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SB-732 General plan: open-space element: agricultural land. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 732

Introduced by Senator Stern

February 17, 2017

An act to amend Section 669.5 of the Evidence Code, to amend Sections 65560 and 65570 of, and to add Sections 65565 and 65565.1 to, the Government Code, to amend Section 5950.1 of the Harbors and Navigation Code, to amend Section 612 of the Public Resources Code, and to amend Section 79033.6 of the Water Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 732, as amended, Stern. General plan: open-space element: agricultural land.

The Planning and Zoning Law requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a land use element and an open-space element. Existing law requires the land use element to, among other things, designate the proposed general distribution and general location and extent of the uses of the land for agricultural use. Existing law requires the open-space element to include a plan for the comprehensive and long-range preservation and conservation of open-space land within the city or county that prepares it.

This bill would authorize a city and county to develop an agricultural land component of the open-space element. The bill would require a city or county to comply with specified requirements when preparing that component, including identifying and mapping, where applicable, using specified data, agricultural lands that are within the city's or county's jurisdiction; establishing a comprehensive set of goals, policies, and objectives to support the long-term protection of agricultural land; and identifying and establishing a set of feasible implementation measures designed to promote those goals, policies, and objectives. The bill would authorize the Department of Conservation, to the extent funds are available, to award grants to a city or county to implement these provisions. The bill would, at least 45 days before adopting or amending the open-space element, require a city or county to submit to the department a draft of the agricultural land component prepared pursuant to these provisions, and any maps used in creating that component. The bill would authorize the department to review

any drafts submitted, and to provide recommendations to the city or county, as provided. The bill would require the department to give priority consideration for grants, bond proceeds, and other local assistance provided by the department to a city or county that complies with specified requirements.

Existing law requires the department to prepare, and to update biennially, Important Farmland Series maps using data compiled by the United States Soil Conservation Service, and collect or acquire information on the amount of land converted to or from agricultural use using specified data for every county for which Important Farmland Series maps exist.

This bill would require the department to also collect or acquire information on the amount of land converted between agricultural categories, as defined, and would make nonsubstantive changes to those provisions.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California is the most productive and diverse agricultural state in the nation, producing 350 different products, including nearly one-half of the nation's fruits, vegetables, and nuts. The reliable and robust supply of these products is crucial to global and local food supplies, healthy communities, and California's economy.

(b) California's agricultural sector employs almost 350,000 people and contributes more than \$70 billion to the state's economy.

(c) California is currently losing thousands of acres of agricultural lands every year to urban development. Most of these losses come from prime farmland, which is a finite resource that developed over centuries and cannot easily be replaced. California is at risk of losing over one million more acres over the next several decades.

SEC. 2. Section 669.5 of the Evidence Code is amended to read:

669.5. (a) Any ordinance enacted by the governing body of a city, county, or city and county which (1) directly limits, by number, the building permits that may be issued for residential construction or the buildable lots which may be developed for residential purposes, or (2) changes the standards of residential development on vacant land so that the governing body's zoning is rendered in violation of Section 65913.1 of the Government Code is presumed to have an impact on the supply of residential units available in an area which includes territory outside the jurisdiction of the city, county, or city and county.

(b) With respect to any action which challenges the validity of an ordinance specified in subdivision (a) the city, county, or city and county enacting the ordinance shall bear the burden of proof that the ordinance is necessary for the protection of the public health, safety, or welfare of the population of the city, county, or city and county.

(c) This section does not apply to state and federal building code requirements or local ordinances which (1) impose a moratorium, to protect the public health and safety, on residential construction for a specified period of time, if, under the terms of the ordinance, the moratorium will cease when the public health or safety is no longer jeopardized by the construction, (2) create agricultural preserves under Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code, or (3) restrict the number of buildable parcels or designate lands within a zone for nonresidential uses in order to protect agricultural uses as defined in subdivision (b) of Section 51201 of the Government Code or open-space land as defined in subdivision (h) of Section 65560 of the Government Code.

(d) This section shall not apply to a voter approved ordinance adopted by referendum or initiative prior to the effective date of this section which (1) requires the city, county, or city and county to establish a population growth limit which represents its fair share of each year's statewide population growth, or (2) which sets a growth rate of no more than the average population growth rate experienced by the state as a whole. Paragraph (2) of subdivision (a) does not apply to a voter-approved ordinance adopted by referendum or initiative which exempts housing affordable to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, or which otherwise provides low- and moderate-income housing sites equivalent to such an exemption.

