

**NOTICE AND CALL OF A SPECIAL MEETING:
San Simeon Community Services**



I, Gwen Kellas, acting Chairperson of the San Simeon Community Services District Board of Directors, hereby call a Special Meeting of the Board of Directors, pursuant to California Government Code Section 54956. The Special Meeting will be held: April 22, 2020 at 3:00 pm.

Internet Meeting Location

Pursuant to Governor Gavin Newsom's Executive Order N-29-20 dated March 17, 2020 and the San Luis Obispo County Local Emergency Order and Regulation regarding COVID-19 dated March 18, 2020, this meeting shall occur as a video teleconference using the Zoom app. Members of the public cannot physically attend this meeting.

Due to a change in Zoom's security protocols a password is now required to login to the meeting, the password is below:

Topic: Special Board Meeting
Time: Apr 22, 2020 03:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
<https://zoom.us/j/9270537206?pwd=RDNNcTErb2E1TmswRG51WGNEZVJLQT09>

Meeting ID: 927 053 7206

Password: 114376

One tap mobile
+1 669 900 9128,,9270537206# US (San Jose)
+1 346 248 7799,,9270537206# US (Houston)

On the day of the meeting, the virtual meeting room will be open beginning at 2:30 PM. If you are unable to access the meeting please contact the District Office Manager at (805) 400-7399 prior to the 3:00 PM meeting start time and staff can assist you in accessing the meeting. Should you have any questions related to the information on this agenda or if you wish to submit public comment in written form you can email Cortney Murguia at admin@sansimeoncsd.org. Members of the public are encouraged to contact District staff with any questions or concerns related to this agenda or accessing the meeting.

- 1. MEETING SESSION: 3:00 PM**
 - A. Roll Call**

2. PUBLIC COMMENT:

This public comment period provides an opportunity for members of the public to address the Board on matters discussed during Agenda Item #3. If a member of the public wishes to speak at this time, Public Comment is limited to three (3) minutes.

3. BUSINESS ITEMS

A. Direction to staff regarding notice of Brown Act Demand for Cure; Request for Agenda letter from the San Luis Obispo District Attorney.

B. Review and approval of Resolution No. 20-419 Declaration of Emergency and Resolution of the San Simeon Community Services District to Temporarily Authorize Increased Authority of the General and Temporary Relief for Non-Payment of Water/Sewer Bills.

C. Discussion related to the District being able to apply for funding as part of the federal stimulus package.

4. ADJOURNMENT

If requested, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. To make a request for a disability-related modification or accommodation, contact the District Administrator at 805-927-4778. Anyone needing an accommodation to be able to observe or participate in this Special meeting, should immediately email Cortney Murguia at cmurguia@graceenviro.com and the District will work with you on your accommodation.

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San Simeon Community Services District (“SSCSD”) Board of Directors
Special Meeting – April 22, 2020
Staff Report

Agenda Item No. 3A & 3B

RECOMMENDATION:

1) It is recommended that the San Simeon Community Services District Board of Directors approve Resolution 20-419: Declaration of Emergency and Resolution of the San Simeon Community Services District to Temporarily Authorize Increased Authority of the General Manager and Temporary Relief for Nonpayment of Water/Sewer Bills. (*Roll Call Vote*)

The Board approved this Resolution at a Special Meeting on March 20, 2020. However, due to the notice requirements not having been properly satisfied for that meeting, it is recommended to approve Resolution 20-419 again.

BACKGROUND:

Due to the spread of novel coronavirus 19 (COVID-19), municipalities across the country are faced with protecting their residents and implementing strategies in response to this public safety threat.

On March 4, 2020, the Governor of the State of California declared a State of Emergency to exist in California as a result of the threat of COVID-19. On March 13, 2020, the San Luis Obispo County Health Officer declared a public health emergency and the County Emergency Services Director also proclaimed a local emergency due to the COVID-19 pandemic. On March 14, 2020, the San Luis Obispo County Public Health Department announced the first confirmed case of COVID-19 in San Luis Obispo County, and additional cases have since been confirmed.

SSCSD’s ability to mobilize local resources, coordinate interagency response, procure necessary supplies and seek reimbursement from State and Federal governments will be vital to responding to COVID-19.

