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**PROPOSAL TO AMEND THE REVENUE AND TAXATION CODE
TO CREATE A TRIBAL PROPERTY TAX EXEMPTION
FOR LAND RETURN TRANSACTIONS**

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¹ **The comments contained in this paper are the individual views of the author who prepared them, and do not represent the position of the California Lawyers Association or of the Taxation Section.**

² Although the authors and/or presenters of this paper might have clients affected by the rules applicable to the subject matter of this paper and have advised such clients on applicable law, no such participant has been engaged by a client to participate on this paper. No author has a direct personal or financial interest in the issue addressed in this paper.

EXECUTIVE SUMMARY: PROPOSAL TO AMEND THE REVENUE AND TAXATION CODE TO CREATE A TRIBAL PROPERTY TAX EXEMPTION FOR TRIBAL LAND RETURN TRANSACTIONS

The State of California and its subordinate entities have enacted policies that encourage tribal land return to California Tribes and support co-management of ancestral lands by California Tribal Nations.³ Current State policy aims to provide measures of restorative justice for California’s role in the genocide of California Indians, taking tribal lands without due process or fair compensation, and its previous prejudicial policies that harmed California Indians.⁴ Unfortunately, these land return transactions can create a financial burden on tribes when the property taxes increase with the acquisition at a higher purchase price.

For example, the California Natural Resources Agency created the Tribal Nature-Based Solutions (TNBS) Program in alignment with California's efforts to promulgate tribal land returns. TNBS grants are helping California tribes reclaim ownership of their ancestral lands and advance multi-benefit nature-based solutions in their communities. However, the program limits a tribe’s ability to develop the land for economic gain, meaning tribes may not develop the land, yet they must pay state and local property taxes. An unintended consequence of land return transactions is that California Native American Tribes will be forced to pay state and local property taxes at a higher rate than the previous owners, as they reacquire ancestral lands that were taken from them through both “legal” and illegal means.

This paper examines recent tribal land returns and comparable California property tax exemptions for conservation, open space, charitable, agricultural, and tribal low-income housing purposes. It proposes new property tax exemptions under California Tax and Revenue Code §214, and documentary transfer tax exemptions under §11931 and §11932, for tribal land returns. These exemptions aim to strengthen land return efforts, support California's redress of historical wrongs against aboriginal tribes, bring parity in State law for Tribal entities, and prevent California Tribes and Tribally-controlled Non-Profits from incurring new property

³*Statement of Administration Policy Native American Issues*, Office of the CA Governor (Sep. 25, 2024) <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.25.20-Native-Ancestral-Lands-Policy.pdf>. and <https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf>.

⁴ California Indian and California Indians is a term used in this paper because it is a term of art in Indian law and is defined in federal statutes, albeit differently, for different purposes. The author is a California Indian, specifically, a member of the Pit River Tribe.

taxes on a stepped-up basis, or potentially losing reacquired lands due to unpaid state property taxes, thus avoiding a repetition of past injustices.

DISCUSSION

I. INTRODUCTION

Since time immemorial, Tribal Nations have stewarded, managed, and lived interdependently with the lands that now make up California. California is home to one hundred and ten (110) federally recognized tribes and more than 60 aboriginal tribes that are not federally recognized. However, the State’s history with aboriginal tribes is a tumultuous and violent one filled with legal and illegal dispossessions of tribal lands, violations of human rights, and unlawful termination of federal recognition as tribal sovereigns. This is precisely why land return programs and a tribal property tax exemption to accompany those programs are critical to healing and reconciliation efforts.

A. Legal and Illegal Land Takings from Tribal Lands

The California gold rush began in 1849, bringing hardships to all Indian peoples of California. The introduction of Anglo-European diseases, along with state-sponsored massacres and the forced removal of countless Indian villages⁵, had reduced the population of the California Indians drastically from at least 310,000 to 20,000 between 1700 and 1900.⁶ In addition, federal statutes like the Homestead Act and Dawes Act advanced the “manifest destiny” agenda, which called for western settler expansion of the United States. Gold seekers and settlers benefited from these laws by displacing Indians from their lands.

