SAN MATEO COUNTY
MOSQUITO & VECTOR
CONTROL DISTRICT
Protecting public health since 1916

1351 Rollins Road
Burlingame, CA 94010

phone (650) 344-8592
fax (650) 344-3843

www.smcmad.org

POLICY COMMITTEE MEETING OF THE BOARD OF TRUSTEES
October 11, 2017
5:00 PM
AGENDA

The Policy Committee is not a decision-making body and only makes recommendations to the Board.

Policy Committee Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting; or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact District Manager Chindi Peavey at least five working days before the meeting at (650) 344-8592. Notification in advance of the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.

Public records that relate to any item on the open session agenda for a Policy Committee meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all Policy Committee members. The Policy Committee of the Board has designated the office of the San Mateo County Mosquito and Vector Control District, located at 1351 Rollins Road, Burlingame, for the purpose of making those public records available for inspection.

1. **CALL TO ORDER.**

2. **PLEDGE OF ALLEGIANCE.**

3. **ROLL CALL.**

- *Chairperson Kati Martin* will take roll call. _____
- Robert Riechel, City of San Bruno _____
- Ed Degliantoni, City of San Mateo _____
- Donna Rutherford, City of East Palo Alto _____
- Carolyn Parker, City of Brisbane _____
- Kat Lion, City of Redwood City _____

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4. PUBLIC COMMENTS AND ANNOUNCEMENTS.

- This time is reserved for members of the public to address the Policy Committee of the Board relative to matters of the Committee not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person (ten minutes where a translator is being used).

5. REGULAR AGENDA

District Policy Manual

A. **Policies in Chapter 3000 of District Policy manual (from April and June)**

i. **District Policy 3010 Vehicle and Watercraft Use** *Consider removing section 3010.301 stating that all vehicles will carry a sign in window saying "no riders"*

ii. **District Policy 3090 Inspection Warrant Requirements –***committee requested clarification on the definition of "open fields" and protocol for non-consensual inspections.*

B. Policies in Chapter 4000 of District Policy Manual

i. **District Policy 4090 Committees of the Board of Trustees (from June)**

a. Consider amending the charges of the Environmental and Public Outreach Committee to include the broader goal of periodically reviewing the outreach program rather than overseeing all educational materials.

b. Consider amending the charges of the Legislative Committee to: (1) include reviewing proposed legislation and making recommendations to the Board and (2) allow the General Manager to act on time-sensitive legislative issues when the Committee cannot be timely convened.

6. ADJOURNMENT

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Agenda Item #5Ai

Review of Changes to District Policy 3010 Vehicle and Watercraft Use

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BACKGROUND

In April and June, the Policy Committee considered these policies and the changes suggested in the attached redline version. There have been no additional changes suggested since those meetings. The committee needs to complete its discussion of the staff recommendation to remove the wording requiring all vehicles to have a sign in the window saying "No Riders". This requirement dates from over 30 years ago at a time when the District was insured by a commercial insurance provider. We are now self-insured through the Vector Control Joint Powers Association (VCJPA). We have checked with the VCJPA, and they do not require these signs on the trucks. Currently, some trucks have signs and some do not, depending on how long ago the vehicle was purchased. District counsel has reviewed the policy and her suggested edits are on the redline version attached, which was presented to the committee at its April and June meetings.

Further revisions requested by the committee in June: None

Attachments

Employee Manual Policy 3010 Vehicle and Watercraft Use

1. 3010 track changes
2. 3010 clean copy

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POLICIES AND PROCEDURES

TITLE: **Vehicle and Watercraft Use**

NUMBER: **3010**

3010.10 The District maintains a fleet of vehicles and watercraft (collectively "District Vehicles") for the sole purpose of conducting district business. In order to best serve the mission of the District, District employees who are authorized to drive a District ~~v~~Vehicle and/or watercraft (hereinafter "Employees") must adhere to this and other District policies as well as all local, state and Federal laws regarding the appropriate use of District Vehicles and vehicle safety. Employees shall use District ~~vehicles~~ Vehicles ~~and watercraft are provided~~only for purposes ~~relating to the~~ of conducting ~~of~~ District business~~,~~ ~~programs,~~ and travel ~~for~~ to / from approved functions.

3010.15 All Employees who operate ~~drivers of~~ District vehicles ~~must maintain i~~be insurable under the district's Automotive Policy with the Vector Control Joint Powers Agency~~nsurance~~ and comply with requirements of the California Department of Motor Vehicles (DMV) ~~requirements~~ as outlined by the Vector Control Joint Powers Agency. This includes, but is not limited to, physically possessing their California Driver's License while operating Vehicles and not operating a Vehicle for District service while Employee's driver's license has expired, been suspended or revoked. Any Employee who is convicted of a DMV moving violation or whose license is suspended/revoked must report this situation to his/her supervisor within one (1) business day. Traffic tickets for mechanical/equipment violations on a District vehicle should be referred to the Employee's supervisor. Tickets for traffic or parking violations are the financial responsibility of the Employee. In the event of an accident or damage involving a District Vehicle, an incident report must be submitted to the Employee's supervisor as soon as possible. The District is not responsible for personal items left in Distric Vehicles.

3010.20 District ~~v~~Vehicles are not to be used for the sole purpose of transportation between the Eemployees' work place and residence, unless authorized by the District Manager or the Board of Trustees.

3010.201 An~~y~~ Eemployee, with permission of the District Manager, may use District ~~v~~Vehicles outside of regular working hours for occasional special responsibilities of work functions where such authorization is indicated for expediency and efficiency.

3010.25 Employees may have his or her Vehicle privileges suspended or revoked, may be subject to disciplinary action, and/or may be liable to the District for costs resulting from any misuse of a District Vehicle. Examples of misuse include, but are not limited to: using a District Vehicle for other than official District business, except as specifically permitted by this policy; driving a District Vehicle without a valid California Driver's License; failure to report a DMV violation; unsafe driving practices; abuse of the District Vehicle; improper fuel card usage; removal of District logos from District Vehicles without authorization; transporting unauthorized passengers; failure to report an accident or wrongfully leaving the scene of an accident; or having multiple preventable accidents causing financial loss to the District. Any person who uses a District Vehicle for other than official District business, except as specifically permitted by this policy may be personally liable for any damage arising from their unauthorized use.

3010.30 Unauthorized passengers are prohibited ~~in~~ from riding in District ~~v~~Vehicles ~~and or watercraft~~ except in cases of extreme emergency involving imminent danger to persons or property.

~~**3010.301** All vehicles Vehicles and watercraft will display "No Rider" signs.~~

Commented [C1]: VCJPA has said that as long as we have an internal policy of no riders it is not necessary to have a sign in the window

3010.40 Authorized passengers include all District personnel, Board members, representatives from other districts, health departments, research agencies, registered volunteers, and other persons having official business with the District.

3010.401 A spouse or partner may be transported by a District ~~v~~Vehicle when accompanying an authorized passenger or driver to approved functions.

3010.402 Persons visiting the District in official capacities of their employment and covered by Workers Compensation Insurance may be transported in District ~~v~~Vehicles ~~and watercraft~~ when appropriate.

Issued: **January 8, 2003**

Reviewed **April 12, 2017**

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POLICIES AND PROCEDURES

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3010.15 All Employees who operate District vehicles must be insurable under the district's Automotive Policy with the Vector Control Joint Powers Agency and comply with requirements of the California Department of Motor Vehicles (DMV) as outlined by the Vector Control Joint Powers Agency. This includes, but is not limited to, physically possessing their California Driver's License while operating District Vehicles, and not operating a District Vehicle for District service while Employee's driver's license has expired, or been suspended or revoked. Any Employee who is convicted of a DMV violation or whose license is suspended/revoked must report this situation to his/her supervisor within one (1) business day. Traffic tickets for mechanical/equipment violations on a District vehicle should be referred to the Employee's supervisor. Tickets for traffic or parking violations are the financial responsibility of the Employee. In the event of an accident or damage involving a District Vehicle, an incident report must be submitted to the Employee's supervisor as soon as possible. The District is not responsible for personal items left in District Vehicles.

3010.20 District Vehicles are not to be used for the sole purpose of transportation between the Employees' work place and residence, unless authorized by the District Manager or the Board of Trustees.

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3010.25 Employees may have his or her Vehicle privileges suspended or revoked, may be subject to disciplinary action, and/or may be liable to the District for costs

resulting from any misuse of a District Vehicle. Examples of misuse include, but are not limited to: using a District Vehicle for other than official District business, except as specifically permitted by this policy; driving a District Vehicle without a valid California Driver's License; failure to report a DMV violation; unsafe driving practices; abuse of the District Vehicle; improper fuel card usage; removal of District logos from District Vehicles without authorization; transporting unauthorized passengers; failure to report an accident or wrongfully leaving the scene of an accident; or having multiple preventable accidents causing financial loss to the District. Any person who uses a District Vehicle for other than official District business, except as specifically permitted by this policy may be personally liable for any damage arising from their unauthorized use.