DISCUSSION:

Special districts may be eligible for Federal, State and/or local financial assistance for expenditures directly incurred due to an eligible emergency/ disaster event under California’s Disaster Assistance Act. (Gov’t Code Section 8680 et seq. and 19 CCR Section 6) The COVID-19 pandemic likely qualifies as an emergency/ disaster event under this law. Although Government Code 8630 states that cities and counties can declare local emergencies, special districts (such as SSCSD) are specifically included under the definition of “local agency” under the California Disaster Assistance Act and are eligible to apply for reimbursement if there’s an emergency.

Therefore, to ensure that SSCSD qualifies for any available emergency funding, it is recommended to declare a state of emergency.

Furthermore, SSCSD has the powers enumerated to it under Government Code 61060 which states, “[a] district shall have and may exercise all rights and powers, expressed and implied, necessary to carry out the purposes and intent of this division, including, but not limited to, the following powers:...(n) To take **any and all actions necessary for, or incidental to**, the powers expressed or implied by this division.” Therefore, given the crisis situation that COVID-19 has created in San Luis Obispo County, not to mention in nearly every other county in the country, SSCSD must take all actions necessary to ensure the continuing operations of its facilities during this crisis, particularly, the integrity of the water supply.

The closures of schools and other businesses due to COVID-19 is causing or may cause a financial hardship for many of SSCSD’s ratepayers. At least one commercial business has already contacted the General Manager about overdue payments. Suspending the discontinuation of services and making other accommodations for ratepayers experiencing a hardship during this emergency is an important step to ensure the health and welfare of this community. The declaration of an emergency provides justification for not prosecuting late rate payers and for not collecting penalties and interest.

These are just a few other special districts in California that also declared public emergencies in response to COVID-19.

Templeton Community Services District
Los Osos Community Services District
Oceano Community Services District
Cambria Community Services District
Rossmoor Community Services District (Orange County)
West Valley Water District (San Bernardino County)
Imperial Irrigation District (Riverside County)

Requested Actions:

1) Approve Resolution 20-419: Declaration of Emergency and Resolution of the San Simeon Community Services District to Temporarily Authorize Increased Authority of the General Manager and Temporary Relief for Nonpayment of Water/Sewer Bills. (Roll Call Vote)

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OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

DAN DOW
District Attorney

PUBLIC INTEGRITY UNIT
KENNETH JORGENSEN
Deputy District Attorney

April 10, 2020

By First Class Mail and E-mail Message

Mr. Charles Grace, General Manager &
Board of Directors of the
San Simeon Community Services District
111 Pico Avenue
San Simeon, CA 93452
cgrace@graceenviro.com
admin@sansimeoncsd.org

Re: Brown Act Demand for Cure; Request for Agenda

To the Board of Directors:

Please accept this letter as a demand from the San Luis Obispo District Attorney's office to the San Simeon Community Services District ("SSCSD") to cure and correct a violation of the Brown Act at its Special Meeting of March 20, 2020. Specifically, the Board of Directors failed to hold an "open and public" meeting as required by Government Code Section 54953.

I also request the District to e-mail me the District's future agenda packets to kjorgensen@co.slo.ca.us, and recommend the Directors and staff schedule a Brown Act training in the near future.

Background

SSCSD's Notice for a Special Meeting.

The SSCSD published a "Notice and Call of a Special Meeting" for March 20, 2020. The agenda listed a "Virtual Meeting Location," inviting members of the public to join through a hyperlink or a dial-in conference number. No physical location was offered.¹ As such, the only way a member of the public could attend the meeting was through virtual means.

¹ It appears the Board of Directors, by citing Governor Newsom's Executive Order N-29-20 of March 17, 2020, was exercising a provision that allowed a government entity to meet solely through a teleconferencing modality and not provide a physical meeting space.

The Special Meeting was called to discuss and vote on a proposed Resolution declaring a public emergency, providing additional powers to its General Manager, and providing leniency on the collection of utility bills.

Attached to the agenda was Resolution No. 20-419, entitled:

“DECLARATION OF EMERGENCY AND RESOLUTION OF THE SAN SIMEON COMMUNITY SERVICES DISTRICT TO TEMPORARILY AUTHORIZE INCREASED AUTHORITY OF THE GENERAL MANAGER AND TEMPORARY RELIEF FOR NONPAYMENT OF WATER/SEWER BILLS.”

The agenda packet did not include a staff report, or any other analysis discussing the legal authority to declare a public emergency or summary of the facts, circumstances, or fiscal impact of approving the Resolution.

SSCSD announced on its website the public could not access the virtual meeting.

