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HEALTH AND SAFETY CODE - HSC

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 27007] (*Division 20 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 6.5. Hazardous Waste Control [25100 - 25259] (*Chapter 6.5 added by Stats. 1972, Ch. 1236.*)

ARTICLE 11.1. Institutional Control [25220 - 25227] (*Article 11.1 added by Stats. 2012, Ch. 39, Sec. 39.*)

25220. (a) The department shall notify the planning and building department of each city, county, or regional council of governments of any recorded land use restriction imposed within the jurisdiction of the local agency pursuant to the former Section 25229, 25230, or 25398.7, as those sections read prior to June 27, 2012, or Section 25202.5, 25221, or 79055. Upon receiving this notification, the planning and building department shall do both of the following:

- (1) File all recorded land use restrictions in the property files of the city, county, or regional council of government.
- (2) Require that a person requesting a land use that differs from those filed land use restrictions on the property apply to the department for a variance or a removal of the land use restrictions pursuant to Section 25223 or 25224.

(b) A planning and building department of a city, county, or regional council of governments may assess a property owner a reasonable fee to cover the costs of taking the actions required by subdivision (a). For purposes of this subdivision, "property owner" does not include a person who holds evidence of ownership solely to protect a security interest in the property, unless the person participates, or has a legal right to participate, in the management of the property.

(c) The department shall maintain a list of all recorded land use restrictions, including deed restrictions, recorded pursuant to the former Sections 25229, 25230, and 25398.7, as those sections read prior to June 27, 2012, and Sections 25202.5, 25221, and 79055. The list shall, at a minimum, provide the street address, or, if a street address is not available, an equivalent description of location for a rural location or the latitude and longitude of each property. The department shall update the list as new deed restrictions are recorded. The department shall make the list available to the public, upon request, and shall make the list available on the department's internet website. The list shall also be incorporated into the list of sites compiled pursuant to Section 65962.5 of the Government Code.

(Amended by Stats. 2022, Ch. 258, Sec. 60. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25221. A person may enter into an agreement with the department regarding his or her property, or a portion thereof, which provides for restricting specified uses of the property, as determined by all parties to the agreement. Except as otherwise provided in this article, the agreement is irrevocable and shall be recorded by the owner, pursuant to paragraph (1) of subdivision (a) of Section 25220, as a hazardous waste easement, covenant, restriction, or servitude, or any combination of those servitudes, as appropriate, upon the present and future uses of the land. That person shall bear all costs incurred in determining the specific land use restrictions for his or her property, or a portion of the property pursuant to this subdivision.

(Repealed and added by Stats. 2012, Ch. 39, Sec. 39. (SB 1018) Effective June 27, 2012.)

25222. Public notice of an agreement proposed to be entered into pursuant to Section 25221 shall be provided by the department at least 30 days before a hearing on, or execution of, the agreement. The notice shall be given by publication once in a newspaper of general circulation published and circulated in the locale or, if there is none, by posting the notice in at least three public places in the locale. In the case of a proposed agreement, the department shall also give notice to the city or county in whose jurisdiction the property is located. Public comment on the proposed agreement entered into pursuant to Section 25221 shall be submitted to the department in writing.

(Repealed and added by Stats. 2012, Ch. 39, Sec. 39. (SB 1018) Effective June 27, 2012.)

25223. (a) A person may apply to the department for a written variance from a land use restriction imposed by the department. An application shall contain sufficient evidence for the department to issue a notice for a hearing. The notice shall contain both of the following:

(1) A statement of all of the following that apply:

(A) Land use restrictions have been imposed on the land.

(B) A hearing is pending on the land.

(2) A statement of who is applying for a variance, the proposed variance, and a statement of the reasons in support of the granting of a variance.

(b) The procedures for the conducting of the hearing specified in subdivision (a) are those set forth in former Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20. A person shall not make a subsequent application pursuant to this section within 18 months of a final decision on an application by the department. A person applying for a variance pursuant to this section shall pay the department for all costs incurred by the department relating to the application.

(c) The applicant shall have the burden of proving at the hearing that the variance will not cause or allow any of the following effects associated with hazardous waste or extremely hazardous waste:

(1) The creation or increase of significant present or future hazards to public health.

(2) A significant diminution of the ability to mitigate any significant potential or actual hazard to public health.

(3) A long-term increase in the number of humans or animals exposed to significant hazards that affect the health, well-being, or safety of the public.

(d) If, upon the preponderance of the testimony taken, the director is of the opinion that the variance should be granted, the director shall issue and cause to be served his or her decision and findings of fact on the owner of the land, the legislative body of the city or county in whose jurisdiction the land is located, and upon any other persons who were permitted to intervene in the proceedings. The findings of fact shall include the exact nature of the proposed variance and the reasons in support of the granting of the variance.

