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5 Attorneys for Plaintiffs  
6 Oscar Braun, Andrea Braun  
and The Oscar A. Braun Trust  
7 Dated 1996

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 [SAN FRANCISCO DIVISION]  
11

12 OSCAR BRAUN, ANDREA BRAUN  
13 and THE OSCAR A. BRAUN  
TRUST DATED 1996,

14 Plaintiffs,

15 v.

16 COUNTY OF SAN MATEO,

17 Defendant.  
18  
19  
20

Case No.: C 03-03415 MJJ

DECLARATION OF OSCAR BRAUN  
IN SUPPORT OF OPPOSITION TO  
COUNTY OF SAN MATEO'S MO-  
TION FOR SUMMARY JUDGMENT

Date: Nov. 9, 2004

Time: 9:30 a.m.

Judge: Martin J. Jenkins

Trial: February 14, 2005

21 I, Oscar Braun, declare as follows:

22 1. I am the Plaintiff in this action. My residence is 1589 Higgins Can-  
23 yon Road, Half Moon Bay, CA 94019.

24 2. All of the matters stated in this declaration are of my own personal  
25 knowledge, and if called upon to testify as to their truthfulness, I could do so  
competently.

26 3. My wife Dr. Andrea Braun and I are San Mateo County residents  
27

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Braun, et al. v. County of San Mateo

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{BRAU:1193:JA:H0009735.DOC.1}

1 and owners of a home on approximately 70 acres overlooking Half Moon Bay  
2 and the Pacific Ocean. I am the Executive Director for Save our Bay, a non-profit  
3 charitable foundation. My wife is a dentist who practices in Menlo Park, and is a  
4 co-founder of Save Our Bay.

5 4. In 1989, my brother and I purchased the property, also known as  
6 "Moon Acres." In 1990, we applied to build two residences on the property. We  
7 faced opposition from Lenore "Lennie" Roberts, a lobbyist for the Committee for  
8 Green Foothills, and the Sierra Club, who opposed any construction that was not  
9 limited to the area immediately adjacent to Higgins Canyon Road. Ms. Roberts  
10 and her associates appealed the Planning Commission approval of the permit to  
11 build my house to the San Mateo County Board of Supervisors. Finally, after  
12 great effort and tens of thousands of dollars in unnecessary fees and other costs,  
13 the development permits for the house, including all water and fire protection  
14 systems, were issued by the County in 1991.

15  
16 5. In about 1994, I became interested in providing housing for Bernie  
17 Neves, the farm laborer on my property, who is mentally disabled. I obtained the  
18 permission of the county Farm Bureau and Growers' Association, and after doing  
19 so I brought a trailer on the property and hooked up a sewer system to the trailer.

20  
21 6. On March 4, 1998, San Mateo County investigators inspected  
22 Moon Acres in response to a complaint by my neighbor Cynthia Giovannoni that  
23 included a false allegation that there was hazardous waste buried on the prop-  
24 erty. In the spirit of full disclosure, I allowed the inspectors to examine the entire  
25 property, not just those items designated in the complaint. A true and correct  
26 copy of Mrs. Giovannoni's report is attached as Exhibit 1 to this Declaration. A  
27

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1 true and correct copy of a March 12, 1998 reply letter from County staff to Mrs.  
2 Giovannoni is attached as Exhibit 2 to this Declaration. A copy of the investiga-  
3 tion report is attached as Exhibit 3 to this Declaration.

4 7. Although the hazardous waste claim was proven false, the County  
5 inspectors notified us of the need to obtain permits for a stable, tractor shed,  
6 agricultural barn, and farm labor housing unit.

