

Braun v. County of San Mateo

U.S. District Court Case No.: C 03-03415 MJJ

EXHIBITS TO DECLARATION OF OSCAR BRAUN

PART 2

1 make it appear in the public place, which has been the case,
2 that we have somehow resisted this legalization process. We
3 haven't resisted it from the beginning as a matter of record,
4 and to say or to infer contrary to that, doesn't reflect well
5 on the County and is certainly not the truth.

6 So again, if the record shows or if this planner or
7 any other planner shows that we have been uncooperative;
8 discourteous; refused to provide whatever information --
9 mapping, site inspections, certifications, whatever the case
10 may be -- everything that has been requested has been given,
11 and we have received in writing that we have, in fact,
12 provided them with everything that they need to process it.

13 So unless the Commission is interested in getting
14 into other issues that pertain to our residence, which is
15 not --

16 THE COMMISSIONER: Well --

17 MR. BRAUN: -- part of this application, or
18 antennas --

19 THE COMMISSIONER: No, no --

20 MR. BRAUN: -- which is not part of this
21 application --

22 THE COMMISSIONER: -- no, no.

23 MR. BRAUN: -- or any other issue, I request that
24 you please bring this to closure.

25 THE COMMISSIONER: And I don't think the staff

1 report makes any charges.

2 MR. BRAUN: I don't know -- absolutely not. Your
3 staff has been exemplary. I want to repeat that. And I also
4 want to say publicly that I appreciate the courtesy and the
5 patience that this young woman has had. Okay? I am not
6 beating up on the staff or the planners that have come here.
7 They are trying to do a job. I think most of them try to do
8 it to the best of their ability. There's a lot of reasons,
9 which I'm sure you understand at this point, which has dragged
10 this on for four years.

11 So the decision I believe that's before you today is
12 that, Do you want to bring closure to this issue; does this
13 remaining objection from the -- from those in the community
14 pose a risk to the public health and safety. We believe it
15 does not affect (inaudible). I would not want to take this
16 into 2002, and if we are turned down here, we obviously take
17 it before the supervisors. I think they would appreciate, as
18 my wife and I would, that they not be put through that.

19 Thank you.

20 THE COMMISSIONER: Any questions (inaudible)?

21 SPEAKER: I've got one question. How come you
22 signed the thing saying you agree with the mitigation measures
23 and then under the bottom you say you don't, 'cuz -- unless
24 you can agree to all of them, then --

25 MR. BRAUN: What I said --

1 SPEAKER: I'm lost here.

2 MR. BRAUN: I signed -- I signed the document, and
3 then I note on the bottom that we are signing the document,
4 and, you know -- signing the documents means that you concur,
5 but I'm stating for the record that it is under coercion, and
6 I think that you might have the legal understanding as to what
7 the meaning of that is. Okay?

8 So you have our concurrence, but I am noting for the
9 public record that any possible future actions that it is
10 under coercion in which we will document at the appropriate
11 time.

12 So you have our concurrence, but the basis in which
13 you have gotten it is also noted.

14 SPEAKER: I understand that, but do you plan to
15 comply or not?

16 MR. BRAUN: I think that our signature speaks for
17 itself. It obviously -- it says that we plan to comply, and
18 again, if you have anything on the record, either verbal or
19 written, that indicates that we haven't complied, that we
20 won't comply, we don't intend to comply, I think now is the
21 time to raise it.

22 But understand this, as my -- it doesn't preclude us
23 from pursuing our remedies --

24 SPEAKER: I understand that.

25 MR. BRAUN: -- okay?

1 So regardless of what your actions are today, the
2 issues that I have with some of these folks that talked today
3 aren't going to go away.

4 SPEAKER: I fully understand different
5 personalities.

6 MR. BRAUN: I understand and I praise you.

7 So you have our concurrence and it's not a
8 contradiction.

9 SPEAKER: Excuse me, Mr. Braun. Just through the
10 Chair, just following up on that. It may be obvious to you,
11 but I think to a person who reads these words in plain
12 English, it may not be obvious. Because when it says the
13 applicant does not concur with mitigation measures for Case
14 PLN1999-0079, Project: Legalize Half Moon Bay agriculture
15 structures, period.

16 MR. BRAUN: Hm-mm.

17 SPEAKER: That seems to say you don't agree just
18 after you said you did.

19 MR. BRAUN: What -- all right.

20 SPEAKER: And -- and so you've -- you've added
21 things to this in what you say to further explain that.
22 Still, when I look at this, I -- it -- be a little as if a
23 traffic patrolman pulls me over and I sign a promise to
24 appear, and then right under it I say, "I do not concur with
25 this promise to appear." I would think that patrolman might

1 be in a state of not knowing what my signature meant, and my
2 telling him that it should be obvious to him, I don't think
3 would convince him that it was obvious to him. I -- I -- so
4 I'm left feeling that this is ambiguous.

5 MR. BRAUN: Well, I can -- can appreciate you coming
6 to that conclusion, but I -- I will just read the following to
7 you:

8 "I agree to carry out this project in
9 accordance with the suggested mitigation
10 measures stated in your letters," blah,
11 blah, blah.

12 I signed it; I dated it. Okay?

13 You can put on the bottom there any way you want to
14 call it. It's not ambiguous; it's a sidebar. I'm just
15 saying, the reason I signed is because of coercion. Okay?
16 That has a certain meaning in the legal field. Okay? So
17 that's -- that's as good as it gets. I've concurred. I've
18 signed it. You got my signature. Okay? Do with it what you
19 like, just -- just -- I say here -- understand this, this
20 doesn't preclude us from taking action.

21 I will refer you to the -- to the -- the e-mail I
22 received from Miroo Brewer two days prior to this on the 11th.
23 And what that was is that me signing this didn't preclude the
24 County from bringing something else up at the 11th hour.
25 Okay? I've just summarized it; I haven't quoted it.

1 So this is -- this is the way, you know, it goes,
2 and, you know, true to form, even providing Miroo with what
3 I'm sure she was instructed to get, which was my signature,
4 which she got.

5 As we literally get within hours of having this
6 session here today, we now have questions about the big house.
7 We have questions about maps. We have questions about all
8 this stuff that was not there before, and just the opposite.

9 So, you know -- I tell you what's ambiguous. What's
10 ambiguous, when this County sends my wife and myself a letter
11 that say (sic) we got everything that we need. And I tell you
12 what's ambiguous. When this County senior staff talks to
13 other Sprint antenna and others and tell them that nothing is
14 going to happen on the Braun's property as long as I'm in
15 here. Okay.

16 So there's a lot of problems here, gentlemen, and
17 all I'm trying to do is get a little closure on a small item,
18 and I suggest that whether it be the County or the Brauns or
19 these good folks back here, we can leave the rest of it to
20 next year, and I don't think we need to burden our Board of
21 Supervisors or the Coastal Commission, if you like, with these
22 issues. I think Lenny's got about as much mileage out of this
23 as it's going to be. Okay?

24 So that's -- you got my signature. So you got a
25 non-issue. And if you're not comfortable with the fact that

1 that doesn't preclude us from further legal action, I'm sorry,
2 but you know what? It cuts both ways. This is real world.
3 And after the 11th, you know, there's not a sweet, gentle
4 person to buffer the County and me. I'm talking about our
5 attorney.

6 THE COMMISSIONER: Okay.

7 SPEAKER: I guess there is the question of fees. Is
8 it our normal practice to process an application with \$7,000
9 worth of fees unpaid?

10 SPEAKER TERRY: We make the -- we request those
11 fees. They're investigation fees. They're set to cover the
12 costs of bringing a violation to this point, more or less, as
13 opposed to the cost we incur when an application is filed in
14 advance of any work being done and goes through a normal
15 process, so the cost of investigating, following up, I think
16 the kind of things that are documented in the chronology.

17 We -- I don't know whether it was done in this case,
18 but we expect those to be paid, but when there is a
19 disagreement about those fees, then we make those a condition
20 of the permit approval so that the person can make their case
21 to the Planning Commission or whoever else this goes before as
22 to whether they -- any disagreement they have with the
23 justification for those fees. Those fees are specified in the
24 County's fee resolution adopted (tape cuts out).

25 They -- Miroo in this case is at a two-times fee?

1 For most permits that are filed in response to a violation,
2 they're two times the permit fee. For grading and tree
3 cutting, they can be as much as ten times the fee. The
4 guidance we've gotten from County counsel is that ultimately
5 the fee must be set within those limits in an amount that
6 roughly corresponds to our actual costs in pursuing the
7 violation, and I believe our conclusion in this case was that
8 those costs exceeded the two-times limit in the fee schedule,
9 so that's what was put forth here.