SEC. 3. Section 65560 of the Government Code is amended to read:

65560. For purposes of this chapter:

(a) "Amount of land converted to agricultural use" means those lands that were brought into agricultural use or reestablished in agricultural use and were not shown as agricultural land on Important Farmland Series maps maintained by the department in the most recent biennial report.

(b) "Amount of land converted from agricultural use" means those lands that were permanently converted or committed to urban or other nonagricultural uses and were shown as agricultural land on Important Farmland Series maps maintained by the department and in the most recent biennial report.

(c) "Category of agricultural land" means prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance, as defined pursuant to the United States Department of Agriculture's land inventory and monitoring criteria, as modified for California, and grazing land. "Grazing land" means land on which the existing vegetation, whether grown naturally or through management, is suitable for grazing or browsing of ~~livestock, or land on which the dominant plant community is grassland, savanna, oak woodland, or shrubland, used for livestock grazing, that additionally serves as a wildlife habitat or riparian zone.~~ *livestock.*

(d) "Department" means the Department of Conservation.

(e) "Interim Farmland maps" means those maps prepared by the department for areas that do not have the current soil survey information needed to compile Important Farmland Series maps. The Interim Farmland maps shall indicate areas of irrigated agriculture, dry-farmed agriculture, grazing lands, urban and built-up lands, and any areas committed to urban or other nonagricultural uses.

(f) "Important Farmland Series maps" means those maps compiled by the United States Soil Conservation Service and updated and modified by the department's Farmland Mapping and Monitoring Program pursuant to Section 65570.

(g) "Local open-space plan" means 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.

(h) "Open-space land" means any parcel or area of land or water that is 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, 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, 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 5097.997 of the Public Resources Code.

SEC. 4. Section 65565 is added to the Government Code, to read:

65565. (a) A city or county may develop an agricultural land component of the open-space element. ~~The~~ *If a city or county chooses to develop an agricultural land component of the open-space element, the* agricultural land component of the open-space element shall do the following:

(1) Identify and map, where applicable, utilizing the designations in the Farmland Monitoring and Mapping Program pursuant to Section 65570, agricultural lands within the city's or county's jurisdiction. That portion of the plan shall include all of the following:

(A) All parcels subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5).

(B) All parcels subject to a conservation easement.

(C) All agricultural preserves established pursuant to Article 2.5 (commencing with Section 51230) of Chapter 7 of Part 1 of Division 1 of Title 5.

(D) All parcels subject to a farmland security zone contract established pursuant to Article 7 (commencing with Section 51296) of Chapter 7 of Part 1 of Division 1 of Title 5.

~~(E) All parcels zoned for nonagricultural uses, currently being operated for agriculture.~~

~~(F)~~

(E) All parcels being used for agricultural purposes within a sphere of influence or municipal service boundary and not subject to a permanent easement.

~~(G)~~

(F) The total acreage of land classified as a category of agricultural land.

~~(H)~~

(G) The total acreage of agricultural land that is located within two miles of land zoned for housing, including rural residential uses, business, or industry in the land use element prepared pursuant to subdivision (a) of Section 65302. *The city or county shall not identify the individual parcels subject to this subparagraph.*

~~(I)~~

(H) All public agencies with responsibility for preservation of agricultural land within the jurisdiction, including resource conservation districts established pursuant to Division 9 (commencing with Section 9001) of the Public Resources Code.

~~(J)~~

(I) The total percentage of land that qualifies as a category of agricultural land that has been developed since 1984.

~~(K)~~

(J) The total acreage of land that qualifies as a category of agricultural land that is likely to be developed in the next five years.

(2) Establish a comprehensive set of goals, policies, and objectives based on the information identified pursuant to paragraph (1) to support long-term protection of agricultural land. In developing these goals, policies, and objectives, a city or county may include, but is not limited to, the following:

(A) Evaluating and amending as necessary the action plan developed pursuant to Section 65564.

