County Land Transactions:

Will the Public Notice?

GRAND JURY 2021-2022

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SUMMARY

Some of the most valuable and treasured assets of Orange County are the public beaches, wildlife refuges, parks, and recreational areas that grace our County. Responding to complaints about the sales - and near sale - of public park land to private citizens, the Orange County Grand Jury (OCGJ) investigated the procedures for the sale of such land.

In its investigation, the OCGJ found that the procedures intended to put the public and interested agencies, such as the California Coastal Commission, on notice of proposed sales are not sufficient. Notice efforts should include mailings, property depictions, and other information that properly inform citizens impacted by the sale. This information should also be displayed on appropriate websites and published in a manner that will reach the intended audience.

Furthermore, the OCGJ is concerned that the intervention of the office of a former Orange County Supervisor influenced the way in which a particular public land sale was handled. Ultimately, after the successor District 2 Supervisor put the sale on hold, enough signatures were gathered to legally bar the sale. Nonetheless, a private fence that is unquestionably on property owned by the County remains in place. By allowing the fence to surround the very property that could not be sold, that parcel has been inappropriately ceded to private use and the fence should be removed to restore that property to its designated status as public trust land.

BACKGROUND

The County of Orange owns an estimated 80,000 acres of land designated as park property. Public lands, and particularly lands designated as public trust land specific to coastal lands, are held in trust by the County, State, or designated government agency (such as the California State Land Commission or the Coastal Commission) for the benefit of the public. The function of the California State Land Commission is to provide effective stewardship of the lands, waterways, and other resources that have been entrusted to its care. Similarly, the Coastal Commission is committed to protecting and enhancing California's coastline and ocean for present and future generations.

Typically, when land has been conveyed to the County, that land must remain subject to any easement or restriction already burdening it. In some cases, it makes sense for the County to auction or sell land to private parties. However, if the land has been dedicated as park land, open space, or designated as public trust land, any sale should be carefully scrutinized in order to avoid the loss of valuable conservation land and to ensure that concessions are not being made to particular individuals for political or other imprudent reasons.

The sale of County land may take place according to the following procedure as provided in Orange County Codified Ordinance (OCCO) Section 2-5-301:

> The Board of Supervisors may abandon all or any portion of a park restricted to park purposes under Section 2-5-300 of this Code, and may sell the land

> comprising it pursuant to this section or use the land for other County purposes, *if it finds that all of the park,* where all is to be abandoned, or the portion to be abandoned is not being used by the public for park purposes and that all of said park, or the portion to be abandoned if less than all, *is not appropriate, convenient or necessary for park purposes.* (Emphasis added.)

It is incumbent upon the Orange County Board of Supervisors (BOS) to ensure that public land up for sale is "not appropriate, convenient, or necessary for park purposes," and has not been permanently protected as conservation land before approving that sale.

REASON FOR THE STUDY

This issue came to the attention of the OCGJ after it received citizen complaints citing incidents of Orange County land designated as public space or parks being sold to private individuals. The complainants believed not only that these properties were under conservation easements that made the transfers inappropriate, but also that the assessed prices presented to the involved parties were unreasonably low. In particular, the nearly completed sale of a parcel of land located in the Newport Beach Back Bay Reserve raised significant concerns about a private individual purchasing this land and the land's assessed price.

Based on these complaints, the OCGJ endeavored to evaluate County land sale procedures, the County's adherence with applicable use and conveyance restrictions, and the appraisal procedures for setting the land purchase price for County lands designated as parks, open space, or property held in public trust.

METHOD OF STUDY

The OCGJ took the following steps in investigating this issue.

- Identified and interviewed key personnel who participated in the decision-making for selling County-owned public land, including several members of the Orange County Board of Supervisors, representatives of CEO Real Estate, and County citizens who had voiced concerns about selling County land.
- Reviewed documents including the following:
  - Relevant state statutes and county ordinances
  - Website information and news articles
  - County property records, including deeds, resolutions, and proclamations
  - Orange County BOS agendas, minutes and staff reports
  - Newspaper articles
  - Photographs
  - Complaint letters with attachments
- Members of the OCGJ toured Newport Back Bay and walked the perimeter of the land parcel that was the subject of citizen complaints.

