

55. APPLICATION FOR APPROVAL OF EXCHANGE OF LAND IN UPPER NEWPORT BAY, ORANGE COUNTY, BETWEEN THE IRVINE COMPANY AND THE COUNTY OF ORANGE - W.O. 4926.

Preceding consideration of Calendar Item 49 attached, the Executive Officer noted for the record that the County of Orange had filed a statement of its willingness to review the ecological program for the area, and to work with the State Department of Natural Resources on this program, this having been an element of concern expressed in a majority of the letters received by the Commission about the proposed exchange; however, it was not an element for consideration of the basic real estate transaction being reviewed, that is, the exchange of lands between the County of Orange and The Irvine Company, which, when completed, is to be studied in connection with development of the area in the State-wide interest, as required by Chapter 2044, Statutes of 1957.

A number of communications received by the Commission, both in favor of and opposed to the exchange, were read into the record by the Executive Officer.

The following appearances were then made (but not necessarily listed in the order in which they appeared):

Group 1 -- Presentations in opposition to an exchange being made without provision for a public ecological reserve

John Tyler, Vice President of Southern California Chapter of The Nature Conservancy

Grover C. Stephens, Professor of Biology, Chairman of Organismic Biology, University of California at Irvine

Craig Harlan, Vice President of Associated Students, University of California at Irvine

Evelyn Gayman, Conservation Chairman of the Desomount Club, and also speaking for Barbara Horton, Pasadena Audubon Society

Paul Colburn, National Audubon Society, National Wild Life, National Parks Association, Orange County Advisory Committee

Robert Vile, President, Ocean Fish Protective Association

Richard H. Ball, Sierra Club, Angeles Chapter

Rimmon C. Fay, Commercial Fisherman

James Schneider, Conservationist Group of Sierra Club, Orange County Group, part of the Los Angeles Chapter

Ellen Stern Harris

Group 2 -- Presentations in opposition to an exchange for reasons other than the exchange being made without provision for a public ecological reserve; i.e., value, etc.

Dr. Lewis A. Follansbee, Professor of Marine Science, Orange Coast College, questioned the appraised values, and asked if they were based on actual figures from the County Assessor's Office.

Warren Crow, of Corona del Mar, questioned the appraised values.

Frank Robinson, County Tidelands Association, claimed that the Irvine Company would receive lands with values far in excess of those to be received by the County.

Jan Boer, Research Analyst, Santa Ana.

Mrs. Corinna Babb, Marina Park Association, Newport Beach, and other organizations named on page 109 of the reporter's transcript

Don Barton, President, Marina Park, Inc., a home owners' group, Upper Newport Bay

James Harrison, Director, Southern California Marine Dealers Association

Fern Zimmerman, Santa Ana, with a petition signed by 91 people

Karl Hufbauer, Costa Mesa

Gus Patzer, Costa Mesa

H. A. Stuckey, Newport Beach, representing the Bay Area Citizens Council

George Friedl, Jr., Corona del Mar

Group 3 -- Recommending approval by the Commission of the proposed exchange

Adrian Kuyper, County Counsel, County of Orange, stated that he concurred with the staff report and recommendation, and urged approval of the exchange. The County has agreed to submit plans to the State Resources Agency for approval of the ecological phase of development of the bay.

David James, Chairman of Executive Committee, Orange County Chamber of Commerce

Selim Franklin, President, Orange County Coast Association

Conrad Epley, Field Representative to Congressman James B. Utt

John Macnab, President, Newport Harbor Chamber of Commerce

Group 4 -- No official position taken

Andrew J. Hinshaw, Assessor of Orange County, stated that he felt the appraisal made by the fee appraiser was more than \$8,000,000 over what it should be for the lands to be received in exchange by the County; that there is a strong question of whether there is much of any value to the islands owned by The Irvine Company that are part of the lands they are offering to the County in the exchange; that there cannot be a net benefit to the County. Upon a request made by the Commission for a written report, Mr. Hinshaw indicated that he did not have any appraisal report in writing available, inasmuch as he had not expected to make an appearance at this meeting, but was only responding to the inquiry of the Commission.

