June 16, 2026

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Chad Rinde
County of Sacramento
700 H Street, Suite 3650
Sacramento, CA 95814

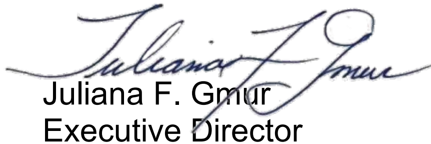
And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Decision
Emergency Shelters: Persons with Pets, 24-TC-06
Statutes 2023, Chapter 344, Section 2 (AB 781); Government Code Section 8593.10(b), (c), and (d), effective January 1, 2024
County of Sacramento, Claimant

Dear Mr. Hill and Mr. Rinde:

On June 12, 2026, the Commission on State Mandates adopted the Decision partially approving the Test Claim on the above-captioned matter.

Very truly yours,



Juliana F. Gmur
Executive Director

BEFORE THE

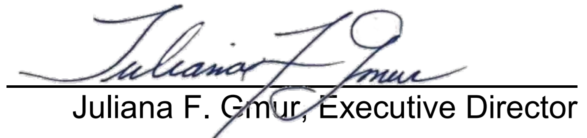
COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Government Code Section 8593.10(b), (c), and (d) Statutes 2023, Chapter 344, Section 2 (AB 781) Filed on December 23, 2024 County of Sacramento, Claimant.	Case No.: 24-TC-06 *Emergency Shelters: Persons with Pets* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted June 12, 2026*) (*Served June 16, 2026*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on June 12, 2026.



Juliana F. Gmur, Executive Director

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IN RE TEST CLAIM Government Code Section 8593.10(b), (c), and (d) Statutes 2023, Chapter 344, Section 2 (AB 781) Filed on December 23, 2024 County of Sacramento, Claimant.	Case No.: 24-TC-06 *Emergency Shelters: Persons with Pets* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted June 12, 2026*) (*Served June 16, 2026*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on June 12, 2026. Chad Rinde appeared on behalf of the County of Sacramento. Kaily Yap appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to partially approve the Test Claim by a vote of 6-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Deborah Gallegos, Representative of the State Controller	Yes
Karen Greene Ross, Public Member	Yes
William Pahland, Representative of the State Treasurer, Vice Chairperson	Yes
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	Yes
Alexander Powell, Representative of the Director of the Office of Land Use and Climate Innovation	Yes

Summary of the Findings

This Test Claim alleges new state-mandated activities and costs arising from Government Code section 8593.10, as added in 2023, which requires updates to county and city emergency plans to address emergency sheltering accommodations for

persons with pets, to designate at least one emergency shelter and, "to the extent practicable," one warming and cooling center to accommodate persons with pets, and to provide public information and notices about accommodating persons with pets during emergencies.

The Commission finds the Test Claim was timely filed within 12 months of the effective date of the test claim statute pursuant to Government Code section 17551(c) and has a period of reimbursement beginning January 1, 2024.[1]

The Commission finds the activities required in section 8593.10(b) do not mandate a new program or higher level of service on counties and cities. With respect to counties, Government Code section 8593.10(b) imposes the following requirements:

- Update its emergency plan to designate emergency shelters able to accommodate persons with pets. (Gov. Code, § 8593.10(b)(1)(A).)
- At least one emergency shelter shall be designated to accommodate persons with pets. (Gov. Code, § 8593.10(b)(1)(C).)
- Whenever a number of emergency cooling centers or warming centers are designated, at least one cooling center and one warming center "shall, *to the extent practicable*," be designated to accommodate persons with pets ". (Gov. Code, § 8593.10(b)(1)(D), (E).)
- An emergency shelter designated as able to accommodate persons with pets shall be in compliance with both of the following:
  - Safety procedures regarding the sheltering of pets referenced or established in the component of the state and local emergency plan.
  - Applicable disaster assistance policies and procedures of the Federal Emergency Management Agency. (Gov. Code, § 8593.10(b)(2).)

The courts have explained that the determination of whether the test claim statute's requirements are mandated by the state depends on whether the claimant's participation in the underlying program is voluntary or legally compelled.[2]

Here, the activities listed in section 8593.10(b) are triggered by whether counties are compelled to have emergency plans and update those plans, and whether those plans are required to designate emergency shelters and warming and cooling centers.

In this case, the law does not require counties to adopt a local emergency plan and, thus, adopting an emergency plan is not legally compelled by state law. Rather, adopting an emergency plan is a condition of having a local disaster council and a factor considered when determining whether funding under California Disaster Assistance Act (CDAA) and the Standardized Emergency Management Systems (SEMS) program

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[1] Exhibit A, Test Claim, page 1.

[2] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 731.

should be provided.[3] In 2006 and 2007, the Commission and the Los Angeles County Superior Court found that compliance with SEMS, which includes a requirement to include the use of SEMS in local emergency plans, was not legally compelled by state law because the requirements are only imposed as a condition of seeking disaster funding for personnel-related costs under the CDAA.[4] In addition, while federal law strongly encourages local governments to have emergency plans, and even provides grant funding to develop the plans, there is no federal requirement to have an emergency plan.[5] Thus, counties are not legally compelled by law to adopt an emergency plan.

The court in SEMS also found that compliance with SEMS was not practically compelled since, like the case in *Kern High School Dist*., if a local agency decides not to participate in SEMS, or elects to discontinue participation in the program, the agency does not face "certain and severe penalties" such as "double taxation" or other "draconian measures." It simply loses its right to apply for state funding under the CDAA to assist the local agency in paying for its response-related personnel costs.[6] These findings were made even though counties have broad Constitutional police powers to protect the health, safety, and welfare of their residents; that all counties have disaster councils (which requires a local emergency plan), all counties signed the Master Mutual Aid Agreement in 1950 (which also requires a local emergency plan), and all counties were designated as operational areas in an emergency.[7]

Typically, the Commission would be required to comply with the court's prior ruling in this case under principles of res judicata and collateral estoppel, which bar the parties to the prior action from re-analyzing the same issue in a subsequent matter. However,

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[3] Government Code section 8607(e), as last amended by Statutes 2022, chapter 28; Government Code sections 8610-8614, as last amended by Statutes 2022, chapter 239; California Code of Regulations, title 19, sections 2401, 2443(a), 2445.

[4] California Code of Regulations, title 19, section 2445; Exhibit H (12), Commission on State Mandates, Proposed Test Claim Statement of Decision, *Standardized Emergency Management System (SEMS)*, 03-RC-4506-01 (CSM-4506); Exhibit H (11), Commission on State Mandates, Adopted Minutes, March 29, 2006 Hearing, pages 4-7; Exhibit H (17), Los Angeles County Superior Court Minute Order and Judgment Denying Petition for Writ of Mandate, SEMS.

[5] United States Code, title 42, section 5196b.

[6] Exhibit H (12), Commission on State Mandates, Proposed Test Claim Statement of Decision, *Standardized Emergency Management System (SEMS)*, 03-RC-4506-01 (CSM-4506), pages 20-22; Exhibit H (17), Los Angeles County Superior Court Minute Order and Judgment Denying Petition for Writ of Mandate, SEMS.

[7] California Constitution, article XI, section 7 ("A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."); Government Code sections 8605, 8559, added by Statutes 1970, chapter 1454; Government Code section 8610(a), as last amended by Statutes 2020, chapter 254.

"[n]either res judicata nor collateral estoppel were ever intended to operate so as to prevent a re-examination of the same question between the same parties where, in the interval between the first and second actions, the facts have materially changed or new facts have occurred which have altered the legal rights or relations of the litigants."[8]

Since the SEMS decision by the court, there has been a Bureau of State Audits (BSA) audit of *county* emergency plans that found the plans inadequate and insufficient, which are proven contributors to the failure of and deficiencies in a county's efforts to respond when the disaster occurs.[9] BSA recommended several statutory changes addressing county emergency plans. The following statutes were enacted:

- In 2020, Government Code section 8593.9 required Cal OES to develop best practices for counties developing and updating county emergency plans. Cal OES is required to provide technical assistance and feedback regarding the sufficiency of the county's emergency plan with respect to Cal OES' best practices; procedures for alerting, evacuating, and sheltering individuals during an emergency; and any other necessary and appropriate element.[10]
- In 2021, Cal OES issued "Best Practices for County Emergency Plans."[11] Cal OES' best practices include complying with FEMA's Comprehensive Preparedness Guide 101 when developing or updating emergency plans, reviewing and updating the plan on a regular basis, and having a care and shelter plan as an annex to the emergency plan.[12]
- In 2021, Government Code section 8593.3.2 required counties to send a copy of their emergency plans to Cal OES on or before March 1, 2022, and upon any update to the plan after that date. Cal OES is required to review the county's emergency plan to determine if it is in compliance with FEMA's Comprehensive Preparedness Guide 101 and Cal OES' best practices.

  Counties are required by Government Code section 8593.3.2 to develop and revise their emergency plans to address the issues that Cal OES identifies in its review.[13]
- As last amended in 2022, Government Code section 8593.3 requires counties, upon the next update to their emergency plans, to "identify emergency evacuation procedures that ensure that local community resilience centers are prepared to serve communitywide assets during extreme heat events and other

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[8] *Union Pacific Railroad Co. v. Santa Fe Pacific Pipeline, Inc*. (2014) 231 Cal.App.4th 134, 179-180.

[9] Exhibit H (2), BSA Audit 2019, page 8.

[10] Government Code section 8593.9(b), as added by Statutes 2020, chapter 257.

[11] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans.

[12] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, pages 11, 15, 24, 67, 68, 71.

[13] Government Code section 8593.3.2(d).

> disasters, and designate available locations to provide respite to individuals during emergencies including during extreme heat and cold.[14] "Local community resilience center" is defined to mean "a hydration station, cooling center, clean air center, respite center, community evacuation and emergency response center, or similar facility established to mitigate the public health impacts of extreme heat and other emergency situations exacerbated by climate change, such as wildfire, power outages, or flooding, on local populations."[15]
>
> The test claim statute, in section 8593.10(a), defines cooling and warming centers similar to the definition of "resilience center" in Government Code section 8593.3. Both are intended to mitigate the impacts of extreme temperatures.[16]

Thus, while counties originally may have had the discretion to adopt an emergency plan to protect the health and safety of its residents and seek funding under the CDAA, they argue they have no choice now and are compelled by these recent laws to send their emergency plans (current and updated plans) to Cal OES, Cal OES is required to review the plans to ensure the county's plan complies with FEMA's Comprehensive Preparedness Guide 101 and Cal OES' best practices, and counties are required to revise their plans in accordance with the Cal OES review.

With this background, the Commission makes the following findings.

1. Government Code section 8593.10(b) does not mandate a new program or higher level of service on counties and cities.

Even presuming counties are compelled to have emergency plans, the requirements to update the county's emergency plan to designate emergency shelters able to accommodate persons with pets, to designate at least one emergency shelter that can accommodate persons with pets, and to ensure that the shelter is in compliance with safety procedures regarding the sheltering of pets referenced or established in the component of the state and local emergency plan and applicable disaster assistance policies and procedures of the Federal Emergency Management Agency, in accordance with section 8593.10(b)(1)(A), (C), and (b)(2), are *not* new requirements.

As indicated above, Government Code section 8593.3.2. requires county emergency plans to be updated and to conform to FEMA's Comprehensive Preparedness Guide 101. FEMA's 2010 Comprehensive Preparedness Guide 101 implements the 2006 federal PETS Act, which required FEMA, when approving standards for state and local

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[14] Government Code section 8593.3(a), as last amended by Statutes 2022, chapter 247.

[15] Government Code section 8593.3(f)(3), as last amended by Statutes 2022, chapter 247.

[16] Government Code section 8593.10(a)(1) and (4) defines these terms as follows:

> "Cooling center" means "a facility established to mitigate the public health impacts of extreme heat."
>
> "Warming center" means "a facility established to mitigate the public health impacts of extreme cold."

emergency preparedness operational plans, to ensure that the plans address the needs of individuals with household pets prior to, during, and following a major disaster or emergency.[17] The 2010 Guide states the following: "A key consideration is the integration of household pets and service animals into the planning process."[18] The 2010 Guide contains standards on "Incorporating Household Pets and Service Animals" in congregate household pet shelters (facilities that provide refuge to household pets of shelterees)[19] and a "Functional Annexes Content Guide," which contain "core functional support activities that should be incorporated" into the emergency plan, including sheltering facilities and plans to safely accommodate persons with pets.[20]

Thus, counties were already required to have their emergency plans identify shelters that can accommodate persons with pets and to implement those plans and have at least one shelter that can accommodate persons with pets in accordance with safety procedures regarding the sheltering of pets referenced or established in the emergency plan and applicable disaster assistance policies and procedures of FEMA, as required by Government Code section 8593.10(b)(1)(A), (C), and (b)(2). These activities are not new.[21]

Second, the language in section 8593.10(b)(1)(D) and (E) that says whenever a county designates any number of emergency cooling centers or warming centers, it "shall, *to the extent practicable*" designate at least one cooling center or one warming/heating center that can accommodate persons with pets, does not impose a state-mandated new program or higher level of service on counties. Assuming counties are required by law to adopt emergency plans and designate warming and cooling centers for extreme temperature events in those plans pursuant to Government Code section 8593.3, counties only have to designate a warming/heating or cooling center able to accommodate pets "*to the extent practicable*." The courts have interpreted this language as recommending that the activity "should" be performed "to the extent practicable," but not requiring that the activity "shall" be performed as a legally enforceable duty.[22] Thus, designating, to the extent practicable, one cooling center and

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[17] United States Code, title 42, section 5196b(g).

[18] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 13.

[19] Exhibit H (14), FEMA's 2007 Disaster Assistance Policy, page 2.

[20] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, pages 68-73, 102.

[21] Moreover, the claimant's May 2024 Animal Sheltering Annex lists the 2006 PETs Act and the 2006 California Animal Response Emergency System (CARES) as authorities and references for the Annex. The test claim statute is not identified in the Annex or its list of authorities and references. (Exhibit H (20) Sacramento County Animal Sheltering Annex, May 21, 2024, page 30.)

[22] See, *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 101-103, 114-115; *Outfitter Properties, LLC v. Wildlife Conservation Board* (2012) 207 Cal.App.4th 237, 247-248; *Alameda County Waste Management Authority v. Waste Connections, Inc.* (2021) 67 Cal.App.5th 1162, 1177; and *Coast*

warming center that can accommodate persons with pets as stated in section 8593.10(b)(1)(D) and (E) does not impose a state-mandated program.

Moreover, even if a court were to agree with the claimant that practical compulsion can be found, the "requirement" to accommodate persons pets at these centers would not be new, since Cal OES identifies as a best practice that facilities identified for cooling and warming centers provide services to accommodate individuals with domestic pets and ensure impacts to pets and animals due to extreme temperatures are addressed.[23] Counties have been required by Government Code section 8593.3.2. to send their emergency plans and updated plans to Cal OES to review for compliance with Cal OES' best practices since 2021. Therefore, section 8593.10(b)(1)(D) and (E) does not mandate a new program or higher level of service on counties.

The test claim statute imposes the same activities on cities, except that the requirement in section 8593.10(b)(1)(B) to update the emergency plan to designate emergency shelters able to accommodate persons with pets is only imposed if the city "has previously adopted an emergency plan designating emergency shelters." Unlike counties, cities have not been subject to any statutes requiring the adoption of an emergency plan, the updating of an emergency plan, or a requirement to designate shelters, and, thus, the activities required by section 8593.10(b)(1)(B) and (C), and (b)(2) are not legally compelled by state law.

Moreover, there is no evidence in the record that cities are practically compelled to perform these underlying activities. Rather, cities have the authority to work with counties to use the countywide operational area for the coordination of emergency activities during a state of emergency or a local emergency and are not compelled to have a separate local emergency plan.[24] Thus, the activities in section 8593.10(b)(1)(B) and (C), and (b)(2) to update the emergency plan to designate shelters to accommodate persons with pets, to designate one shelter to accommodate persons with pets, and to comply with safety procedures and FEMA policies for those shelters are not mandated by the state for cities.

In addition, the language in section 8593.10(b)(1)(D) and (E) that says whenever a city designates any number of emergency cooling centers or warming centers, it "shall, to the extent practicable" designate at least one cooling center or one warming/heating center that can accommodate persons with pets, does not impose a state-mandated activity on cities. Unlike counties, cities are not compelled by law to designate emergency cooling or warming centers. Moreover, "shall, to the extent practicable" does not impose a legally enforceable duty.[25] Thus, the downstream provision to

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Community College District v. Commission on State Mandates (2022) 13 Cal.5th 800, 815.

[23] Exhibit H (4), Cal OES Extreme Temperature Response Plan, pages 7, 76, 80-81.

[24] Government Code section 8605, added by Statutes 1970, chapter 1454.

[25] *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 114-115; *Outfitter Properties, LLC v. Wildlife Conservation Board* (2012) 207 Cal.App.4th 237, 247-248; *Alameda County Waste Management Authority v. Waste*

designate, to the extent practicable, one of these shelters to accommodate persons with pets is not mandated by the state.[26]

Accordingly, Government Code section 8593.10(b) does not mandate a new program or higher level of service for counties or cities.

2. The public information provisions in Government Code section 8593.10(c) impose a state-mandated new program or higher level of service on counties, but not on cities.

Government Code section 8593.10(c) requires that "[w]henever a city or county provides public information regarding the availability of a cooling center or warming center, that information shall include whether the cooling or warming center can accommodate pets." The Commission finds that this requirement imposes a state-mandated new program or higher level of service on counties, but not on cities.

As indicated above, counties have been subject to several statutes governing their emergency plans, including the requirement to designate cooling and warming centers upon the next update of their emergency plans.[27] However, the adoption of a local emergency plan in the first place is not legally compelled by state law and the Commission and the Los Angeles County Superior Court previously denied reimbursement for compliance with these programs because the requirements were conditions for the receipt of funds.[28] However, the facts have materially changed and new court decisions have been issued since those earlier decisions and, thus, the issue is whether adopting an emergency plan (which is the first underlying triggering event for purposes of the requirement in section 8593.10(c)) is compelled as a practical matter in light of these recent laws.[29]

In *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 557 ("*Stormwater*"), the Department of Finance and the Water Boards argued that certain conditions on a stormwater discharge permit were not mandatory because the conditions resulted from the local government's voluntary decision to operate a storm drainage system in the first place. The Court of Appeal rejected this argument and found there was practical compulsion on the ground that "deciding not to provide a

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Connections, Inc. (2021) 67 Cal.App.5th 1162, 1177; and *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

[26] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 731.

[27] Government Code sections 8593.3, 8593.25.

[28] Exhibit H (12), Commission on State Mandates, Proposed Test Claim Statement of Decision, *Standardized Emergency Management System (SEMS)*, 03-RC-4506-01 (CSM-4506), pages 20-22; Exhibit H (17), Los Angeles County Superior Court Minute Order and Judgment Denying Petition for Writ of Mandate, SEMS.

[29] *Union Pacific Railroad Co. v. Santa Fe Pacific Pipeline, Inc.* (2014) 231 Cal.App.4th 134, 179-180.

stormwater drainage system is no alternative at all. It is so far beyond the realm of practical reality that it left permittees without discretion not to obtain a permit."[30]

Similarly, here, while adoption of a local emergency plan is not strictly compelled by state law, counties — who have a primary role in the State's coordinated emergency management system[31] — cannot reasonably ignore the findings in the BSA audit and all the statutes enacted since that audit without jeopardizing the health and safety of their citizens. As noted in the BSA audit report,

> California has experienced an increase in the frequency and destructive nature of wildfires. Experts predict that the recent trend of increased frequency and severity of wildfires will continue, requiring the State to be prepared to protect its residents more often from more dangerous natural disasters than it has in the past. The State's emergency management system designates local governments – such as counties, as primarily responsible for emergency preparedness and response.[32]

The audit further notes that "[a]s natural disasters grow in severity and frequency, the potential effects of being underprepared also grow. Therefore, it is critical that the State also do more to ensure that local jurisdictions are as prepared as possible."[33] And citing to the FEMA guidelines, BSA concludes that "deficiencies in a county's efforts to prepare for a natural disaster can impair its ability to respond when the disaster occurs."[34]

Counties adopted their emergency plans as part of the Master Mutual Aid Agreement in 1950 (over 70 years ago) and since the BSA audit report, counties have been subject to additional laws requiring county emergency plans to comply with FEMA guidelines and Cal OES' best practices in accordance with BSA recommendations.[35] And Cal OES' Extreme Temperature Response Plan lists as "critical information" to provide to the public, "cooling/warming center locations, times of operation, and instructions."[36] Similarly, FEMA's guidelines include a standard for emergency plans to "provide mechanisms for continually updating public statements on shelter capacity and availability as people/animals are coming to shelters."[37] Counties are required to

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[30] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558.

[31] Government Code section 8605.

[32] Exhibit H (2) BSA Audit 2019, page 7.

[33] Exhibit H (2) BSA Audit 2019, page 9.

