

SUPREME COURT
FILED

S230104

MAR 15 2016

**IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA**

Frank A. McGuire Clerk

Deputy

JAIME A. SCHER et al., Plaintiffs, Appellants and Respondents,

v.

JOHN F. BURKE et al., Defendants, Appellants and Respondents.

On Review From The Court Of Appeal For the Second
Appellate District,
Division Three, 2nd Civil No. B235892

After An Appeal From the Superior Court For The State
of California,
County of Los Angeles, Case Number BC 415646, Hon.
Malcolm Mackey

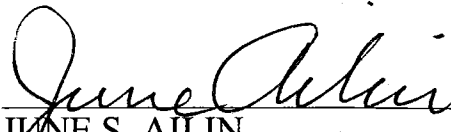
MOTION FOR JUDICIAL NOTICE

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Attorneys for JAIME A. SCHER and JANE McALLISTER

Plaintiffs, Appellants and Respondents, Jaime A. Scher and Jane McAllister respectfully request that the Court take judicial notice of the following document attached hereto as Exhibit 1: Senate Bill No. 504, introduced on March 9, 1971 of the 1971 Legislative Session.

DATED: March/4, 2016 ALESHIRE & WYNDER, LLP
JUNE S. AILIN

By: 
JUNE S. AILIN
Attorneys for Plaintiffs, Appellants
and Respondents, JAIME A.
SCHER and JANE McALLISTER

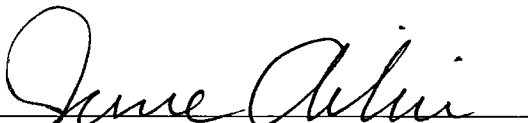
MEMORANDUM OF POINTS AND AUTHORITIES

The central issue before this Court is the interpretation of Civil Code section 1009. The item which Plaintiffs are requesting the Court to judicially notice is the original bill by which section 1009 was proposed in the Legislature. The original bill is noteworthy and relevant because it shows the statement of legislative intent found in subdivision (a) of section 1009 was always part of the proposed statute, remained unchanged throughout the legislative process and was supported by the statement of urgency included in the bill.

Judicial notice of earlier versions of a statute is proper and is mandatory under Evidence Code section 452(a). (*Kaufman & Broad Communities v. Performance Plastering* (2005) 133 Cal.App.4th 26, 31; *Quintano v. Mercury Casualty Co.* (1996) 11 Cal.4th 1049, 1055; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 171.) Because judicial notice of Senate Bill 504 by the trial court would have been mandatory if it had been requested, it is proper for this Court to take judicial notice of it even though the trial court was not requested to do so did not. (Evidence Code section 459(a); *People v. Ansell* (2001) 25 Cal.4th 868, 881, fn. 20; *Elsner v. Uveges* (2004) 34 Cal.4th 915, 929, fn. 10.)

DATED: March 14, 2016

ALESHIRE & WYNDER, LLP
JUNE S. AILIN

By: 
JUNE S. AILIN
Attorneys for Plaintiffs, Appellants
and Respondents, JAIME A.
SCHER and JANE McALLISTER



Introduced by Senators Lagomarsino, Behr, Collier, Cologne, Coombs,
Dills, Marler, Nejedly, Schrade, Way, and Zenovich
(Coauthors: Assemblymen MacDonald, Schabarum, and Townsend)

March 9, 1971

REFERRED TO COMMITTEE ON NATURAL RESOURCES AND WILDLIFE

*An act to add Section 1009 to the Civil Code, relating to
dedication of lands, declaring the urgency thereof, to take
effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 504, as introduced, Lagomarsino (N.R. & W.). Dedication of
lands.

Adds Sec. 1009, Civ.C.

Declares public policy favoring public use of private lands for rec-
reational purposes without impairing rights of landowners.

Prohibits any use after effective date of act from conferring a vested
right in public to continue such use permanently in absence of express
written irrevocable offer by owner of property accepted by specified
public agency.

To take effect immediately, urgency statute.

Vote—3; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1009 is added to the Civil Code, to
- 2 read:
- 3 1009. (a) The Legislature finds that:
- 4 (1) It is in the best interests of the state to encourage owners
- 5 of private real property to continue to make their lands avail-
- 6 able for public recreational use to supplement opportunities
- 7 available on tax-supported publicly owned facilities.
- 8 (2) Owners of private real property are confronted with the
- 9 threat of loss of rights in their property if they allow or
- 10 continue to allow members of the public to use, enjoy or pass
- 11 over their property for recreational purposes.
- 12 (3) The stability and marketability of record titles is
- 13 clouded by such public use, thereby compelling the owner to
- 14 exclude the public from his property.