Assemblyman Kenneth Cory, 69th District

Group 5 -- Not opposed to the exchange, but in favor of ideas expressed by Professor Grover C. Stephens

L. H. Cloyd, Regional Manager, Region 5, Los Angeles, California  
Department of Fish and Game

In addition to the foregoing who made statements, the following interested persons also were present at the meeting (some of whom had intended to speak, but who did not do so, both in the interest of saving time and because the arguments they had intended to present had already been covered by others):

Alton E. Allen, Orange County Supervisor; James E. Ballinger, Harbor Engineer, Orange County Harbor District; Jack Barnett, Ex-Manager of Newport Harbor Chamber of Commerce; Frances Barton; Robert H. Burke, Assemblyman from 70th District; Chip Cleary, President, Cleary, Hitt & Company, Ltd.; Paul W. Colburn, representing Nature Conservancy, National Audubon Society, National Wild Life, National Parks Association, and Orange County Advisory Committee; P. Dee Cook, Councilman, City of Newport Beach; Cundon H. Danler, Title Insurance & Trust Co.; Joseph T. Devlin, Public Works Director, City of Newport Beach; Mrs. John Di Bello; Bruce E. Dubrow; Barbara C. Eastman; C. G. Edelblute, Vice President-General Manager, Newport Dunes, Inc.; Rimmon C. Fay, a commercial fisherman; Mrs. Lewis A. Follansbee; Selim S. Franklin, President, Orange County Coast Association; Mrs. George Friedl; Evelyn Gayman, Conservation Chairman, Desomount Club; Col. T. R. Gillenwaters, Oceanic Advisor to Governor and Staff; Virginia L. Gross; W. Allen Grubb, Orange County Harbor Commission; Katherine R. Hail, Membership Committee, Sea & Sage Chapter, Audubon Society; William J. Herron, Chief, Coastal Engineering Branch, U. S. Army Engineers, L.A. District; Dora O. Hill, former Mayor of the City of Newport Beach; R. J. Hitt, Vice President, Cleary, Hill & Co., Ltd.; Barbara C. Horton, Conservation Chairman, Pasadena Audubon Society; Vernon L. Human; Mrs. Esther P. Johnson; Harvey L. Hurlburt, City Manager, City of Newport Beach; Fenton E. Jones, Attorney, Orange County Chamber of Commerce; Eldon Kiehler, President, The Bluffs Homeowners Community Association; K. C. Klinger, Administrative Assistant, Orange County Harbor District; Mary H. Kuman; Miriam M. Luca, Member of National Audubon Society and of Sea and Sage Society of National Audubon Society; Ralph Maas, Croft-Neville Marine Contractor; Robert Malinoff, Architect; Rivella Malinoff;

Rose Maskwitch; Frank G. Michelena, President, Frank Michelena & Associates, and Member of Board Directors Coast Association; Joanna Mitchell; Edward P. Nichols, Executive Director, Southern California Marine Association; Marvin Roy Olsen, Newspaper Reporter, Santa Ana Register; Mrs. Marna L. Olson; Gus C. Patzer; Irene Rask; Mrs. Geo. Ray; Wendell Reece, Chief, Navigation Permits Section, Los Angeles District, Corps of Engineers; Mrs. Frances Robinson, Orange County Tidelands Association; Jay Robinson; Richard P. Ruiz, Executive Assistant to Supervisor D. L. Baker, Orange County; Howard Seelye, Staff Writer, Los Angeles Times; Tully H. Seymour, City Attorney, City of Newport Beach; Mrs. R. L. Sherman; Lorrain Smith; Mrs. Juanita Stafford; Bernard F. Tiernan, Executive Assistant to William H. Hirsten, Orange County Board of Supervisors; Coulson Tough, Campus Architect, University of California at Irvine; Paul Trautwein, Trautwein Bros.; L. D. Truhill, Executive Vice President, Orange County Chamber of Commerce; George A. Tucker, Councilman, Costa Mesa; Roger E. Wallihan, Coast Engineer, Supv., U. S. Army Corps of Engineers; Gordon H. Wattles, Consulting Engineer, Title Insurance and Trust Company, Santa Ana; Donald D. Wells, Director, Dover Shores Community Association; Lloyd E. Winburn, Vice President, Y.M.C.A., Newport Beach; James T. Workman, Vice President, Cleary, Hitt & Co., Ltd.

