

## Ruling cuts in half tax lien imposed for clearing brush

Owners still owe county \$17,484

By [Jeff McDonald](#), UNION-TRIBUNE STAFF WRITER

Tuesday, January 5, 2010 at 12:01 a.m.



John Gastaldo / UNION-TRIBUNE

Jaime and Laura Rodriguez are unhappy with a ruling in their dispute with the county for clearing brush off their land. "I don't think they took into consideration a lot of the facts that we showed," Laura Rodriguez said.

An independent hearing officer has cut in half a nearly \$35,000 tax lien placed on a backcountry parcel after county code-enforcement officers had the land cleared against the owner's wishes.

It is the first time in at least three years that county officials have seen such an enforcement decision reversed. Until the ruling by attorney [Peter Jensen](#), the county had prevailed in 15 of 15 administrative hearings.

Jensen decided the county could only justify charges of \$17,484 out of the \$34,556 it billed the couple for clearance work performed by a contractor before a judge stopped the job last August.

County planning officials said they disagreed with that finding but maintained the overall ruling validated their belief that the property was a hazard. "The ruling supported the main thrust of the county's case," Pam Elias, the county code-enforcement chief, said in a statement.

The owners of the 1.7-acre vacant lot in Julian were unhappy with the decision.

“Some people would see it as favorable. ... I don’t,” said Laura Rodriguez of Chula Vista, who owns the property with her husband, Jaime. “I don’t think they took into consideration a lot of the facts that we showed.”

The dispute began in early 2008, when the [California](#) Department of Forestry and Fire Protection tagged the Azalea Avenue property as a fire threat because of dead and dying vegetation and referred the case to county code enforcement.

In April 2008, the county sent Rodriguez a letter informing her the case was closed, but the county reversed course later that year and ordered the property cleared.

The Rodriguezes said they tried for months to get the county to clarify the problem and but got no explanation.

More than a year later, the county issued a 24-hour notice and hired a contractor for almost \$50,000 to clear the property.

The property owners went to court and a judge agreed to halt the cleanup project in mid-job. The Rodriguezes hired their own crew to finish the job for much less.

The lien was meant to recover the county’s cost for work completed before it was stopped by the judge.

The Rodriguezes and their attorney argued at the administrative appeal last month that there was no immediate fire threat and the county should have given them more notice and time to meet brush-clearance rules.

A Cal Fire official testified that the hazard was not an immediate threat. A county code-enforcement official told Jensen that any threat could be considered immediate.

In his ruling signed Dec. 24, Jensen said it was determined from the evidence that an immediate clearance was necessary.

## Property owners: County charges too much for cleanup

By [Jeff McDonald](#), UNION-TRIBUNE STAFF WRITER

Monday, December 28, 2009 at 12:04 a.m.

### **AT ISSUE: BRUSH CLEARANCE**

Brush-clearance contracts approved by [San Diego](#) County and charged to property owners jumped from zero to 18 in less than two years. Officials say they are working to reduce the fire threat across the dry backcountry. Some property owners said the county did not give them enough time or notice to do the work themselves, and charged too much for the service.

### **PROPERTY CLEANUPS BY THE NUMBERS**

**2007:** 124 referrals to code-enforcement officers; 0 forced clearances

**2008:** 212 referrals; 5 forced clearances costing property owners \$56,909

**2009\*:** 124 referrals; 18 forced clearances costing property owners \$219,163

\* Through November

*SOURCE: County of San Diego, Department of Planning and Land Use*

Two years ago, every property owner who received a brush-clearance order from county code-enforcement officers heeded the warning and cleaned up the dead trees and dried vegetation that had firefighters concerned.

But the number of property owners who have not complied with clearance demands has climbed sharply since 2007, prompting officials to hire private contractors to do the work — and generating complaints from landowners.

Code-enforcement officers last year ordered five property clearings and billed owners \$56,909, county records show. Between January and November of this year, they charged \$219,163 for 18 property clearings.

Individual jobs can cost a few thousand dollars or \$50,000 or more, depending on the amount of vegetation that must be removed. Cleanup costs are added directly to tax rolls, meaning the county can sell the land to recover its costs if a bill is not paid.

County officials say they are only trying to prevent wildfires.

