

AMENDED IN ASSEMBLY JULY 1, 2004
AMENDED IN ASSEMBLY JUNE 28, 2004
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, 65352, *and* 65560 of, and to add Sections 65352.3, 65352.4, 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 that is on the contact list maintained by the Native American Heritage Commission, among those entities and organizations that may acquire and hold conservation easements, as specified.

(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, by March 1, 2005, the guidelines contain advice, developed in consultation with the Native American Heritage Commission, for consulting with California Native American tribes for the preservation of, or the mitigation of impacts to, specified Native American places, features, and objects. The bill would also require those guidelines to address procedures for identifying the appropriate California Native American tribes ~~and~~, for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects, *and for facilitating voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects*. The bill would define a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission 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 on and after March 1, 2005, to refer the proposed action to California Native American tribes, as specified, and also provide opportunities for involvement of 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 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~~ *On and after March 1, 2005, 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:



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

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

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

15 (4) Many of these historical, cultural, and religious sites are not
16 located within the current boundaries of California Native
17 American reservations and rancherias, and therefore are not
18 covered by the protectionist policies of tribal governments.

19 (b) In recognition of California Native American tribal
20 sovereignty and the unique relationship between California local
21 governments and California tribal governments, it is the intent of
22 the Legislature, in enacting this act, to accomplish all of the
23 following:

24 (1) Recognize that California Native American prehistoric,
25 archaeological, cultural, spiritual, and ceremonial places are
26 essential elements in tribal cultural traditions, heritages, and
27 identities.

28 (2) Establish meaningful consultations between California
29 Native American tribal governments and California local
30 governments at the earliest possible point in the local government
31 land use planning process so that these places can be identified and
32 considered.

33 (3) Establish government-to-government consultations
34 regarding potential means to preserve those places, determine the
35 level of necessary confidentiality of their specific location, and
36 develop proper treatment and management plans.

37 (4) Ensure that local and tribal governments have information
38 available early in the land use planning process to avoid potential
39 conflicts over the preservation of California Native American



1 prehistoric, archaeological, cultural, spiritual, and ceremonial
2 places.

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

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

10 (7) Encourage local governments to consider the cultural
11 ~~aspect~~ *aspects* of California Native American prehistoric,
12 archaeological, cultural, spiritual, and ceremonial places early in
13 land use planning processes.

14 SEC. 2. Section 815.3 of the Civil Code is amended to read:
15 815.3. Only the following entities or organizations may
16 acquire and hold conservation easements:

17 (a) ~~Tax-exempt~~ *A tax-exempt* nonprofit organization qualified
18 under Section 501(c)(3) of the Internal Revenue Code and
19 qualified to do business in this state which has as its primary
20 purpose the preservation, protection, or enhancement of land in its
21 natural, scenic, historical, agricultural, forested, or open-space
22 condition or use.

23 (b) The state or any city, county, city and county, district, or
24 other state or local governmental entity, if otherwise authorized to
25 acquire and hold title to real property and if the conservation
26 easement is voluntarily conveyed. No local governmental entity
27 may condition the issuance of an entitlement for use on the
28 applicant's granting of a conservation easement pursuant to this
29 chapter.

30 (c) A federally recognized California Native American tribe or
31 a nonfederally recognized California Native American tribe that
32 is on the contact list maintained by the Native American Heritage
33 Commission to protect a California Native American prehistoric,
34 archaeological, cultural, spiritual, or ceremonial place, if the
35 conservation easement is voluntarily conveyed.

36 SEC. 3. Section 65040.2 of the Government Code is amended
37 to read:

38 65040.2. (a) In connection with its responsibilities under
39 subdivision (l) of Section 65040, the office shall develop and adopt
40 guidelines for the preparation and content of the mandatory



1 elements required in city and county general plans by Article 5
2 (commencing with Section 65300) of Chapter 3. For purposes of
3 this section, the guidelines prepared pursuant to Section 50459 of
4 the Health and Safety Code shall be the guidelines for the housing
5 element required by Section 65302. In the event that additional
6 elements are hereafter required in city and county general plans by
7 Article 5 (commencing with Section 65300) of Chapter 3, the
8 office shall adopt guidelines for those elements within six months
9 of the effective date of the legislation requiring those additional
10 elements.

