

CRESCENTA VALLEY WATER DISTRICT

2700 FOOTHILL BOULEVARD
LA CRESCENTA, CALIFORNIA

To be held on
March 22, 2023 at 3:00 PM

Agenda for the Meeting of the Policy Committee
of the Crescenta Valley Water District

Posted March 21, 2023 at 3:00 PM

TELECONFERENCING NOTICE

This meeting will be conducted in person at the address listed above. Members of the public may also participate virtually by using a touchtone phone. You may select any of the following phone numbers (there are more than one for increased reliability during this time of increase phone traffic).

(669) 900-6833

(346) 248-7799

(929) 205-6099

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Then, enter Access Code: 870 3329 3711

[Pursuant to the above Executive Order, the public may not attend the meeting in person]

Those members of the public who are able to and would like to additionally participate with a computer through videoconference may access the Zoom videoconferencing tool available at the following link:

<https://us02web.zoom.us/j/87033293711>

If there is a disruption of service, this meeting will continue without remote participation. The remote participation option is provided a convenience to the public and is not required.

Any person may make a request for a disability-related modification or accommodation needed for that person to be able to participate in the public meeting by contacting the District by phone or in writing at customerservice@cvwd.com. Requests must specify the nature of the disability and the type of accommodation requested. A telephone number or other contact information should be included so that District staff may discuss appropriate arrangements. Persons requesting a disability-related accommodation should make the request with adequate time before the meeting for the District to provide the requested accommodation.

Call to Order

Adoption of Agenda

Public Comment:

At this time, members of the public shall have an opportunity to address the Committee on items of interest that are within the subject matter jurisdiction of this Committee. This opportunity is non-transferable, and speakers are limited to three (3) minutes each. Under the provisions of the Brown Act,

the Board is prohibited from taking action on items not listed on the agenda, except under certain circumstances.

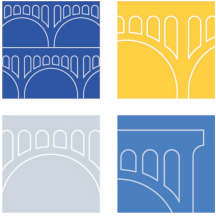
Action Item(s)

The public shall have an opportunity to comment on any action item as each item is considered by the Committee. This opportunity is non-transferrable and speakers are limited to one two-minute (2) comment each.

1. Discuss plan for updating the District's Rules & Regulations
2. Discuss the District's sewer and other easement rights

Committee Members' Request for Future Agenda Items

Adjournment



MEMORANDUM

To: Tom Bunn

From: Reid Miller

Re: Legal Opinion Regarding Enforcement of CVWD's Easement Rights

Date: January 27, 2023

Background Facts and Question

Our client, Crescenta Valley Water District ("District"), holds easement rights to the surface or subsurface easement areas and a right-of-way¹ to two manholes on and over the property at 2523 Cross Street in La Crescenta-Montrose (the "Property") to access its underlying sewer pipes and systems (collectively, "Easement"). The Property's owner has allowed various types of large, physical impediments—such as old and *likely inoperable* automobiles and motorcycles, tires, wooden furniture, plants, garbage cans, storage boxes, and tarping (collectively, "Impediments")—to accumulate on and around the Easement, including placing concrete over one manhole the District needs to use to access the sewer line that runs under the Property.

The District recently discovered that roots have penetrated a portion of the sewer line pipe that runs directly underneath the Property ("Root Damage"). Although the District attempted to access this line for repairs through other nearby manholes—which it has been forced to do because of these obstructing Impediments—its equipment got stuck in the process. Consequently, the District has determined that it can only access the damaged line through the manholes on its Easement.

The District needs these Impediments cleared from its Easement area immediately so its workers and equipment can access and repair the sewer before the roots further expand to fill more of the line—which could result in water leaks, backups, overflows, and other severe and expensive damage to the District's sewer systems and the surrounding properties they serve.

¹ Cal. Civ. Code, § 801.

Although the District has made at least two requests for the owner to remove these Impediments from the Easement areas, he has failed to remove all or most of these items by the imposed deadline, which was extended twice. The District believes the owner lacks the ability to remove these Impediments on his own, and it wants to know what legal remedies it has to enforce its rights and have these Impediments immediately removed from its Easement area.

Questions: Do the District's Easement rights authorize it to use "self-help" and thus take physical action to relocate or remove the obstructing Impediments so it can access the underlying sewer system and repair the Root Damage before it causes additional damage to the sewer system?

What other enforcement mechanisms and legal remedies does the District have?

Short Answer and Organization of Memo

Based on the District's *express* and *implied* Easements rights, and because the Impediments on the Property ***substantially interfere*** with the District's ***use*** of its Easement ***for its intended purpose of accessing the sewer for maintenance***, the District has the ***implied power*** under California state law to resort to self-help and take physical actions to remove the obstructing Impediments from the surface of its Easement.

However, because of the potential risks associated with the use of self-help, it would likely be a better alternative for the District to either (1) work with the appropriate Los Angeles County ("County") department contacts to commence an administrative proceeding to abate this public nuisance, which would include the designated enforcement officer issuing a notice of violation and imposing fines against the Property's owner for interfering with the District's use of its sewer Easement; or (2) filing a lawsuit against the owner seeking a mandatory injunction and order for the removal of these obstructing Impediments, as authorized under both the Los Angeles Municipal Code (the "Code") and California state law.

