



MOUNTAINS RECREATION & CONSERVATION AUTHORITY
Los Angeles River Center and Gardens
570 West Avenue Twenty-six, Suite 100
Los Angeles, California 90065
Phone (323) 221-9944 Fax (323) 221-9934

February 22, 2008

Mr. [REDACTED]
Via Facsimile
310- [REDACTED]

Public Records Request

Dear Mr. [REDACTED]

In response to your request for all correspondence between the Mountains Recreation and Conservation Authority (MRCA) and the American Automobile Association (AAA) from January 1, 2008 to the present, I am faxing to you the following:

- An email dated February 12, 2008 from the MRCA's executive officer to Roger Kempler of the AAA, and
- A letter dated January 28, 2008 from MRCA's outside counsel Craig A. Steele to the MRCA's executive officer.

These are the only records in our possession that are responsive to your request.

Please note that, due to the small number of records requested, the MRCA is waiving the reproduction fee for this request. Future requests will be subject to the reproduction fee.

If you have any questions or further requests, you can reach me at 323-221-9944 ext. 101.

Sincerely,


Jeffrey K. Maloney
Staff Counsel

Jeff Maloney

From: Joseph T. Edmiston, FAICP [edmiston@smmc.ca.gov]
Sent: Tuesday, February 12, 2008 10:01 AM
To: Kempier.Roger@aaa-calif.com
Cc: Ives.Brandon@aaa-calif.com; Craig A. Steele; Laurie Collins; Jeff Maloney; Tim
Subject: Opinion of Richards Watson & Gershon re: Photo enforcement of MRCA ordinance

Dear Mr. Kempier:

Thank you for your interest in the legal basis for the Mountains Recreation and Conservation Authority's park ordinance enforcement of stops within our park areas.

In addition to the opinion of the Mountains Recreation and Conservation Authority's special counsel, Lance Bayer, the Authority also retained the firm of Richards, Watson & Gershon to render an opinion. We selected this firm because it also serves as city attorney to the major independent jurisdictions within our region, i.e., Beverly Hills, Agoura Hills, Westlake Village, etc.

Attached please find the RW&G opinion by Craig A. Steele.

By this message I am releasing Mr. Steele to discuss the opinion with you, should this release be necessary (after 30 years dealing with government attorneys, I still don't know when I must bless your talking to each other)

We also have two in-house counsel that have been involved, Laurie C. Collins, Chief Staff Counsel, and Jeffrey Maloney, Staff Counsel. Tim Yaryan serves as our Legislative Counsel in Sacramento, and his views should also be taken into account.

May I suggest a meeting between all you Juris Doctors to hash this out?

This program really has reduced our liability by orders of magnitude, so I hope the Auto Club can see its way to endorsing, or at least staying neutral with respect to enforcement on these internal park access ways.

Best,

Joseph T. Edmiston, FAICP, Hon. ASLA
Executive Officer
Mountains Recreation & Conservation Authority
joseph.edmiston@mrca.ca.gov

2/21/2008


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January 28, 2008

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Mr. Joe Edmiston, AICP
 Executive Director
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 Los Angeles, California 90065

Re: Video Enforcement of Traffic Regulations

Dear Mr. Edmiston:

You have asked for our opinion regarding whether the MRCA may use a video enforcement system to establish and prosecute violations of the MRCA traffic control ordinance in an administrative enforcement proceeding. We conclude that MRCA is not prohibited from using this type of system of enforcement on park roads, parking lots and paths within its jurisdiction. It is our opinion that MRCA acted within its statutory authority under the applicable provisions of the Public Resources and Government Codes when it adopted this administrative procedure for the enforcement of its traffic control ordinance.

As you are aware, however, this is a relatively new tactic in traffic enforcement and the traffic enforcement authority under which MRCA acts is derived from a combination of statutes and powers exercised by virtue of the joint exercise of powers agreement ("JPA"). Due to those two unusual factors, we were unable to find a reported case that specifically validates this practice.

As you are aware, Richards, Watson & Gershon serves as City Attorney in 27 California cities, including Beverly Hills, Agoura Hills, Westlake Village and Hidden Hills in the area of MRCA's jurisdiction, as well as counsel to dozens of other California public agencies. Members of our firm have counseled California public agencies for well-over 50 years. We have provided opinions such as this one and other advice to MRCA on numerous occasions regarding a variety of legal issues over the past few years.

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Background

The factual bases for our opinion are the documents supplied to us by MRCA in a packet dated December 13, 2007, and our subsequent conversations with you, Laurie Collins and Chief Ranger Walt Young regarding the use and character of the roads and pathways at issue. The documents provided to us included a traffic study prepared for MRCA in 2004 by Linscott, Law and Greenspan. We have performed no independent verification of the status of these roads and paths. If our understanding of the facts is inaccurate in any way, or if the facts change, please let us know immediately as that could affect our opinion. We also have reviewed MRCA's Park Rules and Regulations Ordinance and the JPA as currently available on MRCA's web site, as well as applicable State law.