7 8. I immediately contacted County Health and Planning Department  
8 staff, including Director of Environmental Services Paul Koenig, to request their  
9 assistance in coming into compliance as soon as possible. At no time during the  
10 entire legalization process did I ever state or even indicate that the County did  
11 not have the right to legalize our property. A true and correct copy of an e-mail I  
12 wrote to Planner Laura Thompson, requesting information in the permit process  
13 and expressing a desire to proceed with the legalization, is attached as Exhibit 4  
14 to this Declaration. From this point forward, we did everything we could to  
15 cooperate with the County's efforts.  
16

17 9. In spite of this cooperation, the County proceeded aggressively, is-  
18 suing a citation against me on September 14, 1998, which was served upon me  
19 at the very time I was meeting with County staff to complete the application.  
20 Curiously, the citation was preceded by a newspaper article in the Half Moon Bay  
21 Review on September 9, 1998. When contacted by the reporter for the article, I  
22 informed him that I would cooperate fully with the legalization process. A true  
23 and correct copy of the Half Moon Bay Review Article from September 9, 1998,  
24 which accurately quotes me, is attached as Exhibit 5 to this Declaration.  
25  
26

27 10. On December 2, 1998, at a Court hearing relating to the aforemen-

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1 tioned citation, my wife and I filed an application for a Coastal Development  
2 Permit, a Resource Management-Coastal Zone Permit and a Stable Permit, in  
3 order to legalize the items on the property. Upon the filing of said application, on  
4 December 2, 1998, we paid the \$3,720 in fees the County requested. The  
5 Planning Administrator, Terry L. Burnes, participated by telephone in the court  
6 conference at which the \$3,720 was paid. A true and correct copy of the County  
7 receipt that I was given showing this payment is attached as Exhibit 6 to this  
8 Declaration. I further confirmed this payment and the submission of the com-  
9 plete application in a letter to planner Laura Thompson on January 18, 1999, a  
10 true and correct copy of which is attached as Exhibit 7 to this Declaration.

11  
12 11. Over a year after we paid the fees and submitted our complete ap-  
13 plication, County Planning staff recorded a document entitled "Notice of Continu-  
14 ing Nuisance" against the property. The affidavit to the notice was signed by  
15 Terry Burnes, Planning Administrator. A true and correct copy of the recorded  
16 Notice is attached as Exhibit 8 to this Declaration.

17  
18 12. The application process was arduous and detailed, lasted nearly  
19 three years, and included several inspections and visits by Planning Department  
20 staff. At all steps of the process, we did our utmost to cooperate with County  
21 Staff and to comply with their requests. At times the process grew contentious,  
22 and I contacted Planning staff to voice my opinion. A copy of a letter I wrote to  
23 Planning Staff on July 6, 2000 is attached as Exhibit 9 to this declaration. In this  
24 letter, among other things, I reminded Staff that I had paid all fees demanded by  
25 the County in December 1998. Ultimately, we resolved all differences with the  
26 Planning Department.  
27

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1           13. Finally, after nearly four years, the matter came before the Planning  
2 Commission on November 14, 2001. A true and correct copy of the Transcript of  
3 the Planning Commission hearing is attached as Exhibit 10 to this Declaration.  
4 At the hearing, I agreed to comply with all Planning Department requirements,  
5 even the requirements I believed were unfair, unwarranted or without legal  
6 support. See Exhibit 10, (11/14/01 transcript), page 31, line 16-21.

7           14. At the same hearing, Planning Department Manager Terry L.  
8 Burnes acknowledged that my wife and I had cooperated and were ready to  
9 comply with conditions required for approval. See Exhibit 10, (11/14/01 tran-  
10 script), page 46: line 18 – 47, line 12.) Mr. Burnes recommended approval of the  
11 permits, subject to certain conditions.  
12

13           15. Per Mr. Burnes' recommendation, the Planning Commission  
14 unanimously approved the application, adopting all conditions recommended by  
15 the Planning Department. Those conditions were to be completed before the  
16 issuance of building permits. Those conditions included the payment of certain  
17 additional fees. In signing the application, I thus agreed to pay the fees.  
18

19           16. On December 3 and 4, 2001, two individuals who had objected to  
20 approval of the permits appealed the Planning Commission decision to the Board  
21 of Supervisors. One of the appellants was Mrs. Giovannoni, my neighbor whose  
22 false complaint of hazardous waste had originally initiated the County investiga-  
23 tion into our Property. The other appellant was Lenore "Lennie" Roberts, the  
24 lobbyist for the Committee for Green Foothills (who has identified Ms. Roberts as  
25 the "sixth member" of the five-member Board of Supervisors) who had appealed  
26 my application to build my house back in 1990.  
27

