

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2055**

**Introduced by Assembly Member Wolk**

February 17, 2004

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An act to amend ~~Section 65563 of~~ Sections 65302, 65560, 65561, 65562, 65564, 65566, and 65567 of, and to add Section 65565 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2055, as amended, Wolk. ~~Open-space plan—Open space element.~~

Existing law requires every city and county, ~~on or before December 31, 1973,~~ to prepare, adopt, and submit to the Secretary of the Resources Agency a local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its jurisdiction ~~amend a general plan stating development policies and including specified elements, including a conservation element and an open space element. Existing law provides that no building permit may be issued, no subdivision map approved and no open-space zoning ordinance adopted unless the proposed construction, subdivision, or ordinance is consistent with the local open-space plan.~~

This bill would ~~require the open-space plan to include consideration of the goals and policies included in the State's Environmental Goals and Policy Report~~ provide that the conservation element may include the conservation of agricultural lands. The bill would provide that the open space element is the component of a county or city general plan adopted by the legislative plan, as specified, and would provide subjects

that may be included in the open space element. The bill instead would provide that no building permit may be issued, no subdivision approved, no services or infrastructure constructed or extended and no open space ordinance adopted unless the proposed construction, extension, subdivision, or ordinance is consistent with the local open space element. The bill would make other technical, nonsubstantive changes. The bill would also delete certain obsolete references. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. Section 65563 of the Government Code is
- 2 amended to read:
- 3 65563. A city, county, or city and county shall prepare, adopt
- 4 and submit to the Secretary of the Resources Agency a local
- 5 open space plan for the comprehensive and long range
- 6 preservation and conservation of open space land within its
- 7 jurisdiction that includes, but is not limited to, the following:
- 8 (a) The officially adopted goals and policies that will guide the
- 9 preparation and implementation of the open space plan.
- 10 (b) A program for orderly completion and adoption of the
- 11 open space plan, including a description of the methods by which
- 12 open space resources will be inventoried and conservation
- 13 measures determined.



1 ~~(c) Consideration of the goals and policies included in the~~  
2 ~~State's Environmental Goals and Policy Report that is required~~  
3 ~~pursuant to Section 65041.~~

4 ~~SEC. 2. Notwithstanding Section 17610 of the Government~~  
5 ~~Code, if the Commission on State Mandates determines that this~~  
6 ~~act contains costs mandated by the state, reimbursement to local~~  
7 ~~agencies and school districts for those costs shall be made pursuant~~  
8 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~  
9 ~~2 of the Government Code. If the statewide cost of the claim for~~  
10 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~  
11 ~~reimbursement shall be made from the State Mandates Claims~~  
12 ~~Fund.~~

13 *SECTION 1. Section 65302 of the Government Code is*  
14 *amended to read:*

15 65302. The general plan shall consist of a statement of  
16 development policies and shall include a diagram or diagrams and  
17 text setting forth objectives, principles, standards, and plan  
18 proposals. The plan shall include the following elements:

19 (a) A land use element that designates the proposed general  
20 distribution and general location and extent of the uses of the land  
21 for housing, business, industry, open space, including agriculture,  
22 natural resources, recreation, and enjoyment of scenic beauty,  
23 education, public buildings and grounds, solid and liquid waste  
24 disposal facilities, and other categories of public and private uses  
25 of land. The land use element shall include a statement of the  
26 standards of population density and building intensity  
27 recommended for the various districts and other territory covered  
28 by the plan. The land use element shall identify areas covered by  
29 the plan ~~which~~ *that* are subject to flooding and shall be reviewed  
30 annually with respect to those areas. The land use element shall  
31 also do both of the following:

32 (1) Designate in a land use category that provides for timber  
33 production those parcels of real property zoned for timberland  
34 production pursuant to the California Timberland Productivity  
35 Act of 1982, Chapter 6.7 (commencing with Section 51100) of  
36 Part 1 of Division 1 of Title 5.

37 (2) Consider the impact of new growth on military readiness  
38 activities carried out on military bases, installations, and operating  
39 and training areas, when proposing zoning ordinances or  
40 designating land uses covered by the general plan for land, or other



1 territory adjacent to military facilities, or underlying designated  
2 military aviation routes and airspace.

