

## 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 Declare a State or Other Condition of Emergency

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Constituents of the East Contra Costa Fire Protection District (District) have requested that the District declare an emergency pursuant to the California Emergency Services Act (Cal. Gov. Code §§ 8550 *et seq.*) (ESA) based on the District's financial crisis and limited ability to provide adequate fire protection service to the residents and businesses in its jurisdiction. As further addressed in this memo, the District does not have the power to declare a state of emergency or other condition of emergency, or to request such a declaration from the Governor. Even if the District had the authority to declare an emergency, doing so in the present circumstances would be legally questionable. Further, the successful declaration of an emergency would result in minimal benefits to the District, if any.

### 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 residents and businesses within its service area have caused some individuals to propose declaring a condition of emergency pursuant to the ESA.

### II. CALIFORNIA EMERGENCY SERVICES ACT

The ESA establishes three conditions of emergency: (a) a state of war emergency; (b) a state of emergency; and (c) a local emergency.

- a. A **"state of war emergency"** involves attacks by enemies of the United States. (Cal. Gov. Code § 8558(a).)
- b. A **"state of emergency"** is a "condition[] of disaster or of extreme peril to the safety of persons and property within the state [...] which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any

single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat". (Cal. Gov. Code § 8558(b).) Examples of states of emergency include air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, and earthquakes.

Only the Governor has the authority to proclaim a state of emergency. The Governor can do so if he or she finds that a state of emergency exists and 1) is requested to do make such a declaration by a city or county; or 2) finds that local authority is inadequate to cope with the emergency. (Cal. Gov. Code § 8625.) Declaring a state of emergency grants the Governor additional powers, including the power to make and temporarily suspend certain laws, to direct state resources, and to commandeer private property to prevent or alleviate damage due to the emergency. (Cal. Gov. Code §§ 8627 *et seq.*; 8565 *et seq.*)

- c. A "**local emergency**" is a "condition[] of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city [...] beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat." (Cal. Gov. Code § 8558(c).) Examples of local emergencies include air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, and earthquakes.

State law provides that "[a] local emergency may be proclaimed *only* by the governing body of a city, county, or city and county". (Cal. Gov. Code § 8630(a), emphasis added.) The declaration of a local emergency allows local agencies to "promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew" and to receive certain types of aid from the state and other local agencies pursuant to mutual aid agreements and other agreements. (Cal. Gov. Code § 8630 *et seq.*)

### **III. A CONDITION OF EMERGENCY IS NOT AN AVAILABLE OR APPROPRIATE RESPONSE TO THE DISTRICT'S CURRENT CIRCUMSTANCES**

Though the level of services the District currently provides are inadequate under various service standards for fire and emergency prevention and response, the District cannot "declare an emergency" under the ESA.

- a. The District does not have the power to declare a local emergency or request that the Governor declare a state of emergency.

The ESA restricts the power to declare a local emergency to the governing bodies of cities and counties. (Cal. Gov. Code § 8630(a).) The District is not a city or county, but a special district. Similarly, the ESA the Governor is the only person authorized to declare a state of emergency. The District does not have the authority to request such a declaration from the Governor, as that request must come from a city or county. (Cal. Gov. Code § 8625.) Accordingly, the City of Oakley, City of Brentwood, and Contra Costa County can declare local emergencies, and request that the Governor declare a state of emergency, but the District cannot. In addition, the Governor could declare a state of emergency without city or county action if he or she found that

a state of emergency exists, and the District and other local agencies are unable to cope with the emergency.

- b. The District's current situation does not readily fall within the definition of a condition of emergency.

At minimum, declaring a condition of emergency based on the District's current financial situation would be a highly unusual exercise of the emergency power, and could be subject to legal challenge. A state of emergency and local emergency both require a condition of disaster or of extreme peril to the safety of persons and property. Very little law exists on what constitutes a "condition of disaster or of extreme peril." (Cal. Gov. Code § 8558.) While it is possible that the District's current situation could qualify as an "extreme peril," the District's current circumstances are less dire than the examples referenced in the ESA. A fire or conditions causing a high risk of fire would justify a declaration of emergency, though here the issue is the District's decreased ability to respond to a normal risk of a fire. To declare a state of emergency, the Governor would also have to determine that the resources of the entire county were inadequate to resolve the District's situation. (Cal. Gov. Code § 6558(b).) It is not clear that this is the case.

There is one instance in which the Governor declared a state of emergency based on an agency's financial difficulties; however, the unique circumstances were readily distinguishable from the District's current situation in both their scale and severity. This state of emergency involved the California Department of Corrections and Rehabilitation's inability to resolve overcrowded prison conditions. (See Gov. Arnold Schwarzenegger, Prison Overcrowding State Of Emergency Proclamation (Oct. 4, 2006).) The declaration was preceded by a series of lawsuits finding state prison conditions to be inadequate and to be leading to high levels of prison violence and ongoing public health risks in the prisons. Furthermore, the state prison system concerns related to larger issues which implicated a potential need for assistance from prisons in multiple other states. While the Governor's use of the emergency power in this case was ultimately upheld by a court, it was highly controversial and heavily litigated. (See *California Correctional Peace Officers' Ass'n v. Schwarzenegger* (2008) 163 Cal.App.4th 802.)

- c. The potential gains from declaring a condition of emergency are minimal.

An emergency declaration would make it easier for the District to call upon other fire districts and departments to aid it in providing fire protection services, though the District already collaborates with these fire districts and departments when the District needs aid in responding to fires pursuant to automatic and mutual aid agreements, which are voluntary and subject to availability. Consequently, declaring a state of emergency would be unlikely to significantly enhance the District's ability to draw on the resources of other fire districts and departments. While a condition of emergency may make the District eligible for additional state funding, such funding is determined at the discretion of the Governor.