

STATE OF CALIFORNIA--- BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION

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August 27, 2007

Mark L. Strombotne, Esq.
Strombotne Law Firm
6501 Crown Blvd. # 106F7
San Jose, CA 95120

Re: Brush Road Culvert, 04-Scl-017-PM 2.02 - Los Gatos

Dear Mr. Strombotne:

I have reviewed the material you sent me regarding the culvert that needs repair work on your client's property on Brush Road in Los Gatos. I can find no persuasive legal authority that stands for the proposition that the State has a duty to maintain a drainage facility that is not within its right of way. Seemingly, this culvert if not maintained properly, can pose a flooding threat to downstream facilities, most notably State Highway 017. In light of that fact, it is important that your client understands that it has a duty to prevent water from draining from its land onto any State highway by any means which results in damage to the highway. See Streets and Highways Code § 725(a).

It seems that the State's maintenance forces have in the past erroneously performed maintenance activities on portions of this drainage facility outside of the State's right of way. Their error in working on facilities outside of the State's right of way should not be construed as an intent to convey to anyone that the State has any ownership, control or maintenance obligations with regard to this drainage facility. If anything, the conduct of these State maintenance forces should be construed as giving a helping hand to a neighbor.

In spite of the fact that the State has no legal duty to maintain the culvert on your client's property, I see from the file that the State offered to contribute \$20,000 toward a project to repair the culvert. Your client rejected the State's offer and countered with a demand for full payment for the repair. The State will not pay the full amount for a repair, but I am checking to see if the State wishes to renew its original offer to contribute \$20,000.

Very truly yours,

A handwritten signature in black ink that reads "Frank Valentini".

FRANK D. VALENTINI
Attorney