For a complete verbatim report of the entire discussion on this matter, see the reporter's transcript, copy of which is on file in the Los Angeles Office of the Commission.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION, IN ACCORDANCE WITH CHAPTER 2044, STATUTES OF 1957:

1. FINDS THAT THE LANDS THAT ARE TO BE FILLED AND CONVEYED TO THE IRVINE COMPANY BY THE COUNTY OF ORANGE, PURSUANT TO THE EXCHANGE AND IN ACCORDANCE WITH THE APPLICATION FILED WITH THE STATE LANDS COMMISSION, AT THE TIME OF SAID CONVEYANCE, WILL BE NO LONGER USEFUL FOR NAVIGATION, COMMERCE, AND FISHING.
2. FINDS THAT THE LANDS TO BE RECEIVED BY ORANGE COUNTY IN THE EXCHANGE WITH THE IRVINE COMPANY ARE AT LEAST OF EQUAL VALUE TO THE LANDS TO BE TRANSFERRED TO THE IRVINE COMPANY.
3. GIVES ITS APPROVAL OF, AND CONCURRENCE IN, THE PROPOSED CONVEYANCE TO THE IRVINE COMPANY BY THE COUNTY OF ORANGE OF LAND IN UPPER NEWPORT BAY, IN EXCHANGE FOR THE LANDS TO BE RECEIVED BY THE COUNTY OF ORANGE.
4. AUTHORIZES THE NOTIFICATION OF THE COUNTY OF ORANGE OF THE ABOVE APPROVAL AND FINDINGS.

Attachment  
Calendar Item 49 (4 pages)

APPLICATION FOR APPROVAL OF EXCHANGE OF LAND IN UPPER NEWPORT BAY, ORANGE COUNTY, BETWEEN THE IRVINE COMPANY AND THE COUNTY OF ORANGE - W.O. 4926.

In 1957 the California Legislature enacted Chapter 2044, providing for an exchange of land between the County of Orange and private owners in Upper Newport Bay for the purpose of developing the bay to serve a State-wide interest. It provides in part as follows:

"Sec. 3. That any and all of said portions of said lands hereinbefore referred to, which have been or which shall hereafter be improved, filled, and reclaimed, as hereinbefore provided, if and when so improved, filled, and reclaimed, may be irrevocably alienated and conveyed free of the public uses and trusts in said acts, by the said County of Orange, with the approval and concurrence of the State Lands Commission, to the owner or respective owners of the uplands lying contiguous thereto in exchange for lands of such owner or owners necessary or desirable for the improvement, development and conduct of said harbor upon a finding by the State Lands Commission that the lands located in the area commonly known as Upper Newport Bay which are to be exchanged are no longer useful for navigation, commerce, and fishing, and that the lands to be received in exchange are at least of equal value thereto. The lands received by the county in exchange shall be used by the county only for purposes of state-wide interest. Upon any conveyance as herein provided all right, title, and interest of the State and said County of Orange in the land exchanged shall vest in the grantees or grantees thereof." (Underscoring added.)

Pursuant to said statute, the County of Orange developed a plan of exchange and development that was considered by the State Lands Commission at its meeting on August 25, 1966 (Minute Item 7, pp. 13,053 to 13,059), and again at its meeting on December 14, 1966 (Minute Item 35, pp. 13,481 and 13,482). Final approval was withheld pending studies of alternative plans and the receipt of further legal opinions.

The County of Orange has requested that the proposal for exchange approval be considered by the Commission.

Both the Legislative Counsel and the State Attorney General's Office have determined that the Commission may authorize the exchange by finding that (1) the lands in the bay that are to be filled and conveyed to The Irvine Company are no longer useful for navigation, commerce, and fishing, and (2) the lands to be received in exchange by Orange County are at least of equal value to the lands transferred by the County. Both counsels concluded that an express finding by the Commission that the exchange is in the State-wide interest is not required in order to authorize the exchange. However, the statute does require that the lands received by Orange County ultimately be used for purposes of State-wide interest.



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The Commission employed the planning firm of Livingston and Blaney as its consultants, and received their report on December 14, 1966. This report suggested that alternative methods of development of Upper Newport Bay be explored, which has been done. The further investigations indicated that large public acquisitional and developmental costs would be required by alternative plans, and that there is insufficient money available from any sources to make such alternative plans of development practical in the near future.