3 (A) In determining the impact of new growth on military  
4 readiness activities, information provided by military facilities  
5 shall be considered. Cities and counties shall address military  
6 impacts based on information that the military provides.

7 (B) The following definitions govern this paragraph:

8 (i) “Military readiness activities” mean all of the following:

9 (I) Training, support, and operations that prepare the men and  
10 women of the military for combat.

11 (II) Operation, maintenance, and security of any military  
12 installation.

13 (III) Testing of military equipment, vehicles, weapons, and  
14 sensors for proper operation or suitability for combat use.

15 (ii) “Military installation” means a base, camp, post, station,  
16 yard, center, homeport facility for any ship, or other activity under  
17 the jurisdiction of the United States Department of Defense as  
18 defined in paragraph (1) of subsection (e) of Section 2687 of Title  
19 10 of the United States Code.

20 (b) A circulation element consisting of the general location and  
21 extent of existing and proposed major thoroughfares,  
22 transportation routes, terminals, any military airports and ports,  
23 and other local public utilities and facilities, all correlated with the  
24 land use element of the plan.

25 (c) A housing element as provided in Article 10.6  
26 (commencing with Section 65580).

27 (d) A conservation element for the conservation, development,  
28 and utilization of natural resources including water and its  
29 hydraulic force, forests, soils, rivers and other waters, harbors,  
30 fisheries, wildlife, minerals, and other natural resources. The  
31 conservation element shall consider the effect of development  
32 within the jurisdiction, as described in the land use element, on  
33 natural resources located on public lands, including military  
34 installations. That portion of the conservation element including  
35 waters shall be developed in coordination with any countywide  
36 water agency and with all district and city agencies that have  
37 developed, served, controlled or conserved water for any purpose  
38 for the county or city for which the plan is prepared. Coordination  
39 shall include the discussion and evaluation of any water supply and  
40 demand information described in Section 65352.5, if that



1 information has been submitted by the water agency to the city or  
2 county. The conservation element may also cover the following:

- 3 (1) The reclamation of land and waters.
- 4 (2) Prevention and control of the pollution of streams and other  
5 waters.
- 6 (3) Regulation of the use of land in stream channels and other  
7 areas required for the accomplishment of the conservation plan.
- 8 (4) Prevention, control, and correction of the erosion of soils,  
9 beaches, and shores.
- 10 (5) Protection of watersheds.
- 11 (6) The location, quantity and quality of the rock, sand and  
12 gravel resources.
- 13 (7) Flood control.
- 14 (8) *Conservation of agricultural lands.*

15 The conservation element shall be prepared and adopted no later  
16 than December 31, 1973.

17 (e) An ~~open-space~~ *open space* element as provided in Article  
18 10.5 (commencing with Section 65560).

19 (f) A noise element which shall identify and appraise noise  
20 problems in the community. The noise element shall recognize the  
21 guidelines established by the Office of Noise Control in the State  
22 Department of Health Services and shall analyze and quantify, to  
23 the extent practicable, as determined by the legislative body,  
24 current and projected noise levels for all of the following sources:

- 25 (1) Highways and freeways.
- 26 (2) Primary arterials and major local streets.
- 27 (3) Passenger and freight on-line railroad operations and  
28 ground rapid transit systems.
- 29 (4) Commercial, general aviation, heliport, helistop, and  
30 military airport operations, aircraft overflights, jet engine test  
31 stands, and all other ground facilities and maintenance functions  
32 related to airport operation.
- 33 (5) Local industrial plants, including, but not limited to,  
34 railroad classification yards.
- 35 (6) Other ground stationary noise sources, including, but not  
36 limited to, military installations, identified by local agencies as  
37 contributing to the community noise environment.

38 Noise contours shall be shown for all of these sources and stated  
39 in terms of community noise equivalent level (CNEL) or day-night  
40 average level ( $L_{dn}$ ). The noise contours shall be prepared on the



1 basis of noise monitoring or following generally accepted noise  
2 modeling techniques for the various sources identified in  
3 paragraphs (1) to (6), inclusive.