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1           17.     In response to these appeals, I wrote a letter on behalf of my wife  
2 and myself to the Board of Supervisors on December 26, 2001. A true and  
3 correct copy of this letter is in the Admin. Record at page 00095. In this letter, I  
4 requested that the Board of Supervisors deny the appeal and uphold the unani-  
5 mous decision of the Planning Commission to approve my application. As is my  
6 constitutional right, I also criticized the Board of Supervisors for what I perceived  
7 to be its support of the anti-growth, anti-community agenda espoused by Ms.  
8 Roberts, the Committee for Green Foothills, and other groups who together have  
9 since become known as the Coastal Open Space Alliance ("COSA"). I asserted  
10 my belief that we had been victims of retaliation by the County, and pointed out  
11 several instances of the County's failure to prosecute environmental violations by  
12 parties connected with self-described 'environmental' organizations.  
13

14           18.     Planning Commission staff recommended denial of the appeal and  
15 approval of the application. The Planning Commission recommendation dated  
16 December 31, 2001, which contains all of the Planning Commission's required  
17 conditions, is included in the documents filed by the County in support of its  
18 motion.  
19

20           19.     The hearing before the Board of Supervisors took place on January  
21 15, 2002. I asked the Board to reaffirm the Planning Commission's approval  
22 without additional conditions or mitigation measures. I discussed some of the  
23 various public activities with which I had been involved through my foundation,  
24 including complaints against the county for failure to enforce environmental laws  
25 and for instances of outright pollution, and a 'citizen suit' civil action against local  
26 polluters. I discussed my firm belief that other, more politically 'friendly' persons  
27

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1 and organizations seem to have an easier time of the regulatory process on the  
2 San Mateo County Coast.

3 20. I also twice clearly explained that I had paid the required fees at the  
4 time the application was filed. (See Administrative Record, page 000260;  
5 1/15/02 hearing transcript, page 17 lines 14-16.) Mr. Burnes, on the other hand,  
6 gave the Board the mistaken impression that I had not paid any fees at the time  
7 of the application in 1998. The Board ignored my protestations that I had paid  
8 the fee and appeared to act on the assumption that I had not paid any fee,  
9 without seeking further clarification.  
10

11 21. For her part, Ms. Roberts recited a number of my activities as  
12 reasons why the application should be denied: She stated that I had filed com-  
13 plaints against state parks and the County Public Works Department; that I had  
14 appealed coastal development permit applications of neighbors alleged to be in  
15 violation of environmental and land use laws; that I had alleged the presence of  
16 an un-permitted waste dump on adjoining land owned by a local land trust; and  
17 that I had made appeals to the assessor's office regarding tax impacts of local  
18 environmental problems on adjoining properties. Each of these activities is  
19 protected by the First Amendment. Many of the other speakers at the hearing  
20 seemed more concerned with my reputation than with the facts of the application.  
21

22 22. I was surprised and disappointed that the Board of Supervisors  
23 would demand up-front payment of all building fees, order an additional investi-  
24 gation of my property and order staff to record a notice of violation of building  
25 code against the property. It appeared that the Supervisors had attempted to  
26 undo all of the work we had accomplished with the Planning Department to bring  
27

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1 everything in the application into compliance and have closure. As far as I know,  
2 the County has never imposed a set of similar restrictions on a permit applicant  
3 in my position. The County has admitted that they know of no other permit  
4 applicant in the past fifteen years who has been required to pay building fees  
5 before issuance of a planning permit. I know of no other circumstance in which  
6 the Board of Supervisors directed its staff to launch a new inspection at that  
7 stage in the proceedings to look for new building, planning or development permit  
8 violations. Finally, the Supervisors' order that staff must file a Notice of Violation  
9 was unnecessary, as there was already a Notice of Continuing Nuisance against  
10 the property, which had been recorded in April 2000.  
11

12 23. After the hearing, on January 17, 2002, I sent a letter to the Presi-  
13 dent of the Board of Supervisors, restating my previously disclosed concerns  
14 about environmental violations at adjoining properties and the County's lack of  
15 enforcement. A true and correct copy of this letter is attached as Exhibit 11 to this  
16 declaration. I sent copies of the letter to officials at the California Coastal Com-  
17 mission, Regional Water Quality Control Board, FBI Task Force, and several  
18 public officials.  
19

