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AB-1251 Greenway Development and Sustainment Act. (2015-2016)

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Assembly Bill No. 1251

CHAPTER 639

An act to add Chapter 4.5 (commencing with Section 816.50) to Title 2 of Part 2 of Division 2 of the Civil Code, to amend Section 65560 of the Government Code, and to amend Section 402.1 of the Revenue and Taxation Code, relating to open-space lands.

[Approved by Governor October 08, 2015. Filed with Secretary of State October 08, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1251, Gomez. Greenway Development and Sustainment Act.

Existing law establishes various plans and programs intended to preserve, protect, and rehabilitate lands adjacent to rivers in the state. Existing law provides that a conservation easement, as defined, is an interest in real property voluntarily created and freely transferable for specified purposes and provides for the creation and transfer of conservation easements. Existing law authorizes certain tax exempt nonprofit organizations, state or local governmental entities, and California Native American tribes to acquire and hold conservation easements if those entities meet specified criteria.

This bill would enact the Greenway Development and Sustainment Act and would apply to greenway easements certain creation and transfer provisions similar to those of conservation easements. The bill would define greenway as a pedestrian and bicycle, nonmotorized vehicle transportation, and recreational travel corridor that meets specified requirements. The bill would also include greenways in the definition of "open-space land" for local planning purposes.

The California Constitution provides that, unless otherwise provided in the Constitution or by federal law, all property in the state is taxable and is assessed at its fair market value. Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions, including recorded conservation easements, to which the use of the land may be subjected.

This bill would provide that a recorded greenway easement constitutes an enforceable restriction for purposes of these tax provisions. By changing the manner in which county assessors assess property for property taxation purposes, this bill would impose a state-mandated local program.

The bill would make findings with regard to the development of a greenway along the Los Angeles River and its tributaries.

This bill would incorporate additional changes in Section 402.1 of the Revenue and Taxation Code, proposed by AB 668, to be operative only if AB 668 and this bill are both chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.

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.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following with regard to the development of a greenway along the Los Angeles River and its tributaries:

(a) The area along the Los Angeles River and its tributaries is particularly suited for the development of a greenway.

(b) A Los Angeles River greenway that focuses on public-private partnerships aimed at establishing a continuous pedestrian bikeway along the Los Angeles River and its tributaries would foster job creation, economic development, and community revitalization.

SEC. 2. This act shall be known, and may be cited, as the Greenway Development and Sustainment Act.

SEC. 3. Chapter 4.5 (commencing with Section 816.50) is added to Title 2 of Part 2 of Division 2 of the Civil Code, to read:

CHAPTER 4.5. Greenway Easements

816.50. The Legislature finds and declares the following with regard to the development of greenways along urban waterways:

(a) The restoration and preservation of land in its natural, scenic, forested, recreational, or open-space condition is among the most important environmental assets in California.

(b) Greenways have the potential to improve the quality of life in, and connectivity between, communities, and provide important recreational, open-space, wildlife, flood management, greenhouse gas reduction, and urban waterfront revitalization opportunities.

(c) It is the policy of the Legislature and in the best interest in the state to encourage the voluntary conveyance of greenway easements to qualified nonprofit organizations.

816.52. For purposes of this chapter, the following definitions apply:

(a) (1) "Adjacent" means within 400 yards from the property boundary of an existing urban waterway.

(2) This subdivision does not create a new authority to place or extend an easement on private property that is not part of a voluntary agreement.

(b) "Greenway" means a pedestrian and bicycle, nonmotorized vehicle transportation, and recreational travel corridor that meets the following requirements:

(1) Includes landscaping that improves rivers and streams, provides flood protection benefits, and incorporates the significance and value of natural, historical, and cultural resources, as documented in the local agency's applicable planning document, including, but not limited to, a master plan, a general plan, or a specific plan.

(2) Is separated and protected from shared roadways, is adjacent to an urban waterway, and incorporates both ease of access to nearby communities and an array of amenities and services for the users of the corridor and nearby communities.

(3) Is located on public lands or private lands, or a combination of public and private lands, where public access to those lands for greenway purposes has been legally authorized by, or legally obtained from, the fee owner of the land and, if applicable, the operator of any facility or improvement located on the land, through leases, easements, or other agreements entered into by the fee owner and the operator of any affected facility or improvement on the land.