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Issued: January 8, 2003

Reviewed April 12, 2017

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Agenda Item #5Aii

Review of Changes to District Policy 3090 Inspection Warrants Requirements

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BACKGROUND

In April and June, the Policy Committee considered these policies and the changes suggested in the attached redline version. There have been no additional changes suggested since those meetings. However, the committee had requested further information as outlined below:

1) The committee had asked for more information on the definition of "Open Fields". This term is defined in the legal brief (attached),which was prepared for the Mosquito and Vector Control Association of California (MVCAC) in 2010, by the MVCAC legal counsel Richard Shanahan.
2) The committee had also asked for information about what happens when a property owner does not allow access to their property for inspection or control operations. The District has legal options it can use in this case and the process is described in District Policy 7010 Cooperative Approach to Mosquito Control. In general, the District makes every effort to work with property owners. Policy 7010 contains the legal basis in the Health and Safety code for our ability to enter property for inspection and control.

Further revisions requested by the committee in June: None

Attachments

Employee Manual Policy 3090 Inspection Warrants

1. 3090 track changes
2. 3090 clean copy

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POLICIES AND PROCEDURES

TITLE: **Inspection Warrant Requirements**

NUMBER: **3090**

3090.10 The District's employees shall enter any property in a manner consistent with Health and Safety Code Section 2053, the California Constitution, and the United States Constitution. Except as otherwise provided by law, a~~A~~ll District employees ~~will~~ shall comply with the Mosquito and Vector Control District Inspection and Abatement Guidelines prepared by MVCAC (most recent version) and observe the followings~~e Inspection Warrant Requirements~~best practices for entering properties.

3090.11 Technicians, acting on a service request ~~called into the District office, will~~ shall contact the ~~caller~~requester by telephone or in person within ~~24 hours~~ one business day, or as soon thereafter as practicable, ~~the resident by telephone or in person~~ to receive consent ~~on~~ before entering "private areas" of their property. All ~~residents~~ property owners shall receive notification of findings from a vector control operation carried out on their property.
~~All findings will be made available to the resident.~~

3090.12 Technicians, on a pro-active public health emergency control program, going house-to-house, must receive consent from a resident prior to entering legally ~~"private~~ protected areas~~"~~ of their property. All residents ~~will~~ shall receive notification of findings from a ~~"search and destroy"~~vector control operation carried out on their property. ~~control program.~~

3090.13 Technicians ~~will~~ shall always ~~be in~~wear an official ~~–~~uniform identifying them as a District employee and be able to provide proper identification for inspection by the resident prior to requesting consent to enter legally ~~"private~~ protected areas~~"~~ of their property for inspection and/or abatement of mosquitoes or other vectors.

3090.14 Technicians may enter "open fields" without consent for inspection and/or abatement of mosquitoes or other vectors.

3090.15 In ~~cases~~exigent circumstances, such as where a serious public health threat constitutes an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property and there is insufficient time to obtain a warrant, ~~is under investigation (ie West Nile virus and/or stining insects) Technicians~~ technicians may enter the ~~"back yard"~~legally protected areas of a ~~"search and destroy" control program~~ property ~~while going house-to-house~~ if no resident is available by telephone or at the residence to provide consent. ~~This is only if a serious public health threat (i.e. West Nile virus and/or stinging insects) are under~~

Commented [AB1]: Consider phrasing differently to cover other forms of contact (email, direct contact, etc.)

Commented [C2]: Some callers are business owners, some callers are not calling about their own property

Commented [C3]: If a call comes in on a weekend, we cannot respond until the following business day

Commented [C4]: Some callers are business owners, some callers are not calling about their own property

Commented [AB5]: I prefer to use parallel language across policies when we mean the same thing. Policy 3090.12 was worded a bit more clearly so I suggest using that.

~~investigation.~~ ~~—~~All ~~residents~~ property owners ~~will~~ shall receive notification of findings from a vector control operation carried out on their property.

3090.16 District may ~~utilize —~~work cooperatively with local Code Enforcement officers to assist in gaining access to private properties if consent is not authorized, but inspection and/or abatement is required for mosquito or other vector control operations.

3090.17 When access is denied, ~~County~~ District Counsel ~~will~~ shall be utilized to obtain an inspection and abatement warrant through the courts in a manner consistent with Health and Safety Code Section 2053 and other applicable law.

Issued: **October 8, 2003**
Reviewed: **August 19, 2013**
Reviewed by Policy Committee **April 12, 2017**
Board Approval

Commented [C6]: Improper grammar, needs to be permission to enter is given or consent to enter is given or entry is authorized. You can't authorize consent

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POLICIES AND PROCEDURES

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3090.10 The District's employees shall enter any property in a manner consistent with Health and Safety Code Section 2053, the California Constitution, and the United States Constitution. Except as otherwise provided by law, all District employees shall comply with the Mosquito and Vector Control District Inspection and Abatement Guidelines prepared by MVCAC (most recent version) and observe the following best practices for entering properties.

3090.11 Technicians, acting on a service request, shall contact the requester by telephone or in person within one business day, or as soon thereafter as practicable, to receive consent before entering "private areas" of their property. All property owners shall receive notification of findings from a vector control operation carried out on their property.

3090.12 Technicians, on a pro-active public health emergency control program, going house-to-house, must receive consent from a resident prior to entering legally protected areas of their property. All residents shall receive notification of findings from a vector control operation carried out on their property.

3090.13 Technicians shall always wear an official uniform identifying them as a District employee and be able to provide proper identification for inspection by the resident prior to requesting consent to enter legally protected areas of their property for inspection and/or abatement of mosquitoes or other vectors.

3090.14 Technicians may enter "open fields" without consent for inspection and/or abatement of mosquitoes or other vectors.

3090.15 In exigent circumstances, such as where a serious public health threat constitutes an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property and there is insufficient time to obtain a warrant, technicians may enter the legally protected areas of a property if no resident is available by telephone or at the residence to provide consent. All property owners shall receive notification of findings from a vector control operation carried out on their property.

3090.16 District may work cooperatively with local Code Enforcement officers to assist in gaining access to private properties if consent is not authorized, but inspection and/or abatement is required for mosquito or other vector control operations.

3090.17 When access is denied, District Counsel shall be utilized to obtain an inspection and abatement warrant through the courts in a manner consistent with Health and Safety Code Section 2053 and other applicable law.

Issued:	**October 8, 2003**
Reviewed:	**August 19, 2013**
Reviewed by Policy Committee	**April 12, 2017**
Board Approval	**May 10, 2017**

MOSQUITO AND VECTOR CONTROL DISTRICT INSPECTION AND ABATEMENT GUIDELINES

Richard P. Shanahan
May 2010

Prepared for the Mosquito and Vector Control Association of California

Table of Contents

MOSQUITO AND VECTOR CONTROL DISTRICT INSPECTION AND ABATEMENT GUIDELINES

Introduction

This paper provides advice on property inspection and abatement by mosquito abatement and vector control districts. It describes the current legal requirements and limitations pertaining to the inspection of and abatement activity on property and the control of vectors through a nuisance abatement proceeding. The guidelines set forth required and recommended steps in an inspection/abatement warrant proceeding and nuisance abatement proceeding.

This paper applies to mosquito abatement and vector control districts organized under the Mosquito Abatement and Vector Control District Law (Health and Safety Code, division 3, chapter 1, commencing with section 2000).

Property Inspection Generally

Statutory Authority and Fourth Amendment Limitations

The Health and Safety Code authorizes district staff to enter private property for vector control purposes. Section 2053(b) provides that:

> Subject to the limitations of the United States Constitution and the California Constitution, employees of a district may enter any property, either within the district or property that is located outside the district from which vectors may enter the district, without hindrance or notice for any of the following purposes:
> (1) Inspect the property to determine the presence of vectors or public nuisances.
> (2) Abate public nuisances pursuant to this chapter, either directly or by giving notice to the property owner to abate the public nuisance.
> (3) Determine if a notice to abate a public nuisance has been complied with.
> (4) Control vectors and treat property with appropriate physical, chemical, or biological control measures.

Significantly, the statutory power to enter property is "subject to the limitations of the United States Constitution and the California Constitution." The quoted phrase refers to limitations under the Fourth Amendment of the U.S. Constitution, which protects people against unreasonable searches and seizures. The California equivalent is found at California Constitution, Article I, section 13.

