

19. APPROVAL OF AN AGREEMENT DATED SEPTEMBER 22, 1971, BETWEEN ORANGE COUNTY HARBOR DISTRICT AND AVCO COMMUNITY DEVELOPERS, INC., REGARDING PROPERTY KNOWN AS NIGUEL BEACH PARK, ORANGE COUNTY - W 503.621.

During consideration of Calendar Item 14 attached, the Executive Officer read a letter that had just been received from a Mr. Julius Kerker, dated February 16, 1972, with a request from the Office of the Joint Committee on the Public Domain that this be read into the record, as follows:

"Regarding the Salt Creek situation, several elements I feel should be looked into a little bit deeper.

1. Development of the property was allowed to progress before approval of the sale was actually made. As a result destruction of a portion of the beach area was accomplished.
2. Using Salt Creek as an example for all future matters pertaining to the coast line, there should be a moratorium of development to those areas relating to coast line and their immediate uplands.
3. Although this Agreement between the County and AVCO was financially wise for the County, we must begin to analyze and decide on these matters in ways other than their dollar value.
4. The pacification of the public via the solution of the supposed beach access was in my opinion a foregone conclusion.
5. From my experience I feel that the projected development of the beach area for the public use is some what over-estimated and that the beach area, as it was in its original condition, (undisturbed; undeveloped; and untouched by man) would have served the public interest (now and in the future) more so than the proposed development.

"In the event that there is no way for me to be in attendance at the February 24, 1972, hearing I wish for these above comments to be read into the record."

The Executive Officer reported that expansion of the points outlined in Mr. Kerker's letter was offered in testimony at the public hearing held on behalf of the Commission. He pointed out that the majority of the comments in Mr. Kerker's letter relate to other beach plans, the problems of coastal-zone management, etc., and that even Mr. Kerker concurs that the acquisition of the beach by the County was a financially wise transaction.

The Executive Officer also pointed out that as a result, if the Commission approved the agreement and it went into effect, in lieu of the abandoned Salt Creek road access, new access will be provided in the project for the public at the easterly end and at the center portion, so that there will be more effective access on the upland portions above the bluff; also, at both ends there will be

public parking and concession facilities, etc. established. This will result -- and it is already in use -- in a series, upcoast and downcoast, of beach areas that will become available without any further complications to the public who desire to use the beach.

No one was present at the meeting who wished to appear in opposition to the proposed project.

Upon motion duly made and carried, the following resolution was adopted:

PURSUANT TO CHAPTER 1209 OF THE 1971 STATUTES, THE COMMISSION:

1. CONSIDERS, AS REQUIRED BY SECTION 6110 OF THE PUBLIC RESOURCES CODE, THE WRITTEN REPORT OF A PUBLIC HEARING HELD IN ORANGE COUNTY ON BEHALF OF THE COMMISSION, AS AUTHORIZED BY THE COMMISSION ON DECEMBER 21, 1971, WHICH REPORT IS IDENTIFIED AS EXHIBIT "E" AND ON FILE WITH THE STATE LANDS DIVISION, TOGETHER WITH ANY STATEMENTS, ARGUMENTS, OR CONTENTIONS THAT MAY BE PRESENTED AT THE COMMISSION'S PUBLIC MEETING FOR FEBRUARY 1972;
2. ACKNOWLEDGES THE ANALYSES AND RECOMMENDATION CONTAINED IN THE REPORT IDENTIFIED AS EXHIBIT "C", ON FILE WITH THE STATE LANDS DIVISION AND BY REFERENCE MADE A PART HEREOF;
3. FINDS THAT THE AGREEMENT DESCRIBED IN RECOMMENDATION NO. 4 BELOW AS EXHIBIT "D" IS IN THE BEST INTERESTS OF THE PUBLIC;
4. APPROVES THAT CERTAIN AGREEMENT RELATING TO THE PROPOSED NIGUEL BEACH PARK, DATED SEPTEMBER 22, 1971, AND ENTERED INTO BY AND BETWEEN THE ORANGE COUNTY HARBOR DISTRICT AND THE AVCO COMMUNITY DEVELOPERS, INC., WHICH IS IDENTIFIED AS EXHIBIT "D", ON FILE IN THE STATE LANDS DIVISION AND BY REFERENCE MADE A PART HEREOF;
5. AUTHORIZES THE EXECUTION ON BEHALF OF THE COMMISSION OF DOCUMENTS AS NECESSARY TO EFFECTUATE THE FOREGOING.

