

AMENDED IN SENATE JUNE 24, 2015

AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1251

Introduced by Assembly Member Gomez

February 27, 2015

An act to ~~amend Section 815.3 of~~ add Chapter 4.5 (commencing with Section 816.50) to Title 2 of Part 2 of Division 2 of the Civil Code, ~~and 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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1251, as amended, 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 ~~entities and organizations to acquire and hold conservation easements, including a tax exempt nonprofit organization 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.~~ *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 ~~authorize those tax-exempt nonprofit organizations to acquire and hold a conservation easement if the organizations have as their primary purpose the development of a greenway, as defined: 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 bill would make findings with regard to the development of a greenway along the Los Angeles River and its tributaries and would declare that, by developing a greenway, a city, county, or city and county, may apply for funds from various sources.~~

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.

The bill would make findings with regard to the development of a greenway along the Los Angeles River and its tributaries and would declare that, by developing a greenway, a city, county, or city and county, may apply for funds from various sources.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares the following
- 2 with regard to the development of a greenway along the Los
- 3 Angeles River and its tributaries:
- 4 (a) The area along the Los Angeles River and its tributaries is
- 5 particularly suited for the development of a greenway. A Los
- 6 Angeles River greenway that focuses on public-private partnerships
- 7 aimed at establishing a continuous pedestrian bikeway along the
- 8 Los Angeles River and its tributaries would foster job creation,
- 9 economic development, and community revitalization.

1 (b) By developing a greenway that promotes sustainability and
2 acts as a transportation corridor, a city, county, or city and county
3 may apply for alternative fuels funding, greenhouse gas reduction
4 funds, and other land use funds, as appropriate.

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

7 ~~SEC. 3. Section 815.3 of the Civil Code is amended to read:~~

8 ~~815.3. Only the following entities or organizations may acquire~~
9 ~~and hold conservation easements:~~

10 ~~(a) A tax-exempt nonprofit organization qualified under Section~~
11 ~~501(c)(3) of the Internal Revenue Code and qualified to do business~~
12 ~~in this state that has as its primary purpose the preservation,~~
13 ~~protection, or enhancement of land in its natural, scenic, historical,~~
14 ~~agricultural, forested, or open-space condition or use, or the~~
15 ~~development of a greenway.~~

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

23 ~~(c) A federally recognized California Native American tribe or~~
24 ~~a nonfederally recognized California Native American tribe that~~
25 ~~is on the contact list maintained by the Native American Heritage~~
26 ~~Commission to protect a California Native American prehistoric,~~
27 ~~archaeological, cultural, spiritual, or ceremonial place, if the~~
28 ~~conservation easement is voluntarily conveyed.~~

29 ~~(d) For purposes of this section, the following terms have the~~
30 ~~following meanings:~~

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

33 ~~(2) "Greenway" means a pedestrian and bicycle, nonmotorized~~
34 ~~vehicle transportation, and recreational travel corridor that meets~~
35 ~~the following requirements:~~

36 ~~(A) Includes landscaping that improves rivers and streams,~~
37 ~~provides flood protection benefits, and incorporates the significance~~
38 ~~and value of natural, historical, and cultural resources, as~~
39 ~~documented in the local agency's applicable planning document,~~

1 including, but not limited to, a master plan, a general plan, or a
2 specific plan.

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

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

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

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

24 (3) "Urban waterway" means a creek, stream, or river that
25 crosses (A) developed residential, commercial, or industrial
26 property or (B) open space where the land use is designated as
27 residential, commercial, or industrial, as referenced in a local
28 agency's planning document, including, but not limited to, a
29 general plan, master plan, or specific general plan.

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

32
33 CHAPTER 4.5. GREENWAY EASEMENTS
34

35 816.50. The Legislature finds and declares the following with
36 regard to the development of greenways along urban waterways:

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

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

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

8 ***816.52. For purposes of this chapter, the following definitions***
9 ***apply:***

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

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

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

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

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

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

36 ***(4) Reflects design standards regarding appropriate widths,***
37 ***clearances, setbacks from obstructions, and centerlines protecting***
38 ***directional travel, and other considerations, as appropriate, that***
39 ***are applicable for each affected local agency, as documented in***

1 *the local agency's applicable planning document, including, but*
2 *not limited to, a master plan, general plan, or specific plan.*

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

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

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

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

20 *816.54. (a) A greenway easement is an interest in real property*
21 *voluntarily created and freely transferable in whole or in part for*
22 *the purposes stated in subdivision (c) of Section 816.52 by any*
23 *lawful method for the transfer of interests in real property in this*
24 *state.*

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

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

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

32 *816.56. Only the following entities or organizations may*
33 *acquire and hold a greenway easement:*

34 *(a) A tax-exempt nonprofit organization qualified under Section*
35 *501(c)(3) of the Internal Revenue Code and qualified to do business*
36 *in this state that has as its primary purpose the preservation,*
37 *protection, or enhancement of land in its natural, scenic, historical,*
38 *agricultural, forested, or open-space condition or use, or the*
39 *preservation or development of a greenway.*