(4) Reflects design standards regarding appropriate widths, clearances, setbacks from obstructions, and centerlines protecting directional travel, and other considerations, as appropriate, that are applicable for each affected local agency, as documented in the local agency's applicable planning document, including, but not limited to, a master plan, general plan, or specific plan.

(5) May incorporate appropriate lighting, public amenities, art, and other features that are consistent with a local agency's planning document, including, but not limited to, a general plan, master plan, or specific plan.

(c) "Greenway easement" means any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition that is or has been executed by or on behalf of the owner of the land subject to the easement and is binding upon successive owners of that land, for the purpose of developing greenways adjacent to urban waterways.

(d) "Local agency" means a city, county, or city and county.

(e) "Urban waterway" means a creek, stream, or river that crosses (1) developed residential, commercial, or industrial property or (2) open space where the land use is designated as residential, commercial, or industrial, as referenced in a local agency's planning document, including, but not limited to, a general plan, master plan, or specific general plan.

816.54. (a) A greenway easement is an interest in real property voluntarily created and freely transferable in whole or in part for the purposes stated in subdivision (c) of Section 816.52 by any lawful method for the transfer of interests in real property in this state.

(b) A greenway easement shall be perpetual in duration.

(c) Notwithstanding the fact that it may be negative in character, a greenway easement is not personal in nature and shall constitute an interest in real property.

(d) The particular characteristics of a greenway easement shall be those granted or specified in the instrument creating or transferring the easement.

816.56. Only the following entities or organizations may acquire and hold a greenway easement:

(a) A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use, or the preservation or development of a greenway.

(b) The state or any city, county, city and county, district, or other state or local governmental entity, if otherwise authorized to acquire and hold title to real property and if the greenway easement is voluntarily conveyed. A local governmental entity shall not condition the issuance of an entitlement for use on the applicant's granting of a greenway easement pursuant to this chapter.

(c) 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 to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the greenway easement is voluntarily conveyed.

816.58. All interests not transferred and conveyed by the instrument creating the greenway easement shall remain in the grantor of the greenway easement, including the right to engage in all uses of the land not affected by the greenway easement nor prohibited by the greenway easement or by law.

816.60. Instruments creating, assigning, or otherwise transferring greenway easements shall be recorded in the office of the county recorder of the county where the land is situated, in whole or in part, and those instruments shall be subject in all respects to the recording laws.

816.62. (a) No greenway easement shall be unenforceable by reason of lack of privity of contract or lack of benefit to particular land or because not expressed in the instrument creating it as running with the land.

(b) Actual or threatened injury to or impairment of a greenway easement or actual or threatened violation of its terms may be prohibited or restrained, or the interest intended for protection by that easement may be enforced, by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by the owner of the greenway easement.

(c) In addition to the remedy of injunctive relief, the holder of a greenway easement shall be entitled to recover money damages for any injury to the greenway easement or to the interest being protected thereby or for the violation of the terms of the greenway easement. In assessing the damages, there may be taken into account, in addition to the cost of restoration and other usual rules of the law of damages, the loss of scenic, aesthetic, or environmental value to the real property subject to the greenway easement.

(d) The court may award to the prevailing party in any action authorized by this section the costs of litigation, including reasonable attorney's fees.

816.64. Nothing in this chapter shall be construed to impair or conflict with the operation of any law or statute conferring upon any political subdivision the right or power to hold interests in land comparable to greenway easements, including, but not limited to, Chapter 12 (commencing with Section 6950) of Division 7 of Title 1 of, Chapter 6.5 (commencing with Section 51050), Chapter 6.6 (commencing with Section 51070) and Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of, and Article 10.5 (commencing with Section 65560) of Chapter 3 of Title 7 of, the Government Code, and Article 1.5 (commencing with Section 421) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code.

816.66. A greenway easement granted pursuant to this chapter constitutes an enforceable restriction, for purposes of Section 402.1 of the Revenue and Taxation Code.

SEC. 4. Section 65560 of the Government Code is amended to read:

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

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

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, greenways, as defined in Section 816.52 of the Civil Code, and watershed lands.

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

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

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

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

SEC. 5. Section 402.1 of the Revenue and Taxation Code is amended to read:

402.1. (a) In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. These restrictions shall include, but are not limited to, all of the following:

(1) Zoning.

(2) Recorded contracts with governmental agencies other than those provided in Sections 422, 422.5, and 422.7.