After the meeting, a message was posted on the SSCSD’s website by staff, stating:

March 24, 2020 Notice from Staff

On Friday March 20, 2020 the San Simeon CSD Board of Directors held an Emergency Special Meeting.

Under the Governor’s COVID-19 Executive Order, the District conducted this meeting using an electronic web based format capable of hosting the public, video and voice recording.

Unfortunately, the login information that were posted on the agenda were incorrect. *The District and the Board apologize for any frustration this may have caused.*

The meeting was recorded and you can listen to it by clicking the link below.

(<https://sansimeoncsd.org>; April 1, 2020; **bolding** added for emphasis.)

The SSCSD posted on its website a recording of the Special Meeting of March 20, 2020.

SSCSD posted on its website the recorded video meeting.² Commencing at approximately the 27th minute, the Directors and District staff discussed whether the public was able to participate in the virtual conference. Some Directors and staff acknowledged neither the Zoom hyperlink nor the dial-in teleconference number worked. At the conclusion, all Directors and staff members were aware of the situation. One staff member stated no one from the public contacted her about the issue, implying

² By April 8, 2020, the Notice of Staff, including the link to the recorded meeting, was removed from the Home page. But the link accessing the meeting was still working: https://zoom.us/rec/share/-exrBOzTyFNUJIGV-kjwc6cKGqnfaaa823cd_aUPnRp0xu_4qWYWyTlE-WQ3zS

no one wanted to attend. Another staff member reported that because it was the district's first virtual meeting, the District should consider it a success. A Director then commented that "it will get better."

The meeting then continued to the single item of business, which required a vote by the Board. The Vice-chair called the item and immediately motioned to approve the Resolution. But some discussion commenced thereafter, followed by the Board of Directors' unanimous approval of Resolution No. 20-419. The meeting concluded shortly after that.

The SSCSD's agenda of April 8, 2020, failed to correct the Special Meeting Notice of March 20, 2020.

In the District's most recent agenda of April 8, 2020, the SSCSD failed to agendize and take action to correct the Notice deficiency of the March 20 Special Meeting. Further, the homepage of the District's website removed the link to the virtual meeting. (It appears a link is not provided anywhere else on the District's site.

It seems the SSCSD does not intend to take any further action regarding the lack of public access to its March 20 Special Meeting.

Discussion

The central tenet of the Brown Act is that of open and public meetings.

In enacting the open meeting requirements of the Brown Act in 1953, the Legislature expressly declared "the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." (§ 54950.) Section 54953 accordingly provides "[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."

Government Code Section 54953 also provides rules on teleconferencing. (§54953, subdivision (b).) Because of the COVID-19 pandemic, Governor Gavin Newsom loosened teleconferencing protocols within the statute to promote social distancing and to lessen the spread of the virus. In Executive Order N-29-20, the Governor ordered:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to **make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe** and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or

of the public as a condition of participation in a quorum for a public meeting are hereby waived.

The Order also addresses notice requirements:

(ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also **give notice of the means by which members of the public may observe the meeting and offer public comment**. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including the notice of such means, a body may satisfy this requirement by advertising such means using the “the most rapid means of communication available at the time” within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body’s internet website.

Finally, Executive Order N-29-20 provides:

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency **and provide the public access to their meetings**.

(Executive Order N-29-20; all **bolding** added for emphasis.)

The District has violated Government Code Section 54953.

Despite “loosening” the teleconferencing rules, the essential tenet of conducting “open and public” meetings remained in Executive Order N-29-20. Thus, when the Board of Directors elected to hold the meeting exclusively through teleconferencing, with no physical location, the Board was required to ensure that at least either the telephone number or the hyperlink to the Zoom meeting worked before starting the meeting.

The error was not incidental. The recording of the meeting indicates at least *some* knew of the issue *before* the meeting started. Yet the staff failed to take steps to correct the error before the start. No effort was made to update the Notice, post the correct information on the website, or even delay the Special Meeting. Thus, some directors and staff knew at the start of the meeting that the public had no means to listen and participate. And as the session entered the 27th minute, *all* staff in attendance and *all* the Directors became aware the people could not gain access to the teleconference.

Thus, when the Board of Directors called Item No. 3, to discuss and vote on Resolution 20-419, all in attendance were aware that the metaphorical doorway into the virtual meeting was locked and sealed.

