



1971

Environmental Protection

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Environmental Protection

Environmental Protection; proposed highway or public utility routes

Code of Civil Procedure §1241.7 (amended).

SB 976 (Marks); STATS 1971, Ch 1524

Section 1241.7(b) of the Code of Civil Procedure provides that prior to the initiation of any highway route location studies, or public utility route or structure location studies, an action for declaratory relief may be brought by a public agency owning any affected park, recreation area, wildlife or waterfowl management area, historical site, state-registered landmark, or ecological reserve. Such actions are to determine the question of which public use is the best and most necessary public use for the property.

This section is amended to provide that such action for declaratory relief must be filed and served within 120 days after *publication in a newspaper of general circulation pursuant to Section 6061 of the Government Code* and delivery of written notice to the affected agency by the California Highway Commission or public utility that a proposed or adopted route or site includes land of the type described above.

Prior to this amendment, the Highway Commission or utility was only required to give notice to the affected public agency, and actions for declaratory relief were required to be filed and served within 120 days from the date of such notice.

COMMENT

Section 1241.7(a) establishes a rebuttable presumption that land being used as a park, recreation area, wildlife or waterfowl management area, historical site, state-registered landmark, or ecological reserve is being used for the best and most necessary public use. If an action for declaratory relief as specified above is not filed within the 120 day period, the right to bring such action is waived and the presumption provided for in subdivision (a) does not apply.

If the intended purpose of SB 976 is to afford the general public with knowledge of potential loss of the specified land, thereby giving the public an opportunity to request the affected public agency to file

declaratory relief action, it is questionable whether a one time publication as provided in Government Code §6061 is sufficient notice to the general public.

Environmental Protection; civil liability for water pollution

Water Code §13350 (amended).

SB 225 (Behr); STATS 1971, Ch 668

Imposes civil liability on persons who violate provisions of the Porter-Cologne Water Quality Control Act.

Section 13350 of the Water Code provides that civil liability, not to exceed \$6,000 per day for each day of violation, may be assessed against any person who intentionally or negligently violates any cease and desist order issued, re-issued, or amended by the State Water Resources Control Board or any Regional Water Quality Control Board.

Chapter 668 adds two more violations for which this civil liability may be imposed:

- 1) intentional or negligent discharge of wastes or causing or permitting waste to be deposited where it is discharged into the waters of this state and creates a condition of pollution or nuisance; or
- 2) causing or permitting any oil or residuary product of petroleum to be deposited in or on the waters of the state, except in accordance with the provisions of the Porter-Cologne Water Quality Control Act (Water Code §§13000-13983).

The Attorney General, upon request of a regional board or the state board, is required to petition the superior court to impose, assess and recover the penalty provided for by Section 13350. As amended, except in cases where a person violates a cease and desist order, a regional board or the state board *must* hold a hearing (with notice being given to all affected persons) prior to being able to request action by the Attorney General.

Chapter 668 further amends §13350 to assure that remedies under this section are to be construed to be in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, *Environmental Law Handbook* §7.30 (1970).
- 2) Robie and Hume, *Practice under California's New Water Quality Control Act*, 45 L.A. BAR BULL. 177 (1970).

Environmental Protection; handling of agricultural poisons

Agricultural Code §12991 (amended).

AB 327 (Wood); STATS 1971, Ch 878

Section 12991 of the Agricultural Code, which provides that it is unlawful to store or dispose of any economic poison or its container except in compliance with the rules and regulations of the director, is amended to include the transportation and handling of any economic poison or its container.

Chapter 2 of Division 7 of the Agricultural Code (Economic Poisons) designates those substances or mixtures considered economic poisons.

Environmental Protection; oil spills

Harbors and Navigation Code §§293, 6304.1 (new).

AB 362 (Miller); STATS 1971, Ch 1763

Section 293 is added to the Harbors and Navigations Code to provide that the owner or operator of a vessel engaged in commercial transportation of petroleum or fuel oil is strictly liable for any property damage or injury to the natural resources of the state resulting from leakage or discharge of such material into or upon navigable waters of this state. However, there is no liability under this section when the damage resulted from the interposition of an unforeseeable, external or independent force.

As used in this section, "owner or operator" means any person owning or operating, or chartering by demise a vessel. "Person" means an individual, firm, corporation, association or partnership. "Navigable waters of the state" means all portions of the sea within the territorial jurisdiction of the state and all inland waters navigable in fact.

Section 293 further provides that this section shall be known and may be cited as the Miller Anti-Pollution Act of 1971.

Section 6304.1 is added to the Harbors and Navigation Code to authorize certain port districts to lease portions of their land and water area for marine-oriented apartments, townhouses and boatslips.

See Generally:

- 1) REVIEW OF SELECTED 1968 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 162.
- 2) Lynch, *Coordinated Resources Development: Legal controls of water quality and oil pollution in a marine environment*, 44 L.A. BAR. BULL. 154 (1969).

Environmental Protection; public access to waterways

Public Resources Code §§10000, 10001, 10002, 10020, 10021, 10022, 10040, 10041, 10042, 10043 (new).

AB 1504 (Z'berg); Stats 1971, Ch 1667

Provides that no city or county may approve a map for a subdivision fronting a public waterway which does not provide access from the public highway to the water; does not dedicate a public easement along a portion of the bank or shore; and which does not express to which public entity the dedication is made.

Section 10020 of the Public Resources Code prohibits a city or county from approving a tentative or final map of a subdivision which will front on a public river or stream which does not provide reasonable public access by fee or easement from the public highway to the bank of the river which borders on or lies within the subdivision. The city or county will determine what is reasonable access considering the following factors:

- 1) Access may be by highway, foot trail, bike trail, horse trail or any other means of travel.
- 2) The size of the subdivision.
- 3) The type of riverbank and the various appropriate recreational, educational, and scientific uses which could be made of it.
- 4) The likelihood of trespass on private property and reasonable means to avoid such trespasses.

Section 10021 of this code prohibits the approval of a tentative or final map for any subdivision which fronts a public waterway which does not provide for a dedication of a public easement along a portion of the bank of the waterway bordering or lying within the proposed subdivision. The reasonableness of the easement dedicated will be determined by the city or county using the same factors outlined in §10020 above. Public access routes and easements to the bank of the waterway must be designated on the final subdivision map along with designation to which governmental entity the dedications have been made (§10022). Acceptance by the governmental entity must occur within 3 years of approval of the final subdivision map, or such dedication will be deemed abandoned.

Section 10041 provides that if other access is reasonably available within a reasonable distance of the subdivision, the fact that no reasonable access is provided across the subdivision should not be the sole grounds for disapproval of a tentative or final subdivision map. The

findings regarding availability of such access off the subdivision land must be noted on the face of the subdivision map.

COMMENT

The express intent of the Legislature in enacting this measure is that the natural resources of this state are limited in quantity and the population of this state continues to grow at a rapid rate thus increasing the need for utilization of public natural resources. It is also noted that the increase in population has increased demand for private property adjacent to such natural resources and many real estate subdivisions have resulted in diminished public access. Therefore the Legislature intends that public access to public natural resources be increased as essential to the health and well-being of all citizens of this state.