10 Our position is if you disagree with these fees,
11 fine; we'll move this forward to the Planning Commission and
12 you can make your case there. If the Commission feels the
13 fees aren't warranted or should be modified in some way,
14 we'll -- we'll normally comply with their guidance.

15 So I believe they're here today because there was --
16 I'm assuming there is. I've not had a discussion with Mr.
17 Braun about this, but I assume there is some disagreement with
18 paying those fees.

19 So they're set there as a condition of approval that
20 would need to be met before a building could issue, which is
21 the real, final step in legalizing these structures, is the
22 issuance of building permits, the completion of inspections,
23 and the final approval of the buildings as constructed, which
24 is a process yet to come, so the idea would be that the fees
25 be paid in advance of issuance of the building permit.

1 That's how it's set here, and this has been done in
2 other cases. Mr. Olson's description would apply to other
3 cases.

4 Violations tend to be -- they kind of each have
5 their own unique history and path to a resolution. There's a
6 lot of different circumstances and personalities and factors
7 involved. You know, I think we can say the same about the
8 site plan. I think you could go over to our office and pull
9 the guide off the wall that's our -- called our User's Guide
10 to the Development Review Center. It has an illustration in
11 the middle of the guidebook of a urban -- of an urban site
12 plan and a rural site plan. You could compare this to the
13 rural site plan. I think you'd find it lacking in certain
14 regards.

15 On the other hand, there have been a lot of factors
16 in this case, and our goal, I guess the same as Mr. Braun's,
17 has been to move it forward to a conclusion, and at some
18 point -- I think it was October 17 of 2000 or whatever --
19 stated in the chronology, we did send a letter of complete
20 application. We felt that from a planning point of view,
21 given the size of the property, the nature of the project we
22 were dealing with, and we had the information necessary to
23 address the policies which apply to this type of project.

24 We also -- I'm not encouraging this, but it's a
25 reality in a case like this. We have the facilities on the

1 ground. So in terms of evaluating something like their visual
2 impact, it's just the nature of a violation case like this.
3 We have the actual buildings to look at as opposed to drawings
4 or photo montages or things which attempt to approximate that.

5 So in terms of facilities of -- the septic
6 facilities and the wells here, we're largely relying on the
7 determinations of the Environmental Health Department. Dean
8 Peterson is here today with Stan Lowe (phonetic). They're
9 available to answer your questions about the water supply and
10 sewage disposal systems and requirements here.

11 My personal judgment would be, if we were running
12 the Planning 101 class, you know, this site plan might get a
13 "C," but the question I would -- I guess I would go to in the
14 circumstances -- there's been a lot of time and energy lost
15 over this case, but the question I would have is -- I think it
16 should -- from my point of view, it would come down to what
17 are the issues we're trying to evaluate; what is the decision
18 we're trying to make; do we have the information we need to
19 make that decision or not. If you don't have it, we should
20 get it, but I'm -- I'm not sure in the circumstances it's
21 going to be very productive to argue over formalities here
22 that aren't on point to some decision that we have to make.
23 You know what I'm getting at?

24 THE COMMISSIONER: Um, yeah.

25 SPEAKER: I think I do, Terry. If -- if I can just,

1 though -- I seem to recall that, since I've come on the
2 Commission, we -- we adopted a policy here -- actually maybe
3 even changed an ordinance for approving that; that if -- we
4 weren't going to issue new permits on a property unless
5 previous violations had been taken care of.

6 SPEAKER TERRY: That's correct.

7 SPEAKER: And maybe there aren't any other
8 violations. You know, maybe the -- you know, maybe Caldwell
9 Banker was being somewhat expansive in describing, for
10 instance, house size, and they're including the exterior decks
11 which were perhaps perfectly fine under the building permit,
12 and so there isn't a question of a violation there, but, you
13 know, looking -- I guess that -- that -- when I look down
14 the -- the -- on page 8 of the staff report, BA1, I see a long
15 list of things that are -- that were included in the
16 description of the property, whether it be a press release or
17 (Tape 2 ends) ...

18 (Tape 3 begins) ... I -- I find myself -- if -- if
19 indeed there're issues that -- well, if we were looking at
20 something that hadn't already been built or on a smaller
21 parcel where we might need things to be measured out to the
22 inch or the -- or the foot, well, then, maybe we would need
23 more exact or better site plans, and in this case it's just
24 not that important to determine any real planning issue in
25 question.

1 I can understand not belaboring this over -- over a
2 site plan that, as Terry says, might get a "C" when we might
3 prefer at least an "A-" site plan, but still, when we're
4 looking at this list, are we indeed sure that -- that -- that
5 indeed all the violations on this property are being addressed
6 as a part of this? There's nothing else there. I'm not --
7 I'm not certain of that, and I don't think that, quite
8 frankly, that just because something is unpleasant, that we
9 should -- you know, or is made unpleasant, then we should
10 decide, My, gosh, let's get this over with in a hurry, and
11 not -- well, it's too late for it. I should -- I misspoke.
12 It's already too late to get this over with in a hurry, but
13 without dragging it out another -- another day or another week
14 or another month, you know, I'd like to be certain that indeed
15 all the violations are being addressed as a part of this. If
16 there are none others, that's -- that's great, but -- and I --
17 and I actually would like, I think, to get Dean Peterson or
18 Stan Lowe to comment. I just -- one of the speakers raised
19 the question, how does the effluent get from the stable to the
20 septic field above the house, and it just -- look at the topo
21 lines, it looks to me like it would be a challenge.

22 THE COMMISSIONER: With respect to additional
23 violations, Miroo has gone over the property and has not
24 identified any --

25 SPEAKER TERRY: We could -- actually, we could go

1 through these briefly, um --

2 SPEAKER: Maybe -- maybe that would be good just to
3 have staff go over these. Maybe since I -- I'm sorry, Terry,
4 I'll -- I'll let you take charge.

5 SPEAKER TERRY: Then we might come to the septic --

6 SPEAKER: Sure.

7 SPEAKER TERRY: -- and water supply issues.

8 Access road was, I believe, app -- you know, that
9 was reviewed and approved in 1991.

10 MR. BRAUN: Correct.

11 SPEAKER: The security gate may well have been
12 added.

13 MR. BRAUN: That was 1991 and that's on the
14 adjoining property.

15 SPEAKER TERRY: One of the conditions of Miroo's
16 recommended approval is to obtain a building permit for the
17 security gate. I'm assuming that reflects a conclusion on our
18 part that none was issued for that but that work -- that gate
19 just went in and is unpermitted and would need to be
20 permitted. I didn't see anything unusual about the gate that
21 would make that particularly problematic. It's not a
22 decorative gate or a pretentious gate in any way. It's a
23 normal rural gate across the driveway.

24 The Sprint site we've already discussed. That's a
25 separate application by Sprint. With Mr. Braun's concurrence,

1 we have agreed to move that forward in processing to a
2 point -- I can't say particularly where, but I believe it
3 would either be to hearing -- probably to hearing but not to
4 issuance of construction permits until these matters are
5 resolved.

6 The tractor storage shed, I believe we're dealing
7 with that today.

8 The farm labor housing unit we're dealing with
9 today. On our advice, Mr. Braun converted that application to
10 an application for affordable housing. That essentially
11 allows the unit to be used as it's currently being used and is
12 contemplated, we believe, his tenant would qualify for that
13 housing and he's apparently aware of and willing to agree to
14 the limitations on affordable housing. It would avoid some
15 issues that were in contention about the nature of the farming
16 operations and the nature of employment of his tenants. So
17 that is a thing that we have agreed together that that would
18 be a more appropriate method for accommodating that housing
19 unit.

20 The horse stable building is included in the permits
21 before you today. It's not unusual for a stable building or
22 other utility out-buildings to have a rest room. We have been
23 through that issue in the past, and ultimately the County
24 determined to accommodate a bathroom facilities in rural
25 out-buildings.

1 The horse arena -- is there an actual arena with
2 fencing and a track and that sort of thing, or is this --

3 Ken, do you want to go to the photos and Miroo can
4 tell us where we can get to that?

5 Arena is on the right?

6 SPEAKER: There is no picture, I don't believe here,
7 on the horse arena. The horse arena is --

8 SPEAKER TERRY: Why don't you step to the mike.

9 SPEAKER: Terry, why don't you go back to the -- I'm
10 sorry, Candy, to the topo map.

11 SPEAKER TERRY: The site plan. You can use that
12 pointer there on the table. Push the button. There's a
13 little button on the side. Just hold that down.