Simply put, the Special Meeting of the SSCSD of March 20, 2020, was not an open and public meeting. Despite breaching the most fundamental requirement of the Brown Act, neither the Board of Directors nor staff (including the District's attorney) objected by stopping and re-noticing the meeting. Compounding the violation was a lack of written staff report, nor was staff expected to provide an oral report once the agenda item was initially called, as the Vice-chair immediately motioned to approve the Resolution.

Instead, the Board and a single member of the public were left to their own analysis. No one even questioned whether a Community Service District was permitted to declare an emergency.³ The remaining public, unable to attend the meeting, was left with temporary access to a recording of the meeting and an apology for any "frustration it may have caused" on the District website's home page.

Accordingly, the actions and votes of the Board in that meeting are void because the special meeting was not a Brown Act meeting.

The District Attorney's demand to cure and correct the Brown Act violation.

The District Attorney has the authority to bring a civil action to enforce the Brown Act. (Gov. Code, §§ 54960, 54960.1, 54960.2.) Before bringing an action for violation of section 54954.2, a demand must be presented to the legislative body to cure or correct the violation. (Gov. Code, § 54960.1(b).)

This letter constitutes the demand requirements of Government Code Section 54960.1. Demand is now made that the Board correct the violation of the improperly noticed Special Meeting of March 20, 2020, and the action taken to approve Resolution No. 20-419.

"Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action." (Gov. Code, § 54960(c)(2).) Accordingly, please advise me within 30 days whether the violation has been cured.

Request for agenda and agenda packets.

Under Government Code section 54954.1, I request that a copy of the agenda and agenda packet of upcoming Board meetings be e-mailed to me for the rest of this calendar year to my e-mail address at kjorgensen@co.slo.ca.us. As provided in section 54954.1, the packets shall be sent at the time they are posted, or at the time they are distributed to most members of the Board, whichever is first. (This request was initially made through the District's "contact us" website page in late March; however, I was not provided the agenda packet for the April 8, 2020 board meeting.)

³ State law provides that "a local emergency may be proclaimed *only* by the governing body of a city, county, or city and county." (Government Code § 8630(a); italics added for emphasis.)

Recommendation for Brown Act training.

While it's understandable that issues arise when adjusting to new technologies, it does not excuse the District from dismissing the single most important tenant of the Brown Act. Thus, this office recommends the SSCSD schedule a Brown Act presentation within the next month or two. The presentation could be presented by the District's attorney, or if requested, a member of our office could provide this presentation.

Also, I recommend that the Directors and staff download and read "Open and Public V: A Guide to the Ralph M. Brown Act." It is an excellent summary of the Brown Act and can be found easily on the internet.⁴

I look forward to your response.

Very truly yours,

Dan Dow
District Attorney



By: Kenneth Jorgensen
Deputy District Attorney
Special Prosecutions Division

⁴ <https://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Open-Public-2016.aspx>

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RESOLUTION NO. 20-419

DECLARATION OF EMERGENCY AND RESOLUTION OF THE SAN SIMEON COMMUNITY SERVICES DISTRICT TO TEMPORARILY AUTHORIZE INCREASED AUTHORITY OF THE GENERAL MANAGER AND TEMPORARY RELIEF FOR NONPAYMENT OF WATER/SEWER BILLS

Recitals

WHEREAS, on March 4, 2020, the Governor of the State of California declared a State of Emergency to exist in California as a result of the threat of Novel Coronavirus 2019 (“COVID-19”); and

WHEREAS, on March 12, 2020, the Governor issued Executive Order N-25-20 in further response to the spread of COVID-19, mandating compliance with state and local public health officials as pertains to measures to control the spread of COVID-19; and

WHEREAS, on March 13, 2020, the San Luis Obispo County Health Officer declared a public health emergency and the County Emergency Services Director also proclaimed a local emergency due to the COVID-19 pandemic; and

WHEREAS, on March 14, 2020, the San Luis Obispo County Public Health Department announced the first confirmed case of COVID-19 in San Luis Obispo County, and additional cases have since been confirmed; and

WHEREAS, the health, safety and welfare of San Simeon Community Services District (“District”) residents, businesses, visitors and staff are of utmost importance to the Board of Directors (“Board”), and additional future measures may be needed to protect the community; and

WHEREAS, preparing for, responding to, mitigating, and recovering from the spread of COVID-19 may require the District to divert resources from normal day-to-day operations and it may impose extraordinary requirements on and expenses to the District; and

WHEREAS, the District General Manager (“General Manager”) currently has spending authority up to \$5,000.00, without prior Board approval in addition to limited authority related to personnel matters; and

WHEREAS, in the absence of Board action, strict compliance with certain District rules and ordinances could prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of COVID-19; and

WHEREAS, after consideration of all the facts reasonably available for review at the present time, the Board of Directors finds it in the best interest of the District to authorize the increase in General Manager spending authority to \$10,000, and up to \$15,000 upon authorization

from the President of the Board, and approves all acts necessary and appropriate to ensure the operation of the District.

