

Public Comments, MX Community Advisory Board
April 21, 2021
Bryan Scott, Chair, East County Voters for Equal Protection

Good afternoon, Members and Alternates of the Measure X Community Advisory Board. My name is Bryan Scott, and I want to thank all of you for stepping up and participating in this essential public service.

I especially want to thank Chairperson Moore for her previous work on Measure X, and for accepting the role of Chairperson on this Board. Board Member Cruise also deserves a special thank you, for last week bringing up one of the most significant public policy issues in the County, namely, the public safety emergency in East County.

As I mentioned last week, the regional fire district serving East County has declared an emergency, and limits its firefighting activities to defensive practices only. Emergency response times in East County are two-to-three times stated goals, and the fire district is unable to respond, AT ALL, for significant periods of time each month.

People are dying, and experiencing unnecessary injury, due to the lengthy response times. Homes are burning down. And insurance premiums for the nearly 130,000 residents East County are increasing significantly.

Included in this Public Comment submission is a white paper that explains the history of this government spending calamity, and suggests that this Community Board recommend to the Board of Supervisors that it dedicate 15% of the Measure X sales tax revenue to address this emergency situation.

Also included, as an Appendix, is a page from a LAFCO study that states on how much money, on a per-resident basis, the various fire districts in the County spend on fire and emergency medical services.

If anyone has any questions, or would like to talk about my public comments, or the documents I have submitted, feel free to contact me by email at scott-dot-bryan-at-comcast-dot-net, or by telephone: 925-418-4428.

Again, Thank You for your service.

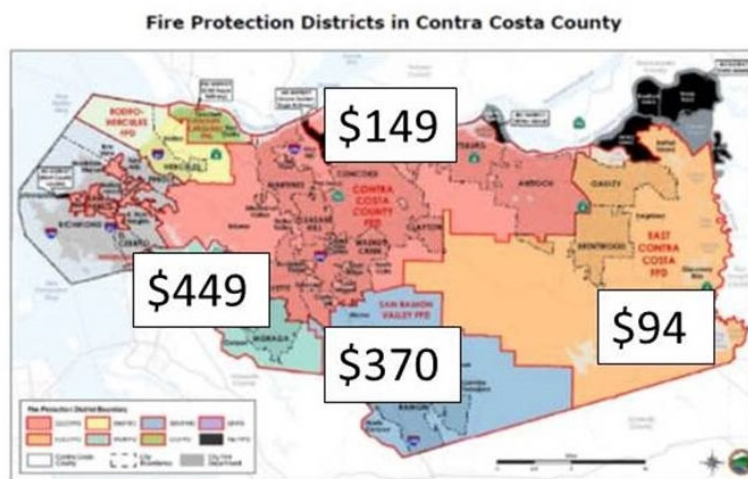
A Partial Timeline of a Public Safety Emergency

Statement of Facts

The provision of essential services to the Public is the primary purpose of government. Special Districts are created within Counties, the political subdivisions of the State, to provide these essential services.

Fire districts, such as the East Contra Costa Fire Protection District (ECCFPD), provide a range of emergency medical and fire response services to the communities served.

In the period of 2000 through 2002, the Contra Costa County Board of Supervisors (BoS) became aware of the decreasing level of fire and emergency medical services being provided to the eastern 31% of the County, an area experiencing dramatic growth. After extensive study, the BoS initiated the consolidation of three existing fire districts, all Dependent Special Districts under its control, that were then providing services to the eastern-most 249-square miles of the County into one agency.



Annual per-person expenditures by fire districts in Contra Costa County

Consequently, and as a result of state and local government spending policies, a huge disparity in public safety services has developed across the County. The above illustration presents data from Page 32 of a 2016 Local Agency Formation Commission study, included as Appendix A.

In 2002 the BoS made application for regulatory approval for the consolidation to the **Contra Costa County Local Agency Formation Commission (LAFCO)**. The cities of Brentwood and

Oakley filed concerns and objections to the consolidation, and the BoS responded to these concerns and objections.

Included in these County responses were promises to the Public that LAFCO received, stating in an official report, **dated July 10, 2002**, “The applicant has also stated that its future plans include funding and service levels that will be on an equal status with the remainder of the Bay Area communities.”