[34] Exhibit H (2) BSA Audit 2019, page 8.

[35] Exhibit H (18), Master Mutual Aid Agreement; Exhibit H (21), SEMS Guidelines, Part I, System Description Section E Regional Level, page 3; Government Code section 8593.3.2.

[36] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 35.

[37] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 72.

comply with FEMA guidelines and Cal OES' best practices.[38] Thus, counties are compelled to comply with the underlying requirement to provide notice to the public regarding the availability of a cooling center or warming center.

Although counties should but are not mandated by the state to make one of the cooling or warming centers available for persons with pets, the plain language of section 8593.10(c) states that a county "shall include" in the public information about the availability of a cooling or warming center "whether" or not the cooling or warming center can accommodate pets. Thus, this requirement to include information on whether or not a cooling or warming center can accommodate persons with pets is not dependent on whether a county does, in fact, offer that service; the information is required to be provided in either case and "whenever" the county provides public information about the availability of a cooling or warming center. Thus, all notices of availability of cooling and warming centers issued by a county are required to state whether or not the facility can accommodate pets. The Commission finds that this downstream requirement is new for counties, as that information was not previously required to be provided with respect to cooling and warming centers. In addition, the requirement is mandated by the state for counties. Government Code section 14 states that "shall" is mandatory and the plain language states that counties "shall" include whether the cooling or warming center can accommodate pets. The requirement also imposes a new program or higher level of service since the requirement is unique to government and provides a governmental service to the public based on the Legislature's intent on enacting the test claim statute to provide increased guidance and public awareness in extreme weather events.[39] Thus, section 8593.10(c) mandates a new program or higher level of service on counties.

However, the requirement in section 8593.10(c) is not mandated by the state for cities. Unlike counties, cities are not compelled by law to designate emergency cooling or warming centers and thus, the downstream provisions to provide public information regarding the availability of a cooling center or warming center, and to include in that information whether the cooling or warming center can accommodate persons with pets, are not compelled or mandated by the state for cities.[40]

3. <u>Government Code section 8593.10(d), which requires counties and cities to post information on their websites about pet emergency preparedness, mandates a new program or higher level of service on counties and cities.</u>

Finally, Government Code section 8593.10(d) requires that "[a] city or county shall make available to the public by posting on its internet website information for pet emergency preparedness, including, but not limited to:

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[38] Government Code section 8593.3.2.

[39] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; Statutes 2023, chapter 344, section 1.

[40] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 731.

> (1) Information for creating an evacuation plan and emergency checklist for pets consistent with recommendations publicly published by the Department of Food and Agriculture and the Federal Emergency Management Agency.
>
> (2) Local organizations that may provide emergency pet assistance.
>
> (3) Local emergency shelters, cooling centers, or warming centers, when active, that can accommodate persons with pets."[41]

This requirement is new for both counties and cities and is not triggered by any prior decision or requirement imposed on local government. Based on the plain language "shall," the requirement is mandated by the state.[42] And the requirement is unique to government and provides a governmental service to the public since the purpose is to carry out the Legislature's intent to provide guidance in increasing public preparedness for disasters and extreme weather events and, thus, imposes a new program or higher level of service on counties and cities.[43]

4. <u>The new state-mandated activities impose costs mandated by the state.</u>

The Commission finds there is sufficient evidence in the record that the claimant will incur increased costs mandated by the state to comply with the new state-mandated activities.[44] Furthermore, none of the exceptions to costs mandated by the state in Government Code section 17556 apply to deny this Test Claim.

Accordingly, the Commission partially approves this Test Claim and finds that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning January 1, 2024, for the following activities only:

- Whenever a county provides public information regarding the availability of a cooling center or warming center, that information shall include whether the cooling or warming center can accommodate pets. (Gov. Code, § 8593.10(c)).

  Government Code section 8593.10(c) does not impose a reimbursable state-mandated program for cities.

- Cities and counties shall make available to the public by posting on its internet website information for pet emergency preparedness, including, but not limited to:

[41] Government Code section 8593.10(d).

[42] Government Code section 14, which states that "shall" is mandatory.

[43] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; Statutes 2023, chapter 344, section 1.

[44] Exhibit A, Test Claim, pages 26-27 (Declaration of the claimant's Emergency Operations Coordinator).

(1) Information for creating an evacuation plan and emergency checklist for pets consistent with recommendations publicly published by the Department of Food and Agriculture and the Federal Emergency Management Agency.

(2) Local organizations that may provide emergency pet assistance.

(3) Local emergency shelters, cooling centers, or warming centers, when active, that can accommodate persons with pets." (Gov. Code, § 8593.10(d).)

All other claims for reimbursement asserted are denied.

COMMISSION FINDINGS

I. Chronology

01/01/2024	The test claim statute became effective.
12/23/2024	The claimant filed the Test Claim.[45]
06/06/2025	The Department of Finance (Finance) filed comments on the Test Claim.[46]
07/03/2025	California State Association of Counties (CSAC) filed late comments on the Test Claim.[47]
07/03/2025	The claimant filed rebuttal comments.[48]
07/09/2025	County of Santa Clara filed late comments on the Test Claim.[49]
03/04/2026	Commission staff issued the Draft Proposed Decision.[50]
03/23/2026	The claimant filed comments on the Draft Proposed Decision.[51]

II. Background

The test claim statute added section 8593.10 to the Government Code to require updates to county and city emergency plans to address emergency sheltering accommodations for persons with pets, to designate at least one emergency shelter and "to the extent practicable" one warming and cooling center to accommodate persons with pets, and to provide public information and notices about accommodating persons with pets. Section 8593.10 is located within the California Emergency Services Act (Gov. Code, §§ 8550-8669.87), which was enacted in 1970 to replace the California

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[45] Exhibit A, Test Claim.

[46] Exhibit B, Finance's Comments on the Test Claim.

[47] Exhibit C, CSAC's Late Comments on the Test Claim.

[48] Exhibit D, Claimant's Rebuttal Comments.

[49] Exhibit E, County of Santa Clara's Late Comments on the Test Claim.

[50] Exhibit F, Draft Proposed Decision.

[51] Exhibit G, Claimant's Comments on the Draft Proposed Decision.

Disaster Act of 1943 (former Mil. & Vet. Code, § 1500 et seq.).[52] A background of Emergency Services Act and its evolution is below.

A. Overview of the California Emergency Services Act

The California Emergency Services Act recognizes the State's responsibility to mitigate the effects of emergencies that may result in harm to the health and safety of the public, confers upon the Governor and the governing bodies of local government emergency powers to act in case of emergency, establishes the Office of Emergency Services (Cal OES), and envisions the coordination of efforts with other jurisdictions, including the federal government, and mutual aid among all levels of government in an emergency.[53] The Act begins with Government Code section 8550, which states the following:

> The state has long recognized its responsibility to mitigate the effects of natural, manmade, or war-caused emergencies that result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people of the state. To ensure that preparations within the state will be adequate to deal with such emergencies, it is hereby found and declared to be necessary:
>
> (a) To confer upon the Governor and upon the chief executives and governing bodies of political subdivisions of this state the emergency powers provided herein; and to provide for state assistance in the organization and maintenance of the emergency programs of such political subdivisions.
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> (b) To provide for a state office to be known and referred to as the Office of Emergency Services, within the office of the Governor, and to prescribe the powers and duties of the director of that office.
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> (c) To provide for the assignment of functions to state entities to be performed during an emergency and for the coordination and direction of the emergency actions of those entities.
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> (d) To provide for the rendering of mutual aid by the state government and all its departments and agencies and by the political subdivisions of this state in carrying out the purposes of this chapter.

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[52] Statutes 1970, chapter 1454.

[53] Government Code sections 8550-8669.87; *Martin v. Municipal Court* (1983) 148 Cal.App.3d 693, 696 ("The California Emergency Services Act recognizes and responds to a fundamental role of government to provide broad state services in the event of emergencies resulting from conditions of disaster or of extreme peril to life, property, and the resources of the state. Its purpose is to protect and preserve health, safety, life, and property.").

> (e) To authorize the establishment of such organizations and the taking of such actions as are necessary and proper to carry out the provisions of this chapter.
>
> It is further declared to be the purpose of this chapter and the policy of this state that all emergency services functions of this state be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government including its various departments and agencies, of other states, and of private agencies of every type, to the end that the most effective use may be made of all manpower, resources, and facilities for dealing with any emergency that may occur.[54]

The Act establishes three degrees of emergency; a state of war emergency, a state of emergency, and a local emergency.[55] The difference between a state of emergency and a local emergency is in their magnitude. A state of emergency is one which requires the combined forces of mutual aid region or regions to combat. A local emergency is one which requires the combined forces of other political subdivisions to combat.[56] Depending on the degree of emergency, the Act confers emergency powers upon the Governor, and the chief executives and governing bodies of local governments.[57]

One of the chief purposes of the Act is to ensure that state and local entities will adequately prepare for and deal with the effects of emergencies through the coordination of resources available at the state and local level.[58] Government Code section 8550 states in relevant part that "the purpose [of the act is] … that all emergency services functions of this state be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government including its various departments and agencies, of other states, and of private agencies of every type, to the end that the most effective use may be made of all manpower, resources, and facilities for dealing with any emergency that may occur."

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[54] Government Code section 8550, as last amended by Statutes 2013, chapter 352.

[55] Government Code section 8558, as last amended by Statutes 2022, chapter 537.

[56] 62 Opinions of the Attorney General 701, notes 3 and 4 (1979).

[57] Government Code sections 8620 et al. (as last amended by Stats. 2011, ch. 36), 8625 et al. (as last amended by Stats. 2015, ch. 62), 8630 et al. (as last amended by Stats. 2018, ch. 395).

[58] *Macias v. State of California* (1995) 10 Cal.4th 844, 854 ("One of the primary purposes of the act is to ensure that 'all emergency services functions' of the State and local governments, the federal government, and 'private agencies of every type,' 'be coordinated ... to the end that the most effective use be made of all manpower, resources, and facilities for dealing with any emergency that may occur.'"); see also, 62 Opinions of the California Attorney General, 701, 702 (1979).

1. **The 1950 Master Mutual Aid Agreement and County Operational Area Plans.**

The Emergency Services Act provides for mutual aid during emergencies when the need arises for outside aid in any county, city and county, or city through adoption of emergency plans and the Master Mutual Aid Agreement.[59] The Master Mutual Aid Agreement was originally executed in November 1950 by Governor Earl Warren on behalf of the State and its departments and agencies, by all 58 counties, and by most cities.[60] Under the terms of the agreement, each party is required to develop mutual aid operational plans providing for the effective mobilization of all its resources and facilities, both public and private, to cope with any type of disaster.[61] Government Code section 8616 states: "During any state of war emergency or state of emergency when the need arises for outside aid in any county, city and county, or city, such aid shall be rendered in accordance with approved emergency plans."[62] In addition, the agreement states that each party agrees to furnish resources and facilities and to render services to each and every other party to prevent and combat any type of disaster. However, no party is required to unreasonably deplete its own resources, facilities, and services in the process of furnishing mutual aid.[63] The mutual aid extended under the agreement and the operational plans adopted pursuant to the agreement must be consistent with the California Disaster Act (the predecessor to the Emergency Services Act).[64] Any party can terminate its participation in the agreement with proper notice.[65] State guidelines explain that mutual aid works through the county operational areas and state mutual aid regions as follows:

> The use of mutual aid by a local government is determined by the jurisdiction in need. Local governments requiring assistance will request mutual aid from neighboring jurisdictions or through their respective operational area. (A variety of local written and in some cases informal mutual aid agreements exist between jurisdictions.) The operational area (which consists of the county and all political jurisdictions within the county) will coordinate the additional aid requirement first from jurisdictions within the operational area (including county owned resources). (See operational area discussion in Guidelines I.D.)

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[59] Government Code section 8561 and 8615 et seq., as last amended by Statutes 2015, chapter 25.

[60] Exhibit H (18), Master Mutual Aid Agreement; Exhibit H (21), SEMS Guidelines, Part I, System Description Section E Regional Level, page 3; *California Correctional Peace Officers Association v. Schwarzenegger* (2008) 163 Cal.App.4th 802, 813.

[61] Exhibit H (18), Master Mutual Aid Agreement, page 1.

[62] Government Code section 8616, as added by Statutes 1970, chapter 1454.

[63] Exhibit H (18), Master Mutual Aid Agreement, page 1.

[64] Exhibit H (18), Master Mutual Aid Agreement, page 2.

[65] Exhibit H (18), Master Mutual Aid Agreement, pages 3, 4.

> If sufficient resources are still not available, the request will be made to the regional level. The mutual aid system regional coordinator (which will differ in name and location by mutual aid system) will attempt to fill the resource order from mutual aid suppliers within the region. If sufficient resources are still not available, the request will be forwarded to the state level, which will fill the resource request from other mutual aid regions within the state, from interstate sources and/or from private and federal sources.
>
> The regional level coordinates mutual aid information and resources among the operational area within the region and between the operational areas and the state level. The regional level and the state level coordinate overall state agency support for emergency response activities.[66]

The Emergency Services Act designates each county an operational area.[67] And each county and the political subdivisions in the county may organize and structure their operational areas.[68] In a state of war emergency, each operational area is required to serve as a link in the system of communications and coordination between the state's emergency operating centers and the operating centers of the political subdivisions comprising the operational area. A county and the political subdivisions within the county also have the authority to use the operational area for the coordination of emergency activities and to serve as a link in the communications system during a state of emergency or a local emergency.[69]

In the County of Sacramento, the County, the cities, and the special districts within the County, established the terms of the operational area by agreement in 1995 and have an operational area (OA) plan, which addresses methods for managing information, resources, and priorities during a multi-jurisdictional response to emergency situations and "is an adjunct to local jurisdiction emergency and disaster plans . . . ."[70] Pursuant to their agreement, each participant is responsible for the following:

- Designating a representative who has the authority to speak on behalf of the jurisdiction to coordinate with the operational area.
- Establish communication and coordination with the operational area.
- Notify the operational area with the EOC [Emergency operation center] is activated.
- Provide status reports of emergency conditions within the jurisdiction.

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[66] Exhibit H (21), SEMS Guidelines, Part I, System Description Section E Regional Level, page 4.

[67] Government Code sections 8605, 8559, added by Statutes 1970, chapter 1454.

[68] Government Code section 8605, added by Statutes 1970, chapter 1454.

[69] Government Code section 8605, added by Statutes 1970, chapter 1454.

[70] Exhibit H (19), Sacramento County OES Operational Area Plan, pages 2, 19.

- Determine the utilization of jurisdictional resources and render mutual aid, if possible, when requested by the operational area.
- Utilize operational area functional coordinators when requesting mutual aid resources.
- If necessary, participate with other affected jurisdictions in the operation area in a multi-jurisdictional coordination group.[71]

The County of Sacramento's operational area plan is meant to be used in conjunction with individual local government emergency operation plans and disaster plans.[72]

A "mutual aid region" is defined as a subdivision of the state emergency services organization, established to facilitate the coordination of mutual aid and other emergency operations within an area of the state consisting of two or more county operational areas."[73] The State of California is divided into six mutual aid regions to enable the most effective application, administration, and coordination of mutual aid and other emergency-related activities.[74]

2. The Emergency Services Act Authorizes Each Local Government to Develop Local Emergency Plans. However, a Local Emergency Plan Is Required if Local Government Has a Disaster Council or Seeks State Funding for Response and Recovery Following a Disaster.

The California Emergency Services Act defines "emergency plan" as:

> . . . those official and approved documents which describe the principles and methods to be applied in carrying out emergency operations or rendering mutual aid during emergencies. These plans include such elements as continuity of government, the emergency services of governmental agencies, mobilization of resources, mutual aid, and public information.[75]

The State's emergency plan, which is approved by the Governor, "shall be in effect in each political subdivision of the state, and the governing body of each political subdivision shall take such action as may be necessary to carry out the provisions

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[71] Exhibit H (19), Sacramento County OES Operational Area Plan, pages 14-15.

[72] Exhibit H (19), Sacramento County OES Operational Area Plan, page 5.

[73] Government Code section 8559(a), as added by Statutes 1970, chapter 1452.

[74] *California Correctional Peace Officers Association v. Schwarzenegger* (2008) 163 Cal.App.4th 802, 813; Exhibit H (21), SEMS Guidelines, Part I, System Description Section E Regional Level, page 4.

[75] Government Code section 8560(a), added by Statutes 1970, chapter 1454.

thereof."[76] "Political subdivision" is defined to include any county, city, or city and county.[77]

The Government Code also requires the Governor to coordinate the preparation of plans and programs for the mitigation of the effects of an emergency by the political subdivisions of this state," and "such plans and programs . . . [shall] be integrated into and coordinated with the State Emergency Plan and the plans and programs of the federal government and of other states to the fullest possible extent."[78]

The Emergency Services Act, however, does not expressly require counties and cities to develop a local emergency plan. Rather, the development of an emergency plan is a downstream requirement of the following programs and contractual agreements identified in the Emergency Services Act that counties and cities elect to participate.

a. Local Disaster Councils

Under the Emergency Services Act, counties and cities have the authority to create local disaster councils by ordinance to formally organize, plan, and coordinate responses for state and local emergencies.[79] Government Code section 8610(b) states: "Counties, cities and counties, and cities ***may*** enact ordinances and resolutions and either establish rules and regulations or authorize disaster councils to recommend to the director of the local emergency organization rules and regulations for dealing with local emergencies that can be adequately dealt with locally; and further may act to carry out mutual aid on a voluntary basis and, to this end, may enter into agreements."[80] Government Code section 8610 further states that if a disaster council is established, it "shall develop plans for meeting any condition constituting a local emergency or state of emergency, including, but not limited to, earthquakes, natural or manmade disasters specific to that jurisdiction, or state of war emergency; those plans shall provide for the effective mobilization of all of the resources within the political subdivision, both public and private."[81]

The disaster council is then required to supply a copy of its emergency plan to Cal OES.[82] Cal OES is required to review ten emergency plans per year, prioritizing plans submitted by counties in high risk wildfire disaster areas, to determine if the emergency plan substantially conforms to or exceeds the recommendations described in FEMA's Comprehensive Preparedness Guide 101, or other successor emergency operations

[76] Government Code sections 8560(b), 8568, as added by Statutes 1970, chapter 1454.

[77] Government Code section 8557(a), as last amended by Statutes 2021, chapter 597.

[78] Government Code section 8569, as added by Statutes 1970, chapter 1454.

[79] Government Code sections 8610-8614, as last amended by Statutes 2022, chapter 239.

[80] Government Code section 8610(b), as last amended by Statutes 2020, chapter 254, emphasis added.

[81] Government Code section 8610(a), as last amended by Statutes 2020, chapter 254.

[82] Government Code section 8610(a), as last amended by Statutes 2020, chapter 254.

planning guidance.[83] Government Code section 8612 further states that "any disaster council that both agrees to follow the rules and regulations established by the Office of Emergency Services pursuant to Section 8585.5 [agreeing to comply with the Emergency Services Act] and substantially complies with those rules and regulations shall be certified by the office."[84] Disaster councils may be accredited following Cal OES's review of the county or city disaster council emergency ordinance, disaster service workers volunteer resolution, and a resolution agreeing to abide by the Master Mutual Aid Agreement.[85]

All 58 counties and most cities in California have accredited disaster councils as of July 15, 2024 (all cities listed, except for the Cities of Point Arena, Yountville, Truckee, Jurupa Valley, Citrus Heights, Rancho Cordova, and Lathrop).[86]

b. The California Disaster Assistance Act (CDAA)

In 1974, the Legislature enacted the California Disaster Assistance Act (CDAA) to provide state financial assistance to eligible local agencies that apply for grant funds to help pay for the costs of emergency response and recovery projects following a disaster.[87] "Disaster" is defined as a "fire, flood, storm, tidal wave, earthquake, or other similar public calamity resulting from natural causes or in the case of fire which the Governor determines presents a threat to public safety, by man-made causes."[88] State financial assistance under the CDAA is available if the Governor proclaims a state of emergency and activates the Act.[89] The CDAA and its regulations define the

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[83] Government Code section 8610(c), as last amended by Statutes 2020, chapter 254.

[84] Government Code section 8612, as last amended by Statutes 2013, chapter 352; California Code of Regulations, title 19, section 2571.

[85] Exhibit H (3), Cal OES Disaster Council Accreditation, page 2.

[86] Exhibit H (8), Cal OES Number of Accredited Disaster Councils as of July 2024, pages 5, 6, 7, 8. For example, this document shows that the City of Lathrop has not yet been accredited, has not submitted a disaster council ordinance, and has not submitted an adopted mutual aid resolution. However, the City of Lathrop does have an Emergency Preparedness division, https://www.ci.lathrop.ca.us/city-manager/page/emergency-preparedness (accessed on January 22, 2026), which states that the City coordinates emergency plans and responses with Cal OES and San Joaquin County OES.

[87] Government Code sections 8680-8692, added by Statutes 1974, chapter 290; California Code of Regulations, title 19, sections 2900 et seq.