1 (b) Regardless of whether a private owner of real property
 2 has recorded a notice of consent to use of any particular prop-
 3 erty pursuant to Section 813 of the Civil Code or has posted
 4 signs on such property pursuant to Section 1008 of the Civil
 5 Code, no use of such property by the public after the effective
 6 date of this section shall ever ripen to confer upon the public
 7 or any governmental body or unit a vested right to continue
 8 to make such use permanently, in the absence of an express
 9 written irrevocable offer of dedication of such property to
 10 such use, made by the owner thereof in the manner prescribed
 11 in subdivision (c) of this section, which has been accepted by
 12 the county, city, or other public body to which the offer of
 13 dedication was made, in the manner set forth in subdivi-
 14 sion (e).

15 (c) In addition to any procedure authorized by law and
 16 not prohibited by this section, an irrevocable offer of dedica-
 17 tion may be made in the manner prescribed in Section 7050 of
 18 the Government Code to any county, city, or other public
 19 body, and may be accepted or terminated, in the manner
 20 prescribed in that section, by the county board of supervisors
 21 in the case of an offer of dedication to a county, by the city
 22 council in the case of an offer of dedication to a city, or by
 23 the governing board of any other public body in the case
 24 of an offer of dedication to such body.

25 SEC. 2. This act shall not be construed to amend or affect
 26 the provisions of Sections 11610.5 and 11610.7 of the Business
 27 and Professions Code or Section 5943 of the Fish and Game
 28 Code nor shall it diminish any public rights of access to
 29 navigable waters conferred by Section 2 of Article XV of the
 30 California Constitution, nor shall this act be construed to
 31 affect, diminish or extinguish any right or rights vested as
 32 of the effective date hereof in the public or any governmental
 33 body ~~or unit~~ by reason of express or implied dedication, or
 34 otherwise.

35 SEC. 3. This act is an urgency statute necessary for the
 36 immediate preservation of the public peace, health or safety
 37 within the meaning of Article IV of the Constitution and shall
 38 go into immediate effect. The facts constituting such necessity
 39 are:

40 Large areas of privately owned property now open to public
 41 use may be closed in the forthcoming recreational season unless
 42 owners are assured by this act that they will not lose property
 43 rights through future public use.

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

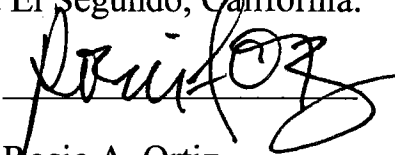
On March 14, 2016, I served true copies of the following document(s) described as **MOTION FOR JUDICIAL NOTICE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses as stated on the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 14, 2016, at El Segundo, California.



Rosie A. Ortiz

SERVICE LIST

<p>Supreme Court of California Earl Warren Building – Civic Center 350 McAllister Street, Ro 1295 San Francisco, CA 94102-4797</p>	<p>1 Original 8 Copies</p>
<p>Court of Appeal – Second District Division 3 Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013</p>	<p>1 Copy</p>
<p>California Superior Court Hon. Malcolm Mackey – Dept. 55 LASC - Stanley Mosk Courthouse 111 North Hill Street Los Angeles, CA 90012</p>	<p>1 Copy</p>
<p>Robert S. Gerstein Law Offices of Robert S. Gerstein 12400 Wilshire Blvd., Ste. 1300 Los Angeles, CA 90025 Tel (310) 820-1939</p>	<p>Attorneys for John Burke, Germaine Burke, and Bennet Kerns, Trustee of the A.S.A. Trust, Dated June 28, 2005 1 Copy</p>
<p>Bennett Kerns Law Offices of Bennett Kerns 2001 Wilshire Blvd., Ste. 200 Santa Monica, CA 90403 Tel (310) 452-5977</p>	<p>Attorneys for John Burke, Germaine Burke, and Bennet Kerns, Trustee of the A.S.A. Trust, Dated June 28, 2005 1 Copy</p>
<p>LEVINSON ARSHONSKY & KURTZ, LLP Richard I. Arshonsky Jason J. Jarvis 15303 Ventura Blvd., Suite 1650 Sherman Oaks, CA 91403 Tel (818) 382-3434</p>	<p>Attorneys for Richard Erickson, Wendie Malick, Andrea D. Schroder and Richard B. Schroder 1 Copy</p>

<p>GARRETT & TULLY, P.C. Ryan C. Squire Zi C. Lin 225 South Lake Ave., Suite 1400 Pasadena, CA 91101 Tel (626) 577-9500</p>	<p>Attorneys for Richard Erickson, Wendie Malick, Andrea D. Schroder and Richard B. Schroder 1 Copy</p>
<p>Wendy C. Lascher Joshua S. Hopstone FERGUSON CASE ORR PATERSON LLP 1050 South Kimball Road Ventura, CA 93004 Tel (805) 659-6800</p>	<p>Attorneys for Gemma Marshall 1 Copy</p>