The Fourth Amendment is the law that historically has protected homes, cars and private property from searches in criminal investigations. During the period from the 1960s to 1990s, the Fourth Amendment was extended by the courts to also apply to most administrative inspection and abatement activities by government agencies on private property. (See, e.g., *Camara v. Municipal Court* (1967) 387 U.S. 523; *Michigan v. Tyler* (1978) 436 U.S. 499; *Conner v. City of Santa Ana* (9th Cir., 1990) 897 F.2d 1487; *Allinder v. Ohio* (6th Cir., 1987) 808 F.2d 1180 (case involving a beehive inspection); *Gleaves v. Waters* (1985) 175 Cal.App.3d 413 (case involving a backyard search by the California Department of Food and Agriculture for Japanese beetle control).

In light of these cases, in the 2002 rewrite of the Mosquito Abatement and Vector Control District Law (Senate Bill No. 1588; 2002 Statutes, chapter 395), the California Legislature limited a district's authority to inspect property in order to conform to Constitutional limits. This was accomplished by adding the phrase "subject to the limitations of the United States Constitution and the California Constitution" now found in section 2053(b).

Property Entitled to Fourth Amendment Protection

A critical step in a Fourth Amendment analysis is to determine whether the subject property is entitled to Fourth Amendment protection. The Fourth Amendment protection against unreasonable searches applies to any property or property area where the property owner or occupant has a legitimate expectation of privacy that society recognizes as reasonable. (*United States v. SDI Future Health, Inc.* (9th Cir., 2009) 568 F.3d 684,694-696.) While the Fourth Amendment protects people, not places, the extent to which the Fourth Amendment protects people depends upon where those people are located. The capacity to claim the protection of the Fourth Amendment depends upon whether the person who claims the protection has a legitimate expectation of privacy in the invaded place. (*Minnesota v. Carter* (1998) 525 U.S. 83, 88.)

The law distinguishes "open fields" from the "curtilage" around a house. In order to better understand the Fourth Amendment requirements, it is helpful to have a general understanding of curtilage and the open fields doctrine.

Curtilage is the land immediately surrounding and associated with the home. In deciding whether an area constitutes curtilage entitled to Fourth Amendment protection, a court will consider four factors: the proximity of the area claimed to be curtilage to the home; whether the area is included in an enclosure surrounding the home; the nature of the uses to which the area is put; and, the steps taken by the resident to protect the area from observation by people passing by. (*United States v. Dunn* (1987) 480 U.S. 294, 301.) A typical curtilage area would include a fenced backyard.

Courts also have developed the "open fields" doctrine. Under this doctrine, a government intrusion upon open fields is not an unreasonable search proscribed by the Fourth Amendment. The term "open fields" applies to any unoccupied or undeveloped area outside of the curtilage; an area need be neither open nor a field to be an open field exempt from Fourth Amendment protection. As explained by the U.S. Supreme Court, "an individual may not

legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home. … [O]pen fields do not provide the setting for those intimate activities that the Amendment is intended to shelter from government interference or surveillance. There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops, that occur in open fields. Moreover, as a practical matter these lands usually are accessible to the public and the police in ways that a home, an office, or commercial structure would not be. It is not generally true that fences or 'No Trespassing' signs effectively bar the public from viewing open fields in rural areas." (*Oliver v. United States* (1984) 466 U.S. 170, 177-178.)

The following are some basic guidelines about the types of property generally entitled to Fourth Amendment protection and the types of property generally not entitled to such protection. Each situation, though, is fact specific. In close or uncertain situations, the district should consult with its attorney or err on the safe side of treating the property as if it is entitled to Fourth Amendment protection.

Examples of property generally entitled to Fourth Amendment protection:

- Enclosed residential backyard.

- An unfenced backyard of a house also may be covered; however, the analysis would depend upon other factors such as the nature and use of the area, proximity of the area to the house, and any steps taken to protect the area from observation.

- Enclosed commercial, industrial and manufacturing facilities generally not open to the public.

- Fenced areas where the owner or occupant has exhibited a reasonable expectation of privacy (e.g., through signage, locked gates).

Examples of property and searches generally not entitled to Fourth Amendment protection:

- Open and generally accessible fields, pastures, agricultural land, forest, riparian areas along rivers, and other open-space areas.

- Unfenced front yard.

- Open undeveloped land.

- Common area of an apartment complex generally open to all occupants of the apartment.

- Obviously vacant, open and abandoned property.

- A fenced area may not be entitled to Fourth Amendment protection if the public can easily see through the fence from adjacent property and roads, the fenced area is not

adjacent to a house, and the property is accessible through a gap or unlocked gate in the fence.

- Plain view searches from adjacent property. Sometimes, it is desirable to look into a backyard from an adjacent parcel in order to determine whether there may be a problem mosquito source in the yard. An observation of a backyard or other property from a lawful, nonintrusive vantage point does not violate any reasonable expectation of privacy. A district staff person's plain view observation into an adjacent backyard while the person was lawfully (e.g., with consent) located in a neighbor's yard does not necessarily make the search illegal. However, if the district undertakes invasive tactics to make the observation into the adjacent backyard, there may be an unlawful search. Such invasive tactics could include using a stool or ladder to observe over a fence or removing a fence board. If, though, the view is made through holes in the fence or missing boards, that generally would not make the search unlawful. A view from a neighbor's second-floor window into an adjacent backyard also would not be an unlawful search.

- Aircraft searches. Courts have concluded that there generally is no reasonable expectation of privacy regarding overflight and searches from aircraft because there is considerable public use of the airspace. In evaluating whether an aerial search constitutes a reasonable and lawful search, courts will consider whether the aircraft was flying at a lawful altitude, whether the subject of the search was visible from the air with the naked eye, whether the surveillance interfered with the use of the property or revealed any intimate details about the property, whether the surveillance created any undue noise, wind, dust or other impact, and the frequency and duration of the surveillance.

Obtaining Access to Fourth Amendment-Protected Property

If property is entitled to Fourth Amendment protection, then a district staff person may not enter that property unless (1) authorized by the consent of the property owner (for owner-occupied property), resident, tenant, occupant, employer, e.g., management personnel (for business property), or other person with access to and control over the property, (2) authorized by an inspection and abatement warrant issued by a court (discussed below), or (3) there are exigent circumstances.

As a first step in most vector surveillance and control situations involving an area that may be protected by the Fourth Amendment, the district should seek to obtain the voluntary consent and cooperation of the affected property owner or occupant. The vast majority of district inspection and treatment is accomplished via consent. If the district has obtained consent, it does not need to worry about whether the property is entitled to Fourth Amendment protection or about whether a warrant is needed. The consent must be by a person with access to and control over the property. Generally, for rented property, a landlord/owner cannot consent to the search of the tenant's property.

When there are exigent circumstances, a government official may immediately enter onto private property without consent or a warrant. Exigent circumstances are narrow. It means an

emergency situation requiring swift action to prevent imminent danger to life or serious damage to property. An important factor is whether the time and burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. (*People v. Lucero* (1988) 44 Cal. 3d 1006; *Gleaves v. Waters* (1985) 175 Cal.App.3d 413.)

In most courts, an administrative inspection/abatement warrant may be obtained relatively quickly. It would be extremely rare for there to be exigent circumstances to justify a warrantless and consent-less search in a vector control situation. In *Gleaves*, the Department of Food and Agriculture argued that, in order to protect the public health and safety from the Japanese beetle, it was essential to maintain a rigorous pesticide treatment schedule, which would be frustrated by the need to obtain warrants. The court rejected this argument and concluded that the administrative warrant process provided the Department with a reasonably prompt remedy.

However, an exigent circumstances situation affecting public health and safety could arise. For example, when responding to a mass stinging incident or threat involving aggressive Africanized honeybees, there could be a swarm of dangerous bees and a vector control technician may find it necessary to immediately follow the swarm onto private property in order to control the swarm and prevent further stinging. That type of situation may justify entry onto private property without consent or a warrant.

Inspection and Abatement Warrant Guidelines

Statutory Authority

An inspection and abatement warrant is a special type of order issued by a superior court that authorizes a district and its staff to enter specified private property in order to perform vector surveillance and control. The warrant is authorized by Health and Safety Code section 2053(a), which provides that:

> A district may request an inspection and abatement warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. A warrant issued pursuant to this section shall apply only to the exterior of places, dwellings, structures, and premises. The warrant shall state the geographic area which it covers and shall state its purposes. A warrant may authorize district employees to enter property only to do the following:
>
> (1) Inspect to determine the presence of vectors or public nuisances.
>
> (2) Abate public nuisances, either directly or by giving notice to the property owner to abate the public nuisance.
>
> (3) Determine if a notice to abate a public nuisance has been complied with.
>
> (4) Control vectors and treat property with appropriate physical, chemical, or biological control measures.

