

Melissa Miller

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**From:** Andrea Gullo <agullo@habitatauthority.org>  
**Sent:** Thursday, August 30, 2012 1:24 PM  
**To:** [REDACTED]; Bob Henderson; Michael Hughes  
**Cc:** Dick Simmons; laurie.collins@att.net; Melissa Miller; Ferrante, Robert  
**Subject:** FW: Brush Clearance Meeting

See below email that pertains to item 5 on the agenda today- I have highlighted two areas that are of particular interest.

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**From:** Simmons, Dick [mailto:[REDACTED]]  
**Sent:** Thursday, August 30, 2012 12:55 PM  
**To:** 'Andrea Gullo'  
**Subject:** FW: Brush Clearance Meeting

FYI

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**From:** Kuhn, Scott [mailto:[REDACTED]]  
**Sent:** Wednesday, January 18, 2012 2:47 PM  
**To:** Nissman, Susan; Todd, John; Johnson, Kevin; Durbin, Ron; 'Ray Smith'; 'Adkins, John'; Knittle, Danny J.; Wellen, Warren; Lee, Myong; Pat DeChellis; [REDACTED]@county.gov  
**Subject:** Brush Clearance Meeting

In advance of tomorrow's meeting, I wanted to provide a little background on the roadway brush clearance requirements in the County Fire Code and how SB 1595 and other state laws impact these requirements.

#### **Background on County Brush Clearance Program**

The County's Brush Clearance/Weed Abatement Program is performed pursuant to the State Health and Safety Code, which allows boards of supervisors to declare, by resolution, hazardous vegetation to be a public nuisance which should be abated. Clearance is conducted according to the State Health and Safety Code because it allows for swift abatement and provides for complete recovery of the costs associated with the County's abatement if the property owner refuses (through an assessment on the property tax). Properties are included in the County's Program because they have failed to clear flammable vegetation in violation of the County Fire Code section 325 and therefore are considered a "public nuisance."

County Fire Code section 325.2 requires that any person owning, leasing, or maintaining any building or structure upon or adjoining any mountainous, or forest or brush-covered land or land covered with flammable growth, and any person owning, leasing, or controlling any land adjacent to such structures shall clear brush to certain distances. In the very high fire hazard severity zones at issue here, the brush clearance distance is generally 200 feet from the structure.

#### **Background on Roadway Clearance Requirements**

Title 32, County Fire Code section 325.10 (Roadway clearance) provides that the Fire Department may require removal and clearance of flammable vegetation or other combustible growth for a minimum of 10 feet on each side of every roadway, whether public or private. The minimum clearance of 10 feet may be increased if the fire code official determines additional distance is required to provide reasonable fire safety.

#### **MRCA Decision to Stop Voluntarily Complying with County Fire Code Regarding Brush Clearance Based on SB 1595.**

Several state agencies and entities, including the Mountains Recreation and Conservation Authority (MRCA), Santa Monica Mountains Conservancy (SMMC), and state conservancy have determined that it is not longer going to perform brush clearance within the 200 feet of adjacent private property. MRCA's argument is two fold. First, since they are the State, the County Code is not applicable on their land which is subject only to State jurisdiction. Second, MRCA believes that a recent state law, SB 1595, puts the responsibility for such brush clearance solely on the owner of the structure and

not on the owner of land that is adjacent to the structure. MRCA argues that SB 1595 shifts the responsibility for brush clearance entirely upon the owner of the structure requiring the protection and precludes the County from requiring that adjacent land owners to perform brush clearance.

County Counsel agrees with the basic premise that the County Fire Code is not applicable on State land and that the County cannot enforce the requirements of the County Fire Code on State lands. However, County Counsel disagrees with MRCA's interpretation of SB 1595. There are provisions in SB 1595 and several other state code sections authorizing the County to adopt more restrictive fire safety requirements. MRCA believes the County Fire Code is less restrictive than SB 1595 because it puts the responsibility for clearing brush beyond the property line on the adjacent property owner rather than the structure owner. County Counsel believes the County Fire Code requirement that the adjacent property owner clear brush on its land was not impacted by SB 1595 and is a valid exercise of the County's authority.