14 SPEAKER: This flat area -- this is an area that's
15 flat. Here's the -- the two 5,000-gallon water tanks, the
16 replacement tanks. These are, by the way, are not visible
17 even if you were standing a few feet away because they are --
18 have been lowered into the ground and surrounded by a berm and
19 that berm has a vegetated (phonetic) screen that's now ten years
20 old.

21 But the arena is portable, which is it's -- it's
22 piped, linking piped fencing together. It can be moved. It's
23 currently in this position here, so it is not a structure.

24 SPEAKER TERRY: Well, it's a structure --

25 SPEAKER: It's a structure that can be moved

1 anywhere within the pasture, is what I'm saying.

2 SPEAKER TERRY: I would agree that, um, you know,
3 this is a common situation in the rural part of the county.
4 That type of piped fenced we saw, particularly in a portable
5 mode for containing animals, I couldn't sit here with a
6 straight face and tell you that we demand permits for that,
7 and in most instances that's a -- you know, just the normal.

8 Now if there was a grand stand, a -- a -- you know,
9 some arenas have a roof over them. They have other facilities
10 that are permit in nature. They might have lighting and
11 water, and these types of systems would all require permits,
12 but I think the same thing applies to the helicopter pad --

13 SPEAKER: Exactly. The helicopter pad is the same
14 area. It's just a flat area. As you can imagine, we're on --
15 this is a field --

16 SPEAKER TERRY: I think what we have here -- and to
17 some degree -- I'm not trying to excuse anything, but I think
18 what we have, to some degree, is the normal hyperbole of a
19 real estate agent.

20 If you're rather insane, there's an area where you
21 can land a helicopter, you know, if you care to, which is
22 probably true in my backyard if you get the right pilot and
23 small enough helicopter. It's characterized as a helicopter
24 pad. Well, I think this is different than a structurally
25 developed helipad with grading, and, you know, blah, blah,

1 blah.

2 So I think -- and what I understood Mr. Braun to say
3 and was going to follow up, but frankly I'm a little -- I'm --
4 I'm -- this is what I went into today, saying that I'm going
5 to leave this to the Commission, but I heard Mr. Braun say
6 that his residence is the same as it was completed in 1991,
7 and I think if you can get a clear statement from him to that
8 effect, that there have been no additions to his residence
9 since 1991, then -- then to me, you know, 2500 square feet is
10 a big difference. That's my whole house and more, but in the
11 context of a 7500- or 10,000-square foot house, I don't know.

12 I mean, if there are decks -- and, again, I -- I --
13 well, I don't know the -- the source of that 10,000-square
14 foot number, and I -- what I would think is the critical
15 question there that you seem to be asking is, Is there -- have
16 there been any structures or buildings built since 1991 that
17 would have required a permit and did not receive one and that
18 what the Commission wants, and I imagine if not Mr. Braun, his
19 real estate agents, any lenders on the sale of this property,
20 any title company, et cetera, would want, is to then get that
21 sorted out and remedied as we're doing with the stable and
22 farm labor unit.

23 So this -- you know, I -- I think what we looked at
24 on this, is the buildings are located a substantial distance
25 from the property lines. There are -- the only requirements

1 in the RM ordinance are a 30-foot separation between the main
2 dwelling and other out-buildings on the property. I think
3 that's -- that looks to be met here.

4 Miroo's been on the site. She's not brought to my
5 attention anything major that's not encompassed in this or
6 somehow addressed in her conditions and approval. The --

7 MR. BRAUN: Lily Toy has also been on site several
8 times, and again, I think if you go back to the very first
9 investigation, Gary Warren's been on our property multiple
10 times.

11 SPEAKER TERRY: Another --

12 MR. BRAUN: I have never denied Gary Warren
13 immediate access. The health department inspectors, they have
14 all been invited to examine all areas of the property, all
15 structures on the property, and gentlemen, we are literally
16 talking about maybe 14, 15 different County personnel over the
17 last four years.

18 SPEAKER TERRY: So when I come down to hear our --
19 the State -- the signature on the mitigated negative
20 declaration. What I suggest you do in that regard, not to put
21 her on the spot, but I would ask Mary Raftery (phonetic) if
22 that is a sufficient concurrence in the mitigation measures,
23 given what Mr. Braun said earlier.

24 What I understood him to be saying was -- this is a
25 discussion I have on a daily basis with my son -- is he agrees

1 to do something, but he doesn't like it, and he lets me know
2 and we go on from there, and I usually just accept that.

3 "Fine. You don't have to like it. You just have to do it."

4 And what I'm hearing Mr. Braun saying -- correct me
5 if I'm wrong -- is that he's agreeing to that as a mitigation
6 measure in the negative declaration and as required by the
7 applicable laws and procedures. He doesn't agree with it as
8 necessary or appropriate in his mind, but if it's important to
9 us, he agrees to it, and I believe that represents a
10 willingness to do it, assuming this project goes forward and
11 obtains building permits and other things that that will be
12 dealt with.

13 MR. BRAUN: You have accurately interpreted what I
14 meant.

15 SPEAKER TERRY: But we have a piece of paper, and
16 what I want to know, if there's a different or better way or
17 if it needs to be stated in a different way for this to move
18 forward.

19 I think the second thing is that -- we need some
20 guidance on is the investigation fees. We believe they're
21 due. I don't think we've heard Mr. Braun's position on that
22 today. I would usually assume that if he had a problem with
23 any of these conditions of approval he would have said so at
24 the podium. I don't think he brought that up, but if that's a
25 question here, you might ask him if he agrees to those or not,

1 and if not, what the basis is and what he suggests and et
2 cetera.

3 My personal feeling is, if we can get those two
4 issues resolved, this is not -- in my opinion, you know, Oscar
5 and I are going to go to our graves disagreeing about this,
6 but we are where we are with this, and what we're trying to do
7 is bring it to a conclusion that would get this off of our
8 agenda and some resolution that would lead to permitting these
9 facilities.

10 We don't see any -- we don't see a basis for
11 removing any of them other than the water tank, but the
12 Commission may conclude differently.

13 SPEAKER: Well, I wasn't going to ask about the
14 mitigation fees because they're a condition of approval, and
15 if Mr. Braun wants his legalization here, I mean, he has to do
16 that. Whether -- if he doesn't want to do it, then he won't
17 get the -- the legalization of the structures.

18 Isn't that sufficient?

19 SPEAKER: He needs a building permit for these
20 structures to be legal. I'm assuming that if he was trying to
21 sell this property or convey it into some different ownership,
22 he would have other motivation to get that resolved.

23 In addition, he disagrees with what we did here, but
24 we recorded a notice of continuing nuisance on this property
25 with regard to these violations, and as far as I'm concerned,

1 that will not be released until these conditions are met.

2 So I believe we have two points of control over
3 this: One is that notice of violation and one is the issuance
4 and final approval of the building permit, and the way this is
5 written, that permit won't issue until the fees have been paid
6 and these other conditions of approval have been met, and
7 when -- you know, my normal approach to this -- I haven't
8 really thought about it in detail in this case. Normally the
9 notice of violation for this type of situation would remain on
10 the record until the building permit is final and then we'd
11 release it; we'd say, "This matter's been resolved" and we'd
12 record -- you can't take it away. You record a release.

13 SPEAKER: If I could, just through the Chair.

14 Terry, you suggested a question that I just want to
15 be sure, if I can, to be sure we've -- I unequivocally
16 understand the answer to that question. Just on --

17 Mr. Braun -- if, through the Chair, I could just --
18 I believe you already told us this, but I want to be sure I
19 heard correctly, that on the question of your house, am I
20 understanding, your house was built according to permit in
21 1991 and there have been no additions to that -- to it since
22 that time that would have required permits; is that correct?

23 MR. BRAUN: I did not -- did not respond to your
24 question earlier, and I frankly have no intention of
25 responding to it now.

1 SPEAKER: I misunderstood. Well --

2 MR. BRAUN: I mean, you know --

3 SPEAKER: -- so you're not responding? Fine.

4 MR. BRAUN: For clarification, I'm here before you
5 today regarding an application to legalize a stable permit
6 violation and some other out-buildings. These are
7 agricultural buildings, (inaudible) buildings. They're not
8 even under -- other than the stable -- under the Uniform
9 Building Code and under your new animal-keeping ordinance,
10 even the stable is not under your building code, so I mean --

11 SPEAKER: Okay. I understand that you don't want to
12 answer --

13 MR. BRAUN: So I'm only going to address those
14 issues that are before you. If you want to launch an
15 investigation or a fishing expedition regarding our residence
16 and what's been improved in the past, fine. If you would like
17 to strike or have me strike the paragraph in which I placed
18 under my signature, I'll do that, but understand, even doing
19 that, we are not precluded from pursuing our legal rights.

