

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: 415 552-7272 F: 415 552-5816
www.smwlaw.com

FRAN M. LAYTON
Attorney
layton@smwlaw.com

May 21, 2010

Via Electronic Filing Only

Molly Dwyer, Clerk
United States Court of Appeals for the
Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Response to Appellants' Citation to Supplemental Authorities (Rule 28(j) of the Federal Rules of Appellate Procedure) in *Guggenheim v. City of Goleta*, Case No. 06-56306

Dear Ms. Dwyer:

Pursuant to Rule 28(j), Appellee City of Goleta provides this response to Appellants' 28(j) letter discussing *Adams Bros. Farming, Inc. v. County of Santa Barbara*, Case No. 09-55315 (9th Cir. May 14, 2010).

In *Adams Bros.*, the panel declined to decide whether the plaintiff had satisfied the "state compensation" ripeness requirement established by *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). Slip Op. at 7028. The panel reasoned that the requirement is prudential, rather than jurisdictional. *Id.* Although *Adams Bros.* indicates that the law in this Circuit on that question is not uniform, it represents the minority view: The majority view in the Circuit is that the state compensation requirement is jurisdictional and thus cannot be disregarded by the court. *See* Brief of League of California Cities et al. in Support of Petition for Rehearing ("LCC Brief I") at 5-6, 9-10; Brief of League of California Cities et al. in Support of City of Goleta on Rehearing En Banc ("LCC Brief II") at 8-9.

Williamson County itself supports this view. The Supreme Court there held that no Fifth Amendment takings claim can arise until the state has denied compensation for an alleged taking, because the Fifth Amendment proscribes only *uncompensated* takings.

Molly Dwyer, Clerk
May 21, 2010
Page 2

See 473 U.S. at 194-95; *see also* LCC Brief II at 5-7. Likewise, in *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 341 (2005), the Supreme Court held that the plaintiffs had not properly invoked the district court's jurisdiction because their Fifth Amendment takings claims were unripe under *Williamson County*. *Id.* (citing *Allen v. McCurry*, 449 U.S. 90, 101 n.17 (1980)); *see* LCC Brief I at 7-8.

The panel, parties, and amici here all have addressed the application of *Williamson County*. *See, e.g.*, LCC Brief I at 4-10; LCC Brief II at 4-17. To secure uniformity in its decisions, this Court should disapprove the minority view reflected in *Adams Bros.* and clarify that the state compensation requirement is jurisdictional, not prudential.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

s/ Fran M. Layton

Fran M. Layton

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 21, 2010.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that three of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

R. S. Radford
PACIFIC LEGAL FOUNDATION
3900 Lennane Drive
Sacramento, CA 95834

Sunny K. Soltani
ALESHIRE AND WYNDER, LLP
Suite 400
18881 Von Karman Avenue
Tower 17
Irvine, CA 92612

William W. Wynder
ALESHIRE AND WYNDER, LLP
Suite 400
18881 Von Karman Avenue
Tower 17
Irvine, CA 92612

s/Cynthia Jawad