For Immediate Release

Golden Gate Water Ski Club
P.O. Box 23
San Lorenzo CA 94580-0023

October 4, 2005

Dear Ladies and Gentlemen,

We have a challenge and we need your help. Since 1948 the Golden Gate Water Ski Club (GGWSC) has been active promoting water-skiing and safe boating. We are currently being threatened by unscrupulous officials within Contra Costa County (CCC). We have existed on a small parcel of land (Golden Isle) in the California Delta since 1966. This is a place where members join for the love of water-skiing and end up vacationing with their families year after year. We have done so for 39 years. At times we have 4 generations on the island. I am 46 and have been participating with GGWSC on and off since I was 6 years old. Golden Isle is a special place where you and your children are safe, where doors are left unlocked, where friends become family. Where water-skiers get their start and grow to become National champions and world class competitors, including the LaPoint brothers.

Not only do we want to protect our island, but our club and the delta community. If CCC is successful in abating Golden Isle, this precedence will threaten every other delta community in California. During the County appeal hearing, CCC mentioned that they are talking to the other counties which mean this abatement process can flow over to other counties quite easily with this precedence. We need to stop this now and should we win this case, the legal precedence could protect other delta and ski lake communities in California. As you well know, defending oneself is not easy, nor free. Our attorneys have performed well for us and we wish to retain them.

We have a very strong case (the attorney's brief is attached). County staff and the County Board of Supervisors are ignoring all the legal evidence and ruled based on their opinions and not on what is legally right or proper. A win in a court of law will grant us the legal protection we need to stay on the island and continue using it as it exists. Basically a legal win grants us our land use permit and our entitlement agreement allowing us to stay and continue using our property as we have for 39 years.

There three remaining potential legal steps are;

1. File the writ of mandate and challenge the county, and if we lose
2. File an appeal with the district 1 court of appeals, a 3 judge panel, and if we lose
3. File an appeal with the California Supreme court. (It may or may not be heard)

What will all this cost?

1. Up to $100,000
2. Approx $50,000
3. Approx $50,000

For a total of up to $200,000.

Why is this important to you? We have been on this island with the Counties knowledge for 39 years. If the County for arbitrary reasons wants to make stuff up and rid us from our property, it is just a matter of time before they show up at your door step. This isn't a Golden Gate Water Ski Club issue but a constitutional rights issue. We have a responsibility to fight to defend the

constitution and we need your help. Please send something; no donation is too small or too large.

We have already invested $40,000 defending the GGWSC and our legal right to use our legally owned private property. We have another $13,600 for legal fees and we have raised over $30,000 and are over 20% of the way there. We still require additional support to make our $200,000 target. This is case has the strength and depth to make a difference for our neighboring islands and ski lake neighbors.

We need your financial support and am asking you to donate to the GGWSC legal defense fund. This is to defend our right to use our private property as we have for 39 years. Did you know that we pay over $10,000 a year in property taxes? A victory for GGWSC will be a victory for all delta islands, local business and boaters as well.

No donation is too small. Your contributions to the GGWSC are tax deductible.

Pay to the order of: Golden Gate Water Ski Club - GGWSC

Send your tax deductible donation to:

Richard Frankhuizen 2104 Stockman Circle Folsom CA 95630	or to	Pete Fracisco 4609 Chateau Park Court Fremont, CA 94538

_____$50.00	_____$1,000.00
_____$100.00	_____$5,000.00
_____$250.00	_____$10,000.00
_____$500.00	_____Other_____

Your support is greatly appreciated you are here by invited to picnic at Golden Isle or ski with us at Skier's Roost. The attorney's brief is attached.