(B) Avoiding or ~~minimizing~~ *minimizing, when feasible,* new development that is located ~~within one mile of land that qualifies as a category of agricultural land.~~ *on land that qualifies as prime farmland, unique farmland, farmland of statewide importance, or grazing land, as shown on the maps prepared for the Farmland Mapping and Monitoring Program.*

(C) Locating, when feasible, new essential public facilities no less than one mile from land that qualifies as ~~a category of agricultural land.~~ *prime farmland, unique farmland, farmland of statewide importance, or grazing*

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land, as shown on the maps prepared for the Farmland Mapping and Monitoring Program.

(D) Adopting land use and zoning policies to ~~prevent~~ *limit* leapfrog *development and promote orderly* development.

(E) Creating procedures for cooperating with other public agencies and agricultural associations to protect land that qualifies as ~~a category of agricultural land:~~ *prime farmland, unique farmland, farmland of statewide importance, or grazing land, as shown on the maps prepared for the Farmland Mapping and Monitoring Program.*

(F) Developing strategies to promote the development of multicounty and city-county agreements for the protection of land that qualifies as ~~a category of agricultural land:~~ *prime farmland, unique farmland, farmland of statewide importance, or grazing land, as shown on the maps prepared for the Farmland Mapping and Monitoring Program.*

(G) Identifying the total percentage of agricultural land to be preserved within the jurisdiction.

(H) Promoting the development of housing, including affordable housing, and commercial development within existing areas zoned for housing and commercial development, when feasible.

(3) Identify and establish a set of feasible implementation measures designed to carry out and promote the goals, policies, and objectives established pursuant to paragraph (2). Implementation measures may include, but are not limited to, all of the following:

(A) Establishing, or entering into an agreement with a resource conservation district, pursuant to Chapter 3 (commencing with Section 9151) of Division 9 of the Public Resources Code.

(B) Establishing public-private partnerships for the long-term protection and stewardship of agricultural lands.

(C) Establishing streamlined procedures for the development of housing within areas identified as adequate housing sites in the housing element developed pursuant to Section 65583.

(D) Promoting the development of ~~housing, including affordable housing,~~ *housing and* utilizing the reforms and incentives to facilitate and expedite the construction of affordable housing that are identified in Section 65582.1.

(E) Repealing ordinances that limit development in existing ~~urbanized or planned urban~~ areas, including, but not limited to, density limitations, permit caps, height restrictions, and voter requirements for project approvals.

(b) Subject to available funding, and pursuant to the grant application requirements of Section 10281.5 of the Public Resources Code, the department may award grants to cities or counties to implement the requirements of this section.

(c) (1) At least 45 days before adopting or amending the open-space element, each county and city shall submit to the department one copy of a draft of the agricultural land component of the open-space plan or amendment and any maps used in creating that component.

(2) The department may review drafts so submitted to determine whether the drafts incorporate all known agricultural land and reasonable measures for the long-term protection of agricultural land, and report its recommendations to the city or county within 30 days of receipt of the draft of the open-space element or amendment pursuant to this subdivision.

(3) The legislative body of the city or county shall consider the department's recommendations before the final adoption of the open-space element or amendment, unless the department's recommendations are not available within the above-prescribed time limits as described in paragraph (4), or unless the department has indicated to the city or county that the department will not review the agricultural component of the open-space element.

(4) If the department's recommendations are not available within those prescribed time limits, the legislative body of the city or county may take the department's recommendations into consideration at the time it considers future amendments to the agricultural component of the open-space element.

(5) All recommendations made by the department shall be advisory to the planning agency and legislative body of the city or county.

SEC. 5. Section 65565.1 is added to the Government Code, to read:

65565.1. (a) The department shall give priority consideration for any grants, bond proceeds, and other local assistance funding provided by the department to a city or county that does all of the following:

- (1) Completes the agricultural land component of the open space element as described in Section 65565.
- (2) Provides the department with any geographical information system (GIS) data corresponding with the information identified in paragraph (1) of subdivision (a) of Section 65565.
- (3) Continues to review, and revise if necessary, the agricultural land component of the open-space element upon each revision of the housing element to identify new information that was not available during the previous revision of the open-space element.

(b) The department may promulgate regulations, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2), that are necessary to carry out its duties under this chapter.

