

Attachment A
2011 MOU

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**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No. 11-361

- Resolution of the Monterey County Board of Supervisors to;
- a. Approve a Memorandum of Understanding (MOU) in support of the Monterey County Fire Warden Office;
- b. Appoint the Cal Fire Chief for the San Benito-Monterey area to serve as the County Fire Warden and Fuel Mitigation Officer;
- c. Authorize the Chair of the Board of Supervisors to execute the MOU; and
- d. Direct staff to take such further actions as may be necessary or appropriate to implement the intent and purposes of the MOU.....

WHEREAS, Monterey County desires to re-establish the County Fire Warden position and create a Fuel Mitigation Officer to serve at the direction of the Monterey County Resource Management Agency to aid in enforcing all laws and ordinances and any rules or regulations adopted by the State Board of Forestry and Fire Protection and the State Fire Marshal relating to fire prevention and protection within the unincorporated territory that is not within a local fire district jurisdictional area.

WHEREAS, the County has previously partnered with the California Department of Forestry and Fire Protection to appoint the State Forest Ranger in Monterey County to the position of County Fire Warden pursuant to Government Code section 24008 (Resolution No. 76-310, adopted August 3, 1976; Board order dated October 25, 1988) but has not filled the position in recent years;

WHEREAS, the Board of Supervisors adopted an ordinance on November 8, 2011 to codify the position of County Fire Warden in the County Code;

WHEREAS, pursuant to Government Code section 24008, the County may appoint a County Fire Warden and the Monterey County Code assigns certain duties to the County Fire Warden;

WHEREAS, the County desires to create a Fuel Mitigation Officer position to be funded by outside funding sources, such as state and federal grants, to act as a technical adviser to the County Board of Supervisors and the County staff regarding wildfire-related matters.

WHEREAS, a Memorandum of Understanding (MOU) has been negotiated, taking into account recommendations from interested parties, to set forth the intention of the County of Monterey, California Department of Forestry and Fire Protection ("CAL FIRE"), Monterey Fire Safe Council, and fire protection districts, departments and brigades located within the unincorporated areas of Monterey County to work together to (1) support the Monterey County Fire Warden Office; and (2) support the appointment of the CAL FIRE Chief for the San Benito-Monterey area to the County Fire Warden and Fuel Mitigation Officer positions.

WHEREAS, the CAL FIRE Chief for the San Benito-Monterey area, Chief Rick Hutchinson, has agreed to assume the responsibilities of the County Fire Warden as set forth in Exhibit IA of the MOU.

WHEREAS, the CAL FIRE Chief for the San Benito-Monterey area has also agreed to assume the responsibilities of the County Fuel Mitigation Officer, as set forth in Exhibit IB of the MOU, until sufficient funding is available to appoint a separate County Fuel Mitigation Officer.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- a. Approve a Memorandum of Understanding (MOU) in support of the Monterey County Fire Warden Office, attached hereto and incorporated herein by reference (Attachment 1);
- b. Appoints Rick Hutchinson, CAL FIRE Chief for the San Benito-Monterey area, to serve as the County Fire Warden and Fuel Mitigation Officer;
- c. Authorizes the Chair of the Board of Supervisors to execute the MOU; and
- d. Directs staff to take such further actions as may be necessary or appropriate to implement the intent and purposes of the MOU.

PASSED AND ADOPTED on this 8th day of November 2011, upon motion of Supervisor Potter, seconded by Supervisor Salinas by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on November 8, 2011.

Dated: November 9, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By *Dennis Hancock*
Deputy

ATTACHMENT 1

Memorandum of Understanding In Support of Monterey County Fire Warden Office

I. STATEMENT OF MUTUAL BENEFITS AND INTEREST

This Memorandum of Understanding (“MOU”) is hereby made and entered into by and among the County of Monterey, California Department of Forestry and Fire Protection (“CAL FIRE”), Monterey Fire Safe Council, and fire protection districts, departments and brigades located within the unincorporated areas of Monterey County (collectively, the “Parties”; individually, “Party”).