Indian Reservations were created in California to segregate Indians for “their protection” from settlers and to free Indian lands for settlement. Originally the \$275,000 federally appropriated budget was for the purpose of “collecting, removing, and subsisting the Indians of California.” In 1855 Thomas J. Henley, Superintendent of Indian Affairs proposed to “finally rid the State of this class of population.” Toward this end, two reservations were established in Mendocino

⁵ BENJAMIN MADLEY, AN AMERICAN GENOCIDE 319-319 (HOWARD R. LAMAR ET AL EDS., 1ST ED. 2017).

⁶ *Tribal History*, Mooretown Rancheria of Maidu Indians of California, <https://www.mooretownrancheria-nsn.gov/Tribal-History> (lasted visited May 1, 2024).

County: The Mendocino Reservation, on the coast, and the Nome Cult Farm in Round Valley.

In July 1856, Pomo, Yuki, and others from as far away as Eureka and Chico were force marched to the Mendocino Reservation and Nome Cult Reservation. Removal of Indian people from ancestral lands during homesteading created the opportunity to legally take “vacant” Indian land. The Homestead Act of 1862 exacerbated Indian peoples’ impoverishment by enabling all adult male citizens to claim 160 acres of land in the “unsettled” West if they were able to possess it and file the appropriate claim.⁷

The Homestead Act excluded California Indians from requesting homesteads since American Indians were not granted United States citizenship until 1924.⁸ This enabled land grabs by settlers, railroad interests, timber companies, land speculators, and individuals seeking more land. As a result, homesteading rapidly diminished tribal landbases. By the 1850s and 1860s, non-Indian settlers had forcibly displaced California Indians from their homelands through homesteading.

B. Reservations and Rancheria’s Established 1850-1920’s

Southern California Indians were finally provided with recognition when several parcels of their former tribal domains were set aside by presidential executive orders beginning in 1873 with the establishment of the Tule River Indian Reservation. Fourteen Southern California Indian Reservations were set aside by executive orders beginning in 1891 and amended in 1898. Unfortunately, tribes aboriginal to both Orange and Los Angeles counties were excluded from land distributions due in part to the value of coastal real estate.

Reduced to severe destitution, most California Indians struggled to support their families as landless laborers. Only 6,536 California Indians were recognized and living on reservations about the turn of the century. Every Native person who survived to see the 20th century had witnessed great suffering and the irreplaceable loss of numerous grandparents, mothers, fathers and children. Some lineages

⁷ Homestead Act of 1862 (now repealed), National Archives, <https://www.archives.gov/milestone-documents/homestead-act#:~:text=Citation%3A%20Act%20of%20May%2020,Archives%20Building%2C%20Washington%2C%20DC> (lasted visited May 1, 2024).

⁸ Indian Citizenship Act, Library of Congress, <https://www.loc.gov/item/today-in-history/june-02/> (last visited May 1, 2024).

disappeared altogether. Demographer S.F, Cook determined the California Indian population declined to fewer than 16,000 individuals in 1900. This figure represents a decline from over 300,000. These staggering losses prompted non-Indians of good will to assist Indian tribes in efforts to secure lands for the still numerous landless Indians.

Several reform groups sought to protect the homeless California Indians. One of their earliest successes was a long legal effort to prevent the Cupa Indians from being dispossessed of their ancestral village of Warner's Hot Springs. While losing the legal case Cupa Indians and their allies managed to secure lands on the nearby Pala Indian Reservation in San Diego County. In Northern California, landless Indians were helped with the efforts of the Northern California Indian Association, which urged the BIA into assisting landless Indians in 1905.

Political pressure from Indians and their allies resulted in the establishment of thirty-six (36) new reservations and Rancherias. Rancherias were very small parcels of land aimed at providing homesites for small bands of landless Indians, which are all located in Northern California. Between 1933 and 1941 Congress authorized the enlargement of several Southern California reservations by 6492 acres. All of today's California Indian Reservations and Rancherias were established either through presidential executive order or through appropriations by Congress.