INVESTIGATION AND ANALYSIS

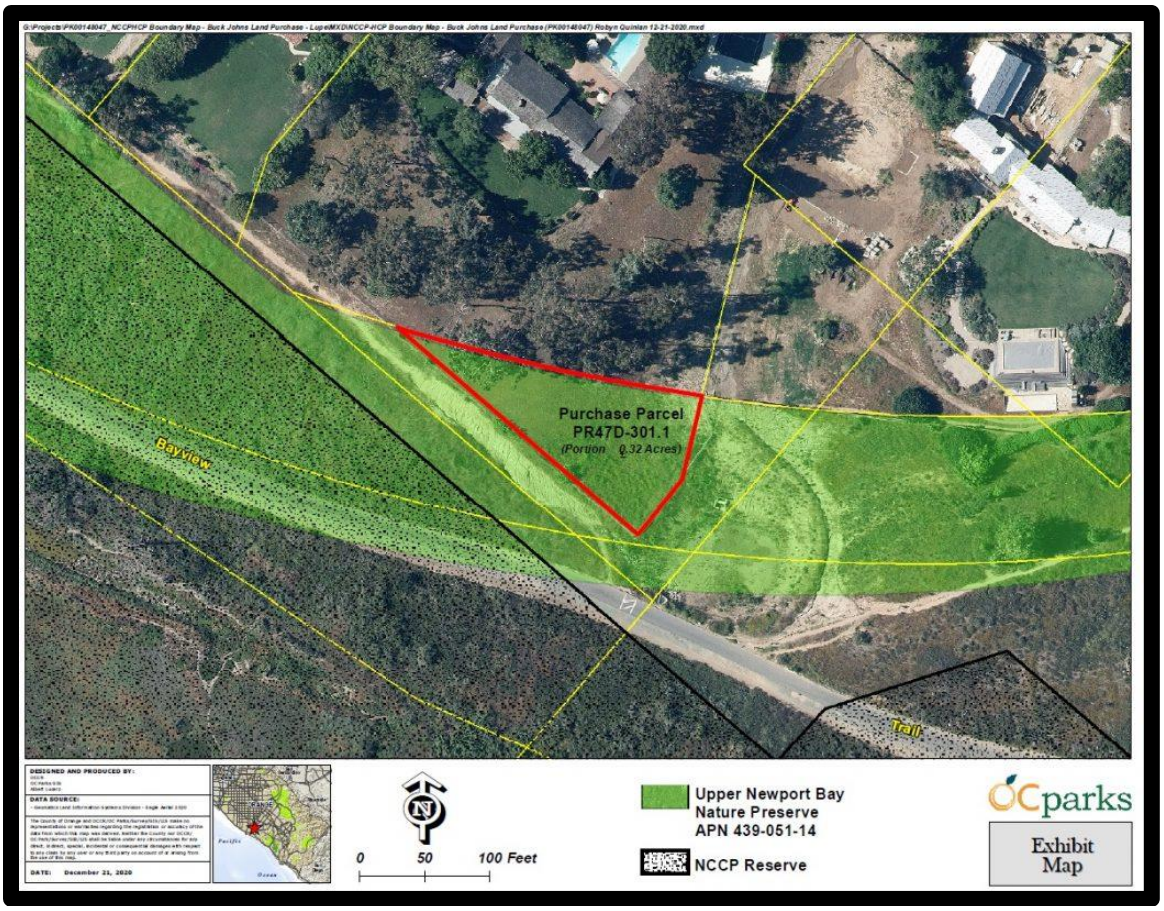
Case Study: Newport Back Bay Parcel APN 439-051-14

In 1989, The Irvine Company (TIC) gifted land it owned to the County under the condition that the land remain dedicated park land. Situated within Newport Beach's Back Bay Reserve, this land is managed under the auspices of the County and the California Coastal Commission. Although recorded by the County Recorder's Office, this dedication was not recorded by the California Coastal Commission.[1] The transfer of this land to the County was made on the condition that the land remain open space and that "The County shall maintain and use the Property solely for passive recreational use by the Public."[2] The parcel APN 439-051-14 is a 13,785 square foot portion of this land.[3]

In 2003, the BOS adopted Resolution No. 03-385 offering to dedicate the County's Upper Newport Bay Nature Preserve (including APN 439-051-14) as state public trust land. In doing so, the BOS declared that the Nature Preserve was "an integral part of the ecological system that constitutes Upper Newport Bay" and that dedicating it as public trust land would allow "public use and enjoyment of this property."

In accordance with that Resolution, on April 5, 2004, the California State Lands Commission voted to designate those same land parcels as public trust land "to be held by the County in Trust…. thereby allowing for public use and enjoyment of the property, as well as supporting the Upper Newport Bay Ecological Preserve, with its unique natural resources."[4] The BOS resolution also noted that the California State Lands Commission leased this property to the State's Department of Fish and Game "as open space and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area."