20 SPEAKER: Yeah, that's not the question I was
21 asking. I think we do want to hear from our legal counsel on
22 that, but I -- I hear what you said, and I'm hearing that I
23 did not hear correctly before that you do not want to address
24 whether or not the house is or is not built according to
25 permit, was or was not added to, or what the size is. I

1 thought I heard -- you know -- and I must have heard --

2 MR. BRAUN: A rather moot point since we're in the
3 house. We've been in the house for a decade and it was, you
4 know, fine when we had our occupancy permit, and we have not,
5 you know --

6 SPEAKER: I don't want to belabor the point further,
7 but I appreciate your answering -- or declining to answer my
8 question. I would like, if we could, to hear from our legal
9 staff on the point of the paragraph added below the signature
10 on the -- agreeing to the mitigation measures of what
11 significance is that additional verbiage added below the
12 signature.

13 SPEAKER: Well, when I read it, it raised the
14 question that he was not, in fact, consenting. I mean, to me
15 you do not say, "I agree, but then I'm only agreeing because
16 I'm being coerced." Coercion is not agreement. Coercion is
17 being forced to take action that's not within your consent or
18 ability to control.

19 So what you're looking for is something that -- he's
20 voluntarily consenting. He's saying yes, I'm going to do it.
21 Now it could be a circumstance, as Terry's described, where
22 somebody says, "Yes, I agree to this, but I want to state on
23 the record I don't like it or I don't think the law that
24 requires me to do this is correct." That's fine. That would
25 still, in my mind, be a sufficient consent.

1 But if somebody is saying, "I'm only doing this
2 because I'm being coerced," to me that's not consent.

3 SPEAKER TERRY: I think I can help both -- both Mr.
4 Braun and Commission understand this if we back up a little
5 bit as to what's the purpose of that form.

6 And the situation is we often hear the term
7 in Calif -- of course we have our own unique body of law here
8 around Seacliff and we have a lot of negative declarations
9 issued, which is a finding in the negative with regard to
10 environmental impacts. It's saying, We studied this matter,
11 and we do not see the potential for significant, adverse
12 environmental impacts resulting from this project.

13 Sometimes in the course of that we say -- you know,
14 we can almost make that conclusion except we got this one
15 little thing that kind of stands in the way. There might be
16 an impact over here or over there, and we say that possibility
17 could be eliminated if the project was modified in some way,
18 and that is often referred to as a mitigation measure, and
19 when it's added to the negative declaration, it then gets
20 referred to as a mitigated negative declaration. But if I
21 understand it correctly, technically under the law, there is
22 no such thing.

23 We do not have the legal ability to impose a
24 mitigation measure as a condition of approving a negative
25 declaration. What we can do -- well, you're not going to like

1 this. What we can do is ask the applicant if he chooses to
2 modify his project to incorporate that feature as part of his
3 plans; to make it his; to say that, "Oh, I didn't realize that
4 my project could have that unintended effect. I'm willing to
5 make a change in the project to avoid that effect."

6 And this process is a method by which the applicant
7 is technically modifying his application to eliminate the
8 potential for environmental impact to allow the County to
9 issue and approve a negative declaration.

10 So that's why the consent is -- is kind of an issue
11 here because it's really -- you know, the long version of this
12 would be, "Take your plans back. Go modify them to fix this
13 problem. Refile them and we'll go back through the review
14 process, and then we'll come to the conclusion there's no
15 problem."

16 We short cut that by saying, "If you agree to modify
17 your application, your project, your plans in this manner,
18 then there will be no potential for an environmental effect
19 and we can issue a negative declaration."

20 SPEAKER: Well, I mean, the other option is that if
21 the Applicant does not consent to a mitigation measure in a
22 negative dec, that means that the approval agency has to go to
23 an EIR --

24 SPEAKER TERRY: Yeah.

25 SPEAKER: -- and require the applicant to bear the

1 burden, the cost, and the expense of an EIR. If the EIR then
2 finds that mitigation measure should be taken, then at that
3 point those can be imposed again, so it -- it just draws out
4 the process.

5 MR. BRAUN: Gentlemen, I spend a thousand dollars
6 every year working on Sequest (phonetic) studies, so this
7 happens to be a topic I'm familiar with.

8 You know, you got my signature there that you need
9 in order to make the neg dec acceptable. I have stated I'll
10 strike it if you like; make you feel better. Still doesn't
11 indemnify the County anyway. You know, I will -- you know, I
12 would just -- reiterate it what the County said. Whether we
13 agree or disagree, it doesn't preclude the County from doing
14 certain things; it doesn't preclude us from doing certain
15 things. Okay? So that's it. You know, it cuts both ways,
16 was my point.

17 So again, you've got my signature. The signature is
18 in the appropriate line to say that I agree. Okay? You don't
19 have a contradiction. You have, what I was hoping to be, a
20 clarification which Terry Burns accurately summed up what my
21 intent was. Okay. So if you want me to strike the magic
22 words and initial it for you to provide you with some comfort
23 level, feel free. You know, but it doesn't change anything.
24 I obviously, for the reasons I've already explained, think
25 that that being brought up at the 11th hour, a revised neg

1 dec, nothing that was ever discussed before. In fact, the
2 revised neg dec is a contradiction with the previous people on
3 the property, all the inspectors said.

4 So I -- again, I say, if there is the violation,
5 what is the nature of the violation that doesn't fit into the
6 code? What is pushing this mitigation?

7 SPEAKER TERRY: Well, on that I was going to suggest
8 and then I looked up and saw Dean was gone, but he's back.
9 This goes to Mitigation Measure 1 on page 41 of the staff
10 report, I believe, which is what Mr. Braun disagrees with or
11 doesn't believe is appropriate.

12 You might want to hear from environmental health
13 about their conclusions with regard to the septic system and
14 what's either wrong or right with it and what they believe
15 needs to be done before a building permit can issue.

16 The basic mitigation measure says that the
17 illegalized -- the septic system serving the mobile home
18 before a building permit is issued for the mobile home, so
19 it's kind of a gateway thing to get into that process, so you
20 may want to understand that issue better. I don't know if
21 that would clarify anything for Mr. Braun, but that's the
22 point of disagreement in the negative declaration --

23 MR. BRAUN: Perhaps that will be helpful. I'll just
24 provide this bit of information to Dean and it's nice to see
25 you, Dean.

1 The drain field is 125 feet or more away from our
2 family water well. Believe me; I have no intention of
3 polluting our source of water, and the well depth where the
4 water comes in and is pumped out in a sealed well is another
5 185 feet. So you extrapolate this out, you're really talking
6 about over 300 feet. It's a moot point, and the County health
7 department, when they came out, that was the first thing they
8 checked because that's the most important thing.

9 And again, from the initial complaint order, when
10 Kurt Jenson (phonetic), I believe, I can't -- his report
11 there. That was the first thing he examined. For our benefit
12 as well as the County's benefit.

13 So there -- you know, if there was an issue, if
14 there was either -- forget about the public's health and
15 safety, it's my health and safety, my wife, my family, our
16 ranch hand.

17 This is a non-issue, and it was deemed a non-issue
18 by health department's finest. You don't see me coming in
19 here to argue, and saying, "Well, they came up with it. They
20 got it wrong." They didn't get it wrong. Three of them got
21 it right.

22 THE COMMISSIONER: Mr. Peterson.

23 MR. PETERSON: Good afternoon. Dean Peterson,
24 director of environmental health, San Mateo County.

25 What would you like me to answer? Where do you want

1 me to start? Do you want to talk about the mitigation
2 measures?

3 SPEAKER: Could you explain the problems -- well,
4 first of all, there's a difference between simply an
5 unpermitted septic system that could be approved and an
6 unpermitted septic system which could not be approved, so I
7 think if you could clarify the permit status of the two septic
8 systems in the well and then there -- there are substantive
9 status. Is this a matter of just paperwork and approvals or
10 is it a matter of some apparent conflicts with the
11 regulations?

12 MR. PETERSON: Okay. Currently, our records
13 indicate that there are -- there is a legal septic system and
14 permit for this system here. The records indicate clearly
15 that it serves the house, and I believe this would be the
16 garage. It does not -- we have not clarified whether or not
17 the stable and the bathroom in the stable is also served by
18 that. We've not gone out to confirm that.

19 That's really all we have on record other than also
20 the installation of this particular domestic well, which we
21 know is serving the main home.

22 Currently, we do not have permits for this
23 particular septic tank or drain field. We have not confirmed
24 the distance of the well to that particular septic tank or
25 drain field. We are not indicating that it is closer than 100

1 feet. We just have not confirmed that.

