

Braun v. County of San Mateo

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

EXHIBITS TO DECLARATION OF OSCAR BRAUN

PART 3

EXHIBIT 17

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



August 24, 2000

To: Honorable Richard Gordon & San Mateo County Board of Supervisors
From: Oscar Braun, Half Moon Bay Coastside Foundation (dba Save Our Bay)
Re: Appeal of CDP Permit File # PLN 2000-00536
Location: Shamrock Ranch on Peralta Road
APN: 023-741-010
Project Planner: Mike Schaller

The Save Our Bay Foundation is appealing to the San Mateo County Board of Supervisors the above captioned Coastal Development Permit granted to Caltrans for the construction of a mitigation pond for transfer of endangered species red-legged frogs. The primary reasons for the appeal are:

- The Devil's Slide Tunnel project has not been granted a Record of Decision nor approval of the Second Supplemental Environmental Impact Study.
- The Coastal Act does not permit mitigation of sensitive habitats if there is a reasonable alternative to accomplish the basic goals of the development project...ie Martini Creek Alignment alternative.
- The voter approved LCP Tunnel Alternative has virtually no impact on the NEPA/CEQA and Coastal Act environmental review process or the FHWA Record of Decision.
- The public documents clearly state that the U.S. District Court and the California Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmental damaging.
- 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 and preserve the streams, parks, watershed, scenic beauty, endangered species, wildlife and other vital natural resources of the San Mateo Coast. 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 change 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.
- By Letter on May 12, 1999, Jack Liebster, Coastal Planner for California Coastal Commission, advised Caltrans of the Commission staff's principal concerns. Of particular note is his discussion of the impact of the tunnel project on the wetlands and his conclusion that "the County, and the Commission, if the project is appealed, will have to assess the appropriateness of any fill proposed in wetlands as defined under the LCP using wetland policies." He further states: "It is not clear that the proposed use of wetland areas as a site for which the LCP indicates fill can be allowed. In addition, the LCP wetlands policies require an examination of alternatives to projects which impacts wetland fill."
- 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 a total of two lanes on rural Scenic Hwy Route 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 written response regarding the Second Supplemental Environmental Statement/Environmental Impact Report as well as the concerns expressed by the Coastal commission staff, U.S. Fish & Wildlife Service, 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 in 1995 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, U.S. Fish & Wildlife Service, 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 the Coastal Act and the current Local Coastal Program policies, various safety and cost issues.

Earlier this month, Save Our Bay wrote the San Mateo County Board of Supervisor informing them that Caltrans and FHWA have concluded their second supplemental environmental review of the Devil's Slide project. As of today, the Martini Creek Alignment remains the only alternative that the County of San Mateo, state and federal agencies have approved and certified. The U.S. District Court reviewed and ruled in 1995 that all eight Devil's Slide project alternatives (including the tunnels) were properly reviewed and the 1986 Final Environmental Impact Statement is upheld. The Save Our Bay Foundation is asking the Board to acknowledge and support the current findings of the NEPA/CEQA and Coastal Act review process and accept the FHWA's Record of Decision. The Local Coastal Program requires that any alternative other than the Tunnels be placed on the ballot. The Foundation has offered a resolution to the Board that the Martini Creek Alignment (aka Sanctuary Scenic Bypass) for State Highway Route 1 be placed on the November 2000 ballot for voter approval.

Supervisor Gordon responded to the Foundation November 2000 ballot measure request on August 8, 2000 by stating: "Your memo contains false information and misstatements of fact. Most importantly, it also fails to include significant information." The Foundation respectfully requested that Supervisor Gordon's Devil's Slide Tunnel Task Force provide the entire Board of Supervisors, Caltrans, the FHWA, the SOB Foundation and the voters of this County with "all" their documentation of "any" false information and "any" significant information that he claims the Foundation is withholding. The public documents speak for themselves; the U.S. District Court and the California Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmentally damaging. The Save Our Bay Foundation believes that a Coastal Act mandated appeal hearing will provide an opportunity to set the record straight!

EXHIBIT 18

July 13, 1998

Edward Ueber
GFNMS
Fort Mason, # 201
San Francisco, California 94123

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



Greetings from Half Moon Bay,

John Plock and I decided it was time to get back to you and brief you on Save Our Bay's activities in the Water Quality Protection Program for the first half of 1998. Unfortunately, we have very little good news and a great deal of distressing news.

The "Good News"! In May, Save Our Bay kicked off their three year campaign Clean Water For Bay and Communities that was sponsored by the City of Half Moon Bay. The City paid for the printing of 20,000 booklets titled "Citizens Guide to Clean Water and the Monterey Bay National Marine Sanctuary". Some concerned local merchants helped pay for a full page ad in the local newspaper and other distribution cost. A small step for Half Moon Bay, but at least the City committed to the three year campaign. A first for the Coastside and movement in the right direction.

The "Bad News"! The illegal landfill operation on the historically important Johnston Ranch that I reported and filed complaints against over five years ago is still in operation. This 648 ranch borders the City of Half Moon Bay at the southern end of Main St. The illegal landfill is located above an aquifer that is located an average depth of only 15 to 40 feet below the surface. The Arroyo Leon Creek is a tributary to Pilarcitos Creek and an important steelhead stream in coastal San Mateo County. Pilarcitos Creek empties into Half Moon Bay less than quarter mile from where Arroyo Leon joins it. The Corp of Engineers have designated the area adjoining the Creek as a wetland. The riparian of the Arroyo Leon has been identified as a sensitive habitat and home to the listed endangered Red Legged Frog. The County has allowed continued illegal use and non permitted commercial tenants to occupy the Johnston Ranch. California Department of Fish & Game and the San Mateo County Planning and Code Enforcement Division have not **enforced their cease and desist or clean up orders**. This historic property has endured five more relentless years of totally preventable environmental damage. One of the tenants is a landscape contractor. He confided to me that he has used the site for a dump for nearly twenty years. The other tenants have a trucking operation and an operating engineering /paving and sealing contractor. The landscape contractor is also a director on the San Mateo County Resource Conservation District Board.

Moving up stream, the neighboring Grass Root Ranch, established a shanty encampment on the riparian of the Arroyo Leon in 1995. I notified the County's Code enforcement and the health department and filed numerous complaints.....no action by these County authorities. The encampment gets larger every year.

Moving up stream about 100 yards to 1780 Higgins Canyon Road we have Half Moon Bay Sealing & Paving. The owners purchased this 20 acre ranch in 1992 and established their business there without any use permits. The area is zoned PAD and designated for agriculture use. In the 1995, the private driveway bridge at 1780 Higgins Canyon Road collapsed from the weight of the over sized trucks and paving equipment. The collapsed bridge destroyed the in stream habitat and blocked fish passage along the Arroyo Leon Creek. The owners of the HMB Sealing & Paving replaced the bridge with a flatbed railroad car without supervision by any County or State

authorities and without any permits. In 1997, an additional railroad flatbed car was placed next to the first section, causing even more damage to the riparian and stream. The owners of this Sealing and Paving business have been operating at this location illegally for six years. The County Planning Division has not required them to cease and desist their illegal operations at this address or at the Johnston Ranch where they also operate. State Fish and Game refuses to cite them, as does the Regional Water Quality Control Board. The San Mateo County Resource Conservation District has identified this "damaged area" as a top restoration priority project in the Pilarcitos Creek Restoration Plan developed by Phillip Williams and Associates in 1996, and is a partnership between the Pilarcitos Restoration Fund (under the authority of the Regional Water Quality Control Board and California Department of Fish and Game) and the property owners, Cindy and Gary Giovannoni. So, the RCD is replacing the destroyed private bridge for the violators at the tax payers expense.....at least \$100,000 project. The RCD got the funding for the Pilarcitos Restoration Fund when the State fined BFI \$1,800,000 in 1994/95 after one of their silt ponds (licensed and permitted) gave way during a winter storm and deposited silt into Pilarcitos Creek. Now the County of San Mateo allows illegal operations to destroy and block the Arroyo Leon and then subsidize and rewards the violators. Last week I asked the RCD to please request from the Planning Division that the Half Moon Bay Sealing and Paving cease operation of their business at that location until such time they have received the appropriate permits. Christina Fischer, Watershed Conservationist and Project Director, stated that they can't get *involved in other departments business or politics!*

In February 1998, I witnessed the San Mateo County Department of Public Works dumping truck loads of earthen slide material into the Arroyo Leon about two hundred feet above the destroyed and stream blocking Half Moon Bay Sealing and Paving bridge. The very same week, a couple of neighbors and I also observed the State Parks and Recreation Maintenance Chief Anna Cross direct the dumping of several thousand yards slide material into Mill Creek. Mill Creek is a steelhead stream and tributary to Arroyo Leon also crossing the Half Moon Bay Sealing and Paving property. The slide in the Park was not blocking a public road and the material could have been relocated and deposited about seventy feet away in a meadow until the winter rains stopped. Please find enclosed the Save Our Bay notice of violation filed with the State Fish and Game and RWQCB. No follow up or citations from these two hard working environmental protection agencies. The RCD did explain to me that these three agencies have a "Memorandum of Agreement". I think their MOA is an Apparent Conflict of Interest.