[1] Responding to a citizen's inquiry, correspondence from the Regional Manager of the California State Coastal Conservancy confirmed the conservation dedication but could not explain why it was not recorded at that time.
[2] Irrevocable Offer of Dedication from TIC to the County of Orange for the Westbay and Bluff parcels, recorded as document 89-388787; https://nbgis.newportbeachca.gov/images/pdf/OR/OR_89-388787.pdf
[3] Prior to 1990, the County had negotiated with TIC to secure portions of the land referred to herein in order to extend University Avenue and connect Jamboree Blvd. with Newport Ave. That plan was abandoned in or about 1989 and the land remained the property of TIC. These transactions preceded the 1990 TIC land dedication and are not relevant to this investigation and analysis.
[4] Dec. 16, 2003, Resolution of the Board of Supervisors, Orange County, Res. No. 03-385, and California State Lands Commission, Minute Item No, 24 (Calendar Item C24), April 5, 2004; https://www.slc.ca.gov/Meeting_Summaries/2004_Documents/04-05- 04/Items/040504C24.pdf



Shortly thereafter, on August 27, 2004, then-Governor Arnold Schwarzenegger signed AB-425 which specified that the subject land be accepted as assets of the public trust and held in trust by the County of Orange, noting that the lands are "integral to the operation of the Upper Newport Bay Ecological reserve and provide ecological benefits in the form of habitat that supports adjacent tide and submerged lands."[5]

Request to Purchase APN 439-051-14

CEO Real Estate is a public agency that manages County-owned land. The agency provides real estate analysis, counsel, land development services, leasing representation, and lease management services to the County. CEO Real Estate is under the direction of and reports directly to the County Executive Officer and BOS. With approval from the BOS, the Transactions and Special Projects team within CEO Real Estate purchases and sells real estate and related assets on behalf of Orange County. CEO Real Estate works actively to preserve public park land. However, it is fair to say that individual Supervisors have significant influence when it comes to decisions made about public land located in their district, and the BOS ultimately directs the actions of CEO Real Estate.

[5] AB 425 1(g) and 2(a) (amending Section 2 of Chapter 317 of the Statutes of 1997 and adding Sections 4.5 and 5.5 to Chapter 74 of the Statutes of 1978).

In the majority of cases, when CEO Real Estate receives a proposal from a private citizen to purchase County park land, the County is not interested in relinquishing park property and no action is taken. This was the case initially when a private citizen with a home overlooking the Newport Beach Back Bay approached CEO Real Estate and the OC Parks Commission to purchase parcel APN 439-051-14 which abuts the homeowner's property. However, after the intervention and active support of the then-County Supervisor for District 2, the homeowner's proposal moved forward.

As discussed above, APN 439-051-14 was designated as public trust land under the auspices of the County, State Land Commission, and the Coastal Commission. Upon inspection of the land, the OCGJ observed that the identified parcel, which is surrounded by a chain link fence, overlooks the Newport Back Bay. While the land stretches some distance from the nearest home, the fence borders a dirt walking path and stands as little as 40 feet from a paved pathway that is popular for recreational use. Walkers, bicyclists, and equestrians all use this pathway while taking in the natural beauty of the Back Bay. The pathway connects Newport Blvd. to Jamboree Road.

With the support of the then-District 2 Supervisor, steps were taken to sell the land *with no restrictions* despite the predated covenants and restrictions and without regard to the Board of Supervisors and the California State Land Commission's resolutions that the land shall be held in trust under the stewardship of the State's Department of Fish and Game. The homeowner/purchaser commissioned and paid for an appraisal of APN 439-051-14 which came back in October 2020. The appraisal came in at only $13,000[6] even though the parcel would add

[6] CBRE Appraisal Report for Vacant Land APN 439-051-14, December 10, 2020. The appraisal was prepared by an approved County appraiser, CBRE. A County-hired appraiser affirmed the CBRE valuation of $13,000. Appraisals take into consideration, among other factors, (i) the accessibility of the land, (ii) the marketability of the land, (iii) any zoning issues or use restrictions, (iv) the contour of the property, and (v) comparable property sales. Appraisals do not consider the value added for a particular homeowner. Therefore, although the addition of APN 439-051-14 would significantly enhance the value of the prospective buyer's own property, this was not a factor in the land appraisal. However, the appraisal included an assumption that the covenants would remain in place, making this land "unbuildable." If the sale had gone through, those covenants would not have survived, and the purchaser would have been free to build an additional unit on that land. The appraisal process is not at issue in this report.

close to three-eighths of an acre of open space to the homeowner's property, was without restrictions, and would substantially increase the home's value. In addition to the appraised price of $13,000, the County and homeowner agreed that an administrative fee of $20,000 would be paid to the County to complete the land purchase. This discretionary fee was set by the County to offset the costs the County would incur to complete the sale.