2 So basically, in order to legalize it, we would be
3 looking to permit, and as we would do -- prior to going in for
4 any septic tank, we would require perc testing. We would
5 require detailed plans. We would require pretty much
6 everything we were requiring on the mitigation measure.

7 The inspector that Mr. Braun refers to, Mr. Dirk
8 Jenson, who was out on the site, is one of my hazardous
9 materials inspectors, and I am almost positive that he would
10 not have addressed septic systems or wells. It is not his
11 expertise. It is not his job assignment. He basically would
12 have been out there to confirm whether or not there was
13 illegal storage of hazardous material and hazardous waste.

14 Other inspections out there, we have no record in
15 the division on any inspections on this particular septic tank
16 and its relationship to the well or certifying this particular
17 septic tank and drain field. That would not have happened.
18 It is not permitted and that's what we're trying to legalize
19 now.

20 SPEAKER TERRY: So taken altogether here, Dean, then
21 you're saying that what needs to happen is an application for
22 that second septic system, at which point you'd evaluate
23 whether it could comply or not. You haven't reached any
24 conclusions about that one way or the other?

25 MR. PETERSON: We have not. We have not received

1 the application. We have not received the perc testing.

2 SPEAKER TERRY: Secondly, there would be an issue --
3 would there be an issue about the well -- the well's ability
4 to serve the affordable housing unit or has that been settled
5 in some way?

6 MR. PETERSON: That, in our minds, has been settled.
7 The initial well testing showed to have adequate supply for
8 the unit, and based on the size of the affordable housing
9 unit, we deemed it would be adequate for that. So we are not
10 asking for further pump testing on that well.

11 SPEAKER TERRY: And then the last piece would be
12 you'd want to address the question of how the rest room in the
13 stable building is sewered and whether that's --

14 MR. PETERSON: That's correct --

15 SPEAKER TERRY: -- feasible or --

16 MR. PETERSON: -- that's correct. We'd want to
17 confirm the plumbing on that; that it is being served by --

18 SPEAKER TERRY: You'd basically expect Mr. Braun to
19 make application to your department for a septic system permit
20 for the second septic system over by the affordable unit and
21 then through your review of the building permit for the stable
22 and the -- you'd probably -- that's probably the venue through
23 which you would address the sewerage of the rest room in the
24 stable building?

25 MR. PETERSON: That's correct.

1 SPEAKER TERRY: Okay. So basically I think what
2 they're saying is they've not -- I'm not hearing any negative
3 judgment to date on the feasibility of Mr. Braun's facilities.
4 Neither -- it sounds like they've said the well is okay to
5 serve all of this with regard to the rest room in the stable
6 building and feasibility of that and the acceptability of that
7 and the second drain, septic system, the jury's out. There's
8 been no judgment reached one way or the other. That would be
9 reached through the course of the permitting process.

10 Dean, if they -- in reviewing that septic system, it
11 did not qualify in some way, what would you do? What would
12 be -- what would happen?

13 MR. PETERSON: If it was unable to and there were no
14 exceptions that were -- we could permit or engineering design
15 or fixes to it, we would have to deny the permit, thus
16 basically causing it to be an illegal septic system; require
17 it to be destroyed.

18 SPEAKER: But first you'd look at ways to modify --

19 MR. PETERSON: Absolutely. Absolutely. I mean, we
20 would look at ways of either modifying, extending the drain
21 field, a number of other solutions prior to coming to
22 requiring it to be destroyed.

23 SPEAKER: And is it safe to say on a site of this
24 size that it's a likelihood something could be worked out or
25 is it --

1 MR. PETERSON: I'm going to reserve any opinions --

2 SPEAKER: Okay.

3 MR. PETERSON: -- on that.

4 SPEAKER: My point there, if there is a difference
5 between a 70-acre site that's already established some septic
6 feasibility here or there and, let's say, a half-acre home
7 site where someone's trying to squeeze a septic system into a
8 very marginal situation.

9 So what I'm hearing here is we need to go through a
10 permitting and review process and will no doubt entail some
11 preparation of plans and data and some testing and other
12 information, but I'm not hearing anything yet that says that
13 can't lead to a successful conclusion. It could be the case
14 in which -- hey, if there's not a feasible way to sewer this
15 affordable housing unit, then -- then a building permit won't
16 issue for it and it'll -- ultimately it will force its
17 removal.

18 THE COMMISSIONER: Thank you, Mr. Peterson.

19 MR. PETERSON: You bet. I'll be here for any other
20 questions you have.

21 THE COMMISSIONER: Sure.

22 SPEAKER: Through the Chair, real quick.

23 On the last item on page 8, Terry, was 10,000-gallon
24 water tank? And that's been, what, modified to two 5,000?
25 Does that need permitting?

1 SPEAKER TERRY: Page 8. We never got to that.

2 SPEAKER: You hit everything on there except that
3 very last one.

4 SPEAKER TERRY: I'll let Miroo take a stab at that.

5 MS. BREWER: I believe that the 8,000 --
6 10,000-gallon water tank being -- is some kind of mistake,
7 because what we do have is one 8,000-gallon water tank, which
8 is being moved; the one that we saw, and two 5,000-gallon
9 water tank, which would add up to a 10,000-gallon water tank.

10 SPEAKER TERRY: So there's -- I think what they're
11 referring to in this ad or whatever it was, was the -- was the
12 holding capacity on the site of 10,000 gallons.

13 SPEAKER: Those two 5,000s have to be legalized
14 also.

15 SPEAKER: Will be part of it.

16 MS. BREWER: Part of it.

17 SPEAKER: I was understanding that had been
18 addressed even though we hadn't spoken about it.

19 Miroo, I just got one question. Could you draw my
20 attention to the condition that relates to the affordable
21 housing unit; where is that?

22 MS. BREWER: That's Condition No. 5 and 6.

23 SPEAKER: On what --

24 MS. BREWER: Page 14.

25 SPEAKER: Basically what happens here is -- for

1 this.

2 MS. BREWER: Page 4 and 5.

3 SPEAKER: I guess I should look at them before I
4 shoot my mouth off.

5 But the process there is that they will enter into
6 an agreement with the County about the continuing
7 affordability and income of this unit and the income --

8 SPEAKER: Okay. That's fine. I just -- I was
9 looking for that to find it again to refresh my memory, so
10 that's helpful.

11 SPEAKER: And we did receive from Mr. Braun
12 information about his current tenant which leads us to believe
13 that he would qualify under those limitations without getting
14 into any personal information.

15 SPEAKER: I have a question for Mr. Braun.

16 Mr. Braun, after listening to Mr. Peterson, I guess
17 I just don't understand why you find that mitigation measure
18 so onerous?

19 MR. BRAUN: I'm sorry?

20 SPEAKER: Why do you -- why do you find the
21 mitigation measure so onerous?

22 MR. BRAUN: Again, the first inspection was by Kurt,
23 and that was for toxics (sic), but the accusations by the
24 Givanonis was that we had buried toxic materials at our well
25 head, which of course, everybody I know on this -- well,

1 anyway, so that was his first thing. So he checked the
2 location of the well. He checked the well, but since then,
3 Laura Thompson sent out or had requested the health department
4 sent out, which they did, a gentleman -- this is back in '99,
5 I believe, from the health department, that inspected the
6 well, inspected the drain field, inspected the septic tank,
7 inspected the affordable housing; went up to the stable -- the
8 stable -- and I'm not a contractor, but the stable sewer line
9 runs into the main house system, so it's -- there's one system
10 above and there's one system below, to answer the question --
11 at least that's my understanding.

12 Anyway, the distances, the criteria as explained to
13 me by the County health department, not one but the last two
14 that came out, met the codes. Okay? I didn't request to have
15 them come out. I didn't in any way interfere with their
16 investigation that I had no idea what their checklist was.
17 That's Mr. Peterson's department who sends them out. If they
18 don't have any records, I'm not surprised.

19 SPEAKER: Well, but, you have to do a perc test and
20 apparently that wasn't done.

21 MR. BRAUN: Well, that's a different --

22 SPEAKER: If I could try to help here, I think what
23 we have here is --

24 SPEAKER: What's the big deal? Why not --

25 MR. BRAUN: Look. I happen to know a lot about perc

1 test too, and we've done a lot on the property here. You
2 know, if you want a perc test done, I'll run you a perc test,
3 you know, and we'll pay the perc test fees. It's not a matter
4 of issue. You're talking about a mitigation item here, and,
5 you know, in short, the neg dec is -- is inaccurate. It is
6 not required -- mitigation is not required because there is no
7 significant risk. Okay? And if there is significant risk,
8 then it be -- then it is -- the staff or whoever is saying
9 that there is a significant risk, you have to say what that
10 significant risk is and why. Okay? Which hasn't been stated.