Attachment:

Calendar Item 14 (4 pages)

CALENDAR ITEM

2/72
W 503.621
CRK

14.

APPROVAL OF AN AGREEMENT DATED SEPTEMBER 22, 1971, BETWEEN ORANGE COUNTY HARBOR DISTRICT AND AVCO COMMUNITY DEVELOPERS, INC., REGARDING PROPERTY KNOWN AS NIGUEL BEACH PARK IN ORANGE COUNTY.

The subject Agreement was given legislative approval by Chapter 1209, Statutes of 1971, with the following requirements:

1. The conduct of separate public hearings in Orange County by the Orange County Board of Supervisors and the State Lands Commission.
2. A report to the Commission by the Attorney General analyzing (a) the need for the agreement; (b) the rights of the public, if any, surrendered thereby; (c) the terms in the agreement and their legal effect; and (d) the Attorney General's recommendation to the Commission.
3. Approval of the agreement by the State Lands Commission and the Orange County Board of Supervisors, after a finding that such agreement is in the best interests of the public.

LOCATION

The property involved is located between Dana Point and the Monarch Bay section of South Laguna in southern Orange County, within the lines shown on Exhibit "A". It is the site of a subdivision known as Niguel Shores and under development by AVCO.

NATURE OF THE AGREEMENT

District purchases the following land from AVCO for \$1,704,090 cash:

- 15.123 acres of beach land.
- 17.050 acres of parking lot.
- 1.799 acres of access path.

In addition, District pays \$883,292 to AVCO for construction of the following improvements:

- Land improvements, including grading and landscaping.
- Two parking lots, with gate houses.
- Three lifeguard stands.
- One concession building, 384 square feet.
- Five restrooms, three of 240 square feet each and two of 144 square feet.
- Two walkways, approximately 800' long.

The improvements are depicted on Exhibit "B".

District agrees to operate and maintain the property at a specified level for 15 years.

CALENDAR ITEM 14. (CONTD.)

District agrees to dismissal of litigation on validity or nonvalidity of prior abandonment of Salt Creek Road.

District agrees to a quitclaim of all other land located in the subdivision area, excepting that to be purchased.

BACKGROUND

The Agreement stems from concerns that arose when the County abandoned a portion of old Pacific Coast Highway to the upland owner and potential developer. It was felt that the County improperly abandoned Salt Creek Road, which had previously provided public access to and use of an area of beach and tideland. The road area, formerly part of a State highway, was relinquished by the State to the County in 1933, and it was used as a County highway until 1960, when portions of the road were abandoned, and in 1968 the abandonment was completed. There followed considerable public controversy and negotiation, which culminated in the Agreement executed on September 22, 1971, by the Orange County Board of Supervisors acting as governing body of the Orange County Harbor District. The Agreement, a copy of which is attached to the Attorney General's Report, Exhibit "C", contains conditions precedent requiring approval by the Legislature and the State Lands Commission.

PUBLIC HEARINGS

1. The Orange County Board of Supervisors conducted its required hearing on December 22, 1971. A certified transcript of the hearing is on file with the State Lands Division. A copy of the Resolution of the Board, finding the agreement to be in the best interest of the public, is attached hereto, marked Exhibit "E" and by reference made a part hereof.
2. In accordance with the Commission's authorization of December 21, 1971 (Calendar Item No. 8), Mr. James F. Trout, Manager of the State Lands Program, held a public hearing on behalf of the Commission at Laguna Beach on January 12, 1972. A report of the hearing is attached hereto, marked Exhibit "F" and by reference made a part hereof. Section 6110 of the Public Resources Code requires consideration by the Commission of this Report at a public meeting prior to a finding that the Agreement is in the best interests of the public.

REPORT OF THE ATTORNEY GENERAL

On January 13, 1972, the Division requested the advice of the Attorney General, as required by Chapter 1209, and it has been received in the form of a report embodying an affirmative recommendation, as well as the analyses required by the statute. The report is attached hereto, marked Exhibit "C" and by reference made a part hereof. (Note that a copy of the Agreement is appended to the report.)