Code of Civil Procedure sections 1822.50 to 1822.57, which applies to government administrative inspection and abatement warrants generally, sets forth the procedures, conditions

and limitations pertaining to such warrants. The following are the pertinent Code of Civil Procedure sections:

> 1822.50. An inspection warrant is an order, in writing, in the name of the people, signed by a judge of a court of record, directed to a state or local official, commanding him to conduct any inspection required or authorized by state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, or zoning.
>
> 1822.51. An inspection warrant shall be issued upon cause, unless some other provision of state or federal law makes another standard applicable. An inspection and abatement warrant shall be supported by an affidavit, particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent.
>
> 1822.52. Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.
>
> 1822.53. Before issuing an inspection warrant, the judge may examine on oath the applicant and any other witness, and shall satisfy himself of the existence of grounds for granting such application.
>
> 1822.54. If the judge is satisfied that the proper standard for issuance of the warrant has been met, he or she shall issue the warrant particularly describing each place, dwelling, structure, premises, or vehicle to be inspected and designating on the warrant the purpose and limitations of the inspection, including the limitations required by this title.
>
> 1822.55. An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judge who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void.
>
> 1822.56. An inspection pursuant to this warrant may not be made between 6:00 p.m. of any day and 8:00 a.m. of the succeeding day, nor in the absence of an owner or occupant of the particular place, dwelling, structure, premises, or vehicle unless specifically authorized by the judge upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry, except that the judge may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of a violation of a state or local law or regulation relating to building, fire,

safety, plumbing, electrical, health, labor, or zoning, which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior consent has been sought and refused, notice that a warrant has been issued must be given at least 24 hours before the warrant is executed, unless the judge finds that immediate execution is reasonably necessary in the circumstances shown.

1822.57. Any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this title is guilty of a misdemeanor.

A district may request a warrant to undertake inspection only or for both inspection and abatement and control. If the initial warrant is for inspection only, then later authorization for abatement activity on the property would require a second warrant application. Most districts therefore, when seeking a warrant, request an inspection and abatement warrant. These guidelines assume that a district is requesting an inspection and abatement warrant.

Meaning of Public Nuisance

A district's warrant and nuisance abatement powers are premised on the existence of a "public nuisance" on property. The Mosquito Abatement and Vector Control District Law includes this important definition:

"Public nuisance" means any of the following:
(1) Any property, excluding water, that has been artificially altered from its natural condition so that it now supports the development, attraction, or harborage of vectors. The presence of vectors in their developmental stages on a property is prima facie evidence that the property is a public nuisance.
(2) Any water that is a breeding place for vectors. The presence of vectors in their developmental stages in the water is prima facie evidence that the water is a public nuisance.
(3) Any activity that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors.

(Health & Saf. Code § 2002(j).)

In mosquito control, most nuisance abatement actions against property are brought under subdivision (j)(2). "Prima facie" is a Latin phrase meaning at first sight or presumably. It is a fact presumed to be true unless disapproved by some evidence to the contrary. A mosquito in its "developmental stages in the water" means a pupa, larva or raft of eggs. If property contains water and mosquito pupae, larvae or eggs are found in the water, then a public nuisance exists on the property.

What about other vectors such as Africanized honey bees, fire ants and ticks? For these vectors, it is a more difficult to determine whether property constitutes a public nuisance. If the vector does not breed in water, subdivision (j)(2) above is inapplicable. This means that a

property would be a public nuisance only if (1) the property has been "artificially altered from its natural condition so that it now supports the development, attraction, or harborage of vectors," or (2) activity occurs on the property "that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors." A bee hive in a tree therefore probably would not constitute a public nuisance that would justify a warrant request or nuisance abatement proceeding. In contrast, a bee hive in a stack of tires might constitute a public nuisance because the property has been altered so that it now supports the harborage of vectors.

Seek Consent

As discussed above, prior to commencing any warrant proceeding, the district first should always attempt to obtain consent for the vector control surveillance and abatement from the property owner or occupant. Furthermore, in the declaration discussed below, it will be important for the district to explain that it sought consent and that consent was refused or otherwise unattainable.

Prepare Application, Declaration and Proposed Warrant

A district begins the process by preparing an application for an inspection and abatement warrant. The application typically consists of a single document with two parts – the application or request and a supporting declaration[2]. An application is not required but is generally advisable because courts are often unfamiliar with the inspection warrant authority and process. The application paperwork usually also includes a proposed warrant to be signed by a judge. Sometimes, especially for a controversial or legally uncertain application, there also may be a memorandum of legal points and authorities in support of the application.

Usually, the papers are prepared by an attorney. An attorney also usually signs the application. There is some uncertainty and inconsistency among the California county superior courts concerning whether an attorney must sign the application. The legal issue is whether the application for a warrant on behalf of a district is the practice of law that may only be undertaken by an attorney. Some courts view the warrant proceeding as the practice of law, meaning that only a California licensed attorney may sign and submit an application. Other courts, concluding to the contrary or not having faced the issue, allow a district staff person to sign and submit an application.

The declaration should be prepared or approved and signed by the district employee who has knowledge about the existence of a vector nuisance on the property and other information contained in the warrant. To the extent feasible, the factual statements in the declaration should be based on the declarant's personal knowledge and observations.

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[2] Code of Civil Procedure section 1822.51 refers to the preparation and filing of an affidavit by the inspecting employee. But Code of Civil Procedure section 2015.5 permits the use of a written declaration, instead of an affidavit, to support an application for an inspection and abatement warrant. An affidavit generally must be signed before a notary public, while a declaration under section 2015.5 does not. Therefore, a declaration generally is the simpler document to prepare.

In order to obtain a warrant, a district must show good cause. Cause exists if either (1) reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular premises, or (2) there is reason to believe that a vector nuisance (e.g., property may provide breeding places for vectors) exists with respect to the particular premises. (Code Civ. Proc. §§ 1822.51 & 1822.52.)

The declaration should particularly describe the following: district's vector control powers from which it derives authority to enter the subject property and conduct the inspection and abatement activities; property or geographic area to be inspected and, if necessary, treated; specific purpose for the inspection and abatement; a statement that consent to inspect has been sought and refused; and, the cause supporting the inspection and abatement (e.g., describe the facts that led the district's inspecting employee to conclude that the subject property may provide breeding places for vectors and, therefore, requires inspection and, if necessary, abatement measures).

The proposed warrant should: describe the property or geographic area to be inspected and abated; designate the purposes and limitations of the warrant; authorize district employees to enter the property and conduct both the necessary inspection and, if necessary, abatement activities; specify whether the owner or occupant must be present and whether advance notice must be given; specify who (what agencies) may attend the inspection and abatement[3]; and, specify the effective period of the warrant and the times when the property may be entered. (Code Civ. Proc. §§ 1822.54 – 1822.55; Health & Saf. Code § 2053.) A warrant cannot be effective for longer than 14 days, unless the judge extends or renews the warrant upon finding that it is in the public interest. (Code Civ. Proc. § 1822.55.)

After the application, declaration and proposed warrant are finalized, the district should contact the local county superior court to schedule an ex parte hearing.[2.] Each county court is unique in the local procedures for processing administrative inspection and abatement warrant applications. The district or its attorney should contact the local court to determine the local procedure. Many jurisdictions do not require that a hearing be scheduled. Typically, the court clerk will schedule an ex parte hearing on the warrant application within a few days of the request. The application paperwork typically is brought to the hearing and not filed beforehand. The documents are filed with the court after the warrant is approved. The district is exempt from payment of any court fees for filing these documents. (Govt. Code § 6103.)

[3] The warrant should specify any other agency that is participating or attending the execution of the warrant, such as law enforcement, general counsel's office (to ensure the safe and proper execution of the warrant), city or county officials, health department, fire department, etc. This is important when agencies other than the vector control district are participating. Otherwise, there could be liability for the agencies and officials not specifically authorized.

[2] *Ex parte* hearing means a hearing in which the court hears from only one side of the dispute or matter.

Ex Parte Court Hearing and Issuance of Warrant

There usually is an ex parte hearing before a judge to consider the warrant application. In most counties, it is standard procedure for the attorney representing the applicant agency and the declarant who prepared the declaration to attend the hearing.

However, an ex parte hearing is not required. The statute requires only that, "Before issuing an inspection and abatement warrant, the judge may examine on oath the applicant and any other witness, and shall satisfy himself of the existence of grounds for granting such application." (Code Civ. Proc. § 1822.53.) This section implies that an appearance by the declarant is not mandatory and that the judge may find grounds for the application based solely on the declaration and other paperwork. In some county courts, it may be possible to save money by structuring a warrant application process that does not require the district staff and attorney to attend a court hearing.

