

Alford, Patrick

From: Bruce Bartram [b.bartram@verizon.net]
Sent: Friday, November 04, 2011 11:10 AM
To: Alford, Patrick
Cc: robb@hamiltonbiological.com; knelson@web-conferencing-central.com; steve.banningranch@hotmail.com; margaret.royall@gmail.com; dobehave@earthlink.net; mamalili@pacbell.net; skyking965@earthlink.net; hbalig@yahoo.com; dodgeva@sbcglobal.net; rhschnur@aol.com; janeolinger@cox.net; rjmj1937@verizon.net; kristenbender0@gmail.com; wre2lef@sbcglobal.net; nagemot@pacbell.net; malawrence@lbcc.edu; valsanto@yahoo.com; nicolai@nicolaiglazer.com; malawrence@prodigy.net; beth@suply.com; sandyfazio@gmail.com; applelib@aol.com; tevishill@aol.com; dennis.mchale@pcm-inc.org; greenp1@cox.net; cblack949@hotmail.com; jimmosher@yahoo.com; pcmalkemus@gmail.com; ropc@sbcglobal.net; ftrapper@hotmail.com; paularms@socal.rr.com; evenkeel4@sbcglobal.net; jimcassidy52@earthlink.net; ginnylombardi@yahoo.com; mikepowell@ca.rr.com; cheryl.johnston@hbcasd.k12.ca.us; a71673.1300@netzero.net; jamesrquigg@yahoo.com; winifree@earthlink.net; cmcevoy@dusd.net; techcowboy@ca.rr.com; blush1996@aol.com; davesutherland4@gmail.com; bnerhus@gmail.com; jp_seque@msn.com; powell.michael@aaa-calif.com; p.martz@cox.net; bmlserv@juno.com; jon_crawford@hurley.com; norbpuff@sbcglobal.net; j_shunda@yahoo.com; slgenis@stanfordalumni.org; christopherbunyan@yahoo.com; medjkraus@yahoo.com; sharon.boles@roadrunner.com; dardentrade@yahoo.com; alfredgcruz@sbcglobal.net; terry@tdpowell.com; shokobennett@gmail.com; swellmel4@juno.com; stephaniepa@socal.rr.com; susantheresalee@msn.com; jtmansfield@ca.rr.com; mtabbert15@gmail.com; mezzohiker@msn.com; dkoken@hmausa.com; terrymwelsh@hotmail.com; jenniferfrutig@aol.com
Subject: Newport Banning Ranch DEIR Comment III
Attachments: NBR DEIR Master Development Plan.pdf; Ticonderoga Agreement.pdf

November 4, 2011

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Newport Banning Ranch DEIR Comment III

Dear Mr. Alford:

California courts have long considered separate activities as one project under the California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq.) and required them to be reviewed together where the second activity is a reasonably foreseeable consequence of the first activity. *Sierra Club v. West Side Irrigation District* (2005) 128 Cal. App. 4th 690; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263.

As shown in the attached Newport Banning Ranch draft environmental impact report (NBR DEIR) Master Development Plan Exhibit 3-15 and discussed in the NBR DEIR Executive Summary Pg. 1-3, the NBR Project calls for the construction of the Bluff Road system, which, in part, consists of Bluff Rd., a north-south, four-lane divided road extending from West Coast Highway to 15th Street and North Bluff Rd. a four-lane divided road transitioning to two land undivided road extending between 15th Street and 19th Street. Shown in NBR DEIR Surrounding Land Uses Exhibit 3-5 and discussed in NBR DEIR Section 3 Project Description on Pg.3-5 as east of the NBR Project site are the condominium developments of the Newport Crest and Seawind Newport. Not discussed is the private road Ticonderoga Street, an undivided street with one lane in each direction which connects the Newport Crest and Seawind complexes to Superior Avenue.

