

November 3, 2016

Elmer Penaranda, Senior Planner
Planning Services Division
City of San Leandro
835 East 14th Street
San Leandro, Ca 94577

Re: File Item 16-556
Heron Bay Kiosk Proposal

Dear Elmer:

What follows is the HOA position regarding two conditions of approval contained in the Planning Commission's recommendation to the City Council made October 20th. Those conditions relate to City directed Kiosk signage and the absolute prohibition preventing the Kiosk attendant from stopping non-resident vehicles entering Bayfront Drive for any reason and at any time 24/7. These conditions are beyond the City's jurisdiction, contrary to law, as well as being contrary to common sense.

For purposes of this City Council Hearing, the HOA is not arguing that portion of the Planning Commission's recommendation denying the plan changing Anchorage Drive to egress only.

Attempt to Limit Kiosk Attendant Duties as a condition of Permit Approval for the Kiosk

- Tract 6810 Map expressly provides "...the area designated as lots 25 through 29 are not offered for dedication. They are intended to be held under common ownership by the Covenant, Conditions and Restrictions." and by operation of law those lots belong to the Heron Bay HOA. Bayfront Drive is depicted as part of Lot 29.
- Other than specifically enumerated easements carved out in that Tract Map, Bayfront Drive is a private street and permission to pass is lawfully within the control of, and is revocable by, the property owner at any time.
- The Tract Map contains several precisely enumerated easements supported by Bayfront Drive and the sidewalk along the northern side of Bayfront Drive. The issue is rooted in the vehicular easements of record that are shown on the Tract Map, approved by the City Engineer, approved by the City Surveyor, approved by the City Clerk, and approved by the original developer who granted these easements nearly 20 years ago.
- To clarify once and for all so there is no further confusion non-resident motor vehicle access to Bayfront drive is expressly permitted only under these easements of record:
 - o EVAE – Emergency Vehicle Access Easement for fire, police, and ambulance vehicle passage onto Bayfront Drive;
 - o SVAE – Service Vehicle Access Easement that allows maintenance and repair vehicles onto Bayfront to service utilities on and under the property;
 - o PVAW – Private Vehicle Access Ways allows the residents of Heron Bay to use the HOA owned private streets to access their own homes
 - o PUE – Public Utility Easement for construction and maintenance of Utilities

- An easement for the benefit of E.B.M.U.D. for construction and maintenance of water transmission pipes
 - SSE – Sanitary Sewer Easement in favor of Ora Loma Sanitary District for the constructions an maintenance of public sanitary sewers
- Conspicuously absent from these precisely defined non-resident vehicle access easements is any reference to non-resident vehicular access or non-resident vehicle parking within Heron Bay for Bay Trail users. Other than these precise easements, the HOA is fully within its rights to control access to non-resident vehicles attempting to use Bayfront Drive. Note that the HOA currently does not provide non-resident public parking on its streets and in fact, all street parking is currently by permit only. Confirming the obvious, private motor vehicles are not permitted on that portion of the Bay Trail and the wetlands along the westernmost boundary of the Heron Bay Community.

The remaining easements of record, are:

- PPAE- Private Pedestrian Access Easement for residents to use HOA sidewalks to access their homes
 - PAE – Public Access Easement – for Bay Trail pedestrian and bicycle users to use the 8’ wide paved path described in the BCDC Permit for Heron Bay from the end of Lewelling roundabout to the Bay Trail trail head at the west end of Bayfront Drive.
 - PSDE – Private Storm Drain to be maintained by the HOA
- To address recurring erroneous statements that the original intent of the Tract Map was to include non-resident vehicular access and vehicular parking for Bay Trail users within Heron Bay HOA, I cite the fact that nowhere on any final documentation connected with the approval of the development are there references to a final agreement by the developer to provide such non-resident vehicular access or non-resident vehicle parking. While conversations and negotiations may have taken place over an extended period of time prior to the Tract Map being finalized in 1997 and may have included those topics, they clearly were not part of the final negotiated settlement as reduced to writing in the form of Tract Map 6810.
- Confirming the fact that for the past 19 years, the Bay Trail access easement granted by the original developer allows pedestrians and bicyclists to freely come and go along the Bayfront Drive path on their way to and from the Bay Trail. The HOA has no issue with pedestrian and bicycle access through the HOA property along this path and proposes no change in that practice. However, the Bay Trail access easement contains no provision for a vehicular access or parking for Bay Trail users. Again to clarify the fact, the BCDC Permit specifies an 8’ wide paved path and associated unpaved shoulder for the access easement clearly was not contemplating vehicular use of that easement. The BCDC permit requires a paved path, not a paved roadbed.
- Mention was made at the Planning Commission hearing about an encroachment on the Lewelling roundabout public street. A mistake by the Attendant last winter in which he placed orange cones in the Lewelling roundabout public right of way was swiftly met with a cease and desist letter from City Engineer Keith Cooke to which the HOA immediately addressed and remedied. No such encroachment on the public right of way has occurred since. To bootstrap that one misstep into a de facto involuntary

