

16. STAFF RECOMMENDATION ON PROPOSED SETTLEMENT OF LITIGATION;
PEOPLE V. THE JONATHAN CLUB, SANTA MONICA BEACH, CITY OF SANTA
MONICA

During consideration of Calendar Item 16 attached, Mr. John Shiner, attorney, representing the Jonathan Club, appeared. He stated they had studied the staff's settlement proposal and had just that morning submitted a counterproposal. In referring to the staff's recommendations as numbered on page 4 of the Calendar Item, he set forth their alternative proposals:

- No. 1 - Acceptable to the Club
- No. 2 - Acceptable to the Club
- No. 3 - Acceptable to the Club
- No. 4 - Acceptable to the Club with the following modification.

They requested an additional 25 feet of exclusive use, increasing the footage to 75 feet, leaving a balance of 20 feet for the nonexclusive use. He explained they would like a parking facility built to the 95 foot area on the condition it would be pulled back if the bike path intruded into the area. In addition, he requested a lease term of 35 years instead of the 25 years recommended.

- No. 4(a) - Acceptable to the Club with the exception that they would have it for an additional 5 years at a nominal rate, increasing it to 15 years.

- No. 4(b) - Acceptable to the Club. However, he expressed his concern as to how the staff characterized fair market value. They requested that the formula be determined at the outset of the lease.

After Mr. Shiner's presentation, Ms. Susanne Wylie, Deputy Attorney General, summarized the staff's proposal. She indicated that the Club's counterproposal was very close to meeting the staff's proposal.

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Mr. L. H. Grimes, Deputy Chief Division of Land Management and Conservation, also indicated the Club's counterproposal was a major stride toward settlement. However, he indicated there were two areas that could not be immediately resolved without further deliberations.

1. Extending the lease term to 35 years.
2. Extending the nominal rent period to 1¹/₂ years.

Mr. Grimes also stated that since this is a multi-agency lease, he would not like to make a recommendation until the other agencies had a chance to review the counterproposal.

Commission-Alternate David Ackerman questioned whether the Commission was in a position to make a decision at this time or whether they should refer it back to the staff and instruct them to return to the Commission after they had had a chance to review it with Parks and Recreation and the City of Santa Monica.

Chairman Cory pointed out to Mr. Shiner that the Commission had been tougher than the staff on the various issues. He suggested that the Commissioners advise the Club of their individual positions on each of the issues which are controversial.

LEASE DURATION

CORY: 25 years.

ACKERMAN: Draws distinction between private use and commercial or quasi-public use such as the Jonathan Club. Feels lease term should be longer and is more in line with the Club's latest proposal.

MORGAN: 4 years, willing to extend to 25 years.

LEASE FOOTAGE

CORY: Favors 50 feet as opposed to 95 feet as recommended by staff. He is looking at equity and a fence or a palm tree does not establish equity.

ACKERMAN: Comfortable with the 95 feet since Parks and Recreation and the City have agreed to it. However, he was open as to how the division within the 95 feet is handled for exclusive use.

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MORGAN: Agreed with Mr. Cory. She did not want to reserve to the Club any more than was offered to private landowners.

MECHANISM TO ESTABLISH RATIO OF NOMINAL V. FAIR MARKET VALUE

CORY: As trustee for public property, he could not consider anything but highest and best use. He did agree that the Club should know at the outset what the fair market rental would be prior to entering into the lease.

ACKERMAN: Did not have a position as yet⁷ but agrees that the formula should be established before the lease is entered into.

MORGAN: Total term is more important than how to split nominal v. fair market value.

Mr. Ackerman stressed that whatever formula is arrived at, it should be consistent with the formula used for the private landowners.

At the conclusion of the discussion, the Commission agreed that the item should be deferred, and instructed the staff to evaluate the counterproposal based on the individual commissioners' positions on the issues as set forth above, while at the same time discussing it with the City of Santa Monica and the other affected agencies.

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STAFF RECOMMENDATION ON
PROPOSED SETTLEMENT OF LITIGATION
PEOPLE VS. THE JONATHAN CLUB
SANTA MONICA BEACH
CITY OF SANTA MONICA

BACKGROUND:

The Subject Property constitutes a portion of the Santa Monica State Beach, which is currently being administered by the Department of Parks and Recreation, and operated by the City of Santa Monica under an operating agreement. This action is a lawsuit brought by the State of California and the City of Santa Monica to quiet title to property along the Santa Monica State Beach and to require removal of encroachments onto the beach adjacent to private property.

In 1921, the City of Santa Monica, acting under its authority as trustee of the State tide and submerged lands pursuant to Chapter 78, Statutes of 1917, surveyed the then existing Mean High Tide line and enacted and recorded City Ordinance No. 188 (Commissioner's Series) fixing the line along the entire length of the subject property.

Since 1921, tide and submerged lands waterward of the 1921 Mean High Tide Line have become filled as the result of the construction of man-made structures, and the beach currently extends an average of 400 feet waterward of the 1921 Mean High Tide Line.