Attached is the "Agreement for Ticonderoga Street" entered into between the City of Newport Beach (City) and the Newport Crest Homeowners Association (Association) on September 19, 1984 and recorded with the Orange County Recorder on September 26, 1984. As you can see, on Pg 2 Section 5 of the Agreement it is expressly stated:

"The Association shall allow Ticonderoga Street to be extended westerly and connect with 15th Street at such time as as 15th Street and Bluff Road are constructed to connect to Coast Highway." (Emphasis added)

Extension of Ticonderoga Street to connect with 15th Street is clearly a "foreseeable consequence" of the NBR Project's intention to construct Bluff Rd., and connect it with both 15th Street and West Coast Highway. As such under California Law cited above this "activity" must be reviewed under CEQA together with the NBR Project for their collective potential environmental impacts. Yet nowhere in the NBR DEIR is the Ticonderoga Street extension mentioned or discussed.

In NBR DEIR Transportation and Circulation Section 4.9 the environmental impacts due to the NBR Project are discussed. Once again, no mention of the Ticonderoga extension is made. On Pg. 4.9-29 Threshold 4.9-1 is asked in determination of the NBR Project's traffic impacts:

"Would the project cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume -to-capacity ratio on streets, or congestion at intersections)?"

On Pg. 4.9-13 of the NBR DEIR Traffic and Circulation Section Bluff Road is described as classified under the City of Newport Beach General Plan Circulation Element as "Primary from West Coast Highway to 19th Street." In turn, on Pg. 4.9-11 Superior Avenue is described as "a four lane divided north-south Primary Arterial in the vicinity of West Coast Highway."

The City of Newport Beach General Plan Circulation Element on Pg. 7-5 defines a Primary arterial highway as "usually a four-lane divided roadway. A Primary arterial is designed to accommodate a daily capacity ranging from 30,000 to 45,000 with a typical daily capacity of 34,000 VPD (vehicles per day)." Also, on Pg. 7-5 a "Commuter Roadway" is defined as a "two-to-four-lane, unrestricted access roadway with a daily capacity ranging from 7,000 to 11,000 with a typical daily capacity of 10,000 VPD. It differs from a local street in its ability to handle through traffic movements between arterials." (Emphasis added)

From the above, the extension of Ticonderoga to connect with Bluff Rd. (a Primary Arterial Highway) which Ticonderoga in turn already connects with Superior Avenue (a Primary Arterial Highway) amounts to Ticonderoga's conversion into a "Commuter Roadway" all as a "foreseeable consequence" of the NBR Project. With this connection to both Bluff Rd. and Superior Avenue (both Primary Highways) Ticonderoga Street under the General Plan as a Commuter Roadway can expect a typical daily capacity of 10,000 vehicles per day through the Newport Crest and Seawind Newport condominium complexes. Thus, from a private local street Ticonderoga faces conversion into a Commuter Roadway without a determination of "its ability to handle traffic movements between arterials" contained in the NBR DEIR. (Emphasis added)

As a resident of Seawind Newport resident whose home directly faces Ticonderoga Street I will not speculate here as to what kind of environmental hell the addition of 10,000 vehicles per day will bring me and my neighbors (i.e., .noise, air quality, safety, et. al.). This, if and/or when NBR Project's construction of Bluff Rd. happens and, pursuant to the Ticonderoga Agreement, the extension occurs. However, the environmental impacts of the Ticonderoga extension need to be analyzed under CEQA before it occurs. The Ticonderoga extension, a foreseeable consequence of the NBR Project, by itself fulfills NBR DEIR Threshold 4.9-1 above regarding significant traffic impacts. NBR DEIR failure to mention, let alone discuss, the Ticonderoga extension renders it deficient both under CEQA and the Newport Beach General Plan.

Very truly yours,

Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663



Source: FORMA 2011

Master Development Plan

Exhibit 3-15

Newport Banning Ranch EIR



RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO
City Clerk
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663-3884

EXEMPT RECORDING FEE
Jude Ramis
Clerk II

84-400786

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

-2:30 PM SEP 26 '84

Lee A. Branch COUNTY
RECORDER

EXEMPT
C10

NO CONSIDERATION

Space above this line for recorder's use only.

