

CITY COUNCIL MEETING

JUNE 3, 1981

2-131

CC-16

COMPLAINT  
RECEIVED RE  
MOKELUMNE RIVER  
HAZARDS TO  
BOATERS IN AREA  
OF RIVERGATE  
MOKELUMNE

Council asked the City Clerk to respond to a letter which had been received from the Rivergate Mokelumne Homeowners Association regarding hazards to boaters which exist on the Mokelumne River as it passes that subdivision.

*Jack Ranko indicated  
he would contact property  
owner regarding various  
issues responsible for  
hazards on river*

*Council*

**RIVERGATE MOKELUMNE HOMEOWNERS ASSOCIATION**

**Post Office Box 791**

**Lodi, CA 95241**

**May 22, 1981**

**City Council  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240**

**Gentlemen:**

It has come to our attention that hazards to boaters exist on the Mokelumne River as it passes our subdivision. Submerged logs pose a hazard to boats, boaters, and skiers as they pass up and down the river. In turn, large, high-speed boats with or without skiers pose a hazard to smaller boats and/or intertubes frequently operated by children. We do not know who is responsible for posting and maintaining speed limits in the River or identifying submerged hazards. We are therefore asking you, the City Council, for your help eliminating these hazards.

As members of the community, we want the Mokelumne to be safe for all those people using it.

Very truly yours,

BOARD OF DIRECTORS



W. H. Libbey  
Secretary-Treasurer

WHL:daz

MAY 27 1981

Sheriff-Coroner Frank W. Marty  
San Joaquin County  
222 E. Weber Avenue  
Stockton, California

Dear Sheriff Marty:

Sometime ago this letter was presented to the City Council of the City of Lodi. Many of the problems pointed out in this letter are matters that would be handled by your Department.

We are passing this information on to you so that you may respond to the Rivergate Mokelumne Homeowners Association regarding concerns they have regarding hazards to boaters that exist on the Mokelumne River.

Very truly yours,

ALICE M. SEDGWICK  
City Clerk

To Alice M. Rasmuch  
City Clerk.

Subject. Mokelumne River adjoining  
Rivergate Mokelumne Sub.

Please consider the following in  
your response to Rivergate Homeowners  
Association.

1. The Rivergate Sub lots do not extend to the river bank. There is approximately 5' of public property adjoining the river along the rear of most lots.
2. The Mokelumne River is not in the City of Fodi. It is in San Joaquin County.
3. Please see letter concerning public access from former City Attorney Robert H. Mullen.

4. Someone? has placed a large  
5 MPH buoy in the middle of  
Mokelumne River adjacent  
to Lot 36. Who gave them  
permission to place the buoy.  
I consider the buoy illegal  
and a hazard in its self.

Roger J Houston

Institute - Canoe - Fisherman  
Boat - Water Skier.

CITY COUNCIL

RICHARD L. HUGHES, Mayor  
JAMES W. PINKERTON, Jr., Mayor Pro Tem  
EZRA EHRHARDT  
WALTER KATNICH  
BEN SCHAFFER

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
LODI, CALIFORNIA 95240  
(209) 368-0641

HENRY A. GLAVES, Jr.  
City Manager

MISS BESSIE BENNETT  
City Clerk

ROBERT H. MULLEN  
City Attorney

October 15, 1973

James Schroeder  
Planning Director  
City Hall  
Lodi, CA 95240

Dear Jim:

You have asked my opinion regarding the requirements of Public Resources Code Section 10030, et seq.

Division 10 containing Sections 10000, et seq, of the Public Resources Code became effective March 4, 1972.

The preamble in this division recites the findings of the Legislature and their declaration that by reason of the fact that the public natural resources of the state are limited and the population is growing that it is necessary to increase the need for utilization of public natural resources, and in Section 10001 it is stated "...The increase in population has also increased demand for private property adjacent to public natural resources through real estate subdivision developments which resulted in diminishing public access to public natural resources." Finally, the Legislature further finds that it is essential to the health and well being of the citizens of the state that public access to public natural resources be increased. (Section 10002)

You may recall that there were decisions affecting property along the coast in Santa Cruz and in Mendocino County that prompted this legislation. These decisions recognized that in the factual situation of those cases, the public for many years had gained access to the ocean over private property, and the courts held that an easement in the public had been obtained and would be preserved.