At the hearing, or in the absence of a hearing, the court will consider whether the application and declaration show reasonable cause for granting the warrant. (Code Civ. Proc., §§ 1822.51 – 1822.53.) The judge may, in his or her discretion, examine under oath the district declarant and any other witnesses. Therefore, it is advisable for the employee who signed the declaration to attend the hearing in order to be able to answer the judge's questions and to avoid possible delay in the event the judge has questions that must be answered before issuing a warrant.

If the declaration and the hearing testimony, if any, convince the judge that the issuance of a warrant is appropriate, then the judge will issue the warrant. (Code Civ. Proc. § 1822.54.) The judge usually signs the proposed warrant presented by the district, but he or she may make changes to it. After the hearing and approval of the warrant, the application, declaration and signed warrant usually are filed with the court. Again, procedures vary from court to court.

Execute the Warrant

The district employees must perform the vector inspection and abatement activities authorized by the warrant and return the warrant to the issuing judge within the 14 day or other period specified in the warrant, unless the issuing judge extends or renews the effective period. The district must provide 24-hour advance notice to the owner or occupant of the premises prior to executing the warrant. (Code Civ. Proc. § 1822.56.) A notice of inspection and abatement form should be completed by district staff and personally delivered to the owner or occupant of the premises, or posted on the premises at least 24 hours before the warrant is executed. The district should make a written record of this delivery or posting.

The inspection and abatement warrant may be executed only between 8:00 a.m. and 6:00 p.m., in the presence of an owner or occupant of the subject property, unless the issuing judge orders otherwise. For property that appears to be vacant or abandoned, the application and declaration should explain so and request the court to issue a warrant that allows inspection and abatement without the presence of the owner or occupant.

If, even with a warrant, the owner/occupant refuses to permit inspection, then the district should seek police or sheriff assistance. Refusal to comply with the warrant is a misdemeanor. (Code Civ. Proc. § 1822.57.) Some districts choose to coordinate with the police or sheriff on every entry made under a warrant. Generally, a warrant does not allow forcible entry. However, with an uncooperative owner/occupant, the district may return to the issuing judge and request that the warrant be revised to allow for forcible entry (in which case the district should ask for police or sheriff help when executing the revised warrant). Warrants for forcible entry are authorized in situations that pose an immediate threat to health or safety, or where it is established that reasonable attempts to serve a previous warrant have been unsuccessful. (Code Civ. Proc. § 1822.56.)

After completion of the work authorized by the warrant, and within the time limits specified in the warrant, the district must return the warrant to the court. This may be accomplished by preparing and filing with the court a declaration in support of return of inspection and abatement warrant that summarizes the action taken to execute the warrant and includes the warrant as an attachment.

Area-Wide Warrant

Typically an administrative inspection and abatement warrant describes and applies to a particular parcel or premises. Some districts have been successful in obtaining a warrant that describes and applies to a broader area of property. These are sometimes referred to as area-wide or blanket warrants.

Health and Safety Code section 2053(a) provides that the warrant "shall state the geographic area which it covers." In contrast, the pertinent Code of Civil Procedure provision provides that the warrant application must particularly describe "the place, dwelling, structure, premises, or vehicle to be inspected." (Code Civ. Proc. § 1822.51.) The reference to "geographical area" in the Health and Safety Code suggests that the scope of a warrant for a mosquito and vector control district may encompass a geographical area or place somewhat broader then the typical warrant that may be limited to a particular dwelling or premises.

In *Camara v. Municipal Court* (1967) 387 U.S. 523, the U.S. Supreme Court recognized that area-wide or blanket warrants for health and safety inspections may be appropriate in some circumstances. The court noted that there are a number of persuasive factors that support the reasonableness of area code-enforcement inspections: such programs have a long history of judicial and public acceptance; the public interest demands that all dangerous conditions be prevented or abated and it is difficult for any other canvassing technique to achieve acceptable results; some dangerous conditions may not be observable from outside the building; and, administrative inspections are neither personal in nature nor aimed at the discovery of evidence of crime and they involve a relatively limited invasion of privacy. The court then concluded that an area-wide health and safety-related inspection is a reasonable search of private property within the meaning of the Fourth Amendment.

The *Camara* court also addressed the kind of proof that a health official would need show to obtain a warrant. Probable cause to issue a warrant to inspect may be based on reasonable legislative or administrative standards for conducting an area inspection. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the property, building or structure, or the condition of the entire area. The standards need not necessarily depend upon specific knowledge of the condition of the particular dwelling or parcel.

In *United States v. Lopez-Anaya* (D. Ariz., 1974) 388 F.Supp. 455, a federal district court upheld an area-wide search warrant that authorized the U.S. Border Patrol to search vehicles for illegal aliens in a prescribed area. (See also, *Almeida-Sanchez v. United States* (1973) 413 U.S. 266, concurring opinion of Justice Powell indicating that area-wide warrants are constitutional.)

On the basis of this authority, some judges in the state have approved applications for area-wide warrants for mosquito-related inspection and abatement activity. Some warrants have been district-wide and some have been limited to a particular problem area of a district. A district's success with an area-wide warrant application may depend on the judge because some judges may be reluctant to issue a broad area-wide warrant.

The process to apply for an area-wide warrant is the same as for a parcel-specific warrant. There are, though, some particular issues to focus on.

The declaration in support of the application must "contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent." (Code Civ. Proc. § 1822.51.) With an area-wide warrant, at the time of the application the district typically will not have sought consent to search from all of the property owner/occupants in the area. Therefore, the district will need to explain the circumstances that reasonably justify not seeking consent before applying for the warrant.

The warrant application must explain the cause to support the warrant. Cause may be shown based on reasonable administrative standards for conducting a routine or area inspection or on a reasonable belief that a condition of nonconformity exists with respect to the particular area. (Code Civ. Proc. § 1822.52.)

Any inspection and abatement warrant cannot be effective "for a period of more than 14 days, unless extended or renewed by the judge who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest." (Code Civ. Proc. § 1822.55.) This language indicates that the original warrant cannot be for longer than 14 days and that the judge thereafter may extend the warrant for another 14 day period or a longer term. Some judges may be reluctant to issue an area-wide warrant for a long period of time.

In a declaration in support of an area-wide warrant application, a district should consider including the following descriptions and explanations: West Nile Virus or other public health risk that justifies the warrant; district's surveillance and treatment practices consistent with the State Mosquito-Borne Surveillance and Response Plan or other local administrative standards and procedures; need for prompt treatment consistent with the plan and surveillance results;

mosquitoes of public health concern are found in ill-maintained swimming pools and other backyard sources; ill-maintained pools and other sources are identified through aerial photographs, complaints and other methods; and challenges and increased public health risk associated with seeking parcel-by-parcel warrants.

Nuisance Abatement Guidelines

When controlling vectors, a district has two fundamental choices – control directly or control through the nuisance abatement process. First, a district may control the vector directly and immediately through its own staff and resources. The vast majority of vector control is undertaken in this manner. When proceeding in this manner, a district generally cannot recoup its vector control costs from the property owner.

Second, a district may use nuisance abatement to compel the property owner to control the vector emanating from the property owner's property. If the property owner fails to timely control the vector, then the district may do so and recoup its costs from and impose civil penalties against the property owner. This section of the guidelines outlines the statutory steps in a nuisance abatement proceeding.

Statutory Authority

Health and Safety Code section 2060(a) provides that a district may abate a public nuisance pursuant to Article 5 of the Mosquito Abatement and Vector Control District Law. Sections 2060 to 2067 set forth detailed requirements for a proceeding to abate a nuisance on property. The proceeding, outlined in the pages below, involves various notice, hearing, order, abatement and collection steps.

The property owner, after notice and hearing, first must be ordered to abate the nuisance and given the opportunity to do so. If the property owner fails to timely abate the nuisance, then the statute authorizes the district to abate the nuisance and recoup its abatement costs from the property owner. (Health & Saf. Code §§ 2061(e) & 2065(a).)

The statute also authorizes a district to enforce the nuisance abatement obligations through a civil penalty. A district may impose a civil penalty on the owner of the property for failure to comply with a nuisance abatement order. The amount of the civil penalty may be up to $1,000 per day for each day that the property owner fails to comply with the district's abatement order. (Health & Saf. Code § 2063.)

The nuisance abatement provisions provide various methods for a district to collect its nuisance abatement costs and civil penalties. (Health & Saf. Code §§ 2065 & 2067.)

In a nuisance abatement proceeding, a district has several options:

- A district may order a property owner to abate a nuisance and take no further action.