CALENDAR ITEM 14. (CONTD.)

INVESTIGATION BY THE DIVISION

In addition to on-site inspection of the property, the Division investigated and inquired into the land valuation. This included examination of pertinent appraisal reports, maps, and drawings, and personal contact with professional persons knowledgeable in the value of ocean-front property in California. Also, the matter of the cost of improvements was investigated. The Division concludes that the County is justified in paying \$1,704,090 for the land and \$883,292 for improvements to be constructed by AVCO.

SUMMARIZATION

The beach frontage made available to the public by the agreement is approximately 4800 feet. An additional 3000 feet may become available by action of the County in establishment of prescriptive rights on adjoining private property not owned by AVCO. Estimated beach users at any one time are calculated to be 4,648, based on four persons per car.

The County estimates annual parking and concession revenue to be \$153,428 as opposed to the annual cost of \$124,763 for improvement amortization, operation, and maintenance. Cost of the land is charged to public recreational use and benefit. The Agreement is void and of no effect if not approved by the State Lands Commission by March 1, 1972.

The affirmative recommendation that follows is based partly on the premise of "home rule," as evidenced by unanimous vote of the Orange County Board of Supervisors, the fact that the public hearings produced no substantial evidence of opposition, favorable cost considerations as verified by Division investigation, and advice contained in the Attorney General's report. Consideration also has been given to the fact that pursuit of litigation to establish the public's right to use Salt Creek Road and part of the beach area, even with expenditure of substantial sums of money, would be hazardous, expensive and time-consuming. Approval of the Agreement on the other hand will result in a usable beach facility becoming available to the public at an early date.

All the lands involved are uplands landward of the mean high tide line (a fluctuating line in natural state at this site), not under jurisdiction of the State Lands Commission, nor included within a State grant of tide and submerged lands to a public agency or municipality.

EXHIBITS:

- A. Location map.
- B. Drawing of Proposed Niguel Beach Park.
- C. Report of the Attorney General.
- D. Agreement dated September 22, 1971 (attached to Attorney General's Report).
- E. Resolution of Approval by Orange County Board of Supervisors.
- F. Report of Public Hearing by Manager, State Lands Program.

CALENDAR ITEM 14. (CONTD.)

IT IS RECOMMENDED THAT, PURSUANT TO CHAPTER 1209 OF THE 1971 STATUTES, THE COMMISSION:

1. CONSIDER, AS REQUIRED BY SECTION 6110 OF THE PUBLIC RESOURCES CODE, THE WRITTEN REPORT OF A PUBLIC HEARING HELD IN ORANGE COUNTY ON BEHALF OF THE COMMISSION, AS AUTHORIZED BY THE COMMISSION ON DECEMBER 21, 1971, WHICH REPORT IS IDENTIFIED AS EXHIBIT "E" AND ON FILE WITH THE STATE LANDS DIVISION, TOGETHER WITH ANY STATEMENTS, ARGUMENTS, OR CONTENTIONS THAT MAY BE PRESENTED AT THE COMMISSION'S PUBLIC MEETING FOR FEBRUARY 1972;
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3. FIND THAT THE AGREEMENT DESCRIBED IN RECOMMENDATION NO. 4 BELOW AS EXHIBIT "D" IS IN THE BEST INTERESTS OF THE PUBLIC;
4. APPROVE THAT CERTAIN AGREEMENT RELATING TO THE PROPOSED NIGUEL BEACH PARK, DATED SEPTEMBER 22, 1971, AND ENTERED INTO BY AND BETWEEN THE ORANGE COUNTY HARBOR DISTRICT AND THE AVCO COMMUNITY DEVELOPERS, INC., WHICH IS IDENTIFIED AS EXHIBIT "D", ON FILE IN THE STATE LANDS DIVISION AND BY REFERENCE MADE A PART HEREOF;
5. AUTHORIZE THE EXECUTION ON BEHALF OF THE COMMISSION OF DOCUMENTS AS NECESSARY TO EFFECTUATE THE FOREGOING.