Just one more Ed, honest! Next door to the HMB Sealing & Paving ranch and at the very location that appears to be Public Works favorite dumping spot, is the newly acquired Wildlife Associates ranch. The Wildlife Associates have operated in San Mateo County for about twelve years. They house and exhibit anywhere from thirty to sixty exotic/detrimental species to schools throughout the Bay Area. Now I know you are going to find this hard to believe, but they have and are still operating **without any of the required permits** from the County of San Mateo Health Department, Animal Control, Planning Division, U.S. Fish and Wildlife and of course my favorite watchdogs over at State Fish and Game. The Fish & Game reported to me that Wildlife Associates Resident Exhibiting/Detrimental Species Permit with the Department has expired and has not been renewed as of July 1, 1998. The Planning Division had a Coastal Development Permit application hearing before the County's Agricultural Advisory Committee. The Committee was not told that the County's General Plan Section 1.17 states: Definition of Incompatible Vegetation, Fish and Wildlife: Define incompatible vegetation fish and wildlife as **ANY plant, fish, or animal, or concentration of plants or animals which are found to be harmful to the surrounding environment or pose a treat to public health, safety and welfare.** The County's Advisory Committee never considered or

read the July 1998 issue of State Fish and Games "Outdoor California" magazines lead article **Critter pollution in California**. "In this issue , Outdoor California examines the invasion of the state by species that threaten to out compete and replace many of California's native plants, fish and wildlife. The fact is we often transport plants and animals and introduce them either deliberately or accidentally into new environments with **unforeseen consequences**. Most introductions of exotic organisms to California have been either authorized and legal, accidental, or deliberate and illegal. Regardless of the manner of introduction, bringing new species to California presents **potentially significant concerns**." The Arroyo Leon , Mill Creek and the rest of the sensitive rural coastal lands and watershed cannot risk this type invasion of exotic species. Of course , the Ag Advisory Committee after being told that the neighboring homeowners where completely supportive to the idea of a private zoo in their neighborhood, adopted a resolution supporting the Coastal Development Permit application for the Wildlife Associates. The Higgins Canyon Homeowners Association didn't even know the Advisory Committee was considering the permit and first knew after reading about it on the front page of the Half Moon Bay Review. Planning staff never noticed any of the adjoining property owners. The Homeowners Association has responded by signing a letter (enclosed) stating their opposition to **any permits** for the Wildlife Associates or Half Moon Bay Sealing & Paving.

Believe it or not Ed, I could write another three pages just on the properties that adjoin my Moon Acres ranch. I won't! Later this week John and I will hopefully meet with Supervisor Rich Gordon. He represents the coastal zone on the Board of Supervisors. We'll be requesting that the Board pass a resolution calling for a Grand Jury Investigation into the violations of the County's Public Works Department and the activities of members of the Board of Directors of the RCD. The Jury should look into why the State Department of Fish & Game and RWQCB are unwilling to enforce the environmental laws that are embodied in their mission and mandate. Is there a Conflict of Interest in their MOA. The Grand Jury should reconsider the State Parks and Recreation use permit for Burleigh Murray Ranch State Park. This Park appears to have evolved into a private recreational facility for park personnel and no longer offers real recreational opportunities for the public or protection for it's sensitive habitat. Of course, John nor I think that the County will do anything about any of these problems. We have come to believe that only private sector WQPP coalition members like Save Our Bay can cut through the politics of environmental protection laws and call for full compliance from all parties, private or public .

The last time around was with the Sewer Authority Mid-coast, we got great support from the United Anglers of California. This time, the California Sportfishing Protection Alliance, has provided help by giving notice of intent to file a proceeding in Federal Court under the Clean Water Act. Like the destruction along the Arroyo Leon, Save Our Bay and supporters plan on going after the County, State and private property owners that violate the laws designed to protect our precious coastal resources. Also, we'll see that the media gives these violators their fifteen minutes of notoriety.

We offer some pretty good coffee here on the coast and both John and I would welcome the opportunity to collaborate and provide you with some hospitality.

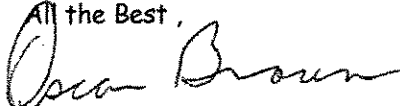
All the Best ,

Oscar Braun

EXHIBIT 19

#5

PUD

Save Our Bay
1589 Higgins Canyon Road
Half Moon Bay, CA 94019
tel 650-726-3307
fax 650-726-2799

February 9, 1998

To:
California Department of Fish & Game
U.S. Department of Fish & Wildlife

From:
Oscar Braun, Executive Director

OB

Subj:
Notice of Violation of Endangered Species Act and Federal Clean Water Act

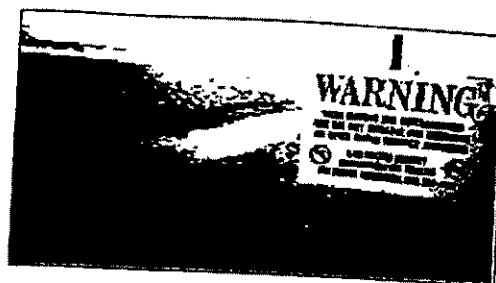
On February 2, 1998, there were a series of earthen slides along Higgins Canyon Road leading up to my Moon Acres Ranch. Moon Acres is bordered on the East by Burleigh Murray Ranch State Park. A short distance from the entrance within the state park there was a substantial slide comprising approximately 2,500 cubic yards or more of rocks, mud, brush and debris. On the morning of Tuesday, February 3, 1998, state park personnel had summoned outside contractors into the park to clear the slide which was partially blocking the road. Under the direction and supervision of state park personnel, two to three thousand cubic yards of debris and mud was dumped directly into Mill Creek. There is a meadow within seventy feet of the slide where all the material could have been deposited until after the conclusion of the winter rains. All this activity was conducted within the presence and witness of several neighbors.

County of San Mateo Public Works employees cleared away the six small slide areas on the north side of Higgins Canyon Road in a quarter mile area adjacent to Moon Acres driveway. The slides were on the road but not blocking traffic from either direction. Approximately two hundred yards of mud was scooped up from the north side of the road and dumped directly into the Arroyo Leon. In both the above described incidents it was neither necessary or unavoidable to deposit this massive siltation into these two very important streams.

Save Our Bay is requesting that an investigation be launched into these activities by California Department of Parks and Recreation and the County of San Mateo. You may contact our offices for further information and assistance. We will provide your investigators with the names of witnesses and photographic evidence. Thank you in advance for your prompt attention to this matter.

MISSION STATEMENT

Save Our Bay's mission is to promote awareness of the ongoing needs for activism, conservation, and education concerning the Monterey Bay National Marine Sanctuary. Save Our Bay will host insightful information focused exclusively on the preservation and protection of the Monterey Bay National Marine Sanctuary. Save Our Bay's goal is to provide guardianship and a voice for the following principles as embodied by the 1976 California Coastal Act.



- Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
- Assure orderly, balanced utilization and conservation of coastal zone resources, taking into account the social and economic needs of the people of the state.
- Maximize public access to and along the coast and maximize public recreational opportunity in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
- Give priority to visitor serving facilities for public and private development that provides necessary, basic visitor support services such as lodging, food, water, restroom, and automobile services. Visitor serving facilities include, but are not limited to, hotels, motels, hostels, campgrounds, group camps, grocery stores, food concessionaires, auto serving stations, public drinking water, restrooms, public parking for coastal recreation access, restaurants, and country inns no more than two stories in height.
- Save Our Bay will monitor, identify, and fight to stop the destructive and polluting activities of private and public entities impacting the Sanctuary.
- Save Our Bay will sponsor and support a legal defense fund exclusively for the preservation of the Monterey Bay National Marine Sanctuary.
- Save Our Bay will provide direct access via e-mail to fax for concerned citizens who are desirous of letting our elected representatives and public servants know they demand nothing less than full compliance and enforcement of the Federal Clean Water Act, the California Coastal Act, and the Endangered Species Act.

Oscar Knows believes that if tens of thousands of citizens will give just a few minutes of their time to raise their voices in unison, our voices will echo loudly:

Save Our Bay!

EXHIBIT 20

#5

Save Our Bay.Org
1589 Higgins Canyon Road
Half Moon Bay, California 94019
Telephone 650-726-3307
Fax 650-726-2799

February 27, 1998

To: Steven M. Furrer, U.S. Fish & Wildlife Service

Brian Arnold, State of California Department of Fish & Game

Michael Napolitano, Regional Water Quality Control Board

From: Oscar Braun, Save Our Bay.Org.