(e) If the director is of the opinion that the variance should not be granted, the director shall issue and cause to be served his or her findings of fact in support of the denial on the parties specified in subdivision (d).

(f) The department shall record within 10 days any final decision made by the director pursuant to this section as provided in Section 25225.

(g) A decision of the director made after a hearing held pursuant to this section shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

(Repealed and added by Stats. 2012, Ch. 39, Sec. 39. (SB 1018) Effective June 27, 2012.)

25224. (a) A person may apply to the department to remove a land use restriction imposed by the department on the grounds that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. A person shall not make a subsequent application pursuant to this section within 12 months of a final decision on an application by the department. A person applying to the department pursuant to this section shall pay the department all costs incurred by the department relating to the application. An application shall contain sufficient evidence for the department to make a finding upon any or all of the following grounds:

(1) The hazardous waste that caused the land to be restricted or designated has since been removed or altered in a manner that precludes any significant existing or potential hazard to present or future public health.

(2) New scientific evidence is available since the restriction or designation of the land or the making of any previous application pursuant to this section, concerning either of the following:

(A) The nature of the hazardous waste that caused the land to be designated.

(B) The geology or other physical environmental characteristics of the designated land.

(b) An aggrieved person may appeal a determination of the department made pursuant to subdivision (a) by submitting a request for a hearing to the director. The request shall be mailed by certified mail not later than 30 days after the date of the mailing of the department's decision on the application.

(c) Upon receipt of a timely appeal, the director shall give notice of a hearing pursuant to the procedures set forth in this article.

(d) The department shall record within 10 days any new and final determination made by the department pursuant to this section as provided in Section 25225.

(e) A determination made by the department, after a hearing held pursuant to this section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

(f) Whenever there is a final determination pursuant to this section removing a land use restriction, the easement, covenant, restriction, or servitude imposed on the land created by Section 25221 or 79055 or the former Section 25222.1 or 25230 shall automatically terminate. The department shall record or cause to be recorded within 10 days a termination of the easement, covenant, restriction, or servitude, which shall particularly describe the real property subject to the easement, covenant, restriction, or servitude and shall be indexed by the recorder in the grantee index in the name of the record title owner of the real property subject to the easement, covenant, restriction, or servitude and in the grantor index in the name of the department.

(Amended by Stats. 2022, Ch. 258, Sec. 61. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25225. The department shall record within 10 days any final written instrument made pursuant to Section 25221 or 25224 with the county recorder of the county in which the property is located. Any recordation made pursuant to this article or Section 25202.5 or 79055 shall include the street address, assessor's parcel number, or legal description of each parcel affected and the name of the owner thereof, and the recordation shall be recorded by the recorder in the grantor index in the name of the record title owner of the real property and in the grantee index in the name of the department.

(Amended by Stats. 2022, Ch. 258, Sec. 62. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25226. An assessor shall consider a restrictive easement, covenant, restriction, or servitude adopted pursuant to the former Section 25230, as that section read prior to June 27, 2012, or Section 25202.5, 25221, or 79055 as an enforceable easement, covenant, restriction, or servitude subject to Section 402.1 of the Revenue and Taxation Code and shall appropriately reassess the land, those of which has been restricted, at the lien date following the adoption or imposition of the easement, covenant, restriction, or servitude.

(Amended by Stats. 2022, Ch. 258, Sec. 63. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25227. A person shall not engage in any of the following on land that is subject to a recorded land use restriction pursuant to former Section 25229, 25230, or 25398.7, as those sections read on January 1, 2012, or pursuant to Section 25202.5, 25221, or 79055, unless the person obtains a specific approval in writing from the department for the land use on the land in question:

(a) A new use of the land, other than the use, modification, or expansion of an existing industrial or manufacturing facility or complex on land that is owned by, or held for the beneficial use of, the facility or complex on or before January 1, 1981.

(b) Subdivision of the land, as that term is used in Division 2 (commencing with Section 66410) of Title 7 of the Government Code, except that this subdivision does not prevent the division of a parcel of land so as to divide that portion of the parcel that contains hazardous materials, as defined in subdivision (d) of Section 25260, from other portions of that parcel.

(c) Construction or placement of a building or structure on the land that is intended for use as any of the following, or the new use of an existing structure for the purpose of serving as any of the following:

(1) (A) Except as provided in subparagraph (B), a residence, including a mobilehome or factory built housing constructed or installed for use as permanently occupied human habitation.

(B) The addition of rooms or living space to an existing single-family dwelling or other minor repairs or improvements to residential property that do not change the use of the property, increase the population density, or impair the effectiveness of a response action, shall not constitute construction or placement of a building or structure for purposes of subparagraph (A).

(2) A hospital for humans.

(3) A school for persons under 21 years of age.

(4) A day care center for children.

(5) A permanently occupied human habitation, other than those used for industrial purposes.

(Amended by Stats. 2022, Ch. 258, Sec. 64. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

