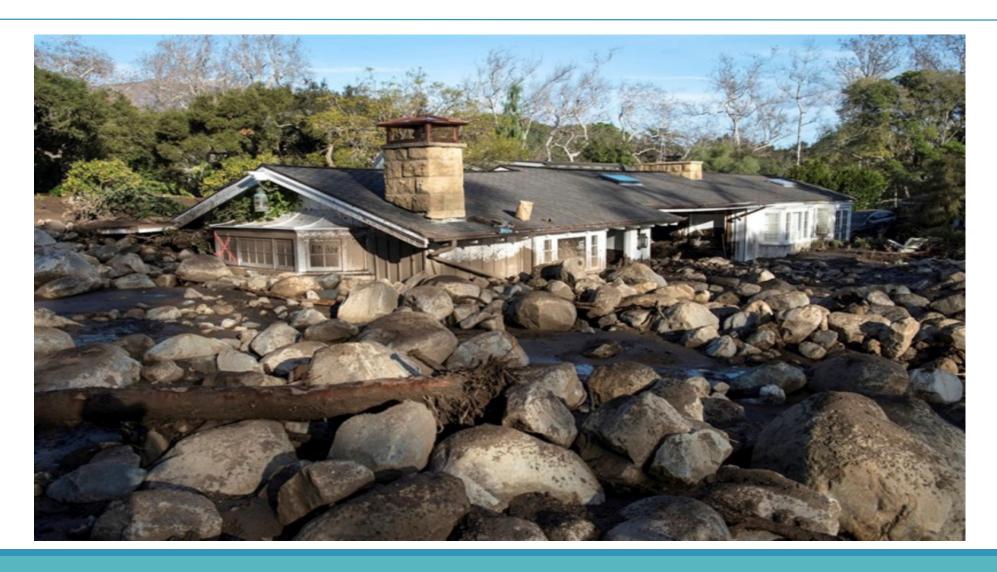
Entry Onto Private Property During Emergencies

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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, <u>becomes a nuisance</u>, <u>which it is lawful to abate</u>..."
 - 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:"

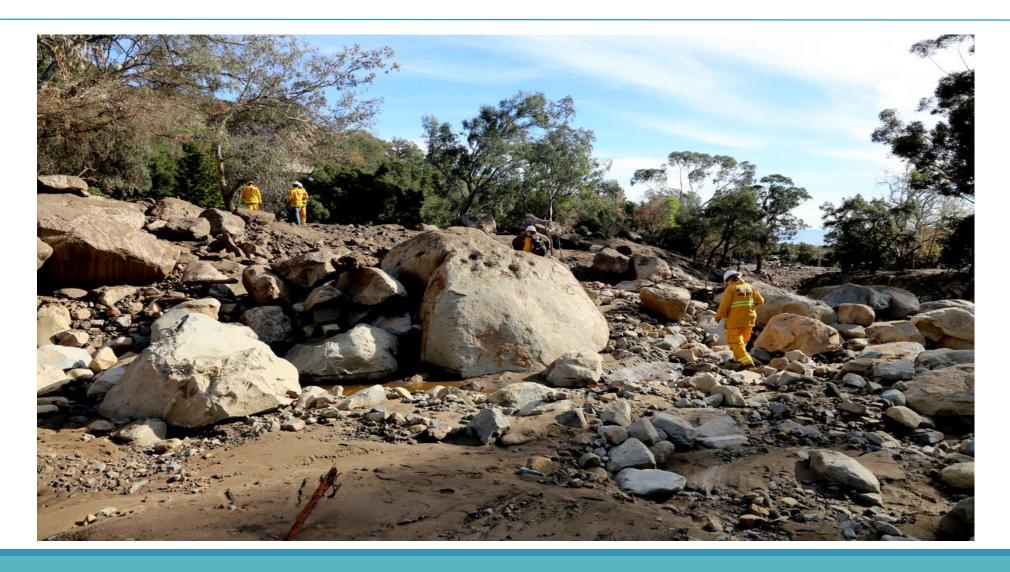
- Orders under the Emergency Services Act, via Gov. Code § 8634
- Health Officer's "preventive measure," via H&S §§ 101040(a) [County],
 101475 [City]

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



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

Debris Flow:

- Volume: About <u>500,000</u> 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

Need: <u>through CalOES</u>, 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 <u>authorize entry onto private property</u> for summary abatement stream-clearing actions, including by State and Federal agencies
- <u>Limited geographically</u> to impacted areas of the Montecito Community Plan Area
- <u>Limited in duration</u> to about the 4-month rain season; express expiration date

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