Some property owners complained they were not properly warned or given enough time to clear their land on their own. Others say the county charged much more than what most clearance crews would cost.

“Our bill was six times the normal rate of a tree-trimming company,” said Edwin Kapitanski, whose family was unable to clear its Julian property in time to satisfy code enforcers.

The county hired a team in October to clean up the land and added \$6,964 to their tax bill. Kapitanski said the county handed the contract to a structural engineering firm that outsourced the job, which he said amounted to little more than chopping down a single tree.

He lost an administrative appeal and now owes the county an additional \$206 for the cost of the hearing, he said. The 0.75-acre vacant lot is worth about \$8,000, according to its county assessment.

“Even the hearing officer stated something about his (cost) being excessive,” Kapitanski said. “It’s corrupt.”

Eric Gibson, director of the Department of Planning and Land Use, said his office is being diligent about reducing the fire threat after deadly wildfires in 2003 and 2007.

“It’s all about public safety, protecting people’s lives and people’s homes,” Gibson wrote in response to questions. “The county only conducts these brush-clearance abatements at the request of fire experts.”

The [California](#) Department of Forestry and Fire Protection inspects about 12,000 properties a year for overgrowth and dead vegetation that could feed a fire.

Typically, when clearance is required, fire officials contact property owners and alert them to the problem, allowing them several weeks to remove the hazard.

When landowners fail to comply, the cases are referred to county code-enforcement officers, who usually visit the site and issue warnings granting the owners two weeks or more to finish the job.

Fire agencies referred 460 cases to code-enforcement officers in nearly three years: 124 in 2007, 212 in 2008 and 124 through November of this year.

County regulations permit property owners to appeal the clearance costs to an administrative hearing officer, but their record of success in recent years is zero. The county prevailed in all 15 cases heard since 2008, planners said.

Gibson said he doesn't know why more owners are not clearing their property before the county is forced to do so. Some may have grown complacent since the last firestorm, he suggested.

“(Two) years down the line, some people may have less of a sense of urgency about this,” he wrote. “Also, properties change hands. We may have more absentee owners who are less involved with these properties.”

Tracy Sells said she and her husband wanted to comply with the code-enforcement officer who tagged their Julian property, but they didn't have the money.

A contractor cleared the hazard in early October and the county added \$7,722 to the Sells' tax bill.

“The guy was super nice about it,” said Sells, who has since given the house up to foreclosure. “He said, ‘If we end up having to do it, it's going to be at least \$5,000, so you might want to do it yourself.’”

County officials say their contracted clearances tend to cost more than private jobs because their rules require contractors to be properly licensed, to hold a \$1 million liability bond and to pay workers a minimum salary.

The contracts are rotated between six preapproved vendors, with a limit of \$250,000 worth of business for each company in a single year, a county spokesman said.

If the cost of a job appears to be more than a historical average for the amount of work, it is put out to bid and the lowest bidder gets the contract.

Jaime and Laura Rodriguez of Chula Vista thought the county's bill to clear their property in Julian was so prohibitive — just less than \$50,000 — they went to court to prevent it from being enforced.

A judge agreed and issued a stop-work order in mid-job. Now the county wants almost \$35,000 from the Rodriguezes for work completed before the job was halted.

“It's caused me sleepless nights, for sure,” said Laura Rodriguez, who is awaiting a ruling on her appeal. “I just want it to be over with.”

*Library researcher Michelle Gilchrist contributed to this report.*

[Jeff McDonald](mailto:jeff.mcdonald@uniontrib.com): (619) 542-4585; [jeff.mcdonald@uniontrib.com](mailto:jeff.mcdonald@uniontrib.com)

## Couple cites blindsiding by county

### \$35,000 lot-clearing bill follows case-closed notice

By [Jeff McDonald](#), UNION-TRIBUNE STAFF WRITER

Monday, December 7, 2009 at 1:50 a.m.



John Gastaldo / Union-Tribune

A [San Diego](#) County official says Jaime and Laura Rodriguez of Chula Vista knew to clear their Julian property without additional notification. The Rodriguezes said they only wanted a clarification about the order.

When Laura and Jaime Rodriguez received a letter from San Diego County telling them the code-enforcement case on their Julian property was being closed, that was that. So they thought.

