

AMENDED IN SENATE FEBRUARY 3, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1195**

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**Introduced by Assembly ~~Member Cohn~~ Members Cohn and  
Mullin**

February 21, 2003

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~~An act to amend Section 65402 of, and to add Section 66412.4 to, the Government Code, relating to land use. An act to add Section 5563.6 to the Public Resources Code, relating to park and open-space districts, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1195, as amended, Cohn. ~~Subdivision Map Act: exemptions~~  
*Midpeninsula Regional Open-Space District: annexation project:  
eminent domain.*

*(1) Existing law establishes procedures for the formation of park and open-space districts, and prescribes the powers, functions and duties of those districts. Existing law authorizes a district to take by grant, appropriation, purchase, gift, devise, condemnation, or lease, and to hold, use, enjoy, and lease or dispose of real personal property of every kind, and rights in real and personal property within or without the district, to the full extent of its powers.*

*This bill would, notwithstanding those provisions, prohibit the Midpeninsula Regional Open-Space District from exercising the power of eminent domain to acquire any real property or interest in real property in the San Mateo County Coastal Annexation Area, as defined in a specified resolution adopted by the Board of Directors of the*

*district. The bill would make legislative findings and declarations with respect to the need for special legislation in the district.*

*(2) The bill would declare that it is to take effect immediately, as an urgency statute.*

~~Existing law makes the Subdivision Map Act inapplicable to specified land uses or interests in land, including, among other things, leases of agricultural land for agricultural purposes and requires that a local agency, as defined, may not acquire real property for specified purposes nor construct or authorize a public building or structure in any county or city that has adopted an applicable general plan until the location, purpose, and extent of the acquisition or disposition of real property, or the proposed public building or structure has been submitted to the local planning agency for review.~~

~~This bill would exempt a regional park and open space district from these provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. 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 65402 of the Government Code is~~
- 2 *SECTION 1. Section 5563.6 is added to the Public Resources*
- 3 *Code, to read:*
- 4 *5563.6. Notwithstanding Section 5540, the Midpeninsula*
- 5 *Regional Open-Space District shall not exercise the power of*
- 6 *eminent domain to acquire any real property or any interest in real*
- 7 *property in the San Mateo County Coastal Annexation Area, as*
- 8 *defined in the Resolution of Application for Annexation*
- 9 *Proceedings No. 03-20, which was adopted by the Board of*
- 10 *Directors of the Midpeninsula Regional Open-Space District on*
- 11 *June 6, 2003.*
- 12 *SEC. 2. The Legislature finds and declares that a special law*
- 13 *is necessary and that a general law cannot be made applicable*
- 14 *within the meaning of Section 16 of Article IV of the California*
- 15 *Constitution because of the unique circumstances applicable only*
- 16 *to this proposed project of the Midpeninsula Regional Open-Space*
- 17 *District. The District has adopted an ordinance and policy*
- 18 *prohibiting the use of the power of eminent domain in an area of*
- 19 *San Mateo County currently proposed to be annexed to the*
- 20 *District. This policy was adopted due to the special and unique*



1 *circumstances of the particular annexation project and the*  
2 *particular nature of the territory proposed for annexation, and in*  
3 *response to input from a Citizens' Advisory Committee formed to*  
4 *recommend policies particular to this proposed project. The*  
5 *Legislature further finds and declares that the need to limit a*  
6 *district's condemnation power is not common to all districts*  
7 *formed under laws governing the formation, powers, and duties of*  
8 *park and open-space districts and, therefore, warrants special*  
9 *legislation.*

10 *SEC. 3. This act is an urgency statute necessary for the*  
11 *immediate preservation of the public peace, health, or safety*  
12 *within the meaning of Article IV of the Constitution and shall go*  
13 *into immediate effect. The facts constituting the necessity are:*

14 *In order that the Midpeninsula Regional Open-Space District's*  
15 *policies regarding eminent domain for the district's annexation*  
16 *project be incorporated in that project at the earliest possible time,*  
17 *it is necessary that this act take effect immediately. amended to*  
18 *read:*

19 ~~65402. (a) (1) If a general plan or part thereof has been~~  
20 ~~adopted, no real property shall be acquired by dedication or~~  
21 ~~otherwise for street, square, park or other public purposes, and no~~  
22 ~~real property shall be disposed of, no street shall be vacated or~~  
23 ~~abandoned, and no public building or structure shall be~~  
24 ~~constructed or authorized, if the adopted general plan or part~~  
25 ~~thereof applies thereto, until the location, purpose and extent of the~~  
26 ~~acquisition or disposition, the street vacation or abandonment, or~~  
27 ~~the public building or structure have been submitted to and~~  
28 ~~reported upon by the planning agency as to conformity with the~~  
29 ~~adopted general plan or part thereof.~~