11 (b) The office may request from each state department and
12 agency, as it deems appropriate, and the department or agency
13 shall provide, technical assistance in readopting, amending, or
14 repealing the guidelines.

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

18 (d) The guidelines shall contain the guidelines for addressing
19 environmental justice matters developed pursuant to Section
20 65040.12.

21 (e) The guidelines shall contain advice including
22 recommendations for best practices to allow for collaborative land
23 use planning of adjacent civilian and military lands and facilities.
24 The guidelines shall encourage enhanced land use compatibility
25 between civilian lands and any adjacent or nearby military
26 facilities through the examination of potential impacts upon one
27 another.

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

- 31 (1) Military installations.
- 32 (2) Military operating areas.
- 33 (3) Military training areas.
- 34 (4) Military training routes.
- 35 (5) Military airspace.
- 36 (6) Other territory adjacent to those installations and areas.

37 (g) By March 1, 2005, the guidelines shall contain advice,
38 developed in consultation with the Native American Heritage
39 Commission, for consulting with California Native American
40 tribes for all of the following:



1 (1) The preservation of, or the mitigation of impacts to, places,
2 features, and objects described in Sections 5097.9 and 5097.995
3 of the Public Resources Code.

4 (2) Procedures for identifying through the Native American
5 Heritage Commission the appropriate California Native American
6 tribes.

7 (3) Procedures for continuing to protect the confidentiality of
8 information concerning the specific ~~identify~~ *identity*, location,
9 character, and use of those places, features, and objects.

10 (4) *Procedures to facilitate voluntary landowner participation*
11 *to preserve and protect the specific identity, location, character,*
12 *and use of those places, features, and objects.*

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

15 SEC. 4. Section 65092 of the Government Code is amended
16 to read:

17 65092. (a) When a provision of this title requires notice of a
18 public hearing to be given pursuant to Section 65090 or 65091, the
19 notice shall also be mailed or delivered at least 10 days prior to the
20 hearing to any person who has filed a written request for notice
21 with either the clerk of the governing body or with any other
22 person designated by the governing body to receive these requests.
23 The local agency may charge a fee which is reasonably related to
24 the costs of providing this service and the local agency may require
25 each request to be annually renewed.

26 (b) As used in this chapter, “person” includes a California
27 Native American tribe that is on the contact list maintained by the
28 Native American Heritage Commission.

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

31 65351. During the preparation or amendment of the general
32 plan, the planning agency shall provide opportunities for the
33 involvement of citizens California Native American Indian tribes,
34 public agencies, public utility companies, and civic, education,
35 and other community groups, through public hearings and any
36 other means the city or county deems appropriate.

37 SEC. 6. Section 65352 of the Government Code is amended
38 to read:



1 65352. (a) Prior to action by a legislative body to adopt or
2 substantially amend a general plan, the planning agency shall refer
3 the proposed action to all of the following entities:

4 (1) A city or county, within or abutting the area covered by the
5 proposal, and a special district that may be significantly affected
6 by the proposed action, as determined by the planning agency.

7 (2) An elementary, high school, or unified school district
8 within the area covered by the proposed action.

9 (3) The local agency formation commission.

10 (4) An areawide planning agency whose operations may be
11 significantly affected by the proposed action, as determined by the
12 planning agency.

13 (5) A federal agency if its operations or lands within its
14 jurisdiction may be significantly affected by the proposed action,
15 as determined by the planning agency.

16 (6) A public water system, as defined in Section 116275 of the
17 Health and Safety Code, with 3,000 or more service connections,
18 that serves water to customers within the area covered by the
19 proposal. The public water system shall have at least 45 days to
20 comment on the proposed plan, in accordance with subdivision
21 (b), and to provide the planning agency with the information set
22 forth in Section 65352.5.

23 (7) The Bay Area Air Quality Management District for a
24 proposed action within the boundaries of the district.

25 (8) On and after March 1, 2005, a California Native American
26 tribe, that is on the contact list maintained by the Native American
27 Heritage Commission, with traditional lands located within the
28 city or county's jurisdiction.

