

August 26, 2004

From: Dede (Debra) and John D'Alessandro

Re: Research into Newport Terrace land & Mineral Rights ownership, and land use.

Records from Orange County Recorder, City of Newport Beach, historic Aerial Photos, etc. were reviewed to determine the chain of ownership of our land, Mineral Rights, and past land use/history.

Summary: We DO NOT own any of the MINERAL RIGHTS (including methane gas) to our property. Newport Beach sold the builder the **LAND ONLY, NO MINERAL RIGHTS**. As of the 1970s when Leadership bought/constructed the condos - The City owns ½ the Mineral Rights, the other ½ is still owned by the previous owner, Ednah Race Capron. (Not the standard verbiage in our Legal Description; excluding "...all oil, gas, or other hydrocarbon substances, lying in, on or under the above property.") Note: Since at least the 1950s, NB has been in the oil & gas business - producing, selling and leasing Oil & Methane. **NB Municipal Code defines Methane Gas as basically any gas in the Methane family "... and any similar substance formed by decomposition of organic materials ..."**.

History of the land: The land was part of Banning Ranch until 1943 when Mary Banning sold it to Ednah Race Capron. Background on the Capron's: Ednah and George Capron bought/sold tons of land in the area, and held tons of Oil/Gas Leases for their land. There are several other ORDERS OF CONDEMNATION between the Capron's and other entities such as OC Flood Control District and Costa Mesa School District. (Note: This information was pulled from the OC Recorder's microfiche index covering approx 1953 – 1963 – couldn't find info prior to 1953, didn't thoroughly check after 1963.) There were about 100 records on microfiche that had Ednah &/or George Capron referenced. A spot-check showed 3 Oil Leases recorded about the same time that looked like our property/adjacent property. It looks like the Capron's were land developers and had some kind of racket going on where they'd buy 'junk land' for cheap, lease it, sell the Land for profit via Orders of Condemnation etc to the City, Water District, School Districts etc., but retain/Lease out the Mineral Rights. In the 1980s there was a Mechanics Lien by Ganahl Lumber against the Capron's, Irvine Co and others (released a short time later).

There's been a lot of activity on our land throughout the years. During the 1940s Sky Harbor Airport was in operation on what is now 19th St – between Placentia and our meadow (looks like the runway ended on our property around the units on 19th, also looks like some kind of structures were on our land – see 1947 Aerial Photo). Don't know much else about the land before 1953; do know there were tons of oil wells and farmland in the area. The Great Flood of 1938 flooded most of the land in the area. When the City took the land through Order of Condemnation (1952) there were a least 3 Oil Lease holders, Laguna Bch Water District had a pipeline easement/lease running through it, and Pacific Coast Airways had a leasehold. There was an oil well on Sundance under a 4th name at some point in time (See Wildcat Map). At the time NB took the land, NB was into oil drilling but didn't like CM oil drilling, there was a big fight between NB & CM over property lines – CM was mad at NB for blocking their coastal access and quickly grabbed land N & W of us to block NB from moving in further. CM also

incorporated that year. The Freedom Tract Builder wasn't happy about a Dump going in next to his huge planned development.

Simultaneously to the dump being in operation; there was at least 1 active Oil Lease, Sully-Miller was mining for gravel, Dick Otto was grazing cattle on it, NB sold garbage to slop some guys hogs (prior to 1950 thru at least Sept 1956), some guy wanted to put in a shooting range, other oil companies wanted to drill it, Costa Mesa merchants wanted to put a bridge through it (threatened NB with proof of their "trash trucks continually lost trash enroute" if they didn't allow right-of-way), Bay Concrete Ready-Mix had a plant on site, and Jaycox Disposal was contracted to haul 'garbage' out. NB also formed an Oil Advisory Committee in the 1950s to handle its Oil empire (both NB owned wells and their oil/gas leases); they also had a contract to sell their Natural Gas to Monterey oil company. The city owned/operated several Oil Wells - currently (2004) they have 15 wells producing oil and also pipe Methane Gas to Hoag Hospital.

During the 1960s there was at least 1 'hazardous condition' that Sully-Miller (SM) had to fence off (shows it wasn't protected and anyone could have dumped anything there) – later, mention was made of SM filling an "excavated water hazard" (same hazard or another?). About the time the dump was closing many new uses for the land were considered, including a Mobil Home Park, a dry dock and storage, a Marina, a Park, Public Parking Lot, of course Condos, etc. Several land surveys, aerials photos, test borings etc were done over the years; we haven't found many of them yet.