11 SPEAKER: Only --

12 MR. BRAUN: Pardon me?

13 SPEAKER: You're just quibbling here. Why not let
14 him do it and get it done with and let's get this --

15 MR. BRAUN: I'm quibbling? This is after four years
16 and \$30,000 worth of expenditure. I'm quibbling?

17 SPEAKER TERRY: If I could, I think what we have
18 here is a confusion between -- let's just assume for the sake
19 of argument that an environmental health, well and septic
20 inspector was on the property. And you know, who knows. I'm
21 sure Dean doesn't have complete records of every activity of
22 all of his staff for every day of the year for the last
23 whatever number of years, but let's assume that someone goes
24 out there. There's a difference between going out, looking at
25 the facilities, giving them the once over, maybe laying out a

1 measuring tape here and there and sort of saying, "Well, if
2 everything is as you represent it and as I've viewed it today,
3 I don't really see any problems with this and issuing a
4 permit."

5 I mean, that would be like a planter going out and
6 saying, "This looks like a feasible home site. You know,
7 don't take this tree out. Put some landscaping over there,"
8 kind of talking it over and saying, "I think you've got a
9 viable approach here," and actually getting the Coastal
10 Development permit.

11 And I think the difference here is if there were
12 some representations made that this was feasible and that
13 there weren't any obvious problems with it, what the
14 mitigation measure goes to is just formalizing that through a
15 permit process and actually getting the permit required for
16 it.

17 And while I don't think Mr. Peterson has records of
18 all his staff's activities, I do think they have very good
19 records of where they've issued septic and well permits.

20 The second point about the negative declaration, I'm
21 sorry, but Miroo could not issue a finding in the negative
22 with regard to potential environmental impacts. It's not
23 actual impacts. It's just, Is there a fair argument that
24 there's a potential significant impact, and where she has, to
25 her knowledge, as -- based on the input from environmental

1 health, an unpermitted sewage disposal system, there is no
2 other conclusion she can reach other than there may be --
3 there is a potential adverse environmental impact. That's a
4 health and safety impact into the physical environment, and
5 the way she's dealing with that is to say, "Just agree to get
6 a septic permit and meet the requirements of health, whatever
7 they may turn out to be." You know, maybe a drain line needs
8 to be moved or another one added or whatever, and then she
9 would be in the position to say, "Now I know that when all is
10 said and done, this septic system is going to conform to
11 health department standards, and now I have a confident basis
12 for saying there will be no adverse environmental impact from
13 the septic system."

14 So it's -- it's just kind of mechanical here.

15 MR. BRAUN: Well, unfortunately -- I understand what
16 you just said, but unfortunately the record says the County --
17 the Planning Department's records says that over the period of
18 a few years there, they sent out the fire department to do
19 their due diligence. They sent out various departments. Came
20 out to -- to check off on this legalization. Okay? The folks
21 from the environmental health department were not requested to
22 come out by us. They were sent out by planners, whether it be
23 Lily Toy or others. They were sent out by planners, and it
24 was the planning department that notified us in September that
25 you had received everything had been needed to got (sic),

1 so...

2 SPEAKER: We need to move on here. I mean --

3 SPEAKER: We're plowing the same ground many times.

4 MR. BRAUN: Unfortunately, I think we are. And --

5 SPEAKER: I think we've heard --

6 THE COMMISSIONER: It's time to move ahead here.

7 SPEAKER: Normally we have a 15-minute period for
8 each side to be heard. We've had far, far longer than that.

9 MR. BRAUN: Well, four-year project, maybe we've --
10 we've --

11 SPEAKER: We've probably had about 45 minutes, I
12 think, Mr. Braun, hearing just from you, and many of it
13 repetition and the same points.

14 And I think that hearing the same thing said once,
15 sometimes even twice, we can get something from it. When you
16 go over the same point three and four and five times, I'm not
17 hearing anything more that I haven't already heard. I think
18 it's -- I would like to move that we close the hearing on this
19 item.

20 THE COMMISSIONER: Any further discussion? Anyone
21 have a problem with --

22 SPEAKER: No questions.

23 THE COMMISSIONER: There's a motion. All in favor,
24 signify by saying "aye."

25 (Aye.)

1 THE COMMISSIONER: The public hearing is closed.

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STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

ss.

I, KAREN S. BYERS, CSR 11743, a Certified
Shorthand Reporter in and for the State of California,
do hereby certify:

That the foregoing proceedings were reduced to
typewriting under my supervision; that this transcript is a
true record and contains a full, true and correct
report of the proceedings which took place at the
time and place set forth in the caption hereto.

I further certify that I have no interest
in the event of the action.

Executed this 25th day of August, 2003.

Karen S. Byers
KAREN S. BYERS

EXHIBIT 11

Half Moon Bay

Coastside Foundation

Water Quality Protection Program

Mission : Implementation



*"Change is inevitable...
Survival is not."*

January 17, 2002

To: Honorable Jerry Hill, President, San Mateo County Board of Supervisors
From: Oscar Braun, Executive Director, WQPP Coastside Watershed Posse
Subject: Final Notice of Violations: POST, Half Moon Bay Sealing & Paving, Wildlife Associates

Dear Jerry,

Enclosed please find three Notices of Violations (NOV) of the Clean Water Act, Endangered Species Act and Coastal Act presented to the County of San Mateo over the last twenty five months. The Coastside Watershed Posse has requested that the County:

- Require the three cited violators to apply for the required Coastal Development Permits (CDP).
- Require the three cited violators to conduct EIR studies for their illegal development within a delineated Environmentally Sensitive Area (ESA),
- Require POST to fully comply with State Water Resources Control Board, Water Quality Order No.97.03 by applying for a permit to operate a landfill.
- POST must comply with the 1998 County of San Mateo's order to conduct a full sub-surface level II (soil) assessment/survey on the entire landfill area (250 acres) while being supervised by SWRCB certified engineers. NOTE: The sworn declaration of Anne T. Jensen, R.E.H.S. provided by the County to the Court stated in part...."*Defendant provided me with a copy of its Level I and Level II assessment of the property. The Level II assessment contained the analysis of three (3) soil borings. No water quality samples were included. At no time was I notified of the implementation of this investigation and therefore, I am unable to comment on the adequacy of the sampling.* (attached please find Jensen's signed declaration before the Court)
- POST must place water quality monitoring wells throughout their Johnston Ranch landfill operation area.
- POST must acquire a NPDES permits for discharging pollutants into the States' water bodies.

The Coastside Watershed Posse has petitioned the Court to appoint the Half Moon Bay Coastside Foundation as a conservator of the POST Johnston Ranch landfill holdings. The Foundation intends to establish an environmental remediation fund to benefit the Arroyo Leon and the ground water reservoir lying only fifteen feet below the landfill. The C.W.Posse is requesting for the final time that the County exercise their regulatory responsibility by enforcing full compliance with the CA, CWA, ESA environmental protection laws. Without enforcement, the County and the Foundation will not be able to secure any Proposition 13 funding because of these three cited commercial and industrial non-permitted violators. We are respectfully requesting that the Planning Administrator Terry Burnes notify our Executive Director Oscar Braun, by close of business Friday the 25th of January of the County's intentions regarding issuing their Notices of Violation (NOV) for the above captioned violations.

Sincerely,

Oscar Braun,
Executive Director

CC. Marcia Raines, Terry Burnes, Mark Delaplaine CCC, C.Sproul EPA, Loretta Barsamian RWQCB, FBI Task Force, R. Slaughter TE/GE IRS, Willy Brown, Dianne Feinstein, John Burton, Anna Eshoo, Byron Sher, Joe Simitian, Louis J. Papan,

EXHIBIT 12



August 28, 2002

CERTIFIED AND REGULAR MAIL
HAND DELIVERED TO SITE



KEN CARDIN
BUILDING INSPECTOR II
PLANNING AND BUILDING DIVISION
ENVIRONMENTAL SERVICES AGENCY
e-mail: kcardin@co.sanmateo.ca.us

Oscar A. Braun
1589 Higgins Canyon Road
Half Moon Bay, CA 94019

455 COUNTY CENTER, 2ND FLOOR
REDWOOD CITY, CA 94063

PHONE: (650) 599-1726
FAX: (650) 363-4849

**ENVIRONMENTAL
SERVICES
AGENCY**

Dear Mr. Braun:

SUBJECT: Notice to Abate Building and Zoning Violations
1589 Higgins Canyon Road, Half Moon Bay

You are the record owner of the property described as 1589 Higgins Canyon Road, Half Moon Bay, Assessor's Parcel Number 064-370-240.

