

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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,~~ *plan* 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~~*Except as otherwise provided in this section,*
4 *a surface mining activity, operation, or facility, or appurtenances*
5 *thereof, shall not become a nuisance, private or public, due to a*
6 *changed condition in or about the locality, if both of the following*
7 *conditions are met:*

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

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

20 (b) (1) *For purposes of paragraph (1) of subdivision (a), an*
21 *amendment to or revision of the permit, other authorization, or*
22 *reclamation plan described in that subdivision that authorizes a*
23 *substantial deviation from the permit or authorization shall*
24 *commence a new three-year period from the date of the amendment*
25 *or revision with respect to the activity, operation, or facility, or*
26 *appurtenances thereof that are the subject of the amendment or*
27 *revision. A “substantial deviation” described in this subdivision*
28 *does not include the amendment or revision of a reclamation plan*
29 *to bring the plan into conformity with regulations adopted pursuant*
30 *to subdivision (b) of Section 2773 of the Public Resources Code.*

31 (2) *If a surface mining activity, operation, or facility, or*
32 *appurtenance thereof becomes subject to either a final*
33 *administrative penalty issued pursuant to subdivision (c) of Section*
34 *2774.1 of the Public Resources Code based on an express finding*
35 *of a willful violation of the provisions of Chapter 9 (commencing*

1 with Section 2710) of Division 2 of the Public Resources Code, or
2 an action by the Attorney General that enjoins the surface mining
3 activity, operations, or facility, or appurtenance thereof, under
4 subdivision (d) of Section 2774.1 of the Public Resources Code,
5 the three-year period for purposes of paragraph (1) of subdivision
6 (a) shall instead commence on the date immediately following the
7 later of:

8 (A) The date that the administrative penalty or injunction
9 becomes final.

10 (B) The date that the conditions giving rise to the administrative
11 penalty or injunction are remediated.

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

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

23 (e) This section shall prevail over any contrary provision of an
24 ordinance or regulation of a city, county, city and county, or other
25 political subdivision of the state. However, nothing in this section
26 shall preclude a city, county, city and county, or other political
27 subdivision of this state, acting within its constitutional or statutory
28 authority and not in conflict with other provisions of state law,
29 from adopting an ordinance that ~~allows a notification to a~~
30 ~~prospective homeowner that the dwelling is proximate to a mining~~
31 ~~activity, operation, facility, or appurtenances thereof, and is subject~~
32 ~~to this section consistent with Section 1102.6a is not in conflict~~
33 ~~with this section. This section shall not affect subdivision (a) of~~
34 ~~Section 2715 of the Public Resources Code.~~

35 (f) For purposes of this section, the term “surface mining
36 activity, operation, or facility, or appurtenances thereof” shall
37 include, but not be limited to, the excavation, extraction,
38 stockpiling, or removal from land of ores and minerals, including
39 sand, gravel, shells, or stone, or combinations thereof, used to
40 produce a construction material or an industrial product or other

1 commercial product from these ores and minerals, including the
2 private ways, roads, and areas necessary to conduct that activity
3 or operation, and the operation of any plant or mill for processing
4 these ores and minerals, including crushers, sorters, equipment,
5 machines, tools, or other materials and structures, whether present
6 on or off the mine site.

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