

ATTACHMENT 5

CALIFORNIA CIVIL CODE § 3482.5, "THE RIGHT TO FARM ACT"

California Agricultural Protection Act
CALIFORNIA CODES
CIVIL CODE
DIVISION 4. GENERAL PROVISIONS
PART 3. NUISANCE
TITLE 1. GENERAL PRINCIPLES

§ 3482.5. Agricultural activity not a nuisance; exceptions; construction with other laws

- (a) (1) No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began.
- (2) No activity of a district agricultural association that is operated in compliance with Division 3 (commencing with Section 3001) of the Food and Agricultural Code, shall be or become a private or public nuisance due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began. This paragraph shall not apply to any activities of the 52nd District Agricultural Association that are conducted on the grounds of the California Exposition and State Fair, nor to any public nuisance action brought by a city, county, or city and county alleging that the activities, operations, or conditions of a district agricultural association have substantially changed after more than three years from the time that the activities, operations, or conditions began.
- (b) Paragraph (1) of subdivision (a) shall not apply if the agricultural activity, operation, or facility, or appurtenances thereof obstruct the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin, or any public park, square, street, or highway.
- (c) Paragraph (1) of subdivision (a) shall not invalidate any provision contained in the Health and Safety Code, Fish and Game Code, Food and Agricultural Code, or Division 7 (commencing with Section 13000) of the Water Code, if the agricultural activity, operation, or facility, or appurtenances thereof constitute a nuisance, public or private, as specifically defined or described in any of those provisions.
- (d) This section shall prevail over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state. However, nothing in this section shall preclude a city, county, city and county, or other political subdivision of this state, acting within its constitutional or statutory authority and not in conflict with other provisions of state law, from adopting an ordinance that allows notification to a prospective homeowner that the dwelling is in

close proximity to an agricultural activity, operation, facility, or appurtenances thereof and is subject to the provisions of this section consistent with Section 1102.6a.

- (e) For purposes of this section, the term "agricultural activity, operation, or facility, or appurtenances thereof" shall include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur bearing animals, fish, or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market.

§ 3482.6. Agricultural processing activity not a nuisance; increase in activity; construction with other laws

- (a) No agricultural processing activity, operation, facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in continuous operation for more than three years if it was not a nuisance at the time it began.
- (b) If an agricultural processing activity, operation, facility, or appurtenances thereof substantially increases its activities or operations after January 1, 1993, then a public or private nuisance action may be brought with respect to those increases in activities or operations that have a significant effect on the environment. For increases in activities or operations that have been in effect more than three years, there is a rebuttable presumption affecting the burden of producing evidence that the increase was not substantial.
- (c) This section does not supersede any other provision of law, except other provisions of this part, if the agricultural processing activity, operation, facility, or appurtenances thereof, constitute a nuisance, public or private, as specifically defined or described in the provision.
- (d) This section prevails over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state, except regulations adopted pursuant to Section 41700 of the Health and Safety Code as applied to agricultural processing activities, operations, facilities, or appurtenances thereof that are surrounded by housing or commercial development on January 1, 1993. However, nothing in this section precludes a city, county, city and county, or other political subdivision of this state, acting within its constitutional or statutory authority and not in conflict with other provisions of state law, from adopting an ordinance that allows notification to a prospective homeowner that the dwelling is in close proximity to an agricultural processing activity, operation, facility, or

appurtenances thereof and is subject to provisions of this section consistent with Section 1102.6a.

(e) For the purposes of this section, the following definitions apply:

(1) "Agricultural processing activity, operation, facility, or appurtenances thereof" includes, but is not limited to rendering plants licensed pursuant to Section 19300 of the Food and Agricultural Code and collection centers licensed pursuant to Section 19300.5 of the Food and Agricultural Code, the canning or freezing of agricultural products, the processing of dairy products, the production and bottling of beer and wine, the processing of meat and egg products, the drying of fruits and grains, the packing and cooling of fruits and vegetables, and the storage or warehousing of any agricultural products, and includes processing for wholesale or retail markets of agricultural products.

(2) "Continuous operation" means at least 30 days of agricultural processing operations per year.

(3) "Proper and accepted customs and standards" means the compliance with all applicable state and federal statutes and regulations governing the operation of the agricultural processing activity, operation, facility, or appurtenances thereof with respect to the condition or effect alleged to be a nuisance.

(f) This section does not apply to any litigation pending or cause of action accruing prior to January 1, 1993.

§ 3483. Continuing nuisance; liability of successive owners for failure to abate

SUCCESSIVE OWNERS. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

§ 3484. Damages recoverable notwithstanding abatement

ABATEMENT DOES NOT PRECLUDE ACTION. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

**Enacted in 1981, amended in 1993 and 1999.
Reviewed and updated by AAHS in June 2001.**