A second LAFCO staff report, dated August 7, 2002, stated when referring to the County, “that a) it intends to fully fund the required services and to ensure uniform and consistent service quality throughout the newly-consolidated district, and b) its future plans include funding and service levels that will be on an equal status with the remainder of Bay Area communities.”

These County communications were to the Public, through the city councils of Brentwood and Oakley. The East County residents, including the residents of the cities of Brentwood and Oakley, waited patiently for the BoS to fulfill their promises, during the entire time the ECCFPD was a Dependent Special District, under the control of the BoS.

During the time between the formation of ECCFPD and the present, funding levels increased slowly in comparison to the dramatic growth of the region. The need for these essential government services grew dramatically, as did ECCFPD’s cost of providing these services. Because of these divergent financial trends, the fire district staff was forced to reduce staff and close fire stations.

What was a minor funding discrepancy in 2002 became a significant public safety emergency by 2017. By that time ECCFPD was experiencing a \$13 million annual funding deficit, and the Public throughout the fire district’s service area was experiencing increased loss of life and property, as well as increased property insurance premiums.

Published on October 21, 2015, a Fire and Medical Services Task Force “Report to Elected Officials” states:

“SUMMARY FINDINGS: 1. The ECCFPD has on-going, structural financial deficiencies to the extent that it is unable to provide adequate fire suppression and medical response services to the communities in the East Contra Costa Fire Protection District.”

On May 11, 2016, the Contra Costa Local Agency Formation Commission (LAFCO), Minutes of Meeting states:

“Gil Guerrero, (ECCFPD Captain) also with IAFF Local 1230, stressed that time and staffing are of the essence. Discovery Bay has lost three residents to cardiac arrest because engines were unavailable to respond. ECCFPD has no paramedics, no fire boat, and no ladder truck.”

On June 15, 2016, CityGate Consultants LLC, published a consulting study for ECCFPD, “Deployment Performance and Headquarters Staffing Adequacy Study,” which states:

“The District cannot meet its needs through its own fire response resources, and is dependent on its neighbors in the regional mutual aid system for assistance on serious, not just catastrophic

emergencies. The District's deployment system does not meet the risks in Brentwood and Oakley if the fire Department is expected to prevent more than a catastrophic loss. ***The District is the most under-deployed and administratively understaffed fire department we have seen*** in over a decade for the size of the communities to be protected.” (Emphasis added)

In April, 2017, Assembly Member Jim Frazier's Field Director, Erica Rodriguez-Langley, in a statement to the Brentwood City Council, said:

“Assemblyman Frazier ... believes that East Contra Costa Fire Protection District is facing a fiscal emergency, and that we have a public safety emergency. He is concerned ... that additional station closures are not far off, and that we need to find additional resources to continue to sustain what we have.”

Published on March 27, 2018, an East Contra Costa Fire Protection District Press Release, titled “East Contra Costa Fire's Critical Infrastructure Update & Next Steps,” states:

“Although the District is not able to provide service levels that adequately protect the community's residents at this time, we are well on our way to building a solid foundation from which service levels can be efficiently increased when the residents move to provide additional revenue.”

The region's lack of these essential services is further documented in LAFCO Municipal Services Reviews and County Grand Jury reports.

The Relative Issues

Fire districts in California are funded primarily with property taxes. Because of the estimated 1,500% population growth the eastern Contra Costa County region has experienced, and the inflexibility of the state-mandated property tax funds distribution methodology, the region's emergency medical and fire services are increasingly under-funded.

The California Legislature, in its Health and Safety Code, has declared “that the local provision of fire protection services, rescue services, emergency medical services, hazardous material emergency response services, ambulance services, and other services relating to the protection of lives and property is critical to the public peace, health, and safety of the state.”

The County, as a political subdivision of the State, bears responsibility for the equitable distribution of state benefits to residents. Both the United States and California Constitutions provide for the equal protection of citizens. Citizens comparably situated must legally be treated comparably, and this is not the case when comparing residents of the eastern 31% of the County and the rest of the County.

