

Liberty Garden



CREATING A 21ST CENTURY COMMUNITY WITHIN A RESTORED AND MANAGED ECOLOGY

December 26, 2011

Ellen Pirie
2nd District Supervisor of Santa Cruz County
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: APN 045-031-05

Dear Ms. Pirie:

This letter is in response to your request that I submit a summary to you of my 74 acre parcel north of La Selva and west of Highway 1 and how I have been denied economic use of the property. This letter also constitutes grounds for my concurrent request for an appeal.

Background

Since closing escrow in 1986, overwhelming obstacles have been encountered through directives from the Santa Cruz County Planning Department and County Counsel. In total, I have been delayed productive use of my land for over 25 years.

When I purchased the property twenty five years ago, I applied and went through the process for a 4 lot minor land division ([Exhibit 1](#)). The minor land division was unilaterally and arbitrarily denied. My wife and I had intended to raise our children on this property. Some children not yet born when I bought the property have now grown to adulthood.

Later I tried to hook up power to my permitted water well, but the County denied the hook-up. This misguided directive led to seven years of wasteful litigation that included a court order requiring the County to issue the hook-up permit.

Over three years ago, I sought the issuance of a permit to build a single family home on the property and once again I am being made to jump through ridiculous hoops in an endless process while the County breaks contracts and changes agreements in order to extort the use of my land.

The County's theft of my use has been long standing, life-altering and damaging.

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History

Over the last two and a half decades I have been harassed by the Planning Department's exercise of authority by this denial of all economic uses. Examples include bogus 'scenic corridors,' unfounded geological limitations, requirements for endless studies, charades of code interpretation and obfuscation by design.

The County has always admitted and acknowledged that there are no endangered species issues on the land ([Exhibit 2, see item #7](#)). Now suddenly my land has been subject to speculative Endangered Species Act harassment and a biotic assessment expedition. In 2010, for the first time, comes a demand for an endangered species study. How did this occur and why all of a sudden is a call made for a broad "species" study, when the County previously admitted there are no areas of biotic concern?

The County's personnel know that the landscape of my property has been made beautiful with the creation of a native plant oasis, derived from existing seed banks located on site and tens of thousands of man's labor hours per year. A scientific journal account is included which summarizes some of the earlier achievements ([Exhibit 3, cover and page #103 et seq.](#)). The County's actions to stifle that achievement and to penalize me by taking the use of my property are counter-productive to a functioning society. It is nothing short of thievery.

Analysis

The creation of a wondrous landscape is in alignment with the public's interest of ecological enhancement, and is a model for future replication. Why should my ecological success result in potentially endless and bank breaking studies, especially when there is a pre-existing contract with the County, regarding the scope of the application process? The County's concern regarding endangered species, specifically the Long Toed Salamander is utterly baseless, has no evidence in support, and is intended to further drain me of time and money. Consider the following:

- In April 13, 1987 correspondence from Bob Leggett, Program Manager for the Planning Department, to Michael Shaw, it was expressly acknowledged and admitted as follows: "County's position on rare and endangered species. According to the County's biotic resources maps, the General Plan Resources and Constraints maps and the State Natural Diversity Data Base maps, there are no known occurrences of rare and endangered species on this property."
- In December 2, 2008 correspondence to Michael Shaw, Mark Deming (Assistant Planning Director with the County of Santa Cruz) confirmed that County staff "only inspects the area of the proposed development." This position appears to have shifted to one of open-ended investigation.
- In a September 9, 2009 e-mail from Mr. Deming to Keith Walker (Michael Shaw's representative), it was made clear that both Mr. Deming and the manager of the Santa Cruz environmental planning section agreed that for the application "the biotic review not be required" and that "there is no designation on the property for endangered species or such...."