Richard Frankhuizen

Richard Frankhuizen 916 983-5134 (Call if you have questions or comments)
2104 Stockman Circle 916 718-4834 cell
Folsom CA 95630 Richardfra@aol.com

THE ZUMBRUN LAW FIRM

A Professional Corporation

CONFIDENTIAL AND PRIVILEGED COMMUNICATION

August 25, 2005

Golden Gate Water Ski Club
PO Box 23
San Lorenzo, CA 94580

VIA E-MAIL

Gentlemen:

Re: Litigation Options

The unanimous decision of the Board of Supervisors to raze the structures on Golden Isle presents the Golden Gate Water Ski Club (Club) with three options: 1) follow the County's mandate and raze the island of all its structures and docks; 2) do nothing, and force the County to raze the structures and docks itself; or 3) file a writ of mandate challenging the County's decision. The following is a brief synopsis analyzing each option and the relative cost of each.

FOLLOW THE COUNTY'S MANDATE AND RAZE THE ISLAND

The Club's first option is to take control of the island abatement process and raze the island itself much like the residents of Salisbury Island opted to do. This affords the Club members the advantage of being able to hire a reputable demolition company, working on their own time table, performing some of the work themselves and controlling the overall cost as much as possible. Disadvantages include diminished use of the island due to the loss of cabins and docks, and the estimated $2.3 million cost of abatement will be borne by the Club up front. Additionally, the County will presumably still have the right to inspect the abatement. The Club may then apply for building permits, or work through Ms. Phiepho's office to find common ground on the use and development of the island as she suggested at the hearing.

DO NOTHING

This option allows the County onto the island with whatever demolition company the County chooses. The demolition will occur using the County's funds initially; however, the cost of abatement will be assessed to the Club and will then be recorded as a lien against the property much like a tax lien. Some advantages to this option include a lower cost of abatement,[1] and the

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[1] This advantage assumes the County is correct in its assessment. The County has stated that it can abate the island for $485,000 as opposed to the estimate of $2.3 million given the Club.

fact that the Club will not have to front the cost of the demolition. The downside of this option is that the County may try to sell the island to recoup the cost of abatement, and has the potential of further raising the ire of county officials who have the final say on any future development of the island.

FILE A LAWSUIT

A lawsuit must be filed within 90 days of when the Board of Supervisor's decision was announced and became final on August 16th. (Cal. Code. Civ. §1094.6). This puts the due date of filing any court action on November 14, 2005. Our office would need to know much sooner than this date if the club wants to file a lawsuit, preferably by September 15, 2005.

Under California law, the clubs defenses of laches and estoppel do not apply to a public nuisance. Therefore, any lawsuit would necessarily have to challenge the County's definition of a public nuisance. The County relies on its own ordinance stating that any violation of the County Code constitutes a public nuisance, and because the Club is in violation of the County's ordinances, the Club's violations are tantamount to a public nuisance.

The lawsuit will challenge the validity of the County's ordnance that defines a public nuisance. We would argue that the power to define a public nuisance is outside the County's jurisdiction, otherwise known as an "ultra vires" act. Put simply, the Club's argument will be that: 1) pursuant to state law, the County does not have the authority to define a public nuisance; 2) the County has declared the ordinance violations on the island to be a public nuisance; not because the Club's structures or use actually amount to a public nuisance under state law, but to deprive the Club of any defense to the County's actions; and 3) the Club's defenses of laches and estoppel apply to the County's enforcement action to abate the ordinance violations.

A. The County Does Not Have the Authority to Define a Public Nuisance

Generally, common law has never allowed a local government to define a public nuisance without express authority to do so from the state. While both cities and counties may abate a public nuisance, in California, the State has given only *cities* the express authority to legislate what qualifies as a public nuisance. By comparison, the State has not seen fit to expressly grant counties the power to define a nuisance. (Government Code §§ 25845 & 25845.5).

Therefore, our argument is premised upon the maxim of statutory construction, *expressio unius est exclusio alterius*, the expression of one thing is the exclusion of another. "Under this maxim, if [a] statute … assumes to specify the effects of a certain provision, other … effects are excluded." (Black's Law Dict. (6th ed. 1990) p. 581). As the California courts have stated the rule, "If a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others …." (*In re Pardue's Estate* (1937) 22 Cal.App.2d 178, 180-181). In other words, because the state specifically gave *cities* the authority to declare what constitutes a

public nuisance, but not *counties*, counties are barred from doing so. It should be noted, however, that this issue has not been directly addressed by the courts and will be precedent setting.

