

AMENDED IN SENATE APRIL 3, 2008

SENATE BILL

No. 1618

Introduced by Senator Hollingsworth

February 22, 2008

An act to add Section 2083.5 to the Fish and Game Code, and to amend Section 30253 of, and to add Sections 21082.3 and 30253.5 to, the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1618, as amended, Hollingsworth. Public resources: defensible space.

(1) The California Endangered Species Act prohibits the taking of specified species that are deemed to be endangered or threatened.

This bill would exempt from this prohibition the taking of endangered or threatened species during specified activities related to creation *and maintenance* of a defensible space for fire safety for a building or structure under specified conditions.

(2) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and to certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would prohibit a lead agency from deeming, as having a significant environmental impact, specified activities related to creation *and maintenance* of a defensible space for fire safety for a building or structure under specified conditions. Because a lead agency, including a local agency, would be required to make a determination as to whether any of the specified conditions exists, this bill would increase the level

of service provided by a local agency, thereby imposing a state-mandated local program.

(3) The California Coastal Act of 1976 requires new developments under the jurisdiction of the California Coastal Commission to, among other things, minimize risks to life and property in the areas of high geologic, flood, and fire hazard.

This bill would provide that specified activities related to creation *and maintenance* of a defensible space for fire safety for a building or structure under specified conditions are deemed to be consistent with the California Coastal Act of 1976.

(4) 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 no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 2083.5 is added to the Fish and Game
 2 Code, to read:

3 2083.5. This article does not apply to the taking of a species
 4 listed by the commission as an endangered species or a threatened
 5 species for either of the following situations:

6 (a) Creation and maintenance of a defensible space for fire safety
 7 involving the clearance of brush and flammable vegetation around
 8 a building or structure in an amount that is approved *for cause* by
 9 a local fire official with jurisdiction over the building or structure
 10 that does not exceed 300 feet and any of the following:

11 (1) The local land use authority has entered into an agreement
 12 with the Department of Fish and Game for a Natural Community
 13 Conservation Plan pursuant to the Natural Community
 14 Conservation Planning Act (Chapter 10 (commencing with Section
 15 2800) of Division 3).

16 (2) The local land use authority has obtained from the Secretary
 17 of the Interior or the Secretary of Commerce an incidental take
 18 statement pursuant to Section 1536 of Title 16 of the United States
 19 Code or an incidental take permit pursuant to Section 1539 of Title
 20 16 of the United States Code that authorizes the taking of an

1 endangered species or a threatened species that is listed pursuant
2 to Section 1533 of Title 16 of the United States Code and that is
3 an endangered species, threatened species, or a candidate species
4 pursuant to this chapter.

5 (3) More than 50 percent of the land of the county in which the
6 project is located is owned by the federal government.

7 (b) (1) ~~Vegetation management activities for fire safety that do~~
8 ~~not involve clearance of brush and flammable vegetation to bare~~
9 ~~mineral ground in an amount that is approved by a local fire official~~
10 *involve clearance in an amount that is approved for cause to avoid*
11 *needless removal of vegetation by a local fire official with*
12 *jurisdiction over the building or structure that does not exceed*
13 *1,000 feet and any of the following:*

14 (1)

15 (A) The local land use authority has entered into an agreement
16 with the Department of Fish and Game for a Natural Communities
17 Conservation Plan pursuant to the Natural Community
18 Conservation Planning Act ~~Chapter~~ (Chapter 10 (commencing
19 with Section 2800) of Division 3).

20 (2)

21 (B) The local land use authority has obtained from the Secretary
22 of the Interior or the Secretary of Commerce an incidental take
23 statement pursuant to Section 1536 of Title 16 of the United States
24 Code or an incidental take permit pursuant to Section 1539 of Title
25 16 of the United States Code that authorizes the taking of an
26 endangered species or a threatened species that is listed pursuant
27 to Section 1533 of Title 16 of the United States Code and that is
28 an endangered species, threatened species, or a candidate species
29 pursuant to this chapter.

30 (3)

31 (C) More than 50 percent of the land of the county in which the
32 project is located is owned by the federal government.

33 (2) *For purposes of this subdivision, “vegetation management*
34 *activities” consist of all of the following activities while, at the*
35 *same time, maintaining the natural habitat values of the area:*

36 (A) *Effectively managing fuels by pruning vegetation.*

37 (B) *Reducing dead, dying, or diseased materials within*
38 *vegetation.*

39 (C) *Thinning native vegetation to reduce flame length.*

1 SEC. 2. Section 21082.3 is added to the Public Resources Code,
 2 to read:

3 21082.3. (a) For the purposes of this division, a lead agency
 4 shall not consider, as having a significant environmental impact,
 5 either of the following:

6 ~~(a)~~

7 (1) For a project that does not impact a threatened or endangered
 8 species, either of the following:

9 ~~(1)~~

10 (A) The creation and maintenance of a defensible space for fire
 11 safety involving the clearance of brush and flammable vegetation
 12 around a building or structure in an amount that is approved *for*
 13 *cause* by a local fire official with jurisdiction over the building or
 14 structure that does not exceed 300 feet.

15 ~~(2)~~

16 (B) Vegetation management activities for fire safety that do not
 17 ~~involve clearance of brush and flammable vegetation to bare~~
 18 ~~mineral ground in an amount that is approved by a local fire official~~
 19 *involve clearance in an amount that is approved for cause to avoid*
 20 *needless removal of vegetation by a local fire official with*
 21 *jurisdiction over the building or structure that does not exceed*
 22 *1,000 feet.*

23 ~~(b)~~

24 (2) For a project that has an impact on threatened or endangered
 25 species, either of the following:

26 ~~(1)~~

27 (A) Creation and maintenance of a defensible space for fire
 28 safety involving the clearance of brush and flammable vegetation
 29 around a building or structure in an amount that is approved *for*
 30 *cause* by a local fire official with jurisdiction over the building or
 31 structure that does not exceed 300 feet and any of the following:

32 ~~(A)~~

33 (i) The local land use authority has entered into an agreement
 34 with the Department of Fish and Game for a Natural Community
 35 Conservation Plan pursuant to the Natural Community
 36 Conservation Planning Act (Chapter 10 (commencing with Section
 37 2800) of Division 3 of the Fish and Game Code).