As you are aware, on April 2, 2002, an inspection of this property was conducted by several members of the San Mateo County Planning and Building Division and the Environmental Health Department. During the course of that inspection several building, zoning, and health violations were confirmed to exist.

Although you did apply for the required planning permits in an attempt to legalize the unpermitted construction and mobile home on this property, your application was denied by the Board of Supervisors on July 23, 2002.

Because you were denied the required discretionary planning permits, you will not be able to apply for any building permits to legalize this work. Therefore, you must obtain demolition permits to remove the unpermitted and illegal structures.

Permits must be obtained to demolish and/or remove the unpermitted rooftop addition to the main house; a 1,440 square foot stable; the 1,200 square foot mobile home; the 2,460 square foot tractor shed/shop; a 200 square foot agricultural barn; and the two 5,000-gallon water tanks, all of which were constructed or installed without permits.

These demolition permits must be obtained by September 30, 2002, and the demolition and/or removal of the unpermitted structures must be completed no later than December 31, 2002.

PLANNING AND BUILDING

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August 28, 2002

Failure, neglect or refusal to comply with this directive will result in a referral of this violation to County Counsel with the request that litigation be initiated to seek compliance with the Building, Zoning and Health Regulations which you have violated.

Sincerely,



William Cameron
Building Inspection Manager

WC:cdn - WJCM1299_WCN.DOC

cc: Marcia Raines, Director, Environmental Services Agency
Terry Burnes, Planning Administrator
Dean Peterson, Director, Environmental Health
Jim Eggemeyer, Development Review Services Manager
Miruni Soosaipillai, Deputy County Counsel
Miroo Desai Brewer, Project Planner

EXHIBIT 13

"Change is inevitable...
Survival is not."



Date: August 1, 2000
To: Honorable San Mateo County Board of Supervisors
From: Oscar Braun, Save Our Bay Foundation
Re: Devil's Slide, Credibility & November 2000 Ballot Measure

As environmentalists, we are proud of the higher standard we set for ourselves and others, especially landowners and public officials. But lately, too many of us are walking away from too many promises. Too many people can no longer take our word. The long-term consequences of people losing faith in us as environmentalists are devastating. It's almost as if telling the truth and living up to our word was nothing more than a tactic that we can use and discard, as convenient. Let's look at the Devil's Slide Bypass Project here in San Mateo County for the clearest example of how some environmental organizations have squandered their credibility with the public in pursuit of their special interest agendas.

Devil's Slide, located within one of the most seismically active regions of the United States, is an actively eroding ocean-facing cliff which is sliding into the sea. The operation of Route 1 has suffered from frequent closures caused by slip-outs and landslides. The California Department of Transportation pursued a solution to this for approximately 30 years. The purpose and need of the project is to provide a safe, dependable and stable State highway route that avoids the geologically unstable Devil's Slide area. The instability of Devil's Slide and the problems with the existing roadway, including landslides and rock falls through that area, remain the same today as set forth in the Final Environmental Impact Statement approved on April 16, 1986.

On April 9, 1986 the California Coastal Commission voted to grant Consistency Certification No. CC-45-85. "The Commission hereby concurs with the consistency certification made by the California Department of Transportation for the proposed project, finding that the project is consistent with the policies and objectives of the California Coastal Management Program. Where conflicts occur between one or more policies, the Commission must resolve such conflicts in a manner which is most protective of significant coastal resources (Section 30007.5). The Commission finds that the selection of the Martini Creek Alignment is the alternative most protective of coastal resources and least environmentally damaging. The Commission finds that the construction of the Martini Creek Alignment will assure the balanced utilization of coastal resources while meeting the social and economic needs of the people of the State. The Commission finds that the provisions of a safe and reliable Highway 1, for all the citizens of the State of California, sensitively designed and adequately mitigated, will enhance and protect for future generations the overall quality of the Coastal Zone."

Caltrans reviewed a number of other alternatives, but withdrew these alternatives from active consideration for various reasons. The other alternatives were Sierra Club's proposed Marine Disposal Alternative (MDA) Freeway Option, No Project Alternative, Modified LH Alignment, Widening Existing Highway 1 from Two to Four Lane, and a Tunnel Alternative. "This Tunnel Alternative would entail a tunnel through San Pedro Mountain, and was suggested by the Sierra Club in 1973. This alternative was withdrawn from active consideration because the tunnel would cost an estimated \$100 million. In addition, a tunnel would have to be two lanes in each direction to provide access for emergency vehicles in the event of an accident or stalled vehicles" Note: Scenic Highway 1 by State law can have only two lanes in rural areas in the coastal zone. Note: (Quotations from 1986 CCC Consistency Certification)

In 1986 the Sierra Club filed suit in U.S. District Court over the issue of deficiencies in the FIES with regards to "noise" and its environmental consequences and mitigation measures. "In March 1995, the Federal Highway Administration (FHWA), in cooperation with the California Departments of Transportation (Caltrans), issued a Draft Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS). The Final Environmental Impact Statement (FEIS) was originally approved on April 16, 1986, for a proposal to improve State Route 1 in San Mateo County, California. The preferred

alternative, identified in the FEIS and selected in the FHWA Record of Decision signed on May 30, 1986, is known as the Martini Creek Alignment."

"As indicated in the Draft Supplement, the purpose of the document is to comply with the Order and subsequent Judgement of the U.S. District Court following litigation regarding the project. The Supplement is limited to addressing the deficiencies in the FEIS determined in the litigation, and therefore, only addresses noise issues. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. Although only noise-related issues were addressed in the 1995 Draft SEIS, comments were received indicating a tunnel alternative would avoid project noise impacts. This issue has been reviewed, and it is determined that the tunnel is not a reasonable alternative because of its inconsistency with current planning policies, the lack of funding, and various safety and cost issues." (Quotation from SEIS June 1995 Tunnel Investigation)

In the Spring of 1996, the Sierra Club proposed and asked the residents of San Mateo County to pass Measure T, the Devil's Side Tunnel Initiative which was placed on the November 5, 1996 ballot. They promised the electorate on the Measure T ballot that: "A tunnel (singular) will protect the environment. A tunnel would have virtually no harmful effects on the environment. It would be consistent with coastal laws. It would avoid serious damage to the watersheds, wildlife habitats and parks of Montara and San Pedro Mountain that would be caused by a surface bypass. A tunnel would be cost effective. A tunnel would be built for less money than the proposed by-pass. A tunnel is a safe and reliable solution. No dangerous bridges or fill for the Sierra Club two lane tunnel" Their campaign slogan was "Tunnel: Sooner, Safer, Cheaper! Measure T was passed by a wide margin by the voters. The County of San Mateo changed their LCP selecting the "tunnel alternative". The California Coastal Commission certified the County's LCP revisions. The FHWA, in cooperation with Caltrans, issued a draft Second Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS) in April of 1999 for public review and comment. The Tunnel alternative was compared for the third time with the CEQA/NEPA certified Martini Creek Alignment.

- By letter dated May 11, 1999, Paul Koenig, Director of Environmental Services for the County of San Mateo, advised Caltrans that the County could not find that the proposed tunnel design complies with the Local Coastal Program. Reason given was the filling of wetlands and destruction of sensitive habitat.
- San Mateo County Senior Planner/Biologist Roman Gankin conducted a field investigation of the nature of two wetland areas that were a point of concern with staff of the Coastal Commission, CalTrans and the County on July 30, 1999. In his letter to Paul Koenig dated August 11, 1999 Mr. Gankin concluded that the area of concern does contain "wetlands". Under the Coastal Act, wetlands are protected by specific limitations with respect to uses which may occur in the wetland and by the requirement that there be no feasible less environmentally damaging alternative to the filling of wetlands and where feasible mitigation measures have been provided to adverse environmental effect. Indeed, the Commission's guidelines provide that "of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection."
- Safety: Tunnels have potential for catastrophic accidents with confined space of long tunnels and also have a higher actual rate of accidents within the local Bay Area tunnels than on comparable open air roadways. Tunnels are built only when there are no other alternatives.
- Two Lanes: The 1996 Sierra Club sponsored Tunnel alternative has two, mile long tunnels and two, thousand foot bridges with two lanes in each direction to provide emergency vehicle access. Currently the Coastal Act only allows total of two lanes on rural Scenic Hwy 1.
- Costs: The Tunnel 1999 projected costs exceeds \$180 million versus \$112 for the Martini Creek Alignment. The Tunnel annual maintenance is estimated \$2.26 million versus \$340,000 for the open air Martini Creek bypass.