B. The County has Declared the Ordinance Violations Present on the Island to be a Nuisance to Deprive the Club of its Defense to the County's Actions

The Club admits that the development on the island constitutes a violation of various County ordinances; however, the suit will quarrel with the idea that a violation of a County ordinance constitutes a nuisance under state law. The County never classified the Club's structures and use of the island as a nuisance before, and the County's own witnesses admitted that the County had no proof of any pollution or hazardous conditions on the island. The County's own findings do not mention dangerous conditions or pollution, but focus exclusively on ordinance violations. We will therefore argue that the County's classification of the violations as "public nuisances" is nothing more than an attempt to deprive the Club of its defenses to the abatement.

C. The Defenses of Laches and Estoppel

The Club's defenses of laches and estoppel apply because the violation does not constitute a public nuisance.

1. Estoppel. Estoppel is a principle that provides that an individual is barred from denying or alleging a certain fact because of that individual's previous conduct. In certain situations, the law refuses to allow a person to deny facts when another person has relied on and acted in accordance with the facts on the basis of the first person's behavior. In other words, estoppel prevents an individual from building certain expectations based on a particular course of conduct and then suddenly changing their course of conduct to the loss or injury of someone who relied on the previous course of their conduct.

The County never saw the Club as a nuisance before 2003. On the contrary, it specifically stated that the island was "well maintained" and the Club's use of the land "is desirable and should be permitted." Given that the County found the Club's use to be a nuisance only earlier this year (after nearly 40 years of viewing the Club as desirable), the County should be estopped from declaring it a nuisance since there has been no change in either the Club's use or circumstances in the ensuing years.

Additionally, the County has collected taxes, not only on the island itself, but also on the structures and improvements found on the island. The tax assessor makes routine visits to the island noting the number of improvements and adjusting the tax rolls accordingly, so it cannot be said that the Club's use or development of the island came as any surprise to the County.

2. Laches. The "Doctrine of Laches" is premised upon the legal maxim that equity aids the vigilant and not those who slumber on their rights. It is better defined as a neglect to assert a right or claim which, taken together with a lapse of time and the circumstances causing

prejudice to an adverse party, operates as a bar to taking an action in court. Here the defense of laches arises because the County began an enforcement action only after an unreasonable delay of time which caused prejudice to the Club.

a. Unreasonable Delay. The County's initial notice and investigation of the structures on the island took place in 1970. The enforcement proceedings took nearly 35 years to begin. This delay is so unreasonable that we have been unable to find an example in the case law that rivals it. Most of the cases indicate that a delay of one and a half years or more is unreasonable. An enforcement action that takes 35 years to begin is most likely per se unreasonable.

b. Prejudice. The Club has sustained the following list of prejudices as a direct result of the County's representations and delay in instigating an enforcement action.

1. Policies and Ordinances. The County has passed a significant number of policies and ordinances over the last 35 years that the County is now holding against the Club, ordinances to which they otherwise would not be subjected.

2. Changes in Zoning. The Club approached the County with a plan to rezone the island to a water recreation area, which is a zoning regulation still listed in the County Code. However, when approached, the County now says that this type of zoning is antiquated and not usable. At the time of initial contact with the Club, this zoning regulation was available.

3. Further Investment of Time, Construction and Expenditure of Substantial Sums of Money. Since the Club was first contacted by the County and given assurances that a "live and let live" policy would be followed, the Club and its members have invested substantial amounts of time and money to maintain and further secure the island and their initial investment. Only now, after 35 years of investment and effort, does the County seek to destroy the Club's labors.

4. The delay of prosecuting the violations in the first ten years, resulted in the Club's withdrawal of their applications. The County asked the Club to submit applications for a land use permit and a zoning change in 1971. According to the County's own documents, the applications were "shelved" and forgotten. After the passage of the Permit Streamlining Act, the County induced the Club to abandon their applications by offering to form a joint committee addressing their problems. Had the County pursued the enforcement action at that time, the applications would have remained pending and been approved, essentially legalizing the development.