II. MOU PURPOSE

The Parties share a common mission with respect to reducing the wildland fire threat to human life and property and for promoting community well-being and ecosystem health. The Parties recognize that this mission can be better accomplished if their efforts are communicated, coordinated and facilitated through a single, central office. As such, through this MOU, the Parties agree to support the re-establishment of the position of the Monterey County Fire Warden.

The purpose of this MOU is to provide the general framework for cooperation and coordination to support the Monterey County Fire Warden and to outline the responsibilities of said position. Additionally, the purpose of the MOU is to support the establishment of a County Fuel Mitigation Officer and to outline the potential funding sources for and responsibilities of said position.

In 1977, the County Board of Supervisors agreed to assign the State Forester certain responsibilities of a County Fire Warden. Government Code section 24008 allows the Board of Supervisors to appoint a County Fire Warden, and on October 4, 2011, the Board of Supervisors adopted an ordinance establishing the position of County Fire Warden. The County Fire Warden has specific review, permitting, and enforcement duties set forth in Government Code section 24008 and the Monterey County Code sections 10.68.030 (Fireworks), 19.01.025 (Minor/Standard Subdivision Committee), 19.10.065 (Private Road Access), and 21.10.070 (Special Regulations-Project Review). Pursuant to Monterey County Code section 18.10.030 (Fire Code), the Building Official is the Fire Code Official. The Fire Warden position is currently unfilled and has been unfilled for the last couple of decades. CAL FIRE agrees through this MOU to assume the responsibility of the County Fire Warden.

The Fuel Mitigation Officer position would be a newly created position to be funded by outside funding sources, such as state and federal grants. CAL FIRE agrees through this MOU to assume the responsibility of the County Fuel Mitigation Officer once sufficient funding is available to support this position. The responsibilities of the County Fire Warden

and Fuel Mitigation Officer are provided as *Exhibits A and B*, respectively, attached hereto and incorporated herein by reference.

The Parties recognize that in order to have an effective role, the County Fire Warden must be provided certain review, permitting, and enforcement authority recognized by the Monterey County Code and by Government Code section 24008 for the unincorporated areas of the County that are not located within a fire district jurisdiction. In order to have an effective role, the Fuel Mitigation Officer must be provided that certain authority specified in the attached position description for the unincorporated areas of the County that are not located within a fire district jurisdiction. Within the fire district jurisdiction, the County Fire Warden and Fuel Mitigation Officer will have no authority to undertake duties and responsibilities of local fire districts except as requested by the local fire districts.

III. AGREEMENT

The Parties agree to:

1. Recognize and support the Monterey County Fire Warden as the County's central liaison and representative between the Parties and the public for communicating, coordinating and facilitating fire prevention and protection, enforcement and other fire-related efforts, as further set forth in *Exhibit A*, attached hereto and incorporated herein by reference..
2. Recognize and support the appointment of the CALFIRE Chief for the San Benito-Monterey unit, or his designee within CAL FIRE, to the County Fire Warden position.
3. Recognize and support the appointment of the CAL FIRE Chief for the San Benito-Monterey unit, or his designee within CAL FIRE, to the County Fuel Mitigation Officer position as the County's central liaison and representative for communicating, coordinating and facilitating fuel mitigation and other wildfire prevention measures such as those set forth in the Monterey County Wildfire Protection Plan (MCCWPP), including, but not limited to, providing wildland fire education outreach programs, promoting and facilitating individual and cooperative actions that lead to reductions in wildland fire threats, and advising, providing oversight of, or undertaking fuel mitigation projects, as further set forth in *Exhibit B*, attached hereto and incorporated herein by reference.
4. To the extent possible, agree to assist any effort that may further the purpose of this MOU.
5. Attend quarterly meetings held by the Parties to monitor the implementation of the MOU and to identify opportunities that may further the purpose of this MOU.
6. Maintain effective and consistent communication and collaboration between and among the Parties. To the extent consistent with laws and regulations, each Party agrees to share fire-related data and information.