[88] Government Code section 8680.3; see also, California Code of Regulations, title 19, section 2900(f).

[89] Government Code section 8685.2; California Code of Regulations, title 19, section 2970.

emergency response and recovery costs eligible for state financial assistance.[90] Direct costs including extraordinary personnel costs (excluding the normal hourly wage costs of regularly assigned emergency services and public safety personnel), equipment costs, and the cost of supplies and materials are eligible for state assistance under the CDAA.[91] Indirect and administrative costs are also eligible for reimbursement.[92] If the application is approved, state funds can be applied to the following *response* activities:

- emergency response work to save lives, protect public health and safety, and to protect property (Cal. Code Regs., tit. 19, § 2920);
- debris removal (Cal. Code Regs., tit. 19, § 2925); and
- emergency protective measures that include emergency flood and levee control, emergency protection of structures and other public works (Cal. Code Regs., tit. 19, § 2930).

State funds can also be applied to the following *recovery* activities:

- permanent repair, restoration, or replacement of public facilities (Cal. Code Regs., tit. 19, § 2940);
- permanent repair, restoration, or replacement of streets, roads, and bridges (Cal. Code Regs., tit. 19, § 2945);
- permanent repair, restoration, or replacement of dikes, levees, and flood control works (Cal. Code Regs., tit. 19, § 2950);
- permanent repair or replacement of public buildings (Cal. Code Regs., tit. 19, § 2955);
- permanent repair or replacement of water, power, or sewage facilities (Cal. Code Regs., tit. 19, § 2960); and
- other projects to repair or replace parks and recreational facilities, district roads and access facilities, or costs associated with temporary facilities (Cal. Code Regs., tit. 19, § 2965).

Local agencies are expected to first seek federal funding and to exhaust federal appeal rights before seeking state funding under the CDAA.[93] No state assistance will be provided if the local agency has, through its own negligence, failed to pursue maximum federal participation in funding projects.[94] Furthermore, except as expressly specified in

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[90] Government Code sections 8680.4, 8685; California Code of Regulations, title 19, sections 2920-2965.

[91] Government Code section 8685(a); California Code of Regulations, title 19, section 2910(a)-(g).

[92] California Code of Regulations, title 19, section 2910(g).

[93] California Code of Regulations, title 19, section 2910(a).

[94] California Code of Regulations, title 19, section 2910(a).

statute, the state share of project funds shall be no more than "75 percent of total state eligible costs."[95] Thus, under the CDAA, the local agency share of costs is 25 percent of total state eligible costs. If federal disaster funds become available, the federal funds are deducted from the total state share.[96] For example, if the federal government funds 75 percent of the eligible costs, the state's share of costs would be 18 percent (75% of the remaining 25%) and the local agency's share of costs would be six percent (25% of the remaining 25%).

Factors considered when determining whether funding under the CDAA should be provided include the "[a]ctivation of Emergency Operations Plan . . ."[97]

c. Standardized Emergency Management System (SEMS), which incorporates the California Animal Response Emergency System (CARES)

In 1992, Government Code section 8607 required Cal OES, in coordination with interested state and local agencies, to establish by regulation a standardized emergency management system, or SEMS, for use by all emergency response agencies for all emergencies or disasters referenced in the state emergency plan.[98] The regulations became operative on September 2, 1994, and bring together several preexisting emergency response systems, including the operational area concept and provisions from the Master Mutual Aid Agreement.[99] SEMS is intended to standardize response to emergencies involving multiple jurisdictions or multiple agencies. In 2006, the Governor issued an executive order requiring Cal OES to integrate the federal emergency system, National Incident Management System (NIMS), into the state's emergency management system.[100] The programs are described as follows:

> California's emergency response system, which is known as the Standardized Emergency Management System (SEMS) mirrors the federal government's National Incident Management System (NIMS). The Federal Emergency Management Agency (FEMA) manages the federal

[95] Government Code section 8686; California Code of Regulations, title 19, section 2970(e).

[96] Government Code section 8686.2.

[97] Exhibit H (5), Cal OES Fact Sheet, CDAA Process, page 3.

[98] Statutes 1992, chapter 1069, and last amended by Statutes 2022, chapter 28.

[99] California Code of Regulations, title 19, sections 2400-2450. Section 2401 states "These regulations establish the Standardized Emergency Management System (SEMS) based upon the Incident Command System (ICS) adapted from the system originally developed by the Firefighting Resources of California Organized for Potential Emergencies (FIRESCOPE) program including those currently in use by state agencies, the Multi-Agency Coordination System (MACS) as developed by FIRESCOPE program, the operational area concept, and the Master Mutual Aid Agreement and related mutual aid systems."

[100] Exhibit H (16), Governor Executive Order S-2-05.

> system, which is the nation's comprehensive approach to emergency management and applies to all levels of government, including cities, counties, and states. Under the State's emergency management system, local governments, which include cities, counties, and special districts are primarily responsible for emergency response. As Figure 1 demonstrates, when a natural disaster exceeds a local government's capacity to manage it, the local government may request assistance from the next level up in the emergency management system.[101]

Under the SEMS program, local governments are the first responders and are required to manage and coordinate the overall emergency response and recovery activities in their jurisdictions.[102] Cities are responsible for emergency response within their boundaries and counties are responsible for emergency response in unincorporated areas and as operational area emergency management staff.[103] All local governments are responsible for coordinating with other local governments, the field response level, and the operational area. Local governments are also responsible for providing mutual aid within their capabilities and can request assistance from the next level up in the emergency management system when a disaster exceeds a local government's capacity to manage it.[104] Mutual aid under the SEMS program is described as follows:

> The basic concept provides that within the operational area, adjacent or neighboring law enforcement agencies will assist each other. Should the event require assistance from outside the county, the region will provide requested assistance to the impacted county. If the combined resources of the region are insufficient to cope with the incident, the Regional Coordinator contacts the Cal OES Law Enforcement Branch for coordination of resources. A similar plan exists for Coroner and Search and Rescue Mutual Aid.[105]

State agencies are required to use SEMS to coordinate multiple jurisdiction or multiple agency emergency and disaster operations.[106]

Local agencies, on the other hand, are required to use SEMS in order to continue to be eligible for state funding under the CDAA for response-related *personnel* costs related to emergency work, debris removal, and emergency protective measures pursuant to

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[101] Exhibit H (2), BSA Audit 2019, page 13.

[102] Exhibit H (21), SEMS Guidelines, Part I, Local Government Level, page 3.

[103] Exhibit H (21), SEMS Guidelines, Part I, Local Government Level, pages 3-4.

[104] Exhibit H (21), SEMS Guidelines, Part I, Local Government Level, page 4; Exhibit H (2), BSA Audit 2019, page 13.

[105] Exhibit H (7), Cal OES Mutual Aid System, page 2.

[106] Government Code section 8607(d), as last amended by Statutes 2022, chapter 28; California Code of Regulations, title 19, sections 2401, 2443(a).

sections 2920, 2925, and 2930 of the Cal OES regulations.[107] Non-participating local agencies could still be eligible to receive funding for repair, renovation, or other *non-personnel* costs resulting from an emergency.[108]

Participating local governments are required to include the use of SEMS in their emergency plans and procedures: "Local governments, operational areas, and state agencies shall include the use of SEMS in emergency plans and procedures . . ."[109]

On March 29, 2006, the Commission adopted a statement of decision, finding that the SEMS program in Government Code section 8607 and the regulations adopted by Cal OES (Code of Regs., tit. 19, §§ 2400-2450) do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution based on the California Supreme Court's 2003 decision in *Kern High School Dist.* (2003) 30 Cal.4th 727, and other cases, since the requirements were triggered by local discretionary decisions to participate in the program to receive response-related personnel costs as follows (with footnotes omitted):[110]

> The claimant concedes that Government Code section 8607, subdivision (e), and the corresponding regulations appear voluntary on its face. But the claimant contends that the "financial penalties" imposed for noncompliance with SEMS makes the program mandatory. The claimant states that the "initial decision" to participate in the program creates the "financial penalties." A similar argument was raised by the school districts in *Kern High School Dist*., and rejected by the court based on the facts of the case.
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> In *Kern High School Dist*., the school districts urged the court to define "state mandate" broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a broad construction to the definition of a federal mandate in the case of *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74, where the state's failure to comply with federal legislation that extended mandatory coverage under the state's unemployment insurance law would result in California businesses facing "a new and serious penalty – full, double unemployment taxation by both state and federal governments." Although the court in

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[107] Government Code section 8607(e), as last amended by Statutes 2022, chapter 28; California Code of Regulations, title 19, sections 2401, 2443(a).

[108] Government Code section 8607(e)(2); California Code of Regulations, title 19. sections 2401, 2443.

[109] California Code of Regulations, title 19, section 2445.

[110] Exhibit H (12), Commission on State Mandates, Proposed Test Claim Statement of Decision, *Standardized Emergency Management System (SEMS)*, 03-RC-4506-01 (CSM-4506); Exhibit H (11), Commission on State Mandates, Adopted Minutes, March 29, 2006 Hearing, pages 4-7.

Kern High School Dist. declined to apply the reasoning in *City of Sacramento* that a state mandate may be found in the absence of strict legal compulsion, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies – the court stated: "In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds."

However, the court in *Kern High School Dist*. found that the facts before it failed to amount to such a "de facto" mandate. The court concluded that:

> [T]he circumstances presented in the case before us do not constitute the type of nonlegal compulsion that reasonably could constitute, in claimants' phrasing, a "de facto" reimbursable state mandate. Contrary to the situation that we described in City of Sacramento … a claimant that elects to discontinue participation in one of the programs here at issue does not face "certain and severe … penalties" such as "double … taxation" or other "draconian" consequences … but simply must adjust to the withdrawal of grant money along with the lifting of program obligations. Such circumstances do not constitute a reimbursable state mandate for purposes of article XIII B, section 6. [Fn. omitted.]

The court reasoned as follows:

> Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstances that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's decision whether to continue its participation in the modified program any less voluntary.

The court's reasoning applies to this case. If a local agency decides not to participate in SEMS, or elects to discontinue participation in the program, the agency does not face "certain and severe penalties" such as "double taxation" or other "draconian measures." It simply loses its right to apply for state funding to assist the local agency in paying for its response-related *personnel* costs. The agency would still be eligible to receive funding for repair, renovation, or other non-personnel costs resulting from an emergency.

In this respect, the claimant states that "[w]e would agree that the impact of the forfeiture in comparison to the overall cost recovery *could* be small

… [h]owever, the dollars for disaster response personnel costs could be large." (Emphasis in original.) There is no evidence in the law or in the record, however, that the reduced funding amounts to a "certain and severe" penalty imposed on a local agency. As stated by the California Supreme Court, "[a]lthough it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program . . . the circumstances that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's decision whether to continue its participation in the modified program any less voluntary." [Fn. omitted.] Rather, the courts have continued to find that the Legislature's decision to withdraw or reduce state funding previously available to local agencies does not violate the purpose behind article XIII B, section 6 and, thus, does not, in itself, constitute a reimbursable state mandate.

Finally, the claimant argues that *if* the Legislature intended SEMS to be voluntary, then the Legislature would not have required counties to be responsible for the "middle cog of the process" at the operational level of SEMS. The claimant contends that "[t]he County is required to be an integral part of the process." The Commission disagrees with this argument. The test claim statute, Government Code section 8607, provides that SEMS must include "the operational area concept, as defined in [Government Code] Section 8559." Government Code section 8559 was enacted in 1970 (and derives from the 1943 California Disaster Act in the Military and Veterans Code). Section 8559 defines an "operational area" as "an intermediate level of the state emergency services organization, consisting of a county and all political subdivisions within the county area." OES included the operational area concept in SEMS when it adopted the regulations to implement the program. The "operational area level" of SEMS is defined in section 2409 of the OES regulations to mean "an intermediate level of the state emergency services organization, consisting of a county and all political subdivisions within the county area." The regulation also states that "each county geographic area is designated as an operational area." The regulation, however, recognizes that a local agency's participation in the SEMS program is not mandatory with the language in subdivision (c), which expressly states that "[t]he operational area authority and responsibility under SEMS *shall not be affected by non-participation of any local government(s) within the operational area*." (Emphasis added.)

Therefore, the Commission finds that Government Code section 8607 and the SEMS regulations adopted by OES (Code of Regs., tit. 19, §§ 2400-

2450) do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[111]

In 2007, the Los Angeles County Superior Court upheld the Commission's decision, finding that:

> The decision by the Commission on State Mandates is correct because the County of San Bernardino is not mandated, by either the statute or SEMS, to provide any particular level of disaster prevention or relief to its residents. The County may either obtain additional funding from the state or federal government by implementing SEMS, or it may elect not do so and provide only the level of disaster preparedness and relief that it can afford to provide without such funding. Under such circumstances, the legislature is not required to reimburse the County for the expense, if any, of implementing SEMS. DEPARTMENT OF FINANCE V. COMMISSION ON STATE MANDATES 30 Cal.4th 727 (2003).[112]

The court's decision was not appealed.

In 2006, the Legislature added section 8608 to the Government Code to require Cal OES to approve and adopt, and to incorporate into SEMS, the California Animal Response Emergency System (or CARES), which was developed under the oversight of the Department of Food and Agriculture.[113] The purpose of the bill was described as follows:

> According to the author's office, one of the lessons of Hurricane Katrina is that there must be a plan in place for the evacuation of companion animals and livestock. In California, with the ever-present threat of fire, flood and earthquake, it is incumbent upon state policymakers to ensure that state and local governments have taken the necessary steps to protect animals, as well as their owners, in the event of disaster.
>
> Further, the author states that a common hindrance to efficient evacuations is the reluctance of potential evacuees to abandon their animals. This reluctance shows rescue efforts and puts both rescuers and disaster victims at further risk. According to a 2001 study of Yuba County following the 1997 storms of El Nino, 80% of the people who re-entered the evacuated area did so to rescue their pets. Emergency management

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[111] Exhibit H (12), Commission on State Mandates, Proposed Test Claim Statement of Decision, *Standardized Emergency Management System (SEMS),* 03-RC-4506-01 (CSM-4506), pages 20-22.

[112] Exhibit H (17), Los Angeles County Superior Court Minute Order and Judgment Denying Petition for Writ of Mandate, SEMS.

[113] Statutes 2006, chapter 604.

cannot disregard the consequences, for rescuers and victims alike, of ignoring animals in disaster planning.[114]

Thus, during a disaster, local agencies manage animal response using SEMS and if local resources are exhausted, local agencies request help through Cal OES. Under the state's emergency plan, the CARES unit at CDFA then provides operation guidance to assist with all aspects of animal care in the event of a disaster or emergency with the assistance of other agencies and volunteer organizations under the SEMS program.[115]

3. Required Updates to and Review of *County* Emergency Plans.

In recent years, legislation has been enacted to address county local emergency plans following a 2019 audit by the Bureau of State Audits (BSA), which found the following:

- The California's Emergency Services Act does not require local jurisdictions to develop emergency plans. However, FEMA states that leaders in jurisdictions are responsible for taking necessary and appropriate actions to protect people from threats and hazards, which would include natural disasters.[116] In addition, inadequate plans and insufficient planning are proven contributors to failure and deficiencies in a county's efforts to prepare for a natural disaster and can impair its ability to respond when the disaster occurs.[117]
- Three counties audited did not follow key emergency practices.[118]

  "The State's emergency management system designates local governments – such as counties – primarily responsible for emergency preparedness and response. In that role, the local governments should develop emergency response plans (emergency plans) that adequately prepare them to protect all residents, including the most vulnerable. We reviewed the extent to which three counties' – Butte County (Butte), Sonoma County (Sonoma), and Ventura County (Ventura) – emergency planning incorporated best practices and the effect that not following those best practices had on their responses to recent wildfires. We determined that the counties have not adequately followed key practices for emergency planning, including having emergency plans for alerting, evacuating, and sheltering residents and assessing the needs of their communities in advance of disaster events. As a result, the counties are less prepared for future

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[114] Exhibit H (1), Assembly Floor Analysis on Assembly Bill 450, Concurrence in Senate Amendments, August 22, 2006, (2006-2007 Reg. Sess.), pages 1-2.

[115] Exhibit H (10), California Department of Food and Agriculture, CARES, page 1.

[116] Exhibit H (2), BSA Audit 2019, page 21.

[117] Exhibit H (2), BSA Audit 2019, page 8.

[118] Exhibit H (2), BSA Audit 2019, pages 21-22.

natural disasters, which may place the residents for whom they are responsible at greater risk of harm."[119]

BSA recommended that:

- The Legislature should require Cal OES to review all counties' emergency plans to determine if they are consistent with best practices and provide necessary technical assistance to counties.
- The Legislature should require Cal OES to involve organizations representing individuals with a variety of access and functional needs in the development of the state emergency plan and guidance for local jurisdictions and to annually disseminate guidance based on lessons learned from natural disasters.
- Each county should revise its emergency plan by following best practices for planning to meet the access and functional needs of its residents, including involving people with those needs in its planning process and developing strategies for alerting, evacuating, and sheltering them.
- Cal OES should issue the guidance related to access and functional needs to local jurisdictions that state law requires it to produce.[120]

In 2020, the Legislature added section 8593.9 to require Cal OES to develop best practices for counties developing and updating county emergency plans, and to develop a process for a county to request the office to review its emergency plan.[121] Cal OES is required to provide technical assistance and feedback regarding the sufficiency of the county's emergency plan with the following elements:

(1) Whether the plan is consistent with the office's proposed best practices.

(2) Whether the plan protects and accommodates vulnerable populations during natural disasters.

(3) Whether the plan has established procedures for alerting, evacuating, and sheltering individuals during an emergency.

(4) Any other necessary and appropriate element, as determined by the office.[122]

Cal OES issued "Best Practices for County Emergency Plans" in November 2021. The document defines "best practices for county emergency plans" as "methods or techniques which have generally been accepted by diverse groups of professionals and practitioners well-versed in emergency management as superior to any alternatives because it produces results that are prescribed as being correct or most effective or has

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[119] Exhibit H (2), BSA Audit 2019, page 7.

[120] Exhibit H (2), BSA Audit 2019, pages 10-11.

[121] Government Code section 8593.9, as added by Statutes 2020, chapter 257.

[122] Government Code section 8593.9(b), as added by Statutes 2020, chapter 257.

become a standard way of doing things."[123] Cal OES' best practices include the following:

- "It is a California best practice for each county to have a current emergency plan for the county's response to emergencies and disasters. This plan should be capable of execution during both emergency and non-emergency situations, such as pre-planned special events, with inter-agency coordination."[124]
- "It is a California best practice for county emergency planners to reference leading national, federal, state, and industry standards when planning for disasters. . . . *Is the county's emergency plan consistent with FEMA's Comprehensive Preparedness Guide 101*?"[125]
- "It is a California best practice for the county's emergency plan to be reviewed and updated regularly."[126]
- "It is a California best practice for counties to have a Care and Shelter plan as an annex to the county's emergency plan, or as a separate standalone document. The plan should detail the plans and procedures to ensure consistency of approach towards shelter management. [Fn. omitted.] The existing shelter inventory should identify shelter sites that have backup generation capabilities for future de-energization events.""[127] Shelter plans should provide services for populations with disabilities; for example, by "allowing service animals inside shelters."[128] The document further notes that some jurisdictions have delegated the responsibility of shelter operations to the American Red Cross.[129]
- Counties should identify best methods of supporting pet populations.[130]

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[123] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 4.

[124] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 11.

[125] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 15.

[126] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 24.

[127] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 67.

[128] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 68.

[129] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 67.

[130] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 69.

- "It is a California best practice for counties to pre-identify facilities which meet minimum standards and can be used as evacuation shelters."[131]

Effective January 1, 2020, the Legislature added section 8593.3.5. to the Government Code, requiring counties, upon their next update to their emergency plans, to integrate cultural competence into the plan by addressing how culturally diverse communities are served by several services, including "emergency evacuation and sheltering" services.[132]

In 2021, the Legislature added section 8593.3.2. to require counties to send a copy of their emergency plans to Cal OES on or before March 1, 2022, and upon any update to the plan after that date. The statute requires that on or before January 1, 2023, Cal OES is required to conduct a review of the emergency plans of at least ten counties that are of high risk for natural disasters. On or before January 1, 2024, and annually thereafter, Cal OES is required to conduct a review of the emergency plans of at least ten counties. And on or before January 1, 2028, Cal OES shall conduct a review of the emergency plan of each county.[133] The review covers the following:

- Whether the plan substantially conforms to or exceeds the recommendations in the Federal Emergency Management Agency Comprehensive Preparedness Guide 101 (Gov. Code 8610(c)(2).)
- Whether the plan is consistent with Cal OES proposed best practices (Gov. Code 8593.9(b)(1).)
- Whether the plan protects and accommodates vulnerable populations during natural disasters. (Gov. Code 8593.9(b)(2).)
- Whether the plan has established procedures for alerting, evacuating, and sheltering individuals during an emergency. (Gov. Code 8593.9(b)(3).
- The status of the county emergency alert system, including the different alerting systems used and the number of individuals signed up for each system. (Government Code section 8593.3.2.(b)(1).).
- Evacuation routes and plans and shelter-in-place plans, including preparations for evacuating or caring for individuals with access and functional needs. (Gov. Code 8593.3.2(b)(2).)