The advantage of filing a lawsuit over the District's alternative remedies of self-help or commencing an administrative enforcement proceeding based on the owner's current Code violations, is that a court order carries significant weight and can likely be obtained through an expedited process²—so the District can take ***immediate action*** to have the Impediments removed from the Easement areas so it can repair the Root Damage ***before*** the intruding roots cause additional ***and more severe damage*** to the line and sewer system below.

² To obtain a preliminary injunction before judgment, the District would need to show by affidavit or verified complaint that it will suffer ***irreparable harm*** unless the injunction is issued. (Emphasis added.) (See Cal. Code Civ. Proc., § 527; see also *Chase v. Wizmann*, 71 Cal. App. 5th 244, 253, 286 Cal. Rptr. 3d 183, 190 (2021).) Here, this could likely be established based on the potentially imminent and irreparable harm these Impediments could cause if the District cannot access the sewer soon and repair the Root Damage before it causes water leaks, backups, and overflows which require emergency attention and result in severe damage to the surrounding sewer system.

Section (A) of this memo contains (1) a short summary of the laws and terminology pertaining to easements, (2) an explanation of the District's *express* and *implied* Easement rights under California law, and (3) a summary of the type and extent of interference with one's easement that amounts to a nuisance under the law, and can thus be abated by the District exercising one or more of its resulting legal remedies outlined in **Section (B)**. A conclusion and recommended course of action is included on the last page of this memo.

Legal Analysis and Opinion

(A) District's Legal Rights

(1) The Law of Easements³

An "easement" is a "nonpossessory" property interest in the land of another that entitles the owner of the easement to a *limited use or enjoyment* of the *other's* land.⁴ In the case of a utility easement and right-of-way,⁵ the land to which the easement is attached is called the "dominant tenement," and the land which bears the burden (i.e., the land of another that is used or enjoyed by the easement holder), is called the "servient tenement."⁶ The owner of the servient tenement has the right to make any use of the land that does not *unreasonably interfere* with the *easement* and its *authorized purpose*.⁷

The Law Applicable to *Express* Easements

The extent that an expressly created easement can be used by its owner is determined by the terms of the establishing instrument.⁸ When an easement is established by grant, the easement owner has those express rights of enjoyment *specifically established* by the grant.

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³ Cal. Civ. Code, § 801 contains the statutes regarding easements.

⁴ See *Eastman v. Piper* (1924) 68 C.A. 554, 560, 229 P. 1002; *Zlozower v. Lindenbaum* (1929) 100 C.A. 766, 770, 281 P. 102.

⁵ A right-of-way that is incident to the land passes with it unless expressly excepted by the terms of the conveyance (*Conaway v. Toogood*, 172 Cal. 706, 158 P. 200 (1916)).

⁶ Cal. Civ. Code, § 803; see *Roth v. Cottrell* (1952) 112 C.A.2d 621, 623, 246 P.2d 958.

⁷ *Pasadena v. California-Michigan etc. Co.*, 17 Cal.2d 576, 579 [110 P.2d 983, 133 A.L.R. 1186].

⁸ Cal Civ. Code, § 806 ("[t]he extent of a servitude is determined by the terms of the grant..."); *Colegrove Water Co. v. City of Hollywood*, 151 Cal. 425, 429, 90 P. 1053 (1907); *Pacific Gas & Elec. Co. v. Hacienda Mobile Home Park*, 45 Cal. App. 3d 519, 526, 119 Cal. Rptr. 559 (1st Dist. 1975).

Implied Secondary Easements

Although a grantee cannot make use of an easement in excess of a grant,⁹ every easement confers on its owner certain ***implied*** “secondary easements” essential to its full enjoyment,¹⁰ and the owner receives, by ***implication***, a secondary set of rights to do all things ***reasonably necessary*** to use the easement for its ***intended purpose***¹¹—so long as the easement owner’s actions are also ***reasonable*** and do not greatly increase the burden on the owner’s servient estate and land.¹² This includes an ***implied right of entry*** on the servient tenement to the extent that it is ***necessary*** to fulfill the owner’s ***statutory duty to maintain and repair*** the easement.¹³

(2) Interference with a Dominant Tenement’s Easement Rights

The owner of a servient tenement cannot ***obstruct or hinder***, or ***install obstructions that hinder***, the owner of a dominant tenement’s ***right of access*** for the ***purpose of maintaining the easement***.¹⁴ The recipient of an easement has the burden of proving what rights of use are attendant to the easement.¹⁵ In the case of a sewer easement, the owner of a servient tenement is not permitted to do anything to the ***surface of the land*** that ***unreasonably interferes*** with the ***easement or access to the sewer***.¹⁶

(3) The District’s Resulting Enforcement Rights to Have these Impediments Cleared from its Easement Areas

Here, the District holds ***express*** easement rights to the surface or subsurface easement areas and a right-of-way¹⁷ on and over the Property to access its manholes and underlying sewer pipes and systems (collectively, “Easement”). The District obtained its Easement by deed (the “Deed”) in 1981 from a predecessor in interest, Kurt Paul Young (“Grantor”), for the stated “right to construct, ***maintain, operate, and use***, a ***sewer line*** and ***appurtenant structures in and across***

⁹ *City of Pasadena v. California-Michigan Land & Water Co.*, 17 Cal. 2d 576, 579, 110 P.2d 983 (1941); *Parks v. Gates*, 186 Cal. 151, 154, 199 P. 40 (1921); *City of Los Angeles v. Howard*, 244 Cal. App. 2d 538, 542, 53 Cal. Rptr. 274 (2d Dist. 1966); *O’Dea v. San Mateo County*, 139 Cal. App. 2d 659, 661, 294 P.2d 171 (1st Dist. 1956).

