

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1180 (Mathis) – As Amended April 26, 2021

SUBJECT: Local governments: surplus land: tribes.

SUMMARY: Expands the definition of “exempt surplus land” to include surplus land that a local agency transfers to a federally recognized California Indian Tribe.

EXISTING LAW:

- 1) Requires each local agency, on or before December 31 of each year, to make an inventory of all lands held, owned or controlled by it or any of its departments, agencies, or authorities, to determine what land, if any, is in excess of its foreseeable needs. Requires a description of each parcel found to be in excess of needs to be made a matter of public record and requires the agency to report this information to the Department of Housing and Community Development (HCD) no later than April 1, beginning in 2021.
- 2) Defines “surplus land” as land owned by any local agency that is determined to be no longer necessary for the agency’s use.
- 3) Designates certain categories of surplus land as “exempt surplus land,” which does not have to meet the requirements of the SLA.
- 4) Requires a local agency that is disposing of surplus land to notify certain public entities and housing sponsors that surplus land is available for one of the following purposes:
 - a) Low- and moderate-income housing;
 - b) Park and recreation, and open space;
 - c) School facilities; or,
 - d) Infill opportunity zones or transit village plans.
- 5) Requires that, if another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must inform the disposing agency of its interest within 60 days, and if multiple entities want to purchase the land, the housing sponsor that proposes to provide the greatest level of affordable housing gets priority. The disposing agency and the interested entity have an additional 90 days to negotiate a mutually satisfactory price and terms in good faith. If they can’t agree, the agency that owns the surplus land can dispose of the land on the private market.
- 6) Requires a local agency, prior to agreeing to the terms for the disposition of surplus land, to provide specified information about its disposition process to HCD. Requires HCD to submit to the local agency, within 30 days, written findings of any process violations that have occurred. The law provides a local agency at least 30 days to either correct the violations or adopt a resolution with findings explaining why the process is not in violation.

- 7) Provides that a local agency that disposes of land in violation of the SLA following a notification from HCD is liable for a penalty of 30 percent of the final sale price for a first violation and 50 percent for subsequent violations. Requires that penalty assessments shall be deposited into a local housing trust fund, the state Building Homes and Jobs Fund, or the Housing Rehabilitation Loan Fund, as specified.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Author's Statement.** According to the author, "AB 1180 provides a fair and meaningful opportunity that allows for the return of ancestral territory to our States' many indigenous tribes. The bill recognizes and addresses the States' history and policy towards tribal land and the cultural significance that they have to our many indigenous groups."
- 2) **Bill Summary.** Existing law designates several categories of surplus land transfers as "exempt surplus land," which the SLA does not apply to. This bill expands the existing provision that exempts government to government transfers to include surplus land transfers to federally recognized California Indian Tribes. This will allow a local government to transfer surplus land to a federally recognized California Indian Tribe without triggering the procedures of the SLA.

This bill is sponsored by the Tule River Indian Tribe of California.

- 3) **Surplus Lands.** The SLA spells out the steps local agencies must follow when they want to dispose of land they no longer need. It requires local governments to give a "first right of refusal" to other governments and nonprofit housing developers, and to negotiate in good faith with them to try to come to agreement. The statute's implicit public policy is that affordable housing is the best use for land that a public agency no longer needs.

Before local officials can dispose of property, they must declare that the land is no longer needed for the agency's use in a public meeting and declare the land either "surplus land" or "exempt surplus land."

Land and land transfers that are deemed "exempt surplus land" are not subject to the right of first refusal requirements related to affordable housing developers. Exempt surplus land currently includes land that is exchanged for another property, and land that is transferred to another local state or federal agency for that agency's use.

- 4) **Federally Recognized and Non-Federally Recognized Tribes.** According to the 2010 Census, California has the highest Native American population in the country, with approximately 720,000 people in the state who identify as Native American. There are currently 109 federally recognized Indian tribes in California and 78 entities petitioning for recognition. California tribes currently have nearly 100 separate reservations or Rancherias.

Throughout California law, various statutory provisions apply only to federally recognized tribes, while other statutes apply more broadly to tribes that are on the contact list maintained by the Native American Heritage Commission (NAHC), which includes federally recognized tribes and tribes that are not recognized by the federal government. The definition or designation that is used in a given statute impacts whether that statute's provisions apply to

different California Native American Tribes. For example, The California Environmental Quality Act (CEQA) cites the more expansive list identified by the NAHC as it relates to consultations related to potential impacts to Tribal Cultural Resources (TCR). Similarly, AB 168 (Aguiar-Curry), Chapter 166, Statutes of 2020, which requires developers and local agencies engaged in approval of a streamlined housing development to engage in a scoping consultation with relevant tribes, also employs the NAHC list. Conversely, AB 307 (Nestande), Chapter 266, Statutes of 2011, amended the definition of "public agency" for purposes of joint powers authorities (JPAs) to add federally recognized Indian tribes.

- 5) **Public Utilities Commission (PUC) Tribal Land Transfer Policy (TLTP) and Guidelines.** The PUC regulates and oversees activities of investor owned utilities (IOUs), and this oversight extends to land dispositions executed by IOUs. The PUC formally adopted the Final TLTP in December 2019 and subsequently adopted guidelines implementing the policy in January of 2021. The TLTP Guidelines are a means of protecting Tribal lands of special significance to California Native American Tribes, ensuring the protection of sacred sites and cultural resources by offering the opportunity for Tribal ownership of ancestral lands.

The Guidelines require that, before an IOU submits a request to the PUC to dispose of real property, the IOU must notify any relevant tribe or tribes that it intends to dispose of the property. The guidelines require IOUs to take affirmative steps to determine whether tribes are interested in purchasing the property, and give tribes a right of first offer on the property before the IOU may put the property on the open market.

The guidelines establish a process for IOUs to identify "relevant tribe or tribes" in consultation with the NAHC. For the purpose of the PUC's guidelines, a "tribe" includes both federally recognized tribes and tribes that are not recognized by the federal government that are on the contact list maintained by the NAHC.

Various statutes and state policies afford certain rights to federally recognized tribes that are not extended to non-federally recognized tribes. However, given that existing state policy includes non-federally recognized tribes in the disposal of certain privately owned lands, the author may wish to consider whether the bill's provisions related to the disposal of publicly owned lands should be limited to federally recognized tribes.

- 6) **Related Legislation.** AB 379 (Gallagher), expands Department of Fish and Wildlife (DFW) and Wildlife Conservation Board (WCB) authority to enter into agreements with and make grants or loans to public agencies and nonprofits to include California Native American tribes identified on the list maintained by the NAHC. This bill is currently pending on the Assembly Floor.
- 7) **Arguments in Support.** According to the Tule River Indian Tribe of California, "AB 1180 would amend the surplus land Act to provide an explicit exemption for sales of surplus land to federally recognized tribes, similar to current exemption for sales of land to local, state and federal agencies. This will provide tribes an opportunity to regain lands lost through corrupt means in the late 1800s and early 1900s.

"The amendments would also be consistent with the California Public Utilities Commission's currently proposed Tribal Land Transfer Policy, which provides a right of first refusal to tribes where an investor-owned utility proposes to divest surplus real property."

8) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

The Tule River Indian Tribe of California [SPONSOR]

The Barona Band of Mission Indians

California Tribal Chairpersons' Association

The Jamul Indian Village of California

Opposition

None on file.

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