C. Individual Indian Allotments- The Dawes Act of 1887

Congress passed the Dawes Act in 1887, which authorized the breakup of reservations, the grant of federal allotments to individual Indians, and opened "unused" lands to settler ownership.⁹ Once individual Indians gained land beneficial ownership to allotted trust land, land speculators often devised ways to take those lands through legal and illegal means. For example, a predecessor of PG&E, Great Western Power Company, unlawfully acquired Indian allotments in the Feather River watershed between 1880 and 1920 without compensating the Indian owners for the lands.¹⁰ This practice also occurred in other tribal regions, including the Pit River, Russian River, and Eel River watersheds.

⁹ 25 U.S.C. §331, *repealed by* Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984.

¹⁰ *See*, BETH ROSE MIDDLETON MANNING, UPSTREAM: TRUST LANDS AND POWER ON THE FEATHER RIVER, 29-31, 65-66 (2018).

Indian allotments were exempt from state property taxes because they were held in trust by the federal government for the benefit of the individual Indians.¹¹ However, many Indian allotments were sold, and the BIA also pressured individual Indians to sell their lands. Additionally, states played a role in taking lands from tribes and Indian owners by assessing state property taxes if their lands were taken out of trust—a concept which was previously unknown to Native people and tribes. Many former trust lands were lost through tax auctions that resulted from the new property tax assessments going unpaid by the tribal owners.

By 1930 approximately 2,300 allotments had been carved out of the tiny communal tribal reservation lands. The program ground to a halt in 1930 due to Indian opposition and failure of BIA to complete the necessary paperwork. The law was repealed in 1934. Thousands of acres of California Indian lands and millions of acres nationally were lost to this destructive and ill-conceived policy.

D. Termination of Many Rancherias

Congress passed the first “Rancheria Act” in 1958, thereby “terminating” forty-one rancherias in California and distributing the land to individual Indians.¹² Termination resulted in tribal trust lands becoming fee lands, excluding tribal members from federal assistance benefits and land distributions. Once the lands were transferred from trust to fee-simple status, the Rancheria Act resulted in the loss of some tribal lands due to property taxes and private sales.

In response, in 1979, thirty-four terminated Rancherias sued the federal government, arguing for the unlawful termination to be reversed. The Tribes brought a class action lawsuit against the United States and various government officials in the Northern District Court of California.¹³ The lawsuit alleged that the federal government had violated the Rancheria Act in its effort to terminate federal supervision of the Tribes. In 1983, one court entered a Stipulation for Entry of Judgment, restoring the Indian land status of the former rancherias and Indian status to the members of seventeen Rancherias.¹⁴ Other Tribes were restored in related

¹¹ AIPRA: Allotment and Fractionation, Colorado Law, <https://www.colorado.edu/law/aipra-allotment-and-fractionation> (last visited May 1, 2024).

¹² *California Indian History*, State of California Native American Heritage Commission, <https://nahc.ca.gov/native-americans/california-indian-history/>.

¹³ See *Tillie Hardwick, et. al. v. United States*, U.S. Dis. Court, Northern Dist. of California, No. C-79-1710-SW.

¹⁴ Additional cases continued addressing the injustice of termination of the other rancherias.

cases.¹⁵ Even though the Tribes succeeded in court, much of the original Rancheria lands of the terminated Tribes could not be restored to trust status because they were taken out of trust and some were lost through tax sales and others were sold into fee simple to non-Indians.

E. States Lack Jurisdiction to Tax Tribal Nations

As an established principle of federal law, states lack jurisdiction to tax federally-recognized Indian Tribes.¹⁶ The Commerce Clause of the United States Constitution states, “Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”¹⁷ The United States Supreme Court articulated this clause in *Worcester v. Georgia*,¹⁸ holding that Tribes were ‘distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged but guaranteed by the United States.’¹⁹

Currently, a federally recognized Tribe that seeks immunity from state taxation of their lands has two methods it can follow: convey land to the United States to be held in trust for the benefit of that Tribe, thus removing land from the state tax rolls,²⁰ or apply for California’s Section 237 tribal low-income housing tax exemption. There are fewer options for a Tribe to benefit from a property tax exemption than a non-profit organization. In fact, non-profit organizations benefit from a number of tax exemptions that Indian Tribes do not including exemption from documentary transfer tax, which is another problem which this Proposal seeks to address.