Subject: Mitigation required for cited violations.

Gentlemen,

On behalf of Save Our Bay and the private property owners adjoining the Burleigh Murray Ranch State Park, I want to first thank all of you for responding to our concerns and complaints in such a timely manner. It was very reassuring to have all of you state that the damages are very real here in Higgins Canyon and that they will be attended to as soon as possible. It is our understanding that your agencies will require that the State Parks and Recreation Department and the County of San Mateo implement mitigating actions this year. The full scope of the required mitigation will be under your agencies direction and supervision. The violators must fund, engineer, construct and restore the damaged and endangered areas that were impacted by their reckless and unlawful actions. The damage to private property has been well documented. In addition, public health and safety risk assessments with regard to Mill Creek, Arroyo Leon and Higgins Canyon Road have been made by your agencies.

#5

Mitigation Required By California State Parks and Recreation:

- Restore damaged areas of Mill Creek within the boundaries of Burleigh Murray Ranch State Park.
- Restore damaged areas of Arroyo Leon on Herndon property located on Higgins Canyon Road.
- Design and engineer drainage that directs the runoff away from residents' property that is adjoining the park's parking area and redirect runoff back into Mill Creek.
- Annually cut the brush and tall grasses adjoining the park's parking area and bordering private residents for fire abatement.
- Restore the fire road to its original distance up to Hwy 35.

Mitigation required By the County Of San Mateo:

- Repair all slide areas along Higgins Canyon Road that are falling into Mill Creek and Arroyo Leon.
- Asphalt (Minimum 2" net) Higgins Canyon Road from just above the entrance to the Burleigh Murray Ranch State Park all the way to Main Street, Half Moon Bay.
- Reinforce all storm damaged and vulnerable embankment areas adjoining Higgins Canyon Rd.
- Evict Half Moon Bay Sealing and Paving from their current business address. Their trucks and heavy paving equipment have destroyed the original bridge across the Arroyo Leon and the County's sub-standard Higgins Canyon Road is unraveling because of their heavy truck and equipment traffic.

I would appreciate if all of you would copy me on any reports, citations, findings and rulings that concern this Save Our Bay formal complaint. Thank you all again for your courtesy and assistance in this matter.

EXHIBIT 21

Environmental Services Agency



Planning and Building Division

County of San Mateo

Mail Drop PLN122 • 590 Hamilton Street • 2nd Floor • Redwood City
California 94063 • Telephone 650/363-4161 • Fax 650/363-4849

Board of Supervisors
Ruben Barrales
Richard S. Gordon
Mary Griffin
Tom Huening
Michael D. Nevin

**Director of
Environmental Services**
Paul M. Koenig

Planning Administrator
Terry L. Burnes

March 2, 1998

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

Dear Mr. Braun:

SUBJECT: 1780 Higgins Canyon Road
File No. VIO 98-0023

I am writing you in response to your fax of February 12, 1998, in which you list several concerns regarding the above address. It is our understanding that your complaints consist of the following activity occurring on the property: (1) the property zoned Planned Agricultural District (PAD) is being used as a commercial equipment yard, and (2) the owners of the property do not live on the property. You have inquired whether the owners have ever applied for permits to legalize the operation.

In response to your complaint, the Code Compliance Section conducted a site inspection of the property. Below, I have addressed the relevant findings of the inspection in regard to each of your concerns.

A site inspection was conducted by Gary Warren, Code Compliance Officer II, on February 9, 1998. The inspection found that: (1) the property is being used to store commercial equipment for Half Moon Bay Sealing and Paving, (2) that part of the property is being farmed, and (3) a residence is located on the property.

1. **What is the legal status of Half Moon Bay Sealing and Paving Inc.?--Operating in the rural residential area that is zoned PAD?**

The only uses permitted within the Pad District without permits are agricultural uses and uses considered accessory to agriculture. The property at this time has a PAD Permit to allow a residence. No permit has been issued to Half Moon Bay Sealing and Paving for the current use.

2. **Does Half Moon Bay Sealing and Paving currently hold a permit of any kind from the County that would allow them to operate their business at its current address?**

No permit has been issued for the sealing and paving business.

3. **Have the owners of Half Moon Bay Sealing and Paving ever applied for any type of permit to develop their commercial paving operation at its current address?**

No. The owners of the property have contacted this office and taken applications for PAD permits. We understand they will be submitted shortly.

4. **Will the County shut this operation down and require it to move to another location until such time the owners have obtained the appropriate permits to operate their commercial paving and sealing business? Will the County require the owners of Half Moon Bay Sealing and Paving to remove all non-farm equipment from its current location until the appropriate permits are obtained? Will the truck and paving equipment repair shop be shut down until proper permits have been acquired?**

The policy of this office is to allow a non-permitted use to continue while the permit process is under way unless there is a serious threat to health, welfare, or safety.

5. **What rights do the neighbors have to protect their property and the quality of life in our neighborhood?**

In cases requiring a PAD Permit, the Zoning Hearing Officer holds a hearing at which time comments are heard regarding the project. If any party disagrees with the findings, they can appeal the decision to the Planning Commission and finally to the County Board of Supervisors. In addition to a PAD Permit, the location of the property requires a Coastal Development Permit, which can be appealed to the Coastal Commission.

6. **When does the County plan to remove this commercial entity from this neighborhood?**

If it is found that the operation cannot be legalized, the property owner will be instructed to remove the equipment and operation from the property.

7. **Does the County realize that the owners of Half Moon Bay Sealing and Paving Inc. do not live at 1780 Higgins Canyon Road, and that this is the sole location of their sealing and paving business?**

The zoning regulations for the PAD do not require that the owner reside on the property. A PAD permit has been approved allowing a residence on this site.

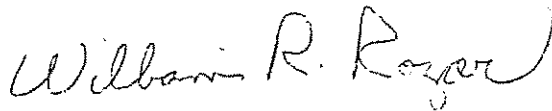
Oscar Braun
March 2, 1998
Page 3

8. Does the County plan to replicate the Highway 92 type theme parks and other non-agriculture based business here in Higgins Canyon?

The County only issues permits for what is allowed in the zoning regulations or allowed by the legal non-conforming regulations.

Once the permit process is started, a planner will be assigned to the case. At that time, you should share your concerns with the project planner.

Yours sincerely,



William R. Rozar
Development Review Manager

WRR:GFW/kcd - GFWI0298.6KE

EXHIBIT 22

Save Our Bay
1589 Higgins Canyon Road
Half Moon Bay, CA 94019
Tel 650-726-3307
Fax 650-726-2799

March 19, 1998

William R. Rozar
Development Review Manager
Mail Drop PLN 122-590 Hamilton Street, 2nd Floor
Redwood City, CA 94019

Dear Mr. Rozar:

Subject: 1780 Higgins Canyon Road
File No. VIO 98-0023

I am writing you in response to your letter of March 2, 1998 in which you replied to my concerns regarding the above address. Your letter states that the inspection found: (1) the property is being used to store equipment for HMB Sealing and Paving; (2) that part of the property is being farmed and; (3) that a resident is located on the property. All three of these inspection findings are erroneous. The Half Moon Bay Sealing and Paving has operated full time for close to 5 years at 1780 Higgins Canyon Road. The approximately 3 acres of land is not under cultivation. The Giovannoni's have used this parcel only as their place of business with three residential rental units. Since receiving your letter, I have compiled a list of historical events that have transpired since Half Moon Bay Sealing and Paving established their place of business in this PAD zoned location.

1) Half Moon Bay Sealing and Paving has been in the asphalt paving, excavating and grading business since 1978. In the Yellow Pages and on all statements and invoices they advertise themselves as being located and doing business at 1780 Higgins Canyon Road. There is no mention or history of them offering services considered accessory to agriculture. Perhaps a copy of their Federal and State business tax returns will clarify the full nature of their business. See enclosures marked #1.

2) In 1993, the owners of Half Moon Bay Sealing & Paving "converted" a portion of an existing agricultural barn into a residence for one of their Half Moon Bay Sealing and Paving employees. I believe an onsite investigation will show that the owners have not met all the requirements of the Environmental Health Section regarding septic system and domestic water nor the County Fire Marshall requirements regarding sprinklers in structures over 1,000 feet. See enclosures marked #2.

3) In 1993, Gary Giovannoni applied for and was granted a Coastal Development Exemption/Exclusion for a 2,400 square-foot barn. The basis for the exemption was to develop another barn for agricultural purposes. The Half Moon Bay Sealing and Paving company subsequently built a 2,400 square foot maintenance and repair shop for their *non-agriculture* related business and covered or paved approximately 15,000 thousand square feet of prime soils with commercial structures and asphalt parking areas for their paving business equipment leaving less than 3 acres for cultivation. See enclosures marked #3.

