

**SANTA MONICA MOUNTAINS CONSERVANCY**

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**MEMORANDUM**

**Date:** February 11, 2009  
**To:** Joseph T. Edmiston  
Executive Director  
**From:** Laurie C. Collins  
Chief Staff Counsel  
**Re:** SB 1595

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**Question Presented**

You have asked me to analyze SB 1595, Kehoe in the context of whether SB 1595 requires only the owner of a structure to maintain defensible space for the structure and has thus shifted the burden from adjacent landowners whose properties may be located within any locally required defensible space.

**Background**

Local ordinances regulating vegetation and brush management require both the owner of the occupied structure and the person or entity in control of any adjacent land to comply with the required vegetation and brush management. Title 32 of the Los Angeles County Code at section 317.2.2 places the burden of maintaining the required brush and vegetation management on “any person owning, leasing, controlling, operating, or maintaining any building or structure...or controlling any land adjacent to such structures....” The Ventura County Fire Code and Los Angeles City Fire Code contain similar language.

**Discussion***Bill Summary*

SB 1595 identifies defensible space requirements and recasts them in terms of “fuels management” instead of “vegetation or brush management;” requires a person who owns or controls a building or structure adjacent to or in a State Responsibility Area (SRA) or Local Responsibility Area (LRA) to maintain a firebreak of all combustible

materials, including manmade items, such as propane tanks, wood piles, and deck furniture; and requires the California Department of Forestry and Fire Protection to map Santa Ana, Mono, and Diablo winds that have been identified as a major cause wild fires spread. Specifically:

- SB 1595 adds to the factors that must be considered in identifying very high fire hazard zones in LRA'S and changes defensible space requirements in both LRA'S and SRA'S.
- Requires the director of CDF to consider Santa Ana, Mono and Diablo winds when identifying very high fire hazard severity zones in LRA'S.
- Adds additional definitions, including defining "fuel" to mean both combustible natural vegetation and manmade materials, especially petroleum product that are likely to ignite during a wildfire in a very high fire hazard severity zone. Also defines "fuel management" and makes other definitions.
- Establishes "defensible space" requirements.
- Modifies defensible space requirements to not only require the removal of flammable vegetation but also manmade objects and improvements attached to structures that may ignite during a wildfire.
- Provides local agencies and insurers may require greater "defensible space" than required by state regulations providing findings that such a clearing is necessary to "significantly reduce" the risk of ignition of and spread of wildfires.
- Requires property owners to remove any portions of trees within 10 feet of a chimney or stovepipe; maintain vegetation adjacent to the dwelling/structures to be free of dead or dying wood; and maintain the roof to be free of leaves, needles and other combustible material.
- Requires that fallen litter under vegetation adjacent to a structure be removed.
- Makes findings regarding the importance of a comprehensive fire protection strategy and the intent of the Legislature to incorporate lessons learned from the state's wild land fires of 2003 and 2007.
- Pre-empts applicable local ordinances, including those of charter cities and counties, but permits local agencies to adopt more restrictive fire and public safety requirements.

### *Pre-emption*

SB 1595 amends Section 51175(b) of the Government Code to read;

"The prevention of wildland fires is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern."

Section 51182 of the Government Code and Section 4291 of the Public Resources Code were amended to read:

- (a) A person who owns, leases occupies, controls operates, or maintains an occupied dwelling or occupied structure... shall at all times do all of the following:
  - (1) Maintain defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation as provided in paragraph (2).
  - (2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation...Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner (emphasis added).”

SB 1595 clearly pre-empts local ordinances in regard to the distance of the required defensible space from the structure and the party responsible for maintaining defensible space.

#### *Structure Owner’s Responsibility*

SB 1595 amended the Government Code and Public Resources Code, modifying and adding definitions and measures for fire prevention and fuel modification. Government Code Section 51182 (a), and Public Resources Code Section 4291 (a) defines the party responsible for maintaining defensible space as:

“A person who owns, leases, controls, operates, or maintains and *occupied dwelling* or *occupied structure* in, upon, or adjoining any mountainous area, forest-covered land, grass-covered land, or any land that is covered with flammable material, which area or land is within a very high fire hazard severity zone designated by the local agency pursuant to Section 51179....”