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

8 ***(c) A federally recognized California Native American tribe or***
9 ***a nonfederally recognized California Native American tribe that***
10 ***is on the contact list maintained by the Native American Heritage***
11 ***Commission to protect a California Native American prehistoric,***
12 ***archaeological, cultural, spiritual, or ceremonial place, if the***
13 ***greenway easement is voluntarily conveyed.***

14 ***816.58. All interests not transferred and conveyed by the***
15 ***instrument creating the greenway easement shall remain in the***
16 ***grantor of the greenway easement, including the right to engage***
17 ***in all uses of the land not affected by the greenway easement nor***
18 ***prohibited by the greenway easement or by law.***

19 ***816.60. Instruments creating, assigning, or otherwise***
20 ***transferring greenway easements shall be recorded in the office***
21 ***of the county recorder of the county where the land is situated, in***
22 ***whole or in part, and those instruments shall be subject in all***
23 ***respects to the recording laws.***

24 ***816.62. (a) No greenway easement shall be unenforceable by***
25 ***reason of lack of privity of contract or lack of benefit to particular***
26 ***land or because not expressed in the instrument creating it as***
27 ***running with the land.***

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

34 ***(c) In addition to the remedy of injunctive relief, the holder of***
35 ***a greenway easement shall be entitled to recover money damages***
36 ***for any injury to the greenway easement or to the interest being***
37 ***protected thereby or for the violation of the terms of the greenway***
38 ***easement. In assessing the damages, there may be taken into***
39 ***account, in addition to the cost of restoration and other usual rules***
40 ***of the law of damages, the loss of scenic, aesthetic, or***

1 *environmental value to the real property subject to the greenway*
2 *easement.*

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

6 *816.64. Nothing in this chapter shall be construed to impair*
7 *or conflict with the operation of any law or statute conferring upon*
8 *any political subdivision the right or power to hold interests in*
9 *land comparable to greenway easements, including, but not limited*
10 *to, Chapter 12 (commencing with Section 6950) of Division 7 of*
11 *Title 1 of, Chapter 6.5 (commencing with Section 51050), Chapter*
12 *6.6 (commencing with Section 51070) and Chapter 7 (commencing*
13 *with Section 51200) of Part 1 of Division 1 of Title 5 of, and Article*
14 *10.5 (commencing with Section 65560) of Chapter 3 of Title 7 of,*
15 *the Government Code, and Article 1.5 (commencing with Section*
16 *421) of Chapter 3 of Part 2 of Division 1 of the Revenue and*
17 *Taxation Code.*

18 *816.66. A greenway easement granted pursuant to this chapter*
19 *constitutes an enforceable restriction, for purposes of Section*
20 *402.1 of the Revenue and Taxation Code.*

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

23 65560. (a) "Local open-space plan" is the open-space element
24 of a county or city general plan adopted by the board or council,
25 either as the local open-space plan or as the interim local
26 open-space plan adopted pursuant to Section 65563.

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

31 (1) Open space for the preservation of natural resources
32 including, but not limited to, areas required for the preservation
33 of plant and animal life, including habitat for fish and wildlife
34 species; areas required for ecologic and other scientific study
35 purposes; rivers, streams, bays, and estuaries; and coastal beaches,
36 lakeshores, banks of rivers and streams, greenways, as defined in
37 Section ~~815.3~~ 816.52 of the Civil Code, and watershed lands.

38 (2) Open space used for the managed production of resources,
39 including, but not limited to, forest lands, rangeland, agricultural
40 lands, and areas of economic importance for the production of

1 food or fiber; areas required for recharge of groundwater basins;
2 bays, estuaries, marshes, rivers, and streams that are important for
3 the management of commercial fisheries; and areas containing
4 major mineral deposits, including those in short supply.

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

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

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

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

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

29 402.1. (a) In the assessment of land, the assessor shall consider
30 the effect upon value of any enforceable restrictions to which the
31 use of the land may be subjected. These restrictions shall include,
32 but are not limited to, all of the following:

33 (1) Zoning.

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

36 (3) Permit authority of, and permits issued by, governmental
37 agencies exercising land use powers concurrently with local
38 governments, including the California Coastal Commission and
39 regional coastal commissions, the San Francisco Bay Conservation

1 and Development Commission, and the Tahoe Regional Planning
2 Agency.

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

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

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

12 (7) Hazardous waste land use restriction pursuant to Section
13 ~~25240~~ 25226 of the Health and Safety Code.

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

21 (B) *A recorded greenway easement, as described in Section*
22 *816.52 of the Civil Code, that is granted in favor of a public*
23 *agency, or in favor of a nonprofit corporation organized pursuant*
24 *to Section 501(c)(3) of the Internal Revenue Code that has as its*
25 *primary purpose the developing and preserving of greenways.*

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

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

33 (c) Grounds for rebutting the presumption may include, but are
34 not necessarily limited to, the past history of like use restrictions
35 in the jurisdiction in question and the similarity of sales prices for
36 restricted and unrestricted land. The possible expiration of a
37 restriction at a time certain shall not be conclusive evidence of the
38 future removal or modification of the restriction unless there is no
39 opportunity or likelihood of the continuation or renewal of the

1 restriction, or unless a necessary party to the restriction has
2 indicated an intent to permit its expiration at that time.

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

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

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

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

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

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

- 1 comparable sales information on land under similar restrictions
- 2 when this information is available.

O