5. Witnesses. Finally, over the last 35 years, witnesses to the County's dealings with the Club have left the County's service, have died or cannot be found.

3. Fraud. The County took a somewhat puzzling approach to the Club's position on the Permit Streamlining Act claims; on the one hand it said that the County viewed further discussions regarding changes in zoning and after the fact permits useless and unworkable, pointing to the 1972 letter to Richard Schuiman. On the other hand, it maintains that it doesn't know why it suggested meeting with the Club and forming a committee.[2]

The only explanation for this apparent discrepancy is that the County, out of fear that the Club's permits would be deemed approved under the Permit Streamlining Act, made a fraudulent offer to form a committee to further discuss the situation and help the Club.[3] This shows the bad faith of the County, as well as the fraudulent inducement of the withdrawal of the Club's permit applications mere days before they were to be deemed approved according to law.

COST AND LIKELIHOOD OF SUCCESS

As you can see from the above-discussion, there are several obstacles we will have to overcome in order to successfully litigate a case based on an ultra vires theory. The Club's case involves precedent-setting issues where there is no applicable law precisely on point. A strong aspect of the Club's case is that it is challenging the County's ruling based on a solid legal theory discussed in several cases. However, as with all lawsuits, especially those setting precedents, this is an unpredictable undertaking which may also include an appeal.

There is considerable research to be done to further strengthen these arguments and additional work to draft the pleadings and file the suit. Mr. Zumbrun estimates the cost of preparation and trial to be $75,000 to $100,000 of which $25,000 will be needed as an initial retainer. This retainer is refundable to the extent it is not expended and the Club can drop the suit should it become too expensive. Additionally, the case may also be settled before trial if the suit goes well.

It is our hope that this letter will help the Club make an informed decision as to its options. If there are any questions regarding this letter or any other matter, please do not hesitate to call.

Best regards,

G. BRAIDEN CHADWICK
Attorney at Law

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[2] Staff admitted that it is possible that the County's concerns that the permits would be approved prompted it to offer to form a committee. This "possibility" is raised to the level of an admission by the internal memorandum dated January 18, 1979, which specifically cites the Permit Streamlining Act as the motivating factor.

[3] By way of excuse, staff suggests that the Club is partially at fault for not following up on the Committee, however, as the County's letter points out, the Committee was slated to be created by the County and that the County will notify the Club when it is formed.

8/30/2005
Gentlemen,

I hope all is going well with your deliberations as to the Club's future and direction. We have done a little more research on the County's ability to abate the island and have uncovered another line of attack independent of the "ultra vires" theory outlined in our original opinion letter.

California Health & Safety Code § 17922 provides that a local ordinance may not allow the abatement of mere violations of maintenance regulations unless the building is a substandard building under the Health and Safety Code or unless the violation is a misdemeanor. (Health & Safety Code § 17922(g)). After briefly searching the County Code, it seems clear that the violation of the Building Code, Mechanical Code, etc. does not constitute a misdemeanor. The clear implication is that because the County did not adopt a finding that the structures on the island are "substandard" pursuant to the Health and Safety Code, they cannot abate them on the basis of mere code violations.

Furthermore, Health & Safety Code § 17922(e) plainly states that unless the buildings endanger the "life, limb, health, property, safety, or welfare of the public or the occupant thereof," they cannot be abated.

This includes "Any nuisance."

The long and the short of these statutes is that unless the residences were found to pose a danger to the life, limb or safety of the occupants or the public (which I do not believe the County proved), the structures cannot be abated on the basis of failure to comply with the County ordinances. In other words, we now have another arrow in our quiver to use against the County.

As always, this opinion is not all inclusive and is meant to give the Club members a general idea as to another line of argument that will be included in any lawsuit. It will require additional research, but at present, this theory appears viable.

If you have any questions, please do not hesitate to call.

Sincerely,

Braiden Chadwick

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