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INSTITUTE

...the voice of the chaparral

San Diego Rural Fire Protection District  
14024 Peaceful Valley Ranch Road  
Jamul, CA 91935

May 13, 2010

Re: Seizure of Joseph Diliberti's Property

Dear Members of the Board,

Thank you for providing the opportunity during your May 4, 2010 meeting for us to request your assistance in resolving the unjust lien the District allowed to be placed on Joseph Diliberti's property in 2004. To further this discussion, we are making the following requests:

**1. Placement on the June 1, 2010 agenda.** We are requesting that the Board place an item on the June 1, 2010 agenda to discuss Mr. Diliberti's situation so the Board can properly consider community testimony, allow new information to be reviewed, and help provide a solution.

**2. Access to records as per the California Public Records Act.** We are also requesting access to (and copies as requested during/after inspection) of the following records within ten days of receipt of this letter. Please notify us via email ([rwh@californiachaparral.org](mailto:rwh@californiachaparral.org)) or phone (760-822-0029) when these records are ready to be reviewed.

A. All records possessed by the San Diego Rural Fire Protection District Board and the San Diego Rural Fire Protection District relating to the vegetation clearance work performed on Mr. Diliberti's property (Parcel #520-012-0900) in 2004 including, but not limited to, citizen complaints, abatement notices, inspection reports, mail records, bill(s)/records from Fire Prevention Services, dump records, board records/hearings, photographs, records relating to the recording of the lien on Mr. Diliberti's property and payments made to the district and Fire Prevention Services by the County of San Diego and/or the San Diego Rural Fire Protection District, and any other communications (email included) that involve Mr. Diliberti's property.

B. Records relating to all weed/brush abatements performed in the San Diego Rural Fire Protection District, from the period when the District first entered into its contract with Fire Prevention Services, after the termination of said contract, and up to the present time.

C. All records relating to citizen complaints relating to weed/brush abatements performed on private property in the San Diego Rural Fire Protection District from the period when the District first entered into its contract with Fire Prevention Services, after the termination of said contract, and up to the present time.

D. All records relating to the District's contract with Fire Prevention Services including fees, the contract's original terms and final termination.

E. Records relating to the District's current weed/brush abatement practices.

### **Not an Isolated Case**

After investigating Joseph Diliberti's case, it has come to our attention that dozens of other citizens were negatively impacted by the District's decision to allow FPS to be in control of the weed/brush abatement process without adequate oversight. In a clear conflict of interest, the company searched for violations, issued abatement notices, and performed the clearance work. Many residents came to the Board (≈2003-04), describing how their lives had been turned upside down by FPS's aggressive behavior in conducting clearance work. In addition to protesting the exorbitant fees charged by FPS, citizens complained that it was extremely difficult to deal with the company or the District when trying to resolve problems or appeal a decision.

For example, in 2003 Robert and Caroline O'Connor, an elderly couple who lived in Jamul, were charged approximately \$4,000 by FPS for clearance work that was not performed according to their son Robert, a practicing attorney. Robert indicated his parents received an abatement notice, did the work, but was told by FPS that the property still needed clearing. "They came out again, didn't do anything, but charged us anyway," Robert said. As a result of the excessive bill, Caroline postponed dental work that needed to be done because she was concerned over her stressed finances. "We tried to appeal," Robert added, "but we felt the deck was stacked against us from the very beginning."

In 2004, Fred Puhn received a "Notice to Clean Premises" from FPS on a vacant lot he owned in Jamul. He said the amateurish appearing contents of the envelope made him think it was junk mail from a cleaning company. He tossed it aside. Before long he discovered there was a \$12,000 lien placed on his property. Mr. Puhn tried to appeal to the designated appeal board, but the panel refused to reduce the charge. Expressing thoughts similar to the O'Connor's, Mr. Puhn felt the experience was more like a "kangaroo court" because the very same people who approved the lien (San Diego Rural Fire Protection District) were the ones hearing the appeal. This is a comment we have continued to hear from people who have felt victimized by the District and FPS. According to Mr. Puhn, the District reduced the lien to \$5,000 after he indicated he was going to file a lawsuit. Mr. Puhn believes this was a calculated decision by the District to restrict the matter to a small claims court.