4) In 1995, William Herndon filed a property tax appeal with the San Mateo County Tax Assessor for their adjoining parcel: 064-370-170. The basis for the request to reduce the assessed value of his residence and parcel was based on the fact that Half Moon Bay Sealing and Paving had established their permanent *non-agricultural* paving business next door to their home. The Herndon's, in addition to all adjoining neighbors, have had to endure not only the unsightliness of this type of business, but also the constant noise made by huge trucks and paving equipment entering and exiting the property. There are the daily sounds of air guns and compressors in the repair shop accompanied by loud radio calls from the trucking dispatcher. The air is thick at times with the smell of asphalt and other petroleum materials. There is a

real concern that these hazardous material may leach into the riparian area of the Arroyo Leon. The County of San Mateo Tax Assessor granted the Herndon's a reduction in their assessed property value. *This tax reduction shows that the County had knowledge of an illegal use of this PAD Zoned parcel and the detrimental effects this use had on the neighboring parcels. The Assessor has recognized and declared the loss of property value to an adjoining parcel. I will be filing for the appropriate tax reduction later this month.*

5) In 1995 the driveway bridge at 1780 Higgins Canyon Road was destroyed under the weight of the Half Moon Bay Sealing and Paving heavy equipment and trucks. Large pieces of the cement bridge fell into the Arroyo Leon taking a considerable portion of the stream bank with it. The flow and direction of the stream was adversely changed causing a negative impact on endangered species habitats. The Giovannoni's then placed an old railroad car bed over the stream creating more damage in the process. The destruction of the original bridge and the unsupervised replacement railroad car has caused additional damage for hundreds of feet both above and below the bridge location. The County has not only been aware of this destruction activity for some years now but has been caught red handed dumping truck loads of earth and debris material into the Arroyo Leon only hundreds of feet from the Half Moon Bay Sealing and Paving collapsed bridge.

At the entrance of the Half Moon Bay Sealing and Paving driveway, where their heavy trucks turn onto Higgins Canyon Road, the embankment of Mill Creek has fallen away into the stream below. This has undermined the road and caused the bank to migrate right up to its edge. I have reported this to Warden Brian Arnold of State Fish and Game and to Chris Porter of the San Mateo County Public Works Dept. There are school buses that drive this dangerous piece of road daily. The substandard road surface on Higgins Canyon Road from the entrance to the Half Moon Bay Sealing and Paving location all the way to Main St. Half Moon Bay is unraveling. Yet, if you examine the road just beyond the HMBS&P entrance, you'll find it be holding up and in safe condition as it continues into the canyon.

See enclosures mark #5. Please note that Save Our Bay has agreed with the State and Federal authorities that the best way to deal with these serious violations committed by the County and Half Moon Bay Sealing and Paving is through quick mitigation. If the County and the Giovannoni's don't comply with the stipulated mitigation demands, I will then be forced to file the appropriate actions in State and Federal Courts under violation of the Endangered Species Act and Federal Clean Water Act.

6) The Giovannoni's claim of buried hazardous material on my property has been turned over to my law firm. It appears to me that they have attempted to use this County as an instrument of retaliation at the very least and possibly committed some very serious acts. The only dumped debris found on my property was brought onto my ranch by Gary Giovannoni or his employees. See enclosures marked #6.

The above information clearly illustrates that the Half Moon Bay Sealing & Paving Co. has caused property and environmental damage and continues to put the public's health and safety at risk. The County's lack of speedy mitigation only escalates their liability by allowing these illegal activities to continue. I respectfully request that the County of San Mateo evict Half Moon Bay Sealing and Paving until such time they have been granted the necessary Coastal Development Permits.

Regards,


Oscar Braun

Save Our Bay, Executive Director

CC: San Mateo County Board of Supervisors
Warden Brian Arnold, State Fish and Game
Michael Napolitano, State Regional Water Quality Board
Special Agent Steve Furrer, U.S Fish & Wildlife Service
Jeffery Carlton, San Mateo County Tax Assessors Office
Neil Cullen, San Mateo County Public Works Department
Eric Rice, Half Moon Bay Review

EXHIBIT 23

Consumer and Environmental Protection Unit
San Mateo County District Attorney's Office
Hall of Justice and Records
401 Marshall Street
Wood City, CA 94063

DATE:

April 2, 1998

I wish to file a complaint against the company/individual named below. I understand that the District Attorney's Consumer and Environmental Protection Unit is unable to represent private citizens seeking the return of their money or other personal remedies. I am, however, filing this complaint to notify your office of the activities of this company/individual. I understand that a copy of this complaint may be sent to the party complained against unless I state, in writing, why this procedure should not be followed.

NAME OF COMPANY OR INDIVIDUAL
YOU ARE COMPLAINING AGAINST:

HALF MOON BAY SEALING & PAVING

ADDRESS: 1780 HIGGINS CANYON RD CITY: HALF MOON BAY STATE: CA ZIP: 94019

TELEPHONE: (650) 726-3588 TRANSACTION DATE: FEB. 27, 1998

Have you contacted a private attorney? YES

If your complaint involves the signing of a contract or the payment of money, in what city or cities did these events occur?

N/A

DESCRIBE EVENTS IN THE ORDER IN WHICH THEY OCCURRED. Please include locations, names, dates, and other specific information. (Use additional sheets if necessary.)

DEAR DEPUTY DISTRICT ATTORNEY John Wilson, -
SAVE OUR BAY Filed a complaint with
STATE FISH & GAME & STATE REGIONAL WATER
QUALITY CONTROL BOARD on Feb. 9, 1998. The
OWNERS OF HALF MOON BAY SEALING & PAVING Filed
a complaint with HAZARDOUS MATERIALS SPECIALIST
DIRK JENSEN on Feb. 27th 1998. The Giovannoni's
claimed to have knowledge of buried HAZARDOUS
MATERIAL on my property. The only dumped
debris found on my property WAS BROUGHT
onto my RANCH by GARY GIOVANNONI or his
EMPLOYEE THAT LIVED on my RANCH FOR 18 MONTHS.

I AM REQUESTING A full INVESTIGATION OF THIS
MATTER. ENCLOSED PLEASE find BACKGROUND documents
PERTAINING TO HALF MOON BAY SEALING & PAVING.

YOUR NAME: (PRINT OR TYPE) OSCAR BRAUN

ADDRESS: 1589 Higgins Canyon Rd CITY: HMB STATE: CA ZIP: 94019

TELEPHONE: (650) 726-3307 ^{FAX} BUSINESS TELEPHONE: (650) 726-2799

PLEASE return this form and enclose legible PHOTOCOPIES (KEEP YOUR ORIGINALS), of all checks (front and back), contracts, advertisements, correspondence and all other documents relating to your complaint. You may retain the PINK COPY for your records.

39001 DA 10/90

CC. Michael Murphy
William Lent
BRIAN ZAMORA

TOTAL P.02

EXHIBIT 24

ENDORSED FILED
SAN MATEO COUNTY

OCT 29 1998

Clerk of the Superior Court
By AMY CANCELLA
DEPUTY CLERK

1 Joseph J. Tabacco, Jr. (75484)
2 Alan A. Beaven (159770)
3 BERMAN, DeVALERIO, PEASE & TABACCO
4 425 California Street, Suite 2025
5 San Francisco, California 94104-2205
6 Telephone: (415) 433-3200

7 Attorneys for Plaintiff
8 Oscar Braun

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN MATEO

11 OSCAR A. BRAUN,

12 Plaintiff,

13 v.

14 TOWNE PACIFIC HALF MOON BAY, LLC,

15 Defendant.

Case No. 405800

COMPLAINT

JURY TRIAL DEMANDED

16
17 OSCAR A. BRAUN hereby alleges as follows:

18 PRELIMINARY STATEMENT

19 1. This is a public interest lawsuit brought under California law for penalties.
20 injunctive relief, attorneys' fees and costs in connection with the ongoing discharge of
21 pollutants into the land and waters of the State at the former Johnston Ranch and the Arroyo
22 Leon Creek in Half Moon Bay, California.

23 2. Plaintiff OSCAR BRAUN is the owner of real property in Half Moon Bay,
24 California, adjacent to the former Johnston Ranch. He is also the holder of recorded
25 easements over the former Johnston Ranch.

26 DEFENDANT

27 3. Defendant TOWNE PACIFIC HALF MOON BAY LLC is a California
28 limited liability company with its registered office at CT Corporation System, 818 West 7th

1 Street, Los Angeles, CA 90017.

2 4. Defendant TOWNE PACIFIC HALF MOON BAY LLC has as its authorized
3 agent Christopher L. Lau of 220 South King Street, Honolulu, Hawaii. Mr. Lau conducts
4 business for defendant under the name Towne Development of Hawaii, Inc.

