CALIFORNIA CHAPARRAL INSTITUTE

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Senator Fran Pavley, Chair
Senate Committee on Natural Resources and Water
State Capitol, Room 4035
Sacramento, CA 95814

April 29, 2010

Re: Abuse of vegetation clearance law (PRC 4291)

Dear Senator Pavley,

The state's vegetation clearance law (PRC 4291) and the ability to place a lien on property for forced vegetation abatement is being abused by private companies with the tacit approval of local government officials.

In many instances, these private companies have been hired to search for vegetation management violations, issue abatement notices, and perform the work for which they charge exorbitant fees. Epsten, Grinnell and Howell, a legal firm representing homeowners associations, has described the weed abatement activities of one such company, Fire Prevention Services (FPS), as those of a "bounty hunter" that abuses the authority granted to it by local fire districts (1). Unfortunately, fire officials appear to support this approach by often responding to complaints by merely confirming the need to remove flammable vegetation.

Charges in excess of $25,000 to remove plant material from less than a half acre, double billing of work already paid for, and government agencies giving police power to for-profit clearance companies are some of the abuses of state law that are turning private citizens' lives upside down. In San Diego County, Joseph Diliberti, a Vietnam veteran living on disability checks, may lose his home because his government representatives have refused to acknowledge that the abatement lien placed on his home is a gross miscarriage of justice (2).

Mr. Diliberti's situation is not an isolated case. In 2004, a family in El Cajon was charged $5,340 by FPS to remove vegetation they had done in previous years for $300. They received the abatement notice just before going on vacation and didn't have time to take care of the problem. They left on their trip, figuring they would just pay for the abatement

when they returned. The family nearly lost their home before they decided they could no longer afford to fight the matter in court and ended up paying $41,000 because of fines and penalties to resolve the matter.

An elderly couple who lived in Jamul was charged $4,000 in 2003 by FPS for clearance work that was never 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, his mother postponed dental work that need 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."

The appeal boards that Robert and others have faced to challenge the expensive consequences of abatement actions are composed of the same people who ordered the abatement in the first place. The appeal process has been characterized as a "kangaroo court" by numerous individuals who have experienced its proceedings.

Reflecting the depth of the problem is the fact that FPS, one of the leading clearance companies in the state, has been sued forty times over the past ten years in San Diego County Superior Court alone (3). Although the courts have admonished FPS for its abuses of the law (4), 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.

We have brought these abuses to the attention of local officials in San Diego County many times, but they have failed to act (2,5,6). As a result, county officials and local fire districts are leaving the impression that in the name of fire protection, citizen's rights, due process, and environmental protections have little meaning (7,8,9,10,11).

Consequently, **we are turning to you to help clarify state regulations to ensure that the rights of citizens are no longer abused by the inappropriate and overzealous enforcement of vegetation clearance laws.** We hope the attached examples of such abuse will provide you with the documentation you need to help correct the problem.

Although most of the documents we have provided relate to San Diego County, **the abuse of PRC 4291 is a statewide problem.** We have received numerous complaints from citizens from other regions of California (12).

We believe six main issues need to be addressed:

> **1). Conflict of interest with private companies.** Private companies should not be given police power to enforce state law by searching for violations, conducting the inspections, issuing abatement notices that appear to come directly from the fire department, and then performing the required work. Similar to tow truck

operators in the past, clearance companies have become the equivalent of bounty hunters in search of profit.

2). Outrageous abatement fees. The fees private companies and local government code enforcement officers charge need to be controlled. The current arrangement, whereby fire agencies approve contract rates, is not working because they have not prevented exorbitant charges.

3). Adequate notice. Government agencies, fire districts, etc. must follow a notification process that is fair and reasonable before engaging in any "forced abatement" of vegetation. Besides mailed notices, a face-to-face meeting with the property owner by *fire officials* (not private companies), reasonable opportunities for the owner to appeal before an *objective, independent review board* made clear at the time of the meeting, and a signed affidavit from the property owner acknowledging notice has been received, should all be required before any agency can permit forced vegetation abatement.

4). Reasonable appeal time/due process. Two-week to 24-hour abatement notices are not reasonable, but have been frequently used as documented in the attached examples (13). In addition, there should be an *independent* appeal process that is clearly spelled out and does not create an undue burden on private citizens. The current system discriminates against those who do not have the financial resources or knowledge to find justice.

5). Local agencies need to enforce the law as written. PRC 4291 clearly indicates that natural vegetation is not the only variable in determining fire hazard and that the fire safe nature of structures must to be taken into consideration when determining vegetation management needs. Frequently, local jurisdictions fail to do this and focus only on "clearing" native vegetation. Flammable *ornamental* plants that have been directly responsible for the loss of many homes in wildfires over the past decade are usually ignored. Such an approach violates the intent and logic of 4291 and often leads to destructive land clearing operations and more flammable landscapes.

6). Lack of standards. Although some of the official literature on defensible space and vegetation management describes the proper way to reduce fire risk, the pervasive use of the word "clearance" and the lack of consistent standards and training for those performing vegetation management is causing significant confusion and environmental damage. Citizens are cutting down mature oak trees and scraping the earth because they have been told to "clear."

Proper vegetation management around homes to reduce fire risk is critical. Defensible space regulations can play an important role in helping us understand how to improve fire safety in and around our communities. However, when abused, public resentment and resistance can develop, making it difficult for fire officials to help reduce fire risk. Such

abuses will set back efforts to encourage citizens to comply with fire safety regulations. Defensible space laws are supposed to protect people's homes, not take them away.

We look forward to working with you and the committee on this matter.

Sincerely,

Richard W. Halsey
Director

Attachments

1. Documents relating to Mirasol Homeowners Association and their effort to remove an illegal $25,000 lien.
2. Letter to San Diego County Board of Supervisors concerning the taking of Joseph Diliberti's home by a tax sale to cover a weed abatement lien - 4/14/10.
3. Case listing of lawsuits against Fire Prevention Services in San Diego County Superior Court.
4. Judgment against Fire Prevention Services in the California Court of Appeal, Paulson v. FPS, 9/13/07.
5. Letter from CalFire expressing concerns about FPS to San Diego County, 5/7/07.
6. Notice to Abate Hazard - testimony from a citizen concerning experiences with the abatement process.
7. Carroll v. County of Riverside. Carroll had a false lien placed on his property in Perris, Riverside County. When sold there was more than $30,000 paid to FPI and City of Perris for no work done. This case was settled by the County and City of Perris over the objection of FPS.
8. Improper Notification and Excessive fees by FPS - RMWD Board of Directors, 1/27/09.
9. Center for Natural Lands Management letter to City of Oceanside, 8/26/08.
10. Confusion over property lines - testimony from a citizen, 4/19/10.
11. Double billing - testimony from a citizen - 4/28/10.
12. Letter to Contractors State License Board, 12/10/08.
13. Rodriquez case - $35,000 lien cut in half by court, 1/5/10.