Mr. Puhn did follow up in small claims court and prevailed. However, the District appealed. The court threw out the small claims decision on a technicality relating to how the case was filed.

The impact of FPS's conduct is not limited to your District. James and Elaine Rattan of El Cajon were charged \$5,340 in 2004 by FPS to remove vegetation they had done in previous years for \$300. As with Mr. Puhn's case, their effort to find justice in court was prevented due to a technicality. The court decided the Rattans didn't have standing due to the fact that the abatement notice was mailed to their daughter. As a consequence, the Rattans nearly lost their home before they decided they could no longer afford to fight and ended up paying \$41,000 in 2009 to resolve the matter.

Mr. Diliberti also challenged the lien placed on his property. Unfortunately, he was equally unsuccessful in his attempt to gain relief through the court system.

### **Neither Fair or Just**

The pattern is clear. Private citizens appear to be unable to find justice after being subjected to the alleged abuse by Fire Prevention Services or other private companies engaged in weed abatement activities. Epsten, Grinnell and Howell, a legal firm representing homeowners associations, has described the actions of FPS as those of a "bounty hunter" that abuses the authority granted to it by local fire districts.

Reflecting the depth of the problem is the fact that FPS has been sued more than forty times over the past ten years in San Diego County Superior Court alone. Although the courts have ruled against FPS several times, the company appears to continue to operate by its own rules in an unprofessional, stealth-like manner that makes it nearly impossible for citizens and their representatives to resolve problems in a timely manner.

The behavior of FPS has attracted the attention of the California Department of Forestry and Fire Protection in the past. This prompted them to write a letter to Walter Eckard, Chief Administrative Officer for the county, on May 9, 2007. They said in part,

We have great concerns that contract inspectors for Fire Prevention Services are essentially compelling property owners to eliminate all vegetation within 100 feet of buildings, or to the property line. This application is producing properties that are aesthetically displeasing, environmentally damaging, and potentially exposing the property to erosion damage. If these requirements are based on PRC 4291, they are also misrepresenting the law (3).

We met with Mr. Ken Osborn, the president of FPS, and county representatives shortly after the county received this letter to discuss proper implementation of PRC 4291 (California's defensible space law). Mr. Osborn appeared to be receptive to our concerns, however, efforts to collaborate never went beyond a few email communications.

We agree with Chief Nissen when he expressed his opinion to us that the \$25,000 fee charged for the clearance work on Mr. Diliberti's property is egregious. The exorbitant

penalties levied on Mr. Diliberti by San Diego County due to the resulting lien placed on his property have only made matters worse. As you have undoubtedly noticed from the recent public reaction to this story, most reasonable persons concur that the charges are outrageous.

Mr. Diliberti has been told he must accept responsibility for the full amount and enter into a payment plan to pay off the entire \$63,000 that is now due. As a veteran living off disability checks, Mr. Diliberti cannot afford to pay such an exorbitant fee and the expectation that he do so is not reasonable.

Your decision to terminate the contract with FPS in response to the complaints you received from the community was a wise one. However, many of the unfortunate consequences of the district's use of FPS are still with us. Mr. Diliberti's case is one of those. It would benefit both the board's mission and the community at large to close this difficult chapter by helping to negotiate a fair and just settlement in this matter to allow Mr. Diliberti to retain his studio and live in peace. Otherwise, the San Diego County Tax Collector will sell the property by public auction after July 1, 2010.

What is happening to Mr. Diliberti is neither fair or just. Mr. Diliberti should not be expected to pay for the district's past mistakes.

Please help us resolve this matter as soon as possible.

Sincerely,

Richard Halsey  
Director

The California Chaparral Institute is a non-profit science and educational organization dedicated to promoting an understanding of and appreciation for California's shrubland ecosystems, helping the public and government agencies create sustainable, fire safe communities, and encouraging citizens to reconnect with and enjoy their local, natural environments.