment #2 of the attached Senate Local Government Committee consultant analysis, one question for members of the Senate Local Government Committee to consider in hearing this bill is to determine whether tribal governments that wish to end a Williamson Act contract should be treated differently than other property owners that wish to develop agricultural land subject to Williamson Act contracts.

The Chumash have asserted, in correspondence to the State Department of Conservation, that a tribal government should have the same power as a city or county to cancel a Williamson Act contract. Specifically, the Chumash states they should have the ability to cancel a Williamson Act contract and make appropriate public policy findings as part of annexing land to the Reservation through the fee to trust process (See #2 on page 2 of the attached letter from the Chumash to the Department of Conservation).

As indicated in the attached Senate Local Government Committee Consultant analysis, supporters of this bill include the Santa Ynez Band of Chumash Indians, California Association of Tribal Governments and the Tule River Indian Tribe. The opponents of this bill include the California Farm Bureau, the California State Association of Counties, the Regional Council of Rural Counties and the Santa Ynez Valley Concerned Citizens.

Senate Bill 170 is scheduled to be heard by two committees in the Senate, the Local Government Committee and the Judiciary Committee. The first hearing at the Senate Local Government Committee was scheduled for April 1, 2009. However, the bill author pulled the bill for possible amendment on March 31, 2009 and the hearing has been rescheduled for April 15, 2009.

As part of the legislative process, an analysis of the bill was prepared by the Senate Local Government Committee consultant on March 26, 2009 (see attached document). As part of the analysis, the Committee consultant has proposed, under comment #5, a possible amendment to the bill for consideration by the Committee during its hearing. The amendment would apply the rebuttable presumption to cancel a Williamson Act contract on land owned by a tribe on the condition that the tribe imposes a covenant on the former contracted land, restricting its use to the stated purposes of cultural centers, housing and infrastructure and, as a contract rescission, that the tribal government put an agricultural conservation easement on other non-contacted land of equal or greater value.

Since the bill hearing has been rescheduled to April 15, there may be additional amendments forthcoming for consideration. Such amendments could potentially clarify the intent and parameters of the legislation. For instance, is it inferred that infrastructure and housing are limited to “tribal” uses as the legislation explicitly states tribal cultural centers, but does not include the word “tribal” before infrastructure or housing? Will forthcoming amendments clarify this purpose? Also, the legislation currently does not define a tribal cultural center, infrastructure or housing. Forthcoming amendments could clearly define these terms.

Background: This item is on the Board of Supervisor’s agenda to receive a presentation on Senate Bill 170 and determine whether the County of Santa Barbara’s Board of Supervisors will issue a position on this bill.

The protection of open space, agriculture and the Williamson Act program in particular has been part of the County’s ongoing legislative platform. The County has opposed efforts by the Legislature and Governor to eliminate the Williamson Act subvention program as part of State budget proposals. The County’s 2009 platform included specific reference to seek any and all available State and Federal revenues for the preservation and/or acquisition of the open space in the County of Santa Barbara, including but not limited to the Gaviota Coast.

SB 170 was brought to the attention of the County’s Legislative Program Committee for policy guidance during its March 23, 2009 meeting. The Legislative Program Committee currently consists of Supervisor Carbajal, Supervisor Wolf, Auditor-Controller Bob Geis, County Counsel Dennis Marshall and County Executive Officer Michael Brown. The Committee voted 4-0 (with one member absent from this vote) to bring the bill to the Board of Supervisors for consideration without a recommendation from the Committee.

On March 24, 2009, an ex-agenda item was brought forth by Supervisor Farr to receive a presentation on SB 170 and issue a letter of opposition to the bill to Senator Wiggins, Chair of the Senate Local Government Committee before the April 1, 2009 hearing. The motion to add this item to the Board’s agenda failed via a 3-2 vote. However, a motion directing staff to return with a report on SB 170 on April 7, 2009 passed via a 5-0 vote.

Performance Measure:

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

Narrative: The County would lose the subvention payment associated with any properties that are subject to Williamson Act cancellation. The County receives about \$600,000 in total subvention payments from the State for all parcels enrolled in the Williamson Act program. The State General Fund would receive a cancellation fee equal to 121/2% of the property's non-restricted value.

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

Attachments:

- (1) Amended Text of Senate Bill 170
- (2) Analysis of SB 170 Prepared by Committee consultant for the Senate Local Government Committee
- (3) Letter to the Department of Conservation from the Santa Ynez Band of Chumash Indians dated March 18, 2009
- (4) Letter of Opposition to SB 170 Issued by California State Association of Counties and Regional Council of Rural Counties
- (5) Letter of Opposition to SB 170 Issued by California Farm Bureau Federation

Authored by:

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CC:

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Bill Gillette, Agricultural Commissioner