

1  
2  
3 **ENDORSED FILED**  
4 **SAN MATEO COUNTY**

5 SEP 02 2004

6 Clerk of the Superior Court  
7 By SANDRA HARRIS

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN MATEO

10  
11 HALF MOON BAY COASTSIDE FOUNDATION  
12 aka SAVE OUR BAY, OSCAR BRAUN,  
13 ANDREA BRAUN, AND H. JOHN PLOCK, JR.  
14 Petitioners,

15 vs.

16 SAN MATEO COUNTY LOCAL AGENCY  
17 FORMATION COMMISSION AND DOES 1  
18 through 200, inclusive  
19 Respondent,

20 MID-PENINSULA REGIONAL OPEN SPACE  
21 DISTRICT  
22 Real Parties in Interest

Case No.: CIV 439808

**DECISION REGARDING PETITION FOR  
PERMANENT RESTRAINING ORDER**

23 This matter was assigned to this Court by the Presiding Judge for hearing on the request for a  
24 permanent injunction as part of Petitioners' request for a writ of mandate action they filed on June 7,  
25 2004. On July 22 and 23, 2004 an evidentiary hearing was held in this Department. H. Ann Liroff and  
26 Peter W. Daniel of Hannig Law Firm LLP represented Petitioners. Carol Woodward of the San Mateo  
27 County Counsel's Office represented Respondent. Ellison Folk and Richard Taylor of Shute, Mihaly &  
28 Weinberger LLP and Susan Schectman represented Real Party in Interest.

1 Real Party in Interest presented to Respondent an "application for annexation of 140,000 acres of  
2 San Mateo County coastal lands."<sup>1</sup> Respondent approved the proposed annexation by adopting  
3 Resolution No. 960.<sup>2</sup> As a result Respondent set the proposal for hearing as required by law.<sup>3</sup> Notice of  
4 the hearing must be given<sup>4</sup> with certain requirements within the notice.<sup>5</sup> Prior to the conclusion of this  
5 hearing any affected owner of land or registered voter within the affected area to be annexed is entitled  
6 to protest the proposed annexation.<sup>6</sup> The number of valid protests filed determines what action  
7 Respondent must take. If there are more than 25% but less than 50% "of the registered voters residing  
8 within the affected territory" then a confirmation election must be held.<sup>7</sup>

9  
10 Petitioners contend in this portion of their action that Respondent, through their agent the San  
11 Mateo County Department of Elections, applied the incorrect standard in determining the "value of  
12 written protests filed and not withdrawn"<sup>8</sup> as required when deciding whether sufficient protest votes  
13 have been filed to challenge a proposal approved by Respondent. Most of the evidentiary hearing and  
14 arguments were directed toward this issue. At this point Petitioners seek an injunction prohibiting  
15 Respondent from ordering the "change of organization"<sup>9</sup> that would otherwise take place in light of the  
16 fact that Respondent has determined in its mind that insufficient valid protest votes have been filed.<sup>10</sup>

17  
18 In order to obtain injunctive relief Petitioners must establish the lack of an adequate remedy at  
19 law.<sup>11</sup> Furthermore, "[t]here is a general rule against enjoining public officers or agencies from  
20 performing their duties. [Citations omitted] This rule would not preclude a court from enjoining  
21 unconstitutional or void acts, but to support a request for such relief the plaintiff must make a significant  
22

23  
24 <sup>1</sup> See Petitioners' Petition for Writ of Mandamus filed June 7, 2004 at page 2.

25 <sup>2</sup> See Petitioners' Exhibit 15.

26 <sup>3</sup> See Government Code § 57002 and 57050.

27 <sup>4</sup> See Government Code § 57025.

28 <sup>5</sup> See Government Code § 57026.

<sup>6</sup> See Government Code § 57051.

<sup>7</sup> See Government Code § 57075(a)(2)(A).

<sup>8</sup> See Government Code § 57052.

<sup>9</sup> See Government Code § 57075.

<sup>10</sup> See Petitioners' Exhibit 15.

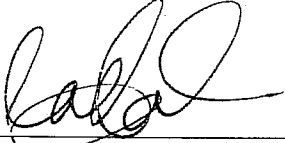
<sup>11</sup> See *Grettenberg v. Goggin* (1931) 113 Cap. App. 252. See also Code of Civil Procedure § 526(a)(4)(5) and Civil Code § 3422.

1 showing of irreparable injury.”<sup>12</sup> No such showing has been made here to justify an injunction in light of  
2 Petitioners’ right to file a validation action pursuant to Code of Civil Procedure section 863. Here  
3 contrary to Petitioners position a validation action would be an adequate remedy at law raising the issues  
4 that Petitioners raise here.

5  
6 As a result IT IS HEREBY ORDERED that:

- 7 1. Petitioners’ request for a permanent restraining order is denied; and  
8 2. The July 13, 2004 temporary restraining order shall be lifted.  
9

10 Dated this September 2, 2004  
11

12  
13 

14  
15 CARL W. HOLM  
16 JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

---

<sup>12</sup> *Tahoe Keys Property Owners’ Assn. V. State Water Resources Control Bd.* (1994) 23 Cal. App. 4<sup>th</sup> 1459, 1471.

**AFFIDAVIT OF MAILING: CASE NO: CIV439808**

**HALF MOON BAY COASTSIDE FOUNDATION aka SAVE OUR BAY, OSCAR  
BRAUN, ANDREA BRAUN and H. JOHN PLOCK, JR., Petitioners, v. SAN  
MATEO COUNTY LOCAL AGENCY FORMATION COMMISSION, and DOES  
1 through 200, inclusive, Respondent, MID-PENINSULA REGIONAL  
SPACE DISTRICT, Real Party in Interest**

**ENCOURSED FILED  
OPEN  
SAN MATEO COUNTY**

SEP 02 2004

**DOCUMENT: DECISION REGARDING PETITION FOR PERMANENT  
RESTRAINING ORDER**

Clerk of the Superior Court  
**SANDRA HARRIS**  
DEPUTY CLERK

I declare, under penalty of perjury, that on the following date I deposited in the United State Post Office Mail Box at Redwood City, California a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage pre-paid thereon and addressed to the following:

**H. Ann Liroff  
Peter W. Daniel  
Hanning Law Firm LLP  
2991 El Camino Real  
Redwood City, CA 94061**

**Carol Woodward  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063**

**Ellison Folk  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102**

**Susan Schectman  
333 Distel Circle  
Los Altos, CA 94022-1633**

**Executed on September 2, 2004  
At Redwood City, CA**

**CLERK OF THE SUPERIOR COURT**

By: **SANDRA HARRIS**  
Deputy Clerk