You have informed us that in a number of specific locations under MRCA's jurisdiction, many drivers have been consistently failing to stop at posted stop signs on MRCA driveways, roads and pathways. This obviously creates a safety hazard, since the parks within which these stop signs are located enjoy a pedestrian friendly reputation and atmosphere. While a pedestrian on a public street might have one set of expectations and cautions in mind when he or she approaches a stop sign on a public street, hikers and joggers could have a different and more relaxed approach to a stop sign on a trail in a public park. Pedestrians on a busy public street are apt to be more cautious and verify that cars are stopping before they step into the street. Persons who are hiking on a trail or otherwise using a park may be less aware of vehicle traffic around them.

To address these safety concerns, MRCA adopted an ordinance that, among other issues, requires compliance with various traffic safety rules and signs. This traffic enforcement ordinance is enforced through an administrative hearing process, rather than in criminal or traffic courts. At selected stop signs, an MRCA video camera takes a video recording of cars. An MRCA ranger later reviews those videos and issues administrative citations if a violation of the traffic enforcement ordinance - namely the requirement to stop at stop signs - can be established. If so, the registered owner of the vehicle receives an administrative citation by mail and has the option to appear for an administrative enforcement hearing. If the violation is sustained after the hearing, a \$100 administrative fine is assessed against the owner of the vehicle. As with all administrative enforcement ordinances, the alleged violator may appeal an administrative fine to the Superior Court. No DMV points or other penalties are

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assessed against the owner of the vehicle, the violation is not reflected on a DMV record, and there is no criminal prosecution.

Chief Ranger Young provided me with the following list of locations where video enforcement is currently in place, with a description of the characteristics of each, briefly summarized here:

1. **Franklin Canyon – Upper Parking Lot Stop Sign.** The road to this location is gated and the gates are closed at night. Various entities own parts of the property but it is managed and maintained by MRCA. The road in question originally was a DWP service road and never has been a City street.
2. **Franklin Canyon Dam.** Again, this property is owned by various agencies and managed and maintained by MRCA. The park roads in question originally were DWP service roads and never were City streets.
3. **Top of Topanga Outlook.** The Santa Monica Mountains Conservancy ("SMMC") developed, constructed and owns this park. MRCA operates it and MRCA rangers have enforced park rules since construction was completed and the overlook was opened for public use. The stop sign exists on SMMC property and was not placed at the request of the County.
4. **Temescal Gateway Park, Lower Parking Lot and YMCA Pool cutoff.** Both are owned by SMMC and managed by MRCA. The Linscott Law Study does not classify these locations as streets, since they basically are driveways. These paths experience significant cut-through traffic by commuters. There is no evidence of any City expenditures on this site.
5. **Hollywood Bowl Overlook**

This area is owned by the City of Los Angeles, and was developed and constructed by SMMC. MRCA manages and maintains the site, MRCA rangers enforce park rules and MRCA erected a stop sign in March of 2006. The off-street stop sign essentially regulates traffic that exits the overlook parking area onto the public right of way.

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Analysis

In many ways, the enforcement activity at issue here is analogous to the regulation of traffic by a private security company or homeowners' association on private residential streets in a subdivision or residential complex. The stop signs at locations described above are, in all but one instance, located off of public streets and on property owned and/or managed by MRCA. The stop signs generally regulate vehicle movements into or out of parks, parking lots or park facilities rather than traffic patterns on public streets, which is within the jurisdiction of either the County or the applicable City. While the stop signs are intended to protect the safety of the users of a specific facility, MRCA is a government agency and its rangers are public officials, and both have the obligation to work within statutory and constitutional frameworks.

Administrative Enforcement

As an entity formed by more than one public entity for the joint exercise of governmental powers pursuant to Government Code Section 6500, *et seq.*, MRCA exercises the enforcement authority over park rules and regulations the Legislature has granted to one or more of its members. Some member entities of MRCA are recreation and parks districts. As relevant here, MRCA relies on the powers of recreation and parks districts to adopt ordinances and enforce rules and regulations pertaining to the operation and use of its programs and services. *See, e.g.* Public Resources Code Section 5786.1. The Legislature also has delegated to another MRCA member, the Santa Monica Mountains Conservancy ("SMMC"), the authority to regulate vehicle use, parking and signage. *See, e.g.* Public Resources Code Section 33211.5 and 33211.6. MRCA employs that statutory enforcement authority as well.

In furtherance of these jointly-exercised powers, MRCA adopted (and has amended) Ordinance No. 1-2005, a comprehensive set of park rules and regulations (the "Ordinance"). As relevant here, Chapter 4 of the Ordinance regulates vehicle use in parks under MRCA's control, including parking, signage and speed limits. Section 4.2. establishes the automated motor vehicle enforcement system for stop sign violations that is the subject of this opinion.