7. Assist the efforts of the Monterey County Fire Warden in developing funding mechanisms to support the Fuel Mitigation Officer position, including, but not limited to, identifying, reviewing, and completing grant applications.
8. To the greatest extent feasible, carry out the Parties' separate activities in a coordinated and mutually beneficial manner in furtherance of this MOU.

IV. PARTY AUTONOMY

1. Parties to this MOU, and their respective organizations and offices, will implement the activities of this MOU in a manner that defines, supports, and maintains their autonomy and utilize their own resources in pursuing these objectives.
2. The Fire Warden and his designees, including the Fuel Mitigation Officer, shall have no authority to undertake duties and responsibilities of local fire districts within the areas of the County that are located within a fire district jurisdiction except as requested by the local fire district. Additionally, except in areas where CAL FIRE has jurisdiction independent of this MOU, the Monterey County Fire Warden and Fuel Mitigation Officer shall serve at the direction of the Resource Management Agency (RMA). Except in a fire emergency or unless CALFIRE has independent authority under federal or state law to take action, the Fire Warden, the Fuel Mitigation Officer or their designees shall, prior to undertaking, or permitting fuel mitigation projects that could potentially result in a physical change in the environment within the unincorporated area of the County, inform the County Resource Management Agency - Director of Planning or his designee of the proposed work in order to determine whether any County permits or environmental review is necessary to perform the proposed work. The Parties understand and agree that this MOU is intended to be carried out in compliance with all federal and state law and County regulation, and nothing in this MOU is intended to abrogate the requirements of the California Environmental Quality Act, the County's certified Local Coastal Program, General Plan, zoning, grading and building ordinances, or any other law or regulation.
3. Parties to this MOU are not obligated to make expenditures of funds or provide services in order to implement this MOU. No offer or obligation of permanent employment with the County is intended in any manner, and the County Fire Warden and County Fuel Mitigation Officer shall not be entitled by virtue of this MOU to receive from the County of Monterey any form of employee benefits or compensation.
4. This instrument in no way restricts the Parties, or any cooperating third parties, from participating in similar activities with other public or private agencies, organizations, and individuals or from implementing fire prevention programs in accordance with the applicable statutes, regulations, or policies.
5. The Parties acknowledge that this MOU shall not give rise to any Party's claim against any other Party for compensation for any loss, damage, personal injury or death arising from or in any way connected with the performance of this MOU; and each Party hereto expressly waives any such claims.

6. It is expressly declared that this MOU hereby does not constitute a partnership, joint venture, agency or contract of employment between the Parties or any of them.
7. It is agreed and understood by the Parties hereto that this MOU has been arrived at through negotiation and that no Party is to be deemed the Party which prepared this MOU within the meaning of Civil Code section 1654.

V. NONBINDING AGREEMENT

This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The Parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose of this MOU. Nothing in this MOU authorizes any of the Parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among the Parties require execution of separate agreements, and the negotiation, execution, and administration of these separate agreements must comply with all applicable law.

VI. TERM

This MOU will become effective with and upon the last date appearing opposite the signatures below by the Parties (“Effective Date”) and shall remain in effect for a maximum period of five (5) years from the Effective Date, or until such time as the MOU is dissolved by the withdrawal from the MOU by the County of Monterey or CAL FIRE or by mutual agreement of the Parties.

VII. AMENDMENT

Any amendment to the MOU must be made by mutual consent of the Parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials of the Parties, prior to any changes becoming effective.

VIII. TERMINATION

Notwithstanding the provisions in Section VI, at any time within the term of the MOU, any signatory may withdraw from participating in this MOU after thirty (30) days advance written notice to the other signatories. The remaining approving signatories may continue the provisions of this MOU until the expiration of its term. The MOU may also be dissolved by the withdrawal from the MOU by the County of Monterey or CAL FIRE or by mutual agreement of the Parties.