Timeline:

- This land was originally part of Banning Ranch (a portion of Lot A).
- October 23, 1944 - Mary Banning sold a portion of Lot A (containing our property) to Ednah Race Capron for \$10.00.
- 1950 – Hog Slop - From at least 3-27-1950 thru at least 9-30-1956 (prior to dump opening and during operation) NB had contracts with Dr Price/his son Kenneth C. Price for the sale and disposal of garbage. Garbage was used to slop hogs; price of garbage was based on sales price of hogs. No mention of where garbage coming from, (probably on the contracts). *Was all garbage brought here, sorted and then hauled off for slop? If so, did some get dumped here?*
- April 28, 1952 – City wants to obtain land for a City Garbage Disposal area. (8-25-1952) Ednah (and husband George) Capron offer to sell their land for \$35,000, City accepts. There was a fight, sounds like a leaseholder (don't know which one) on the property wouldn't give up their rights. Note: Owners/vested interest was as follows: Ednah Race Capron; a right of way or easement for a pipe line owned by Laguna Beach County Water District; Pacific Coast Airways Inc., claimed a leasehold interest; David M. Anderson, Emil L. Menveg, and James S. Gillstrap each claim an undivided 1/3 of an undivided 4 1/3% of all oil, gas and other hydrocarbon substances in a portion of said real property. Reso 4010 (Oct 27, 1952) states eminent domain to take title subject only to a reservation of 1/2 oil/gas rights, the Laguna water pipeline right of way/easement, and easement for road (19th st.).
- January 16th, 1953

The City Council of the City of Newport Beach met in the Council Chambers of the City Hall at 11:00 AM. January 16th, 1953, in response to a call for the purpose of considering the restrictions of the contemplated dump site against open burning and the deposit of animal, fruit, and vegetable refuse and offal. The notice of special meeting having been duly given and the councilmen having duly consented to the holding of the special meeting and waived further notice thereof, the meeting was called to order at 11:00 AM. by the City Clerk in the absence of Mayor Miller.

- January 27, 1953 - Final Order of Condemnation -NB took the land from Ednah Capron, including $\frac{1}{2}$ *the Mineral Rights* and paid her \$35,000. The Order of Condemnation states it condemned/took the property for the purpose of putting a City garbage disposal area. Also, since the City took only $\frac{1}{2}$ the Mineral Rights, it left ***Ednah as owner of the other $\frac{1}{2}$ of the Mineral Rights***. (Ednah's interest also mentioned in our Tract Map 7989 & Leadership's GD from NB).
- Feb 9, 1953 – 1 Year Grazing Agreement for Dick Otto to graze on dump site.
- July 12, 1954 – NB gives the State Division of Highways permission to excavate sub-base material from the dump to construct State Road VII-ORA-60-N.B.
- On October 19, 1954 - Ednah recorded an OIL AND GAS LEASE which appears to be ***LEASING OUT THE OIL/GAS RIGHTS TO OUR PROPERTY to Frank Collins***. (The legal description is tricky but I believe it covers our land). ***NOTE THIS WAS RECORDED A YEAR AFTER THE CITY CONDEMNED THE LAND, WHICH SHOWS EDNAH STILL OWNED $\frac{1}{2}$ THE RIGHTS***. (Ednah recorded other Oil Leases that same day for neighboring property.)
- Dec 13, 1954 - Richfield Oil Company wants to lease the site for sub-surface drilling. City Council deferred action, don't know if it ever happened.
- Mar 14, 1955 - Sully-Miller requests an extension on the existing agreement for pit operation on the City Dump to 1-26-63.
- Oct 10, 1955 – NB obviously in the oil biz as “No. 10 Well now pumping 249 barrels of oil a day, it might be the best well.” (Where is it?)
- Feb 27, 1956 – NB & Irvine Co. want to put in a Dam & Reservoir (where?)
- Mar 15, 1956 – NB signs a Natural Gas Contract to sell to Monterey Oil Company (don't know location).
- May 14, 1962 – NB dedicates part of our land (30' strip) to extend 19th St.
- Feb 11, 1963 - Negotiating 1 yr extension with Sully-Miller for the removal of more sand & gravel, auth'd aerial photo to see how much material is left.
- Jul 7, 1963 – Bay Ready Mix test boring at dump site.
- Sept 23, 1963 – BAY CONCRETE READY-MIX PLANT operating on dump site.
- Jul 26, 1965 - JAYCOX DISPOSAL contracted "to remove garbage" from our dump. (Letter Contract, was verbal)
- Sep 27, 1965 – NB Auth'd a dump site study with Engineering-Science, Inc.
- Dec 13, 1965 – There's a hazardous excavation pit at the dump site. Sully-Miller to promptly install a fence.

