

AMENDED IN ASSEMBLY JUNE 14, 2004
AMENDED IN ASSEMBLY JUNE 10, 2004
AMENDED IN ASSEMBLY SEPTEMBER 12, 2003
AMENDED IN ASSEMBLY SEPTEMBER 5, 2003
AMENDED IN ASSEMBLY AUGUST 25, 2003
AMENDED IN ASSEMBLY AUGUST 18, 2003
AMENDED IN ASSEMBLY JULY 9, 2003

SENATE BILL

No. 18

Introduced by Senators Burton, Chesbro, and Ducheny

December 2, 2002

An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65092, 65351, 65560 of, and to add Sections 65351.1, 65351.2, and 65562.5 to the Government Code, relating to traditional tribal cultural places.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Burton. Traditional tribal cultural places.

(1) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property.

Existing law authorizes only specified entities or organizations, including certain tax-exempt nonprofit organizations, and local

government entities to acquire and hold conservation easements, if those entities and organizations meet certain conditions.

This bill would include a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe, band, or nation that is listed on a specified catalog maintained by the Native American Heritage Commission, among those entities and organizations that may acquire and hold conservation easements.

(2) Existing law requires the Office of Planning and Research to implement various long range planning and research policies and goals that are intended to shape statewide development patterns and significantly influence the quality of the state's environment and, in connection with those responsibilities, to adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans.

This bill would require that the guidelines contain advice for consulting with California Native American tribes for the preservation of, *or the mitigation of impacts to*, specified Native American places, features, and objects, and prescribe procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects. The bill would define a California Native American tribe as a "person" for purposes of provisions relating to public notice of hearings relating to local planning issues.

(3) Existing law requires a planning agency during the preparation or amendment of the general plan, to provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

This bill would require the planning agency to also conduct consultation with California Native American tribes. The bill would require that, prior to the adoption or amendment of a city or county's general plan, the city or county conduct consultations with California Native American tribes ~~or bands~~ for the purpose of preserving specified places, features, and objects that are located within the city or county's jurisdiction. The bill would define the term "consultation" for purposes of those provisions. By imposing new duties on local governments with respect to consultations regarding the protection and preservation of California Native American historical, cultural, and sacred sites, the bill would impose a state-mandated local program.



This bill would include open space for the protection of California Native American historical, cultural, and sacred sites within the definition of “local open-space plan” for purposes of provisions governing the preparation of the open-space element of a city and county general plan.

(4) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Current state law provides a limited measure of protection
4 for California Native American prehistoric, archaeological,
5 cultural, spiritual, and ceremonial places.

6 (2) Existing law provides limited protection for Native
7 American sanctified cemeteries, places of worship, religious,
8 ceremonial sites, sacred shrines, historic or prehistoric ruins,
9 burial grounds, archaeological or historic sites, inscriptions made
10 by Native Americans at those sites, archaeological or historic
11 Native American rock art, and archaeological or historic features
12 of Native American historic, cultural, and sacred sites.

13 (3) Native American places of prehistoric, archaeological,
14 cultural, spiritual, and ceremonial importance reflect the tribes’
15 continuing cultural ties to the land and to their traditional
16 heritages.



1 (4) Many of these historical, cultural, and religious sites are not
2 located within the current boundaries of California Native
3 American reservation and rancherias, and therefore are not
4 covered by the protectionist policies of tribal governments.

5 (b) In recognition of California Native American tribal
6 sovereignty and the unique relationship between California local
7 governments and California tribal governments, it is the intent of
8 the Legislature, in enacting this act, to accomplish all of the
9 following:

10 (1) Recognize that California Native American prehistoric,
11 archaeological, cultural, spiritual, and ceremonial places are
12 essential elements in tribal cultural traditions, heritages, and
13 identities.

14 (2) Establish meaningful consultations between California
15 Native American tribal governments and California local
16 governments at the earliest possible point in the local government
17 land use planning process so that these places can be identified and
18 considered.

19 (3) Establish government-to-government consultations
20 regarding potential means to preserve those places, determine the
21 level of necessary confidentiality of their specific location, and
22 develop proper treatment and management plans.

23 (4) Ensure that local and tribal governments have information
24 to avoid potential conflicts over the preservation of California
25 Native American prehistoric, archaeological, cultural, spiritual,
26 and ceremonial places before development entitlements vest and
27 investments are made.

28 (5) Enable California Native American tribes to manage and
29 act as caretakers of California Native American prehistoric,
30 archaeological, cultural, spiritual, and ceremonial places.

31 (6) Encourage local governments to consider preservation of
32 California Native American prehistoric, archaeological, cultural,
33 spiritual, and ceremonial places in their land use planning
34 processes by placing them in open space.