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[131] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 71.

[132] Government Code section 8593.3.5(a) (Stats. 2019, ch. 402). "Cultural competence" is defined as "the ability to understand, value, communicate with, and effectively interact with people across cultures in order to ensure that the needs of all community members are addressed, with priority given to "culturally diverse communities." "Cultural competence" includes, but is not limited to, being respectful and responsive to the cultural and linguistic needs of diverse population groups." (Gov. Code, § 8593.3.5(c).)

[133] Government Code section 8583.3.2, added by Statutes 2021, chapter 744.

- Efforts at community outreach to prepare communities and individuals to take action in the event of an emergency or a disaster. (Gov. Code 8593.3.2(b)(4).)
- Plans to ensure the health and safety of citizens during power outages. (Gov. Code 8593.3.2(b)(5).)
- Any other necessary and appropriate element, as determined by Cal OES. (Gov. Code 8593.9(b)(4).)[134]

Cal OES also states that its review of county emergency plans includes a review for alignment with SEMS and the federal NIMS program, which is met by following FEMA's Comprehensive Preparedness Guide 101.[135]

Counties are required by Government Code section 8593.3.2 to develop and revise their emergency plans to address the issues that Cal OES identifies in its review.[136]

4. Requirements for Counties to Establish Public Respite Facilities During Weather-Related Events and Cal OES' 2022 Extreme Temperature Response Plan and Guidance for Local Governments to Manage Extreme Temperatures by Providing Cooling and Warming Facilities to Accommodate Individuals with Domestic Pets.

In 2021, the Legislature added 8593.25 to require counties, in advance of the next update to their emergency plans, to establish criteria, locations, and measurements of effectiveness for public respite facilities during poor air quality and other weather-related events.[137]

As last amended in 2022, Government Code section 8593.3 requires counties, upon the next update to their emergency plans and as part of the required integration of access and functional needs populations into county emergency plans,[138] to:

- Identify emergency evacuation procedures that ensure that local community resilience centers are prepared to serve communitywide assets during extreme heat events and other disasters, and designate available locations to provide respite to individuals during emergencies including during extreme heat and

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[134] Exhibit H (6), Cal OES Fact Sheet, Updates to County Emergency Plan Legislation, page 4.

[135] Exhibit H (6), Cal OES Fact Sheet, Updates to County Emergency Plan Legislation, page 5.

[136] Government Code section 8593.3.2(d).

[137] Government Code section 8593.25, as added by Statutes 2021, chapter 412.

[138] Government Code section 8593.3(f)(1) defines "Access and functional needs population" as "individuals who have developmental or intellectual disabilities, physical disabilities, chronic conditions, injuries, limited English proficiency or who are non-English speaking, older adults, children, people living in institutionalized settings, or those who are low income, homeless, or transportation disadvantaged, including, but not limited to, those who are dependent on public transit or those who are pregnant."

cold.[139] "Local community resilience center" is defined to mean "a hydration station, cooling center, clean air center, respite center, community evacuation and emergency response center, or similar facility established to mitigate the public health impacts of extreme heat and other emergency situations exacerbated by climate change, such as wildfire, power outages, or flooding, on local populations."[140]

In 2022, Cal OES issued its Extreme Temperature Response Plan as an annex to the State Emergency Plan, which includes guidance and best practices for local governments to manage extreme temperatures.[141] The plan recognizes the need to:

- Communicate and coordinate between state agencies and local government.
- Mobilize resources and initiate actions in advance of local requests.
- Support the local government's actions according to SEMS.[142]

The plan recognizes three phases of activation: Phase I is seasonal readiness, Phase II is heat or cold/freeze alert, and Phase III is heat or cold/freeze warning. These phases are activated based on the severity of the risk and "considers individuals who are at greater risk for serious illness from extreme temperatures, individuals with an access or functional need, the general population, as well as animals and livestock."[143]

The importance of coordination and communication between levels of government through SEMS in an extreme temperature event is explained in the plan as follows:

> All state actions should be coordinated with the affected local governments through the affected regions, and the local coordination links used by key state departments/agencies. It is essential that the affected local governments and all the key state departments/agencies are informed of actions taken during Phase II and Phase II by the state. It is equally important for the state to be apprised of local actions. These communications are facilitated through the Standardized Emergency Management System (SEMS) functions, the affected regions, activated EOCs, Cal EOC reports (online) oat the region and SOC, and by phone calls, texts, and various other notifications to constituents.[144]

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[139] Government Code section 8593.3(a), as last amended by Statutes 2022, chapter 247. The requirements in section 8593.3(a) are imposed on "A county, including a city and county" and the only consolidated city and county in California is the City and County of San Francisco.

[140] Government Code section 8593.3(f)(3), as last amended by Statutes 2022, chapter 247.

[141] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 7.

[142] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 7.

[143] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 8.

[144] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 27.

State actions considered during extreme temperature events include identifying state assets that can be used as cooling or warming centers and opening and staffing these centers.[145]

The local guidelines and best practices are attached as Appendix B to the State's Extreme Temperature Response Plan, which is introduced as follows:

> This plan recognizes that local agencies may have a system for managing extreme temperatures. It also recognizes that those systems should be consistent with SEMS. It is the intent of this guidance to provide a tool to further assist local efforts and to better coordinate with efforts initiated by state departments/agencies. The guidance is intended to be flexible to fit unique community needs.[146]

The guidelines include recommendations for local government cooling or warming centers to accommodate individuals with domestic pets, as follows:

- Ensure during phase I, the seasonal readiness stage, that the facilities identified for cooling or warming centers will be available, and identify the services provided in these facilities to accommodate individuals with disabilities, service animals, and domestic pets.[147]
- Activate local extreme temperature response plans during phase II, the heat or cold/freeze alert stage, identify cooling or warming centers, work with volunteer groups to identify additional cooling centers that are ADA compliant and may be needed, and coordinate planning with local transportation providers.[148] Local government may also request mutual aid through SEMS.[149]
- During phase III, the heat or cold/freeze warning stage, monitor and determine the need for additional warming or cooling centers and resources as needed, coordinate with neighboring jurisdictions and Cal OES, and "[e]nsure impacts to pets and animals due to extreme temperatures are addressed at cooling/warming centers."[150]

The guidelines also list as "critical information" during an extreme weather event, cooling and warming center locations, times of operation, and instructions.[151]

The plan explains that extraordinary emergency costs, such as personnel or equipment rental, incurred by local government in response to an extreme temperature-related

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[145] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 34.

[146] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 73.

[147] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 76.

[148] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 78.

[149] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 79.

[150] Exhibit H (4), Cal OES Extreme Temperature Response Plan, pages 80-81.

[151] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 35.

disaster may potentially be recovered on a cost share basis under the CDAA and the federal Stafford Act (which is explained in the next section) if the Governor proclaims a state of emergency and requests a declaration of a major disaster.[152] Eligible costs may include establishing and staffing cooling and warming centers as follows:

> Extraordinary emergency costs (such as overtime or equipment rental) incurred by local government in response to an extreme temperature-related disaster may potentially be recovered (on a cost share basis) under the California Disaster Assistance Act (CDAA) when the Governor has proclaimed a State of Emergency. Eligible costs may include the extra costs related to establishing cooling or warming centers, staffing the EOCs, renting generators, air conditions, or heaters for the emergency sheltering effort, emergency public information costs, fatality management costs, and overtime costs for police, fire/rescue, and medical activities directly related to extreme temperatures. Additionally, funding can be provided (on a cost-share basis) to repair publicly owned facilities or infrastructure if damaged by the extreme temperatures. This includes damaged transformers and other electrical equipment owned by a public utility.
>
> If the response and repair costs meet federal thresholds, the Governor may request, through FEMA, a Presidential Declaration of a Major Disaster, opening federal funds for these same applications under the Stafford Act. The federal Emergency Repair Program of Federal Highways Administration may be independently activated so highways in the Federal Aid System can be covered for heat or cold damage.[153]

B. Federal Disaster Relief Under the Stafford Act; the 2006 PETS Act, which Requires FEMA to Ensure that State and Local Emergency Preparedness Operational Plans Address the Needs of Individuals with Household Pets Prior to, During, and Following a Major Disaster or Emergency; Federal Grant Funds for the Development of Local Emergency Plans; and FEMA's 2010 Comprehensive Preparedness Guide.

1. Federal Public Assistance Under the Stafford Act Following Major Disaster and Emergency Declarations.

In 1988, Congress passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), which authorizes the President to issue major disaster and emergency declarations that activate federal assistance to states and local governments.[154] Congress enacted the Stafford Act to "provide an orderly and continuing means of assistance by the Federal Government to State and local

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[152] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 37.

[153] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 37.

[154] United States Code, title 42, section 5121 et seq.; Code of Federal Regulations, title 44, Subpart B.

governments to carry out their responsibilities to alleviate the suffering and damage which result from such disasters" by "achieving greater coordination and responsiveness of disaster preparedness and relief programs" and "encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments."[155]

The Act provides that upon request from the governor of a state affected by a major disaster requiring federal assistance, the President may declare that a major disaster or emergency exists.[156] The request shall include confirmation that the governor has taken appropriate action under state law and directed the execution of the state emergency plan.[157] "State Emergency Plan" is defined in FEMA regulations to mean the "plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance."[158] Federal regulations further require states to set forth in their emergency plans all responsibilities and actions specified in federal law that are required of the state and its political subdivisions to prepare for and respond to major disasters and emergencies and to facilitate the delivery of federal disaster assistance.[159]

Factors considered when evaluating a governor's request for a major disaster declaration include the estimated cost of the assistance, localized impacts, insurance coverage in force or should have been in force as required by law, hazard mitigation and the extent to which state and local government measures contributed to the reduction of disaster damages, and any recent disasters.[160] The Governor shall also furnish information on the nature and amount of state and local resources which have been or will be committed to alleviating the results of the disaster and shall certify that, for the current disaster, state and local government obligations and expenditures will comply with all applicable cost sharing requirements of the Stafford Act.[161]

The President can thereafter direct any federal agency to utilize its resources granted to it under federal law in support of state and local assistance efforts and assist state and local governments in the distribution of medicine, food, and other consumable supplies

[155] United States Code, title 42, section 5121(b).

[156] United States Code, title 42, section 5170.

[157] Code of Federal Regulations, title 44, sections 206.35(c), 206.36(c).

[158] Code of Federal Regulations, title 44, section 206.2(a)(24).

[159] Code of Federal Regulations, title 44, section 206.4.

[160] Code of Federal Regulations, title 44, section 206.48(a).

[161] United States Code, title 42, section 5170(a).

and emergency assistance.[162] The federal share of assistance shall be "not less than 75 percent of the eligible cost of such assistance."[163]

a. <u>The Federal Public Assistance Program.</u>

The federal Public Assistance (PA) Program is FEMA's largest grant program under the Stafford Act providing funds of not less than 75 percent of the eligible costs to assist communities responding to and recovering from major disasters or emergencies declared by the President.[164] The program provides funding for state and local governments for emergency assistance to save lives and protect property and assists with funding for permanently restoring community infrastructure affected by a federally declared incident.

FEMA's 2021 report to Congress on its Public Assistance Program states that public assistance has been authorized in every county and municipality in the United States:

> The Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program is central to contemporary U.S. federal emergency and disaster relief. Over the past 10 years, PA has been authorized in every county, parish, and municipality in the United States. The reconstruction of entire infrastructure systems following Hurricane Katrina, mass evacuations ahead of California wildfires, and emergency medical care during the Coronavirus Disease 2019 (COVID-19) pandemic were all funded through PA.[165]

FEMA publishes a "Public Assistance Program and Policy Guide" (PAPPG), which "provides a robust and streamlined guide for evaluating eligibility under the public assistance program."[166] The claimant has submitted the fifth version of the PAPPG for incidents declared on or after January 6, 2025.[167] As relevant here, projects that are eligible for federal funding under the Public Assistance Program include:

- Use of equipment, such as buses, trucks, or other vehicles (including accessible vehicles) to provide one-time transportation to evacuate survivors and their household pets and service and assistance animals to evacuation facilities or emergency shelters from pre-established pick-up locations. This includes

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[162] United States Code, title 42, sections 5170a and 5170b.

[163] United States Code, title 42, section 5170b(b); Code of Federal Regulations, title 44, section 206.47(a).

[164] Exhibit A, Test Claim, page 72.

[165] Exhibit H (15), FEMA's Public Assistance Program: A Primer and Considerations for Congress, page 1.

[166] Exhibit A, Test Claim, page 38.

[167] Exhibit A, Test Claim, pages 36 et al.

standby time for drivers and contracted equipment while waiting to transport survivors.[168]

- Tracking of evacuees, household pets, service animals, luggage, and durable medical equipment. This includes the use of animal microchips GPS tags, and other electronic means for the purpose of tracking and reunification of evacuated animals.[169]
- The following "congregate shelter costs:"
    - Minor facility modifications if necessary to make the facility functional as household pet shelter.[170]
    - Veterinary and animal care staff in shelters.[171]
    - Food, water, bowls for household pets.[172]
    - Medication for animal decontamination and parasite control.[173]
    - Crates, cages, leashes, and animal transport carriers.[174]
    - Animal cleaning tables and supplies.[175]
    - Shelter management.[176]
    - Supervision of paid and volunteer staff.[177]
    - Cleaning the shelter, linens, and animal crates.[178]
    - Shelter safety and security.[179]
    - Emergency medical, crisis intervention/psychological first aid, and veterinary services for household pets.[180]

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[168] Exhibit A, Test Claim, page 179.

[169] Exhibit A, Test Claim, page 179.

[170] Exhibit A, Test Claim, pages 180-181.

[171] Exhibit A, Test Claim, page 181.

[172] Exhibit A, Test Claim, page 181.

[173] Exhibit A, Test Claim, page 181.

[174] Exhibit A, Test Claim, page 182.

[175] Exhibit A, Test Claim, page 182.

[176] Exhibit A, Test Claim, page 182.

[177] Exhibit A, Test Claim, page 182.

[178] Exhibit A, Test Claim, page 182.

[179] Exhibit A, Test Claim, page 182.

[180] Exhibit A, Test Claim, pages 182-183.

As explained below, these expenses have been eligible for federal reimbursement since 2006.

b. The 2006 PETS Amendment to the Stafford Act requires FEMA to ensure that state and local emergency preparedness operational plans address the needs of individuals with household pets prior to, during, and following a major disaster or emergency.

In 2006, Congress enacted the Pets Evacuation and Transportation Standards (PETS) Act, largely in response to failures during Hurricane Katrina, when many owners would not evacuate because they did not want to leave their pets behind.[181]

The PETS Act amended the Stafford Act, effective October 10, 2006, to require FEMA, when approving standards for state and local emergency preparedness operational plans, to ensure that these plans address the needs of individuals with household pets prior to, during, and following a major disaster or emergency.[182] The PETS Act also:

- Authorizes FEMA to study and develop emergency preparedness measures designed to afford adequate protection of life and property, including "plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or emergency."[183]
- When approving essential assistance to meeting immediate threats to life and property resulting from a major disaster, federal assistance may provide rescue, care, shelter and essential needs to individuals with household pets and service animals and to such pets and animals.[184]

FEMA's Disaster Assistance Policy, issued in 2007 after the PETS legislation was enacted, identifies the expenses related to state and local governments' emergency pet evacuation and sheltering activities that may be eligible for reimbursement following a major disaster or emergency declaration. The policy defines "congregate household pet shelters" (a phrase used in the 2025 PAPPG summarized above)[185] as "[a]ny private or public facility that provides refuge to rescued household pets and the household pets of shelterees in response to a declared major disaster or emergency."[186] FEMA's 2007 Disaster Assistance Policy identifies the following expenses eligible for federal reimbursement in line with the PETS Act:

> **Household Pet Rescue.** State and local governments may conduct rescue operations for household pets directly or they may contract with

[181] Public Law No. 109-308 (Oct. 10, 2006).

[182] United States Code, title 42, section 5196b(g).

[183] United States Code, title 42, section 5196(e).

[184] United States Code, title 42, section 5170b(a)(3)(J).

[185] Exhibit A, Test Claim, page 180.

[186] Exhibit H (14), FEMA's 2007 Disaster Assistance Policy, page 2.

other providers for such services. Eligible costs include, but are not limited to, the following:

1. Overtime for regular full-time employees.
2. Regular time and overtime for contract labor (including mutual aid agreements) specifically hired to provide additional support required as a result of the disaster.
3. The use of applicant-owned or leased equipment (such as buses or other vehicles) to provide eligible pet transportation to congregate pet shelters may be reimbursed according to 44 CFR § 206.228(1)(a) (does not include operator labor). The cost of leasing equipment for this purpose may also be eligible for reimbursement.

Congregate Household Pet Sheltering. State and local governments may conduct sheltering operations for pets directly, or may contract with other sheltering providers for such services. Eligible Category B congregate sheltering costs may include, but are not limited to, the *reasonable* costs for:

1. Facilities
   - Minor modifications to buildings used for congregate household pet sheltering, if necessary to provide increased capacity for the accommodation of shelterees' household pets.
   - Facility lease or rent.
   - Increase in utility costs, such as power, water, and telephone.
   - Generator leas and operation (but not purchase).
   - Shelter safety and security.
   - Shelter management.
   - Shelter and crate/cage cleaning.
2. Supplies and Commodities. Eligible items are those needed for, and used directly on, the declared disaster, and are reasonable in both cost and need. Examples include:
   - Food, water, and bowls.
   - Crates/Cages.
   - Pet transport carriers.
   - Animal cleaning tables and supplies.

- Medication for animal decontamination and parasite control to ensure that the animal is not a health threat to humans or other animals.

3. Eligible labor. If the regular employees of an eligible applicant perform duties in direct support of congregate pet sheltering operations, any overtime pay related to such duties is eligible for reimbursement. However, the straight-time pay of these employees is not eligible. Regular-time and overtime for contract labor, including mutual aid agreements, specifically hired to provide additional support required as a result of the disaster or emergency is also eligible for reimbursement.

4. Equipment. The use of applicant-owned or leased equipment (such as buses, trucks, or other vehicles) to provide eligible pet evacuation or sheltering support may be reimbursed according to 44 44 CFR § 206.228(1)(a) (does not include operator labor). The cost of leasing equipment may also be an eligible expense for reimbursement.

5. Emergency Veterinary Services. For the purposes of screening health of household pets and service animals, and assessing and treating minor illnesses and injuries, congregate pet shelters may be staffed with emergency veterinary teams. The following costs related to the provision of emergency veterinary services in a congregate pet sheltering environment are eligible for reimbursement:

   - Veterinary diagnosis, triage, treatment, and stabilization.
   - Provision of first aid, including materials (bandages, etc.).
   - Medicine.
   - Supervision of paid and volunteer veterinary staff.
   - Vaccinations administered to protect the health and safety of congregate shelter and supporting emergency workers including but not limited to tetanus and hepatitis.
   - Vaccinations administered to protect the health and safety of congregate shelter pets for transmissible or contagious diseases including but not limited to Bordetella/kennel cough.

6. Transportation. Transportation of evacuees' household pets and service animals to congregate shelters from pre-

established pickup locations is an eligible expense when the means of transportation used is the most cost-effective available.

7. Shelter Safety and Security. Additional reimbursable safety and security services may be provided at congregate pet shelters, based upon need.

8. Cleaning and Restoration. The costs (to the Applicant) to clean, maintain, and restore a facility to pre-congregate pet shelter condition are eligible.

9. Removal and Disposal of Animal Carcasses. The costs (to the Applicant) to remove and dispose of animal carcasses in a safe and timely manner and in compliance with applicable laws and regulations are eligible.

10. Cataloging/Tracking System for Pets. The reasonable costs (to the Applicant) for tracking animals at congregate pet shelters for the purpose of reuniting them with their owners are eligible.[187]

2. Federal Grant Funding and Technical Assistance for the Development of Emergency Plans.

The Stafford Act also authorizes the President to provide technical assistance and make grants available to states and their political subdivisions for the development of emergency plans and programs for disaster preparedness and prevention on the condition that the state set forth a comprehensive and detailed state program for preparation against and assistance following emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments.[188] The stated purpose of these provisions is as follows:

> The purpose of this title is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide

[187] Exhibit H (14), FEMA's 2007 Disaster Assistance Policy, pages 3-5.

