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GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57607] (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 1. CITIES AND COUNTIES [50001 - 52203] (Division 1 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES [50001 - 51298.5] (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 6.5. Open-Space Easements [51050 - 51065] (Chapter 6.5 added by Stats. 1969, Ch. 762.)

51050. Any city or county which has adopted a general plan may accept grants of open-space easements on privately owned lands lying within the city or county in the manner provided in this chapter, provided no city or county shall accept any grants of open-space easements pursuant to this chapter on or after January 1, 1975.

(Amended by Stats. 1974, Ch. 1003.)

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.

(Amended by Stats. 2012, Ch. 875, Sec. 1. (SB 1501) Effective January 1, 2013.)

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.

(Amended by Stats. 2012, Ch. 875, Sec. 3. (SB 1501) Effective January 1, 2013.)

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.

(Amended by Stats. 2012, Ch. 875, Sec. 4. (SB 1501) Effective January 1, 2013.)

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.

(Amended by Stats. 2012, Ch. 875, Sec. 5. (SB 1501) Effective January 1, 2013.)

51056. No grant of an open-space easement shall be accepted by a city or county, 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 city and county; and

(b) That the preservation of the land as open space is in the best interest of the state, county, or city 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 and specifically because one or more of the following reasons exist:

- (1) It is likely that at some time the public may acquire the land for a park or other public use.
- (2) The land is unimproved and has scenic value to the public as viewed from a public highway or from public or private buildings.
- (3) The retention of the land as open space will add to the amenities of living in adjoining or neighboring urbanized areas.
- (4) The land lies in an area which in the public interest should remain rural in character and the retention of the land as open space will help preserve the rural character of the area.
- (5) 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.
- (6) The land lies within an established scenic highway corridor.
- (7) The land is valuable to the public as a wildlife preserve or sanctuary and the instrument contains appropriate covenants to that end.
- (8) The public interest will otherwise be served in a manner recited in the resolution and consistent with the purposes of this subdivision and Article XXVIII 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.

(Added by Stats. 1969, Ch. 762.)

51057. The governing body of the city or county shall not accept any grant of an open-space easement until the matter has first been referred to the city or county planning department or planning commission and a report thereon has been received from the planning department or planning commission. Within 30 days after receiving the proposal to accept a grant of an open-space easement, the planning department or planning commission shall submit its report to the governing body. The governing body may extend the time for submitting such a report for an additional period not exceeding 30 days. The report shall contain a statement that the proposal is, or is not, consistent with the general plan of the jurisdiction.

(Added by Stats. 1969, Ch. 762.)

51058. From and after the time when an open-space easement has been accepted by the city or county and its acceptance endorsed thereon, no building permit may be issued for any structure which would violate the easement and the city or county shall seek by appropriate proceedings an injunction against any threatened construction or other development or activity on the land which would violate the easement and shall seek a mandatory injunction requiring the removal of any structure erected in violation of the easement.

In the event the county or city fails to seek an injunction against any threatened construction or other development or activity on the land which would violate the easement or to seek a mandatory injunction requiring the removal of any structure erected in violation of the easement, or if the county or city should construct any structure or development or conduct or permit any activity in violation of the easement, the owner of any property within the county or city, or any resident thereof, may, by appropriate proceedings, seek such an injunction.

Nothing in this chapter shall limit the power of the state, or any department or agency thereof, or any county, city, school district, or any other local public district, agency or entity, or any other person authorized by law, to acquire land subject to an open-space easement by eminent domain.

(Added by Stats. 1969, Ch. 762.)

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.

(Amended by Stats. 2012, Ch. 875, Sec. 6. (SB 1501) Effective January 1, 2013.)

51060. From time to time, the governing body of any city or county may accept an instrument whereby the term of any open-space easement is extended in the same manner as is provided for the acceptance of an instrument originally creating an open-space

easement. Upon the acceptance thereof the same shall be recorded in the office of the county recorder and a copy thereof filed with the county assessor.

(Added by Stats. 1969, Ch. 762.)

51061. The governing body of any city or county at any time may, by resolution, abandon an open-space easement, if it finds that no public purpose described in subdivision (b) of Section 51056 will be served any longer by keeping the land as open space. No resolution abandoning an open-space easement shall be finally adopted until the matter has been referred to the city or county planning commission, the commission has held a public hearing thereon and furnished a report on the matter to the governing body and the governing body has held at least one public hearing thereon after giving 30 days notice thereof by publication in accordance with Section 6061, and by posting notice on the land.

Prior to approval of the resolution abandoning an open-space easement, the governing body shall direct the county assessor to assess the land, as if the easement did not exist, and to report such new assessed value to the governing body. As a condition of the abandonment of the easement, the owner shall pay to the county or city an amount equal to 50 percent of the new assessed value of the land; provided, however, that the governing body may waive all or any portion of such payment, if it finds that it is consistent with the public interest to do so, and if the waiver is approved by the Secretary of the Resources Agency. Any such payment not waived shall be considered deferred taxes, and a sum equal to the sum actually collected shall be transmitted by the treasurer of the county or city to the State Controller and be deposited in the State General Fund.

(Amended by Stats. 1971, 1st Ex. Sess., Ch. 1.)

51062. Upon the recording in the office of the county recorder of a certified copy of any resolution abandoning the open-space easement and reciting compliance with the provisions of Section 51061, the land subject thereto shall be deemed relieved of the easement and the covenants of the owner contained therein shall be deemed terminated.

(Added by Stats. 1969, Ch. 762.)

51063. If any land or a portion thereof as to which any city or county has accepted an open-space easement is thereafter sought to be condemned for public use and the city or county received the easement as a gift without the payment of any compensation therefor, the easement shall terminate as of the time of the filing of the complaint in condemnation as to the land or portion thereof sought to be taken for public use, and the owner shall be entitled to such compensation for the taking as he would have been entitled to had the land not been burdened by the easement.

(Added by Stats. 1969, Ch. 762.)

51064. Lands subject to the grant of an open-space easement executed and accepted in accordance with this chapter shall be deemed to be enforceably restricted within the meaning of Section 8 of Article XIII of the Constitution of the State of California.

(Amended by Stats. 1975, Ch. 224.)

51065. Nothing in this chapter shall be deemed to prevent or restrict the right or power of any city or county to acquire by gift, purchase or otherwise scenic easements or other rights in property for the purpose of preserving open space or for any other purpose under any other provisions of law.

(Added by Stats. 1969, Ch. 762.)