5 GENERAL ALLEGATIONS

6 5. By Grant Deed 98-002243 recorded on January 8, 1998, defendant purchased
7 approximately 648 acres identified as Parcel 1A, Parcel 1B, Parcel 1C, Parcel II, Parcel III
8 and Parcel IV ("the said land") in part formerly known as the Johnston Ranch from Half
9 Moon Bay Heritage Co., Ltd., a California limited partnership. A copy of the Grant Deed is
10 incorporated herein by reference.

11 6. Defendant and its predecessor Half Moon Bay Heritage Co., Ltd. have leased
12 portions of the said land to commercial tenants, Tom Pacheco Contracting, Wayne Pasterino
13 Trucking and Half Moon Bay Sealing and Paving.

14 7. Defendant has leased portions of the said land to commercial tenants
15 referenced in paragraph 6 without defendant or its tenants obtaining a Coastal Development
16 Permit and/or Use Permits. The current use of the said land by the said commercial tenants is
17 illegal.

18 8. Defendant and its predecessor Half Moon Bay Heritage Co., Ltd. were aware
19 that tons of construction material, asphalt, cement, plastic nursery plant containers, PVC
20 pipes, oil cans and chemical containers had been discharged onto the said land, which land
21 includes wetlands and drainages leading to the Arroyo Leon Creek.

22 9. On or about June 30, 1995, the County of San Mateo recorded a violation for
23 the said land for the unauthorized discharge of 10,000 cubic yards of fill material including
24 abandoned vehicles and other trash.

25 10. Defendant's predecessor in title requested a Phase I and II site assessment by
26 Lumina Technology. This investigation was performed without knowledge of the County of
27 San Mateo Health Services Agency.

28 11. On July 25, 1995, the California Department of Fish and Game notified

1 defendant's predecessor in title of violations of the Fish and Game Code. Specifically, the
2 violations related to the dumping of construction debris, trash and vehicle parts into
3 drainages on the said land, which drainages lead into the Arroyo Leon Creek.

4 12. Defendant's predecessor in title allowed the said land to be used as an
5 unauthorized landfill and violated §1603 of the Fish and Game Code.

6 13. On August 12, 1997, the County of San Mateo recorded a grading violation on
7 the title of the said land.

8 14. On June 8, 1998, the County of San Mateo advised defendant of the illegal
9 discharge of pollutants (as defined by the Clean Water Act) on the said land.

10 15. On September 3, 1998, Kerry Burke, a consultant acting on behalf of
11 defendant, advised the County of San Mateo that defendant would remove all tires, plastic,
12 appliances and/or household waste from the said land.

13 16. Drainage from the said land is to the Arroyo Leon Creek, a tributary to
14 Pilarcitos Creek, and spawning habitat for steelhead. This drainage is subject to the
15 Pilarcitos Creek Restoration Plan.

16 17. On July 23, 1998, plaintiff, through a sportfishing group, gave notice to
17 defendant that it was required to obtain an NPDES permit under the Clean Water Act.

18 18. Defendant has not obtained a permit (a) to discharge fill into wetlands; (b) to
19 operate a former landfill; (c) to allow stormwater runoff from the said land and/or; (d) to
20 allow the discharge of pollutants into the Arroyo Leon Creek.

21 FIRST CAUSE OF ACTION

22 (Unfair Competition Act §17200)

23 19. Plaintiff incorporates by reference the allegations in paragraphs 1 through 18
24 above as though fully set forth herein.

25 20. Defendant purchased the said land at below market value and with knowledge
26 of the unauthorized fill on the said land.

27 21. Defendant has continued to operate the former landfill and has committed
28 ongoing violations of the Clean Water Act, the California Water Code, the California Health

1 and Safety Code, and the California Fish and Game Code.

2 22. Defendant has granted an option to Peninsula Open Space Trust to purchase
3 the said land effective July 1999.

4 23. Defendant intends to sell the said land for profit without obtaining any permits
5 for the said land and/or remediating the conditions of pollution on the said land.

6 24. By committing the acts alleged above in violation of the Clean Water Act, the
7 California Water Code, the California Fish and Game Code, the California Health and Safety
8 Code, defendant has engaged, and is engaged, in unlawful business practices which constitute
9 unfair competition.

10 25. Defendant has engaged, and is engaged, in unlawful business practices with
11 the specific intent to injure and/or destroy competition for the lawful purchase and/or sale of
12 the said land.

13 26. Plaintiff's property interests have diminished in value because of defendant's
14 unlawful landfill operations.

15 27. The unlawful and unfair business practices of defendant have injured and
16 present a continuing threat of injury to plaintiff.

17 28. Plaintiff has no adequate remedy at law with respect to defendant's continuing
18 violations and will continue to suffer harm unless injunctive relief and restitution are granted.

19 SECOND CAUSE OF ACTION

20 (Private Nuisance)

21 29. Plaintiff incorporates by reference the allegations in paragraphs 1 through 28
22 above as though fully set forth herein.

23 30. The acts and omissions of defendant create a private nuisance through
24 substantial interference with the use and enjoyment of plaintiff's interests in the said land and
25 his interest in land adjacent to the said land.

26 31. The substantial interference with the use and enjoyment of plaintiff's interests
27 in property includes, but is not limited to, loss of use of real property and injury or loss to real
28 property.

1 32. Substantial interference with plaintiff's interests was caused by the acts and
2 omissions of defendant.

3 WHEREFORE, plaintiff prays for relief as follows:

4 **PRAYER FOR RELIEF**

5 1. On the First Cause of Action, an order of disgorgement or restitution to
6 prevent defendant from retaining any money or property obtained by means of its unlawful
7 conduct.

8 2. On both Causes of Action, enter such temporary restraining orders,
9 preliminary injunctions, permanent injunctions or other orders requiring defendant to obtain
10 all permits and/or abate the nuisance and damages resulting therefrom prior to sale of the said
11 land;

12 3. For the appointment of a receiver;

13 4. For costs, expert expenses and reasonable attorneys' fees;

14 5. For such other and further relief as the Court deems necessary.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a trial by jury on all issues so triable.

17 Dated: October 27, 1998

Respectfully submitted,

18 **BERMAN, DeVALERIO, PEASE & TABACCO**

19
20 By: 

21 Alan A. Beaven

22 Joseph J. Tabacco, Jr.
23 425 California Street, Suite 2025
24 San Francisco, California 94104-2205
25 Telephone: (415) 433-3200

26 Attorneys for Plaintiff
27 Oscar Braun
28

EXHIBIT 25

Feb 5, 1999

Braun wins free-speech SLAPP suit

By ERIC RICE
Half Moon Bay Review

Controversial Higgins Canyon resident Oscar Braun won a court victory against a landowner who sought to silence him from speaking out about alleged environmental degradation on the Half Moon Bay Heritage Property.

A lawsuit filed in December by Towne Pacific Half Moon Bay L.L.C. against Braun alleged that a letter he published in the Half Moon Bay Review was libelous.

The Review was not named as a defendant in the lawsuit, however.

On Jan. 25, San Mateo County Superior Court Judge Phasel L. Shelton ruled in favor of Braun, dismissing Towne Pacific's complaint and awarding Braun court costs and attorneys' fees.

"The reason this is important is it reaffirms First Amendment rights, people's rights to express things they believe are wrong in their community," said Alan Beaven, Braun's attorney.

The attorney representing Towne

Pacific, Kenyon Mark Lee, declined to comment on the case at the request of his client.

The land involved in the lawsuit is the 648-acre Johnston Ranch property fronting Higgins Canyon Road. It was the focal point for the ill-fated 1992 Measure D residential and commercial development proposal, and in later years was the focus of litigation for alleged illegal dumping of construction material on the property.

Last year, Peninsula Open Space Trust purchased an option to buy the property to keep it as undeveloped open space.

In response to the option to sell to

POST, Braun began insisting that an environmental assessment be conducted on the property to determine if the material, which had been dumped years before, was contaminated. Braun is still pressing a claim against Towne Pacific to force the environmental assessment.

In a court filing, Braun claims that Towne Pacific Half Moon Bay "is attempting to obtain a quick profit on the sale of the ... land without conducting the remedial activities it knew were necessary when it purchased the property in December 1997."

A hearing is set on that complaint for March.

E A M I L Y

EXHIBIT 26

Half Moon Bay Coastside Foundation Alan Beaven's Living Legacy



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

October 23, 2001

To: Christopher Sproul, Assistant Regional Counsel, EPA
Joseph Tabacco Jr., Berman, DeValerio, Pease, Tabacco, Burt & Pucillo
Ms. Rosie Slaughter, Director-Examination TE/GE Division, IRS
Ms. Loretta Barsamian, Executive Director, San Francisco Regional Water Quality Control Board
From: Oscar Braun, Executive Director, WQPP Coastside Posse

Re: Continued Violations of Clean Water Act and Endangered Species Act by Peninsula Open Space Trust (POST).

