

Senate Bill No. 1501

Passed the Senate May 29, 2012

Secretary of the Senate

Passed the Assembly August 22, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 51051, 51053, 51054, 51055, 51059, 51084, and 51087 of, and to repeal Section 51052 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

SB 1501, Kehoe. Open-space easements.

(1) Existing law regulates the execution and acceptance of a grant of an open-space easement, as defined, that was entered into before January 1, 1975. The execution and acceptance of a grant of an open-space easement constitutes a dedication to the public of the open-space character of the lands for the term specified. Existing law provides that the easement and covenant run for a term of not less than 20 years. Existing law authorizes an open-space easement to contain a covenant against the extraction of natural resources or other activities that may destroy the unique physical and scenic characteristics of the land, as specified.

This bill would make technical, nonsubstantive changes to these provisions.

(2) The Open-Space Easement Act of 1974 authorizes any county or city that has an adopted open-space plan to accept or approve a grant of an open-space easement, as defined, on privately owned lands lying within the county or city in a specified manner for a term not less than 10 years. Existing law authorizes a grant of an open-space easement to be accepted only if the governing body, by resolution, makes specified findings, including a finding that the preservation of the land as open space is consistent with the general plan of the county or city and that it is important to the public for a specified purpose.

This bill would expand the purposes for which a governing body may approve a grant of an open-space easement, as specified.

(3) Existing law, the Open-Space Easement Act of 1974, requires the clerk of the governing board of a city or county, upon acceptance or approval of a grant of an open-space easement, as defined, to record the easement in the office of the county recorder and file a copy of the easement with the county assessor, as specified.

Existing law requires the county recorder in each county to develop and maintain, within the existing indexing system, a comprehensive index of conservation easements and notice of conservation easement on lands within that county.

This bill would require an easement accepted or approved pursuant to existing law to be recorded consistent with the existing indexing system maintained by a county recorder.

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

SECTION 1. Section 51051 of the Government Code is amended to read:

51051. As used in this chapter, the following terms have the following meanings:

(a) “Grant of an open-space easement” means a grant by an instrument whereby the owner relinquishes to the public, either in perpetuity or for a term of years, the right to construct improvements upon the land except as may be expressly reserved in the instrument and which contains a covenant with the city or county, running with the land, either in perpetuity or for a term of years, not to construct or permit the construction of any improvements, except as that right is expressly reserved in the instrument and except for public service facilities installed for the benefit of the land subject to any covenant or public service facilities installed pursuant to an authorization by the governing body of the city or county or the Public Utilities Commission.

Any such reservation shall be consistent with the purposes of this chapter or with the findings of the county or city pursuant to Section 51056 and shall not permit any action that will materially impair the open-space character of the land.

(b) “Owner” means any lessee or trustee, if the expiration of the lease or trust occurs at a time later than the expiration of the easement or any extension thereof.

SEC. 2. Section 51052 of the Government Code is repealed.

SEC. 3. Section 51053 of the Government Code is amended to read:

51053. The execution and acceptance of an instrument described in subdivision (a) of Section 51051 shall constitute a dedication to the public of the open-space character of the lands

for the term specified. Any such easement and covenant shall run for a term of not less than 20 years.

SEC. 4. Section 51054 of the Government Code is amended to read:

51054. An instrument described in subdivision (a) of Section 51051 may contain, and the city or county in appropriate cases may require that it contain, a covenant against the extraction of natural resources or other activities which may destroy the unique physical and scenic characteristics of the land or a covenant against the cutting of timber, trees and other natural growth, except as may be required for fire prevention, thinning, elimination of diseased growth and similar protective measures, or for the harvest of trees in a manner compatible with scenic purposes.

SEC. 5. Section 51055 of the Government Code is amended to read:

51055. An instrument described in subdivision (a) of Section 51051 shall not be effective until it has been accepted by resolution of the governing body of the city or county and its acceptance endorsed thereon.

SEC. 6. Section 51059 of the Government Code is amended to read:

51059. Upon the acceptance of any instrument creating an open-space easement the clerk of the governing body shall record the same in the office of the county recorder and file a copy thereof with the county assessor. The recording shall be consistent with Section 27255. From and after the time of the recordation, the contract shall impart the notice thereof to all persons as is afforded by the recording laws of this state.

SEC. 7. Section 51084 of the Government Code is amended to read:

51084. A grant of an open-space easement shall not be accepted or approved by a county or city, unless the governing body, by resolution, finds:

(a) That the preservation of the land as open space is consistent with the general plan of the county or city; and

(b) That the preservation of the land as open space is in the best interest of the state, county, city, or city and county and is important to the public for the enjoyment of scenic beauty, for the use of natural resources, for recreation, or for the production of

food or fiber specifically because one or more of the following reasons exists:

(1) That the land is essentially unimproved and if retained in its natural state has either scenic value to the public, or is valuable as a watershed or as a wildlife preserve, and the instrument contains appropriate covenants to that end.

(2) It is in the public interest that the land be retained as open space because such land either will add to the amenities of living in neighboring urbanized areas or will help preserve the rural character of the area in which the land is located.

(3) The land lies in an area that in the public interest should remain rural in character and the retention of the land as open space will preserve the rural character of the area.

(4) It is in the public interest that the land remain in its natural state, including the trees and other natural growth, as a means of preventing floods or because of its value as watershed.

(5) The land lies within an established scenic highway corridor.

(6) The land is valuable to the public as a wildlife preserve or sanctuary and the instrument contains appropriate covenants to that end.

(7) The public interest will otherwise be served in a manner recited in the resolution and consistent with the purposes of this subdivision and Section 8 of Article XIII of the Constitution of the State of California.

The resolution of the governing body shall establish a conclusive presumption that the conditions set forth in subdivisions (a) and (b) have been satisfied.

SEC. 8. Section 51087 of the Government Code is amended to read:

51087. Upon the acceptance or approval of any instrument creating an open-space easement the clerk of the governing body shall record the same in the office of the county recorder and file a copy thereof with the county assessor. The recording shall be consistent with Section 27255. From and after the time of the recordation, the easement shall impart notice thereof to all persons as is afforded by the recording laws of this state.

Approved _____, 2012

Governor