35 (7) Encourage local governments to consider cultural aspect of
36 California Native American prehistoric, archaeological, cultural,
37 spiritual, and ceremonial places early in land use planning
38 processes.

39 SEC. 2. Section 815.3 of the Civil Code is amended to read:



1 815.3. Only the following entities or organizations may
2 acquire and hold conservation easements:

3 (a) Tax-exempt nonprofit organization qualified under Section
4 501(c)(3) of the Internal Revenue Code and qualified to do
5 business in this state which has as its primary purpose the
6 preservation, protection, or enhancement of land in its natural,
7 scenic, historical, agricultural, forested, or open-space condition
8 or use.

9 (b) The state or any city, county, city and county, district, or
10 other state or local governmental entity, if otherwise authorized to
11 acquire and hold title to real property and if the conservation
12 easement is voluntarily conveyed. No local governmental entity
13 may condition the issuance of an entitlement for use on the
14 applicant's granting of a conservation easement pursuant to this
15 chapter.

16 (c) A federally recognized California Native American tribe or
17 a nonfederally recognized California Native American tribe, band,
18 or nation that is listed on the catalog of places of special religious
19 or social significance to Native Americans maintained by the
20 Native American Heritage Commission pursuant to subdivision
21 (a) of Section 5097.94 of the Public Resources Code.

22 SEC. 3. Section 65040.2 of the Government Code is amended
23 to read:

24 65040.2. (a) In connection with its responsibilities under
25 subdivision (l) of Section 65040, the office shall develop and adopt
26 guidelines for the preparation and content of the mandatory
27 elements required in city and county general plans by Article 5
28 (commencing with Section 65300) of Chapter 3. For purposes of
29 this section, the guidelines prepared pursuant to Section 50459 of
30 the Health and Safety Code shall be the guidelines for the housing
31 element required by Section 65302. In the event that additional
32 elements are hereafter required in city and county general plans by
33 Article 5 (commencing with Section 65300) of Chapter 3, the
34 office shall adopt guidelines for those elements within six months
35 of the effective date of the legislation requiring those additional
36 elements.

37 (b) The office may request from each state department and
38 agency, as it deems appropriate, and the department or agency
39 shall provide, technical assistance in readopting, amending, or
40 repealing the guidelines.



1 (c) The guidelines shall be advisory to each city and county in
2 order to provide assistance in preparing and maintaining their
3 respective general plans.

4 (d) The guidelines shall contain the guidelines for addressing
5 environmental justice matters developed pursuant to Section
6 65040.12.

7 (e) The guidelines shall contain advice including
8 recommendations for best practices to allow for collaborative land
9 use planning of adjacent civilian and military lands and facilities.
10 The guidelines shall encourage enhanced land use compatibility
11 between civilian lands and any adjacent or nearby military
12 facilities through the examination of potential impacts upon one
13 another.

14 (f) The guidelines shall contain advice for addressing the
15 effects of civilian development on military readiness activities
16 carried out on all of the following:

17 (1) Military installations.

18 (2) Military operating areas.

19 (3) Military training areas.

20 (4) Military training routes.

21 (5) Military airspace.

22 (6) Other territory adjacent to those installations and areas.

23 (g) The guidelines shall contain advice for consulting with
24 California Native American tribes for the preservation of, *or the*
25 *mitigation of impacts to*, places, features, and objects described in
26 Sections 5097.9 and 5097.995 of the Public Resources Code, and
27 shall prescribe procedures for continuing to protect the
28 confidentiality of information concerning the specific identity,
29 location, character, and use of those places, features, and objects.

30 (h) The office shall provide for regular review and revision of
31 the guidelines established pursuant to this section.

32 SEC. 4. Section 65092 of the Government Code is amended
33 to read:

34 65092. (a) When a provision of this title requires notice of a
35 public hearing to be given pursuant to Section 65090 or 65091, the
36 notice shall also be mailed or delivered at least 10 days prior to the
37 hearing to any person who has filed a written request for notice
38 with either the clerk of the governing body or with any other
39 person designated by the governing body to receive these requests.
40 The local agency may charge a fee which is reasonably related to



1 the costs of providing this service and the local agency may require
2 each request to be annually renewed.

3 (b) As used in this chapter “person” includes a California
4 Native American tribe.

5 SEC. 5. Section 65351 of the Government Code is amended
6 to read:

7 65351. During the preparation or amendment of the general
8 plan, the planning agency shall provide opportunities for the
9 involvement of citizens, public agencies, public utility companies,
10 and civic, education, and other community groups, through public
11 hearings and any other means the city or county deems
12 appropriate. The planning agency shall also conduct consultations
13 with California Native American tribes.