- Feb 28, 1966 – CM Local Merchants Assoc. favors a bridge at 19th/Brookhurst, & said if Condemnation is required they'll submit evidence that "Newport's trash trucks continually lose trash enroute" to dump; NB agrees to right-of-way.
- Apr 11, 1966 –NB extends SM's May 9, 1966 deadline for filling the excavated pit at the westerly end of the City Dump.
- Sept 26, 66 - Discontinues using dump "as a refuse disposal site in order to prevent further degradation of the property and constant loss in ultimate value; complete transfer of refuse disposal operation to OC dump" ~ Jan 1,1967.
- Oct 24, 66 - Gangi Bilt Homes interested in dump as a Mobile Home Park.
- Nov 28, 66 - Re. hazardous excavation pit at the dump, NB accepted SM's work to "fill an excavated water hazard" & released SM from further liability. Someone suggested turning the dump into a boat repair and dry storage yard.
- Feb 14, 1967 – 2 more garbage boys added to payroll to help close the dump.
- Dec 11, 1967 to conduct a study on future use of dump.
- Jul 12, 1968 - Preliminary Soil Investigation and materials Survey prepared for Wilsey and Ham (by Woodward-McNeill)
- Mar 13, 1972 – NB declares us Surplus Land to be sold. Outlines terms of sale. Buyer pays all costs including CLTA etc. Doesn't say "AS IS", just NO WARRANTY made. (NB sold a lot of other surplus land in Huntington about the same time)
- Jun 12, 1972 - Leadership wins bid on land; Citizens Advisory Greenbelt Committee recommended incl. us in Greenbelt Program; Keys Marina thought they won bid; OC League of Women Voters urged Council to call for environmental impact.
- Jun 15, 1972 - 6-15-72 to 7-7-72 Woodward-McNeill Boring logs in their office (where are they now?).
- Aug 28, 1972 - Tentative Tract Map 7989 was approved (that's our 1st tract # and includes Sundance/meadow area).
- Dec 7, 1972 - Soils Report by R. Leonard Allen RCE #18554 (Woodward-Mc Neill)
- Jan 12, 1973 - 3 Page **Escrow Instructions** - NB to Leadership Housing. Doesn't say "As Is", does say **EXCLUDES THE INTEREST IN ALL OIL, GAS, OR OTHER HYDROCARBON SUBSTANCES, AS CONDEMNED BY THE CITY...**, Leadership pays all costs.
- March 13, 1973 Grand Deed recorded – NB to Leadership for \$616,010. The Grant Deed does **NOT CONTAIN MINERAL RIGHTS**. The accompanying Trust Deed specifically states **"EXCEPT THE INTEREST IN ALL OIL, GAS, OR OTHER HYDROCARBON SUBSTANCES, AS CONDEMNED BY THE CITY OF NEWPORT BEACH BY FINAL ORDER OF CONDEMANITION, RECORDED JANUARY 27, 1953 ... WHICH INSTRUMENT STATES, AMONG OTHER THINGS, "TOGETHER WITH AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS OR OTHER HYDROCARBON SUBSTANCES, LYING, IN, ON OR UNDER THE ABOVE DESCRIBED PROPERTY." "**
- May 18, 1973 - Tract 7989 recorded. Note: City declined dedication of Sundance but reserved right to take it later.
- Apr 19, 1974 - Tract 8835 TD recorded "Excepting there from an undivided one-half interest in all oil, gas or other hydrocarbon substances lying in, on or under the above described property, ..."

- Feb 14, 1975 - Tr Map 8835 recorded (re-subdivided part of Tr 7989).
- May 1, 1976 – The Battle of Sundance begins, has something to do with Newport Trails Tract 9291 (neighboring condos off Sundance) – (details researched by other committee members)
- Mar 13, 1978 - Proposed annexation of Tract 9291 (Newport Trails) to NB. We didn't want it, their builder did, so did NB, didn't happen.
- Nov 10, 2003 - Just interesting (from Counsel minutes); shows City has methane/problems near Hoag (which isn't far from oilfields). A lady asked about fumes she sees on Sunset Ridge. Answer was "area has a lot of methane gas in the ground, Hoag vacuums the gas and scrubs it clean which meets AQMD standards. He added that if the gas was not processed, it would leak up through the ground and have a foul odor. Bill Kelley asked if the methane could be burned in the co-gen plant. Mr. Foulke said yes they use it now." Also mentions the co-gen plant & that they've "gone through all the AQMD procedures to insure a clean operation."

OUR TRACT #s EXPLAINED. We have 2 Tract numbers, 7989 and 8835. The original Tract is # 7989 Lots 1-5; Lots 3-5 were Re-subdivided into Tr 8835 Lots 1-6. Tr 7989 Lot 1 is our Phase 1 – (SUNDANCE Etc.) LOT 2 is EXCLUSIVELY COMMON AREA (WHERE THE DUMP WAS) IE POOL & MEADOW AREA.

Does the exact verbiage of the Rights make a difference? IE. Oil, Gas etc ON LAND vs 500' UNDER.

