

Entry Onto Private Property During Emergencies

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Origins of Authority to Enter Private Property

Updating from 1596 to 1853, via *Surocco v. Geary* (1853) 3 Cal. 69:

- Alcalde blew up a house “to stop the progress of the conflagration then raging”
- Holding(s):
 - “A **house on fire**, or those in its immediate vicinity which serve to communicate the flames, **becomes a nuisance, which it is lawful to abate...**”
 - Not “a taking of private property for public use”
- Reasoning: “In the absence of any legislation on the subject, we are compelled to fall back upon the rules of the common law.”
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 - “*Necessitas inducit privilegium quod [i]ura privata.*” (Francis Bacon, 1596.)

“Modern” Authority to Enter Private Property

Without an “immediate threat” or proclaimed “emergency:”

- California Constitution, art. XI, § 7
- Health & Safety Code §§ 101025 [County], 101450 [City]

If “immediate threat,” summary abatement of:

- Nuisances, via Gov. Code §§ 25845(a) [County], 38773 [City]*
- “Uncontrolled fire,” via Pub. Resources Code § 4170.5 [Fire Protection Agency]

If proclaimed “emergency:”

- Orders under the Emergency Services Act, via Gov. Code § 8634
- Health Officer’s “preventive measure,” via H&S §§ 101040(a) [County],
101475 [City]

Limits on Authority to Enter Private Property

Due process: “...preponderance of the evidence that an emergency actually existed”

Search & seizure, unless consent or **exigent circumstances**. *Michigan v. Tyler* (1978):

- 4th Amend generally extends to abating a public nuisance, or routine inspections
- But, “[a] **burning building** clearly presents an exigency of sufficient proportions”

Inverse condemnation, unless within the “**emergency exception**,” which depends on:

- Timing; and
- Source of the emergency

State and Federal reimbursement requirements, including “right of entry” unless waived

Example: 1/9 Debris Flow, Santa Barbara County



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Timeline summary:

- December 4, 2017: Thomas Fire begins in Ventura County
- December 7-8, 2017: Emergency declarations covering Santa Barbara County:
Local, State expanded, Presidential
- December 29, 2017: Thomas Fire at 92% containment, within 281,393 acres
- January 7, 2018: Evacuation Orders and Evacuation Warnings, to 25,000
- January 8, 2018: Flash Flood Watch issued by National Weather Service
Local Emergency for serious risk of flooding and debris flows
- January 9, 2018: Debris Flow, at about 4:00 AM

Example: 1/9 Debris Flow, Santa Barbara County

Debris Flow:

- Volume: About 500,000 cubic yards (10-wheel dump truck = about 10 cubic yards)
 - 400,000 cubic yards in flood channels and debris basins; and
 - 100,000 cubic yards in public right-of-ways
- Speed: 20-plus miles per hour
- Height: 15-plus feet
- 23 people died, and many more injured
- 59 structures destroyed, 470 structures damages, 50 miles of roads impacted, 20 bridges damaged, 200 culverts blocked or destroyed

Example: 1/9 Debris Flow, Santa Barbara County

Need: through CalOES, obtain Direct Federal Assistance to clear sediment and debris -- before next major rain -- from: 1) flood channels on private property; & 2) debris basins

Approach: Urgency Ordinance for Summary Nuisance Abatement (Stream-Clearing)

- Authority: Government Code §§ 25123(d), 25845(a)
- Referenced Local, State, and Presidential declarations
- Stated CEO's authority to authorize entry onto private property for summary abatement stream-clearing actions, including by **State and Federal agencies**
- Limited geographically to impacted areas of the Montecito Community Plan Area
- Limited in duration to about the 4-month rain season; express expiration date

Outcome: Corps of Engineers contracted for about \$110 million of debris removal