Enclosed please find discovery documents and a deposition for the last Clean Water Act lawsuit brought by Alan Beaven on my behalf; Oscar A. Braun versus Towne Pacific Half Moon Bay L.L.C. On November 19, 1999 the parties settled case (# 406800) and the plaintiff filed a notice of dismissal within ten days of the parties signing a settlement agreement. Please note that a portion of the deposition of Christopher Lau accompanied by selected POST discovery documents are marked "Confidential Available to Counsel and Retained Experts Only". Alan informed me after the settlement, that POST had acquired the property in "As Is" condition and "Fully Indemnified" Towne Pacific prior to purchasing the property. He also informed me that Towne had fully disclosed "all" information regarding the twenty-five year landfill operation. The confidential deposition documents also reveals Tom Pacheco's role as operator of the 250 acre landfill and the fact that it was Tom Pacheco and Gary Giovannoni that conducted the Level II survey sample borings of their landfill operation on behalf of Towne (note site sampling photos). Finally, the confidential documents reveal that POST representatives were present during the Level II sampling by Pacheco and Giovannoni contrary to instructions issued by the County of San Mateo Environmental Health's Ann Jensen to be notified in advance of the Level II survey. Alan sent me all his case documents for storage prior to his planned one year sabbatical in India. The Half Moon Bay Coastside Foundation is a tenured coalition member of NOAA's Water Quality Protection Program and as such is formally requesting that the EPA and RWQCB issue POST a Notice of Violation and Enforcement Orders for the following violations:

- The Coastside Posse is asking EPA to file a NOV of the Clean Water Act (CWA) Section 404. Issue Peninsula Open Space Trust an Enforce Order for their unlicensed landfill located in a wetland environmentally sensitive area (ESA) containing listed species without applying for the required CWA NDPEs permits. The Watershed Posse further requests EPA ask the Court to assess the maximum fines for each and every violation committed by this 501(c)(3) open space land Trust's breach of the public trust. Additionally, we are asking the EPA to seek Court protection for the water resources controlled or managed by POST. The Half Moon Bay Coastside Foundation is requesting that the Court appoint the HMBC Foundation as a conservator of the lands of POST. We further are requesting that POST be disqualified from receiving any State or Federal permits or funding because of their multiple violation of the CWA and gross breach of the public trust.
- We are requesting that the EPA issue a referral to the U.S. Fish and Wildlife Service of multiple violations of the Endangered Species Act Section 9 (take) of listed species in a dedicated ESA wetland and Arroyo Leon steelhead stream. The Coastside Watershed Posse is asking that the Service issue an enforcement order and recommend the maximum fines and penalties be assessed by the Court. POST should be disqualified from receiving any State or Federal issued permits or funding grants because of their multiple Section 9 violations and gross breach of the public trust.

Half Moon Bay Coastside Foundation Alan Beaven's Living Legacy



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

- The Half Moon Bay Coastside Foundation is formally filing this complaint with the IRS Ms. Rosie Slaughter, Director of Examination TE/GE, regarding POST's multiple violations of the Federal Clean Water Act and Endangered Species Act while benefiting from being granted their special 501©3 tax exempt status. We are requesting a full and complete examination and audit of the Peninsula Open Space Trust books and business dealings. We are requesting that POST's 501©3 tax exempt status be immediately suspended until such time a final determination can be issued by the Internal Revenue Service. POST continues to receive ten of millions of State and Federal funding grants in addition to the millions pledged or donated to their open space trust by the public at large. POST has breached the public trust, continues to pollute our coastal steelhead streams and the waters contained within the borders of the Monterey Bay National Marine Sanctuary. Alan Beaven notified POST on February 22, 1999 that "when POST acquires the property it will become liable in nuisance for any pollutants emanating from its property. " Ergo, POST had full environmental disclosure from the seller Towne, tenant Tom Pacheco, Coastside Watershed Posse Executive Director Oscar Braun and the Foundation's Clean Water Act legal counsel Alan Beaven prior to the purchase of the Johnston Ranch landfill and thus POST exercised informed consent.

In closing, our Coastside Watershed Posse, co-founded by Alan Beaven, would appreciate an acknowledgement of receipt of this formal complaint from the EPA, RWQCB and IRS. The Half Moon Bay Coastside Foundation has additional documents regarding the POST properties and will make their staff and records available to all regulatory agencies involved in processing this complaint. We are asking Alan's friend and colleague Joseph Tobacco Jr. to monitor the actions of the captioned regulatory agencies and assist them before the Courts if required.

Sincerely,

Oscar Braun, Executive Director WQPP

Enclosures: Documents RE: General Order 97-03 State Water Resource Control Board, Deposition of Christopher Lau October 21, 1999, Confidential Deposition of Christopher Lau Available to Counsel and Retained Experts Only, Mission Statement, Coastside Posse's Living Legacy, Memorial Services Celebrating the Life of Alan Anthony Beaven with Poem by his son John Beaven.

CC: FBI Terrorist Task Force, Marcia Raines, San Mateo County Director of Environmental Services

EXHIBIT 27

Higgins Canyon Homeowners Association
P.O. Box 1086
Half Moon Bay, California 94019

June 26, 1998

Terry L. Burnes
Planning Administrator
Mail Drop PLN 122
590 Hamilton Street 2nd Floor
Redwood City, California 94063

Subject: Wildlife Associates and Half Moon Bay Sealing and Paving

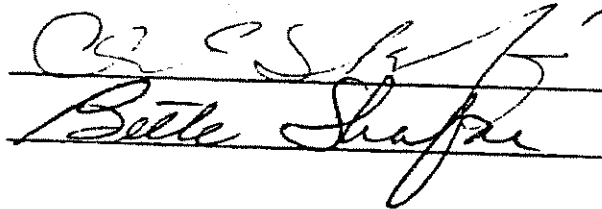
Dear Mr. Burnes,

The Higgins Canyon Homeowners Association is strongly opposed to the issuing of any Coastal Development Permits to the Wildlife Associates and Half Moon Bay Sealing and Paving. We are deeply concerned about public health, welfare, and most important: safety. Allowing 60 wild animals and reptiles to be released into the canyon will pose a great danger to our families, especially for senior citizens and children. The positive benefits pale in comparison to the potential harm that could arise from the issuance of these permits. Our families have already suffered a loss of tranquility affecting the quality of life in our rural canyon setting. This is evidenced by the deterioration of our road because of excessive travel by heavy equipment, excessive noise from various diesel engines, jackhammers, and a "Decline in Value" statement issued to one of our member by the County Appraiser's office.

We understand that the Wildlife Associates and Half Moon Bay Paving and Sealing are currently operating without the benefit of legal use permit. We demand a stop to this misuse of political power that they so freely enjoy in this county. In a recent conversation with Mr. Murz of your staff, Mr. Shafae' was assured that no animals will be moved to this location until a proper permit was approved and issued. We will continue to monitor the situation, and respectfully request that your office set a date for a public hearing on the issuing of CDP's and other needed use permits by the captioned entities. Please provide details of your plan as soon as possible.

Thank you in advance for your prompt attention to this matter.

Mr. and Mrs. Charles Shafae'
P.O. Box 1086 HMB



Higgins Canyon Homeowners Association
P.O. Box 1086
Half Moon Bay, California 94019

Mr. and Mrs. Oscar Braun
189 Higgins Canyon, HMB

Oscar Braun
Adella All Braun

Mr. and Mrs. William Herndon
305 Higgins Canyon, HMB

William W. Herndon
William M. Herndon

Mr. Richard Braun
1579 Higgins Canyon, HMB

Richard Braun

Mr. Douglas Brinkmeier
Ms. Kim Hargraves
2208 Higgins Canyon, HMB

Douglas Brinkmeier
Ms. Kim Hargraves

Mr. and Mrs. John Dull
2175 Higgins Canyon, HMB

John Dull
Carol Dull

Mr. and Mrs. Charles Curry
2205 Higgins Canyon, HMB

Charles Curry
Cheryl Curry

Higgins Canyon Homeowners Association
P.O. Box 1086
Half Moon Bay, California 94019

Mr. and Mrs. Thomas Ferenz
3501 Higgins Canyon Rd, HMB

Thomas Ferenz
Kathleen Ferenz

Mr. and Mrs. Walter Ferenz
3555 Higgins Canyon Rd, HMB

Walter Ferenz
Patricia Ferenz

Cc: San Mateo County Board of Supervisors
Jeff Carlton, Tax Assessors Office
Neil Cullen, Public Works Department
Brian Arnold, Department of State Fish and Game
William Rozar, Planning Division
Gary Warren, Code Compliance
Jack Liebster, California Coastal Commission
Steve Furrer, US Fish and Wildlife
Ann T. Jensen, Hazardous Material Specialist, Environmental Health Services
John Plock, Environmental Director, Save Our Bay
Eric Rice, Half Moon Bay Review
Mike Copeland, San Mateo County Times

EXHIBIT 28

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



To: San Mateo County Zoning Administrator
From: Oscar Braun, Save Our Bay
Subject: August 20, 1998 Agenda, items 8 & 9
Date: Monday, August 17, 1998

Dear Zoning Officer,

The property owners adjoining parcels APN: 066-100-100 and APN: 064-370-370 request that the applications for a CDP 98-0050 and PAD Permit 98-0008 be DENIED.