- On April 7, 2011 Matt Johnston of the Santa Cruz Planning Department e-mailed Dave Michael (Michael Shaw's representative) with the comment that there is now a "potential salamander presence." In this same e-mail Mr. Johnston states that a staff inspection will be expanded to include the "potential for species of any kind to be present."
- In a July 7, 2011 e-mail to Dave Michael, Matt Johnston acknowledged that "there are no mapped resources on the site," yet determined that there "may be areas of biotic concern that could be impacted by the proposed development." There is no specificity as to what these "areas of biotic concern" are, or how planning staff reached this conclusion.
- In response to Michael Shaw's public records act requests, the County produced no map or document indicating the presence of any endangered species on the property, or any map or document indicating the potential for the presence of any endangered species.

As you can see, a decision has clearly been made to impose new, artificially created obstacles to the building of our home, where none previously existed for the past 25 years. Does the County impose such burdens on every development application? The answer is no, thus creating significant equal protection and civil rights concerns. It is up to you and other County leaders to reign in planning staff.

The landscape investigation and study order, biotic review dated March 9, 2010 ([Exhibit 4](#)) has been made a new condition to applying for this building permit. To accede to this demand would be to submit to an intruder acting under cover of law who makes clear he intends to take off with one's valuables. In this case the ecological condition was privately created and resulted in valuable knowledge and product. The County now uses our improvements as an opportunity to make demands that confiscate that information and deny me the use of my own property and open me up to endless inspection that I have to pay for no less. This is absurd.

I make the website www.LibertyGarden.com part of the record in regard to the management and history of my ownership experience.

Prior Contract with County

Prior to making this application I obtained an agreement with the County. This agreement involved limiting the County review of my land to the proposed house site plus one hundred feet surrounding it ([Exhibit 5](#)). It is on this condition that I made this application. I have now discovered that the County's planning department is demanding a property review that vastly expands the site review as established in the preexisting contract. The new requirements now insist that I fund: (1) a study of whether salamanders cross my long-existent road across the land's valley floor, (2) create a biotic review of the riparian course, and (3) implement a wholesale 'fishing trip' for any and all "protected" species.

I have also now learned that the department has demanded that the biotic study be conducted by a person from the County's "approved list." Such demand violates state statute. Not only that, but I have also been told that I must pay for another approved list member who serves as the County's consultant. Several of these people have been contacted. Each of them appeared to be individuals

who had predetermined that I do a multi-year study that could cost over \$100,000 dollars. The investigation, we were told, would most likely result in a “conservation easement.” This is despite the County’s failure to provide any relevant information in a public records act request regarding specific evidence of salamander presence ([Exhibit 6](#)).

The massive and remarkably successful twenty-five year, multimillion dollar native plant restoration project is not something an elected official can take even if you are acting on what you think might be an appropriate balancing act. My land management achievement is not open for the County or its partners to occupy, record, inspect, or steal. I will not be financing the County’s efforts to order a study that ultimately results in a mandated conservation easement. Conservation easements are designed to strip a landowner of management alternatives and authority.

Furthermore it has become apparent that certain special interests desire the use of my property to be controlled by government agencies and/or its partners. For example:

1. I have had the central coast head of the Bureau of Land Management (BLM) tell me ‘you keep working, when you slow down we will take your land over.’ (So much for a free society!)
2. In 1987 Supervisor Robley Levy told me that she would ‘let’ me build in a spot designated by her provided the rest was left out of my control.
3. In 2006, Judge Samuel Stevens said, while on an off the record site visit, that in a few years he ‘intended to return with his grandson and camp.’ Since he had not been invited one might think he knew I was targeted to lose control of my property.

The County should conform itself to the agreement executed by Mark Deming dated December 2, 2008 which limits the area of review to the building site plus 100 feet ([Exhibit 7](#)). I ask that you cause that to be the case.

Santa Cruz County Land Trust and Broader County Land Policy

Recently the Santa Cruz County Land Trust (SCLT) issued its “Blueprint” Report for Santa Cruz County. The map is a continuation of the nine counties “One Bay Area” which intends the taking of millions of acres for purposes of creating a Wildland around the Bay Area.