¹⁰ *Dolnikov v. Ekizian*, 222 Cal. App. 4th 419, 428, 165 Cal. Rptr. 3d 658 (2d Dist. 2013). See § 15:1 (profits distinguished).

¹¹ *Pear v. City and County of San Francisco*, 67 Cal. App. 5th 61, 77, 281 Cal. Rptr. 3d 841, 855 (6th Dist. 2021); *Camp Meeker Water System, Inc. v. Public Utilities Com.*, 51 Cal. 3d 845, 866, 274 Cal. Rptr. 678, 799 P.2d 758

¹² See *Durfee v. Garvey*, 78 Cal. 546, 551, 21 P. 302 (1889); *Ware v. Walker*, 70 Cal. 591, 595, 12 P. 475 (1886); *City of Gilroy v. Kell*, 67 Cal. App. 734, 743, 228 P. 400 (1st Dist. 1924).

¹³ Cal. Civ. Code, § 845(a) (“[t]he owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair.”); *Durfee v. Garvey*, 78 Cal. 546, 551, 21 P. 302 (1889); *Ware v. Walker*, 70 Cal. 591, 595, 12 P. 475 (1886); *City of Gilroy v. Kell*, 67 Cal. App. 734, 743, 228 P. 400 (1st Dist. 1924).

¹⁴ *City of Los Angeles v. Jameson*, 165 Cal. App. 2d 351, 357, 331 P.2d 1014 (2d Dist. 1958).

¹⁵ *O’Dea v. San Mateo County*, 139 Cal. App. 2d 659, 661, 294 P.2d 171 (1st Dist. 1956).

¹⁶ *McCann v. City of Los Angeles*, 79 Cal. App. 3d 112, 116, 144 Cal. Rptr. 696 (Ct. App. 1978).

¹⁷ Cal. Civ. Code, § 801.

the real [Property].”¹⁸ (Emphasis added.) The bottom of the Deed states the District’s rights include “the right to **enter upon and to pass and repass over** and along said easement and right-of-way... **whenever and wherever necessary for the purposes above set forth.**” (Emphasis added.)

Further, here, in addition to the District’s express rights under the Deed and its statutory duty to maintain the Easement,¹⁹ based its secondary and **implied** easement rights, the District has the right to take **actions to remove the Impediments**, because these items (1) are located on the **surface of the land**,²⁰ and (2) are **obstructing its right-of-way** to the manholes it needs to **access the underlying sewer system** for the **Easement’s specific purpose**—that is, being able to **maintain, operate, and use** the **sewer line** and **appurtenant structures in and across** the Property.

The District’s **implied right** and power to act to **remove the Impediments** currently **obstructing its access** to the manholes on its Easement and the underlying sewer is supported by the holding in *Kapner v. Meadowlark Ranch Assn.*²¹ In that case, the California Court of Appeal interpreted express language in recorded CC&Rs, which obligated an administering association “to operate and maintain, or provide for the operation and maintenance of all private roads”), to include, **by implication, the power to act to remove obstructions placed on the roadway parcel.** In support of this finding, the court reasoned that, “one cannot maintain a roadway **by allowing obstructions** on it.”²² (Emphasis added.) Although *Kapner v. Meadowlark Ranch Assn* is **not** a case about self-help, it is significant here because it provides that an aggrieved easement owner can file a lawsuit for declaratory relief to confirm its implied rights and resulting power to remove obstructions placed on its easement.

Here, based on this same reasoning, it seems highly likely that a court or trier of fact would find that the District’s Easement **rights include**, also **by implication**, the **power to remove the Impediments** from its Easement area, because they are **obstructions** which **unreasonably interfere** with the District’s **use of its Easement** for its stated **purpose of being able to freely access, maintain, and operate the underlying sewer.**

Therefore, because the District’s **implied easement rights** provide it the **power to remove obstructions that interfere with its ability to maintain the underlying sewer**, it can cause these

¹⁸ Recorded in the recorder’s office for Los Angeles County on May 1, 1981 as document number 81-440067. An easement agreement, which was recorded separately from the Deed, states the District’s rights run with the land and are binding on all subsequent owners of the Property. This includes the current owner of the Property because public records indicate he purchased it in 1983.

¹⁹ Cal. Civ. Code, § 845(a).

