

Santa Ynez Band of Chumash Indians

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March 18, 2009

Ms. Bridgett Luther, Director
California Dept. of Conservation
801 K Street, MS 24-01
Sacramento, CA 95814
Phone: (916) 322-1080 / Fax: (916) 445-0732

RE: SB 170

Dear Director Luther:

By now you are aware of the interest of the Santa Ynez Band of Chumash Indians ("Tribe") in reforming the processes for tribal governments to cancel Williamson Act Contracts as part of the tribal fee-to-trust process for annexing land to the Reservation.

As part of such process, the Tribe is opening up dialogues with various stakeholders. The Department of Conservation is a major stakeholder and therefore the Tribe would like to solicit the Department's input. To date we have explored the following ideas and we are open to other alternatives that the Department may propose:

1. Condemnation analysis: Our first version of AB 2680 which is now SB 170 expressly made the fee-to-trust annexation of land to the Reservation a condemnation for the purpose of voiding a Williamson Act contract.

The Williamson Act specifically provides that when the federal government condemns land subject to the Williamson Act or acquires such land in lieu of eminent domain condemnation, the Williamson Act Conservation Easement/Contract is considered void and cancelled pursuant to Section 51295 of the Public Resources Code:

51295. When any action in eminent domain for the condemnation of the fee title of an entire parcel of land subject to a contract is filed, or when that land is acquired in lieu of eminent domain for a public improvement by a public agency or person, or whenever there is any such action or acquisition by the federal government or any person, instrumentality, or agency acting under the authority or power of the federal government, the contract shall be deemed null and void as to the land actually being condemned, or so acquired as of the date the action is filed, and for the purposes of establishing the value of the land, the contract shall be deemed never to have existed.

Upon the termination of the proceeding, the contract shall be null and void for all land actually taken or acquired.

One case from Mendocino County also seems to hold that Section 51295 does not include federal fee-to-trust transfers. Friends of East Willits Valley v. County of Mendocino, 23

Cal.Rptr.2d 708 (First District, Div. 5 2002) (decided on other grounds that the County has a valid public policy reason for cancellation).

One possible remedy to this ambiguity in the Williamson Act as to federal fee-to-trust transfers was to add the following language to Public Resources Code Section 51295:

When any action in eminent domain for the condemnation of the fee title of an entire parcel of land subject to a contract is filed, or when that land is acquired in lieu of eminent domain for a public improvement by a public agency or person, or whenever there is any such action or acquisition by the federal government or any person, instrumentality, or agency acting under the authority or power of the federal government, including, without limitation, acquisitions of land by the federal government to hold such land in trust on behalf of a federally recognized Indian Tribe, the contract shall be deemed null and void as to the land actually being condemned, or so acquired as of the date the action is filed, and for the purposes of establishing the value of the land, the contract shall be deemed never to have existed.

Friends of East Willits Valley did analyze this condemnation analysis. The Court of Appeals found that while the federal government did have condemnation power the fee-to-trust process was separate from such condemnation power.

The Court of Appeals, however, did not analyze whether the Tribe had condemnation power. If a city annexes land for a public purpose it has condemnation authority once the land is within City limits. That is what a City annexing land subject to a Williamson Act contract receives a tentative cancellation, annexes the land and then voids the contract either by condemnation or by transfer in lieu of condemnation.

Tribes have the same power of self government on the Reservation. A tribe could theoretically condemn an individual allotment of trust land for public purposes. Likewise a tribe should be able to receive a tentative cancellation, annex the land by fee-to-trust transfer and void the Williamson Act contract by condemnation or by transfer in lieu of condemnation.

2. Power to Cancel the Williamson Act Contract like a City

Once a City annexes land subject to a Williamson Act contract, the City now has the authority to cancel the contract and make appropriate public policy findings.

The Williamson Act could be amended to permit a tribal government the power to cancel the Williamson Act contract and make appropriate public policy findings as part of annexing land to the Reservation through the fee-to-trust process.

We have considered submitting the following language to Legislative Counsel to directly address the power of Tribal Governments to cancel Williamson Act Contracts as part of the fee-to-trust process:

To the extent that Government Code Sections 51280-51287 are amended to add "Cities, Counties and federally recognized Tribal governments" wherever only "Cities and Counties" are currently mentioned, does that permit Tribal Governments to make the necessary tentative and final cancellation findings to cancel a Williamson Act Contract as part of a Tribal annexation of such land by fee-to-trust transfer to the federal government pursuant to 25 U.S.C. 465 or otherwise?

3. Creating Safe Harbors or Rebuttable Presumptions Regarding Tribal Cancellations

If a tribal government is not allowed the same powers as a City to cancel a Williamson Act Contract as part of an annexation, then the process could at least recognize the legitimacy of Tribal annexations as a permissible public policy basis for Williamson Act cancellation. As it stands, the current Williamson Act makes no mention of an Tribal government or the interest in creating strong and self sufficient tribal Reservations. There is only one reported case from Mendocino County leaving each tribe without any guidance in pursuing Williamson Act cancellations with their respective Counties or Cities.

As such SB 170 was amended as follows:

Where a Native American tribe or tribal group has petitioned for a contract cancellation pursuant to this article, there shall be a rebuttable presumption that tribal cultural centers, infrastructure, and housing are specified alternative uses which can qualify as "other public concerns" for the purposes of the finding pursuant to Section 51282(c)(1), and that for these uses, land contiguous to existing tribal lands can provide "more contiguous patterns of urban development" for a finding made pursuant to Section 51282(c)(2). This section shall not operate to narrow the circumstances under which a board or council may approve a petition pursuant to Section 51282 where one or both of the presumptions do not apply or have been rebutted.

4. Other possibilities?

The Tribe looks forward to meeting with the Department and discussing all available options for amending the Williamson Act to reflect tribal concerns.

Sincerely,



Vincent Armenta,
Tribal Chairman

CC: Brian Leahy, Esq., Dept. of Conservation Counsel