

John H. Blake  
Of Counsel

**DIRECT DIAL:**  
650/482-3084

**E-MAIL**  
jhb@hanniglaw.com



CORNER OF SELBY LANE/ATHERTON  
AND EL CAMINO REAL/REDWOOD CITY

www.hanniglaw.com

2991 EL CAMINO REAL  
REDWOOD CITY, CA 94061-4003

TELEPHONE (650) 482-3040

FACSIMILE (650) 482-2820

**PARTNERS:**  
TED J. HANNIG  
H. ANN LIROFF

**OF COUNSEL:**  
JOHN H. BLAKE  
WILLIAM R. WARHURST

**ASSOCIATES:**  
CHLEORA L. AGLIPAY  
TERESA E. CICHUCKI\*  
ELLEN B. HAAS  
DAVID M. WOOLFE

\*ADMITTED IN  
CONNECTICUT ONLY

April 2, 2001

**HAND DELIVERED**

Perry A. Irvine  
635 Bryant Street  
Palo Alto, CA 94301-2502

*Re: POST acquisition of 1589 Higgins Canyon Road, Half Moon Bay*

Dear Mr. Irvine:

As a follow-up to our recent discussion, this letter will elaborate on the invitation to the Peninsula Open Space Trust (POST) to acquire the property of Oscar and Andrea Braun (Moon Acres Ranch) on Higgins Canyon Road. The letter is not an offer to sell the property; rather, it outlines terms on which the Brauns would be willing to sell.

The Brauns would consider either an outright sale or the grant of a conservation easement. The object in either case would be to preserve the property as open space, thus providing a key link in the greenbelt stretching from Interstate 280 to Highway 1.<sup>1</sup>

The Brauns would reserve the right, during their lives, to reside, farm and keep livestock on the property, as they currently do. The POST principals are welcome to inspect the property to see for themselves the scope of these uses.<sup>2</sup>

The Brauns have negotiated a lease with Sprint PCS for placement of cellular communication antennas at a single site on their property. The towers will be fifteen feet high and camouflaged as pine trees.<sup>3</sup> The lease is conditioned on approval of the San Mateo County Planning Commission for the placement of the antennas. The lease would generate about \$90,000 in annual revenue that could inure to the benefit of POST, depending on how POST structured its transaction with the Brauns.

<sup>1</sup> See article entitled "A Spring Road Trip" (Landscapes, Spring 2001), in the booklet that accompanies this letter.

<sup>2</sup> The residence, outbuildings and other improvements are described in the memorandum entitled "Protecting California's Future; EnviroBank: Moon Acres Ranch," which is included in the booklet.

<sup>3</sup> See digital images and diagram showing proposed location of antennas in the booklet.

Perry A. Irvine  
April 2, 2001  
Page Two

Based on inquiries the Brauns have received from real estate agents and others about selling their property for its existing use primarily as a residence, which is the "highest and best use" under current zoning, the Brauns estimate the property's fair market value at \$25,000,000. However, they would convey the fee title to POST, subject to their lifetime occupancy described above, for \$12,500,000. POST would receive all other incidents of ownership, including the income from the Sprint PCS lease.

The Brauns would be willing to receive the price in a long-term payout at an interest rate favorable to POST, subject to approval of the Brauns' tax and financial advisors. Provided the payment stream was adequately secured in some other manner, the Brauns would not require a deed of trust or other encumbrance on the property.

Should POST find a conservation easement more attractive than outright ownership, the Brauns invite POST to specify the nature and extent of such an easement, so the Brauns can put a price on it.

Besides furthering POST's mission of open space preservation, the transaction could be the catalyst for an alliance between POST and the EnviroBank, as I suggested in my letter of February 20, 2001 to Audrey Rust.

Whereas the mission of POST, as I understand it, is primarily acquisition of land for open space, the EnviroBank's mission focuses on stewardship of open space, agricultural and other land. When POST, for whatever reason, continues to hold properties it has acquired rather than passing them to public agencies or others, POST incurs burdens of ownership for which it seems ill equipped. Examples include mitigating fire hazards, prevention of trespassing and related illicit activities, and remediating environmental problems. It is to handle such matters, among others, that the EnviroBank was conceived.<sup>4</sup> And, it is worth noting that Moon Acres Ranch is ideally located and equipped to serve as a staging area for these stewardship activities.<sup>5</sup>

Among the projects the EnviroBank hopes to undertake is remediation of the landfill on the Johnston Ranch. POST's public statements concerning the Johnston Ranch suggest that whatever plans POST has for the property will be implemented, not by POST itself but by others to whom POST will convey the property.<sup>6</sup> If so, then those plans, as well as the landfill remediation, could be accomplished by transferring the property to the EnviroBank, which would

<sup>4</sup> See memoranda entitled "Protecting California's Future; Mission: SOB Foundation," and "Protecting California's Future: EnviroBank," in the booklet.

<sup>5</sup> See memorandum entitled "Protecting California's Future; EnviroBank: Moon Acres Ranch" in the booklet.

<sup>6</sup> See Landscapes, Spring 2001, p. 4 in the booklet.

Perry A. Irvine

April 2, 2001

Page Three

then implement the POST agenda along with the remediation. The EnviroBank could act now, whereas POST may have to wait indefinitely for a public agency or other entity willing to take responsibility for the Johnston Ranch.

Besides allowing prompt action on the POST agenda, transferring the Johnston Ranch to the EnviroBank would eliminate or minimize any exposure POST may have to liability arising from the landfill, including the expense of remediation, for which the EnviroBank would assume full responsibility. An aquifer runs under Half Moon Bay and the hills to the east, where the Johnston Ranch is located. In the vicinity of the landfill on the Johnston Ranch, the groundwater that presumably feeds this aquifer is only fifteen feet beneath the surface. The passage of time increases the risk that any toxic substances in the landfill will leach into the ground water and thence into the aquifer.

Finally, POST is welcome to whatever information its principals might need in order to verify that the EnviroBank is a properly chartered and viable entity capable of implementing whatever plans POST has for the Johnston Ranch, as well as the landfill remediation. Similarly, POST could impose reasonable safeguards to assure the EnviroBank's adherence to those plans; for example, a recorded covenant, or perhaps sharing control of the EnviroBank itself through membership of POST principals, or others of POST's choice, on the EnviroBank board of directors.

We would hope that successful collaboration on the Johnston Ranch would be a springboard to future alliances along the lines suggested in my February 20 letter to Ms. Rust. Given the role of Moon Acres Ranch as a strategic link in the greenbelt, POST's acquisition of it, standing alone, would be a milestone. But we urge the POST principals to think in larger terms, and to take this opportunity to forge an alliance with the EnviroBank that would serve the interests of both parties. We would welcome a meeting in which the principals, as well as the lawyers, could have a give-and-take discussion of these matters.

Given our support of the POST mission and the potential for cooperation on the Johnston Ranch, we would prefer to deal with POST rather than other prospective buyers of Moon Acres, even those who, like POST, would purchase it for open space. Accordingly, we will withhold any commitment to any other party through Monday, April 16, 2001. After that, POST should



Perry A. Irvine  
April 2, 2001  
Page Four

consider itself on a par with any other prospective purchasers, and we will deal with everyone on a "first-come-first-served" basis.

Sincerely,

**HANNIG LAW FIRM LLP**

John H. Blake

cc: Clients