AGREEMENT FOR TICONDEROGA STREET

THIS AGREEMENT is made and entered into this 19th day of September, 1984, by and between the CITY OF NEWPORT BEACH, a municipal corporation, hereinafter referred to as "CITY" and the NEWPORT CREST HOMEOWNERS ASSOCIATION, hereinafter referred to as "ASSOCIATION."

W I T N E S S E T H:

WHEREAS, ASSOCIATION desires to enter into an Agreement with CITY to satisfy the conditions of approval for the vacation of Ticonderoga Street as required by Resolution 84-38 and to construct non-standard street improvements at certain locations on Ticonderoga Street, a private street and public utility easement recorded as Instrument No. 84-40254 of Official Records of Orange County, California; and

WHEREAS, the ASSOCIATION is authorized, under its Bylaws and Articles of Incorporation, to enter into this Agreement, and to perform all of the duties and obligations required of the Agreement; and

WHEREAS, the ASSOCIATION has, in accordance with its Bylaws and Articles of Incorporation, duly authorized the President and Secretary of the Association to execute this Agreement; and

WHEREAS, CITY and utility companies have underground and above ground utilities located within said public utility easement; and

WHEREAS, CITY desires to enter into an Agreement with the ASSOCIATION as required by Resolution 84-38, and to condition approval of construction of said non-standard street improvements over said utility facilities; and

WHEREAS, the parties hereto desire to execute an Agreement providing for fulfillment of the conditions required by the City Council under Resolution No. 84-38 and to permit ASSOCIATION to construct said non-standard improvements;

NOW, THEREFORE, in consideration of their mutual promises, the parties hereto agree as follows:

1. The ASSOCIATION shall maintain a policy of insurance with CITY as an additional insured, that provides coverage in the sum of One Million Dollars (\$1,000,000) or more with respect to any loss, damage or injury, which arises out of, or is in any way related to the use of Ticonderoga Street subsequent to the date on which the Resolution of Vacation is recorded; and ASSOCIATION shall require insurance carrier to provide 30 days' notice to CITY prior to the cancellation of any such policy of insurance;

2. The ASSOCIATION shall indemnify, hold harmless, and defend the CITY with respect to any loss or injury that arises out of, or is in any way related to the use of Ticonderoga Street subsequent to the date of vacation; *not to exceed three million dollars, either individually or totally, per incident;*

3. The ASSOCIATION shall maintain Ticonderoga Street in good condition and repair;

4. The ASSOCIATION shall pay 25% of the cost of a traffic signal to be constructed at the intersection of Ticonderoga Street and Superior Avenue and prior to vacation, the ASSOCIATION shall deposit, or bond for the amount of Twenty Thousand Dollars (\$20,000), which represents approximately 25% of the cost of the signal;

5. The ASSOCIATION shall allow Ticonderoga Street to be extended westerly and connected with 15th Street at such time as 15th Street and Bluff Road are constructed to connect to Coast Highway;

6. The ASSOCIATION shall obtain approval of CITY through the Public Works Department for the design and installation of a guard gate or gates on Ticonderoga Street;

7. It is mutually agreed that non-standard street improvements shall be defined as any street or sidewalk surfacing within the public utility easement which is not asphaltic concrete or Portland cement concrete with only a "broom" or trowel finish and any planters, minor structures or guard gates within the public utility easement.

8. CITY reserves the right to enter onto Ticonderoga for purposes of fire protection, law enforcement, or utility repair, maintenance, renewal, replacement or enlargement of those facilities under its responsibility.

9. CITY will allow ASSOCIATION to construct, reconstruct, install, maintain, use, operate, repair and replace non-standard street improvements and all facilities and appurtenances necessary and incidental thereto, over CITY's

84-400786

storm drain, water, sewer, and street lighting facilities, all in substantial conformance with plans and specifications therefor on file in CITY's Public Works Department. CITY will further allow ASSOCIATION to take all reasonable measures necessary or convenient in accomplishing the aforesaid activities. It will be necessary for the ASSOCIATION to obtain separate authorization for the construction of non-standard improvements over the facilities of the various utility companies.

10. ASSOCIATION and CITY further agree as follows:

(a) ASSOCIATION shall construct and install non-standard street improvements and all facilities and appurtenances necessary and incidental thereto, in substantial conformance with plans and specifications therefor on file in CITY's Public Works Department.