In alignment with California’s policy to encourage tribal land returns, California Indian Tribes could be exempted from paying property taxes on reacquired lands with deed restrictions prohibiting commercial activities. We further propose that a transfer of property to a California Indian Tribe where there is a restriction on land use be included in the list of transfer tax exemptions to clearly provide authority upon purchase. This paper highlights examples of tribal land returns in recent years. Next, it provides examples of analogous statutes in

¹⁵ Insert names of cases.

¹⁶ See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973).

¹⁷ U.S.C.A Const. art. 1, §8, cl.3.

¹⁸ 31 U.S. (6Pet.) 515 (1832).

¹⁹ *Id* at 557.

²⁰ 25 U.S.C. §465 (1988).

California that create tax exemptions for lands used for conservation, open space, charitable, agriculture, and tribally owned low-income housing. Finally, it proposes a new property tax exemption for tribal land returns and a documentary transfer tax exemption for California Indian Tribes.

II. TRIBAL LAND RETURN EFFORTS IN CALIFORNIA

California Indian Tribes have been re-acquiring their aboriginal lands that were taken through the course of colonization as described above. This section highlights the complexity of the acquisitions and also highlights the tax implications for tribal land return transactions and the harsh impact the tax burden will have on the specific Tribe.

1. Tribal Nature-Based Solutions Grant

The Tribal Nature-Based Solutions (“TNBS”) program offers competitive grants to California Native American Tribes seeking to reacquire ancestral lands in fee simple. Notably, the program requires a deed restriction on the reacquired land by limiting a Tribe’s ability to use the land *only* for activities that include nature-based solutions. This program was made possible through the California legislature appropriating \$71 million to the California Natural Resources Agency as part of the state’s goals with Executive Order N-82-20 (Nature-Based Solutions Executive Order), Pathways to 30x30 Strategy, and Natural and Working Lands Climate Smart Strategy. Additional funding in 2023 raised the total funds for tribal land acquisitions to \$100 million.

While the CNRA grant program is a significant step toward restorative justice for some California tribes, most of the tribes will face great obstacles in seeking a property tax exemption for the property because none of the current tax exemptions readily apply to California Indian Tribes. The following problems have been identified:

1. The purchase price will be for the appraised value of the land, so the purchase will trigger a **new stepped-up basis** for the land value.
2. The transaction itself will be subject to a **documentary transfer tax**, which varies depending on the local jurisdiction, however it is a percentage of the purchase price, which can be substantial when the prices are in the millions of dollars.

3. Once acquired, the land value for property tax purposes will be reassessed by the local tax assessor. At this point, the higher purchase price will cause the tax assessor to increase the **value of the property for property tax purposes**.

Because each of the above tax events will negatively impact California Tribes during a land return transaction, we propose new property tax exemptions and documentary transfer tax exemptions for lands acquired by California Native American Tribes when there is a restriction on future uses of the lands.

2. Lisjan Nation Restores West Berkeley Shellmound Ancestral Land

In March 2024, the Berkeley City Council unanimously approved an ordinance that authorized purchasing the West Berkeley Shellmound and Village Site with funds raised by Sogorea Te' Land Trust ("STLT"), a Native women-led land trust based in Oakland, that is associated with the Confederated Villages of Lisjan Nation ("Lisjan Nation").²¹ The land is among the most culturally significant sites for the Lisjan people, so the land return acquisition was imperative to the Tribe's ability to protect its culture.

The property transfer to STLT resulted in the City being among the first in the state to return lands to a tribal entity. Tribal leaders plan to construct a replica of the former shellmound cultural site that includes a museum for cultural displays to educate the public about the land's original stewards.