²⁰ A person “is not permitted to do to the **surface of the land** anything that **unreasonably interferes** with... [a] **sewer easement.**” (Emphasis added.) *McCann v. City of Los Angeles*, 79 Cal. App. 3d 112, 116, 144 Cal. Rptr. 696 (Ct. App. 1978)

²¹ *Kapner v. Meadowlark Ranch Assn.*, 116 Cal. App. 4th 1182, 11 Cal. Rptr. 3d 138, 143 (2004)

²² *Kapner* at 1185.

Impediments to be removed from the Easement areas using any of the legal remedies discussed in section (B) below, including the use of self-help.

(B) The District's Remedies to Abate the Owner's Interference with its Easement Rights

The District has three primary options for enforcing its Easement rights. These include: **(1)** the use of “self-help”; **(2)** working through local channels and the appropriate County departments to commence an administrative enforcement procedure to abate the public nuisance caused by these Impediments pursuant to the Code; and/or **(3)** causing a lawsuit to be filed against the owner for injunctive relief, damages, and abatement costs and attorneys’ fees.

(1) Option One: Self-Help

Under certain conditions, when another’s property encroaches on the land of another, as an alternative remedy to filing a lawsuit, the aggrieved owner may employ the use of “self-help,”²³ and thereby take affirmative actions to remove the interfering Impediments on its own. This alternative remedy was developed by courts in a line of cases dealing with annoyances and damages caused by tree trunks, leaves, and branches encroaching on an adjoining neighbor’s land. As established under that line of cases, however, this remedy can only be used if the interfering encroachment amounts to a **private nuisance**,²⁴ and it requires the aggrieved easement owner to act *reasonably*.²⁵

Here, as further discussed in sections (2) and (3) below, although the District can clearly establish that the obstructing Impediments constitute both a public and private nuisance—thus authorizing it to abate the nuisance through the use of self-help—there are a few potential risks and drawbacks associated with this enforcement option.

Potential Risks Associated with Use of Self-Help

First, this remedy has primarily been used in connection with landowners taking acts to remove portions of trees which encroach on their neighboring land. That is different from the situation here—where stored, manmade objects are “encroaching” on and interfering with the District’s right-of-way and utility Easement (which “floats” on the surface and subsurface areas of the owner’s Property). Although the same legal principles discussed in that line of cases could be applied to the facts here, this would involve the District making an argument by analogy, as opposed to an argument which is more fully supported by case law with similar facts to those being analyzed here.

²³ [§ 388] In General., 12 Witkin, Summary 11th Real Prop § 388 (2022); *See also Stevens v. Moon* (1921) 54 C.A. 737, 740, 202 P. 961; *Crance v. Hems* (1936) 17 C.A.2d 450, 451, 62 P.2d.

²⁴ *Bonde v. Bishop* (1952) 112 C.A.2d 1, 6, 245 P.2d 617

²⁵ *Booska v. Patel* (1994) 24 C.A.4th 1786, 30 C.R.2d 241

Second, many of the cases and legal treatises which discuss this remedy caution its use and indicate that it is likely a better alternative to seek relief from this type of interference through the courts—and apply for a mandatory injunction and order for the removal of the obstructing Impediments.²⁶ (A court order could even authorize the District the right to use self-help—and specifically spell out all legal rights and actions it can take under the self-help remedy in that court order.)

Third, the extent of physical acts and actions one can take in connection with abating a nuisance through self-help is somewhat unclear.²⁷ For example, here, while the District may have the right to clear the Impediments from its Easement areas, it might not have the power to **permanently remove** the Impediments from the Property. It is also unclear whether the District could simply **relocate** these Impediments to the street or another location of the Property (and, if so, where), or if any Impediments removed from the Property would need to be stored at an offsite location. (And, if so, (1) how long would they need to be stored before they could be discarded, and (2) which party would be responsible for paying these possible storage and disposal costs?)

Fourth, there is a possibility the owner will claim that because the Deed does not contain any **express language** providing the District with the explicit right to, for example, “remove any and all **personal property** which **may be encroaching on the easement or right-of-way**,” the District is not legally entitled to remove these Impediments from the Property. Similarly, and for these same reasons, the owner may attempt to physically interfere with the District’s attempts to relocate or remove the Impediments from the Easement areas.

Finally, **fifth**, the owner may file a lawsuit against the District for: (1) relocating or removing his personal property and automobiles from their “storage location” on his Property; (2) exceeding the scope of its actual or implied Easement rights and resulting self-help remedy; (3) acting

²⁶ See, for example: (1) *Bonde v. Bishop* (1952) 112 C.A.2d 1, 6, 245 P.2d 617 (“[t]he landowner, merely because he does not desire a neighbor's tree to overhang his premises, can, in a sense, take the law in his own hands and cut off the encroachment, **but to act in what is probably a more orderly manner and apply to the court for an injunction** restraining the tree owner from allowing the tree to so encroach, he apparently has to prove that the encroachment constitutes a nuisance.” (emphasis added)); (2) *Booska v. Patel*, 24 Cal. App. 4th 1786, 1792, 30 Cal. Rptr. 2d 241, 245 (1994) (“Witkin notes: ‘A private nuisance **may be abated by the party injured at his own risk**; or he may bring a civil action for an injunction or damages or both’.”); (3) (a) [§ 388] In General., 12 Witkin, Summary 11th Real Prop § 388 (2022) (“[a]lternatively, the aggrieved owner may employ *self-help* and cut off the offending branches or roots at the boundary. This appears to be the normal remedy, **recognized mainly by dicta in cases dealing with actions for an injunction or damages**.”); (4) § 19:20. Alternative remedies, 6 Cal. Real Est. § 19:20 (4th ed.), examining *Clinton v. 4911 Van Nuys Ltd.*, 212 Cal. App. 2d 703, 706, 28 Cal. Rptr. 170 (2d Dist. 1963) (“the plaintiff and defendant entered into an agreement that gave the plaintiff the right to remove certain buildings from the property before a particular date. When the plaintiff failed to remove them by the date specified, the court held that the property owner had the right to destroy them. **It is suggested that in such cases prudence dictates that judicial action is the wiser course**.”) (Emphasis Added.)