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

COUNTY OF MONTEREY



By: Jane Parker
Chair, Monterey County Board of Supervisors

Date: 11-9-11

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

CAL FIRE SAN BENITO MONTEREY UNIT




By: Richard C. Hutchinson, Jr.
Unit / Fire Chief

Date: Oct. 24, 2011

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

MONTEREY COUNTY FIRE CHIEFS ASSOCIATION

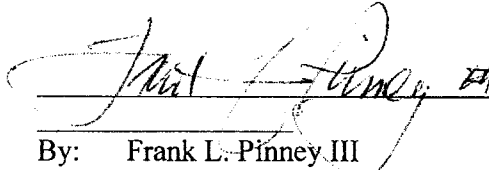


By: Richard Foster
President

Date: 10-6-11

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

ASSOCIATION OF MONTEREY COUNTY FIRE DISTRICTS AND VOLUNTEER FIRE BRIGADES

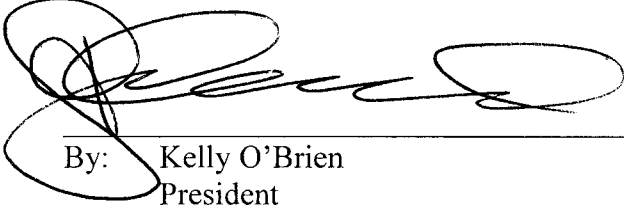


By: Frank L. Pinney III
President

Date: Oct 24, 2011

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

MONTEREY FIRE SAFE COUNCIL



By: Kelly O'Brien
President

Date: 10-28-11

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

NORTH COUNTY FIRE PROTECTION DISTRICT

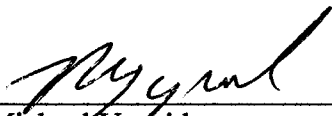


By: Chris W. Orman
Fire Chief

Date: 10/28/11

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

MONTEREY COUNTY REGIONAL FIRE DISTRICT



By: Michael Urquides
Fire Chief

Date: 10/16/2010

~~IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.~~

~~CARMEL VALLEY FIRE DISTRICT~~

By: ~~Michael Urquides~~ _____ Date: _____
~~Fire Chief~~

NOTE: ENTITY NO LONGER IN EXISTENCE

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

AROMAS TRI-COUNTY FIRE PROTECTION DISTRICT



Date: Oct. 24, 2011

By: _____
Richard C. Hutchinson, Jr.
Unit / Fire Chief

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

CARMEL HIGHLANDS FIRE PROTECTION DISTRICT



Date: Oct. 24, 2011

By: _____
Richard C. Hutchinson, Jr.
Unit / Fire Chief

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

CSU MONTEREY BAY FES



By: Richard C. Hutchinson, Jr.
Unit / Fire Chief

Date: Oct. 27, 2011

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

CYPRESS FIRE PROTECTION DISTRICT

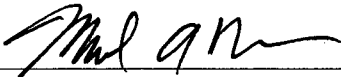


Date: Oct. 24, 2011

By: Richard C. Hutchinson, Jr.
Unit / Fire Chief

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

PEBBLE BEACH CSD

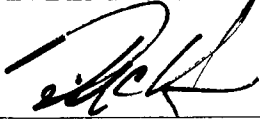


By: _____
Mike Niccum
General Manager

Date: October 24, 2011

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

SAN BENITO COUNTY FD



By: _____
Richard C. Hutchinson, Jr.
Unit / Fire Chief

Date: Oct. 24, 2011

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

SOUTH MONTEREY COUNTY FIRE PROTECTION DISTRICT



Date: Oct. 24, 2011

By: _____
Richard C. Hutchinson, Jr.
Unit / Fire Chief

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

BIG SUR VOLUNTEER FIRE BRIGADE

Martha Karstens Chief
By: Martha Karstens
Fire Chief

Date: 10/12/11

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

SPRECKELS FIRE COMPANY



By: Richard Foster
Fire Chief

Date: 10-6-11

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

MISSION SOLEDAD FIRE PROTECTION DISTRICT

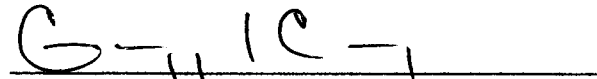


By: _____
Richard C. Hutchinson Jr.
Unit / Fire Chief

Date: Oct. 24, 2011

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

CACHAGUA FIRE PROTECTION DISTRICT


By: Gregg Curry
Fire Chief

Date: 10-7-2011

IN WITNESS THEREOF, the party hereto has entered into the Memorandum of Understanding as evidenced by their signature below.