- A district may order a property owner to abate a nuisance and, in order to enforce the order, impose a civil penalty on the property owner if the property owner fails to timely abate the nuisance. The daily civil penalty may remain in effect until the property owner abates the nuisance. The nuisance abatement statutes do not obligate the district to abate the nuisance. Rather, a district may utilize the proceeding to compel the property owner to do so.

- A district may order a property owner to abate a nuisance and, if the property owner fails to timely abate the nuisance, the district may proceed to abate the nuisance. If the district abates the nuisance, it may recoup its abatement costs from the property owner.

- In the abatement-by-district situation, the district also may impose a civil penalty (in addition to recouping its abatement costs), which may be imposed until the nuisance is abated.

Property Owner Responsibility

The Mosquito Abatement and Vector Control District Law imposes a significant obligation on all property owners in the district: "The person or agency claiming ownership, title, or right to property or who controls the diversion, delivery, conveyance, or flow of water shall be responsible for the abatement of a public nuisance that is caused by, or as a result of, that property or the diversion, delivery, conveyance, or control of that water." (Health & Saf. Code § 2060(b).) If a property owner's land contains water with mosquito pupae, larvae or eggs, then the owner "shall be responsible for the abatement of a public nuisance." Stated another way, no property owner has the right to allow mosquitoes or other vectors to exist on and emanate from its property.

It is important to note that the legal obligation burdens the property owner (i.e., "person or agency claiming ownership, title, or right to property"). Similarly, the proceedings outlined below provide for notice to and orders against property owners. The obligation to pay penalties and reimburse abatement costs lies against property owners. Therefore, even though particular property may be occupied and controlled by a tenant, and the tenant's property maintenance (or lack of it) or other action is causing the nuisance, the nuisance abatement proceeding nevertheless must be directed against the property owner. The property owner, if it wishes, then must deal with its relationship with the tenant. Most leases and rental agreements prohibit the tenant from maintaining a nuisance on the property.

An essential preliminary step in a nuisance abatement proceeding therefore is for the district to determine the person or entity that owns the subject property. A district may determine this information through a title search or based on the most recent assessment roll of the county in which the property is located.

Investigate and Compile Supporting Proof

A nuisance abatement proceeding is a fact-finding process. Prior to commencing any proceeding, district staff should ensure that it has compiled sufficient proof and evidence of facts to support a determination by the district board of trustees that a public nuisance exists on the subject property. Such facts typically are based upon a history of inspection, surveillance and monitoring data concerning the property. In a typical mosquito abatement situation, the pertinent facts are straightforward and require district staff to show that (1) the property contains water, and (2) mosquito pupae, larvae or eggs are found in the water.

While not required by statute, it is advisable for the facts presented by district staff to also summarize prior notices to the property owner and other pre-nuisance abatement efforts to control or otherwise address the problem. A nuisance abatement proceeding rarely is a remedy of first recourse. Rather, most districts pursue a progressive discipline or enforcement method involving a series of steps, e.g., an initial personal contact, letter urging cooperation, more serious warning letter informing the property owner of its responsibility and the potential for nuisance abatement, and finally a formal notice to abate.

The Fourth Amendment restrictions discussed above would be applicable to any nuisance abatement related investigation. It is important that any inspection, surveillance and monitoring activity be undertaken in compliance with those restrictions, meaning that the district had consent or a warrant or that the subject property was not entitled to Fourth Amendment protection.

Notice to Abate

After compiling the proof, the next step in a nuisance abatement proceeding is to approve and serve a notice to abate that notifies the property owner about the existence of a public nuisance. Whenever a public nuisance exists on any property within a district or on any property that is located outside the district from which vectors may enter the district, the board of trustees may notify the owner of the property of the existence of the public nuisance through a notice to abate. (Health & Saf. Code § 2061(a)-(c).)

The notice to abate must include the following information:

(1) State that a public nuisance exists on the property, describe the public nuisance, and describe the location of the public nuisance on the property.
(2) Direct the owner of the property to abate the nuisance within a specified time.
(3) Direct the owner of the property to take any necessary action within a specified time to prevent the recurrence of the public nuisance.
(4) Inform the owner of the property that the failure to comply with the requirements of the notice within the specified times may result in the district taking the necessary actions, and that the owner shall be liable for paying the costs of the district's actions.
(5) Inform the owner of the property that the failure to comply with the requirements of the notice within the specified times may result in the imposition of civil penalties of up

to $1,000 per day for each day that the public nuisance continues after the specified times.

(6) Inform the owner of the property that before complying with the requirements of the notice, the owner may appear at a hearing of the board of trustees at a time and place stated in the notice.

(§ 2061(b).)

Subdivisions (b)(2) and (b)(3) provide for the notice to abate to set forth "a specified time" by which the property owner must abate the nuisance. Subdivision (b)(6) provides that the abatement hearing must be held "before complying with the requirements of the notice." In construing these provisions, it appears that the "specified time" deadline then must be a date after the abatement hearing at which the owner will have the opportunity to object to the alleged nuisance.

After approval of the notice to abate, and at least 10 days before the date of the abatement hearing, the notice must be (1) "served on the owner of the property in the same manner as a summons in a civil action," and (2) "mailed by certified mail to the owner of the property at the address shown on the most recent assessment roll of the county in which the property is located." If, after a diligent search, the notice cannot be served on the property owner, the district instead must post the notice in a conspicuous place on the property for not less than 10 days before the hearing. (§ 2061(c).)

Service of the notice "in the same manner as a summons in a civil action" is a precise legal requirement. There are detailed statutes outlining various processes for serving a summons against natural persons, corporations, partnerships and other entities. A detailed outline of these procedures is beyond the scope of this paper. For this step in the process, and in order to ensure proper notice, a district should consult with its general counsel and consider utilizing a process server.

Section 2061, subdivisions (a) and (c) provide for "the board of trustees" to notify the property owner about the public nuisance and to cause the notice to abate to be served. Later provisions in the abatement proceeding also provide for a noticed public hearing before the board of trustees. Therefore, if the district board both approves the notice to abate and thereafter conducts the abatement hearing, the proceeding would involve two steps before the board of trustees, which can be very time-consuming, especially for a board that meets only once per month.

In order to expedite a nuisance abatement proceeding, a district board may delegate to its manager the authority to approve and serve a notice to abate. Health and Safety Code sections 7 and 2020 authorize a board of trustees to delegate authority to the manager. Furthermore, under general public agency law, a governing board may delegate to staff the performance of tasks relating to investigation and determination of facts preliminary to district action. (See *California School Employees Assn.* v. *Personnel Commission* (1970) 3 Cal.3d 139, 144-145; *Margulis v. Myers* (1981) 122 Cal.App.3d 335, 345, fn. 6.)

Therefore, a district board may wish to adopt a resolution authorizing its manager to initiate a nuisance abatement proceeding by approving, serving and noticing the notice to abate. The resolution should specify that the board retains the authority and responsibility to hear and determine the existence of a public nuisance and to order abatement after the hearing.

Abatement Hearing

At the time and place stated in the notice to abate, the board of trustees conducts the abatement hearing and accepts written and oral testimony from district staff, the property owner and other persons. (Health & Saf. Code § 2061(d).) An abatement hearing is a quasi-judicial proceeding with the district board and president acting as judge and decision-maker and with district staff acting as advocate or prosecutor.[4] The hearing should be tape-recorded or recorded by a court reporter.

While there are no particular legal requirements, a typical simple abatement hearing may follow these procedures:

- Introductory comments by the board president explaining the purpose of the hearing, steps in the hearing process, and evidentiary guidelines.
- Presentation of testimony and documents by district staff.
- Opportunity for property owner to cross-examine or ask questions of district staff.
- Opportunity for trustee questions of district staff.
- Presentation of testimony and documents by the property owner and its representatives
- Opportunity for district staff to cross-examine or ask questions of the property owner and its representatives.
- Opportunity for trustee questions of property owner.
- Closing comments by the property owner.

[4] The district general counsel or attorney typically advises the board of trustees in an abatement proceeding, assists the president with the flow of the hearing and decisions on evidence, and, based on direction from the board, prepares a board resolution setting forth the findings of fact and decision. There are constitutional due process principles that restrict the attorney's role in the proceeding. Generally, the attorney may not both advise the staff as advocate in undertaking the investigation and developing the facts to support the nuisance abatement action and preparing for the hearing and then later advise the board in its role as neutral, impartial decision-maker. In other words, the attorney generally "cannot wear both hats" by advising both advocate (staff) and adjudicator (board) in the same proceeding. (See *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731.) If an attorney has been substantially involved in the staff investigatory and hearing preparation steps, then the district may need to utilize a different attorney to advise the board of trustees at the hearing. It may be possible for the attorneys to be from the same office or law firm so long as there is a strict separation between them, their functions and the pertinent files. A thorough analysis of this issue is beyond the scope of this paper.