38 ~~(B)~~

39 (ii) The local land use authority has obtained from the Secretary
 40 of the Interior or the Secretary of Commerce an incidental take

1 statement pursuant to Section 1536 of Title 16 of the United States
2 Code or an incidental take permit pursuant to Section 1539 of Title
3 16 of the United States Code that authorizes the taking of an
4 endangered species or a threatened species that is listed pursuant
5 to Section 1533 of Title 16 of the United States Code and that is
6 an endangered species, threatened species, or a candidate species
7 pursuant to the California Endangered Species Act (Chapter 1.5
8 (commencing with Section 2050) of Division 3 of the Fish and
9 Game Code).

10 (C)

11 (iii) More than 50 percent of the land of the county in which
12 the project is located is owned by the federal government.

13 (2)

14 (B) Vegetation management activities for fire safety that do not
15 ~~involve clearance of brush and flammable vegetation to bare~~
16 ~~mineral ground in an amount that is approved by a local fire official~~
17 *involve clearance in an amount that is approved for cause to avoid*
18 *needless removal of vegetation by a local fire official with*
19 *jurisdiction over the building or structure that does not exceed*
20 *1,000 feet and any of the following:*

21 (A)

22 (i) The local land use authority has entered into an agreement
23 with the Department of Fish and Game for a Natural Communities
24 Conservation Plan pursuant to the Natural Community
25 Conservation Planning Act (Chapter 10 (commencing with Section
26 2800) of Division 3 of the Fish and Game Code).

27 (B)

28 (ii) The local land use authority has obtained from the Secretary
29 of the Interior or the Secretary of Commerce an incidental take
30 statement pursuant to Section 1536 of Title 16 of the United States
31 Code or an incidental take permit pursuant to Section 1539 of Title
32 16 of the United States Code that authorizes the taking of an
33 endangered species or a threatened species that is listed pursuant
34 to Section 1533 of Title 16 of the United States Code and that is
35 an endangered species, threatened species, or a candidate species
36 pursuant to the California Endangered Species Act (Chapter 1.5
37 (commencing with Section 2050) of Division 3 of the Fish and
38 Game Code).

39 (C)

1 (iii) More than 50 percent of the land of the county in which
 2 the project is located is owned by the federal government.

3 (b) For purposes of this section, “vegetation management
 4 activities” consist of all of the following activities while, at the
 5 same time, maintaining the natural habitat values of the areas:

- 6 (1) Effectively managing fuels by pruning vegetation.
- 7 (2) Reducing dead, dying, or diseased materials within
 8 vegetation.
- 9 (3) Thinning native vegetation to reduce flame length.

10 SEC. 3. Section 30253 of the Public Resources Code is
 11 amended to read:

12 30253. New development shall:

13 (a) Minimize risks to life and property in areas of high geologic,
 14 flood, and fire hazard.

15 (b) Assure stability and structural integrity, and neither create
 16 nor contribute significantly to erosion, geologic instability, or
 17 destruction of the site or surrounding area or in any way require
 18 the construction of protective devices that would substantially alter
 19 natural landforms along bluffs and cliffs.

20 (c) Be consistent with requirements imposed by an air pollution
 21 control district or the State Air Resources Control Board as to each
 22 particular development.

23 (d) Minimize energy consumption and vehicle miles traveled.

24 (e) Where appropriate, protect special communities and
 25 neighborhoods which, because of their unique characteristics, are
 26 popular visitor destination points for recreational uses.

27 SEC. 4. Section 30253.5 is added to the Public Resources Code,
 28 to read:

29 30253.5. In furtherance of subdivision (a) of Section 30253,
 30 the creation and maintenance of defensible space for fire safety
 31 involving the clearance of brush and flammable vegetation around
 32 a building or structure in an amount that is approved *for cause* by
 33 a local fire official with jurisdiction over the building or structure
 34 that does not exceed 300 feet shall be considered consistent with
 35 this division if any of the following conditions exist:

36 (a) The local land use authority has entered into an agreement
 37 with the Department of Fish and Game for a Natural Community
 38 Conservation Plan pursuant to the Natural Community
 39 Conservation Planning Act (Chapter 10 (commencing with Section
 40 2800) of Division 3 of the Fish and Game Code).

1 (b) The local land use authority has obtained from the Secretary
2 of the Interior or the Secretary of Commerce an incidental take
3 statement pursuant to Section 1536 of Title 16 of the United States
4 Code or an incidental take permit pursuant to Section 1539 of Title
5 16 of the United States Code that authorizes the taking of an
6 endangered species or a threatened species that is listed pursuant
7 to Section 1533 of Title 16 of the United States Code and that is
8 an endangered species, threatened species, or a candidate species
9 pursuant to the California Endangered Species Act (Chapter 1.5
10 (commencing with Section 2050) of Division 3 of the Fish and
11 Game Code).

12 (c) More than 50 percent of the land of the county in which the
13 project is located is owned by the federal government.

14 SEC. 5. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 a local agency or school district has the authority to levy service
17 charges, fees, or assessments sufficient to pay for the program or
18 level of service mandated by this act, within the meaning of Section
19 17556 of the Government Code.