Pursuant to Section 65009 of the California Government Code, the stated issues for making this request are as follows:

- The property owners/tenants applicants have been cited by the County Health Department and State Fish and Game for operating an illegal landfill.
- The activities of the owners/tenants applicants have caused great environmental damage to the Arroyo Leon, both in stream and riparian and beyond to the adjoining wetlands.
- The owners/tenants applicants Town Pacific Half Moon Bay, Tom Pacheco Contracting, Wayne Pastorino Trucking, Half Moon Bay Sealing & Paving all have been "allowed" to operate their businesses without any use permits or CDP's from this County.
- In May 1998, an investigation by the County Health Department revealed that thousands of tons of construction material, asphalt, cement, plastic nursery plant containers, pvc pipe, oil cans, all sorts of chemical containers and everyday household garbage had been dumped into the Arroyo Leon and its riparian and tributaries. The material was brought onto the property with trucks and buried or covered up with large construction equipment.
- The California Sportfishing Protection Alliance has given notice pursuant to Section 1365 of the Clean Water Act that they intend to file proceeding in Federal Court for an injunction requiring the removal of all debris on the site, and/or requiring the owners to obtain a permit to operate this landfill. In addition, CSPA will request an assessment of penalties for failure to obtain an NPDES permit for each day from July 23, 1998 until the property owners obtain such permit, or the trial of this action, whichever occurs sooner.
- Tom Pacheco Contracting and Half Moon Bay Sealing & Paving and Pastorino Trucking are all current tenants of APN 064-370-070. Much of the illegal landfill material found on this historic Johnston ranch, asphalt, cement, construction debris, plastic nursery material etc, appear to be connected to the types of business that they operate off site.
- The Planning Department's Code Enforcement office has NOT enforced compliance on any of the outstanding citations or violations since 1993.
- We neighbors have had to exist with lawlessness for nearly a decade. Illegal shooting & poaching, trespassing, destruction of our property at the hands of some of these tenants. There has been very serious environmental damage to the steelhead stream Arroyo Leon and to the over all quality of life in this sensitive rural lands area. Higgins Canyon Road is unraveling from all the excess traffic of big oversized heavy trucking operations with no use permits.
- Parcel 064-370-070 has never been granted a CDP and currently does not have on site water for fire protection. The products sold & stored on the property are grown and shipped in from outside San Mateo County.
- Tenant and landfill operator Tom Pacheco is a current director of the RCD.

- On July 30, 1998, Ken Aasen, State Department of Fish & Game informed me that there had been NO authorization given to the San Mateo County Resource Conservation District to use public funds for this "private property" project ---CDP 98-0050. Save Our Bay will make a referral to the Grand Jury regarding the RCD's unauthorized activities.
- The RCD could clearly restore the stream banks and stream bed without restoring the illegally placed clear span railroad flatcar bridge place there by the private property owners.
- It is our intention as Coastal Zone property owners to hold San Mateo County's Planning Dept. accountable for all these non-compliant, illegal and destructive activities in our neighborhood. We will exercise our full legal rights to protect our homes and property.

Sincerely Yours,

Oscar Braun

Oscar Braun

Executive Director

Andrea Braun *Andrea Braun*

Richard Braun *Richard Braun*

William Herndon *William Herndon*

Margaret Herndon *Margaret Herndon*

Donald Pretre *Donald Pretre*

Letha Pretre *Letha Pretre*

Chris Andresen *Chris H. Andresen*

Rusty Tate *Rusty Tate*

Pam ANDRESEN *Pam Andresen*

CC. Richard Gordon, Board of Supervisors

Ann Jensen, County Health Dept.

John Wade, POST

Louie Figone, RCD

Loretta K. Barsamian, RWQCD

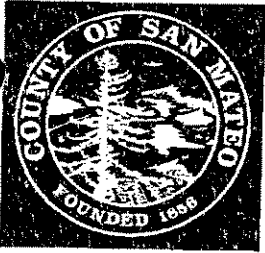
LT. Dennis Baldwin, State Fish & Game

Roger Chin, Chairperson, Grand Jury

Half Moon Bay Review

*This letter will be posted to Save Our Bay's Coastside Communities Forum: www.saveourbay.org

EXHIBIT 29

Environmental Services Agency**Planning and Building Division****County of San Mateo**

Mail Drop PLN122 · 455 County Center · 2nd Floor · Redwood City
California 94063 · Telephone 650/363-4161 · Fax 650/363-4849

Board of Supervisors

Ruben Barrales
Richard S. Gordon
Mary Griffin
Tom Huening
Michael D. Nevin

**Director of
Environmental Services**
Paul M. Koenig

Planning Administrator
Terry L. Burnes

September 29, 1998

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

Dear Mr. Braun:

SUBJECT: Wildlife Associates

This is a clarification as to the enforcement of Wildlife Associates which currently operates, without, benefit of a County Planning permit, at the Shamrock Ranch facility near Pacifica.

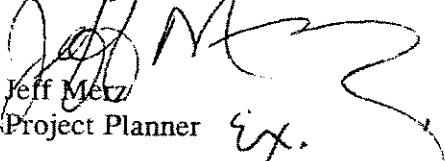
It is our understanding that Wildlife Associates has been operating at Shamrock Ranch for the past 15 years. The County did not have any knowledge of this activity until recently, when Wildlife Associates applied for a number of Planning permits for the proposed new location at 1794 Higgins Canyon Road. They applied for these permits on March 9, 1998.

The County pursues code compliance when an owner or applicant does not have, nor has applied for, the proper Planning permits. My understanding is that Wildlife Associates has all appropriate Local/State/Federal permits related to the keeping and caring of animals on the Shamrock Ranch site. However, Wildlife Associates lacks local land use permits from the County Planning Division.

While the applicant is making a good faith effort to secure applicable permits with the County Planning Division, the County will delay code compliance with Wildlife Associates on Shamrock Ranch. One aspect of this effort is applying for permits and paying applicable fees. The applicant for Wildlife Associates has applied for permits at the proposed location.

Staff is currently processing the applicant's permits related to the proposed use at 1794 Higgins Canyon Road. Please contact me in writing if you have any comments. I will forward a copy of the environmental review once it is completed and published. I will also forward a copy of the staff report to you, once the final report is also completed.

Sincerely,


Jeff Metz
Project Planner *ex.*

JM:cdn - JDMI1525.6CN

cc: Paul Koenig, Director of Environmental Services
Terry Burnes, Planning Administrator
Bill Rozar, Development Review Manager

EXHIBIT 30

Fax: 363-4849

September 30, 1998

To: Jeff Merz
Planning and Building Division
County of San Mateo
From: Oscar Braun
Higgins Canyon Homeowners Association
Save Our Bay



Dear Mr. Merz,

SUBJECT: Wildlife Associates

In January 1998, I had a two hour meeting with Steve Karlin at my Moon Acres ranch. He stated that he had been operating for over fifteen years without any permits from the County of San Mateo. He told me that he had made repeated inquiries at the Planning Dept. and was told that NO permits were needed. He further stated that he had hired Lennie Roberts and Mike McCracken to manage the permit process. Also, in January of this year, I had a meeting with Bill Rozar to discuss the Coastways Ranch VSF project. I asked Bill what the story was with the Wildlife Associates and their intentions of moving their operation to Higgins Canyon. Bill Rozar told me, without referring to any files, that the Wildlife Associates have been operating without any permits for years and that they could NOT operate in a PAD zoned area. **The County had full knowledge of the Wildlife Associates activities for years and most certainly before March 9, 1998.**

In January 1998, Steve Karlin and Lennie Roberts invited the neighbors in for a presentation and demonstration of the Wildlife Associates proposed facility. They told the neighbors that the site was going to be used for "housing" purposes only with no public demonstrations or access to the facility. I noticed that their application is for a "Wildlife breeding and education center". We have a few questions regarding this application:

- How does the applicant run an educational center while not allowing on site access to the public?
- The Department of Fish & Game has provided me in writing a statement "that the Wildlife Associates, Pacifica, California, Resident Exhibiting/Detrimental Species Permit with the Department of Fish and Game expired July 1, 1998". The San Mateo Health Department has sent me a letter stating that the "Wildlife Associates don't hold any of their required permits". The U. S Fish and Wildlife inform me that the Wildlife Associates don't hold the needed "breeders" permits for protected species. Steve Karlin stated to me and also in the newspapers that his animals are "neutered" and cannot breed if they escape into the surrounding sensitive coastal environment. How is Planning Staff protected species breeding experts going to explain this to the Planning Commission and the Homeowners?
- Is Mr. Karlin going to "clone" these protected species?
- How has the applicant, Wildlife Associates, proven that their proposed use or facility does not create a risk or potential for any health or safety hazards for the rural community or the sensitive coastal zone environment?