²⁷ For example, while it is the right of a landowner to remove those portions of trees which encroach on his land whether they cause damage or not, the owner cannot take overhanging fruit, nor can the owner enter on the other's land and cut down the tree, without being liable for trespass. (see *Fick v. Nilson*, (1950) 98 C.A.2d 683, 685, 220 P.2d 752.)

unreasonably in connection with exercising its self-help rights; and/or (4) causing physical damage to the owner's real or personal property during the abatement process.

Conclusion Regarding the District's Potential Use of Self-Help

Based on the above risks associated this self-help enforcement option, remedies (2) and (3) are likely better options and technics for enforcing the District's rights and causing these Impediments to be removed from the Easement areas.

(2) Option Two: Working with the Appropriate Los Angeles County Departments and Personnel to have Fines and Possible Noncompliance Fees Imposed Against the Property Owner for Being in Current Violation of Numerous Applicable Code Sections

Because the Property is in La Crescenta-Montrose, an unincorporated part of Los Angeles that is located within Los Angeles County, it is governed by the Los Angeles County Municipal Code (the "Code").²⁸ Under the Code, it is a "public nuisance" to place obstructions on or around a sewer easement which prevent utility workers from accessing the underlying sewer.²⁹ The Code further provides that ***maintaining a public nuisance*** is unlawful,³⁰ and that ***every day a public nuisance continues*** is a ***new and separate violation*** for the purposes of the Code.³¹ (Emphasis added.)

Here, the Impediments the owner has placed on the District's Easement prevent it from accessing the sewer, and, therefore, the Impediments meet the definition of constituting a public nuisance under the Code.³² Consequently, the District can commence an administrative proceeding to abate this public nuisance pursuant to the enforcement procedures set forth in Chapter 1.25 of the Code,³³ entitled "Administrative Fines and Noncompliance Fees for Code Violations." The

²⁸ Los Angeles Municipal Code section 1.23.010.

²⁹ Title 20 of the Code provides that: (1) no person shall ***interfere*** with any property in which the district has an ***easement*** (Los Angeles Municipal Code section 19.07(A)(1)); (2) no person shall ***place or cause to be placed within or upon any easement*** held by the district ***any object or structure*** in such a location or manner as ***to interfere with or obstruct the district's ready and easy access to or use of the easement*** area (Los Angeles Municipal Code section 19.07(A)(4)); and (3) that ***either*** type of ***violation*** would constitute threat to public health and safety and be deemed a ***public nuisance*** (Los Angeles Municipal Code section 19.11.). Further, (4), that maintaining a ***public nuisance*** is unlawful (Los Angeles Municipal Code section 1.23.050); and (5) that every day a ***public nuisance continues*** shall be regarded as a ***new*** and ***separate violation*** for the purposes of the Code (Los Angeles Municipal Code section 1.23.050). (Emphasis added throughout.)

³⁰ Los Angeles Municipal Code section 1.23.050.

³¹ Los Angeles Municipal Code section 1.23.050.

³² Additionally, the owner's failure to comply with the District's two previous removal requests likely qualifies as "maintaining a public nuisance" under the Code.

³³ Los Angeles Municipal Code section 1.25.010 ("[t]he purpose of this chapter is to establish *alternate remedies for code enforcement officials to utilize in enforcing the provisions of this code*. The remedies authorized in this chapter are *cumulative to any other remedy provided for in this code or the laws of the state of California, or the United States of America, and the administrative fines and noncompliance fees authorized in this chapter may be imposed in addition to any other fine, penalty, fee, charge, notice of violation, or any other remedy*

administrative abatement enforcement procedure set forth in this Chapter 1.25 of the Code may include one or more designated enforcement officers issuing a notice of violation and imposing fines against the Property's owner for the current Code sections he is violating by interfering with the District's use of its sewer Easement. Because the Code is somewhat unclear as to which specific department(s) may be responsible for enforcing the owner's Code violations here,³⁴ the District may need to contact the County department(s) which enforce(s) Code violations involving County utilities, County easements and property, or County sewers, to determine the specific department and enforcement officer(s) that will be responsible for commencing one or more administrative procedures authorized under this Chapter 1.25. Some of the fines, penalties, and enforcement remedies that can be utilized by the designated enforcement officer under this Chapter 1.25 may include:

(a) Administrative Fines. Whenever an enforcement officer determines that a Code violation has occurred, he or she is authorized to issue a notice of violation ("NOV") to the responsible person with a specified correction period of not less than 30 days, if a correction period is warranted.³⁵ **Each and every violation** of any Code section, and **each** separate offense thereunder, is subject to an administrative fine of up to \$1,000.³⁶ If any violation in a NOV has not been corrected or otherwise remedied before the abatement deadline, the enforcement officer may issue a notice of **administrative fine** to the responsible person ("Fine").³⁷ If required by the enforcement officer, the payment of an administrative fine does **not** excuse the responsible person from correcting the Code violation(s).³⁸ In addition to any other remedy provided by law, if a Fine is not paid within the required time period, and the underlying violation pertains to the condition of **real property**, as is the case here, the amount of the unpaid administrative fine shall **become a lien on that real property** and the issuing department may enforce and collect the unpaid administrative fine by recording a notice of lien against that real property in the office of the registrar-recorder/county clerk.³⁹

(b) Noncompliance Fees. Whenever an enforcement officer issues an NOV, that officer is authorized to issue a **notice of noncompliance fee** ("N/C Fee") to the responsible person(s) concurrently with the NOV, or in his or her discretion, upon the expiration of

provided for in this code or the laws of the state of California, or the United States of America, so long as the cumulative application of such available remedies would not violate any applicable law.")

³⁴ See, for example: (1) Los Angeles Municipal Code section 1.25.010, stating that "code enforcement officials" are responsible for enforcing the remedies under this chapter of the Code; see (2) Los Angeles Municipal Code section 1.25.020(B), which defines an "Enforcement officer" as "[a]ny county employee or agent of the county delegated with the power to enforce any provision of this code"; see (3) Los Angeles Municipal Code section 1.25.020(E), which defines an "Issuing department" as "[t]he county department that issues a notice of violation and that has authority and responsibility for enforcing the code section that is the subject of the notice of violation."

³⁵ Los Angeles Municipal Code section 1.25.030.

³⁶ Los Angeles Municipal Code section 1.25.040.

³⁷ Los Angeles Municipal Code section 1.25.050(B).

³⁸ Los Angeles Municipal Code section 1.25.050(F).

³⁹ Los Angeles Municipal Code section 1.25.110.

any correction period.⁴⁰ The amount of the N/C Fee shall be separately determined by the *board of supervisors for each issuing department* and it cannot exceed the amount reasonably necessary to *recover the costs* incurred by *each respective department* in the enforcement of Code sections that have been violated; including, but not limited to, *responding to complaints, performing inspections, and issuing notices of violations*.⁴¹

- (c) **Causing the County to File a Criminal or Civil Lawsuit to Remedy any More Serious Violation(s).** If the violation is serious enough—which could be the case here, due to risk of the current roots in the line causing more severe damage to the sewer system if they are not dealt with soon—in addition to issuing Fines, and regardless of all Fines being paid, the enforcement officer can also refer the violation(s) to the (1) district attorney for the filing of a ***criminal complaint*** or (2) County counsel for the filing of a ***civil enforcement action***.⁴²

Conclusion Regarding use of County Administrative Proceeding to Enforce District’s Rights

Although commencing an administrative proceeding under the Code and imposing fines against the Property owner will likely motivate him to remove the Impediments, this process could take longer to complete, and there is no guarantee that any number of notices of violations, fines, or fees will motivate the owner to take action to have the Impediments removed. Moreover, due to his age and based on observations reported by the District, he may not be capable of causing these Impediments to be cleared from the Easement areas on his own. Nonetheless, this seems like a good option to explore, and the District should contact the County and ask to be put in touch with the specific department(s) which may be responsible for enforcing the owner’s current Code violations here.

(3) Option Three: Filing a Lawsuit for Injunctive Relief, Damages, and Abatement Costs

Cause of Action for Failure to Abate a Private Nuisance Under California State Law

As discussed in the summary of law pertaining to easements and the section discussing the self-help remedy above, when an easement is “nonexclusive,” as is the case with District’s Easement here, the owner of the servient tenement (the Property owner in this instance) may *not* use their property in a way that *obstructs the normal or authorized use of the easement*.⁴³ Any use of the servient estate that results in an ***unreasonable interference with the easement’s purpose is prohibited***.⁴⁴ As an example and illustration of this concept, an express billboard easement

⁴⁰ Los Angeles Municipal Code section 1.25.070(A).

⁴¹ Los Angeles Municipal Code section 1.25.060(B).

⁴² Los Angeles Municipal Code section 1.25.050(F).

⁴³ *Blackmore v. Powell*, 150 Cal. App. 4th 1593, 59 Cal. Rptr. 3d 527 (2d Dist. 2007); *Herzog v. Grosso* (1953) 41 Cal 2d 219, 259 P2d 429; *McCann v. Los Angeles* (1978, 2nd Dist) 79 Cal App 3d 112, 144 Cal Rptr 696; *Keeler v. Haky* (1958, 2nd Dist) 160 Cal App 2d 471, 325 P2d 648.