SEC. 6. Section 65570 of the Government Code is amended to read:

65570. (a) The department may establish, after notice and hearing, rules and regulations, and require reports from local officials and may employ, borrow, or contract for such staff or other forms of assistance as are reasonably necessary to carry out this section, Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2, and Section 612 of the Public Resources Code. In carrying out the department's duties under those sections, it is the intention of the Legislature that the department shall consult with the Director of Food and Agriculture and the Director of State Planning and Research.

(b) Commencing July 1, 1986, and continuing biennially thereafter, the department shall collect or acquire information on the amount of land converted to or from agricultural use, and between agricultural categories, using 1984 baseline information as updated pursuant to this section for every county for which Important Farmland Series maps exist. On or before June 30, 1988, and continuing biennially thereafter, the department shall report to the Legislature on the data collected pursuant to this section. In reporting, the department shall specify, by category of agricultural land, the amount of land converted to, or from, agricultural use, by county and on a statewide basis. The department shall also report on the nonagricultural uses to which these agricultural lands were converted or committed.

(c) Beginning August 1, 1986, and continuing biennially thereafter, the department shall update and send counties copies of current Important Farmland Series maps. Counties may review the maps and notify the department within 90 days of any changes in agricultural land pursuant to subdivision (b) that occurred during the previous fiscal year, and note and request correction of any discrepancies or errors in the classification of agricultural lands on the maps. The department shall make those corrections requested by counties. The department shall provide staff assistance, as available, to collect or acquire information on the amount of land converted to, or from, agricultural use for those counties for which Important Farmland Series maps exist.

(d) The department may also acquire any supplemental information which becomes available from new soil surveys and establish comparable baseline data for counties not included in the 1984 baseline, and shall report on the data pursuant to this section. The department may prepare Interim Farmland maps to supplement the Important Farmland Series maps.

(e) The Legislature finds that the purpose of the Important Farmland Series maps and the Interim Farmland maps is not to consider the economic viability of agricultural lands or their current designation in the general plan. The purpose of the maps is limited to the preparation of an inventory of agricultural lands, as defined in this chapter, as well as land already committed to future urban or other nonagricultural purposes.

SEC. 7. Section 5950.1 of the Harbors and Navigation Code is amended to read:

5950.1. The term "inland parks and recreation areas," as used in this chapter, includes, but is not limited to, open-space land, as defined by subdivision (h) of Section 65560 of the Government Code, except that such term shall not include open-space land, as defined in paragraph (2) of subdivision (h) of Section 65560.

The provisions of Section 5900.4 shall not apply to the acquisition of forest lands, rangeland, or agricultural lands when the acquisition is for the purpose of establishing hiking, bicycling, or equestrian trails or where the lands are being acquired for their scenic or aesthetic values.

SEC. 8. Section 612 of the Public Resources Code is amended to read:

612. The department shall prepare, update, and maintain Important Farmland Series maps as defined in subdivision (e) of Section 65560 of the Government Code and other soils and land capability information, and prepare and maintain an automated map and data base system to record and report changes in the use of agricultural lands.

SEC. 9. Section 79033.6 of the Water Code is amended to read:

79033.6. (a) The money in the Agriculture and Open Space Mapping Subaccount, upon appropriation by the Legislature to the Department of Conservation, may be used by the Department of Conservation for the purposes of assisting local land-use planning by making available Important Farmland Series maps and Interim Farmland maps, as those terms are defined in Section 65560 of the Government Code. The information provided by the Department of Conservation is intended for local government use in conjunction with floodplain and flood hazard maps developed by the department to protect agricultural land resources coincident with avoidance or reduction of future flood risk and damage to residential or commercial land uses. The use of the funds in that subaccount by the Department of Conservation shall include, but is not limited to, all of the following:

- (1) Accelerating production of Important Farmland Series maps and Interim Farmland maps.
 - (2) Increasing the coverage and availability of soil surveys conducted by the United States Natural Resources Conservation Service.
 - (3) Increasing topographic, soil, and agricultural crop data collection and enhancing data gathering capability.
 - (4) Developing integrated mapping that incorporates Important Farmland Series mapping and Interim Farmland mapping data with other relevant information, including, but not limited to, floodplain or flood hazard information, planning designation, and other land and natural resource data.
- (b) For the purposes of this article, "maps" and "mapping" may include digital map files.