30 ~~(2) The planning agency shall render its report as to conformity~~  
31 ~~with the adopted general plan or part thereof within 40 days after~~  
32 ~~the matter was submitted to it, or such longer period of time as may~~  
33 ~~be designated by the legislative body.~~

34 ~~(b) If the legislative body so provides, by ordinance or~~  
35 ~~resolution, the provisions of this subdivision shall not apply to any~~  
36 ~~of the following:~~

37 ~~(1) The disposition of the remainder of a larger parcel that was~~  
38 ~~acquired and used in part for street purposes.~~

39 ~~(2) Acquisitions, dispositions, or abandonments for street~~  
40 ~~widening.~~



1 ~~(3) Alignment projects, provided that the dispositions for street~~  
2 ~~purposes, acquisitions, dispositions, or abandonments for street~~  
3 ~~widening, or alignment projects are of a minor nature.~~

4 ~~(c) (1) A county shall not acquire real property for any of the~~  
5 ~~purposes specified in subdivision (a) or (b), nor dispose of any real~~  
6 ~~property, nor construct or authorize a public building or structure,~~  
7 ~~in another county or within the corporate limits of a city, if the city~~  
8 ~~or other county has adopted a general plan or part thereof and the~~  
9 ~~general plan or part thereof is applicable thereto.~~

10 ~~(2) A city shall not acquire real property for any of the purposes~~  
11 ~~specified in subdivision (a) or (b), nor dispose of any real property,~~  
12 ~~nor construct or authorize a public building or structure, in another~~  
13 ~~city or in unincorporated territory, if the other city or the county~~  
14 ~~in which the unincorporated territory is situated has adopted a~~  
15 ~~general plan or part thereof and the general plan or part thereof is~~  
16 ~~applicable thereto, until the location, purpose and extent of the~~  
17 ~~acquisition, disposition, or the public building or structure have~~  
18 ~~been submitted to and reported upon by the planning agency~~  
19 ~~having jurisdiction, as to conformity with the adopted general plan~~  
20 ~~or part thereof.~~

21 ~~(3) Failure of the planning agency to report within 40 days after~~  
22 ~~the matter has been submitted to it shall be conclusively deemed~~  
23 ~~a finding that the proposed acquisition, disposition, or public~~  
24 ~~building or structure is in conformity with the adopted general plan~~  
25 ~~or part thereof.~~

26 ~~(4) The provisions of this subdivision shall not apply to~~  
27 ~~acquisition or abandonment for street widening or alignment~~  
28 ~~projects of a minor nature if the legislative body having the real~~  
29 ~~property within its boundaries so provides by ordinance or~~  
30 ~~resolution.~~

31 ~~(d) (1) A local agency shall not acquire real property for any~~  
32 ~~of the purposes specified in subdivision (a) nor dispose of any real~~  
33 ~~property, nor construct or authorize a public building or structure,~~  
34 ~~in any county or city, if the county or city has adopted a general~~  
35 ~~plan or part thereof and the general plan or part thereof is~~  
36 ~~applicable thereto, until the location, purpose and extent of the~~  
37 ~~acquisition, disposition, or the public building or structure have~~  
38 ~~been submitted to and reported upon by the planning agency~~  
39 ~~having jurisdiction, as to conformity with the adopted general plan~~  
40 ~~or part thereof.~~



1 ~~(2) Failure of the planning agency to report within 40 days after~~  
2 ~~the matter has been submitted to it shall be conclusively deemed~~  
3 ~~a finding that the proposed acquisition, disposition, or public~~  
4 ~~building or structure is in conformity with the adopted general plan~~  
5 ~~or part thereof.~~

6 ~~(3) If the planning agency disapproves the location, purpose or~~  
7 ~~extent of the acquisition, disposition, or the public building or~~  
8 ~~structure, the disapproval may be overruled by the local agency.~~

9 ~~(e) (1) Local agency as used in this subdivision means an~~  
10 ~~agency of the state for the local performance of governmental or~~  
11 ~~proprietary functions within limited boundaries.~~

12 ~~(2) Local agency does not include the state, a county, a city, or~~  
13 ~~a regional park and open space district established pursuant to~~  
14 ~~Article 3 (commencing with Section 5500) of Chapter 3 of~~  
15 ~~Division 5 of the Public Resources Code.~~

16 ~~SEC. 2. Section 66412.4 is added to the Government Code, to~~  
17 ~~read:~~

18 ~~66412.4. This division shall not apply to conveyances of land~~  
19 ~~or interests in land, to or from a regional park and open space~~  
20 ~~district established pursuant to Article 3 (commencing with~~  
21 ~~Section 5500) of Chapter 3 of Division 5 of the Public Resources~~  
22 ~~Code, when the conveyances are solely for the purpose of open~~  
23 ~~space preservation.~~

