

## Memorandum

**TO:** East Contra Costa Fire Protection District  
Board of Directors  
Brian Helmick, Interim Fire Chief

**FROM:** Shayna M. van Hoften and Jerett T. Yan, Legal Counsel

**DATE:** September 7, 2017

**RE:** Legal Analysis of the District's Authority to Regulate Land Use and Development

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This memorandum briefly discusses the East Contra Costa Fire Protection District's (District) authority to influence land use regulations in its service area. While the District does not have any authority to regulate land use directly, such as through the imposition of a moratorium on the construction of new buildings, the District can influence land use decisions by offering nonbinding advice and recommendations, and can oppose new developments during zoning and entitlement processes.

### I. BACKGROUND

The District is a special district formed under the Fire Protection District Act of 1987 (Cal. Health & Safety Code §§ 13800 *et seq.*) (FDPA). The District provides services, including fire protection and fire and emergency response, to over 114,000 residents in an area covering 249 square miles. Due to ongoing budgetary constraints, the District's current revenues allow it to operate three fire stations—down from eight stations in 2010—and fund operation of the CalFire Sunshine station during non-fire season. Concerns about the District's ability to provide adequate services to the existing residents and businesses within its service area have caused some individuals to request that the District impose restrictions on new development until the District can provide more robust service to both existing and new developments.

### II. THE DISTRICT CANNOT DIRECTLY REGULATE LAND USE OR DEVELOPMENT

The power to regulate land use, including the enactment of development moratoria, rests primarily with cities and counties. The California Constitution grants the general police power to cities and counties, which includes the power to regulate land use to maintain the public health, safety, and welfare. (Cal. Const., art. XI, § 7; *Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1481-1482.) Consistently, the State Legislature has assigned primary responsibility for regulating land use to cities and counties, with some authority being allocated expressly to certain kinds of special districts. (See generally Cal. Gov. Code, Title 7; see also Cal. Gov. Code, §§ 65100, 65800.)

The powers granted to cities and counties includes the authority to regulate and limit development. For example, a city can enact zoning requirements, require development fees, and even enact moratoria on new development. (See e.g., *Associated Home Builders v. City of*

*Livermore* (1976) 18 Cal. 3d 588.) However, once a city or county has authorized a proposed development, the developer often gains the right to complete the development as approved. (See generally, Gov. Code, §§ 65866, 66411, *et seq.*; *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors* (2000) 84 Cal.4th 221; *Avco Community Developers v. South Coast Regional Comm.* (1976) 17 Cal.3d 785.) In other words, even a city or county with land-use authority has very limited ability to impose new or different requirements on ongoing development projects.

While the FPDA authorizes the District to provide certain types of services and to adopt building standards related to fire safety and fire prevention rules, the FDPA does not grant the District any general police power authority comparable to that of cities and counties, or any other power relating to planning, zoning, or regulation of land use. (See Cal. Health & Safety Code §§ 13860 *et seq.*) As a result, the District must defer to local land-use agencies' determination of whether any proposed development is entitled to continue, or whether further conditions can be placed on a development. It cannot adopt such measures on its own authority.

### **III. THE DISTRICT CAN PROVIDE NON-BINDING ADVICE AND RECOMMENDATIONS ON LAND USE AND NEW DEVELOPMENT**

The FDPA grants the District the power to "prepare and disseminate information [... to] help to prevent fire, eliminate life hazards, and prepare for medical emergencies." (Cal. Health & Safety Code § 13875.) Consistent with this authority, the District can provide input on land use decisions – such as zoning, granting of land use entitlements, and development agreements for proposed developments – to the extent local decisions affect fire safety and the availability of fire protection services. At times, the Cities of Brentwood and Oakley and Contra Costa County specifically request the District's input on new development, though the District could also provide input on its own initiative. The District may refuse to endorse any new development or request that the land use authority impose development fees or other similar measures to mitigate the impact of new development, but no law requires the cities or the County to follow the District's recommendations. The District also can address the potential costs of providing service to new developments by levying special taxes on new developments. (Cal. Health & Safety Code §§ 13911 *et seq.*)

In conclusion, the District has no authority to govern, direct, or limit local land use. However, the District does have the authority to take a more proactive, vocal role in influencing city and county decision making on land use and development matters.