- Closing comments by district staff.

- Close the hearing.

- Board deliberation and decision. The decision should be by resolution. The resolution may be adopted at a subsequent meeting. The board deliberation and decision must be conducted in open session. However, if the board wishes to confer with or receive advice from its attorney prior to deciding, it may do so in closed session.

At the public hearing, district staff bears the burden of proof to demonstrate the existence of a nuisance and the need for abatement. In the presentation of facts by district staff, the following points should be covered and explained:

- Inform the board about the particular property and owner of the subject property.

- Explain when and how the notice to abate was served on the property owner.

- Explain any prior (e.g., pre-notice to abate) district notices or correspondence to the property owner and/or occupant.

- Explain any prior relevant written materials submitted by the property owner.

- Explain in a chronological manner all of the prior inspection, surveillance and abatement activities concerning the property. Include relevant dates. Include specific surveillance data and findings (e.g., larvae counts). If applicable, explain how these surveillance data exceed established treatment thresholds.

- If the surveillance, inspection and abatement activities are memorialized in reports, correspondence, memos and/or other database, then the documents should be compiled, printed and made available to the board and referred to by staff in its presentation (i.e., made part of the record of proceedings before the board). If the documents are substantial, it is sufficient to have the district file(s) at the hearing and available for the board and it is not necessary to make a copy of the entire file(s) for each trustee.

Board Decision

At the close of the hearing, the board of trustees must determine, based on substantial evidence in the record, whether a public nuisance exists on the property.[5] If the board finds that a public nuisance exists, then the board should adopt a written decision in the form of a resolution. The resolution should include the following information:

[5] There is a special statute that limits the finding of a nuisance involving immature flies at an agricultural operation. (Health & Saf. Code § 2062.) If a district nuisance abatement proceeding relates to this type of nuisance, then the district should consult and follow section 2062.

- Summarize the pertinent facts as determined by the board and based on the evidence received at the hearing. These findings of fact should explain the existence of a public nuisance on the property and confirm that district staff complied with the notice to abate requirements.

- Order the property owner to abate the public nuisance and to take other necessary specified actions to prevent the recurrence of the public nuisance.

- Set forth a reasonable time by which the property owner must comply with these requirements.

- Specify that any recurrence of a public nuisance on the property shall be considered a continuation of the original nuisance.

- Authorize district staff to abate the nuisance if the property owner fails to timely abate the nuisance (optional).

- Impose a civil penalty (optional).

- Provide notice to the property owner that the abatement costs or civil penalties, or both, may be collected as a lien against the subject property and also may be collected at the same time and in the same manner as county real property taxes against the property (optional).

While not set forth in the statute, the statutory process implies that the resolution/decision will be provided to the property owner. Similarly, the statute does not specify any method of notice or service. It is recommended that a copy of the signed resolution be (a) mailed to the owner of the property at the address shown in the county tax assessor records, and (b) personally delivered to the subject property and either handed to an adult occupant or resident or left as a door-hanger. A memo to file should be prepared memorializing the mailing and personal delivery.

Judicial Review

An aggrieved property owner or other person affected by a nuisance abatement decision may seek judicial review pursuant to Code of Civil Procedure section 1094.5 (administrative mandate). (Health & Saf. Code § 2006(b).) A petition for judicial review must be filed within 90 days after the date of the district board's final decision. (Code Civ. Proc. § 1094.6.)

In an administrative mandate proceeding, the court will review the district board decision to determine whether the district proceeded in the manner required by law (i.e., whether the district followed the steps prescribed by the statute), whether the board decision is supported by written findings of fact that explain and support the decision, and whether the findings are supported by evidence received at the abatement hearing. The court's review generally will be limited to the administrative record consisting of a recording or transcript of the hearing, notice to abate, board resolution/decision, and the documents produced and available at the hearing. A

district's likelihood of success in a lawsuit challenging an abatement decision will be measured in large part upon the adequacy of the administrative record before the board. It therefore is important for the district to prepare a good, sufficient and complete administrative record.

Abatement by District

After the adoption of the board resolution/decision, district staff should monitor the property, abatement efforts, and compliance with the requirements of the resolution. If the property owner does not abate the public nuisance and take the necessary actions to prevent the recurrence of the public nuisance within the time specified in the resolution, the district may take action to control and abate the public nuisance, undertake other necessary actions to prevent the recurrence of the public nuisance, and impose civil penalties. (Health & Saf. Code § 2061(e).)

A warrant may be required. There is nothing unique in the nuisance abatement proceedings that would render inapplicable the Fourth Amendment restrictions discussed above. If a district gets to the step in a nuisance abatement proceeding where, following the property owner's failure to abate, the district intends to abate the nuisance, then the district should determine whether the subject property is entitled to Fourth Amendment protection. If it is, then the district must obtain consent or an inspection and abatement warrant before entering the property.

If the district proceeds to abate the nuisance on the subject property, then the district may require the property owner to pay the cost of abating the public nuisance and the cost of any necessary actions to prevent the recurrence of the public nuisance. If imposed by the board, the district also may impose civil penalties. (Health & Saf. Code § 2065(a).)

Collection of Costs and Penalties

Following abatement by the district, the district should prepare a written demand for payment setting forth the district's abatement costs. Payment should be demanded within 60 days. These costs may include the costs of materials, contractors and staff time. The district should memorialize the calculation of the costs and, where applicable, and compile and make available supporting invoices and other documents. For district staff time, the abatement staff should maintain a record of their hours spent on the abatement activity and the staff costs should be calculated based on the staff person's hourly wage together with the hourly cost of benefits. The demand for payment should be mailed to the property owner at the address shown in the county tax assessor records.

If the owner of the property fails to pay the district's costs within 60 days, the district may collect the costs on the tax roll and through an abatement lien against the property. If payment is not made within the 60 day period, then district staff should prepare a resolution that (1) orders the costs and any civil penalties charged and collected against the property through the county tax roll, and (2) authorizes a notice of abatement lien to be recorded against the property.

If the district board approves the resolution, then a certified copy of the resolution should be filed with the county auditor/tax collector requesting collection of the costs and penalties on the county tax roll. District staff also should prepare a notice of abatement lien and record it in the county recorder's office. The notice of abatement lien must identify and describe (1) the record owner of the property, (2) the last known address of the record owner, (3) the date upon which the abatement of the public nuisance was ordered by the board of trustees, (4) the date upon which the abatement and any necessary actions to prevent the recurrence of the public nuisance was complete, (5) a description of the real property subject to the lien, and (6) the amount of the costs and any civil penalties.

The costs and penalties then will be collected by the county at the same time and in the same manner as ordinary county property taxes. Any money collected by the county would be paid to the district, less a collection fee that the county may charge under Government Code section 29304. The abatement lien provides additional security to ensure collection. Recordation of a notice of abatement lien has the same effect as recordation of a recorded abstract of a money judgment and the same priority as a judgment lien. The lien continues in effect until released. Upon collection in full of the costs and any civil penalties, the abatement lien should be released by preparing and recording a notice of release of lien.

If the district does not record a notice of abatement lien and, prior to the date on which the first installment of county taxes would become delinquent, the subject real property is transferred to a third party buyer or another lien has been created and attaches to that property, then the cost and any civil penalties could not be collected through the secured tax roll or as a lien against the property. Instead, the money due would be transferred to the unsecured tax roll for collection. It therefore is advisable to promptly record a notice of abatement lien after the board adopts the resolution authorizing the lien.

State and Local Government Property

The nuisance abatement provisions apply to real property owned by a state or local government agency. (See Health & Saf. Code §§ 2055 & 2066; see also the definition of "public agency" at § 2002(i).) Because of federal supremacy, these provisions do not apply to property owned by the United States and its agencies.

The statute obligates the state or local government agency to pay the district for the cost of abating the public nuisance, the cost of any necessary actions to prevent the recurrence of the public nuisance, and any civil penalties. (Health & Saf. Code § 2066.) Accordingly, through its nuisance abatement powers, a district may compel the control of vectors on lands owned by State of California or other local agency.

A district's collection remedies, though, are limited. Because local and state agencies do not pay property taxes, the district cannot collect its costs and penalties on the tax roll. Furthermore, the statute prohibits a district from placing an abatement lien against the public agency's property. (§ 2066.)