WHEREAS, the Board understands that the closures of schools and other businesses due to COVID-19 is causing or may cause a financial hardship for many of its ratepayers and therefore will suspend discontinuation of services and make other accommodations for ratepayers experiencing a hardship during this emergency.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Directors of the San Simeon Community Services District, as follows:

1. The Board of Directors declares a State of Emergency to exist in San Simeon as a result of the threat of Novel Coronavirus 2019 (“COVID-19”)
2. The Board of Directors authorizes an increase in the General Manager’s spending authority to \$10,000, and up to \$15,000 upon authorization from the President of the Board.
3. The Board of Directors orders that the process to discontinue water or sewer service for nonpayment shall be suspended for ninety (90) days from the date of adoption of this Resolution.
4. The Board of Directors orders that all late fees for nonpayment of water or sewer service shall be waived for ninety (90) days from the date of adoption of this Resolution.
5. The Board of Directors orders that for ratepayers experiencing a financial hardship due to COVID-19, the General Manager is authorized to work with the ratepayer on an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges for ninety (90) days or more.
6. The General Manager may take all actions necessary, proper, and appropriate in his/her reasonable discretion to ensure the operation of the District, the safety of employees, and the safety of the public, including, but not limited to reasonable deviations from Board adopted Ordinances, Resolutions, Policies, and Procedures.
7. The authority vested in the General Manager by this resolution will be reviewed during each regularly scheduled Board meeting and otherwise terminate upon a declaration by the Governor that the State of Emergency has ended and the County Health Officer that the Public Health Emergency has ended and the County Emergency Services Director that the Local Emergency has ended.

ADOPTED by the Board of Directors of the San Simeon Community Services District on April 22, 2020, by the following roll call votes:

AYES:
NOES:
ABSENT:
ABSTAINED:

The foregoing Resolution is hereby adopted this 22 day of April, 2020.

Gwen Kellas, acting Chairperson of the Board of Directors

ATTEST:

Charles Grace, General Manager and Secretary for the Board of Directors

APPROVED AS TO FORM AND LEGAL EFFECT:

Natalie F. Laacke, District Counsel

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April 22, 2020 Board Meeting
Handouts from Members of Public

April 22 Special
Mtg

April 22, 2020

To: San Simeon CSD Board, General Manager, and Admin

Subject: Following are my comments submitted for SSCSD Special Board Meeting April 22, 2020 Business Item B Review and approval of Resolution No. 20-419

The proposed resolution itself has substantive flaws. It does little if anything for our community. In fact, it appears that the District is trying to do less for residents by overriding a Governor's Executive Order on service disconnects, etc. (as detailed below).

The District has failed to provide a legal basis/authorization for declaring a local emergency. Why potentially pick an expensive legal battle with the District Attorney's Office to prove a point. This is a 99% lost cause. Basic legal costs could easily run \$10,000 - \$15,000.

This is over. End it this afternoon. Vote NO on Resolution 20-419.

Comments on the General Manager's Staff Report:

- 1) The Staff Report fails to identify a proper legal basis or authorization for a local Declaration of Emergency in San Simeon.

The proposed Resolution 20-419 fails to provide the specific Government Code reference that authorizes and provides a legal basis for San Simeon as a Community Services District to declare an emergency.

There is a whole body of Government Code in the California Emergency Services Act [8550 – 8669.7] that details allowable emergency actions. Article 14 of this Act covers Local Emergencies in Section 8630.(a), copy included. It states: "*A local emergency may be proclaimed ONLY by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by the governing body.*" This section is unambiguous in its use of the word "only" which means other local governmental entities like Community Service Districts are excluded.

Working down the chain-of-command and authority, the Governors Declaration of Emergency for Covid-19 and subsequent Executive Orders are each authorized under sections of the California Emergency Services Act detailed in Government Code [8550 – 8669.7]. The specific Government Code sections providing authorization are identified in each of the Governor's orders.