20 24. On April 2, 2002, I was not present at Moon Acres for County's raid  
21 on the property by county law enforcement officers and staff, searching for items  
22 to add to its existing litany of alleged violations. Instead, my attorney Ted Hannig  
23 was alone at the ranch when County officials conducted their 'investigation.'  
24

25 25. Neither was I present at the following hearings before the Board of  
26 Supervisors: April 16, 2002, June 18, 2002, and July 23, 2002. The atmosphere  
27 was becoming too hostile and contentious, and I was concerned that I would  
28

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1 express my frustration with the treatment at the hands of the Supervisors. In-  
2 stead, my wife and our attorney appeared on our behalf.

3 26. One of the things that the April 2, 2002 County 'investigation' turned up  
4 was a waste "storage container" that was illegally placed on the Property by the hus-  
5 band of the appellant Cynthia Giovannoni. This storage container is actually a huge,  
6 landfill-solid-waste-disposal trailer. Initially, the County claimed that it was our respon-  
7 sibility to remove the trailer. The Giovannonis admitted to placing a waste trailer on our  
8 property, but claimed that we had consented to their placing of the trailer on our prop-  
9 erty. We proved the Giovannonis wrong by producing a declaration by a man named  
10 Gino Magri, whose declaration appears at page 236 and 237 of the County's Adminis-  
11 trative Record. The County has since confirmed that it never ordered or even asked the  
12 Giovannonis to remove the trailer. It remains on our property to this day.  
13

14 27. We refused to pay the list of building fees assessed by the Supervi-  
15 sors. In April 2002, The County claimed that we owed \$45,073.24 (of which  
16 \$5,718.50 had been paid). This is the first time the County acknowledged that  
17 we had indeed paid \$3,720 in December 1998. Of the total, the County de-  
18 scribed \$36,543.08 as "investigation fees," i.e., penalty assessments. The  
19 amount demanded was further inflated because of egregious 'mistakes' on the  
20 County spreadsheets that took months to correct. In an apparent concession  
21 that the County had assessed unlawful fees, County Counsel reduced the  
22 County's demand for so-called "investigation fees" from \$36,543.08 to  
23 \$20,132.80 between April 10, 2002, and July 17, 2002. A true and correct copy  
24 of the County Counsel Report is in the Admin. Record at page 00226. We  
25 refused to pay even this amount prior to approval of the planning application.  
26  
27

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1           28.    I feel that the Board of Supervisors' ultimate grant of the appeal and  
2 denial of our application on July 23, 2002 was a foregone conclusion after the  
3 punitive and retaliatory actions on January 15, 2002.

4           29.    On August 28, 2002, the County issued an abatement order against  
5 our property. The order prohibited us from applying for any building permits, and  
6 further required us to apply for permits to demolish structures built without per-  
7 mits, in addition to some items that had received prior County approval, such as  
8 the water system that provided fire protection and irrigation, which was approved  
9 by the County in 1991. The abatement order effectively prohibited us from  
10 marketing the property in any way, and also prohibited us from taking any further  
11 steps to legalize the property. A true and correct copy of the "Notice to Abate  
12 Building and Zoning Violations" is attached as Exhibit 12 to this declaration.  
13

14           30.    This is not the first case in which I have publicly disagreed with  
15 County policies and tactics. I have long been an outspoken "whistleblower" on  
16 issues of public interest, including the Devil's Slide / Highway 1 Tunnel project  
17 south of Pacifica and what I perceive to be the County's intentional failure (at the  
18 behest of "open space" organizations) to provide adequate public services to  
19 coastal residents. I operate a publishing concern called "Oscar Knows" through  
20 which I publish a web site based publication known as "Fifth Column vs. U.S."  
21 "Oscar Knows" also maintains web sites for various organizations in which I am  
22 involved. I am the executive director of the Half Moon Bay Coastsides Foundation  
23 a.k.a. Save Our Bay, and I am a member of the Higgins Canyon Homeowners'  
24 Association, the Coastal Family alliance and the Lake Beryessa Visitors Services  
25 Task Force.  
26  
27

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1           31. I consider myself an environmentalist, though one often at odds  
2 with mainstream environmental and 'no growth' groups, which I consider to be  
3 anti- community. I have filed several civil and administrative actions to protect  
4 the environment from pollution, and I played a large part in instituting a storm  
5 water testing program on the San Mateo Coastside. I regularly send e-mails to a  
6 list of recipients that includes local residents, government officials at the local,  
7 county, state, and federal level, and members of the press.