In light of the County's response to the Second Supplemental Environmental Statement/Environmental Impact Report as well as the concerns expressed by the Coastal commission staff, Caltrans and the FHWA are not able to approve the Second Supplemental Environmental Statement/Environmental Impact Report or issue a new Record of Decision for the Tunnel alternative. A tunnel alternative was considered and

rejected as part of the CEQA/NEPA environmental review process in 1986. The Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmentally damaging. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. The Tunnel alternative has been reviewed a third time by the County of San Mateo, the Coastal Commission, Caltrans and the FHWA and it is determined that the tunnel is not a reasonable alternative because it is not the most protective of coastal resources, it is inconsistent with current Local Coastal Program policies, various safety and cost issues.

Resolution: The Half Moon Bay Coastside Foundation (dba Save Our Bay) request the Board of Supervisors, County of San Mateo, State of California to co-sponsor and adopt a resolution approving submission of a measure to the electorate to amend policy of the land use plan of the Local Coastal Program relating to the construction of the Martini Creek Alignment alternative for the Devil's Slide Bypass on State Route 1.

Purpose of This Measure: The purpose of this measure is to provide the citizens of California a permanent solution to the Devil's Slide Route 1 Bypass that complies with the NEPA/CEQA and Coastal Act environmental review process, Record of Decision and qualifies for Federal funding.

Findings: On April 9, 1986 the California Coastal Commission voted to grant Consistency Certification No. CC-45-85. "The Commission hereby concurs with the consistency certification made by the California Department of Transportation for the proposed project, finding that the project is consistent with the policies and objectives of the California Coastal Management Program. Where conflicts occur between one or more policies, the Commission must resolve such conflicts in a manner which is most protective of significant coastal resources (Section 30007.5) The Commission finds that the selection of the Martini Creek Alignment is the alternative most protective of coastal resources and least environmentally damaging. The Commission finds that the construction of the Martini Creek Alignment will assure the balanced utilization of coastal resources while meeting the social and economic needs of the people of the State. The Commission finds that the provisions of a safe and reliable Highway 1, for all the citizens of the State of California, sensitively designed and adequately mitigated, will enhance and protect for future generations the overall quality of the Coastal Zone."

The goal of the Measure T's proponents was never to build a tunnel; they simply wanted to stop the Martini Creek bypass and maintain limited access to the coast. The Tunnel Initiative has proved to be a fiasco. San Mateo County cannot afford an environmental movement that cannot be trusted. Think of all the work left to do: The endangered species protection; smart growth to prevent urban sprawl and the preservation of wetlands and other sensitive habitats. If environmentalist cannot be trusted at the table, then soon we will no longer be invited. And that would be a tragedy, not just for environmentalists, but the environment itself. Much as we would work to protect our environment, so we must protect our honor. Or neither will survive.

CC

Honorable Grey Davis, Governor, State of California
Edwin Pang, California Department of Transportation
Ging P. Bill Wong, U.S. Department of Transportation
Peter Douglas, California Coastal Commission.
San Mateo County Board of Supervisors
Sierra Club Tunnel Task Force
City of Half Moon Bay
City of Pacifica
Released to Media

EXHIBIT 14

RICHARD GORDON

Board of Supervisors
County of San Mateo

August 8, 2000

Oscar Braun
1589 Higgins Canyon Road
Half Moon Bay, CA 94019

Dear Oscar,

Your August 1st request for the Board of Supervisors to co-sponsor a ballot measure in support of a bypass for Devil's Slide, is inconsistent with Board of Supervisors policy, the voters of San Mateo County, and the adopted local coastal program.

Your memo contains false information and misstatements of fact. Most importantly, it also fails to include significant information.

The Devil's Slide tunnel project, as approved by the voters of San Mateo County, is moving forward. We fully expect a record of decision from Federal Highways later this fall. That will lead to design contracting and construction.

As is usual with a project of this magnitude, the progress is not as swift as we would like. Progress, however, is being made and if you support an alternative to the current Highway 1 route at Devil's Slide I am sure that you will applaud the next steps that CalTrans and San Mateo County will take to bring this project on line.

Sincerely,



Richard Gordon

County Government Center
401 Marshall Street
Redwood City, CA 94063



Direct (650) 363-4569
Coastside (650) 573-2222
Fax (650) 599-1027

EXHIBIT 15

"Change is inevitable...
Survival is not."



August 10, 2000

To: Honorable Richard Gordon & Board of Supervisors County of San Mateo
From: Oscar Braun, Half Moon Bay Coastside Foundation (dba Save Our Bay)
Re: Your Letter of August 8, 2000

Dear Supervisor Gordon,

As you know, the Save Our Bay Foundation is a non profit publicly supported charity. The mission of the Foundation is marine and watershed conservation within the boundaries of the Monterey Bay National Marine Sanctuary. Our letter of August 1st clearly states the purpose of the proposed ballot measure.

- **Purpose of This Measure:** The purpose of this measure is to provide the citizens of California a permanent solution to the Devil's Slide Route 1 Bypass that complies with the NEPA/CEQA and Coastal Act environmental review process, Record of Decision and qualifies for Federal funding.

You state in your letter, "Your memo contains false information and misstatements of facts. Most importantly, it also fails to include significant information." Other than the opening and closing paragraphs regarding credibility and honor, the entire body content of the Foundation's letter was drawn from published public and court documents exclusively dealing with the NEPA/CEQA and Coastal Act environmental review process for the Devil's Slide project. The Foundation respectfully requests that you provide them with documentation of "any" false information and misstatements contained in our letter. Further, please include "all" significant information that you claim we failed to disclose in our letter. The Foundation believes that if we are to maintain our credibility and the public trust, we must be beyond reproach. The Foundation would appreciate your cooperation in providing us the documents supporting your assertion of false and misstatement of facts by August 15th. Let's set the record straight.

Your letter further states "We fully expect a record of decision from Federal Highways later this fall." What information has the FHWA provided the Tunnel Task Force that has given you this expectation? Could you please provide us with documentation supporting your expectations? What Findings stated below are false or inaccurate?

Findings: In light of the County's response to the Second Supplemental Environmental Statement/Environmental Impact Report as well as the concerns expressed by the Coastal commission staff, Caltrans and the FHWA are not able to approve the Second Supplemental Environmental Statement/Environmental Impact Report or issue a new Record of Decision for the Tunnel alternative. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmentally damaging. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. The Tunnel alternative has been reviewed a third time by the County of San Mateo, the Coastal Commission, Caltrans and the FHWA and it is determined that the tunnel is not a reasonable alternative because it is not the most protective of coastal resources, it is inconsistent with current Local Coastal Program policies, various safety and cost issues.

The Foundation applauds this Board of Supervisors, the Coastal Commission, Caltrans and the FHWA for performing their due diligence on behalf of our local citizens by providing their best efforts to serve the needs of all Californians, protect our precious coastal resources and support our coastal communities need for safe and dependable roadways. It's now time for the electorate to make their final decision.

Sincerely,

A handwritten signature in dark ink, appearing to read "Oscar Braun". The signature is fluid and cursive, written over a horizontal line.

Oscar Braun, Executive Director

EXHIBIT 16

"Change is inevitable...
Survival is not."



HALF MOON BAY REVIEW • Wednesday, Aug. 16, 2000 • 9A

Gordon responds to fax from Braun

By JANET ZICH
Half Moon Bay Review

Normally mild-mannered San Mateo County Supervisor Rich Gordon had obviously reached his limit.

Responding last week to a fax from Oscar Braun, executive director of Save Our Bay (SOB), Gordon told Braun in no uncertain terms: "Your August 1 request for the Board of Supervisors to cosponsor a ballot measure in support of a bypass for Devil's Slide is inconsistent with Board of Supervisors policy, the voters of San Mateo County and the adopted local coastal program."

SOB had asked the supervisors to reconsider the Martini Creek bypass, the same bypass that was soundly defeated by San Mateo County voters in 1996 in favor of a tunnel.

Retreating even further into the past, Braun quoted the 1986 California Coastal Commission finding that of all the proposals for a Devil's Slide solution, "the Martini Creek Alignment is the alternative most protective of coastal

resources and least environmentally damaging."

Braun and SOB neglected to mention that the three-mile Martini Creek bypass was considered "most protective" only when compared to the six-mile, Montara-bisecting alternative that would have exited across from the Half Moon Bay Airport.

A tunnel had not even been considered at that time.

"As environmentalists," Braun wrote, "we are proud of the higher standard we set for ourselves and others."

Replied Gordon: "Your memo contains false information and misstatements of fact." And, in the unkindest cut of all, Gordon wrote of the three-and-a-half page, single-space missive from SOB, "Most importantly, it also fails to include significant information."

Gordon concluded by noting that the tunnel project is "moving forward. We fully expect a record of decision from Federal Highways later this fall. That will lead to design contracting and construction."