The last leg of this mapping was Santa Cruz County. These maps were recently released by SCLT. As is evident on their “Conservation Map,” our land is included as a Wildland Conservation corridor (dark blue) that stretches to the ocean ([Exhibit 8](#)).

There is a list of public private partners characterized as “Blueprint Technical Advisors.” This list includes Matt Johnston, an environmental planner with the County ([Exhibit 9](#)). It is by his decree that the processing of my home permit be made pursuant to Chapter 16 of the local code. In September 2011, I discussed the Land Trust maps and the local Wildlands planning in a one hour KSCO radio presentation ([Exhibit 10](#)).

Chapter 16 is applied to the “mapped lands” that are known to include rare elements. The chapter 16.32.070 et seq. includes section 16.32.095 (b). It reads: “Where property owners upgrade grasslands on their parcels, outside of mapped areas, through resource management activities, the prevailing General Plan densities shall not be reduced. (Ord. 4346, 12/13/94; 4496-C, 8/4/98).” This code resulted from my successful effort in drafting Program h which was incorporated in the 1994 General Plan – Chapter 5 ([Exhibit 11](#)). It was in reliance on this code that I preceded with this multi decade high level commitment to drastic grassland and herbaceous plant community improvement.

My land has never been included in the mapping of Chapter 16. The sudden determination without any substantive evidence other than a general awareness of our management success is abusive.

Local Agenda 21 and ICLEI policies are throughout Santa Cruz County Government policy

I understand the objectives and forces behind Sustainable Development Agenda 21 and the Santa Cruz adoption of the Local Agenda 21 protocol that has been consistently implemented since 1990.

More on Agenda 21, including Santa Cruz County’s official commitment to create “Wildland” open space by taking private property through regulation and other unethical means can be obtained by studying www.FreedomAdvocates.org. The research and analysis contained on that website is part of the record of this file. We are able to streamline your review of this information, if requested.

Contemporary government appears to be pursuing globalist policies at the expense of the exercise of my (and other’s) natural or unalienable rights. Further evidence of this commitment to globalism by Santa Cruz County can be found via the County’s full membership in ICLEI, an international NGO that seeks to localize Agenda 21 by implementing a program called “Local Governments for Sustainability.” Santa Cruz, under your watch, has been in lock step with this program.

For you having implemented these policies, you might retort that the courts will protect you from liability. Perhaps that is so but in Alameda County, the court, in another Wildlands case, ruled in my company’s favor against the County. A sizeable sum was paid in connection with specific government employee malfeasance claims in this land use case. (Court documents are available upon request.) Additionally, the court found a member of the County Counsel liable for monetary sanctions for misdirecting planning staff. Are you advised elected officials have unqualified immunity for civil wrongdoing?

One needs to make ethical, moral and principled judgment in the execution of public jobs and not succumb to being a lineman in a tyrannical assault on private property. I suggest, and hope, you work to timely approve this home construction. This way no one loses; the landscape continues to thrive, and my use is not confiscated.

Sincerely,



Michael Shaw

cc: Kathleen Molloy Previsich, Santa Cruz County Planning Director

Exhibits:

1. [Letter to County of Santa Cruz dated December 26, 1986](#)
2. [Response letter from the County dated April 13, 1987](#)
3. [Ecological Restoration, Volume 20 Number 2 June 2002](#)
4. [Letter for Pre-Development Site Review and biotic assessment dated March 9, 2010](#)
5. [Letter from Michael Shaw dated October 23, 2008](#)
6. [FOI re-request letter](#)
7. [Letter of agreement from Mark Deming dated December 2, 2008](#)
8. [Santa Cruz County Land Trust's Conservation Blueprint map](#)
9. List of Technical Advisors for the Conservation Blueprint ([page 21](#) and [page 22](#))
10. [KSCO Radio show September 3, 2011](#)
11. [Program h, 1994 General Plan](#)