⁴⁴ *Dolnikov v. Ekizian*, 222 Cal. App. 4th 419, 165 Cal. Rptr. 3d 658 (2d Dist. 2013); *Hill v. San Jose Family Housing Partners, LLC*, 198 Cal. App. 4th 764, 130 Cal. Rptr. 3d 454 (6th Dist. 2011).

necessarily intends that the billboard *be visible* to passing motorists and *prohibits* the landowner from constructing a building which *interferes* with that view.⁴⁵ Any such wrongful behavior is a **private nuisance** under California law.⁴⁶ Whether the activities of a servient owner unreasonably hinder the use of an easement and amount to a nuisance is a question of fact.⁴⁷

If a person's unlawful conduct or use of another owner's easement amounts to a **private nuisance** under California law, the easement owner can bring a cause of action for declaratory and injunctive relief to resolve the dispute regarding the nature and scope of that easement.⁴⁸ A court of equity will, in a proper case, award a mandatory injunction for the protection and preservation of an easement for its intended purpose, including, where that remedy is appropriate, *an order for the removal of physical obstructions on the easement*.⁴⁹ In addition to these equitable remedies, under section 731 of the Code of Civil Procedure, and at common law without the aid of that section, the party injured by a nuisance may obtain a judgment abating it⁵⁰ and recover damages caused by a party's interference with its easement rights.⁵¹

Here, in addition to the Impediments qualifying as a **public nuisance** under the local Code, the District can also establish that they constitute a **private nuisance** under California state law, because they **substantially** and **unreasonably obstruct** and **interfere** with the District's authorized access to and use of its Easement for its intended purpose of maintaining the sewer.

Caselaw Supporting the District's Position that the Impediments Constitute an *Unreasonable Interference* with its Easement Rights and Therefore Amount to a *Private Nuisance*

The plaintiffs in *City of Los Angeles v. Jameson*⁵² held similar easement rights to the District's Easement rights here. In that case, the plaintiffs' rights were also established by deed for "the purpose of constructing, maintaining and operating an electric power line or lines"⁵³ and included

⁴⁵ *Hill v. San Jose Family Housing Partners, LLC*, 198 Cal. App. 4th 764, 130 Cal. Rptr. 3d 454 (6th Dist. 2011).

⁴⁶ Civ. Code, § 809; *Danielson v. Sykes*, 157 Cal. 686, 691, 109 P. 87 (1910); *Hardin v. Sin Claire*, 115 Cal. 460, 463, 47 P. 363 (1896); *Stallard v. Cushing*, 76 Cal. 472, 474, 18 P. 427 (1888); *Posey v. Leavitt*, 229 Cal. App. 3d 1236, 280 Cal. Rptr. 568 (4th Dist. 1991); *Smith v. Scrap Disposal Corp.*, 96 Cal. App. 3d 525, 529, 158 Cal. Rptr. 134 (4th Dist. 1979); *Pacific Gas & Elec. Co. v. Hacienda Mobile Home Park*, 45 Cal. App. 3d 519, 524, 119 Cal. Rptr. 559 (1st Dist. 1975); *Keeler v. Haky*, 160 Cal. App. 2d 471, 479, 325 P.2d 648 (2d Dist. 1958); *Hartsif v. Wann*, 139 Cal. App. 2d 119, 120, 293 P.2d 65 (4th Dist. 1956).

⁴⁷ *Youngstown Steel Products Co. v. Los Angeles* (1952) 38 Cal 2d 407, 240 P2d 977.

⁴⁸ *McBride v. Smith*, 18 Cal. App. 5th 1160, 227 Cal. Rptr. 3d 390 (1st Dist. 2018).

⁴⁹ *Hartsif v. Wann*, 139 Cal. App. 2d 119, 293 P.2d 65 (4th Dist. 1956); *Pacific Gas & Elec. Co. v. Minnette*, 115 Cal. App. 2d 698, 252 P.2d 642 (3d Dist. 1953).

⁵⁰ The party may elect to prosecute separate actions concurrently or to combine an action for an injunction with an action for damages in the same suit. (*Katenkamp v. Union Realty Co.*, 6 Cal. 2d 765, 776, 59 P.2d 473 (1936); but see *Yolo County v. City of Sacramento*, 36 Cal. 193, 196, 1868 WL 835 (1868), where the court held that an action instituted to enjoin a nuisance and to recover damages caused by it did not involve two separate causes of action, but merely different kinds of relief that the owner might receive.).

⁵¹ Code Civ. Proc., § 731; *Yolo Co. v. Sacramento*, 36 Cal. 196; 14 Ency. of Pl & Pr. 1116.

⁵² *City of Los Angeles v. Jameson*, 165 Cal. App. 2d 351, 331 P.2d 1014 (1958).

⁵³ *City of Los Angeles* at 353.

