

ASSEMBLY BILL

No. 1161

Introduced by Assembly Member Salas

February 22, 2013

An act to add Section 3482.7 to the Civil Code, relating to nuisance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1161, as introduced, Salas. Nuisance: mining activities.

Existing law defines a nuisance, in part, as anything that is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Existing law authorizes various remedies for nuisances, including remedies to effect abatement and damages. Existing law provides, among other things, that no agricultural activity, operation, facility, or appurtenances thereof, as defined, in operation for more than 3 years, and conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, shall become a nuisance due to any changed condition in the locality if it was not a nuisance at the time it began, except as specified.

This bill would provide that no mining activity, operation or facility, or appurtenances thereof, as defined, conducted or maintained for commercial purposes by means of a quarry or pit for more than 3 years pursuant to an active, valid land use authorization and reclamation plan, as specified, shall become a nuisance due to any changed condition in the locality if it was not a nuisance at the time it began, except as specified.

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

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

1 SECTION 1. Section 3482.7 is added to the Civil Code, to
2 read:

3 3482.7. (a) No surface mining activity, operation, or facility,
4 or appurtenances thereof, shall become a nuisance, private or
5 public, due to a changed condition in or about the locality, if both
6 of the following conditions are met:

7 (1) The surface mining activity, operation, or facility, or
8 appurtenances thereof, is conducted or maintained for commercial
9 purposes by means of a quarry or pit for more than three years
10 from both the issuance of an active, valid surface mining permit,
11 conditional use permit, or other land use authorization and an
12 active, valid reclamation plan approved pursuant to the Surface
13 Mining and Reclamation Act of 1975 (Chapter 9 (commencing
14 with Section 2710) of Division 2 of the Public Resources Code).

15 (2) The surface mining activity, operation, or facility, or
16 appurtenances thereof, described in paragraph (1) was not a
17 nuisance at the time it began.

18 (b) For purposes of paragraph (1) of subdivision (a), an
19 amendment to or revision of the permit, other authorization, or
20 reclamation plan described in that subdivision that authorizes a
21 substantial deviation from the permit or authorization shall
22 commence a new three-year period from the date of the amendment
23 or revision with respect to the activity, operation, or facility, or
24 appurtenances thereof that are the subject of the amendment or
25 revision.

26 (c) Subdivision (a) shall not apply if the surface mining activity,
27 operation, or facility, or appurtenances thereof, obstruct the free
28 passage or use, in the customary manner, of any navigable lake,
29 river, bay, stream, canal, or basin, or any public park, square, street,
30 or highway.

31 (d) Subdivision (a) shall not invalidate any provision in the
32 Health and Safety Code, Fish and Game Code, Food and
33 Agricultural Code, or Division 7 (commencing with Section 13000)
34 of the Water Code, if the mining activity, operation, or facility or
35 appurtenances thereof, constitutes a nuisance, public or private,
36 as specifically defined or described in any of those provisions.

37 (e) This section shall prevail over any contrary provision of an
38 ordinance or regulation of a city, county, city and county, or other

1 political subdivision of the state. However, nothing in this section
2 shall preclude a city, county, city and county, or other political
3 subdivision of this state, acting within its constitutional or statutory
4 authority and not in conflict with other provisions of state law,
5 from adopting an ordinance that allows a notification to a
6 prospective homeowner that the dwelling is proximate to a mining
7 activity, operation, facility, or appurtenances thereof, and is subject
8 to this section consistent with Section 1102.6a.

9 (f) For purposes of this section, the term “surface mining
10 activity, operation, or facility, or appurtenances thereof” shall
11 include, but not be limited to, the excavation, extraction,
12 stockpiling, or removal from land of ores and minerals, including
13 sand, gravel, shells, or stone, or combinations thereof, used to
14 produce a construction material or an industrial product or other
15 commercial product from these ores and minerals, including the
16 private ways, roads, and areas necessary to conduct that activity
17 or operation, and the operation of any plant or mill for processing
18 these ores and minerals, including crushers, sorters, equipment,
19 machines, tools, or other materials and structures, whether present
20 on or off the mine site.