(3) Permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments, including the California Coastal Commission and regional coastal commissions, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency.

(4) Development controls of a local government in accordance with any local coastal program certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

(5) Development controls of a local government in accordance with a local protection program, or any component thereof, certified pursuant to Division 19 (commencing with Section 29000) of the Public Resources Code.

(6) Environmental constraints applied to the use of land pursuant to provisions of statutes.

(7) Hazardous waste land use restriction pursuant to Section 25226 of the Health and Safety Code.

(8) (A) A recorded conservation, trail, or scenic easement, as described in Section 815.1 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

(B) A recorded greenway easement, as described in Section 816.52 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the developing and preserving of greenways.

(9) A solar-use easement pursuant to Chapter 6.9 (commencing with Section 51190) of Part 1 of Division 1 of Title 5 of the Government Code.

(b) There is a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses.

(c) Grounds for rebutting the presumption may include, but are not necessarily limited to, the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land. The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

(d) In assessing land with respect to which the presumption is unrebutted, the assessor shall not consider sales of otherwise comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal effect upon value.

(e) In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable lands that are not under restriction but upon which natural limitations have substantially the same effect as restrictions.

(f) For the purposes of this section the following definitions apply:

(1) "Comparable lands" are lands that are similar to the land being valued in respect to legally permissible uses and physical attributes.

(2) "Representative sales information" is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

(g) It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction to ensure the accurate assessment of that land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and Section 1630 is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land that legally are not available to the owner and not contemplated by government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. This statute shall not be construed as requiring the assessment of any land at a value less than as required by Section 401 or as prohibiting the use of representative comparable sales information on land under similar restrictions when this information is available.

SEC. 5.5. Section 402.1 of the Revenue and Taxation Code is amended to read:

402.1. (a) In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. These restrictions shall include, but are not limited to, all of the following:

(1) Zoning.

(2) Recorded contracts with governmental agencies other than those provided in Sections 422, 422.5, and 422.7.

(3) Permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments, including the California Coastal Commission and regional coastal commissions, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency.

(4) Development controls of a local government in accordance with any local coastal program certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

(5) Development controls of a local government in accordance with a local protection program, or any component thereof, certified pursuant to Division 19 (commencing with Section 29000) of the Public Resources Code.

(6) Environmental constraints applied to the use of land pursuant to provisions of statutes.

(7) Hazardous waste land use restriction pursuant to Section 25226 of the Health and Safety Code.

(8) (A) A recorded conservation, trail, or scenic easement, as described in Section 815.1 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

(B) A recorded greenway easement, as described in Section 816.52 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the developing and preserving of greenways.

(9) A solar-use easement pursuant to Chapter 6.9 (commencing with Section 51190) of Part 1 of Division 1 of Title 5 of the Government Code.

(10) A contract where the following apply:

(A) The contract is with a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(B) The contract restricts the use of the land for at least 30 years to owner-occupied housing available at affordable housing cost in accordance with Section 50052.5 of the Health and Safety Code.

(C) The contract includes a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale.

(D) The local housing authority or an equivalent agency, or, if none exists, the city attorney or county counsel, has made a finding that the long-term deed restrictions in the contract serve a public purpose.

(E) The contract is recorded and provided to the assessor.

(b) There is a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses.

(c) Grounds for rebutting the presumption may include, but are not necessarily limited to, the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land. The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

(d) In assessing land with respect to which the presumption is un rebutted, the assessor shall not consider sales of otherwise comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal effect upon value.

(e) In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable lands that are not under restriction but upon which natural limitations have substantially the same effect as restrictions.

(f) For the purposes of this section the following definitions apply:

(1) "Comparable lands" are lands that are similar to the land being valued in respect to legally permissible uses and physical attributes.

(2) "Representative sales information" is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

(g) It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction to ensure the accurate assessment of that land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and Section 1630 is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land that legally are not available to the owner and not contemplated by government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. This statute shall not be construed as

requiring the assessment of any land at a value less than as required by Section 401 or as prohibiting the use of representative comparable sales information on land under similar restrictions when this information is available.

SEC. 6. Section 5.5 of this bill incorporates amendments to Section 402.1 of the Revenue and Taxation Code proposed by both this bill and Assembly Bill 668. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 402.1 of the Revenue and Taxation Code, and (3) this bill is enacted after Assembly Bill 668, in which case Section 5 of this bill shall not become operative.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.