

2005 California Public Resources Code Sections 5400-5409

CHAPTER 2.5. PRESERVATION OF PUBLIC PARKS

5400. This chapter shall be known as the Public Park Preservation Act of 1971.

5400.5. As used in this chapter "public park" includes only a park operated by a public agency.

5400.6. As used in this chapter "operating entity" means the entity owning the park land and the facilities thereon.

5401. (a) No city, city and county, county, public district, or agency of the state, including any division, department or agency of the state government, or public utility, shall acquire (by purchase, exchange, condemnation, or otherwise) any real property, which property is in use as a public park at the time of such acquisition, for the purpose of utilizing such property for any nonpark purpose, unless the acquiring entity pays or transfers to the legislative body of the entity operating the park sufficient compensation or land, or both, as required by the provisions of this chapter to enable the operating entity to replace the park land and the facilities thereon.

5401. (b) Where the operating entity and the acquiring entity are one and the same, the entity is subject to the provisions of this chapter pertaining to both operating and acquiring entities, and the entity is, as acquiring entity, required to make funds or land, or both, available pursuant to Section 5405 or 5407.2, and, as operating entity, required to acquire or improve park lands and facilities pursuant to Sections 5404, 5407, 5407.1, and 5407.2.

5402. The provisions of this chapter shall not apply to the acquisition of real property or any interest in real property for the construction or maintenance of underground utility services.

5403. The provisions of this chapter shall not apply to a public utility, whether privately or publicly owned, acquiring real property or an interest in real property for the purpose of providing services to the public park, if it is not feasible to place the utility services or facility underground.

5403.5. The provisions of this chapter shall not apply to a public utility, whether privately or publicly owned, acquiring real property or any interest in real property as a waterway; provided, that the legislative body of the operating entity determines by a majority vote that such waterway would preserve or enhance the recreational or aesthetic values of the park.

5404. In the event that the park land and facilities are acquired, the operating entity shall acquire substitute park land and facilities. If, however, less than 10 percent of the park land, but not more than one acre, is acquired, the operating entity may, instead of acquiring substitute park land and facilities, improve the unacquired portion of the park land and facilities, using the funds received for this purpose, after holding a public hearing on the matter and upon a majority vote of its legislative body.

5405. Unless the provisions of Section 5407.2 are applicable, the amount of compensation or land, or both, required by this chapter for the taking of the park land and facilities shall be equal to one of the following:

(a) The cost of acquiring substitute park land of comparable characteristics and of substantially equal size located in an area which would allow for use of the substitute park land and facilities by generally the same persons who used the existing park land and facilities, and the cost of acquiring substitute facilities of the same type and number, plus the cost of development of such substitute park land, including the placing of such substitute facilities thereon.

(b) Substitute park land of comparable characteristics and of substantially equal size located in an area which would allow for use of the substitute park land by generally the same persons who used the existing park land, and the cost of acquiring substitute facilities of the same type and number, plus the cost of development of such substitute park land, including the placing of such substitute facilities thereon.

(c) Any combination of substitute park land and compensation in an amount sufficient to provide substitute park land of comparable characteristics and of substantially equal size located in an area which would allow for use of the substitute park land and facilities by generally the same persons who used the existing park land and facilities, and to provide substitute facilities of the same type and number, plus the cost of development of such substitute park land, including the placing of such substitute facilities thereon.

5406. Upon receiving an offer of compensation or land, or both, from the acquiring entity for the acquisition of the park, the legislative body of the operating entity may enter into an agreement with the acquiring entity to the effect that the acquiring entity has complied with the requirements of Section 5405 or Section 5407.2 in determining the amount of compensation or land, or both. Such agreement may be entered into only after a public hearing, except where less than 10 percent of the total area of a state park is acquired, in which case the operating entity shall follow the procedure it adopts for such purposes. Within 45 days of the public hearing, due notice shall be conspicuously posted at the park being acquired, including along its exterior boundaries, at all entrances, and on the recreation building, if any exists. Any resident of the operating entity may bring an action in the superior court of the county in which the park is located for determination of whether such agreement complies with the requirements of Section 5405 or Section 5407.2. If no such agreement has been entered into within six months after the receipt of such offer, either party may submit a proposal for compensation or land, or both, to the superior court of the county in which the park to be acquired is located for the determination of proper compensation. The court may reject any such proposal as not meeting the requirements of Section 5405 or Section 5407.2. The court may approve only one proposal as meeting such requirements.

5407. Unless improvement of an unacquired portion of the park land and facilities is undertaken pursuant to Section 5404, all funds, or land and funds received by the operating entity shall be used to obtain or provide substitute park land and facilities in accordance with the provisions of Section 5407.1 or Section 5407.2.

5407.1. Such substitute park land and facilities shall be of comparable characteristics and of substantially equal size located in an area which would allow for use of the substitute park land

and facilities by generally the same persons who used the acquired park land and facilities. However, the operating entity, after holding a public hearing, with due notice posted at the park being acquired, and after finding on the basis of evidence submitted at such hearing that there are compelling reasons for acquiring a substitute park of a different character, may, upon the recommendation of the park commission or if none exists, upon the recommendation of the administrative department, unit or agency charged with the responsibility for the maintenance and operation of the park land and facilities, and by a three-fourths vote of its legislative body, provided it is otherwise legally permissible to do so, change the general character of the substitute park land and facilities.

5407.2. The operating entity, after holding a public hearing, with due notice posted at the park being acquired, and after finding on the basis of evidence submitted at such hearing that there is a lack of need for the park in its present location and that there are compelling reasons for acquiring a substitute park in another general location, may, upon the recommendation of the park commission or if none exists, upon the recommendation of the administrative department, unit or agency charged with the responsibility for the maintenance and operation of the park land and facilities, and by a three-fourths vote of its legislative body, provided it is otherwise legally permissible to do so, change the general location of the substitute park land and facilities. If the legislative body votes to change the general location of the substitute park land and facilities, the amount of compensation or land, or both, for the taking of the park land and facilities shall be determined on the basis of the fair market value of the property taken, considering all the uses for which it is available and adaptable regardless of its dedication to park purposes, plus the value of any and all improvements constructed thereon.

5408. Failure of any public entity or public utility to comply with any provision of this chapter shall not affect the validity of an acquisition by such entity or utility.

5409. Nothing in this chapter shall be construed to authorize the acquisition of public park property by purchase, exchange, condemnation, or otherwise.