

# Legal Considerations For Emergency Responses



Amara Morrison

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*Director*

Fennemore Wendel



# **Bay Planning Coalition Spring Summit Emergency Preparedness and Response**

**Suspension of Permitting Requirements in Event of a Local or State Emergency**

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Presenter:  
Amara Morrison  
Director, Fennemore Wendel

# California Law Regarding Emergency Response/ Reconstruction

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- **California Emergency Services Act (CESA)**

- Authorizes the Governor to proclaim a state of emergency under certain circumstances and provides that a state of war emergency exists, with or without proclamation by the Governor when certain conditions exist
- Gives the Governor special powers to suspend any regulatory statute where Governor determines and declares that strict compliance would delay mitigation of emergency
- CESA authorizes Governor to temporarily suspend any state, county, city or special district statute, ordinance, regulation or rule imposing non-safety restrictions on delivery of food products, pharmaceuticals, or other emergency essentials distributed through retail or institutional channels
- Governor also authorized to temporary suspend/modify public health, safety, zoning or intrastate transportation laws

(Government Code §8571)

# California Law Regarding Emergency Response/ Reconstruction

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- Section 8571 was amended in 2022 to limit the Governor's powers
  - Governor may only suspend a statute or regulation during a state of emergency or state of war emergency, as described above, in connection with the specific conditions of emergency proclaimed by the Governor or state of war emergency
  - Governor may only temporarily suspend statutes, ordinances, regulations, or rules in connection with the specific conditions of emergency proclaimed by the Governor
  - Regarding laws, ordinances, or regulations temporarily suspended or modified to provide temporary housing, Governor may only temporarily suspend those laws, ordinances, or regulations in connection with the specific conditions of emergency proclaimed by the Governor and declared by the President to be an emergency or major disaster



# California Law Regarding Emergency Response/ Reconstruction

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- **Economic Disaster Act of 1984**

- Intended to “institutionalize the planning and response of state agencies to disasters”
- Meant to reduce economic hardship on business stemming from disasters

Government Code §8695

- “Disaster” threshold: estimated damage exceeds \$3 billion or Governor order
- Secretary of Emergency Management shall establish appropriate task forces or emergency teams to include concerned elements of state and local governments and the private sector

# California Law Regarding Emergency Response/ Reconstruction

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- **CEQA Statutory Exemption**

- CEQA does not apply to the repair, restoration, demolition or replacement of facilities by a public agency when Governor has formally declared a disaster or state of emergency

[Public Resources Code - PRC § 21080](#)

- CEQA does not apply to, " (3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with [Section 8550\) of Division 1 of Title 2 of the Government Code](#)." – (Pub. Res. Code §21080(b)(3).)

# California Law Regarding Emergency Response/ Reconstruction

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- **CEQA Statutory Exemption cont'd.**
  - Limitations:
    - Not applicable to designated historical resources without notification/ consultation with SHPO
      - Public Resources Code §5028
    - No structure that is listed on the National Register of Historic Places, on the California Register of Historic Places may be demolished, destroyed, or significantly altered, except for restoration to preserve or enhance its historical values, unless the structure presents an imminent threat to the public of bodily harm



# California Law Regarding Emergency Response/ Reconstruction

- **California Coastal Act**

- Immediate emergency work within the California Coastal Zone may commence without a coastal development permit to protect life, property, repair public service facilities to maintain service, and repairs to public highways but the agency must be notified within 14 days of the commencement of the activity

(Public Resources Code §30000, *et. seq.*)





# California Law Regarding Emergency Response/ Reconstruction

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- **McAteer Petris Act**

- Established the San Francisco Bay Conservation and Development Commission (BCDC)  
(14 CCR 10110 *et. seq.*)
- Act permits emergency repair projects to be undertaken within one year of damage without a permit provided notice is given to BCDC “not later than the first working day following the commencement of the undertaking or action”  
(Government Code §66632.2(d))

# California Law Regarding Emergency Response/ Reconstruction

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- **Fish and Wildlife Resources**

- Permit provisions to protect fish and wildlife do not apply to immediate emergency work (within one year of the damage) undertaken or approved by state or local governmental agency necessary to protect life or property  
(Fish & Game Code section §1610)
- Immediate emergency repairs to public service facilities in an area in which a state of emergency has been proclaimed by the Governor per Government Code §8550
- Emergency projects undertaken or approved by state or local governmental agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage
- 14 day notice requirement

# California Law Regarding Emergency Response/ Reconstruction

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- **Department of Water Resources**

- In times of extraordinary stress and disaster, resulting from storms and floods, or where damage to watershed lands by fires has created an imminent threat of floods and damage by water, mud, or debris, DWR may perform any work or remedial measures necessary to avert, alleviate, repair, or restore damage to property in which the state interest is to protect the health, safety, convenience, and welfare of the general public of the state
- In undertaking such work, DWR may perform the work itself or in cooperation with any other state department/agency, the federal government, or any political subdivision, city, or district

(Water Code §128)

- Emergency permits exempt from specified procedures

(Water Code §8730)



# California Law Regarding Emergency Response/ Reconstruction

- **Emergency Levee Maintenance**
  - Emergency levee work required to protect public benefits in the delta, permits the Department of Water Resources to use funds without approval of a plan by the Water Board or the Department of Fish and Wildlife, subject to limitations of \$200,000 per year and \$50,000 per site  
(Water Code §12994)
  - Local match up to 25%





# California Law Regarding Emergency Response/ Reconstruction

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- **Geologic Hazard Abatement Districts**

- 1979 Beverly Act
- Established GHADs as independent public agencies to prevent, mitigate and abate geologic hazards  
(Public Resources Code §26500-26654)
- Broadly defines “geologic hazard” as “an actual or threatened landslide, land subsidence, soil erosion, earthquake, or any other natural or unnatural movement of land or earth”
- GHAD statute specifically excludes GHADs from definition of “local agency”; because a GHAD is a political subdivision of the State, and specifically not a “local agency”, GHAD work is exempt from local zoning and building requirements
- GHAD statute expressly states all activities of a GHAD are “deemed to be specific actions necessary to prevent or mitigate an emergency.” Sections 26601, 26505. All GHAD activities are exempt from CEQA by virtue of this emergency characterization