[188] United States Code, title 42, sections 5131, 5133.

necessary assistance, as authorized in this title so that a comprehensive emergency preparedness system exists for all hazards.[189]

To assist in carrying out this purpose, the Stafford Act authorizes FEMA to make financial contributions to the states for necessary and essential state and emergency preparedness personnel and administrative expenses, on the basis of approved plans "which shall be consistent with the Federal emergency response plans for emergency preparedness."[190] To obtain financial assistance, the requirements, which include the development of state and local emergency preparedness operational plans pursuant to standards approved by FEMA, are as follows:

- Provide, pursuant to state law, that the plan shall be in effect in all political subdivisions of the state and be mandatory on them and be administered or supervised by a single state agency.
- Provide that the state shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with state law.
- *Provide for the development of state and local emergency preparedness operational plans, including a catastrophic incident annex, pursuant to standards approved by FEMA.*
- Provide for the employment of a full-time emergency director, or deputy director, by the state.
- Provide that the state shall make such reports in such form and content as FEMA may require.
- Make available to duly authorized representatives of FEMA and the Comptroller General, books, records, and papers necessary to conduct audits for the purposes of this section.
- Include a plan for providing information to the public in a coordinated manner.[191]

3. FEMA's Comprehensive Preparedness Guide 101.

FEMA's Comprehensive Preparedness Guide 101 "is the foundation for state, territorial, tribal, and local emergency planning in the United States" and, thus, sets the standards for state and local emergency plans.[192] FEMA "recommends that teams responsible for developing EOPs [Emergency Operations Plans] use CPG 101 to guide their efforts. It provides a context for emergency planning in light of other existing plans and describes a universal planning process."[193]

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[189] United States Code, title 42, section 5195.

[190] United States Code, title 42, section 5196b(a).

[191] United States Code, title 42, section 5196b(b), emphasis added.

[192] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 5.

[193] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 9.

The Guide explains the importance of local emergency plans:

> Planners achieve unity of purpose through coordination and integration of plans across all levels of government, nongovernmental organizations, the private sector, and individuals and families. This supports the fundamental principle that, in many situations, emergency management and homeland security operations start at the local level and expand to include Federal, state, territorial, tribal, regional, and private sector assets as the affected jurisdiction requires additional resources and capabilities. Plans must, therefore, integrate vertically to ensure a common operational focus. Similarly, horizontal integration ensures that individual department and agency EOPs [Emergency Operations Plans] fit into the jurisdiction's plans, and that each department or agency understands, accepts, and is prepared to execute identified mission assignments. Incorporating vertical and horizontal integration into a shared planning community ensures that the sequence and scope of an operation are synchronized.[194]

As indicated above, state law requires Cal OES to review any city and county emergency plans adopted to determine if the plans comply with or exceed the recommendations in FEMA's Comprehensive Preparedness Guide 101, and further requires counties to send updated emergency plans to Cal OES for review and to revise their emergency plans to address the issues that Cal OES identifies in its review.[195]

The 2010 version of FEMA's Comprehensive Preparedness Guide 101 implements the PETS Act amendments to the Stafford Act and recognizes the following: "A key consideration is the integration of household pets and service animals into the planning process. Many individuals make decisions on whether to comply with protective action measures based on the jurisdiction's ability to address the concerns about their household pets and service animals."[196] The Guide states: "Planners should check the written plan for its conformity to applicable regulatory requirements and the standards of Federal or state agencies, as appropriate," and when conducting this review, planning for individuals with household pets "are critical to each component of the planning process."[197]

The Guide contains a section on "Incorporating Household Pets and Service Animals," which recommends that emergency plans address the following:

- Preparedness
  - Does the plan describe the partnership between the jurisdiction's emergency management agency, the animal control authority, the mass

[194] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 9.

[195] Government Code sections 8583.3.2, 8610(c)(2).

[196] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 13.

[197] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, pages 65.

care provider(s), and the owner of each proposed congregate household pet sheltering facility?

    - Does the plan have or refer to an MOA/MOU or MAA that defines the roles and responsibilities of each organization involved in household pet and service animal response?
    - Do organizations with agreed upon responsibilities in the plan have operating procedures that govern their mobilization and actions?
    - Does the plan recommend just-in-time training for spontaneous volunteers and out-of-state responders?
    - Does the plan encourage household pet owners and service animal owners to make arrangements for private accommodations for themselves and their household pets and service animals prior to a disaster or emergency situation?

- Evacuation Support
    - Does the plan address the evacuation and transportation of household pets from their homes or by their owners or those household pets rescued by responders to congregate household pet shelters?
    - Does the plan address how owners will be informed where congregate household pet shelters are located and which shelter to use?
    - Does the plan provide for the conveyance of household pets or service animals whose owners are dependent on public transportation?
    - Does the plan address how household pets that are provided with evacuation assistance are registered, documented, tracked, and reunited with their owners if they are separated during assisted evacuations? – Does the plan address the responsibility of transportation providers to transport service animals with their owners?
- Shelter Operations
    - Does the plan identify the agency responsible for coordinating shelter operations?
    - Does the plan provide guidance to human shelter operators on the admission and treatment of service animals?
    - Does the plan identify an agency in the jurisdiction that regulates nonemergency, licensed animal facilities (e.g., animal control shelters, nonprofit household pet rescue shelters, private breeding facilities, kennels)?
    - Does the plan establish criteria that can be used to expeditiously identify congregate household pet shelters and alternate facilities?

- Does the plan provide guidance about utility provisions, such as running water, adequate lighting, proper ventilation, electricity, and backup power, at congregate household pet shelters?
- Does the plan include mechanisms or processes to reduce/eliminate the risk of injury by an aggressive or frightened animal, the possibility of disease transmission, and other health risks for responders and volunteers staffing the congregate household pet shelter?
- Does the plan recommend a pre-disaster inspection and development of agreements for each congregate household pet facility? – Does the plan provide for the care and maintenance of each facility while in use as a shelter?
- Does the plan identify equipment and supplies that may be needed to operate each congregate household pet shelter, as well as supplies that household pet owners may bring with them to the congregate shelter?
- Does the plan provide for the physical security of each congregate household pet facility, including perimeter controls and security personnel?
- Does the plan provide for acceptance of donated resources (e.g., food, bedding, containers)?
- Does the plan provide for the acquisition, storage, and security of food and water supplies?
- Does the plan provide for the diverse dietary needs of household pets?

- Registration and Animal Intake
  - Does the plan establish provisions for the sheltering of unclaimed animals that cannot be immediately transferred to an animal control shelter?
  - Does the plan provide for segregation or seizure of household pets showing signs of abuse?
  - Does the plan provide for household pet registration?
  - Does the plan provide for installation and reading of microchip technology for rapid and accurate identification of household pets?
  - Does the plan provide for technical consultation/supervision by a veterinarian or veterinary technician as official responders?
  - Does the plan identify the need for all animals to have a current rabies vaccination?
  - Does the plan provide for the case when non-eligible animals are brought to the shelter?

- Animal Care
    - Does the plan provide for the housing of a variety of household pet species (e.g., size of crate/cage, temperature control, appropriate lighting)?
    - Does the plan provide for separation of household pets based on appropriate criteria and requirements?
    - Does the plan provide for the consultation of a veterinarian or animal care expert with household pet sheltering experience regarding facility setup and maintenance?
    - Does the plan provide for the setup and maintenance of household pet confinement areas (e.g., crates, cages, pens) for safety, cleanliness, and control of noise level?
    - Does the plan recommend the setup of a household pet first aid area inside each shelter?
    - Does the plan provide for the control of fleas, ticks, and other pests at each congregate household pet shelter?
    - Does the plan provide criteria for designating and safely segregating aggressive animals?
    - Does the plan provide for the segregation or quarantine of household pets to prevent the transmission of disease?
    - Does the plan recommend the relocation of a household pet to an alternate facility (e.g., veterinary clinic, animal control shelter) due to illness, injury, or aggression?
    - Does the plan recommend providing controlled areas (indoor or outdoor) for exercising dogs?
    - Does the plan provide for household pet waste and dead animal disposal?
    - Does the plan provide for the reunion of rescued animals with their owners?
    - Does the plan include mechanisms or processes to address the long-term care, permanent relocation, or disposal of unclaimed household pets?
- Public Information and Outreach
    - Does the plan provide mechanisms for continually updating public statements on shelter capacity and availability as people/animals are coming to shelters?
    - Does the plan provide for a public education program?
    - Does the plan provide for the coordination of household pet evacuation and sheltering information with the jurisdiction’s public information officer or Joint Information Center?

- Does the plan provide for communication of public information regarding shelter-in-place accommodation of household pets, if available?

- Record Keeping
  - Does the plan define the methods of pre- and post-declaration funding for the jurisdiction's household pet and service animal preparedness and emergency response program?
  - Does the plan describe how to capture eligible costs for reimbursement by the Public Assistance Program as defined in Disaster Assistance Policy (DAP) 9523.19, Eligible Costs Related to Pet Evacuations and Sheltering?
  - Does the plan describe how to capture eligible donations for volunteer labor and resources as defined in DAP 9525.2, Donated Resources?
  - Does the plan describe how to capture eligible donations for mutual aid resources as defined in DAP 9523.6, Mutual Aid Agreements for Public Assistance and Fire Management Assistance?[198]

The Guide also contains a "Functional Annexes Content Guide," which contain "core functional support activities that should be incorporated" into the emergency plan. The Guide states the following:

> These annexes contain detailed descriptions of the methods that government agencies and departments follow for critical operational functions during emergency operations. Functional annexes support the EOP as they do hazard-specific annexes. *There are core functional support activities that should be incorporated, and specific functional support activities that support incident response.* The essence of these support functions should be incorporated into plans, rather than be stand-alone. The checklists in this section can be used for either functional annexes or emergency support function annexes.[199]

The Guide's Annex for "Mass Care, Emergency Assistance, Housing, and Human Services" contains a checklist with relevant provisions for sheltering persons with pets, which identifies the following same or similar information bulleted above:

- Identify and describe the actions that will be taken to identify, open, and staff emergency shelters, including temporarily using reception centers while waiting for shelters to open officially.
- Describe the agencies and methods used to provide essential care (e.g., food, water) to promote the well-being of evacuees throughout the entire process (including household pets and service animals).

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[198] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, pages 68-73.

[199] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 102, emphasis added.

- Identify and describe the actions that will be taken to care for household pets and service animals brought to shelters by evacuees.
- Describe the provisions for the sheltering of unclaimed animals that cannot be immediately transferred to an animal control shelter or when non-eligible animals are brought to a shelter.
- Identify and describe the actions that will be taken to segregate or seize household pets showing signs of abuse.
- Describe the method for household pet registration (including identification of a current rabies vaccination for all animals).
- Describe the criteria that can be used to expeditiously identify congregate household pet shelters and alternate facilities.
- Describe the method for utility provisions, such as running water, adequate lighting, proper ventilation, electricity, and backup power, at congregate household pet shelters.
- Identify and describe the actions that will be taken to address the risk of injury by an aggressive or frightened animal, the possibility of disease transmission, and other health risks for responders and volunteers staffing the congregate household pet shelter.
- Identify and describe the actions that will be taken to assess and provide animal care services (e.g., remove and dispose of carcasses, rescue/recover displaced household pets/livestock, provide emergency veterinary care, treat endangered wildlife) and the individuals/agencies used in this process (e.g., veterinarians, animal hospitals, Humane Society, state department of natural resources).
- Identify and describe the actions that will be taken to decontaminate patients, individuals with access and functional needs, children, and household pets and service animals for exposure to chemical, biological, nuclear, and radiological hazards both at the scene of the incident and at treatment facilities.
- Describe the plan for receiving those evacuated as a result of hazards in neighboring jurisdictions, including household pets and service animals.
- Identify and describe the actions that will be taken to provide for the care of the evacuees' household pets and service animals or to instruct evacuees on how to manage their household pets and service animals during an evacuation and in returning home when permitted.
- Describe the evacuation and transportation of household pets from their homes or by their owners or those household pets rescued by responders to congregate household pet shelters.
- Describe how household pet owners will determine where congregate household pet shelters are located and which shelter to use.

- Describe methods of transportation for household pets or service animals whose owners are dependent on public transportation.
- Describe how household pets that are provided with evacuation assistance are registered, documented, tracked, and reunited with their owners if they are separated during assisted evacuations.[200]

C. The Test Claim Statute; Government Code Section 8593.10, Added by Statutes 2023, Chapter 344.

The test claim statute became effective January 1, 2024, and was enacted to "provide guidance in increasing public awareness and establishing co-sheltering standards" for persons with pets during disasters or extreme weather events. Section 1 of the test claim statute contains the Legislature's findings and declarations as follows:

> SECTION 1. The Legislature finds and declares all of the following:
>
> (a) Natural disasters and extreme weather events, including wildfire, flooding, earthquakes, extreme heat, and extreme cold, present severe risks to public health and safety in California.
>
> (b) Pets are particularly vulnerable to extreme weather conditions, including increased risk of heatstroke-related illness and death.
>
> (c) A majority of Americans consider their pets to be family members. Research has found the most significant risk factor for evacuation failure is pet ownership. Research indicates that pet owners may refuse evacuation, attempt to illegally reenter evacuation sites to rescue their animals, and face grief, depression, and PTSD because of separation from their pet during an emergency (Heath and Linnabary, Challenges of Managing Animals in Disasters in the U.S., Mar. 26, 2015, 5 Animals 173).
>
> (d) Zoonotic disease risks increase when pets are abandoned or left to roam.
>
> (e) Gaps in public preparedness and cosheltering opportunities during a disaster or extreme weather event increase risks to public health and safety.
>
> (f) It is the intent of the Legislature in enacting this legislation to provide guidance in increasing public preparedness and establishing cosheltering standards so that Californians know that when a disaster or extreme weather event occurs, they will not have to choose between seeking safety and staying with their pets.[201]

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[200] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, pages 107-115.

[201] Exhibit A, Test Claim, page 32.

The test claim statute added section 8593.10 to the Government Code. The claimant pleads subdivisions (b)-(d) of section 8593.10. Subdivision (b)(1) requires a city or county, upon the next update to its emergency plan, to do the following:

A. A county shall update its emergency plan to designate emergency shelters able to accommodate persons with pets.

B. A city "that has previously adopted an emergency plan designating emergency shelters" shall update its emergency plan to designate emergency shelters able to accommodate persons with pets.

C. Whenever a city or county designates any number of emergency shelters, it shall designate at least one emergency shelter that can accommodate persons with pets.

D. Whenever a city or county designates any number of emergency cooling centers, it shall, "to the extent practicable", designate at least one cooling center that can accommodate persons with pets.

E. Whenever a city or county designates any number of emergency warming centers, it shall, "to the extent practicable", designate at least one heating[202] center that can accommodate persons with pets.

Section 8593.10(b)(2) requires that an emergency shelter designated as able to accommodate persons with pets to be in compliance with both of the following:

A. Safety procedures regarding the sheltering of pets referenced or established in the component of the state and local emergency plan.

B. Applicable disaster assistance policies and procedures of the Federal Emergency Management Agency.

Section 8593.10(c) and (d) address public information and notices, and require the following:

- Whenever a city or county provides public information regarding the availability of a cooling center or warming center, that information shall include whether the cooling or warming center can accommodate pets.
- A city or county shall make available to the public by posting on its internet website information for pet emergency preparedness, including, but not limited to:

  (1) Information for creating an evacuation plan and emergency checklist for pets consistent with recommendations publicly published by the Department of Food and Agriculture and the Federal Emergency Management Agency.

  (2) Local organizations that may provide emergency pet assistance.

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[202] Statutes 2024, chapter 14 (AB 2232), amended this to change the word "heating" to "warming."

> (3) Local emergency shelters, cooling centers, or warming centers, when active, that can accommodate persons with pets.

Bill analyses for the test claim statute state there may potentially be significant state-mandated costs, especially for counties that do not already have an existing shelter able to safely accommodate persons with pets:

> According to the Senate Appropriations Committee, unknown, potentially significant state reimbursable mandated costs for cities and counties to update their emergency plans, designate at least one emergency shelter able to accommodate persons with pets, and post specified information online (General Fund). There may also be significant costs for counties that do not already have an existing shelter able to safely accommodate persons with pets to provide an emergency shelter that complies with the mandates of this bill.[203]

III. Positions of the Parties

A. <u>Claimant, County of Sacramento</u>

The claimant contends the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and urges the Commission to approve the Test Claim. The claimant states that it updated its emergency plan in fiscal year 2023-2024 and incurred $3199.57 in costs for staff time to update the plan. The plan is entitled "Animal Sheltering Annex," is attached to the claimant's emergency plan, and was taken to the County Board of Supervisors for approval in May 2024.[204]

From June 4-6, 2024, the claimant also opened cooling centers in Sacramento and designated a shelter to accommodate persons with pets. The claimant complied with FEMA's disaster assistance policies, as required by the test claim statute, and incurred costs to staff the shelter to accommodate pets and purchased supplies including water for the site. Costs incurred for these three days totaled $1060.43.[205]

The claimant expects to incur costs totaling $58,186 In fiscal year 2024-2025, to operate emergency shelters, cooling centers, and warming centers required to be accommodated for persons with pets and accommodated in accordance with FEMA guidelines. The claimant lists the following required activities:

- Use of equipment, such as buses, trucks, or other vehicles (including accessible vehicles) to provide one time transportation to evacuate survivors and their

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[203] Exhibit H (22), Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 781 (2023-2024 Reg. Sess.), page 6.

[204] Exhibit A, Test Claim, pages 14, 26 (Declaration of the claimant's Emergency Operations Coordinator). See also, Exhibit H (20), Sacramento County Animal Sheltering Annex, May 21, 2024.

[205] Exhibit A, Test Claim, pages 14, 26 (Declaration of the claimant's Emergency Operations Coordinator).

household pets and service and assistance animals to evacuation facilities or emergency shelters from pre-established pick-up locations. This includes standby time for drivers and contracted equipment while waiting to transport survivors.

- Tracking of evacuees, household pets, service animals, luggage, and durable medical equipment. This includes the use of animal microchips, GPS tags, and other electronic means for the purpose of tracking and reunification of evacuated animals.
- Sheltering costs, which includes the following: minor facility modifications if necessary to make the facility functional for pets; veterinary and animal care staff; food, water, and bowls for pets; medication and animal decontamination and parasite control; crates, cages, leashes, and animal transport carriers; animal cleaning table and supplies; shelter management; supervision of paid and volunteer staff; cleaning costs; shelter safety and security; and emergency medical, crisis intervention/psychological first aid, and veterinary services for sheltered survivors, household pets, and service and assistance animals.
- Posting information on the County website for pet emergency preparedness, information for creating evacuation plans, emergency checklists for pets, local organizations providing pet assistance, and local shelters when active that can accommodate persons with pets.[206]

The claimant estimates increased statewide costs totaling $2,680,417 in fiscal year 2024-2025, which includes $1,728,000 to update the emergency plans and $952,417 in sheltering costs.[207]

The claimant is not aware of, nor did it receive, any state, federal, or other non-local agency funds for this program, and all the increased costs were paid and will be paid from the Claimant's General Fund appropriations.[208]

The claimant filed rebuttal comments disagreeing with the arguments made by Finance that the requirements imposed by the test claim statute are triggered by local discretionary decisions. The claimant states the following:

- A Finance analysis of a 1990 bill amending Government Code section 8610 to require local government to provide disaster plans developed by local disaster councils states that the bill would create a reimbursable state mandate for only those jurisdictions with disaster councils in existence on the operative date of the bill, but no reimbursable mandate would exist for disaster councils established

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[206] Exhibit A, Test Claim, pages 15-16, 22-23 (Declaration of the claimant's Chief of Emergency Services), 27 (Declaration of the claimant's Emergency Operations Coordinator).

[207] Exhibit A, Test Claim, pages 16-17, 28 (Declaration of the claimant's Emergency Operations Coordinator).

[208] Exhibit A, Test Claim, page 17.

after the operative date of the bill because local government would have the option not to establish disaster councils. The claimant contends that Finance is taking a different view now by arguing that reimbursement should be denied in full because cities and counties have the discretion to create local disaster councils.[209]

- While Finance argues that a disaster council is a discretionary decision, it is functionally required when considered from a practical perspective:
  - Nearly every local agency has an accredited disaster council with recent data demonstrating that all 58 counties and 481 cities have disaster councils. The majority of these were formed during 1946-1950 in the Civil Defense Era, following the amendment in 1945 of former Military and Veterans Code section 1571 (Stats. 1945 Chap. 1024, Sec. 27) (predecessor of current Government Code section 8610).[210]
  - In order to authorize public officers, employees, and volunteers to respond to an emergency and command citizens to assist in their disaster service worker duties, a county or city must have previously formed a disaster council. Absent this formation, a local agency will not be able to effectively marshal resources in response to an emergency.[211]
  - Pursuant to Government Code section 8505, each county is designated an operational area that serves as a link in the system of communications and coordination between the state's emergency operating centers and the operating centers of the political subdivisions comprising the operational area.[212]
  - The State Emergency Management System (SEMS), intended as a system to coordinate multiple jurisdictions and multiple agency operations, requires local participation to be eligible for funding for response-related costs. SEMS regulations also require the use of SEMS in emergency plans and procedures.[213]
  - Government Code sections 8593.3.2 and 8610 require counties to file a copy of their emergency plans with Cal OES and require Cal OES to annually review ten local emergency plans.[214]

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[209] Exhibit D, Claimant's Rebuttal Comments, pages 2-3, 14-18 (Declaration of Deputy County Counsel and copy of Finance Analysis on SB 2778 (1990)).