Chapter 6 of the Ordinance establishes a system of administrative citations for violations of the Ordinance. This administrative enforcement system was adopted by

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the MRCA pursuant to Government Code Section 53069.4, which provides in relevant part:

"The legislative body of a local agency, as the term 'local agency' is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties."

The Board of MRCA is a "legislative body" as defined in Government Code Section 54951¹. MRCA, as a JPA made up on local agencies, is itself a "local agency" under Government Code Section 53069.4. See, *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force*, 134 Cal. App. 4th 354, 363 (2007). Thus, the MRCA Board had the legal authority to adopt the administrative enforcement system set forth in the Ordinance. As established above, the recreation and parks district members of MRCA each have the statutory authority to adopt ordinances and enforce rules and regulations pertaining to the use of parks and park facilities. Further, the SMMC has the statutory authority to regulate vehicle use, parking and signage. Thus, in adopting the Ordinance, the members of MRCA jointly exercised the individual powers of its members to adopt an ordinance that regulates the use of vehicles in MRCA's parks and requires adherence to all posted signs, including stop signs. It follows, then, that MRCA had the legal authority to include the vehicle regulations in Chapter 4 of the Ordinance in MRCA's administrative enforcement system.

Having established that those vehicular regulations in the Ordinance are legally subject to administrative enforcement, MRCA then had the statutory authority to set forth in an ordinance the administrative procedures for the "imposition, enforcement, collection and administrative review" of administrative fines and penalties. Chapters

¹ Government Code Section 54951, the statute that determines to which local agencies the Brown Act applies, defines "local agency" as "a county, city, whether general law or chartered, city and county, school district, municipal corporation, district, political subdivision or any board, commission or agency thereof, or any other local public agency." As MRCA complies with the Brown Act, it has long been acknowledged that MRCA falls within this definition, likely as "any other local public agency." We note also that the members of the MRCA acknowledge the status of the MRCA Board as a Brown Act body in Section 5 of the JPA.

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4, 5 and 6 of the Ordinance do just that. As most relevant here, Chapters 4 and 5 of the Ordinance establish specifically that automated video evidence may be used under specific circumstances to determine whether the Ordinance should be enforced against a particular vehicle, and whether an administrative penalty should be imposed. Basic provisions of notice, right to hearing and due process will determine whether the video evidence is valid and dispositive in individual cases.

Once the Board of MRCA determined that the Ordinance would be enforced administratively pursuant to the applicable provisions of the Government Code, it is our opinion that MRCA had the statutory authority to adopt the automated video enforcement provisions of the Ordinance.

Vehicle Code Pre-emption Issues

A driver or vehicle owner cited for an administrative violation of the Ordinance based on automated video evidence may argue that MRCA is pre-empted by the California Vehicle Code from enforcing traffic regulations in this manner. Such an argument would be based either on the express pre-emption language of Vehicle Code Section 21, or the basic requirement that vehicular violations take place "in the officer's presence" set forth in Vehicle Code Section 40300. Although this has not yet been addressed in published and binding legal authority, it is our opinion that neither of those statutes control in this instance.

Vehicle Code Section 21 states:

"Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein."

Thus, a potential violator may argue that the MRCA is pre-empted from enforcing any local traffic control ordinance at all, and that MRCA rangers are limited to enforcing only the normal Vehicle Code provisions or "Rules of the Road." We believe this argument fails first because MRCA is not a "local authority" as defined in the Vehicle Code and thus not subject to this pre-emption. Under Vehicle Code Section 385, the term "local authorities" means "the legislative body of every county or municipality having authority to adopt local police regulations." Obviously,

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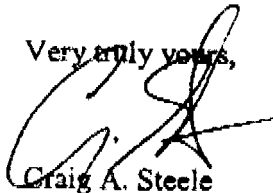
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neither MRCA nor any of its members fits that definition. This likely explains why the Legislature established entirely separate regulatory and enforcement authority for recreation and parks districts and SMMC. Second, we believe the pre-emption argument fails because, as we described above, it is not at all clear that the stop signs at issue here are actually located on public streets subject to the Vehicle Code.

The argument that MRCA may only enforce a vehicular violation if it is committed in the officer's presence, as prescribed by Vehicle Code Section 40300 is rebutted by the relevant language of that section, which expressly states that it applies only to violations "of this Code." While it is a violation of the Vehicle Code for a driver to fail to stop at a red light, MRCA rangers enforce the separate violation of the Chapter 4 of the Ordinance, rather than the provisions of the Vehicle Code. In that limited administrative enforcement, which does not involve an arrest or any DMV points report, the evidentiary provisions adopted by the MRCA Board would appear to control.

We hope that this opinion is helpful to MRCA in explaining the legal basis for the automated motor vehicle enforcement program to interested parties. Please do not hesitate to contact me if we can be of any further assistance in this or other matters.

Very truly yours,



Craig A. Steele

cc: Laurie Collins, Esq.

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