14 SEC. 6. Section 65351.1 is added to the Government Code, to
15 read:

16 65351.1. (a) Prior to the adoption or amendment of a city or
17 county’s general plan, the city or county shall conduct
18 consultations with California Native American tribes ~~or bands~~ for
19 the purpose of preserving places, features, and objects described
20 in Sections 5097.9 and 5097.995 of the Public Resources Code that
21 are located within the city or county’s jurisdiction.

22 (b) Consistent with the guidelines developed and adopted by
23 the Office of Planning and Research pursuant to Section 65040.2,
24 the city or county shall protect the confidentiality of information
25 concerning the specific identity, location, character, and use of
26 those places, features, and objects.

27 SEC. 7. Section 65351.2 is added to the Government Code, to
28 read:

29 65351.2. For purposes of Section 65351, 65351.1, and
30 65562.5, “consultation” means the meaningful and timely
31 process of seeking, discussing, and considering carefully the views
32 of others, in a manner that is cognizant of all parties’ cultural
33 values and, where feasible, seeking agreement. Consultation
34 between government agencies and Native American tribes shall be
35 conducted in a way that is mutually respectful of each party’s
36 sovereignty. Consultation shall also recognize the tribes’ potential
37 needs for confidentiality with respect to places that have
38 traditional tribal cultural significance.

39 SEC. 8. Section 65560 of the Government Code is amended
40 to read:



1 65560. (a) “Local open-space plan” is the open-space
2 element of a county or city general plan adopted by the board or
3 council, either as the local open-space plan or as the interim local
4 open-space plan adopted pursuant to Section 65563.

5 (b) “Open-space land” is any parcel or area of land or water
6 that is essentially unimproved and devoted to an open-space use
7 as defined in this section, and that is designated on a local, regional
8 or state open-space plan as any of the following:

9 (1) Open space for the preservation of natural resources
10 including, but not limited to, areas required for the preservation of
11 plant and animal life, including habitat for fish and wildlife
12 species; areas required for ecologic and other scientific study
13 purposes; rivers, streams, bays and estuaries; areas adjacent to
14 military installations, military training routes, and restricted
15 airspace that can provide additional buffer zones to military
16 activities and complement the resource values of the military
17 lands; and coastal beaches, lakeshores, banks of rivers and
18 streams, and watershed lands.

19 (2) Open space used for the managed production of resources,
20 including but not limited to, forest lands, rangeland, agricultural
21 lands and areas of economic importance for the production of food
22 or fiber; areas required for recharge of ground water basins; bays,
23 estuaries, marshes, rivers and streams which are important for the
24 management of commercial fisheries; and areas containing major
25 mineral deposits, including those in short supply.

26 (3) Open space for outdoor recreation, including but not
27 limited to, areas of outstanding scenic, historic and cultural value;
28 areas particularly suited for park and recreation purposes,
29 including access to lakeshores, beaches, and rivers and streams;
30 and areas which serve as links between major recreation and
31 open-space reservations, including utility easements, banks of
32 rivers and streams, trails, and scenic highway corridors.

33 (4) Open space for public health and safety, including, but not
34 limited to, areas which require special management or regulation
35 because of hazardous or special conditions such as earthquake
36 fault zones, unstable soil areas, flood plains, watersheds, areas
37 presenting high fire risks, areas required for the protection of water
38 quality and water reservoirs and areas required for the protection
39 and enhancement of air quality.



1 (5) Open space for the protection of places, features, and
2 objects described in Sections 5097.9 and 5097.995 of the Public
3 Resources Code.

4 SEC. 9. Section 65562.5 is added to the Government Code, to
5 read:

6 65562.5. If land designated, or proposed to be designated as
7 ~~openspace~~ *open space* contains a place, feature, or object
8 described in Sections 5097.9 and 5097.995 of the Public
9 Resources Code, the city or county in which the place, feature, or
10 object is located shall conduct consultations with the California
11 Native American tribe, if any, that has given notice pursuant to
12 Section 65092 for the purpose of determining the level of
13 confidentiality required to protect the specific identity, location,
14 character, or use of the place, feature, or object and for the purpose
15 of developing proper treatment of the place, feature, or object in
16 any corresponding management plan.

17 SEC. 10. No reimbursement is required by this act pursuant
18 to Section 6 of Article XIII B of the California Constitution for
19 certain costs that may be incurred by a local agency or school
20 district because in that regard this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.

26 However, notwithstanding Section 17610 of the Government
27 Code, if the Commission on State Mandates determines that this
28 act contains other costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code. If the statewide cost of the
32 claim for reimbursement does not exceed one million dollars
33 (\$1,000,000), reimbursement shall be made from the State
34 Mandates Claims Fund.



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2 CORRECTIONS
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4 Text — Page 9.
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