4 The noise contours shall be used as a guide for establishing a  
5 pattern of land uses in the land use element that minimizes the  
6 exposure of community residents to excessive noise.

7 The noise element shall include implementation measures and  
8 possible solutions that address existing and foreseeable noise  
9 problems, if any. The adopted noise element shall serve as a  
10 guideline for compliance with the state’s noise insulation  
11 standards.

12 (g) A safety element for the protection of the community from  
13 any unreasonable risks associated with the effects of seismically  
14 induced surface rupture, ground shaking, ground failure, tsunami,  
15 seiche, and dam failure; slope instability leading to mudslides and  
16 landslides; subsidence, liquefaction and other seismic hazards  
17 identified pursuant to Chapter 7.8 (commencing with Section  
18 2690) of the Public Resources Code, and other geologic hazards  
19 known to the legislative body; flooding; and wild land and urban  
20 fires. The safety element shall include mapping of known seismic  
21 and other geologic hazards. It shall also address evacuation routes,  
22 military installations, peakload water supply requirements, and  
23 minimum road widths and clearances around structures, as those  
24 items relate to identified fire and geologic hazards. Prior to the  
25 periodic review of its general plan and prior to preparing or  
26 revising its safety element, each city and county shall consult the  
27 Division of Mines and Geology of the Department of Conservation  
28 and the Office of Emergency Services for the purpose of including  
29 information known by and available to the department and the  
30 office required by this subdivision.

31 To the extent that a county’s safety element is sufficiently  
32 detailed and contains appropriate policies and programs for  
33 adoption by a city, a city may adopt that portion of the county’s  
34 safety element that pertains to the city’s planning area in  
35 satisfaction of the requirement imposed by this subdivision.

36 At least 45 days prior to adoption or amendment of the safety  
37 element, each county and city shall submit to the Division of Mines  
38 and Geology of the Department of Conservation one copy of a  
39 draft of the safety element or amendment and any technical studies  
40 used for developing the safety element. The division may review



1 drafts submitted to it to determine whether they incorporate known  
2 seismic and other geologic hazard information, and report its  
3 findings to the planning agency within 30 days of receipt of the  
4 draft of the safety element or amendment pursuant to this  
5 subdivision. The legislative body shall consider the division's  
6 findings prior to final adoption of the safety element or  
7 amendment unless the division's findings are not available within  
8 the above prescribed time limits or unless the division has  
9 indicated to the city or county that the division will not review the  
10 safety element. If the division's findings are not available within  
11 those prescribed time limits, the legislative body may take the  
12 division's findings into consideration at the time it considers future  
13 amendments to the safety element. Each county and city shall  
14 provide the division with a copy of its adopted safety element or  
15 amendments. The division may review adopted safety elements or  
16 amendments and report its findings. All findings made by the  
17 division shall be advisory to the planning agency and legislative  
18 body.

19 *SEC. 2. Section 65560 of the Government Code is amended to*  
20 *read:*

21 65560. (a) ~~“Local open space plan” is the open space~~  
22 ~~element of a county or city general plan adopted by the board or~~  
23 ~~council, either as the local open space plan or as the interim local~~  
24 ~~open space plan adopted. The open space element is the component~~  
25 *of a county or city general plan adopted by the legislative body*  
26 *pursuant to Section 65563.*

27 (b) ~~“Open space~~ *“Open space land”* is any parcel or area of  
28 land or water that is essentially unimproved and devoted to an  
29 ~~open space~~ *open space* use as defined in this section, and that is  
30 designated on a local, regional or state ~~open space~~ *open space* plan  
31 as any of the following:

32 (1) Open space for the preservation of natural resources  
33 including, but not limited to, areas required for the preservation of  
34 plant and animal life, including habitat for fish and wildlife  
35 species; areas required for ecologic and other scientific study  
36 purposes; rivers, streams, bays and estuaries; areas adjacent to  
37 military installations, military training routes, and restricted  
38 airspace that can provide additional buffer zones to military  
39 activities and complement the resource values of the military



1 lands; and coastal beaches, lakeshores, banks of rivers and  
2 streams, and watershed lands.