Unfortunately, the purchase price for the land was over \$25 million and therefore structuring a transaction that would reflect the purpose of the acquisition was a challenge. It is unclear whether the Sogorea Te' Land Trust and Confederated Villages of Lisjan Nation will be successful in obtaining a property tax exemption for the property, ironically due to the high purchase price, which was beyond their control. In addition, negotiating the transfer tax was problematic, and therefore a companion to the property tax is a proposed transfer tax exemption because none of the current exemptions clearly applied to an acquisition by either the non-profit land trust or the Tribe.

²¹ *West Berkeley Shellmound Site to Return to Indigenous Stewardship*, Shellmound (Mar. 20, 2024) <https://shellmound.org/2024/03/shellmound-to-be-rematriated/>. See also *West Berkeley Shellmound to be Transferred to the Sogorea Te' Land Trust*, National Trust for Historic Preservation (Mar. 14, 2024) <https://savingplaces.org/americas-most-endangered-historic-places/updates/west-berkeley-shellmound-11-most>.

III. PROBLEMS ADDRESSED

California's tax code requires California Tribes to pay high property taxes after reacquiring lands that were unjustly, and sometimes illegally, taken from them. State property taxes burden Tribes that reacquire lands when grant funding limits the use of the land for conservation and cultural preservation. For many of these land return projects California Tribes are restricted from generating revenue for economic development purposes. Yet, they are expected to cover property taxes on their newly reacquired tribal lands, which are even higher than taxes paid by prior landowners.

This land return tribal tax exemption would remedy the issue of state property taxes burdening Tribes that reacquire their ancestral lands. The proposal would establish a tribal land return tax exemption for California Native American Tribes that reacquire ancestral lands for non-commercial purposes. A tribal land return tax exemption would remove the threat of Tribes losing restored tribal lands due to the inability or failure to pay state property taxes.

An exemption from the documentary transfer tax will clarify that no tax is due merely to record the deed when a Tribe or a non-profit that is associated with a California Native American Tribe has paid for the land. Currently, there is no documentary transfer tax exemption for land acquisition by a California Native American Tribe to hold with encumbrances on the title that restrict the use of the land.

IV. PROPOSED CHANGE

A. Tribal Land Property Tax Exemption.

A solution proposed by this paper is to amend the **California Revenue and Taxation Code §214** to create a new subsection (m) to include the following:

Section 214 (m)

A federally-recognized California Indian Tribe or California Tribal Non-Profit shall be exempt from state property taxes for land return transactions, as defined, that include restrictive covenants that prohibit that Tribe from engaging in commercial activities on the land or restrict the uses to cultural, educational, recreational or conservation purposes.

“Tribal Land Return” means a land return acquisition that transfers ownership to a Federally-recognized California Indian Tribe in fee simple and is not federal trust land as defined in Section 1151 of Title 18 of the United States Code (18 U.S.C. § 1151).

“California Native American Tribe” means a federally recognized Native American Tribe or a non-federally recognized tribe, whose name is included on the Native American Contact List.

“California Tribal Non-Profit means a non-profit established under tribal, state or federal law for the purpose of holding land for the benefit of a California Native American Tribe for the purposes outlined herein.

Tribal Land shall be exempt from state property taxes if any of the following applies:

- (1) Cultural conservation. The land is used to promote cultural conservation e.g. including, but not limited to, the construction of cultural centers, curation facilities, educational activities, services or exhibits, community gatherings, ceremonial practices, traditional subsistence practices, harvesting traditional plant medicines and foods, and preserving ancestral trails.
- (2) Environmental conservation. The land is used to promote environmental conservation of native plants, animals, biotic communities, geological or geographical formations of scientific or educational interest, and natural resource restoration and protection e.g. including traditional fisheries, traditional medicinal plants, and river and stream restoration projects.
- (3) Open space. The land is managed for recreation and enjoyment of scenic beauty, where tribal traditional land management practices are utilized during stewardship. Nothing herein prohibits the Tribal Land from being actively managed including fuels reduction and other permitted activities.
- (4) Cemetery and Reburial Grounds. The land is used for the burial of human remains and the reburial of ancestral remains not limited to, but including ancestral remains and related items repatriated through NAGPRA, and CalNAGPRA claims. An aboriginal California Indian burial ground is deemed to be cemetery pursuant to subdivision (g) of Section 3 of Article XIII of the California Constitution.