[210] Exhibit D, Claimant's Rebuttal Comments, page 4.

[211] Exhibit D, Claimant's Rebuttal Comments, page 4.

[212] Exhibit D, Claimant's Rebuttal Comments, pages 4-5.

[213] Exhibit D, Claimant's Rebuttal Comments, page 5.

[214] Exhibit D, Claimant's Rebuttal Comments, page 6.

- The Legislature has also added requirements to the emergency plans (i.e., emergency plans addressing wildfire smoke, integrating cultural competence into the emergency plans, incorporate procedures for persons with access or functional needs).[215]
- If a county fails to have a disaster council that develops or maintains an emergency plan, the county would not receive immunity protection under Government Code section 8657 and would not be eligible for SEMS funding for response-related costs. "These substantial penalties help further explain why all counties and cities are part of this system which includes requiring emergency plans to ensure local communities have access to the financial resources and protections to property recover from emergencies."[216]

The claimant filed comments on the Draft Proposed Decision, agreeing with the analysis on the public information and notice requirements,[217] but disagreeing with the following points, primarily with respect to the requirements for heating and cooling centers:

- The claimant agrees that Government Code section 8593.3.2 requires each county to submit a copy of its emergency plan to Cal OES and requires that it incorporates best practices (captured in the 2010 Comprehensive Preparedness Guide), but argues the following:

  > "However, what is lost is that those emergency plans were intended to address State and Federally declared disasters and sheltering requirements for persons and pets associated with that category of event. What it does not do is address warming and cooling events specifically for persons with pets, which are not addressed in the FEMA 2010 Comprehensive Preparedness Guide.
  >
  > Thus, the County of Sacramento still contends that counties are practically compelled to have emergency plans and AB781 through Government Code section 8593.10(b)(1)(a) imposes new requirements to update emergency plans which are not existing activities as they incorporate additional types of events (i.e. heating and cooling) and new requirements for those type of events (populations of persons with pets) which were not previously required."[218]

- The claimant argues that *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, which is cited to support the conclusion that the language "to the extent practicable" in 8593.10(b)(1)(D)-(E) means counties and cities which designate any number of emergency cooling or warming centers are not mandated to designate at least one cooling or warming

[215] Exhibit D, Claimant's Rebuttal Comments, pages 6-8.

[216] Exhibit D, Claimant's Rebuttal Comments, page 9.

[217] Exhibit G, Claimant's Comments on the Draft Proposed Decision, page 3.

[218] Exhibit G, Claimant's Comments on the Draft Proposed Decision, pages 1-2.

center that can accommodate pets, does not apply and that this case is distinguishable as follows:

> ". . . there is not a similar off-ramp for Emergency Shelters in Government Code section 8593.10(b)(1)(C) as recognized in the proposed decision. Included in the County's test claim in addition to the designation of a shelter, was the costs to operate a shelter to accommodate persons with pets under that designation.
>
> Thus, we contend that in certain types of emergencies that are not a State or Federally declared emergency wherein the County could pursue reimbursement, that this still imposes a new state-reimbursable mandate specific to sheltering costs of persons with pets. We would encourage the Commission to look specifically at that element and reconsider if this may be a reimbursable mandate."[219]

Therefore, the claimant contends that the test claim statute imposes a state-mandated program.

B. Department of Finance

The Department of Finance contends that the test claim statute does not impose a state-mandated program and urges the Commission to deny the Test Claim. Finance states that the requirement to develop emergency plans and the downstream requirements imposed by the test claim statute to update the plans to accommodate pets stems from the local discretionary decision of a city or county to form disaster councils and adopt an emergency plan.

Finance further states it is not aware of any requirement for local government to operate an emergency shelter, except for the requirements that are downstream from the discretionary decision to create a disaster council. Finance further contends local government is not required to operate cooling and warming shelters.

Therefore, the costs to comply with the test claim statute are not mandated by the state and are not eligible for reimbursement.[220]

Finance did not file comments on the Draft Proposed Decision.

C. Interested Party and Interested Person Comments

1. County of Santa Clara

The County of Santa Clara filed comments to respond to the arguments raised by Finance and urges the Commission to find a state-mandated program and approve the Test Claim as follows:

- Counties are practically compelled to create and maintain local disaster councils. Counties and the residents they serve face certain and severe consequences if counties fail to engage in emergency planning and management. Finance's

[219] Exhibit G, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

[220] Exhibit B, Finance's Comments on the Test Claim, pages 1-2.

position essentially declares that a county has the discretion to "excise itself from the State's emergency management system, rendering it an island cut off from regional and statewide emergency planning and preparedness, coordination, and mutual aid. As with the decision to not provide a stormwater drainage system, this "is no alternative at all."[221]

- All 58 counties and at least 481 cities have state-accredited disaster councils. Disaster councils are integral to the State emergency management system. Cal OES recognizes these as critical local government functions, emphasizing the importance of local government involvement in emergency planning and response. "In the State of California Emergency Plan, Cal OES declares that '[a]ll incidents are local'; and that, under the State's Standardized Emergency Management System, it is the responsibility of '[l]ocal governments [to] manage and coordinate the overall emergency response and recovery activities within their jurisdiction.' (Reed Decl., *supra*, at p. 2, ex. 2.)"[222]
- The State requires local government to submit a disaster council model emergency ordinance, a disaster service workers volunteer resolution, and a master mutual aid agreement to the state. "(See Cal. Code Regs. Tit. 19, § 2571; see also Reed Decl., *supra*, at p. 2, ex. 3.)"[223]

  > "Severe and certain consequences would follow if a county took the unprecedented step of withdrawing from the regional and statewide disaster management framework, including the loss of coordination and mutual aid in emergencies. (*Id*., at p. 3.) Indeed, the Legislature designed California's emergency management system around this very interdependence (see Gov. Code, § 8605), and Cal OES contemplates statewide participation by localities (see Reed Decl., *supra*, at p. 2 [citing pertinent provisions of the State Emergency Plan]). And again, surrounding localities and the State would likewise suffer from any individual county's withdrawal. (*Id*., at p. 3.)"[224]

- Each county-based disaster council has been accredited for at least 70 years, and the California Disaster and Civil Defense Master Mutual Aid Agreement was memorialized by Governor Earl Warren in 1950. "In other words, the DOF contemplates that a county can avoid the costs of AB 781 by taking a wrecking

[221] Exhibit E, County of Santa Clara's Late Comments on the Test Claim, page 2, citing *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558.

[222] Exhibit E, County of Santa Clara's Late Comments on the Test Claim, pages 3-4.

[223] Exhibit E, County of Santa Clara's Late Comments on the Test Claim, page 4.

[224] Exhibit E, County of Santa Clara's Late Comments on the Test Claim, page 4.

ball to local government infrastructure and regional and statewide expectations that have been in place for more than 70 years."[225]

- The test claim statute requires a city or county to designate at least one cooling or warming center to accommodate persons with pets "to the extent practicable." However, practicality does not mean local government can decline to implement this "mandate." This language should be understood in the context of *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, which concerned a mandate requiring county firefighters to have protective equipment. There, the Court of Appeal "apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even void the extra costs to which it would be subjected." (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888.) In other words, the discretion to determine what is practicable does not render a mandate discretionary for the purposes of Section 6.[226]

  In addition, "the definition of 'practicable' means 'capable of being put into practice or of being done or accomplished.' (Practicable, Merriam-Webster, https://www.merriam-webster.com/dictionary/practicable.) It does not mean that a decisionmaker can decline a mandate out of hand. If the Legislature wished to make this action discretionary, it would have used the ordinary term, 'may.'"[227]

Thus, County of Santa Clara contends that the requirements imposed by the test claim statute are mandated by the state.

The County of Santa Clara did not file comments on the Draft Proposed Decision.

2. California State Association of Counties (CSAC)

CSAC filed comments to respond to the arguments raised by Finance and urges the Commission to find a state-mandated program and approve the Test Claim as follows:

- The requirement to adopt an emergency plan does not stem from a local agency's decision to form a disaster council. CSAC states:

  > While it is discretionary that local emergency plans be developed and approved by a local disaster council, it is not discretionary for local governments to have and maintain emergency plans. The establishment of a local disaster council is one manner in which local governments take action to comply with the requirement to carry out the provisions of the State Emergency Plan. Lacking the establishment of a local disaster council does not exempt a local government from compliance with the State Emergency Act or the directives of Cal OES.

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[225] Exhibit E, County of Santa Clara's Late Comments on the Test Claim, page 4.

[226] Exhibit E, County of Santa Clara's Late Comments on the Test Claim, pages 5-6.

[227] Exhibit E, County of Santa Clara's Late Comments on the Test Claim, page 5.

The provisions of AB 781 do not specify that they pertain only to emergency plans as developed and approved by local disaster councils. Rather, AB 781 applies to any city or county emergency plan that serves to carry out the provisions of the State Emergency Plan.[228]

In addition, CSAC contends that counties, as political subdivisions of the state, are required to take action to carry out the provisions of the State Emergency Plan. The Government Code requires the Governor to coordinate and enforce the State Emergency Plan by coordinating the preparation of plans for mitigation of the effects of an emergency by the political subdivisions of the state. The Governor's Office of Emergency Services (Cal OES) is required to implement the State Emergency Plan and perform executive functions assigned by the Governor to support all phases of emergency management. This includes the promulgation of guidelines and assignments to state government and its political subdivisions to support the development of California's emergency management system. The State's emergency management system designates local governments—such as counties—as primarily responsible for emergency preparedness and response.[229] CSAC cites to the following code sections:

- "The State Emergency Plan shall be in effect in each political subdivision of the state, and the governing body of **each political subdivision shall take such action as may be necessary to carry out the provisions thereof**." (Government Code section 8568.)
- " "Political subdivision" includes any city, city and county, county, district, or other local governmental agency or public agency authorized by law." (Government Code section 8557(b).)
- " "Emergency plans" means those official and approved documents which describe the principles and methods to be applied in carrying out emergency operations or rendering mutual aid during emergencies. These plans include such elements as continuity of government, the emergency services of governmental agencies, mobilization of resources, mutual aid, and public information." (Government Code section 8560(a).)
- "The Governor shall coordinate the State Emergency Plan and those programs necessary for the mitigation of the effects of an emergency in this state; and **he shall coordinate the preparation of plans and programs for the mitigation of the effects of an emergency by the political subdivisions of this state**, such plans and programs to be integrated into and coordinated with the State Emergency Plan and the

[228] Exhibit C, CSAC's Late Comments on the Test Claim, page 2.

[229] Exhibit C, CSAC's Late Comments on the Test Claim, pages 1-2.

plans and programs of the federal government and of other states to the fullest possible extent." (Government Code section 8569.)

    - "A county shall send a copy of its emergency plan to the Office of Emergency Services on or before March 1, 2022, and upon any update to the plan after that date." (Government Code Section 8593.3.2.)
    - "On or before July 31, 2015, the Office of Emergency Services shall update the State Emergency Plan to include proposed best practices for local governments and nongovernmental entities to use to mobilize and evacuate people with disabilities and others with access and functional needs during an emergency or natural disaster." (Government Code Section 8570.3.)[230]

- Local emergency planning, local maintenance of emergency plans, and local compliance with the State Emergency Plan are not discretionary. In addition to the requirements of the test claim statute, counties are required, upon the next update to their emergency plans, to:
    - Integrate access and functional needs into the emergency plan by addressing, at a minimum, how the access and functional needs population is being served by emergency sheltering. (Government Code section 8593.3.)
    - Integrate cultural competence into the emergency plan by addressing how culturally diverse communities are served by emergency evaluation and sheltering. (Government Code sections 8593.3.5(a).)

Thus, CSAC contends that the requirements imposed by the test claim statute are mandated by the state.

CSAC did not file comments on the Draft Proposed Decision.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service…

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[231] Thus, the subvention

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[230] Exhibit C, CSAC's Late Comments on the Test Claim, pages 2-3, emphasis in original.

[231] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[232]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[233]
2. The mandated activity constitutes a "program" that either:
   a. Carries out the governmental function of providing a service to the public; or
   b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[234]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[235]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[236]

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[237] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[238] In making its decisions, the Commission must strictly construe article XIII B, section 6 of the

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[232] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[233] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[234] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

[235] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

[236] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[237] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

[238] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

California Constitution, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[239]

A. The Test Claim Was Timely Filed, with a Period of Reimbursement Beginning January 1, 2024.

Government Code section 17551(c) provides that test claims "shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."[240] Section 1183.1(c) of the Commission's regulations, in turn, defines "12 months" as 365 days.[241] The test claim statute became effective on January 1, 2024, and the test claim was filed on December 12, 2024, within 365 days following the effective date of the test claim statute.[242] The Test Claim was therefore timely filed.

Government Code section 17557(e) requires a test claim to be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year.[243] The December 12, 2024 filing date establishes reimbursement eligibility for the 2023-2024 fiscal year, but because the test claim statute became effective on January 1, 2024, the potential period of reimbursement begins on January 1, 2024.

B. The Test Claim Statute Imposes a Partial State-Mandated New Program or Higher Level of Service.

Article XIII B, section 6 requires reimbursement when "the Legislature or any state agency mandates a new program or higher level of service on any local government." A new program or higher level of service has been defined as those "that carry out the governmental function of providing services to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[244] Just one of these conditions need be met.[245] The purpose of article XIII B, section 6 is to prevent the state from forcing extra programs on local government each year in a manner that negates their careful budgeting of increased expenditures counted against the local government's annual

[239] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[240] Government Code section 17551(c).

[241] California Code of Regulations, title 2, section 1183.1(c).

[242] Exhibit A, Test Claim, page 1.

[243] Government Code section 17557(e)

[244] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537, citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis in original.

[245] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

spending limit and thus, article XIII B, section 6 requires a showing that the test claim statute mandates new activities compared to prior law.[246]

The Commission finds that the test claim statute imposes a partial state-mandated new program or higher level of service for the activities required by Government Code section 8593.10(c) and (d) only.

1. The Activities to Update an Emergency Plan to Designate Shelters Able to Accommodate Persons with Pets and to Designate at Least One Shelter to Accommodate Persons with Pets, as Provided in Government Code section 8593.10(b), Do Not Mandate a New Program or Higher Level of Service on Counties and Cities.

As explained below, the law and the plain language of the test claim statute treat counties and cities differently and, thus, the test claim statute is analyzed separately for these local agencies to determine if the statute mandates a new program or higher level of service.

a. Even if counties are compelled to have local emergency plans and to regularly update those plans, the activities identified in Government Code section 8593.10(b)(1)(A), (C), (D), (E), and (b)(2) do not mandate a new program or higher level of service on counties.

Government Code section 8593.10(b)(1) requires counties, upon the next update of the county's emergency plan, to do the following:

A. Update its emergency plan to designate emergency shelters able to accommodate persons with pets.

B. [¶]

C. Whenever a county designates any number of emergency shelters, it shall designate at least one emergency shelter to accommodate persons with pets.

D. Whenever a number of emergency cooling centers are designated, at least one cooling center "shall, to the extent practicable," be designated to accommodate persons with pets.

E. Whenever a number of emergency warming centers are designated, at least one heating center "shall, to the extent practicable," be designated to accommodate persons with pets.

Section 8593.10(b)(2) requires: "An emergency shelter designated as able to accommodate persons with pets shall be in compliance with both of the following:

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[246] California Constitution, articles XIII B, sections 1, 8(a) and (b); *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763.

A. Safety procedures regarding the sheltering of pets referenced or established in the component of the state and local emergency plan.

B. Applicable disaster assistance policies and procedures of the Federal Emergency Management Agency."

The parties dispute whether these activities are mandated by the state. Finance asserts that the downstream requirements imposed by the test claim statute to update emergency plans to accommodate persons with pets stems from the local discretionary decision to form a disaster council and adopt an emergency plan. The claimant and the interested counties disagree and contend that the underlying decision to adopt an emergency plan is not voluntary but is compelled by state law.

The courts have explained that the determination of whether the test claim statute's requirements are mandated by the state depends on whether the claimant's participation in the underlying program is voluntary or legally compelled.[247] "[A]ctivities undertaken at the option or discretion of a local government entity … do not trigger a state mandate and hence do not require reimbursement of funds — even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice."[248]

Here, the activities listed in section 8593.10(b) are triggered by whether counties are compelled to have emergency plans and update those plans, and whether those plans are required to designate emergency shelters and warming and cooling centers.

There are two distinct theories for determining whether these underlying activities are compelled: legal compulsion and practical compulsion.[249]

Legal compulsion occurs when a statute or executive order uses mandatory language that requires or commands a local entity to participate in a program or service. "Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey. This standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has a clear, present, and usually ministerial duty to act. ... Mandate will not issue if the duty is ... mixed with discretionary power."[250]

"[P]ractical compulsion," [is] a theory of mandate that arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance

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[247] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 731.

[248] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 742; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

[249] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 807, 815.

[250] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply.[251] A determination of practical compulsion in each case must depend on such factors as the nature and purpose of the program, whether its design suggests an intent to coerce, when local participation began, the penalties, if any, assessed for withdrawal or refusal to participate or comply, and any other legal or practical consequence of nonparticipation.[252]

For example, the court in *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, applied the practical compulsion theory to determine whether the County of San Diego and cities within the San Diego region, as operators of municipal separate storm sewer systems (MS4s), which are operated exclusively by government entities, were entitled to reimbursement for the requirements imposed in a National Pollutant Discharge Elimination System (NPDES) stormwater permit.[253] The State argued the permit did not require local government to operate an MS4 and, thus, compliance with the permit did not constitute a program within the meaning of article XIII B, section 6.[254] The court found that the decision to obtain a permit was not truly voluntary because as a matter of law, local government could not decide to opt-out of providing a stormwater drainage system; "In urbanized cities and counties such as permittees, deciding not to provide a stormwater drainage system is no alternative at all," and therefore the local government permittees were practically compelled to obtain a permit.[255]

However, practical compulsion has not been found when local government simply has to adjust for a loss or withdrawal of grant funding if it decides not to participate in the underlying program.[256]

In this case, the law does not require counties to adopt a local emergency plan. As explained in the Background and in the BSA audit, adopting an emergency plan is not legally compelled by state law. Rather, adopting an emergency plan is a condition of having a local disaster council and a factor considered for the receipt of funds under the California Disaster Assistance Act (CDAA) and the SEMS program (which incorporates

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[251] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[252] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816, citing to *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

[253] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 555.

[254] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 557.

[255] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558.

[256] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 754.

mutual aid and the CDAA provisions) for emergencies and major disasters.[257] In 2006 and 2007, the Commission and the court found that compliance with SEMS was not legally compelled by state law because the requirements are only imposed as a condition of seeking disaster funding for personnel-related costs under the CDAA.[258] In addition, while federal law strongly encourages local governments to have emergency plans, and even provides grant funding to develop the plans, there is no federal requirement to have an emergency plan.[259] Thus, counties are not legally compelled by law to adopt an emergency plan.

The Commission and the court in SEMS also found that compliance with SEMS was not practically compelled since, like the case in *Kern High School Dist*., if a local agency decides not to participate in SEMS, or elects to discontinue participation in the program, the agency does not face "certain and severe penalties" such as "double taxation" or other "draconian measures." It simply loses its right to apply for state funding under the CDAA to assist the local agency in paying for its response-related *personnel* costs.[260] These findings were made even though counties have broad Constitutional police powers to protect the health, safety, and welfare of their residents; that all counties have disaster councils (which requires a local emergency plan), all counties signed the Master Mutual Aid Agreement in 1950 (which also requires a local emergency plan), and all counties were designated as operational areas in an emergency.[261]

Typically, the Commission would be required to comply with the court's prior ruling in this case under principles of res judicata and collateral estoppel, which bar the parties to the prior action from re-analyzing the same issue in a subsequent matter. However, "[n]either res judicata nor collateral estoppel were ever intended to operate so as to prevent a re-examination of the same question between the same parties where, in the

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[257] Government Code section 8607(e), as last amended by Statutes 2022, chapter 28; California Code of Regulations, title 19, sections 2401, 2443(a), 2445.

[258] Exhibit H (12), Commission on State Mandates, Proposed Test Claim Statement of Decision, *Standardized Emergency Management System (SEMS)*, 03-RC-4506-01 (CSM-4506); Exhibit H (11), Commission on State Mandates, Adopted Minutes, March 29, 2006 Hearing, pages 4-7; Exhibit H (17), Los Angeles County Superior Court Minute Order and Judgment Denying Petition for Writ of Mandate, SEMS.

[259] United States Code, title 42, section 5196b.

[260] Exhibit H (12), Commission on State Mandates, Proposed Test Claim Statement of Decision, *Standardized Emergency Management System (SEMS)*, 03-RC-4506-01 (CSM-4506), pages 20-22; Exhibit H (17), Los Angeles County Superior Court Minute Order and Judgment Denying Petition for Writ of Mandate, SEMS.