3 (2) Open space used for the managed production of resources,  
4 including but not limited to, forest lands, rangeland, agricultural  
5 lands and areas of economic importance for the production of food  
6 or fiber; areas required for recharge of ground water basins; bays,  
7 estuaries, marshes, rivers and streams which are important for the  
8 management of commercial fisheries; and areas containing major  
9 mineral deposits, including those in short supply.

10 (3) Open space for outdoor recreation, including but not  
11 limited to, areas of outstanding scenic, historic and cultural value;  
12 areas particularly suited for park and recreation purposes,  
13 including access to lakeshores, beaches, and rivers and streams;  
14 and areas which serve as links between major recreation and  
15 ~~open-space~~ *open space* reservations, including utility easements,  
16 banks of rivers and streams, trails, and scenic highway corridors.

17 (4) Open space for public health and safety, including, but not  
18 limited to, areas which require special management or regulation  
19 because of hazardous or special conditions such as earthquake  
20 fault zones, unstable soil areas, flood plains, watersheds, areas  
21 presenting high fire risks, areas required for the protection of water  
22 quality and water reservoirs and areas required for the protection  
23 and enhancement of air quality.

24 *SEC. 3. Section 65561 of the Government Code is amended to*  
25 *read:*

26 65561. The Legislature finds and declares as follows:

27 (a) ~~That the~~ *The* preservation of ~~open-space~~ *open space* land,  
28 as defined in this article, is necessary not only for the maintenance  
29 of the economy of the state, but also for the assurance of the  
30 continued availability of land for the production of food and fiber,  
31 for the enjoyment of scenic beauty, for recreation and for the use  
32 of natural resources.

33 (b) ~~That—discouraging—~~ *Discouraging* premature and  
34 unnecessary conversion of ~~open-space~~ *open space* land to urban  
35 uses is a matter of public interest and will be of benefit to urban  
36 dwellers because it will discourage noncontiguous development  
37 patterns which unnecessarily increase the costs of community  
38 services to community residents.

39 (c) ~~That the~~ *The* anticipated increase in the population of the  
40 state demands that cities, counties, and the state at the earliest





1 possible date make definite plans for the preservation of valuable  
2 ~~open-space~~ *open space* land and take positive action to carry out  
3 such plans by the adoption and strict administration of laws,  
4 ordinances, rules and regulations as authorized by this chapter or  
5 by other appropriate methods.

6 (d) ~~That in~~ *In* order to assure that the interests of all its people  
7 are met in the orderly growth and development of the state and the  
8 preservation and conservation of its resources, it is necessary to  
9 provide for the development ~~by the state, regional agencies,~~  
10 ~~counties and cities, including charter cities, of statewide~~  
11 ~~coordinated plans~~ *open space elements* for the conservation and  
12 preservation of ~~open-space~~ *open space* lands.

13 (e) ~~That for~~ *For* these reasons this article is necessary for the  
14 promotion of the general welfare and for the protection of the  
15 public interest in ~~open-space~~ *open space* land.

16 *SEC. 4. Section 65562 of the Government Code is amended to*  
17 *read:*

18 65562. It is the intent of the Legislature in enacting this article  
19 *to do all of the following:*

20 (a) ~~To assure~~ *Assure* that cities and counties, *local agency*  
21 *formation commissions, and the state* recognize that ~~open-space~~  
22 *open space* land is a limited and valuable resource ~~which that~~ must  
23 be conserved *for ecological and economic reasons* wherever  
24 possible.

25 (b) ~~To assure that every city and county will prepare and carry~~  
26 ~~out open-space plans which, along with state and regional~~  
27 ~~open-space plans, will accomplish the objectives of a~~  
28 ~~comprehensive open-space program.~~ *Ensure long-term*  
29 *preservation of natural resources for plant and animal life, and*  
30 *promote sustainable ecosystems that protect and enhance the*  
31 *quality of life within the state.*

32 (c) *Encourage the managed production of resources to ensure*  
33 *that the long-term viability of agricultural land and other*  
34 *resource-based economic development are recognized in the plans*  
35 *and actions of state and local entities, and that the quality and*  
36 *diversity of agricultural commodities produced within the state are*  
37 *safeguarded by protecting the land resources upon which these*  
38 *resources rely.*



1 (d) Provide adequate opportunities for passive and active  
 2 outdoor recreation areas that include urban parks, to promote the  
 3 health and general welfare of the citizenry.

