

# The Great Gate Debate

By Brian Mitchell, General Manager



From the inception of Nellie Gail Ranch and the first homes sold in 1977 there has been one significant issue that has rebounded for consideration over the years; the debate over whether or not to gate the community. Significant consideration has been given to that possibility over the years; specifically 1981-1982, 1985-1986, 1988, 1995 and 2003-2005. Periodically the suggestion will be made at a Board Meeting or posted on various websites and blogs. This article is provided to share some of the history of past investigations, surveys, votes, and communications with the City of Laguna Hills. For those of you who have been on all or a part of this 36-year journey 1981 through 2017, this may bring back some interesting memories.

In 1981 the Association created a "Guarded Gate Committee," which studied gating eight entries in the neighborhood with the possibility of another two in the future. The Committee considered constructing guardhouses at three of the entries, gating all entries, installing card reader systems, telephone systems, closed circuit TV monitoring of unmanned gates, and privatization of the streets,

roads, streetlights, drainage structures and other publicly owned property in the community. The Committee believed the scope of work could have been accomplished with a dues increase of approximately \$37.00 per month. As the dues at the time were \$31.25, this would have represented an increase of approximately 118%. The issues were submitted to the membership for a vote. On April 13, 1982, a total of 548 votes were cast, of which 316 were cast "against the gate." The issue failed.

In 1985 a "Gated Entry Committee" was chartered which had fifteen members appointed to serve on it. Four of those Committee Members still live in Nellie Gail Ranch. The Committee was tasked with researching the following areas:

- Feasibility, type, and location of gates.
- Method of communication between gates and individual homeowners.
- Whether gating would require Nellie Gail Ranch to have private streets and what the financial and legal implications of that would be.
- Costs of construction and maintenance.
- Impact on homeowners' dues.
- Impact, if any, on real property

taxes and homeowners' association liability.

- Compensation, benefits, and liability insurance for gate personnel.
- Other alternatives to eliminate or minimize the impact of the Moulton Ranch subdivision development on Nellie Gail Ranch.

This Committee performed extensive research and issued a report in the Fall of 1986 to the Board of Directors. The report findings recommended in part:

- No action should be taken by the Board unless petitioned by at least 50% of the members.
- Create a file for homeowner use with all backup data. Include copies of previous "campaign" materials for those considering similar action in the future.
- Costs should be approved by 50% of all members via a vote.
- If "yes" then may require 75% vote for approval of CC&R changes.
- If "yes" then establish budgets, hire lawyers, architects, administrators, contractors, and security services.
- If "yes" then create the Rules Committee

In January 1988, the matter was requested by the Members to be brought forth to a vote of the membership. The subsequent ballot carried two issues:

- Issue One – The Board of Directors of Nellie Gail Ranch Association should allocate funds to develop a professional feasibility and cost analysis and proceed with the Gated Entrance Study Project – Yes or No.
- Issue Two – I would be willing to incur the (estimated) additional \$128 to \$150 increase in monthly assessments to provide gated entrances to the Nellie Gail Ranch Planned Unit Development – Yes or No.

There were a total of 672 responses

of which 444 voted against the two issues.

In 1995 the issue of gating the community was again re-visited by the Board of Directors at the request of a number of concerned homeowners. This time three options for manned and unmanned gates and funding options were proposed via a survey. The survey generated a response of 970 homeowners of which 622 were opposed to the gating.

The issue was brought up for discussion again in 1998 and then in July 2003, with another committee formed to revisit past findings and consider new technologies. Again, the Committee Members put in countless hours and provided recommendations resulting in 2005 with an "Official Gating and Patrol Service Survey" that was distributed to the homeowners. The survey generated a response of 620 homeowners of which 421 voted "NO, I am opposed to moving towards a gating ballot and the associated costs to produce the ballot."

The City of Laguna Hills was founded March 5, 1981, at which time they became responsible for the Nellie Gail Ranch public streets. Every legal opinion we are aware of that Nellie Gail Ranch has received has advised that gating cannot be accomplished without the City's agreement to vacate the

streets. We reached out to the City to request their current position on the matter. We were directed to two lawsuits related to two Cities that were sued, and who lost, for vacating public streets. One of the Cities was Laguna Niguel who was found to have vacated streets improperly resulting in voiding the vacating. We were also advised; "There are several legal impediments to proceeding to 1) Abandon and vacate the streets to make them private and/or 2) to gate an otherwise public street. Here is an excerpt of the legal research:"

Vehicle Code § 21101.6. Notwithstanding Section 21101, local authorities may not place gates or other selective devices on any street which deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street. This section is not intended to make a change in the existing law but is intended to codify the decision of the Court of Appeal in *City of Lafayette v. County of Contra Costa* (91 Cal.App.3d 749).

Vehicle Code § 21465. No person shall place, maintain, or display upon, or in view of, any highway any unofficial sign, signal, device, or marking, or any sign, signal, device, or marking which purports to be or is an imitation of, or resembles, an official traffic control device or which attempts to direct the movement of traffic or which hides from view any

official traffic control device.

Streets & Highways Code § 8333. The legislative body of a local agency may summarily vacate a public service easement in any of the following cases: (a) The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation. (b) The date of dedication or acquisition is less than five years, and more than one year, immediately preceding the proposed vacation, and the easement was not used continuously since that date. (c) The easement has been superseded by relocation or determined to be excess by the easement holder, and there are no other public facilities located within the easement.

In conclusion, our intent in presenting this information is not to prove that gating of Nellie Gail Ranch is impossible. The intent is to provide background that reflects the extensive hurdles that would have to be overcome to move it forward. A significant number of individuals served on the various Committees and the Board of Directors over the years. The effort they put into their volunteer service is reflected in the volume and quality of the information they compiled. Knowing that a number of you are still in the community, you should be collectively commended for the effort.