The elements of a promissory estoppel claim in California are (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by this reliance.

During communications leading up to the fire district consolidation approval, the County made promises to the Public. The Public has relied on these promises, and it was “reasonable and foreseeable” that the Public would do so. The Public is and continues to be injured by this reliance.

Using the largest fire district in the County, the Contra Costa County Fire Protection District, as a benchmark, it has been calculated that an annual funding deficit of about \$13 million exists.

The Relief Sought

The Public is asking the Measure X Community Advisory Board to recommend that the County and the BoS perform, as promised in 2002. Justice requires that the funding for public safety services in eastern Contra Costa County be increased by an amount in the range of \$11 million to \$13 million annually. This translates to roughly 15% of the expected \$81 million of Measure X revenue.

Promissory Estoppel is a legal doctrine in which one party has an obligation to fulfill its obligations, as per the terms of a contract, in order to prevent another party from experiencing injustice or losses.

Equal Protection Under the Law is a constitutional provision which ensures all citizens are treated in a similar fashion, given similar situations.

The BoS has an obligation to improve the level of emergency medical and fire services funding in East County, so that all residents of Contra Costa County receive a comparable level of essential government services. The Measure X Community Advisory Board has a duty to recommend that the BoS fulfill its promises, so that all residents of the county equally receive comparable services.

FINANCING

As shown in **Table 4**, below, the primary revenue source for the fire districts is property taxes, which depend on the district's share of taxes generated by assessed value within district boundaries. A low share of property taxes, combined with relatively low assessed values, contributes to the significant financial problems of the ECCFPD and RHFPD, which receive on average 6% to 7% of each property tax dollar paid within their districts, compared to other districts that receive two to three times that tax share. Except in rare cases of district dissolutions or certain reorganizations, shifting property taxes from one entity to a fire service agency is highly unlikely to occur, either at the State or the local level.

Table 4
Financing of Fire and EMS Expenditures (FY 2014-15)

AREA	Expenditures		Revenues				
Agency	Fire & EMS	per Resident	Property Taxes (1)	% of 1% Tax	Assessments & Spec. Taxes	Other Sources	TOTAL
WEST COUNTY							
City of Richmond	\$29,388,000	\$274	\$6,346,000	28%		\$23,042,000	\$29,388,000
City of El Cerrito	5,742,000	\$239	1,268,000	18%		4,474,000	5,742,000
City of Pinole (2)	3,469,000	\$184	530,000	12%	\$1,006,600	1,932,400	3,469,000
Kensington FPD	3,009,000	\$593	3,264,000	30%	\$200,000		3,464,000
Rodeo-Hercules FPD	6,637,000	\$201	2,743,000	6%	\$2,277,000	1,617,000	6,637,000
Crockett-Carquinez FPD	<u>436,000</u>	<u>\$132</u>	444,000	12%			444,000
Subtotal	\$48,681,000	\$254					
CENTRAL COUNTY							
San Ramon Valley FPD	\$55,703,000	\$370	\$56,838,000	14%		\$4,479,270	\$61,317,270
Moraga-Orinda FD	<u>18,842,000</u>	<u>\$449</u>	16,150,000	17%		2,692,000	18,842,000
Subtotal	\$74,545,000	\$387					
EAST COUNTY							
East Contra Costa FPD	\$10,791,000	\$94	\$10,363,000	7%		\$428,000	\$10,791,000
OTHER							
ConFire	\$89,200,000	\$149	\$96,600,000	12%			\$96,600,000

(1) City property taxes allocated to fire/EMS estimated based on property taxes as % of GF revenues.

(2) City of Pinole Fund 105 FY14-15 Revised Measure "S-2006" for fire expenditures.

(3) El Cerrito excludes approx. \$2.4 million of reimbursement for KFPD contract.

In limited circumstances, new developments have been required to fund public safety operations through creation of a special tax by a city or the County, with concurrence of the developer. If the County or a city does not take advantage of the opportunity to require and create a special tax for fire services before residents move into a community, the tax will require two-thirds voter approval, which has proven difficult in areas already burdened by special taxes for infrastructure and by lack of voter support.