4 (e) Identify special areas that require special management for  
 5 public health and safety to keep urban uses out of harms way and  
 6 minimize costs of emergency response.

7 (f) Minimize or avoid the premature or unnecessary loss of  
 8 open space, while encouraging opportunities that are compatible  
 9 with or complementary to other existing or planned uses or  
 10 infrastructure.

11 SEC. 5. Section 65564 of the Government Code is amended to  
 12 read:

13 65564. Every local ~~open-space~~ open space plan shall contain  
 14 an action program consisting of specific programs ~~which~~ that the  
 15 legislative body intends to pursue in implementing its ~~open-space~~  
 16 open space plan.

17 SEC. 6. Section 65565 is added to the Government Code, to  
 18 read:

19 65565. The open space element may include, but is not  
 20 limited to, any of the following:

21 (a) A land inventory identifying the type and use of the  
 22 following:

23 (1) Land under a natural communities conservation program or  
 24 other easement for the purposes of ecosystem protection, buffers  
 25 for military installations, and sensitive lands that provide clean air  
 26 and water.

27 (2) Resource-based managed lands including areas for  
 28 agriculture and timber production, and mining, using existing data  
 29 submitted pursuant to Section 65570, including agricultural  
 30 preserves, timberland production zones, Williamson Act  
 31 contracted land, including Farmland Security Zones, as identified  
 32 in Chapter 7 (commencing with Section 51200) of Part 1 of  
 33 Division 1 of Title 5.

34 (3) Lands designated for passive and active outdoor recreation,  
 35 that include urban parks where appropriate, for the purpose of  
 36 providing greater access to recreation and open space for all  
 37 citizens.

38 (4) Land that, for reasons of public health and safety, requires  
 39 special management to avoid placing urban uses in areas subject  
 40 to natural hazards including, but not limited to, flood, fire,



1 landslide, and seismic activities that increase emergency response  
2 costs.

3 (b) Goals, objectives, and policies that support the long-term  
4 conservation of agricultural and other open space lands, and  
5 appropriate implementation measures including, but not limited  
6 to, measures that seek to avoid or minimize conflicts with  
7 authorized urban uses on neighboring or nearby lands, and  
8 preserve opportunities for food security through local food  
9 production that sustains family farming operations.

10 (c) Goals, objectives, and policies that support and encourage  
11 continuation or initiation of agricultural and other open space use,  
12 and opportunities, where appropriate and compatible, and  
13 appropriate implementation measures, including, but not limited  
14 to, provision of incentives, removal of disincentives, design  
15 solutions, and conjunctive uses.

16 (d) To implement Section 65300.7 and to accommodate the  
17 diversity of circumstances within a jurisdictional boundary, the  
18 element may contain differing measures for different areas and for  
19 differing types of open space uses, including, but not limit to,  
20 conjunctive, or transitional uses, and different physical land uses.

21 *SEC. 7. Section 65566 of the Government Code is amended to*  
22 *read:*

23 65566. Any action by a county or city by which ~~open-space~~  
24 *open space* land or any interest therein is acquired or disposed of  
25 or its use restricted or regulated, whether or not pursuant to this  
26 part, must be consistent with the local ~~open-space~~ *open space* plan.

27 *SEC. 8. Section 65567 of the Government Code is amended to*  
28 *read:*

29 65567. No building permit may be issued, no subdivision ~~map~~  
30 approved, *no services or infrastructure constructed or extended*  
31 and no ~~open-space~~ *open space* zoning ordinance adopted, unless  
32 the proposed construction, *extension*, subdivision, or ordinance is  
33 consistent with the local ~~open-space plan~~ *open space element*.