(b) ASSOCIATION shall obtain an Encroachment Permit from the Public Works Department for work within said easement over CITY utilities and shall obtain permission from the utility companies to perform work which may affect their respective facilities.

(c) ASSOCIATION shall maintain the existing Ticonderoga Street asphalt roadway improvements westerly of Intrepid Street westerly entrance.

(d) ASSOCIATION shall maintain paved service access to all CITY and utility company facilities at all times.

(e) CITY shall permit ASSOCIATION to construct a block wall at the westerly end of Ticonderoga Street as approved by the Public Works Department provided the ASSOCIATION shall cause wall to be removed (at ASSOCIATION cost) when Ticonderoga Street is extended.

(f) ASSOCIATION shall maintain the aforesaid non-standard street improvements and facilities in accordance with general prevailing standards of maintenance, and pay all costs and expenses incurred in doing so. However, nothing herein shall be construed to require ASSOCIATION to maintain, replace or repair any CITY or utility-owned pipeline, conduit or cable in or under said non-standard street improvements unless ASSOCIATION or its contractors are responsible for the damaged facility.

(g) That should CITY or utility company be required to enter onto any easements owned by CITY to exercise its primary rights associated with said easements, including, but not limited to, the maintenance, removal, repair,

renewal, replacement or enlargement of their utility lines, CITY or the utility company may remove portions of the non-standard street improvements and in such event:

(i) CITY or utility company shall notify ASSOCIATION of its intention to accomplish such work provided an emergency does not exist.

(ii) ASSOCIATION shall be responsible for arranging for any renewal or restoration of the non-standard street improvements affected by such work by CITY or utility company.

(iii) CITY agrees to bear the portion of the costs of any such renewal or restoration of the non-standard street improvements not in excess of the cost which would be incurred for the restoration or renewal of standard street improvements in the same location;

(iv) ASSOCIATION agrees to pay any costs of renewal or restoration of the non-standard street improvements in excess of the costs to be paid by CITY.

11. Should the ASSOCIATION breach the Agreement, CITY shall, at its option, have the right to obtain a court order for specific performance.

12. It is mutually agreed that this Agreement shall be binding upon the heirs, successors and assigns of ASSOCIATION and shall be recorded in the office of the County Recorder of Orange County, California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF NEWPORT BEACH,
a Municipal Corporation

By Richard P. Hart
Mayor

ATTEST:

Wanda E. Raggio
City Clerk

NEWPORT CREST HOMEOWNERS ASSOCIATION

By Richard H. Williams
President

APPROVED AS TO FORM:

[Signature]
City Attorney

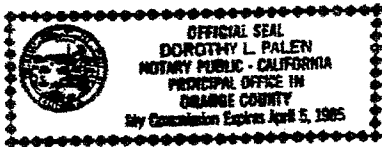
By Al Lightner
Secretary

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss:

On September 19, 1984, before me, the undersigned a Notary Public in and for said State, personally appeared Evelyn R. Hart, known to me to be the Mayor and Wanda E. Raggio, known to me to be the

City Clerk of the Municipal Corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the Municipal Corporation therein named, and acknowledged to me that such Municipal Corporation executed the within instrument pursuant to a resolution of its City Council.

WITNESS my hand and official seal.



Dorothy L. Palen
Notary Public in and for said State
DOROTHY L. PALEN

STATE OF CALIFORNIA }
COUNTY OF _____ } ss:

On this _____ day of _____, 1984, before me, _____ a Notary Public in and for said State, personally appeared _____ and _____, personally

known to me (or proved to me on the basis of satisfactory evidence) to be the President and Secretary, respectively, of Newport Crest Homeowners Association, that executed the within instrument and known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument on behalf of said corporation, and said corporation being known to me (or proved to me on the basis of satisfactory evidence) to be one of the joint ventures of _____, the joint venture that executed the within instrument and acknowledge to me that such corporation executed the same both individually and as joint venture of said joint venture and that such joint venture also executed the same.

Notary Public in and for said State