(5) Deed restrictions. A deed restriction prevents a Tribe from developing the land and engaging in commercial activities for economic development.

Revenue-generating activities consistent with real property instruments and that are related to the Tribal land's purpose shall be allowed and not disqualify the Tribe from the property tax exemption.

Revenue-generating activities that are incidental and reasonably necessary to carry out the permitted purposes shall not disqualify the Tribe from otherwise qualifying for the tax exemption.

A. Transfer Tax Exemption

A solution proposed by this paper is to amend the **California Revenue and Taxation Code §11931** and **§11932** to create a new subsection to include the following:

§ 11931 - Any tax imposed pursuant to this part shall not apply with respect to any deed, instrument, or other writing which conveys real property to a federally-recognized California Indian Tribe or California Tribal Non-Profit, if such instrument includes a restrictive covenant that prevents the Tribe from full use of the property under California laws.

§ 11932 - Any tax imposed pursuant to this part shall not apply with respect to any deed, instrument, or other writing which conveys real property a non-profit organization that is affiliated with a California Native American Tribe or California Tribal Non-Profit, if such instrument includes a restrictive covenant that prevents the Tribe from full use of the property under California laws

B. Advantages of a Legislative Change

The tribal land return property tax exemption would benefit Tribes and tribally established non-profits that use their Tribal lands for non-commercial purposes, including conservation, cultural preservation, and open spaces. Amending the state Revenue and Taxation Code would enable California Native American Tribes to benefit from reacquiring Tribal lands with deed restrictions by granting a tax exemption – one already available to other kinds of entities.

This Tribal land return property tax exemption would also align with California's conservation goals, tribal land return policy,²² and Truth & Healing Council goals.²³ Further, this new tribal tax exemption would address the policy gap that prevents land return programs from fulfilling their intended purpose of returning lands to benefit Tribes through programs such as the TNBS program.

One disadvantage to Tribal communities might be the property tax exemption application and process itself, as well as audits. Both pose lengthy processes that require staff capacity. Another disadvantage may be that non-federally recognized tribes do not qualify for the current proposed Tribal Land Return Property Tax Exemption, however, there may be room for revisions and amendments in the future once state law is clarified regarding the status of non-recognized tribes as entities.

One could also argue that the proposed property tax exemption represents special treatment towards a racial group, and as property taxes support the development of public infrastructure, schools, and services, this pulls funding away from these areas. We note that Indian tribes are distinct legal entities that are based on political classification and are not considered a racial classification for purposes of constitutional equal protection analysis.

We have also started to witness a shift in the cultural and political climate throughout the state regarding restorative justice in relation to Tribal communities. In fact, a number of cities in California themselves make annual Tribal Land Tax contributions and have returned land to Tribes and Tribal communities. California can set the example for other states throughout the Nation regarding how to be in right-relation with Indigenous communities, and how to create long term sustainable ecological practices in collaboration with Tribes to mitigate the impacts and futures of climate change.

C. Analogous Laws Exists in California

California allows property tax exemptions for lands used for conservation, open space, and education purposes. The California tax code also includes a property tax exemption specifically for Tribes that own and manage tribal low-income housing developments. The proposed Tribal land return property tax

²² *Statement of Administration Policy Native American Issues*, *supra* note 2.

²³ CA Executive Order N-15-19 (2019).

exemption draws inspiration from existing California property tax exemptions, such as the following examples:

*1. California Revenue & Tax Code § 237: Exemption for Tribal-Owned Low-Income Housing*²⁴

This tax exemption ensures that federal low-income housing funding is available for California Tribes. The exemption supports Tribes that develop, maintain, and operate affordable housing for Tribal members living off trust lands by exempting a Tribe from paying property taxes where the land is used for tribal low-income housing. This exemption demonstrates California's willingness to collaborate with Tribes by carving out a tribal property tax exemption that aligns with California's policy to develop affordable housing. Here, the Tribal land return tax exemption would align with the state's policy to address its historical wrongs with California Tribes by returning ancestral lands to their original stewards.