The interpretation of the plain language of these code sections places the responsibility of maintaining the defensible space upon the owner of an occupied structure or dwelling not the adjacent landowner.

The issue of responsibility for maintaining the defensible space appears to arise when defining the area required for fuel modifications in Government code Section 51182

(a)(1), and Public Resources code Section 4291 (a)(1). These sections state that the owner of the structure or dwelling must:

“Maintain defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation and as provided in paragraph (2).”

The question of who is responsible for maintaining the defensible space is at issue when that space crosses beyond the property line of the private landowner and encroaches on state or local park property. Paragraph (2) provides that “Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted with written consent by the adjacent landowner.”

Absent a state law, local ordinance, rule, regulation, or an insurer’s requirements, a homeowner’s responsibility for fuel modification ends at his/her property line. A private land owner is not responsible for clearing fuel from private, state or local agency land without some additional authority making them responsible to do so and without consent from the adjacent land owner.

Conversely, ordinances passed by Los Angeles and Ventura counties (L.A. County Code title 32317.2.2, Ventura County Fire Code H105, and L.A. City Fire Code 57.21.07) address “land ownership,” as opposed to just “building” ownership. The effect for this language is that it has placed the responsibility for fuel management on the adjacent landowners to do the fuel clearing if the clearance zone falls within their properties. These ordinances are clearly “less restrictive” than state law in that they attempt to relieve the homeowner of “defensible space” responsibility and liability and, as such, are in contravention of and pre-empted by Section 51175 (b) of the Government Code.

As discussed in the Assembly Floor Analysis of AB 1595, CAL FIRE defines defensible space, in part, as: “The area within the perimeter of a parcel where basic wildfire protection practices are implemented, providing the key point of defense from an approaching wildfire or escaping structure fire.” In addition to providing firefighters a working environment to protect buildings and structures from encroaching wildfires, defensible space also minimizes the chance that a structure fire will escape to the surrounding wild land. It is well documented that a home with adequate defensible space faces a higher probability of surviving a wildfire.

In 2006, the Board adopted defensible space guidelines that provide property owners with examples of fuel modification measures in order to comply with existing defensible space requirements in SRA'S. The guidelines suggest more intensive fuel clearance within 30 feet of a structure and emphasize the vertical and horizontal separation of trees and shrubs, for example, between 30 and 100 feet. They acknowledge that separation between vegetation will depend on slope, vegetation size and type, and other fuel characteristics. However, these guidelines are limited to vegetation management and silent with respect to other sources of combustion such as wood decks, outdoor furniture, woodpiles, and propane tanks. Additionally, existing guidelines myopically require the removal or clearance of flammable vegetation only.

This bill attempts to expand this limited view of defensible space by focusing instead on "fuels management," defined as "the act of controlling flammability and chemical, biological, or manual means, or by fire in support of land management objectives." Additionally, the bill somewhat mirrors CAL FIRE'S defensible space guidelines that suggest more intensive clearance 30 feet from a structure. While this absolute distance may not be entirely appropriate for all regions of the state or vegetation types, the bill states that "The intensity of fuels management may vary within the 100 foot radius of the structure."

The bill also embodies a "system approach" to fuel management, recognizing that a homeowner should consider building material, building standard, geography, and type of vegetation when determining the amount and intensity of defensible space. It does this, in part, by establishing a defensible space performance standard: "Fuels shall be maintained in a condition so that fire passing through under average weather conditions would be unlikely to ignite the dwelling. "For example, as of this January, any new home in a very high fire hazard severity zone" must comply with minimum standards dictating the use of "ignition resistant" materials. In a home with stucco siding, a fire-resistant roof and other risk-minimizing construction features is going to require less fuel modification than a home with open eaves and wooden roof. Finally, the bill requires CAL FIRE to develop and periodically update guidelines on fuel management. A copy of CAL FIRE'S "General Guidelines for Creating Defensible Space" is attached. It was last updated on February 8, 2006 and, as such, has not yet incorporated changes to the law mandated by SB 1595.