The County of San Luis Obispo Declaration of Emergency in the first paragraph specifically finds its authority in the same area of Government Code Section and specifically references Government Code Section 8630 (see attached copy of County declaration)

The County of Sal Luis Obispo website lists all emergency orders proclamations/declarations in the County including those of seven cities (see attachment). Taking nearby Morro Bay as an example, the same sections of Government Code are used for authority in their emergency declaration.

spe. mtg.
April 22

I have attached a relatively recent legal opinion on this matter prepared by a legal firm headquartered in San Francisco with offices around the Bay area. I highlighted key statements in the attachment.

Their summary statement is that *"the District [East Contra Costa] does NOT have the power to declare a state of emergency or other condition of emergency"*. They reference the same area of Government Code that the San Luis Obispo County District Attorney's Office references in the SSCSD letter page 5 footnote 3 - section 8630(a).

What our District's Staff Report references and interprets is a phrase in a separate area of Government Code for special districts that states: *"any and all actions necessary, or incidental to"*. It would be one extreme extrapolation to justifying a "special unique to San Simeon" local emergency for Covid-19. No specific emergency declaration authority is provided in this referenced section of Government Code that Staff references for special districts.

The State and County have already and with proper authorization declared emergencies under the Emergency Services Act. The County's declaration of emergency covers all unincorporated areas of the County including San Simeon.

Staff and District Counsel appear to have presented a specious argument. Staff and District Counsel failed to find a clear and specific legal basis/authority for issuing or declaring a local emergency. As detailed above, the law only allows cities and counties to do so.

The District Attorney's Office may have been providing some courteous guidance on page 5 of their letter referencing Gov. Code Section 8630 in footnote 3 and in the text stating that: *"No one even questioned whether a Community Services District was permitted to declare an emergency."* Because Resolution 20-419 was voided, the District has not officially done something improper, at least not yet. I think they may have been sending the District a message.

Unfortunately, Staff is still recommending approval of this Declaration of Emergency without a proper legal basis. Does the District want to potentially take on the District Attorney's Office and enter an expensive legal quagmire and battle to defend Staff's interpretation?

Note: The Staff Report mentions a few other districts in California (out of 3,400) have also declared public emergencies in response to COVID-19. That is like telling the CHP Officer that I was just keeping up with traffic. Looking at some of these declarations, they also fail to provide a legal basis for declaring a local emergency. It is possible that some unsupported copycatting has occurred. As mentioned above only cities declaring emergencies are listed on the County website. Maybe there is a reason for this.

- 2) The Staff report states that *"local agencies under the Disaster Assistance Act are eligible to apply for reimbursement if there's an emergency. Therefore, to ensure that SSCSD qualifies for any available funding, it is recommended to declare an emergency."*

Note the use of the work "recommended". The declaration is clearly not required (meaning not

necessary), because the State and County have already declared emergencies that apply to San Simeon. In fact, if such a local declaration of emergency by SSCSD did not have a sound legal basis, a funding request based on such may be challenged.

If one follows the logic in the Staff Report, the other 3,393 special districts/CSD's are going to miss out or have a lessor chance of emergency funding by not declaring a local emergency.

The whole idea of having 3,400 additional and unique declarations of emergency in the State makes no sense for emergency funding administration and more. The State already must deal with 58 counties and 480 cities declaring local emergencies.

The County level declaration of emergency covers unincorporated areas for emergency relief funding which includes San Simeon CSD.

The local Declaration of Emergency is not needed for emergency funding and in fact may be problematic. This rationale for a local emergency declaration is unsound and should be dismissed as a justification for this resolution.

Comments on proposed Resolution 20-419 itself:

- 1) Paragraph 3 of the resolution states that the District will not discontinue water or service for ninety days. This conflicts with Executive Order N-42-20 which prohibits discontinuance of residential and certain business service for the period that the Governor's emergency order is in effect. It does not limit the discontinuance to ninety days. The District resolution provides less than the required relief to the community. In fact, the way the resolution is written half of the ninety-day grace period is already gone leaving only forty-five days of relief.

The District's resolution would override the Governor's order. I do not think the District can declare its own emergency to supersede the Governor's orders. Given the Executive Order, this paragraph is unnecessary (Governor already handled this) and conflicts with an Executive order. It needs to be removed from the resolution or totally rewritten.