- What will Staff base their findings on with regards to the health and safety issues and the Wildlife Associates handling of detrimental species in our sensitive rural coastal environment?
- What expertise does the San Mateo County Planning Staff have regarding the handling, breeding and housing of Resident Exhibiting/Detrimental Species?
- How many applicants has the County of San Mateo had seemlier to Wildlife Associates?
- How many located in PAD zoning?
- Has the Wildlife Associates applicant demonstrated that no feasible sites exist in the RM, RM/CZ, TPZ, OR TPZ/CZ zones for the proposed facility? If not, why not?

I met with Laura Thompson earlier this month and requested she pass on some documents and information to you regarding the Wildlife Associates. The current access road on the Wildlife Associates parcel is not up to current code requirements.....they'll need 18 feet with 1 foot shoulders for their access road. The Fire Marshall has told the Homeowners Association that neither the access road or bridge crossing the Arroyo Leon are in compliance.

I look forward to receiving the environmental review and staff report once they are completed and published.

Sincerely,



Oscar Braun
Executive Director

cc. Paul Koenig, Director of Environmental Services
Terry Burnes, Planning Administrator
Bill Rozar, Department Review Manager

EXHIBIT 31

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



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WEDNESDAY

July 29, 1998

NEWS-8

LETTERS TO THE EDITOR

Businesses threaten canyon life

THE HIGGINS Canyon Homeowners Association is strongly opposed to the issuing of any coastal development permits to the Wildlife Associates and Half Moon Bay Sealing and Paving. The reasons for our united opposition are as follows:

➤ Most of our rural homes adjoin, or overlook the steelhead streams of Arroyo Leon and Mill Creek. Both streams are tributaries of Pilarcitos Creek. The County's General Plan states: "Regulate land uses and development activities within and adjacent to sensitive habitats in order to protect critical vegetative, water, fish and wildlife resources; protect rare, endangered and unique plants and animals from reduction in their range or degradation of their environment; and protect and maintain the biological productivity of important plant and animal habitats."

The State Fish and Game's June issue of "Outdoor California" clearly defines the issue in the article "Citter Pollution in California": "They come by land and by sea, laying siege to California. Plants and animals from around the world have found their way to California, threatening many of our native species."

➤ The County Planning Division has allowed Wildlife Associates, Half Moon Bay Sealing and Paving and tenants of the historic Johnston Ranch to operate their nonagricultural commercial zoo, trucking and contracting business without any use or coastal development permits for between six and 15 years.

➤ The tenants of Johnston Ranch have continued to operate an illegal landfill in the wetlands and Arroyo Leon since 1993, causing massive environmental damage.

➤ The private bridge on the HMB Seal & Paving parcel collapsed in 1995 from excessive load and continues to block spawning steelhead from getting upstream. More preventable destruction of sensitive habitat.

➤ Our families have already suffered a loss of tranquility affecting the quality of life in our rural canyon setting. This is evidenced by the deterioration of our once quite scenic road because of excessive travel by heavy trucks and equipment, excessive noise from various diesel construction engines, jackhammers and a "decline in value" statement issued to one of our members from The County Appraiser's Office.

Getting in touch with the editor



We invite reader input with Letters to the Editor.

➤ Please sign your letter and include a home address and daytime and home phone numbers.

➤ Please limit your letter to 250 words. They may be edited for brevity and clarity.

➤ Write: The San Mateo County Times, Editorial Page Editor Shannon Kokoska, 1080 S. Amphlett Blvd., San Mateo 94402-1802. Phone 348-4324. Fax 348-4446. E-mail: smctlet@angnewspaper.com

How many people want to purchase a home next door to a paving business, an illegal landfill or a zoo?

All our homeowners insist that The County protect our families' health and safety and our quality of life.

Oscar Braun
Half Moon Bay

10-13-04P03:4

August 28, 1998

Dear Editor,



What does a methamphetamine lab, Gary Giovannoni, Wayne Pastorino, Thomas Pacheco and Steve Karlin have in common? All of them have run businesses in the rural coastal zone without Coastal Development Permits or Use Permits for up to fifteen years. How do they get away with it? The answer is the County of San Mateo Planning, Building & Health Divisions receive their millions of dollars from "development & user fees" and virtually no funding designated for monitoring and code enforcement! The result? Polluted ground water on the Muzzi Ranch; Arroyo Leon steelhead blocked from getting up stream to spawn; the largest known and still operating illegal landfill on the historical Johnston Ranch buried over a vital fresh water aquifer and in the Arroyo Leon; and the destruction of scenic Higgins Canyon Road. Their activities in very real ways are destroying our rural neighborhood's quality of life and that of our surrounding environment. Everyday, after they have completed their business activities.....they return home to the quiet and safety of their own neighborhoods.

Steve Karlin told me that he has hired Lennie Roberts and Mike McCracken to represent his interests. Roberts and McCracken are recognized as the original authors of the Local Coastal Plan. Under their LCP, the San Mateo Coastal Zone has become nothing more than a "Recreational Theme Park" ill conceived and poorly managed by the non-elected but politically influential Sierra Club, Committee for Green Foothills and lawyer/developer Mike McCracken.

In mid July, Mr. Karlin was quoted in the Review as stating "charges that the facility poses a safety threat are *totally false and misleading*". On July 30, 1998 he restated essentially the same thing on page A10 of the San Francisco Examiner. The top story that same day on the front page was the three foot crocodile captured in the Mission District. (Two years ago an alligator was found in a local lake.) The very next day, the front page of the Mercury News, tells the story of how Kuma, a loving and gentle tiger, while in the presence of his two trained handlers, wearing restraint chains, unexpectedly mauled Jaunell Waldo's neck and head. I suggest that Steve, Mike and Lennie rush over and reassure her that there is no "*public health & safety risk*" with their wild animals. Oh yeah,....I know Ms. Waldo would believe them, she is an associate planner for the Santa Clara Planning Department. And if she asked Steve why he's missing fingers on his right hand, he'll tell her what he told me....it's a birth defect.

Save Our Bay's mission is to promote awareness of the ongoing needs for activism, conservation and education concerning the Monterey Bay National Marine Sanctuary and it's watershed. Save Our Bay will monitor, identify and fight to stop the destructive and polluting activities of private and public entities impacting the Sanctuary. www.saveourbay.org sponsors a wide array of free Coastsides Community services: Open Coastsides Communities Forum, Free Coastsides Activities Calendar, Free Coastsides Links, Free E-Mail Translation Service and a Pitch In Volunteer Program for park cleanups. I invite you to voice your concerns, your opinions and get involved in your Coastsides community.

Oscar Braun, Executive Director

EXERCISE SHOW

Letters

Lawlessness in Higgins Canyon

Dear editor:

Don't kill the messenger! Your front page story regarding a "war against some neighbors for alleged violations of the California Coastal Act" is grossly inaccurate, and I've got a "Beef with Rice." I provided you with a copy of Save Our Bay's Grand Jury referral that contained official copies of citations from the County Health Dept. Solid Waste Division and State Fish & Game notifying the owners of the Johnston Ranch that their tenants are operating an illegal landfill. Not an allegation but a factual finding after two investigations by the county and state.

I and 23 other Higgins Canyon residents have had to exist with lawlessness for nearly a decade. Illegal shooting and poaching, trespassing, destruction of our property. There has been undisputed environmental damage to the steelhead stream Arroyo Leon and the overall quality of life in this sensitive rural lands area. Scenic Higgins Canyon Road is unraveling from all the excess traffic of big oversized heavy trucking operations

with no use permits.

My fellow neighbors and I have paid hundreds of thousands of dollars on development fees and permits to this county for the right to build our "family farms and homes."

We have all gone through the legal land use development process and all of us are residing here in Higgins Canyon legally. Your paper has characterized this as a "war" between Braun and Half Moon Bay Sealing and Paving. While mocking us residents with your Hatfield vs. McCoy characterization may be great journalistic red meat for the Review's political bubbas, we united Higgins Canyon homeowners will continue to hold San Mateo County's Planning Dept. accountable for all these non-compliant, illegal and destructive activities in our neighborhood.

Lastly, in response to this county's gross mismanagement of coastal resources, rural lands farmers and families have formed the "Quality of Life Coalition" and have launched a campaign to bring the power home to the Coastside. We believe the solution for coastal protection is local control. We will exercise our full legal rights to protect our farms, our families and our coastal environment.

Oscar Braun
Higgins Canyon