MID COAST FIRE BRIGADE


By: Cheryl Goetz
Fire Chief

Date: 10/18/11

Exhibit 1A

DUTY STATEMENT MONTEREY COUNTY FIRE WARDEN

As mutually agreed by the County Board of Supervisors and the California Department of Forestry and Fire Protection (CAL FIRE), and in accordance with Government Code section 24008, the following are the duties and responsibilities that may be assigned to the County Fire Warden by the County Board of Supervisors:

- I. In accordance with Government Code section 24008 and subject to the direction of the County of Monterey Resource Management Agency for any action for which CAL FIRE does not have independent state authority, enforce all laws and ordinances and any rules or regulations adopted by the State Board of Forestry and Fire Protection and the State Fire Marshal relating to fires or to fire prevention and protection within the unincorporated territory that is not within a local fire jurisdictional area, including as follows:
 - A. Analyze building construction plans to assure compliance with applicable fire codes, rules, regulations and policies, and identify needed corrections;
 - B. Inspect structures, as necessary, to ensure compliance with State and Monterey County Codes and permit conditions; issue code violations where appropriate; and assure corrections are made to any violation of the fire codes, rules, regulations and policies;
 - C. Review projects pursuant to Monterey County Code section 21.10.070;
 - D. Pursuant to section 10.68.030 of the Monterey County Code, issue permits for fireworks;
 - E. Such other duties as may be enumerated in the Monterey County Code.
- II. Serve as an advisor to provide technical support to the County of Monterey on fire protection and prevention matters within the unincorporated territory that is not within a local fire jurisdictional area including:
 - A. Provide expertise and recommendations to the County Building Official (who is designated the Fire Code Official pursuant to Monterey County Code section 18.10.030) and to the Resource Management Agency-Planning Department regarding fire safety and fire safety measures;
 - B. Review and recommend fire protection matters as requested, including proposed fire district boundary changes under consideration and County appropriation of funding to fire protection agencies;
- III. Assist in the development of County Code provisions, ordinances and Board-level policies deemed necessary for improved enforcement of the State fire codes, rules, regulations and policies.
- IV. Prepare an annual report on fire protection and prevention efforts in Monterey County, and report and recommend to the County Board of Supervisors as necessary on fire protection and prevention issues, including pending or new legislation and regulation.
- V. Apply for federal and state grants to fund projects that further the purpose and goals of the County Fire Warden Office.

VI. Except in a fire emergency or unless CALFIRE has independent authority under federal or state law to take action, the Fire Warden or his or her designee shall, prior to undertaking, or permitting fuel mitigation projects that could potentially result in a physical change in the environment within the unincorporated area of the County, inform the County Resource Management Agency - Director of Planning or his designee of the proposed work in order to determine whether any County permits or environmental review is necessary to perform the proposed work.

None of the above shall be interpreted as intended to prohibit or discourage the County Fire Warden from contacting appropriate administrators or governing bodies, relative to the initiation of programs or other matters where the need is observed.

It is mutually understood that accomplishment of the above duties shall be dependent upon available personnel, funds and time, the benefits accruing to existing State and local government programs, and that there shall be no impairment of existing State and locally funded programs. It is further understood that this service shall be provided solely at the State's expense, and that no cost shall be chargeable to the County, any County Service Area, or any fire district unless specifically authorized by separate agreement. To partially fund this position, CAL FIRE shall receive certain fees paid by applicants or home owners for the review of building construction plans relative to fire prevention, performance of required inspections by fire personnel, and enforcement of fire code violations through the Fire Warden's office.