29 (b) Each entity receiving a proposed general plan or
30 amendment of a general plan pursuant to this section shall have 45
31 days from the date the referring agency mails it or delivers it in
32 which to comment unless a longer period is specified by the
33 planning agency.

34 (c) (1) This section is directory, not mandatory, and the failure
35 to refer a proposed action to the other entities specified in this
36 section does not affect the validity of the action, if adopted.

37 (2) To the extent that the requirements of this section conflict
38 with the requirements of Chapter 4.4 (commencing with Section
39 65919), the requirements of Chapter 4.4 shall prevail.



1 SEC. 7. Section 65352.3 is added to the Government Code, to
2 read:

3 65352.3. (a) (1) Prior to the adoption or any amendment of
4 a city or county's general plan, proposed on or after March 1, 2005,
5 the city or county shall ~~make a reasonable and good faith effort to~~
6 conduct consultations with California Native American tribes that
7 are on the contact list maintained by the Native American Heritage
8 Commission for the purpose of preserving or mitigating impacts
9 to places, features, and objects described in Sections 5097.9 and
10 5097.995 of the Public Resources Code that are located within the
11 city or county's jurisdiction.

12 (2) *From the date on which a California Native American tribe*
13 *is contacted by a city or county pursuant to this subdivision, the*
14 *tribe has 90 days in which to request a consultation, unless a*
15 *shorter timeframe has been agreed to by that tribe.*

16 (b) Consistent with the guidelines developed and adopted by
17 the Office of Planning and Research pursuant to Section 65040.2,
18 the city or county shall protect the confidentiality of information
19 concerning the specific identity, location, character, and use of
20 those places, features, and objects.

21 SEC. 8. Section 65352.4 is added to the Government Code, to
22 read:

23 65352.4. For purposes of Section 65351, 65352.3, and
24 65562.5, "consultation" means the meaningful and timely
25 process of seeking, discussing, and considering carefully the views
26 of others, in a manner that is cognizant of all parties' cultural
27 values and, where feasible, seeking agreement. Consultation
28 between government agencies and Native American tribes shall be
29 conducted in a way that is mutually respectful of each party's
30 sovereignty. Consultation shall also recognize the tribes' potential
31 needs for confidentiality with respect to places that have
32 traditional tribal cultural significance.

33 SEC. 9. Section 65560 of the Government Code is amended
34 to read:

35 65560. (a) "Local open-space plan" is the open-space
36 element of a county or city general plan adopted by the board or
37 council, either as the local open-space plan or as the interim local
38 open-space plan adopted pursuant to Section 65563.

39 (b) "Open-space land" is any parcel or area of land or water
40 that is essentially unimproved and devoted to an open-space use



1 as defined in this section, and that is designated on a local, regional
2 or state open-space plan as any of the following:

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

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

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

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

34 (5) Open space for the protection of places, features, and
35 objects described in Sections 5097.9 and 5097.995 of the Public
36 Resources Code.

37 SEC. 10. Section 65562.5 is added to the Government Code,
38 to read:

39 65562.5. *¶ On and after March 1, 2005, if land designated,*
40 *or proposed to be designated as open space, contains a place,*



1 feature, or object described in Sections 5097.9 and 5097.995 of the
2 Public Resources Code, the city or county in which the place,
3 feature, or object is located shall conduct consultations with the
4 California Native American tribe, if any, that has given notice
5 pursuant to Section 65092 for the purpose of determining the level
6 of confidentiality required to protect the specific identity, location,
7 character, or use of the place, feature, or object and for the purpose
8 of developing treatment with appropriate dignity of the place,
9 feature, or object in any corresponding management plan.

10 ~~SEC. 10.~~—

11 *SEC. 11.* No reimbursement is required by this act pursuant
12 to Section 6 of Article XIII B of the California Constitution for
13 certain costs that may be incurred by a local agency or school
14 district because in that regard this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

20 However, notwithstanding Section 17610 of the Government
21 Code, if the Commission on State Mandates determines that this
22 act contains other costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code. If the statewide cost of the
26 claim for reimbursement does not exceed one million dollars
27 (\$1,000,000), reimbursement shall be made from the State
28 Mandates Claims Fund.