“all necessary and convenient means of ingress and egress to and from said right of way for the purpose of maintaining, repairing, or renewing such [utility] line or lines... [for] the full and perfect use and enjoyment by... [the easement owner]... of the rights and easements herein above described.”⁵⁴ After owners of adjoining land began **storing automobiles, trucks, machinery, and oil drums, etc., upon plaintiffs’ right of way**, (similar to the type of Impediments obstructing the District’s Easement here), they filed suit to quiet title to the easement, for declaratory relief, and for injunctions compelling defendants to remove these obstructions.⁵⁵

The plaintiffs obtained multiple judgments against defendants for their interfering behavior, which decreed, in part, that: (1) plaintiffs were the owner of a permanent and **unobstructed** easement and right of way in, over, and across the strip of land described in the deed⁵⁶; (2) the **objects stored on the right of way** were **substantial** and **unreasonable obstructions** to the **operation and maintenance** of plaintiffs’ **electric power facilities**; and (3) defendants were enjoined from maintaining these obstructions **as well as any other obstructions within the boundaries of the plaintiffs’ right-of-way**.⁵⁷ (Emphasis added.) In subsequent litigation pertaining to a different obstruction, the court observed that “**objects** which **obstruct** the **free passage of equipment and personnel of the department in and along the right of way** [of plaintiffs’ utility easement] make such passage **more difficult and burdensome**.”⁵⁸ (Emphasis added.) Further, if the plaintiffs were required to perform emergency repairs to the utility’s transmission lines, the obstructing impediments on plaintiffs’ right-of-way would delay their repair work, increase repair costs, and increase the loss of electric energy.⁵⁹

Here, like the easement in the case above, the purpose of the District’s Easement is also **for right-of-way access to maintain and operate** the **sewer line** below its Easement. Similarly, the Impediments here are **also obstructing the District’s access to the sewer**, and, therefore, they interfere with the District’s use and enjoyment of its Easement for its intended purpose of being able to freely access, maintain, and operate the sewer line under the Property. Further, in addition to **routine maintenance work** being essential to keeping the underlying sewer system **working properly**, if the District is ever required to perform emergency repair work to the sewer line in the future because of the current Root Damage and/or for any other reason, like the obstructions in the case above, the owner’s obstructing Impediments will delay that work, increase the District’s costs, and increase the severity or amount of damage to the underlying sewer.

Therefore, and for these reasons, a court or trier of fact would find that the Impediments constitute an **unreasonable interference** with the District’s **Easement rights** and therefore amount to a **private nuisance** under California law.

⁵⁴ *City of Los Angeles* at 353.

⁵⁵ *City of Los Angeles* at 353.

⁵⁶ *City of Los Angeles* at 355-356.

⁵⁷ *City of Los Angeles* at 357.

⁵⁸ *City of Los Angeles* at 356.

⁵⁹ *City of Los Angeles* at 354.

Cause of Action for Public Nuisance Under the Code

As an alternative or in addition to⁶⁰ the administrative enforcement procedures under Chapter 1.25 of the Code discussed above, the District may also elect to enforce its rights pursuant to remedies available under the County’s “Nuisance Abatement Ordinance,” set forth in Chapter 1.23 of the Code (the “Nuisance Ordinance”).

Similar to Chapter 1.25, the Nuisance Ordinance authorizes the County’s legal counsel to commence a (1) legal action *or* (2) *administrative proceeding* against the Property’s owner for the abatement, removal, or enjoinder of the current Impediments creating this public nuisance under the Code.⁶¹ If the District elects to file a lawsuit as part of its enforcement strategy, including a cause of action under the Nuisance Ordinance provides for additional civil penalties against the owner of up to \$1,000 for ***each*** of his ***violations*** of the Code.⁶²

Additionally, if a lawsuit is filed by County counsel on behalf of the District under this Nuisance Ordinance, the County can recover all costs and attorneys’ fees it incurs abating this nuisance. The County’s ability to recover its enforcement costs incentivizes it to act on behalf of the District and enforce its rights through the courts if it is required to. Additionally, the threat and possibility of the owner being potentially responsible for paying these additional enforcement-related costs will likely further and financially motivate him to take all actions necessary to swiftly remove the Impediments from the Easement area.

Conclusion and Recommendation

Based on the risks associated the District’s potential use of self-help, remedies two and three are likely better options and techniques for enforcing the District’s Easement rights in this situation.

However, one thing for the District to consider with respect to option two—commencing an administrative enforcement proceeding through the County—is that there is *no guarantee* that any number of fines, fees, or notices of violation will motivate the owner to cause all Impediments to be removed from the Property *immediately*, or at all. Moreover, he may not be capable of causing these Impediments to be cleared from the Easement areas on his own.

Therefore, the best course of action would likely be to (1) work with the appropriate County department(s) to commence an administrative enforcement procedure pursuant to one or more applicable chapters and sections of the local Code, and (2), if it appears that process is taking too long—and it will not result in the Impediments being removed from the Property fast enough—

⁶⁰ The remedies available under the Nuisance Ordinance are “***nonexclusive*** and are ***cumulative*** with any other remedy available to the county as provided for by law for the protection of the health, safety, and welfare of the people of the County of Los Angeles.” (Emphasis added.) See Los Angeles Municipal Code section 1.23.110

⁶¹ Los Angeles Municipal Code section 1.23.060.

⁶² Los Angeles Municipal Code section 1.23.090.

then the District should rely on the legal authority discussed in this memo and proceed with filing a lawsuit to obtain an order allowing it to take all actions necessary to remove the Impediments from the Easement areas as soon as possible to repair the sewer.