

Introduced by Senator Machado

February 21, 2002

An act to add Section 1240.060 to the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1616, as introduced, Machado. Eminent domain: agricultural, open space, and conservation lands.

The Eminent Domain Law provides that the power of eminent domain may be exercised only to acquire property for a public use, and that this power may only be exercised by a person so authorized by statute. Existing law permits a public entity to use eminent domain only when (1) public interest and necessity require the project, (2) the project is planned or located in the manner that is most compatible with the greatest public good and the least private injury, and (3) the property is necessary for the project

This bill would prohibit taking by eminent domain property that is dedicated or restricted to agricultural, open space, or conservation, as defined, unless the public entity makes a specified finding, supported by substantial evidence in the record.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1240.060 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1240.060. (a) A public entity may not acquire by eminent
- 4 domain property that is dedicated or restricted to agricultural, open

1 space, or conservation use unless the public entity finds, based on
2 substantial evidence in the record, each of the following:

3 (1) The acquisition is for a land use other than agricultural,
4 open space, or conservation use that is consistent with the general
5 plan of the city or county in which the property is located.

6 (2) The acquisition and proposed subsequent use of the
7 property is not likely to result in the removal of additional adjacent
8 property from agricultural, open space, or conservation uses.

9 (3) The acquisition and proposed subsequent use of the
10 property will not result in discontinuous patterns of urban
11 development.

12 (4) That there is no proximate property that is both available
13 and suitable for the proposed subsequent use.

14 (b) As used in this section:

15 (1) “Property that is dedicated or restricted to agricultural,
16 open space, or conservation use,” means property that is subject
17 to any of the following:

18 (A) An open-space easement entered into pursuant to the
19 Open-Space Easement Act of 1974 (Chapter 6.6 (commencing
20 with Section 51070) of Part 1 of Division 1 of the Government
21 Code).

22 (B) A contract entered into pursuant to the California Land
23 Conservation Act of 1965 (Chapter 7 (commencing with Section
24 51200) of Part 1 of Division 1 of the Government Code).

25 (C) A farmland security zone contract created pursuant to
26 Article 7 (commencing with Section 51296) of Chapter 7 of Part
27 1 of Division 1 of the Government Code.

28 (D) A conservation easement entered into pursuant to Chapter
29 4 (commencing with Section 815) of Title 2 of Part 2 of Division
30 2 of the Civil Code.

31 (E) An agricultural conservation easement entered into
32 pursuant to Chapter 4 (commencing with Section 10260) of
33 Division 10.2 of the Public Resources Code.

34 (2) “Proximate property” means property not dedicated or
35 restricted to agricultural, open space, or conservation use that is
36 sufficiently close to property that is so restricted that it can serve
37 as a practical alternative for the subsequent use that is proposed for
38 the restricted property.

39 (3) “Suitable for the proposed subsequent use” means that the
40 salient features of the proposed subsequent use can be served by



- 1 property not restricted to agricultural, open space, or conservation
- 2 use. The nonrestricted property may be a single parcel or may be
- 3 a combination of contiguous or discontinuous parcels.

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