- 2) Executive Order N-42-20 also directs: *"The State Water Resources Control Board shall identify best practices, guidelines, or both to be implemented during the COVID-19 emergency (i) to address non-payment or reduced payments, (ii) to promote and to ensure continuity of service by water systems and wastewater systems, and (iii) to provide measures such as the sharing of supplies, equipment and staffing to relieve water systems under financial distress."* At the last Board meeting, District Counsel stated that she was studying the Executive Orders.

Did District Counsel or Staff reach out to the Water Resources Board to see what the guidelines are? It is not clear that the District is meeting the minimum relief guidelines for late payments. Further, there should be other ways explored to deal with late payments besides a declaration of emergency.

- 3) As stated previously, the District's services contract with the General Manager's Company already has a clause that gives the General Manager's Company authority for additional expenditures for

emergency maintenance. The proposed resolution cannot indirectly change the General Manager Company's contract. District policies are correctly and appropriately clear that the General Manager's contract prevails. Making such changes as recommended by the General Manager/Staff via resolution appears to be improper. These clauses should be removed.

Summary:

The proposed resolution does not meet the minimum State mandated relief requirements for residential and certain business disconnects. It may also not be offering the minimum guidelines for late payment arrangements. This needs further research by Staff.

Staff does not provide sound rationale, or adequate justification, or clear legal authority for this already problematic San Simeon CSD Declaration of Emergency. The District is grasping for straws to justify it. This is not acceptable. The only thing left in this resolution is reducing late fees which should be done without a declaration of emergency.

This is over. End it this afternoon. Our disadvantaged community does not need to spend \$10,000 to \$15,000 or more on legal fees for a 99% lost cause. There are better uses for these funds.

Vote NO on Resolution 20-419.

Respectfully,



Henry Krzciuk
San Simeon Resident

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

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.

SAN LUIS OBISPO COUNTY

CURRENT EMERGENCY INFORMATION

Emergency Proclamations, Declarations and Orders

Current Emergency Information



Orders

County of San Luis Obispo Orders

- **April 16, 2020:** [Local Emergency Order Number 5-Continuation of Mandatory Sheltering At Home](#)
- **March 26, 2020:** [Health Officer Order Number 1- Restrictions to Visitors to Hospitals](#)
- **March 21, 2020:** [Local Emergency Order Number 4 - Shelter at Home](#)
 - [Information Regarding Shelter at Home Order - Number 4](#)
- **March 18, 2020:** [Executive Order for Suspension of Commencement of Evictions - Number 3](#)
- **March 16, 2020:** [Local Emergency Order and Regulation Number 2](#)
- **March 16, 2020:** [Local Emergency Order and Regulation Number 1](#)

City Orders

- **March 27, 2020:** [City of Pismo Beach Public Order P-2020-001 City Parking and Pier Regulations](#)

Proclamations / Declarations

County of San Luis Obispo Proclamations and Declarations

- **March 13, 2020:** [Proclamation of Local Emergency-San Luis Obispo County](#)
- **March 13, 2020:** [Declaration of Local Health Emergency](#)

City Proclamations

- **March 17, 2020:** [Proclamation of Local Emergency-City of Arroyo Grande](#)
- **March 17, 2020:** [Proclamation of Local Emergency-City of Atascadero](#)
- **March 16, 2020:** [Proclamation of Local Emergency-City of Grover Beach](#)
- **March 14, 2020:** [Proclamation of Local Emergency-City of Morro Bay](#)
- **March 17, 2020:** [Proclamation of Local Emergency-City of Paso Robles](#)
- **March 17, 2020:** [Proclamation of Local Emergency-City of Pismo Beach](#)
- **March 17, 2020:** [Proclamation of Local Emergency-City of San Luis Obispo](#)

State and National Proclamations and Declarations

- **March 4, 2020:** [California Proclamation of State of Emergency](#)
- **March 13, 2020:** [National Emergency Declaration](#)

PROCLAMATION OF LOCAL EMERGENCY

WHEREAS, the California Emergency Services Act (Government Code Section 8550 et seq.) and San Luis Obispo County Code Chapter 2.80 authorize the County of San Luis Obispo Emergency Services Director to proclaim a local emergency under certain circumstances as described in Government Code Sections 8558, subdivision (c) and 8630; and

WHEREAS, Government Code Section 8558, subdivision (c), defines a "local emergency" as "the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county . . . caused by . . . conditions . . . [that] are or are likely to be beyond the control of the services, personnel, equipment, and facilities of [the county] and require the combined forces of other political subdivisions to combat. . ."; and