Subsequent to consideration of the matter by the State Lands Commission on August 25, 1966, the Office of the Attorney General advised that the controlling law to be considered by the Commission in making its determination is as follows:

1. Chapter 2044, Statutes of 1957, is not unconstitutional on its face, and a legal exchange may be accomplished pursuant thereto.
2. Chapter 2044, Statutes of 1957, vests in the Commission discretionary authority to examine the proposed transaction as a whole to determine whether the proposed conveyance of granted lands free of the public trust is in the best interests of the State.
3. The Commission should make the following determinations:
  - a. Whether it should give or withhold its approval of and concurrence in the proposed conveyance;
  - b. Whether the lands to be conveyed are no longer useful for navigation, commerce, and fishing; and
  - c. Whether the lands to be received in the exchange are of at least equal value to those conveyed.

In connection with the determination under 3.b. above, the Office of the Attorney General advised that the legislative finding in the statute does not relieve the Commission of the responsibility for making an independent examination of pertinent facts and the application of the established criteria, and that the Commission's finding should be based upon physical conditions existing on the date of actual conveyance.

Data developed indicates that the project is large enough to be of Statewide interest, and that the following advantages would accrue from the development of the proposed project:

1. The area under public jurisdiction is increased from about 400 to 745 acres, an increase of 345 acres or over 86%.
2. The area available for public park and beach areas is increased from 70 to 261 acres, an increase of 191 acres or 273%.
3. The waterfront public access, including that in front of the park areas, is increased from about 6,090 to 17,880 lineal feet, an increase of over 193%.

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4. The development of the area in the interest of the people of the State of California would be made feasible by the approval of the exchange.
5. Approval of the exchange would make it feasible to have early development of aquatic facilities currently needed by the University of California at Irvine and other educational institutions, including a five-acre waterfront site and a 2000-meter rowing course.
6. Access is provided by several major county and city arterial roads, which connect to two existing and two future freeways within one mile of the public areas.
7. Approval of the exchange would make feasible development that would provide for an estimated increase of from 8 to 17.2 million user-days for greater Newport Harbor.
8. The parties are contractually bound by the dredging agreement to complete the preliminary dredging within two years and to complete dredging of the navigable channels within five years, thus assuring the public of the use of the waterways at a much earlier date than any alternative plan studied.

An independent appraisal report shows the value of the land to be received by the County is greater than that to be transferred to The Irvine Company, as follows:

Total value of parcels received by Orange County.....	\$19,466,000
Total value of parcels received by The Irvine Company....	<u>11,453,500</u>
Advantage to County.....	\$ 8,012,500

A staff appraisal shows the land received by the County to be at least of equal value to the land to be transferred to The Irvine Company.

The Resources Agency reported the desirability of providing for preservation and improvement of the marine ecology in any development program for the subject area. The County of Orange has agreed to cooperate in the implementation of such a marine development program, subject to the approval of the Resources Agency.

A supplementary agreement has been entered into between The Irvine Company and Orange County specifying the leases that may be administered by The Irvine Company. The entire value of the land covered by the retained leases may be excluded from the appraised value of the lands to be received by the County without substantially affecting the preponderance of value in favor of the County, and without affecting compliance with the statutory requirement of at least equal value.

IT IS RECOMMENDED THAT THE COMMISSION, IN ACCORDANCE WITH CHAPTER 2044, STATUTES OF 1957:

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1. GIVE ITS APPROVAL OF, AND CONCURRENCE IN, THE PROPOSED CONVEYANCE TO THE IRVINE COMPANY BY THE COUNTY OF ORANGE OF LAND IN UPPER NEWPORT BAY, IN EXCHANGE FOR THE LANDS TO BE RECEIVED BY THE COUNTY OF ORANGE.
2. FIND THAT THE LANDS THAT ARE TO BE FILLED AND CONVEYED TO THE IRVINE COMPANY BY THE COUNTY OF ORANGE, PURSUANT TO THE EXCHANGE AND IN ACCORDANCE WITH THE APPLICATION FILED WITH THE STATE LANDS COMMISSION, AT THE TIME OF SAID CONVEYANCE, WILL BE NO LONGER USEFUL FOR NAVIGATION, COMMERCE, AND FISHING.
3. FIND THAT THE LANDS TO BE RECEIVED BY ORANGE COUNTY IN THE EXCHANGE WITH THE IRVINE COMPANY ARE AT LEAST OF EQUAL VALUE TO THE LANDS TO BE TRANSFERRED TO THE IRVINE COMPANY.
4. AUTHORIZE THE NOTIFICATION OF THE COUNTY OF ORANGE OF THE ABOVE APPROVAL AND FINDINGS.