The Director of the State Department of Public Health is charged with the responsibility of resolving vector control related disputes between a district and another state or local government agency. In the event of a dispute between a district and another public agency over the need to prevent, abate, or control a vector, or the methods and materials used to prevent, abate, or control the vector or vectorborne disease, the district or the other public agency may appeal the subject decision to the Director within 10 days after the decision. Within 30 days after receiving an appeal, the Director must consult with the affected agencies, take written and oral testimony, decide the appeal, and convey the decision to the affected agencies. The Director's decision must be consistent with the purposes of Mosquito Abatement and Vector Control District Law. (Health & Saf. Code § 2055.)

Conclusion

A vector control district has broad authority to enter public and private property to inspect, monitor and control mosquitoes and other vectors. However, the federal and state Constitutions place limits on entering certain property. A district must have some familiarity with the types of property that are protected from governmental searches under the Fourth Amendment. For such property, there generally must be consent, exigent circumstances or an inspection and abatement warrant.

The Mosquito Abatement and Vector Control District Law authorizes a district to pursue formal nuisance abatement proceedings against landowners in the control of vectors. On the other hand, a district may undertake vector control through direct abatement without following the formal abatement process. Such direct control, though, generally precludes the district from recouping its abatement costs. If a district desires to compel the property owner to remedy a vector-related nuisance on its property, recoup its abatement costs, and/or impose civil penalties, then a district may utilize the nuisance abatement proceedings. Additionally, if Clean Water Act and other environmental regulations make it increasingly difficult for a district to control vectors through the ordinary integrated pest management practices, then a district could take a different vector control approach by using its nuisance abatement powers more frequently to compel landowners to abate the vectors without any direct control or abatement (e.g., pesticide use) by the district.

A district has vector control authority over state and local government agency land, subject to appeal oversight by the State Department of Public Health. Districts have less authority over federal land.

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POLICIES AND PROCEDURES

TITLE: **Cooperative Approach to Mosquito Control**

NUMBER: **7010**

7010.10 The District has the responsibility within the county or in territory that is located outside the County of San Mateo from which vectors and vector borne diseases may enter the District, to do the following, in accordance with the Mosquito Abatement and Vector Control District Law §2000, Health and Safety Code.

7010.11 Conduct surveillance programs and other appropriate studies of vectors and vector borne diseases.

7010.12 Take any and all necessary or proper actions to prevent the occurrence of vectors and vector borne diseases.

7010.20 Property owners or agencies claiming ownership, title, or right to property or who controls the diversion, delivery, conveyance, or flow of water shall be responsible for the abatement of a public nuisance that is caused by, or as a result of, that property or the diversion, delivery, conveyance, or control of that water.

7010.21 If the property owner does not abate the public nuisance, and take the necessary actions to prevent the recurrence of the public nuisance the District will abate the public nuisance and take the necessary actions to prevent the recurrence of the public nuisance.

7010.22 The District may also impose civil penalties pursuant to Section 2063.

7010.221 The civil penalty may not exceed one thousand dollars ($1,000) per day for each day that the owner of the property fails to comply with the District's requirements.

7010.30 The District may request an inspection and abatement warrant pursuant to Government Code, Title 13. A warrant issued pursuant to this section shall apply only to the exterior of places, dwellings, structures, and premises. The warrant shall state the geographic area which it covers and shall state its purposes. A warrant may authorize District employees to enter property inspect, abate public nuisance, determine abatement compliance, and control vectors.

7010.40 The District will hold the property owner responsible for mosquito breeding sites, which exist by reason of any use made of the land or of any artificial change in its natural condition. The District will establish service abatement agreements with the property owners to abate these unusual difficult to control breeding sites as inexpensively as possible. If the property owner is unwilling to pursue a service abatement agreement and will not abate the public nuisance, the District will be forced to pursue an inspection and abatement warrant.

Issued: February 11, 2004

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Agenda Item #5Bi

Review of Changes to District Policy 4090

BACKGROUND

This policy was brought to the committee in April and in June to consider

1) amending the charges of the Environmental and Public Outreach Committee toward the broader goal of periodically reviewing the outreach program rather than overseeing all educational materials and
2) Amending charges of the Legislative committee to include reviewing proposed legislation and making recommendations to the Board.

Further changes to consider

At the June committee meeting, when this policy was reviewed, the committee also requested suggestions on language from District counsel that would allow the District Manager to take positions on behalf of the District on time-sensitive issues. If the Board chooses to give this discretion to the District Manager, District counsel Alexandra Barnhill has suggested the following language could be added to the policy:

"If the Legislative Committee cannot be timely convened in order to address time-sensitive legislative issues, the General Manager may use his/her discretion to take a position/action on behalf of the District and shall make a report to the Board as soon as possible thereafter"

Further changes are suggested by the District Manager to clarify who can make assignments to the committee under section 4090.30. The changes do not change the meaning of the sentence, but should make it easier to understand.

District Counsel will be available to answer the Committee's questions and assist with additional revisions, if necessary.

Attachments

District Policy 4090 Committees of the Board of Trustees

1. 4090 track changes
2. 4090 clean copy

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POLICIES AND PROCEDURES

TITLE: **Committees of the Board of Trustees**

NUMBER: **4090**

4090.10 The President has formed the following standing board committees:

Finance

Environmental and Public Outreach

Policy

Strategic Planning

Legislative

Manager's Evaluation

4090.20 The President of the Board of Trustees shall appoint Board members as the chairs and members of the standing committees for the ensuing year and announce them at the January Board meeting.

4090.30 The Board's standing committees shall be established and maintained for the purpose of serving the needs of the District. The President of the Board of Trustees may make assignments for standing committees, or by a majority vote of the Board of Trustees, assignments may be made for standing committees or on their own initiative standing committees may approve their own assignments. All recommendations for action by committees shall be presented to the Board of Trustees for approval.

4090.40 The Finance Committee considers and makes recommendations regarding the financial management of the District. This may include overseeing the preparation of the annual budget, coordinating salary and benefit negotiations with District employees, analyzing investment strategies, reviewing the County Treasurer's monthly reports, and reviewing monthly financial statements and expenditures. This committee shall also make recommendations for the selection of an auditor by the Board of Trustees and verify the completion of an annual audit.

4090.50 The Environmental and Public Outreach Committee governs the District environmental and public outreach programs. This committee oversees environmental assessments, cleanup operation protocols for pesticide spills, and review of pesticide use permits. This committee also periodically ~~oversees~~ reviews and evaluates District ~~sponsored media releases, website, program brochures and handouts, media communications~~ outreach and educational programs. Additionally, the committee shall recommend to the Board of Trustees strategies for enhancing the public's ~~perception~~ knowledge and understanding of the District.

4090.60 The Policy Committee drafts, analyzes, and makes recommendations concerning District policies for Board of Trustee approval.

4090.70 The Strategic Planning Committee shall be concerned with the strategy and direction of the District. This committee will develop a Strategic Plan for consideration and approval by the Board of Trustees each fiscal year.

4090.80 The Manager's Evaluation Committee shall be concerned with conducting a performance evaluation of the District Manager every 12 months. The committee will solicit input from all Trustees, which will be considered by the Committee in its evaluation. The performance evaluation results will be provided to the Board of Trustees and the Board President will review the performance evaluation with the District Manager. The committee will make recommendations concerning the District Manager's salary and benefits for the Board of Trustees approval, and shall have input concerning contract negotiations with the District Manager. The Board's representative for negotiation of new contract, salary, and benefits with the District Manager shall be the Board President or his/her designee.

4090.90 The Legislative Committee works with District staff to analyze and track pending legislative bills that may impact the District operations and reports to the rest of the board with recommended actions on such bills. When directed by the Board, members contact legislators and city and county representatives when grassroots efforts are needed to inform elected officials ~~works with our legislators to educate them on the needs of the District~~. If the Legislative Committee cannot be timely convened in order to address time-sensitive legislative issues, the General Manager may use his/her discretion to take a position/action on behalf of the District and shall make a report to the Board as soon as possible thereafter

Commented [C1]: Wording from District counsel as requested by the committee

4090.100 The President shall appoint such Ad Hoc committees as may be deemed necessary or advisable. The duties of the Ad Hoc committees shall be outlined at the time of appointment, and the committee shall be considered dissolved when its final report has been made. When an Ad Hoc committee is appointed, the President of the Board of Trustees shall indicate an estimate of the date by which the committee should present its final report to the Board of Trustees.

Issued:	**January 8, 2003**
Revision:	**March 27, 2012**
Policy Committee Review & Board Approval:	**2016**
Update & Policy Committee Review	**June 2017**

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Commented [C1]: Recommended changes to clarify the meaning of this sentence on where committee assignments come from

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Commented [C2]: Wording from District counsel as requested by the committee

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Issued:	**January 8, 2003**
Revision:	**March 27, 2012**
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