WHEREAS, pursuant to the authority vested in me by Government Code section 8630, I, Wade Horton, Emergency Services Director of the County of San Luis Obispo, State of California, hereby find and determine as follows:

1. A novel coronavirus named "COVID-19" by the World Health Organization ("WHO") was first detected in Wuhan City, Hubei Province, China, in December 2019.
2. Cases of COVID-19 have been diagnosed in the United States, primarily in individuals who have traveled to other countries, but there have been cases identified of "community spread" of COVID-19 involving individuals who have not traveled overseas and who have no known connections to overseas travel.
3. As of March 12, 2020, the Centers for Disease Control ("CDC") reported 1,323 cases of COVID-19 in the United States and 198 cases of the virus within the State of California.
4. On March 4, 2020, the Governor of the State of California issued a Proclamation of a State of Emergency due to outbreaks of COVID-19 within the state, and ordered the suspension of: (1) the provisions of Government Code section 8630 and Health and Safety Code section 101080 mandating that the governing authority of a city or

county review and renew proclamations of local emergency and declarations of local health emergencies as set forth in the governing statutory law; and (2) applicable provisions of the Government Code and Public Contract Code, including but not limited to those provisions related to travel, advertising, and competitive bidding requirements in order to address the effects of COVID-19.

5. On March 11, 2020, the WHO declared COVID-19 to be a pandemic, presently affecting six continents where sustained transmission of the virus has infected more than 120,000 people and killed more than 4,300 worldwide.

6. The number of reported cases of COVID-19 has escalated dramatically over a short period of time; for instance, as of March 12, 2020, the World Health Organization has reported 127,863 confirmed cases of COVID-19 worldwide, with 80,932 cases in China and the remaining 46,931 cases in 116 other countries; there have been 3,169 deaths in mainland China due to COVID-19, and another 1,549 deaths in other countries (4,718 worldwide); as of March 10, 2020.

7. Cases of COVID-19 have now been identified in the following California counties: Alameda, Contra Costa, Los Angeles, Monterey, San Diego, Santa Clara, Santa Cruz, Sacramento, Solano, and the City and County of San Francisco. Each of these counties have made declarations of local health emergency or proclamations of local emergency.

8. Currently, there is no vaccine or specific antiviral treatment for COVID-19.

9. The best information to date indicates the following: (1) the virus is spread between people primarily via respiratory droplets produced when an infected person coughs or sneezes; (2) symptoms of the virus include fever, cough, and shortness of breath; (3) infected individuals have experienced a range of outcomes, from mild sickness to severe illness and death; and (4) the CDC believes that symptoms appear two to fourteen days after exposure.

10. In order to protect public health and limit the spread of COVID-19 in the United States, the CDC recommends that travelers avoid all nonessential travel to countries with sustained transmission.

11. On March 12, 2020, the Governor of the State of California issued an Executive Order to cancel or postpone non-essential mass gatherings that bring people together in a single room or single space at the same time.

12. In light of the foregoing, the Health Officer of the County of San Luis Obispo has determined that there is an imminent and proximate threat to public health from the likely introduction of COVID-19 in San Luis Obispo County, and has issued a declaration of a local health emergency in order to best protect the public health.

NOW, THEREFORE, I HEREBY PROCLAIM A LOCAL EMERGENCY pursuant to the California Emergency Services Act (starting with Government Code Section 8550) and Chapter 2.80 of Title 2 of the San Luis Obispo County Code, in the entire area of the County of San Luis Obispo due to the existence of conditions of extreme peril to the safety of persons within the entire area of the county caused by an imminent and proximate threat to public health from the likely introduction of COVID-19 in San Luis Obispo County, and do hereby invoke all of the powers and mechanisms set forth in the California Emergency Services Act and in the San Luis Obispo County Code Chapter 2.80, and hereby order that:

1. All of said powers and mechanisms set forth in section 2.80 may hereafter be utilized by authorized personnel of the County of San Luis Obispo;

2. A copy of this Proclamation of Local Emergency be posted on all outside public access doors of the new County Government Center and in one public place within any area of the County of San Luis Obispo within which this Proclamation applies, and that personnel of said county shall endeavor to make copies of this Proclamation available to news media;

3. This Proclamation of Local Emergency shall be effective immediately and shall be ratified by the Board of Supervisors within seven days.

Date: 13 MARCH 2020



WADE HORTON
Emergency Service Director

Time: 10:00AM