extension of the trail access easement along Bayfront Drive to include vehicles is without any legal authority.

- As Bayfront Drive is a private street with no general public vehicle easement, the HOA is within its authority as property owner to control non-resident vehicular access onto the property subject to easements of record (i.e.: service vehicles, emergency vehicles). To extend the pedestrian/bicyclist Bay Trail access easement over Bayfront Drive to include all motor vehicles at all times of the day and night makes no sense in light of the finding of fact that the presence of the Attendant has had a positive impact on reducing crime being committed within the neighborhood by non-residents. Further, to argue that the Bay Trail access easement includes all non-resident motor vehicles not only flies in the face of the facts, but it amounts to an encroachment of the private property rights of the 629 homeowners who each own an undivided fractional interest in the HOA common area property that includes Bayfront Drive.
- The BCDC has consistently asserted jurisdiction over the Bay Trail access easement and is the proper party to enforce the access easement of record. I suggest that the City is exercising authority it does not have when it comes to controlling non-resident vehicular access to private property not otherwise expressly permitted by easement.
- As you know, our ongoing negotiations with BCDC contemplate some sort of non-resident motor vehicle parking accommodation in favor of Bay Trail users arriving by car. A Bay Trail user arriving for the first time would not intuitively know that parking was available nor where it is located. For the attendant to inquire into the reason the non-resident is coming onto the property and, once learning the reason, then assist the vehicle driver locate the appropriate space requires that the Attendant interact with the driver. Having the vehicle stop to engage the driver in conversation for that purpose would appear to "violate" the condition of approval. Such provision is inconsistent and illogical and in direct contradiction to the proper assertion of private property rights by the HOA.
- The inclusion of non-resident parking accommodations along Bayfront Drive is properly a revision of the BCDC public-access permit and is part of ongoing discussion with BCDC and will be, and can only be, resolved once the Kiosk proposal approval becomes final with the City.
- For these reasons, the HOA respectfully requests that the recommended restrictive condition on stopping non-resident vehicles entering Bayfront Drive should be deleted from the approved conditional permit thereby acknowledging BCDC's recognized statutory enforcement jurisdiction over Bay Trail access. In other words, let BCDC do its job.

Wayfinding signage on the Kiosk

- The City approved Permit Amendment should not include a wayfinding signage condition on the Kiosk itself because BCDC has established uniform signage guidelines for the entire Bay Trail System as can be found in their circular entitled: "Shoreline Signs, Public Access Signage Guidelines". This publication can be found on BCDC web site at <http://www.bcdc.ca.gov/planning/SSSG.pdf>. Graphic templates can be found at <http://www.bcdc.ca.gov/publications/signage/getSigns.php>

- The City's condition that the Kiosk be adorned with Bay Trail wayfinding signage is again a topic that is entirely within the jurisdiction of the BCDC. In concurrent discussions with BCDC, Heron Bay HOA has proposed signage in accordance with BCDC guidelines along the Public Easement, and into the Bay Tail access. Furthermore, Heron Bay HOA, in order to ensure that the kiosk "blends-in and is compatible with the existing context of the residential community," and not cluttered with excess signage has NOT planned any signage on the kiosk itself.
- Wayfinding signage requirements should be part of an overall plan rather than a piecemeal approach and subject to one set of standards to maintain consistency throughout the Bay Trail system. BCDC has clearly asserted its jurisdiction over "Public Shore" and "Bay Trail" wayfinding signage as it relates to this point of access to the Bay Trail.
- For these reasons, the HOA respectfully requests that the wayfinding signage condition should be deleted from the approved conditional permit and allowed to properly remain within the BCDC's recognized statutory permit enforcement jurisdiction.

Regards,

Jeff Tepper on behalf of Heron Bay HOA