**Per SB 1595, Clearance Beyond the Property Line Cannot be Required Unless the Local Ordinance Contains Specific Findings and the Adjacent Land Owner Provides Written Consent.**

SB 1595 specifically states that clearance beyond the property line is not required unless: 1) the local ordinance specifically provides for clearance beyond the property line and contains specific findings justifying the need to require clearance beyond the property line; and 2) written consent of the adjacent property owner has been provided to allow the structure owner to enter onto the adjacent land to conduct the brush clearance.

It is undisputed that the County Fire Code does not currently require the structure owner to conduct brush clearance beyond his or her property. It is also undisputed the County Fire Code does not contain the specific findings listed in SB 1595 to require clearance beyond the property line.

MRCA has been sending out written consent to adjacent private property owners granting those property owners to enter onto MRCA land to conduct brush clearance required by the County Fire Code. However, unless the County amends the Fire Code to include the findings mandated by SB 1595 and requiring clearance beyond the property line, there is no enforceable requirement that the structure owner conduct brush clearance beyond its property. While nothing prevents a structure owner who is given consent by MRCA to voluntarily conduct the brush clearance on MRCA land, if the structure owner refused, there is no current requirement in the County Fire Code or SB 1595 that requires the structure owner to perform the brush clearance beyond his or her property line.

The vast majority of the properties impacted by the County Fire Code's brush clearance requirements are private properties. Amending the Fire Code to require the structure owner, and not the adjacent property owner, to be responsible for the brush clearance would create chaos and dramatically reduce the effectiveness of the program. If the County amended its Fire Code to provide for clearance beyond the property line, it is anticipated that many adjacent land owners would simply refuse to grant written permission and then the County would not be able to enforce clearance of that adjacent property. Enforcement would become extremely difficult and burdensome. Accordingly, County Counsel has recommended that the County not amend the County Fire Code to require clearance beyond the property line. The result of the recommended action is that structure owners who receive MRCA's letter granting consent to enter its land, cannot be forced by the County to perform brush clearance on MRCA land. Nothing in the County Code prevents structure owners who are given consent by MRCA from voluntarily performing brush clearance on MRCA land. The County's brush clearance program for private property in the County will continue without interruption and will continue to require adjacent private property owners to perform brush clearance on their land within 200 feet of structures on adjacent land.

**State Gov't. Code §51184 Exempts Many State Parcels from Brush Clearance Requirements.**

Government Code §51184 provides that brush clearance requirements do not apply to land that is acquired or managed for one or more of the following purposes or uses:

- (1)Habitat for endangered or threatened species.
- (2)Lands kept in a predominantly natural state as habitat for wildlife, plant, or animal communities.
- (3)Open space lands that are environmentally sensitive parklands.
- (4)Other lands having scenic values, as declared by the local agency, or by state or federal law.

Nearly all of the parcels owned by the SMMC, MRCA, and Coastal Conservancy would likely fall within these purposes and uses.

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## State Responsibility Areas (SRA) lands

The County and the State have contracted pursuant to Public Resources Code section 4129 for the County "to assume responsibility for the prevention and suppression of all fires on SRA lands within County." It is my understanding that the contract does not, and has not, specifically required any brush clearance activities by the County on SRA lands. I would not recommend that the County seek to assert authority under PRC section 4129 to undertake such brush clearance activities as the State would be unlikely to pay for such activities and if the County conceded that we had the responsibility to do such brush clearance, the County could be liable if there were a wildfire. For example, the County was brought into a lawsuit by property owners against the State regarding Corral Canyon based on an alleged failure to perform contracted brush clearance on State lands.

See you all tomorrow.

Scott Kuhn  
Senior Deputy County Counsel  
Phone: 213-974-1852  
Fax: 213-613-4751

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