Section 10020 states that "No city...shall approve either a tentative or a final map of any proposed subdivision to be fronted upon a public waterway, river, or stream which does not provide or have available reasonable public access by fee or easement from a public highway to that portion of the bank of the river or stream bordering or lying within the proposed subdivision".

James Schroeder  
October 15, 1973  
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This Section goes on to state that "reasonable public access shall be determined by the city...." and in making the determination of what shall be reasonable, the city shall consider the following:

- "1. That the access may be highway, foot, bike, or horse trail or any other means of travel.
2. The size of the subdivision.
3. The type of river bank and the various appropriate recreational, educational, and scientific uses including but not limited to swimming, diving, boating, fishing, water skiing, scientific collection and teaching.
4. The likelihood of trespass on private property and reasonable means of avoiding such trespasses."

Section 10021 is identical with Section 10020 except that this section calls for the providing for the "dedication of a public easement along a portion of the bank of the river or stream bordering or lying within the proposed subdivision".

As you can see, Section 10020 provides for the access through the subdivision and Section 10021 provides for an easement along the waterway.

Section 10021 stresses that the extent and character of the easement referred to shall be "reasonably defined to achieve reasonable public use of the public waterway, river or stream consistent with public safety. The reasonableness and extent of the easement shall be determined by the city....". In determining what is reasonable, the following elements are to be considered:

- "1. That the easement may be for a foot, bike, or horse trail" (note these restrictions).
2. The size of the subdivision.
3. The type of river bank and the various appropriate recreational, educational, and scientific uses, including but not limited to swimming, diving, boating, fishing, water skiing, scientific collection, and teaching.
4. The likelihood of trespass on private property and reasonable means of avoiding such trespasses.

James Schroeder  
October 15, 1973  
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Finally, it should be noted that Section 10022 states that the foregoing easements shall be shown on the final map and show the governmental entity to which the dedication is being offered. The governmental agency has three years within which to accept the offer, and unless accepted, the dedication shall be deemed abandoned.

The first question is whether Sections 10020, et seq., of the Public Resources Code apply to the subdivision under consideration in view of the fact that a tentative map was filed and approved prior to March 4, 1972. By reason of the fact that the sections state that "no city...shall approve either a tentative or a final map of any proposed subdivision...", it would be my opinion that the sections do apply to this particular development as no final map has been approved.

It is to be borne in mind that the foregoing statute has been adopted for application statewide. The Legislature must have realized that every factual situation could not be covered by the statute where a subdivision borders on a public waterway. I make this conclusion based on the use of the words in the statute in Section 10020(b) that "reasonable public access shall be determined" and guidelines are then set forth. Again, in Section 10021(b) where the extent of the public easement "shall be reasonably defined to achieve reasonable public use...consistent with public safety. The reasonableness and extent shall be determined by the city...."

It is therefore my opinion that it is up to the planning commission and/or city council to ultimately determine whether "reasonable public access...." as well as a public easement can be "reasonably defined to achieve reasonable public use consistent with public safety" should be required in any subdivision bordering the Mokelumne River. In arriving at your decision, some of the items that come to mind for consideration are:

Has the public used any portion of the particular subdivision for access to the property for a period of time as was the factual situation in the two cases above referred to.

What should be the reasonable width of the access to the property. In my opinion, it should not be greater than 20 feet.

James Schroeder  
October 15, 1973  
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Should vehicular traffic be permitted, or only foot traffic?

What uses are to be made of the easement?

The easements, if established, would be publicly owned with attendant cost of maintenance, upkeep, and liability to the city.

What provisions will be made for public parking for those persons using the easements?

The easement contemplated by Section 10021 is limited to a foot, bike, or horse trail. Where would this begin and where would it end?

Very truly yours,

  
Robert H. Mullen  
City Attorney

RHM:lks

cc: Carlyn F. Reid

RIVERGATE MOKELUMNE HOMEOWNERS ASSOCIATION

Post Office Box 791

Lodi, CA 95241

May 22, 1981

City Council  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

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