*2. California Revenue & Tax Code § 214.02: Exemptions for property used for education interest, open-space lands, and conservation*²⁵

This tax exemption applies to properties that operate exclusively to preserve native plants, animals, biotic communities, geological or geographical formations of scientific or educational interest, or open space lands used solely for recreational purposes and enjoyment of scenic beauty. Further, a California appellate court concluded that revenues derived from an "incidental and reasonably necessary" activity that helps accomplish a charitable purpose are allowed.²⁶ Similarly, the proposed tribal land property tax exemption language also includes a section meant to use the land for conservation and open spaces, and it includes a provision that would also allow Tribes to engage in revenue-generating activities consistent with the property's purpose.

*3. Williamson Act (aka California Land Conservation Act of 1965)*²⁷

This statute provides a reduced tax on land used for agricultural projects. It enables local governments to enter contracts with private landowners to restrict specific parcels of land to agricultural or related open space use for a minimum 10-

²⁴ CA. REV. AND TAX CODE § 237.

²⁵ CA. REV. AND TAX CODE § 214.02.

²⁶ See *Santa Catalina Island Conservancy v. County of Los Angeles*, 126 Cal. App.3d 221 (1981).

²⁷ California Land Conservation Act of 1965, Government Code Section 51200 et. seq.

year.²⁸ In return, landowners get property tax assessments that are much lower than usual because the assessments are based on farming and open space uses as opposed to total market value. Similar to the CRT § 214.02, this statute demonstrates that California has historically passed property tax laws meant to promote conservation and open space uses.

4. Cemetery Exemption and Pioneer Cemeteries – (Pre1900 Cemeteries)²⁹

The Cemetery Exemption tax exemption provides exemption to property used or held exclusively for the deposit of the human dead, and the care and maintenance of the property. It also includes Revenue and Taxation Code section 256.7(a), otherwise known as Pioneer Cemeteries-Pre1900 Cemeteries, which outlines property tax exemption for cemeteries that were used by residents of the state prior to the year 1900, and is no longer used for current or future interments, which can be applied to the many Indian burial grounds throughout the state, and the many Tribes which receive ancestral remains requiring grounds for reburial.

D. Proposal Feasibility

The proposal is feasible – politically and economically, as mentioned in Gavin Newsom’s Executive Order N-82-20³⁰, “the well-being of our communities and California’s economic sustainability are interconnected with our natural and cultural resources.” In the past few decades, we have borne witness to environmental and climate catastrophe throughout the state, increasing rapidly through wildfires, loss of biodiversity, dwindled populations of vital species, threatened habitats, floods, droughts, and sea level rise. It is imperative for the continuity of California and its economy to develop long term climate resilience for the future, and to do so, we look to the land’s original caretakers and practices. Ancestral land return is a fundamental component in combatting the climate crises, and directly supports the success of Governor Newsom’s Pathways to 30x30 Strategy and Natural and Working Lands Climate Smart Strategy.

²⁸ CA Government Code Section 51200 et. seq. (1965); see also *Williamson Act Program*, CA Dept. of Conservation, <https://www.conservation.ca.gov/dlrp/wa> (last visited May 1, 2024).

²⁹ Cemetery Exemption and Pioneer Cemeteries, California State Board of Equalization https://www.boe.ca.gov/proptaxes/cemetery_exemption.htm#:~:text=The%20Cemetery%20Exemption%20is%20available,of%20Revenue%20and%20Taxation%20Code).