8           32. Supervisor Richard Gordon had engaged in a highly public dispute  
9 with me concerning the Devil's Slide / Highway 1 Tunnel shortly before the permit  
10 appeal came before the Board of Supervisors. On August 1, 2000, I wrote a  
11 detailed letter to the Board of Supervisors regarding the Tunnel and seeking the  
12 Supervisors' cooperation in supporting a resolution to submit to the electorate an  
13 alternative to the Tunnel. A true and correct copy of this letter is attached as  
14 Exhibit 13 to this declaration. In response, Supervisor Richard Gordon sent a  
15 curt response stating that my August 1, 2000 letter contained "false information  
16 and misstatements of fact. Most importantly, it also fails to include significant  
17 information." A true and correct copy of Mr. Gordon's letter is attached as Exhibit  
18 14 to this declaration. I replied on August 10, 2000 and respectfully requested  
19 that Mr. Gordon clarify what he meant. A true and correct copy of this letter is  
20 attached as Exhibit 15 to this declaration. I never heard back from Supervisor  
21 Gordon. This public exchange was noted in an article in the Half Moon Bay  
22 review on August 16, 2000, which began "Normally mild-mannered San Mateo  
23 County Supervisor Rich Gordon has obviously reached his limit." A true and  
24 correct copy of this article is attached as Exhibit 16 to this declaration.  
25  
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1           33.     Also regarding the Tunnel, on August 24, 2000 I appealed the  
2 Planning Commission's approval of a Coastal Development Permit that would  
3 allow CalTrans and the owner of the land on the north end of the proposed tunnel  
4 to impact a colony of red-legged frogs, a federally protected species within an  
5 Environmentally Sensitive Habitat Area. I considered this permit approval to be  
6 inconsistent with the Local Coastal Plan, the California Coastal Act, and the  
7 Federal Clean Water Act. A true and correct copy of this appeal letter is at-  
8 tached as Exhibit 17 to this declaration. This appeal was thus being heard at the  
9 same time as the appeal of my own permit application. The Board of Supervi-  
10 sors ultimately unanimously denied my appeal of the CalTrans permit.

12           34.     I have also been instrumental in publicizing what I perceive to be  
13 the unequal treatment of persons in the Higgins Canyon area. I believe that  
14 certain people and organizations that hold sway with county politicians receive  
15 preferential treatment by the County. A true and correct copy of a letter I wrote  
16 to Ed Ueber, director of the Federal National Marine Sanctuary in Monterey Bay  
17 in July 1998, which explains some of the history of pollution and un-permitted  
18 activity in Higgins Canyon, is attached as Exhibit 18 to this Declaration.

20           35.     I have also publicized episodes of pollution and habitat destruction  
21 by County personnel. In February 1998, I personally witnessed County employ-  
22 ees dumping waste mud and earth into the Arroyo Leon Creek. I petitioned the  
23 California Department of Fish and Game to investigate and implement mitigation,  
24 and the petition was successful. True and correct copies of letters I sent to the  
25 State Department of Fish & Game on February 9 and February 27, 1998 are  
26 attached as Exhibits 19 and 20 to this Declaration.