[261] California Constitution, article XI, section 7 ("A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."); Government Code sections 8605, 8559, added by Statutes 1970, chapter 1454.

interval between the first and second actions, the facts have materially changed or new facts have occurred which have altered the legal rights or relations of the litigants."[262]

Since the SEMS decision by the court, there has been a BSA audit and several statutes enacted addressing ***county*** emergency plans, as follows:

- The 2019 BSA audit findings include the statement that local jurisdictions are responsible for taking necessary and appropriate actions to protect people from threats and hazards, which would include natural disasters.[263] In addition, inadequate plans and insufficient planning are proven contributors to failure and deficiencies in a county's efforts to prepare for a natural disaster and can impair its ability to respond when the disaster occurs.[264]
- BSA recommended the following:
  - The Legislature should require Cal OES to review all counties' emergency plans to determine if they are consistent with best practices and provide necessary technical assistance to counties.
  - Each county should revise its emergency plans by following best practices for planning to meet the access and functional needs of its residents, including involving people with those needs in its planning process and developing strategies for alerting, evacuating, and sheltering them.[265]
- In 2020, Government Code section 8593.9 required Cal OES to develop best practices for counties developing and updating county emergency plans. Cal OES is required to provide technical assistance and feedback regarding the sufficiency of the county's emergency plan with respect to Cal OES' best practices; procedures for alerting, evacuating, and sheltering individuals during an emergency; and any other necessary and appropriate element.[266]
- In 2021, Cal OES issued "Best Practices for County Emergency Plans."[267] Cal OES' best practices include complying with FEMA's Comprehensive Preparedness Guide when developing or updating emergency plans, reviewing and updating the plan on a regular basis, and having a care and shelter plan, as follows:
  - "It is a California best practice for each county to have a current emergency plan for the county's response to emergencies and disasters. This plan should be capable of execution during both emergency and non-

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[262] *Union Pacific Railroad Co. v. Santa Fe Pacific Pipeline, Inc*. (2014) 231 Cal.App.4th 134, 179-180.

[263] Exhibit H (2), BSA Audit 2019, page 21.

[264] Exhibit H (2), BSA Audit 2019, page 8.

[265] Exhibit H (2), BSA Audit 2019, pages 10-11.

[266] Government Code section 8593.9(b), as added by Statutes 2020, chapter 257.

[267] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans.

emergency situations, such as pre-planned special events, with inter-agency coordination."[268]

- "It is a California best practice for county emergency planners to reference leading national, federal, state, and industry standards when planning for disasters. . . . *Is the county's emergency plan consistent with FEMA's Comprehensive Preparedness Guide 101*?"[269]
- "It is a California best practice for the county's emergency plan to be reviewed and updated regularly."[270]
- "It is a California best practice for counties to have a Care and Shelter plan as an annex to the county's emergency plan, or as a separate standalone document. The plan should detail the plans and procedures to ensure consistency of approach towards shelter management. [Fn. omitted.] The existing shelter inventory should identify shelter sites that have backup generation capabilities for future de-energization events.""[271] Shelter plans should provide services for populations with disabilities; for example, by "allowing service animals inside shelters."[272]
- "It is a California best practice for counties to pre-identify facilities which meet minimum standards and can be used as evacuation shelters."[273]

- In 2021, Government Code section 8593.3.2 required counties to send a copy of their emergency plans to Cal OES on or before March 1, 2022, and upon any update to the plan after that date. Cal OES is required to review the county's emergency plan to determine if it is in compliance with FEMA's Comprehensive Preparedness Guide 101 and Cal OES' best practices.

  Counties are required by Government Code section 8593.3.2 to develop and revise their emergency plans to address the issues that Cal OES identifies in its review.[274]

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[268] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 11.

[269] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 15.

[270] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 24.

[271] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 67.

[272] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 68.

[273] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 71.

[274] Government Code section 8593.3.2(d).

- As last amended in 2022, Government Code section 8593.3 requires counties, upon the next update to their emergency plans, to "identify emergency evacuation procedures that ensure that local community resilience centers are prepared to serve communitywide assets during extreme heat events and other disasters, and designate available locations to provide respite to individuals during emergencies including during extreme heat and cold.[275] "Local community resilience center" is defined to mean "a hydration station, cooling center, clean air center, respite center, community evacuation and emergency response center, or similar facility established to mitigate the public health impacts of extreme heat and other emergency situations exacerbated by climate change, such as wildfire, power outages, or flooding, on local populations."[276]

  The test claim statute, in section 8593.10(a), defines cooling and warming centers similar to the definition of "resilience center" in Government Code section 8593.3. Both are intended to mitigate the impacts of extreme temperatures.[277]

Thus, while counties originally may have had the discretion to adopt an emergency plan to protect the health and safety of its residents and seek funding under the CDAA, they argue they have no choice now and are compelled by these recent laws to send their emergency plans (current and updated plans) to Cal OES. As explained above, Cal OES is required to review the plans to ensure the county's plan complies with FEMA's Comprehensive Preparedness Guide 101 and Cal OES' best practices, and counties are required to revise their plans in accordance with the Cal OES review.

In compliance with these standards and assuming counties are compelled to have an emergency plan that designates shelters and respite centers (warming and cooling centers), and to regularly update their plans, then the issue is whether the following downstream activities imposed by Government Code section 8593.10(b) to address the emergency accommodations for persons with pets mandates a new program or higher level of service on counties:

- Update its emergency plan to designate emergency shelters able to accommodate persons with pets. (Gov. Code, § 8593.10(b)(1)(A).)
- At least one emergency shelter shall be designated to accommodate persons with pets. (Gov. Code, § 8593.10(b)(1)(C).)

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[275] Government Code section 8593.3(a), as last amended by Statutes 2022, chapter 247.

[276] Government Code section 8593.3(f)(3), as last amended by Statutes 2022, chapter 247.

[277] Government Code section 8593.10(a)(1) and (4) defines these terms as follows:

"Cooling center" means "a facility established to mitigate the public health impacts of extreme heat."

"Warming center" means "a facility established to mitigate the public health impacts of extreme cold."

- Whenever a number of emergency cooling centers or warming centers are designated, at least one cooling center and one warming center "shall, to the extent practicable," be designated to accommodate persons with pets. (Gov. Code, § 8593.10(b)(1)(D), (E).)
- An emergency shelter designated as able to accommodate persons with pets shall be in compliance with both of the following:
  - Safety procedures regarding the sheltering of pets referenced or established in the component of the state and local emergency plan.
  - Applicable disaster assistance policies and procedures of the Federal Emergency Management Agency. (Gov. Code, § 8593.10(b)(2).)

These activities are *not* reimbursable for the following reasons.

i. The requirements in section 8593.10(b)(1)(A), (C), and (b)(2), regarding the accommodation of persons with pets at emergency shelters, are not new and, thus, do not mandate a new program or higher level of service.

First, assuming counties are compelled to adopt an emergency plan, the requirements to update the county's emergency plan to designate emergency shelters able to accommodate persons with pets, to designate at least one emergency shelter that can accommodate persons with pets, and to ensure that the shelter is in compliance with safety procedures regarding the sheltering of pets referenced or established in the component of the state and local emergency plan and applicable disaster assistance policies and procedures of the Federal Emergency Management Agency, in accordance with section 8593.10(b)(1)(A), (C), and (b)(2), are *not* new requirements.

As indicated above, Government Code section 8593.3.2., added in 2021, already requires counties to send their emergency plans and updated plans to Cal OES to review for compliance with FEMA's Comprehensive Preparedness Guide 101 and Cal OES' best practices. It is a best practice to regularly update the emergency plans and to ensure that the plans conform to FEMA's Comprehensive Preparedness Guide 101.[278] And Cal OES's Fact Sheet states that its review covers whether the plan substantially conforms to or exceeds the recommendations in FEMA's Comprehensive Preparedness Guide 101.[279] Counties are required by section 8593.3.2. to revise their plans after Cal OES' review.[280] Thus, assuming counties are required by state law to

[278] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, pages 15, 24. In addition, Government Code section 8610(c), as last amended by Statutes 2020, chapter 254, requires Cal OES to review county emergency plans developed by a county disaster council to determine if the emergency plan substantially conforms to or exceeds the recommendations described in FEMA's Comprehensive Preparedness Guide 101, or other successor emergency operations planning guidance.

[279] Exhibit H (6), Cal OES Fact Sheet, Updates to County Emergency Plan Legislation, page 4.

[280] Government Code section 8593.3.2., added by Statutes 2021, chapter 744.

have an emergency plan, county emergency plans are required to be updated and to conform to FEMA's Comprehensive Preparedness Guide.[281]

FEMA's 2010 Comprehensive Preparedness Guide 101 (in effect when section 8593.3.2. was enacted) implements the 2006 PETS Act to require FEMA, when approving standards for state and local emergency preparedness operational plans, to ensure that these plans address the needs of individuals with household pets prior to, during, and following a major disaster or emergency.[282] The 2010 Guide states the following: "A key consideration is the integration of household pets and service animals into the planning process."[283] The 2010 Guide contains standards on "Incorporating Household Pets and Service Animals" in congregate household pet shelters (facilities that provide refuge to household pets of shelterees)[284] and a "Functional Annexes Content Guide," which contain "core functional support activities that should be incorporated" into the emergency plan, including sheltering facilities and plans to safely accommodate persons with pets.[285] FEMA Guidelines recommend that emergency plans address the following relevant provisions:

- Does the plan address how owners will be informed where congregate household pet shelters are located and which shelter to use?
- Does the plan provide for the conveyance of household pets or service animals whose owners are dependent on public transportation?
- Does the plan address how household pets that are provided with evacuation assistance are registered, documented, tracked, and reunited with their owners if they are separated during assisted evacuations?
- Does the plan establish criteria that can be used to expeditiously identify congregate household pet shelters and alternate facilities?
- Does the plan provide guidance about utility provisions, such as running water, adequate lighting, proper ventilation, electricity, and backup power, at congregate household pet shelters?
- Does the plan include mechanisms or processes to reduce/eliminate the risk of injury by an aggressive or frightened animal, the possibility of disease

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[281] The claimant agrees that "Government Code section 8593.3.2 does require each county to submit a copy of its emergency plan to Cal OES and requires that it incorporates best practices (captured in the 2010 Comprehensive Preparedness Guide)." (Exhibit G, Claimant's Comments on the Draft Proposed Decision, page 1.)

[282] United States Code, title 42, section 5196b(g).

[283] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 13.

[284] Exhibit H (14), FEMA's 2007 Disaster Assistance Policy, page 2.

[285] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, pages 68-73, 102.

transmission, and other health risks for responders and volunteers staffing the congregate household pet shelter?

- Does the plan recommend a pre-disaster inspection and development of agreements for each congregate household pet facility?
- Does the plan identify equipment and supplies that may be needed to operate each congregate household pet shelter, as well as supplies that household pet owners may bring with them to the congregate shelter?
- Does the plan provide for the physical security of each congregate household pet facility, including perimeter controls and security personnel?
- Does the plan provide for acceptance of donated resources (e.g., food, bedding, containers)?
- Does the plan provide for the acquisition, storage, and security of food and water supplies?
- Does the plan provide for the diverse dietary needs of household pets?
- Does the plan provide for segregation or seizure of household pets showing signs of abuse?
- Does the plan provide for household pet registration?
- Does the plan provide for installation and reading of microchip technology for rapid and accurate identification of household pets?
- Does the plan identify the need for all animals to have a current rabies vaccination?
- Does the plan provide for the housing of a variety of household pet species (e.g., size of crate/cage, temperature control, appropriate lighting)?
- Does the plan provide for the consultation of a veterinarian or animal care expert with household pet sheltering experience regarding facility setup and maintenance?
- Does the plan provide for the setup and maintenance of household pet confinement areas (e.g., crates, cages, pens) for safety, cleanliness, and control of noise level?
- Does the plan recommend the setup of a household pet first aid area inside each shelter?
- Does the plan provide for the control of fleas, ticks, and other pests at each congregate household pet shelter?
- Does the plan provide criteria for designating and safely segregating aggressive animals?
- Does the plan provide for the segregation or quarantine of household pets to prevent the transmission of disease?

- Does the plan provide for household pet waste and dead animal disposal?[286]

Thus, the federal guideline in effect in 2010, which county emergency plans are required to comply with pursuant to Government Code section 8593.3.2., requires that emergency plans identify shelters that can accommodate persons with pets and to implement those plans and have at least one shelter that can accommodate persons with pets in accordance with safety procedures regarding the sheltering of pets referenced or established in the emergency plan and applicable disaster assistance policies and procedures of FEMA, as required by Government Code section 8593.10(b)(1)(A), (C), and (b)(2). These activities are not new and do not mandate a new program or higher level of service.[287]

ii. The requirement in Government Code section 8593.10(b)(1)(D) and (E), that counties "shall, to the extent practicable" designate at least one warming/heating center and one cooling center that can accommodate persons with pets, does not mandate a new program or higher level of service.

Government Code section 8593.10(b)(1)(D) and (E) says whenever a county designates any number of emergency cooling centers or warming centers, it "shall, to the extent practicable" designate at least one cooling center and one warming/heating center that can accommodate persons with pets.

The claimant contends that this requirement mandates a new program or higher level of service because the heating and cooling centers are not addressed in the FEMA 2010 Comprehensive Preparedness Guide.

> Government Code section 8593.3.2 does require each county to submit a copy of its emergency plan to Cal OES and requires that it incorporates best practices (captured in the 2010 Comprehensive Preparedness Guide).
>
> However, what is lost is that those emergency plans were intended to address State and Federally declared disasters and sheltering requirements for persons and pets associated with that category of event. What it does not do is address warming and cooling events specifically for persons with pets, which are not addressed in the FEMA 2010 Comprehensive Preparedness Guide.

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[286] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, pages 68-73; see also pages 107-115 (checklist in the Guide's Annex for "Mass Care, Emergency Assistance, Housing, and Human Services.")

[287] Moreover, the claimant's May 2024 Animal Sheltering Annex lists the 2006 PETs Act and the 2006 California Animal Response Emergency System (CARES) as authorities and references for the Annex. The test claim statute is not identified in the Annex or its list of authorities and references. (Exhibit H (20) Sacramento County Animal Sheltering Annex, May 21, 2024, page 30.)

> Thus, the County of Sacramento still contends that counties are practically compelled to have emergency plans and AB781 through Government Code section 8593.10(b)(1)(a) imposes new requirements to update emergency plans which are not existing activities as they incorporate additional types of events (i.e. heating and cooling) and new requirements for those type of events (populations of persons with pets) which were not previously required.[288]

However, FEMA's Preparedness Guide addresses emergency plans for all emergencies and not just for state and federally declared disasters as asserted by the claimant. The Guideline expressly states the following:

> This Guide helps planners at all levels of government in their efforts to develop and maintain viable all-hazards, all-threats EOPs [Emergency Operation Plans]. . . .
>
> . . . the fundamental principle that, in many situations, emergency management and homeland security operations start at the local level and expand to include Federal, state, territorial, tribal, regional, and private sector assets as the affected jurisdiction requires additional resources and capabilities. Plans must, therefore, integrate vertically to ensure a common operational focus. Similarly, horizontal integration ensures that individual department and agency EOPs fit into the jurisdiction's plans, and that each department or agency understands, accepts, and is prepared to execute identified mission assignments. Incorporating vertical and horizontal integration into a shared planning community ensures that the sequence and scope of an operation are synchronized.[289]

An extreme temperature event is a type of emergency and, as stated in FEMA's Guide, "A key consideration is the integration of household pets and service animals into the planning process" for emergency plans.[290] However, while FEMA's Preparedness Guide addresses emergency shelters, it does not specifically address heating and cooling centers.

Nevertheless, and as explained below, the Commission finds that section 8593.10(b)(1)(D) and (E) does not impose a state-mandated new program or higher level of service on counties.

The plain language of the test claim statute provides that counties only have to designate one warming/heating center and one cooling center able to accommodate pets "*to the extent practicable*." The language "shall, to the extent practicable" is different than the Legislature's use of the word "shall," alone, when addressing the accommodation of persons with pets at shelters in section 8593.10(b)(1)(C). Where the

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[288] Exhibit G, Claimant's Comments on the Draft Proposed Decision, pages 1-2.

[289] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 8.

[290] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 13.

Legislature uses a different word or phrase in one part of a statute than it does in other sections, it must be presumed that the Legislature intended a different meaning.[291]

The courts have interpreted “to the extent practicable” as recommending that the activity “should” be performed “to the extent practicable,” but not requiring that the activity “shall” be performed as a legally enforceable duty. In *Coachella Valley Unified School District v. State of California*, school districts filed a petition for writ of mandate against the State of California challenging California’s compliance with No Child Left Behind Act (NCLBA) in its testing of limited English proficient (LEP) students. The school districts claimed that because California tests LEP students in English for purposes of NCLBA accountability, instead of in the student’s native language, the tests are not “valid and reliable” for these students as required by the federal legislation.[292] Federal law stated that LEP students “*shall* be assessed in a valid and reliable manner and provided reasonable accommodations on assessments..., including, *to extent practicable*, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency....”[293] The state chose to test in English and provide accommodations to LEP students, instead of assessing the LEP students in their native language.[294] The court disagreed with the school districts, denied the petition for writ of mandate, and found that the “test must be ‘reliable and valid’; reasonable accommodations must be provided; and to the ‘extent practicable’ these accommodations *should include* ‘assessments in the language and form most likely to yield accurate data.’”[295] The court held that native language testing was not mandatory, but should be provided to the extent practicable.[296] The court stated that “the explicit concern for ‘practicability’ and reasonableness, are all statutory signposts calling for broad discretion.”[297]

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[291] *Roy v. Superior Court* (2011) 198 Cal.App.4th 1337, 1352.

[292] *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 101.

[293] *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 103, emphasis added.

[294] *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 103.

[295] *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 114, emphasis added.

[296] *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 114-115.

[297] *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 115.

Other courts addressing the same language in different governmental contexts have come to the same conclusion; that the Legislature's use of the word "practicable" means that "an entity is vested with discretion to consider the 'advisability' of an action."[298]

Similarly, here, the language that says counties "shall, to the extent practicable" designate one cooling and one warming center able to accommodate pets shows that accommodating persons with pets at cooling and warming centers should be done, but the decision is within the discretion of the county to determine if accommodating pets in these centers is feasible and would include local considerations of availability of facilities and any costs to open and staff these facilities, in light of the existing requirement to designate at least one emergency shelter to accommodate persons with pets as discussed above.[299]

The claimant asserts that this case is unlike *Coachella*, since counties and cities that are able to designate a cooling or warming center that can accommodate persons with pets do not have the discretion, but are mandated to do so:

> The *Coachella Valley Unified School District* case therefore establishes that under the NCLBA, "to the extent practicable" involves states having discretion to decide whether they should test LEP students in their primary

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[298] *Outfitter Properties, LLC v. Wildlife Conservation Board* (2012) 207 Cal.App.4th 237, 247-248 citing to *Covarrubias v. Superior Court* (1998) 60 Cal.App.4th 1168, 1180 (the juxtaposition of the phrase "where practicable" with the word "shall" in Code of Civil Procedure section 223 evinces an intent to vest discretion to determine the practicability of a course of action); and *Wilson v. Ostly* (1959) 173 Cal.App.2d 78, 83-84 (holding that a provision in county charter that promotional examinations shall be held when practicable gave defendants limited discretion.)

See also, *Alameda County Waste Management Authority v. Waste Connections, Inc.* (2021) 67 Cal.App.5th 1162, 1177, addressing the California Integrated Waste Management Act. In 1992 the Act required,

> "landfill operators, *to the extent practicable*, to report periodically to each county the tonnages of waste from that jurisdiction that had been deposited at their facilities and required waste haulers to report to landfill operators the origin of the waste they delivered. . . .
>
> *In 1994, the Legislature strengthened the reporting requirements, making them mandatory by eliminating the 'to the extent practicable' language* and authorizing CalRecycle to adopt implementing regulations (Stats. 1994, ch. 1227, p. 7658, amending § 41821.5.) CalRecycle adopted regulations establishing a disposal reporting system, establishing record retention and quarterly reporting requirements for landfills, haulers and local jurisdictions, and requiring identification of waste by the jurisdiction of origin." Emphasis added.

[299] Merriam-Webster's definition of "practicable is "capable of being put into practice or of being done or accomplished: feasible" https://www.merriam-webster.com/dictionary/practicable (accessed on May 13, 2026).