Exhibit 1B
DUTY STATEMENT
MONTEREY COUNTY FUEL MITIGATION OFFICER

Once sufficient funding is available for a County Fuel Mitigation Officer, the Board of Supervisors may consider establishing the position of and appointing a County Fuel Mitigation Officer to serve as an assistant to the County Fire Warden. Until a Fuel Mitigation Officer position is created, the Fire Warden will also have these duties. As mutually agreed by the County Board of Supervisors and the California Department of Forestry and Fire Protection (CAL FIRE), the following are duties and responsibilities which may be assigned to the County Fuel Mitigation Officer by the County Board of Supervisors:

- I. Act as a technical adviser to the County Board of Supervisors and the County staff regarding wildfire-related matters, including:
 - A. Provide consultation and technical guidance to the County Board of Supervisors and County staff regarding wildfire and wildland urban-interface fire prevention issues;
 - B. Assist in the development and implementation of County Code provisions, policies and action plans deemed necessary for improved wildfire prevention and protection in Monterey County; and
 - C. Function as a liaison between the County Board of Supervisors and the U.S. Forest Service (USFS), Bureau of Land Management (BLM), other governmental agencies, environmental groups and community groups to communicate, coordinate and facilitate fuel mitigation and other wildfire prevention measures such as those set forth in the Monterey County Wildfire Protection Plan (MCCWPP).

- II. Undertake oversight authority for fuel mitigation work pursuant to Public Resources Code section 4291 and pursuant to the County's determination to implement projects included in the advisory MCCWPP, including:
 - A. Educate property owners regarding fuel mitigation work around their structures and access roads;
 - B. Issue permits, in accordance with Section VI below, for the performance of fuel mitigation work and conduct pre- and post inspections pursuant to the permit, as necessary; and
 - C. Work in the field as necessary to assess areas for potential wildland fire hazards in the wildland urban-interface and recommends action plans, if needed, to the County Board of Supervisors.

- III. Work with community groups and organizations, such as the Monterey Fire Safe Council, to address wildland fire prevention planning and wildland fire hazard mitigation, including:
 - A. Promote and facilitate individual and cooperative actions that lead to reductions in wildland fire threats;
 - B. Coordinate with the USFS and BLM regarding fuel mitigation work on federal land; and
 - C. Provide wildland fire education outreach programs, informational workshop and training to community groups and organizations regarding wildfire prevention and protection.

- IV. Apply for and manage federal and state funded grant projects related to County wildfire mitigation projects, including:
 - A. Identify and prepare grant applications to provide funding for fire prevention and protection projects, including funding to support this County Fuel Mitigation Officer position; and
 - B. Manage County grant projects related to fire prevention and protection and ensure that the projects are achieved in accordance with the grant objectives.

- V. Support County emergency services during wildfire firefighting efforts by providing technical guidance relating to protecting Monterey County's residents, structures, infrastructure and the environment.

- VI. Except in a fire emergency or unless CALFIRE has independent authority under federal or state law to take action, the Fuel Mitigation Officer or his or her designee shall, prior to undertaking, or permitting fuel mitigation projects that could potentially result in a physical change in the environment within the unincorporated area of the County, inform the County Resource Management Agency - Director of Planning or his designee of the proposed work in order to determine whether any County permits or environmental review is necessary to perform the proposed work.

None of the above shall be interpreted as intended to prohibit or discourage the County Fuel Mitigation Officer from contacting appropriate administrators or governing bodies, relative to the initiation of programs or other matters where the need is observed.

It is mutually understood that accomplishment of the above duties shall be dependent upon available personnel, funds and time, the benefits accruing to existing State and local government programs, and that there shall be no impairment of existing State and locally funded programs. It is further understood that this service shall be provided solely at the State's expense, and that no cost shall be chargeable to the County, any County Service Area, or any fire district unless specifically authorized by separate agreement.