The owner of the upland parcel (Club) contends it is entitled to all or a portion of the filled tide and submerged lands, claiming that the filling is at least partially naturally caused. It also contend that the City and State are estopped from requiring removal of the encroachments due to acquiescence in their existence for a substantial length

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of years, and that the City issued building permits for the construction of the encroachments.

The Club was purchased in 1934 and contends that as the beach prograded it used the area 135 feet waterward of the 1921 MHTL for more than 36 years in the belief that they owned the land.

The encroachments in People vs. The Jonathan Club, et al., consist of a windbreak fence, children's play area, flagpole, volleyball courts, paved walkway and recently planted palm trees. The encroachments extend a maximum of 135 feet beyond the 1921 Mean High Tide Line (an area of approximately 59,400 square feet).

During the past several years, the staff of the Commission, together with staff of the Attorney General's Office, the City of Santa Monica, and the Department of Parks and Recreation (State), have been conducting negotiations with representatives of the Jonathan Club (Club) in hopes of avoiding the need for long court litigation over ownership of this portion of Santa Monica State Beach. Throughout this period of time, the State has made various offers of settlement and has considered various counteroffers of Club. Neither side has found a common ground for agreement.

At the last meeting, it was agreed that if Club would prepare a settlement offer, the staff would present Club's offer to the Commission along with staff's recommendations and a possible counteroffer. Club has submitted a settlement offer; a complete copy of which is available in the Sacramento office of the State Lands Commission. It is outlined as follows:

1. Club will acknowledge State ownership of the beach area waterward of the 1921 MHTL.

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2. Club desires an exclusive lease with the following terms:
 - a. Lease term of 50 years.
 - b. Lease area to be the width of Club's frontage and 95 feet waterward of the 1921 MHTL.
 - c. Lease rental not to exceed \$1000 per year.
 - d. An option to renew the lease for an additional 50 years with rent to be negotiated prior to renewal.
3. Club will remove improvements on the beach area waterward of an area leased from the State.
4. Club will remove, at lease termination, all improvements waterward of the 1921 MHTL in the leased area if lease is not renewed.
5. Club shall have an option during the lease term (50 years) to use the State Parks parking lot immediately south of the Club's property on generally the following conditions:
 - a. Subsurface: to construct an underground parking structure.
 - b. Air Space: to construct an overhead parking structure.

In either case, a. or b., the sole consideration for this right would be the reconditioning and continued maintenance of the existing public parking lot.

 - c. Surface: Club will incorporate the public lot into its existing surface lot; expand the combined lots 95 feet waterward of the 1921 MHTL and reserve 52 parking spaces (the current number available in

the existing public lot) for the public at the same rates as those charged by other public lots.

The sole consideration for Case c above would be maintaining the existing 52 public spaces and the Club would retain the parking fees to defray the Clubs operating costs.

The State's last settlement proposal to the Club is as follows:

1. Club to execute a Boundary Line Agreement establishing the 1921 MHTL as retraced in 1978 as the boundary between private lands and State lands.
2. Club to remove all improvements waterward of an area leased from the State.
3. Club to remove all existing improvements waterward of the 1921 MHTL upon lease termination.
4. State to issue a lease covering an area the length of the Club's existing frontage and 95 feet waterward of the 1921 MHTL, the first 50 feet for Club's exclusive use and the remaining 45 feet subject to the location of a proposed bike path and walkway. The lease to have a term of 25 years and annual rent as follows:
 - a. First 10 years at a nominal amount based on rental schedule for general permit - recreational use contained in 2 Cal. Adm. Code Section 2005(b)(6) approximately \$840 per year,
 - b. Remaining 15 years at a negotiated fair-market rental to be established during year 10 of the lease.

The State also agreed to pursue, through normal channels, the possibility of leasing to the Club the subsurface, and possibly the air rights to the State Parks public

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parking lot which adjoins the Club to the south. We advised the Club's representatives that such a lease probably would require the approval of General Services and that General Services would require rental or some other consideration based on an appraisal. If such rights were conveyed to Club they would be subject to the rights of the public to use the existing surface for parking.

Based on staff review of the Club's current settlement offer, and the terms which staff had previously discussed with Club as being acceptable to the State, staff would recommend that the Commission reject, as unacceptable, the Club's current offer as summarized above.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE SETTLEMENT OFFER DATED APRIL 15, 1981 BY THE JONATHAN CLUB IS UNACCEPTABLE AND NOT IN THE BEST INTEREST OF THE STATE.
2. AUTHORIZE STAFF OF THE COMMISSION AND THE ATTORNEY GENERAL'S OFFICE TO PROCEED WITH EXISTING LITIGATION WITH THE JONATHAN CLUB TO PERMANENTLY FIX THE BOUNDARY BETWEEN STATE AND PRIVATE LANDS AT THIS LOCATION.