> language to achieve the NCLBA's legal objectives, not whether states are able to do so. In contrast, under Government code sections 8953.10(b)(C)-(D), counties and cities which designate emergency cooling or warming centers are mandated to designate at least one cooling or warming center that can accommodate people with pets if they are able to do so. Unlike states under the NCLBA, counties and cities which are able to designate a cooling or warming center that can accommodate persons with pets do not have discretion to decide whether they should do so.[300]

However, as the Supreme Court explained, a state mandate based on "legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey. This standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has "a clear, present, and usually ministerial duty to act. ... *Mandate will not issue if the duty is ... mixed with discretionary power*."[301] And, here, there is no legal compulsion. Rather, the state has left the decision to local governments to designate one cooling center and one warming/heating center that can accommodate persons with pets, based on whether the local government decides if that action is practicable for its jurisdiction. Thus, even assuming counties are compelled to have an emergency plan that designates warming and cooling centers in the first place, Government Code section 8593.10(b)(1)(D) and (E) does not legally compel counties to accommodate persons with pets at one of those centers, based on the plain language of the statute.

The claimant may be arguing there is practical compulsion since it asserts that a mandate exists for those local governments that *can* accommodate persons with pets in their jurisdiction's heating and cooling centers. As indicated above, practical compulsion "arises when a statutory scheme induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply."[302] A determination of practical compulsion in each case must depend on such factors as the nature and purpose of the program, whether its design suggests an intent to coerce, when local participation began, the penalties, if any, assessed for withdrawal or refusal to participate or comply, and any other legal or practical consequence of nonparticipation.[303]

The claimant has not identified any laws or provided any evidence to show the imposition of severe consequences if it fails to accommodate persons with pets at these

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[300] Exhibit G, Claimant's Comments on the Draft Proposed Decision, page 2.

[301] *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815, emphasis added.

[302] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[303] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816, citing to *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

centers. The law provides that a county simply has to show that it is not practicable to comply in its jurisdiction.

Moreover, even if a court were to agree with the claimant that practical compulsion can be found, the "requirement" to accommodate persons pets at these centers would not be new. As indicated in the Background, counties have been required by Government Code section 8593.3.2. to send their emergency plans and updated plans to Cal OES to review for compliance with Cal OES' best practices since 2021. Cal OES' Planning Best Practices for County Emergency Plans refers to additional best practices "on topics such as Extreme Temperature (hot/cold) planning," which can be found on Cal OES's Publication page.[304] Cal OES' Extreme Temperature Response Plan, issued in 2022, states that it "establishes best practices for local governments through guidance and checklists and recognizes that some local agencies may already have a system for managing extreme temperatures. It is the intent of this plan to assist local efforts and to better coordinate their efforts with those initiated by state agencies."[305]

Cal OES Extreme Temperature Response Plan identifies as a best practice that facilities identified for cooling and warming centers provide services to accommodate individuals with domestic pets and ensure impacts to pets and animals due to extreme temperatures are addressed.[306] Thus, even if a court were to find that counties are practically compelled to have emergency plans which designate heating and cooling centers, and are practically compelled to accommodate persons with pets at one of those centers, then the requirement is not new since counties were previously required to comply with Cal OES' best practices to accommodate persons with pets at these centers.

Thus, designating, to the extent practicable, one cooling center and warming center that can accommodate persons with pets as stated in section 8593.10(b)(1)(D) and (E) does not mandate a new program or higher level of service.

Accordingly, the activities identified in Government Code section 8593.10(b) do not mandate a new program or higher level of service on counties.

b. The activities in Government Code section 8593.10(b)(1)(B), (C), (D), (E), and (b)(2) do not mandate a new program or higher level of service for cities.

Government Code section 8593.10(b)(1) requires cities, upon the next update of a city's emergency plan, to do the following:

[¶]

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[304] Exhibit H (9), Cal OES Planning Best Practices for County Emergency Plans, page 6.

[305] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 7.

[306] Government Code section 8593.3, as last amended by Statutes 2022, chapter 247; Exhibit H (4), Cal OES Extreme Temperature Response Plan, pages 7, 76, 80-81.

B. A city that has previously adopted an emergency plan designating emergency shelters shall update its emergency plan to designate emergency shelters able to accommodate persons with pets.

C. Whenever a city or county designates any number of emergency shelters, it shall designate at least one emergency shelter that can accommodate persons with pets.

D. Whenever a city or county designates any number of emergency cooling centers, it shall, "to the extent practicable", designate at least one cooling center that can accommodate persons with pets.

E. Whenever a city or county designates any number of emergency warming centers, it shall, "to the extent practicable", designate at least one heating[307] center that can accommodate persons with pets.

Section 8593.10(b)(2) requires that an emergency shelter designated as able to accommodate persons with pets to be in compliance with both of the following:

A. Safety procedures regarding the sheltering of pets referenced or established in the component of the state and local emergency plan.

B. Applicable disaster assistance policies and procedures of the Federal Emergency Management Agency.

Unlike counties, cities have not been subject to any statutes requiring the adoption of an emergency plan, the updating of an emergency plan, or a requirement to designate shelters, and, thus, the activities required by section 8593.10(b)(1)(B) and (C), and (b)(2) are not legally compelled by state law. These activities are discretionary decisions of a city to carry out its police powers and to qualify for emergency response funding under the CDAA. This is consistent with the plain language in section 8593.10(b)(1)(B), which begins with "[a] city that has previously adopted an emergency plan designating emergency shelters . . ."

Moreover, there is no evidence in the record that cities are practically compelled to perform these underlying activities. Rather, cities have the authority to work with counties to use the countywide operational area for the coordination of emergency activities during a state of emergency or a local emergency and are not compelled to have a separate local emergency plan.[308] In fact, the claimant's 2024 Animal Sheltering Annex states that it is designed to assist the Sacramento Operational Area in preparing and sheltering animals and was designed with the assistance of the operational area stakeholders, including cities.[309]

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[307] Statutes 2024, chapter 14 (AB 2232), amended this to change the word "heating" to "warming."

[308] Government Code section 8605, added by Statutes 1970, chapter 1454.

[309] Exhibit H (20), Sacramento County Animal Sheltering Annex, May 21, 2024, pages 6, 7.

Thus, the activities to update the emergency plan to designate shelters to accommodate persons with pets, to designate one shelter to accommodate persons with pets, and to comply with safety procedures and FEMA policies for those shelters are not mandated by the state for cities.

Even if a city argues it is practically compelled to have an emergency plan as a condition of having a local disaster council pursuant to Government Code section 8610, then the activities to update the emergency plan to designate shelters to accommodate persons with pets, to designate one shelter to accommodate persons with pets, and to comply with safety procedures and FEMA policies for those shelters, would not be new. As indicated in Government Code section 8610, the local disaster council is required to send a copy of its emergency plan to Cal OES and Cal OES is required to determine if the emergency plan substantially conforms to or exceeds the recommendations described in FEMA's Comprehensive Preparedness Guide 101, or other successor emergency operations planning guidance.[310] As indicated above, FEMA's guide recommends that:

- Emergency plans should be reviewed, revised, and updated.[311]
- The emergency plan should incorporate household pets in congregate household pet shelters and should designate sheltering facilities and plans to safely accommodate persons with pets.[312]

Thus, the activities required by section 8593.10(b)(1)(B) and (C), and (b)(2) do not mandate a new program or higher level of service on cities.

Moreover, the language in section 8593.10(b)(1)(D) and (E) that says whenever a city designates any number of emergency cooling centers or warming centers, it "shall, to the extent practicable" designate at least one cooling center and one warming/heating center that can accommodate persons with pets, does not impose a state-mandated activity on cities. Unlike counties, cities are not subject to any laws requiring them to designate emergency cooling or warming centers. Moreover, "shall, to the extent practicable" does not impose a legally enforceable duty.[313] Thus, the downstream

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[310] Government Code section 8610(c), as last amended by Statutes 2020, chapter 254.

[311] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 74.

[312] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, pages 68-73, 107-115.

[313] *Coachella Valley Unified School District v. State of California* (2009) 176 Cal.App.4th 93, 114-115; *Outfitter Properties, LLC v. Wildlife Conservation Board* (2012) 207 Cal.App.4th 237, 247-248; *Alameda County Waste Management Authority v. Waste Connections, Inc.* (2021) 67 Cal.App.5th 1162, 1177; and *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

provision to designate, to the extent practicable, one of these shelters to accommodate persons with pets is not mandated by the state.[314]

Accordingly, activities in Government Code section 8593.10(b)(1)(B), (C), (D), (E), and (b)(2) do not mandate a new program or higher level of service for cities.

2. The Public Information Provision in Government Code Section 8593.10(c) Regarding Whether a Cooling or Warming Center Can Accommodate Pets Mandates a New Program or Higher Level of Service for Counties, But Not for Cities Since Cities Are Not Compelled to Have Cooling or Warming Centers.

Government Code section 8593.10(c) requires the following: "Whenever a city or county provides public information regarding the availability of a cooling center or warming center, that information shall include whether the cooling or warming center can accommodate pets."

The determination of whether the requirement in section 8593.10(c) is mandated by the state depends on whether the claimant's participation in the underlying program is voluntary or legally compelled.[315] For the reasons below, the Commission finds that section 8593.10(c) imposes a state-mandated new program or higher level of service for counties, but not for cities.

As indicated above, counties have been subject to several statutes governing their emergency plans, including the requirement to designate cooling and warming centers upon the next update of their emergency plans.[316] However, the adoption of a local emergency plan in the first place is not legally compelled by state law. Rather, adopting an emergency plan is a condition of having an accredited local disaster council and a factor considered for the receipt of funds under the California Disaster Assistance Act (CDAA) and the SEMS program (which incorporates mutual aid and the CDAA provisions) for emergencies and major disasters.[317] The Commission and the Los Angeles County Superior Court previously denied reimbursement for compliance with these programs because the requirements were conditions for the receipt of funds.[318]

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[314] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 731.

[315] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 731.

[316] Government Code sections 8593.3, 8593.25.

[317] Government Code section 8607(e), as last amended by Statutes 2022, chapter 28; California Code of Regulations, title 19, sections 2401, 2443(a), 2445.

[318] Exhibit H (12), Commission on State Mandates, Proposed Test Claim Statement of Decision, *Standardized Emergency Management System (SEMS)*, 03-RC-4506-01 (CSM-4506), pages 20-22; Exhibit H (17), Los Angeles County Superior Court Minute Order and Judgment Denying Petition for Writ of Mandate, SEMS.

However, the facts have materially changed and new court decisions have been issued since those earlier decisions and, thus, the issue is whether adopting an emergency plan (which is the first underlying triggering event for purposes of the requirement in section 8593.10(c)) is compelled as a practical matter in light of these recent laws.[319]

In *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 557 ("*Stormwater*"), the Department of Finance and the Water Boards argued that certain conditions on a stormwater discharge permit were not mandatory because the conditions resulted from the local government's voluntary decision to operate a storm drainage system in the first place. The Court of Appeal rejected this argument and found there was practical compulsion:

> Here, the alternative to not obtaining an NPDES permit was for permittees not to provide a stormwater drainage system. If permittees chose to operate a [stormwater drainage system], they were required by the State to obtain a permit. While permittees at some point in the past chose to provide a stormwater drainage system, the drainage of a city in the interest of the public health and welfare is one of the most important purposes for which the police power can be exercised. In urbanized cities and counties such as permittees, *deciding not to provide a stormwater drainage system is no alternative at all. It is so far beyond the realm of practical reality that it left permittees without discretion not to obtain a permit.* Permittees were thus compelled as a practical matter to obtain an NPDES permit and fulfill the permit's conditions.[320]

Similarly, here, while adoption of a local emergency plan is not strictly compelled by state law, counties — who have a primary role in the State's coordinated emergency management system[321] — cannot reasonably ignore the findings in the BSA audit and all the statutes enacted since that audit without jeopardizing the health and safety of their citizens. As noted in the BSA audit report,

> California has experienced an increase in the frequency and destructive nature of wildfires. Experts predict that the recent trend of increased frequency and severity of wildfires will continue, requiring the State to be prepared to protect its residents more often from more dangerous natural disasters than it has in the past. The State's emergency management system designates local governments – such as counties, as primarily responsible for emergency preparedness and response.[322]

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[319] *Union Pacific Railroad Co. v. Santa Fe Pacific Pipeline, Inc*. (2014) 231 Cal.App.4th 134, 179-180.

[320] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558.

[321] Government Code sections 8605.

[322] Exhibit H (2) BSA Audit 2019, page 7.

The audit further notes that "[a]s natural disasters grow in severity and frequency, the potential effects of being underprepared also grow. Therefore, it is critical that the State also do more to ensure that local jurisdictions are as prepared as possible."[323] And citing to the FEMA guidelines, BSA concludes that "deficiencies in a county's efforts to prepare for a natural disaster can impair its ability to respond when the disaster occurs."[324]

As explained above, counties adopted their emergency plans as part of the Master Mutual Aid Agreement in 1950 (over 70 years ago) and since the BSA audit report, counties have been subject to additional laws requiring county emergency plans to comply with FEMA guidelines and Cal OES' best practices.[325] One of the statutes enacted also requires counties, upon the next update of their emergency plans, to designate cooling and warming centers for extreme temperature events.[326] And Cal OES' Extreme Temperature Response Plan lists as "critical information" to provide to the public, "cooling and warming center locations, times of operation, and instructions.[327] Similarly, FEMA's guidelines include a standard for emergency plans to "provide mechanisms for continually updating public statements on shelter capacity and availability as people/animals are coming to shelters."[328] Counties are required to comply with FEMA guidelines and Cal OES' best practices if they adopt an emergency plan.[329]

The Commission finds that deciding not to adopt or update an emergency plan in accordance with these standards is no alternative at all. "It is so far beyond the realm of practical reality" that the law leaves counties without discretion to adopt an emergency plan and comply these recent changes in law.[330] Accordingly, counties are required by state law to provide notice to the public regarding the availability of a cooling center or warming center.

Although counties should but are not mandated by the state to make one of the cooling or warming centers available for persons with pets, the plain language of section 8593.10(c) states that "*whenever*" a county provides public information regarding the availability of a cooling or warming center, it "shall include" in the public information

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[323] Exhibit H (2) BSA Audit 2019, page 9.

[324] Exhibit H (2) BSA Audit 2019, page 8.

[325] Exhibit H (18), Master Mutual Aid Agreement; Exhibit H (21), SEMS Guidelines, Part I, System Description Section E Regional Level, page 3; Government Code section 8593.3.2.

[326] Government Code sections 8593.3, 8593.25.

[327] Exhibit H (4), Cal OES Extreme Temperature Response Plan, page 35.

[328] Exhibit H (13), FEMA's 2010 Comprehensive Preparedness Guide 101, page 72.

[329] Government Code section 8593.3.2.

[330] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558.

"whether" or not the cooling or warming center can accommodate pets. Thus, this requirement to include information on whether or not a cooling or warming center can accommodate persons with pets is not dependent on whether a county does, in fact, offer that service; the information is required to be provided in either case and "whenever" the county provides public information about the availability of a cooling or warming center. Thus, all notices of availability of cooling and warming centers issued by a county are required to state whether or not the facility can accommodate pets.

The Commission finds that this downstream requirement is new for counties, as that information was not previously required to be provided with respect to cooling and warming centers. In addition, the requirement is mandated by the state for counties. Government Code section 14 states that "shall" is mandatory and the plain language states that counties "shall" include whether the cooling or warming center can accommodate pets. The requirement also imposes a new program or higher level of service since the requirement is unique to government and provides a governmental service to the public based on the Legislature's intent on enacting the test claim statute to provide increased guidance and public awareness in extreme weather events.[331] Thus, section 8593.10(c) mandates a new program or higher level of service on counties to include information about whether a cooling or warming center can accommodate pets whenever a county provides public information on the availability of a cooling or warming center.

However, the downstream requirement is not mandated by the state for cities. Unlike counties, cities are not required by law to designate emergency cooling or warming centers and thus, the downstream provisions to provide public information regarding the availability of a cooling center or warming center, and to include in that information whether the cooling or warming center can accommodate persons with pets, are not compelled or mandated by the state for cities.[332]

3. Government Code Section 8593.10(d), Which Requires Cities and Counties to Post Information on their Internet Websites, Mandates a New Program or Higher Level of Service on Cities and Counties.

Government Code section 8593.10(d) requires that "[a] city or county shall make available to the public by posting on its internet website information for pet emergency preparedness, including, but not limited to:

> (1) Information for creating an evacuation plan and emergency checklist for pets consistent with recommendations publicly published by the Department of Food and Agriculture and the Federal Emergency Management Agency.
>
> (2) Local organizations that may provide emergency pet assistance.

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[331] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; Statutes 2023, chapter 344, section 1.

[332] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 731.

(3) Local emergency shelters, cooling centers, or warming centers, when active, that can accommodate persons with pets."[333]

The claimant states that this "requires staff to obtain the appropriate content and do an initial page on the website but also to maintain the information to ensure proper locations during emergency events."[334]

This requirement is new for both counties and cities and is not triggered by any prior decision or requirement imposed on local government. Based on the plain language "shall," the requirement is mandated by the state.[335] And the requirement is unique to government and provides a governmental service to the public since the purpose is to carry out the Legislature's intent to provide guidance in increasing public preparedness for disasters and extreme weather events and, thus, imposes a new program or higher level of service on counties and cities.[336]

C. The New State-Mandated Activities Result in Costs Mandated by the State.

Finally, Government Code section 17514 defines "costs mandated by the state" as any increased costs which a local agency or school district is required to incur as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) specifically requires that no claim (including a test claim and a reimbursement claim) or payment shall be made unless the claim exceeds $1,000. A finding of costs mandated by the state also means that no exception in Government Code section 17556 applies.

Here, the claimant has filed a declaration signed under penalty of perjury identifying actual increased costs exceeding $1,000 to comply with the test claim statute for fiscal year 2023-2024.[337] The claimant's declaration also reports actual costs over $1,000 for staff time and supplies for cooling centers that accommodated pets, which would include costs to provide public information about whether the cooling center was able to accommodate pets in accordance with section 8593.10(c).[338] And the claimant's declaration estimates costs for fiscal year 2024-2025 of $315 to comply with the notice

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[333] Government Code section 8593.10(d).

[334] Exhibit A, Test Claim, page 24 (Declaration of claimant's Chief of Emergency Services).

[335] Government Code section 14, which states that "shall" is mandatory.

[336] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; Statutes 2023, chapter 344, section 1.

[337] Exhibit A, Test Claim, pages 26-27 (Declaration of the claimant's Emergency Operations Coordinator).

[338] Exhibit A, Test Claim, page 27 (Declaration of the claimant's Emergency Operations Coordinator).

requirements in section 8593.10(d).[339] Thus, there is sufficient evidence in the record that the claimant will incur increased costs mandated by the state to comply with the new state-mandated activities.

Furthermore, none of the exceptions to costs mandated by the state in Government Code section 17556 apply to deny this Test Claim. Although there may be state or federal grant funding that could be applied to the public information and notice costs, there is no evidence of additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate in accordance with Government Code section 17556(e).

Accordingly, the Commission finds the following new state-mandated activities required by Government Code section 8593.10(c) and (d) impose costs mandated by the state:

- Whenever a county provides public information regarding the availability of a cooling center or warming center, that information shall include whether the cooling or warming center can accommodate pets. (Gov. Code, § 8593.10(c)).
- Cities and counties shall make available to the public by posting on its internet website information for pet emergency preparedness, including, but not limited to:

  (1) Information for creating an evacuation plan and emergency checklist for pets consistent with recommendations publicly published by the Department of Food and Agriculture and the Federal Emergency Management Agency.

  (2) Local organizations that may provide emergency pet assistance.

  (3) Local emergency shelters, cooling centers, or warming centers, when active, that can accommodate persons with pets. (Gov. Code, § 8593.10(d).)

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim and finds that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning January 1, 2024, for the following activities only:

- Whenever a county provides public information regarding the availability of a cooling center or warming center, that information shall include whether the cooling or warming center can accommodate pets. (Gov. Code, § 8593.10(c)).

  Government Code section 8593.10(c) does not impose a reimbursable state-mandated program on cities.
- Cities and counties shall make available to the public by posting on its internet website information for pet emergency preparedness, including, but not limited to:

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[339] Exhibit A, Test Claim, page 27 (Declaration of the claimant's Emergency Operations Coordinator).

(1) Information for creating an evacuation plan and emergency checklist for pets consistent with recommendations publicly published by the Department of Food and Agriculture and the Federal Emergency Management Agency.

(2) Local organizations that may provide emergency pet assistance.

(3) Local emergency shelters, cooling centers, or warming centers, when active, that can accommodate persons with pets. (Gov. Code, § 8593.10(d).)

All other claims for reimbursement asserted are denied.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 16, 2026, I served the:

- **Current Mailing List dated June 9, 2026**
- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date issued June 16, 2026**
- **Decision adopted June 12, 2026**

  Emergency Shelters: Persons with Pets, 24-TC-06
  Statutes 2023, Chapter 344, Section 2 (AB 781); Government Code Section 8593.10(c), and (d), Effective January 1, 2024
  County of Sacramento, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 16, 2026 at Sacramento, California.

Jill Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/9/26

Claim Number: 24-TC-06

Matter: Emergency Shelters: Persons with Pets

Claimant: County of Sacramento

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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