³⁰ See CA Governor Gavin Newsom’s Executive Order N-82-20 <https://www.gov.ca.gov/wp-content/uploads/2020/10/10.07.2020-EO-N-82-20-signed.pdf>

The proposed Tribal Land Return Property Tax Exemption is developed to support Tribes in their endeavors to sustainably re-establish their relationships with these sites of land return, many of which have faced decades of mismanagement, wildfire, and neglect and require immediate and intensive efforts to begin mitigating risks on site. When Tribes must allocate exorbitant costs to Property Taxes for Ancestral Land Return, the prioritization is forced to shift to accommodate the fees, and leaves room for risks to occur that are inherited through the acquisition.

This proposed property tax exemption would not be restricted by Proposition 13, nor the failed Proposition 26. Proposition 13 establishes limitations on the tax rate and assessment increase for real property in California. Under this amendment, when real property undergoes a change in ownership, the property value is reassessed to establish a new base year for property tax purposes. This proposed exemption would not be impacted by Proposition 13 as it would altogether preclude tribes from having to pay any property tax on these reacquired lands. The reassessment process for property value would be superfluous and a limited taxation rate unnecessary.

As property values increase rapidly in the state, the tax value of the land tribes are attempting to reacquire through programs such as TNBS would likely be much higher than what the current owners of the property are taxed according to their base year. This proposed exemption would, economically, deprive the state of potentially high revenues in state property taxes resulting from these land transactions. However, an exemption would benefit these Tribes as it would exempt them from having to pay these potentially exorbitant state property taxes that would result from a stepped-up basis on the property at acquisition.

Although the proposed exemption would decrease potential revenue to the State and local governments, states and counties receive an annual Payments in Lieu of Taxes (PILT³¹), which assists in offsetting the loss of property taxes due to exemptions for non-taxable federal lands to ensure that states can maintain their community services. In fact³², in 2023 alone, California received 61 million out of the nation's 578.8 million for local governments from the PILT program, and immensely surpasses³³ other states nation-wide in PILT funding each year.

³¹ Payments in Lieu of Taxes, U.S. Department of the Interior <https://www.doi.gov/pilt>

³² Federal Public Land Within Counties: Payments In Lieu of Taxes Program California State Association of Counties <https://www.counties.org/csac-bulletin-article/federal-public-land-within-counties-payments-lieu-taxes-program>

³³ Payments in Lieu of Taxes Fiscal Year 2022 Summary by State, <https://www.doi.gov/sites/doi.gov/files/2022-national-summary-pilt-508-final.pdf>

E. Statements and Suggested Viewers

The author has discussed this topic with California Natural Resources Agency California's Deputy Secretary for Tribal Affairs Geneva Thompson, and Tribal Affairs Secretary to Governor Gavin Newsom Christina Snider-Ashtari to get input regarding the feasibility and necessity of the proposed Tribal Land Return Property Tax Exemption.

The author has not discussed the topic with any individuals involved in California Legislation, or Tax Agency.

The author does not presently and has not previously had a matter involving the proposed Tribal Land Return Property Tax Exemption before any state or local tax authority, or court.

The author represents several Tribes throughout the State that would benefit from the proposed Tribal Land Return Property Tax Exemption, and is a member of a Federally Recognized Tribe, but the author herself otherwise does not have personal or financial interest in the issue addressed.

The author suggests California Natural Resources Agency California's Deputy Secretary for Tribal Affairs Geneva Thompson, and Tribal Affairs Secretary to Governor Gavin Newsom Christina Snider-Ashtari as reviewers for the topic, and they are able to meet the quick turnaround time in August.

IX. CONCLUSION

A Tribal land return property tax exemption would enhance California's policy to return aboriginal lands to the original stewards, whose traditional ecological management practices have preserved the land's integrity and biodiversity. The proposed tax exemption would remove the threat of Tribes losing their reacquired tribal lands due to the inability or failure to pay state property taxes and would allow the Tribes to strategically focus their site-related funding to Traditional Ecological Knowledge based land management practices. California's land return efforts will continue moving in the right direction once its tax laws align with its land return program and goals intended to benefit Tribes.

The comments contained in this paper are the individual views of the author who prepared them and do not represent the position of the State Bar of California or of the Taxation Section.