The NB Order of Condemnation states the land was taken from Ednah specifically for use as a Garbage Dump. Since SM Gravel Mine was also in operation along with methane-producing cows etc. – does that mean anything to us legally?

Note: It should be verified nothing has been recorded in recent years changing Ednah's ½ of the Mineral Rights.

4-27-53 minutes

On motion of Councilman Finch, seconded by Councilman Isbell and carried, the Mayor and City Clerk were authorized to petition the Orange County Water District for the exclusion of recently annexed lands, to-wit: The City Disposal Area, Irvine Terrace, and the Five Parcel Annexation.

Resolution of Intention No. 4073, being a resolution of Intention to annex the property known as the Angel Garcia Annexation, setting the date of Monday, June 5th as the time for hearing the owners of real property within the proposed annexation, was adopted on motion of Councilman Isbell, seconded by Councilman Smith and carried D~ the following roll call vote, to-wit:

6-8-53

The City Clerk announced that this was the time and place set in Resolution of Intention to Annex No. 4073 for a hearing on the annexation of certain uninhabited territory known as the "Angel Garcia Annexation" The Clerk reported that no written communications had been received and the Mayor declared the hearing open. No one responded and the Mayor declared the hearing closed.

On motion of Councilman Finch, seconded by Councilman Bennett and carried, the reading of Ordinance No. 688, being

AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN UNINHABITED TERRITORY, CONTIGUOUS TO THE CITY OF NEWPORT BEACH, AND KNOWN AS ANGEL GARCIA ANNEXATION

On motion of Councilman Finch, seconded by Councilman Isbell, Ordinance No. 688 was passed to second reading by the following roll call vote, to-wit:

6-22-53

AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN UNINHABITED TERRITORY~ CONTIGUOUS TO THE CITY OF NEWPORT BEACH AND KNOWN AS ANGEL GARCIA ANNEXATION

was presented for second reading and on motion of Councilman Isbell~ seconded by Councilman Finch and carried~ reading of the ordinance was waived°

On motion of Councilman Isbell~ seconded by Councilman Finch° Ordinance No° 688 was adopted by the following roll call vote~ to-wit~

12-28-53

City Attorney presented a contract between the city and Angel Garcia for a term of five (5) years covering the disposal of trash collected by the city for the consideration of \$1 per ton. On motion of Councilman Finch, seconded by Councilman Bennett? Resolution No. 41917 being a resolution authorizing the Mayor and City Clerk to execute the contract in behalf of the city was adopted on the following roll call vote? Zo wit:

4-27-53 angel garcia

On motion of Councilman Finch, seconded by Councilman Isbell and carried, the Mayor and City Clerk were. authorized to

petition the Orange County Water District for the exclusion of recently annexed lands, to-wit: The City Disposal Area, Irvine Terrace, and the Five Parcel Annexation.

Resolution of Intention No. 4073, being a resolution of Intention to annex the property known as the Angel Garcia Annexation, setting the date of Monday, June 5th as the time for hearing the owners of real property within the proposed annexation, was adopted on motion of Councilman Isbell, seconded by Councilman Smith and carried by the following roll call vote, to-wit: Application for Use Permit for City Disposal. On motion of Councilman Finch, seconded by Councilman Bennett and carried, application for Use Permit for the recently Annexed City Disposal Area was ordered filed with the Planning Commission.

2-9-53 Dick Otto (OC College) grazing

- Dick Otto offered \$1 per acre per season for the grazing privileges on the newly acquired dump site and on motion of Councilman Isbell, seconded by Councilman Smiths Resolution No. 4041, being a resolution authorizing the Mayor and City Clerk to execute the contract was adopted by the following roll call vote, to-wit:

Dick Otto offer \$1 per acre for grazing rights on new dump site. Res. No. 4041, contract on same adopted.

4-23-51 Angel Garcia (old dump)

The City Attorney stated that he had prepared a new lease for a period of 3 years with Angel Garcia for disposition of the City's salvage. Resolution 3874, being a resolution approving the lease and authorizing the Mayor and City Clerk to execute the same, was adopted 9-14-53 min. Angel Garcia

Norman O. Buck Vice-President Southern California Paper Stock Company commended the work of Angel Garcia, holder of the City's trash disposal contract as a supplier of waste papers. On motion of Councilman Finch, seconded by Councilman Isbell and carried, the letter was ordered filed.

4-12-54

Bids for scales at the City disposal area

The City Manager reported that he had received the following bids for the furnishing and installing of scales at the City Disposal area at 19th Street and Whittier Avenue:

American Scale Company	\$ 2,684.00
Howe Scale Company	\$2,730.26

On motion of Councilman Smith, seconded by Councilman Finch, the bid of the American Scale Company, being the low bid, was accepted and the contract ordered executed by the Mayor and City Clerk