But over the summer the planning department hired a contractor to clear dead trees and brush from the vacant lot, then billed the Chula Vista couple nearly \$35,000.

The Rodriguezes say they were singled out and they don't understand how a case that had been closed could turn into an expensive job they couldn't afford.

"In the beginning, it was infuriating," said Laura Rodriguez, who works for a local security company. "Now I'm almost feeling numb."

County officials said the property owners should have complied with a follow-up clearance order issued in June 2008, two months after the county closed the file.

Code-enforcement chief Pam Elias said the case started as one of 12,000 or more routine inspections Cal Fire performs every year. Once a hazard is cited, the vast majority of owners clean up their land, Elias said.

"I wouldn't say they're being harassed," Elias said. "We allowed them plenty of time in order to get the work done and they just didn't do it."

The two sides will make their cases at an administrative hearing Dec. 17.

Lack of appropriate notice to property owners has been claimed before. In a 2005 report, the county grand jury noted that "numerous citizen complaints" over abatement orders "generally allege poor notification and overcharges."

The Rodriguezes said they always wanted their property to be fire-safe, but much of the neighborhood looked just like their 1.7 acres and they needed more time to find a less-expensive contractor.

They said the clearance notices started after a neighbor who had rebuilt the vacation home he lost in the 2003 Cedar fire started complaining about debris on the lot more than three years ago.

After a series of letters to fire officials and at least one politician, Cal Fire inspectors visited the Rodriguez property and decided that vegetation needed to be cleared within 30 feet of the property lines.

State fire officials issued a removal order March 8, 2008, and gave the owners a little more than two weeks to comply.

The Rodriguezes, who bought the lot at auction for about \$30,000 the previous year, answered with a letter seeking clarification and additional time to address Cal Fire's concerns.

But the violation was referred to the code-enforcement section of the county Department of Planning and Land Use, which is responsible for enforcing abatement orders.

In April 2008, code enforcement officer Penu Pauu Jr. inspected the site and found there was no threat to nearby homes. Pauu told the Rodriguezes he was closing the case.

"There are no structures on your vacant property and the nearest one (mentioned above) is within an area already cleared to an effective fuel modification zone," Pauu wrote.

Pauu sent the Rodriguezes another notice that June reversing his April decision and telling them to comply with the March order. The only explanation was that a subsequent Cal Fire inspector considered the property hazardous.

The Rodriguezes responded with letters and phone calls, again asking for more information and time. Although the county never replied officially, Elias said the property owners knew what they had to do.

“There’s no legal requirement to have an additional notice,” Elias said.

Code enforcement officers are allowed to clear brush without the owner’s consent, but it is relatively uncommon. The county took 23 such actions in the past three years.

In a handful of those cases, the county sought a court warrant ahead of time, an extra level of authority for special cases, Elias said.

On Aug. 19, 2009 — 14 months after his June 2008 clearance order — Pauu signed an affidavit stating that the hazard persisted through four follow-up inspections of the Rodriguez property. The document cites no contact with the Rodriguezes after June 2008, although Pauu does say the case-closed letter he sent in April 2008 was “in error.”

The Rodriguezes say they were in the process of hiring a contractor when they received a last-warning notice Aug. 20. Records show they hired a crew Aug. 22 — two days before the county’s team was scheduled to start.

During an emotional confrontation at the property Aug. 24, the Rodriguezes said Pauu told them it was too late, the county contractor was beginning that day and it would cost the family more than \$49,000.

Jaime Rodriguez said a sheriff’s deputy he called to the scene told him the only way to stop the county was by going to court. On Aug. 26 a judge in Vista ordered the county to halt the job, which by then was 60 percent finished.

The Rodriguezes hired a crew to finish in about two weeks for \$500 a day, according to their records.

The county wants \$29,670 it spent on the cleanup repaid and \$4,816 for staff time on the case. It also wants a \$70 title fee reimbursed, for a total of \$34,556.

“The economics of this whole situation are insane,” said William Fuhman, the Rodriguezes’ attorney. The county “essentially charged more money than the Rodriguez’s interest in the property is worth.”

[Jeff McDonald](mailto:jeff.mcdonald@uniontrib.com): (619) 293-1708; [jeff.mcdonald@uniontrib.com](mailto:jeff.mcdonald@uniontrib.com)