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1           36.     Half Moon Bay Paving and Sealing is a business operated by our  
2 neighbors the Giovannonis, at a location adjacent to Moon Acres. Mrs. Giovan-  
3 noni is the same person who filed the initial complaint against us in 1998, and  
4 who appealed the Planning Commission approval of my application in December  
5 2001. I have conducted substantial research into the conduct of Half Moon Bay  
6 Paving and Sealing, and I have learned that this business has a long history of  
7 unauthorized waste dumping and operation without permits. I have been vocal in  
8 my opposition to the business practices there. My research has shown me that  
9 in 1991, the County received an anonymous report regarding hazardous waste  
10 dumping / storage by the business at their prior address at 444 Central Ave. in  
11 Half Moon Bay. The caller said the waste oil had been poured into a hole three  
12 feet deep. In September 1991, the County District Attorney worked out a plan  
13 with the Giovannonis to test the soils, but the Giovannonis themselves were  
14 allowed to do the digging (this makes them 'agents' of the County) and they were  
15 only required to dig to a depth of only 18 inches. In February 1998, the County  
16 determined that the Giovannonis did not have a permit to operate a paving &  
17 sealing business in Higgins Canyon. The Giovannonis were ultimately allowed to  
18 operate without a permit in an agricultural zone as a result of the County's erro-  
19 neous finding that their paving operation was 'ancillary' to agriculture because  
20 they did some paving operations in agricultural areas. True and correct copies of  
21 correspondence between County staff and myself in March 1998 relating to illegal  
22 activities on the site is attached as Exhibits 21 and 22 to this Declaration. A copy  
23 of a complaint I filed against the Giovannonis on April 2, 1998 is attached as  
24 Exhibit 23 to this Declaration.

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1           37. I have also publicized complaints about the Johnston Ranch, which  
2 is also adjacent to the Moon Acres Ranch. The Johnston Ranch contains a  
3 large, 250-acre landfill dumpsite containing a variety of waste materials and  
4 pollutants. In October 1998, I brought a lawsuit against the previous owners of  
5 the Johnston Ranch because of the longstanding and ongoing discharge of  
6 pollutants into local waterways. A true and correct copy of the civil complaint is  
7 attached as Exhibit 24 to this Declaration. The owners of the Ranch then tried to  
8 sue me to prevent me from speaking out about the pollution, but their complaint  
9 was dismissed as an unlawful "SLAPP" suit. A true and correct copy of an  
10 article in the Half Moon Bay Review discussing the SLAPP suit is attached as  
11 Exhibit 25 to this Declaration.  
12

13           38. In 1999, the Johnston Ranch was purchased by the Peninsula  
14 Open Space Trust ("POST"), a COSA member. POST is closely aligned with  
15 Lenore Roberts and the Committee for Green Foothills. I have long asserted  
16 that the landfill has not adequately been cleaned up, and that the County has not  
17 enforced environmental cleanup laws against POST, the current owner. Al-  
18 though certain County employees have identified the existence of pollutants on  
19 the site, the County as a whole has not pursued a real cleanup plan. I have long  
20 spoken out as a "whistleblower" about the existence of pollutants at Johnston  
21 Ranch. A true and correct copy of a letter I wrote to the U.S. Environmental  
22 Protection Agency on October 23, 2001 regarding pollutants on the property is  
23 attached as Exhibit 26 to this Declaration.  
24  
25

26           39. I have also vocally opposed the lenient treatment for un-permitted activi-  
27 ties at another local business called Wildlife Associates, which is also adjacent to Moon  
28

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1 Acres. Wildlife Associates is a group in the business of housing various non-native and  
2 native exotic species of animals for display at schools and other institutions, which  
3 operated for years without any County permits at its prior location about ten miles north  
4 of its current location adjacent to the Brauns. The prior location was in the path of the  
5 proposed Devil's Slide Tunnel. In 1998, Ms. Roberts persuaded the County to allow  
6 Wildlife Associate to operate without a permit at new location on the false basis that the  
7 detrimental exotic species at Wildlife Associates are accessory to agriculture and  
8 therefore allowable on the agricultural land. In stark contrast to our treatment, Wildlife  
9 Associates has also received lenient and flexible treatment by the County. True and  
10 correct copies of 1998 correspondence with the County relating to the un-permitted  
11 activities by the business are attached as Exhibits 27, 28, 29 and 30 to this declaration.  
12

13 40. I also wrote letters to the editors of local newspapers concerning the  
14 foregoing un-permitted and unlawful activities in Higgins Canyon. True and correct  
15 copies of three such letters I wrote in July, August and October 1998 are attached as  
16 Exhibit 31 to this Declaration.  
17  
18

19 I declare under penalty of perjury under the laws of the State of California that  
20 the foregoing is true and correct. Executed at Redwood City, CA on October \_\_\_\_, 2004.  
21

22 /s/ \_\_\_\_\_  
23 Oscar Braun  
24  
25  
26  
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