The Staff Report and Initial Vote

The procedure for selling public land includes the following:

> Before abandoning all or any portion of a park, the Board of Supervisors shall adopt a resolution of intention by unanimous vote of all its members describing the park or portion of it proposed to be abandoned and fixing a time at least sixty (60) days after the adoption of the resolution when it will meet to take final action.[7]

On January 26, 2021, without discussion, the BOS voted to move forward with the resolution and sale. The BOS Staff Report prepared in anticipation of the vote did not mention the previous Board Resolutions designating the property as public trust land or the oversight granted to the State Land Commission, the Coastal Commission, and the State's Department of Fish and Game. The Staff Report indicated that the parcel was subject to restrictive covenants per TIC, but that TIC had removed these restrictions.

An examination of the BOS Staff Report, the Park Commission Staff Report, and TIC's consent to rescind its restrictions indicates that the people that prepared those reports repeated the homeowner's inaccurate version of the history of the parcel. The CEO Real Estate questionnaire attached to the BOS Staff Report contained the completely erroneous statement that the property was being considered for conveyance "To allow [homeowner name] to *regain* ownership of a portion of APN 439-051-14, that was previously acquired by the County for the University Drive extension, which has been cancelled." (Emphasis added.) The "University Drive extension" was a plan that was abandoned well before the 1989 dedication. There is no documentary evidence or other suggestion that the current homeowner ever owned or had any claim on this parcel, and TIC's account, as well as other historical accounts, memorandum from CEO Real Estate and documentary evidence all belie this contention.[8]

Furthermore, the BOS Staff Report stated that the OC Parks Commission had approved the sale.[9] According to the OC Parks Commission meeting minutes of January 7, 2021, the misconception

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[7] OCCO § 2-5-301.

[8] CEO Real Estate Real Property Conveyance Questionnaire for APN 439-051-14, attachment F to January 26, 2021 BOS Agenda Staff Report, Abandonment and Conveyance of Property in Upper Newport Bay.
BOS Staff Report submitted with the minutes for the BOS meeting of January 26, 2021; OC Parks Commission meeting minutes of January 7, 2021; April 30, 2019, email from TIC VP/Assistant General Counsel to homeowner/ potential purchaser and counsel; December 16, 2020 TIC Termination of the Restriction and Reversionary Interest.

[9] *Ibid*. The Staff Report also stated that the Orange County Parks Commission voted for Board Approval with three votes of the five Commissioners present. This was somewhat misleading as a revision memo dated January 14, 2021, addressed to the BOS Clerk stated that the Parks Commission "did not recommend approval based on only three voting in the affirmative (4 yes votes would be necessary for a majority of the body.)"

that the homeowner had previously owned the land parcel was repeated so that the Park Commissioners voted to approve the transfer and allow that homeowner to "reacquire" his property. Again, the documentation, as well as the appraisal prepared by CBRE at the buyer's request, specifically contradicts this claim.[10]

TIC's relinquishment of restrictions also relied upon the representation that the land had been fenced off by the homeowner since 1970. Photographic records reveal that the fence had not remained intact and, in fact, had been extended significantly several times.[11] As reflected in a memo dated April 30, 2019, from TIC to the homeowner, TIC's authorization to release its restrictions was based on the history provided by the homeowner and as a concession to the County if it was willing to convey that parcel.[12] Notably, TIC rescinded this covenant release as soon as the sale of the land was aborted.[13]

The BOS Staff Report makes no mention of the 2003 BOS Resolution to *permanently* dedicate this parcel "as public trust land to be held by the County of Orange in trust…" Instead, the Staff Report included a conclusory statement to satisfy the Abandonment Act that the land "will not be used by the public and is not appropriate, convenient, or necessary for park purposes." This assessment was made even though the CEO Real Estate questionnaire attached to the Staff Report indicated that there had been no analyses performed as to whether to convey the property.[14]

According to the proposed sale documentation, if this sale had gone through, the homeowner would own the land with no use restrictions.

Getting the Word Out: Notice and Posting Requirements

Under OCCO Section 2-5-301, once the BOS has adopted, by unanimous vote, a resolution of intent to sell, the resolution shall be published in the following manner:

> "in a newspaper of general circulation in the County printed and published nearest the park all or a portion of which is proposed to be abandoned and in the newspaper of greatest circulation in the County if that newspaper is not the one printed and published nearest to such park."

The newspaper notice was printed in the OC Reporter. The Reporter publishes state and local legal, business, and real estate news in addition to public notice advertising. The publication comes out three times a week. Although the OC Reporter prints some articles of general interest, this publication exists primarily to provide a vehicle for legal notices. It is not within the spirit of the law to claim that this is the newspaper with the greatest circulation in order to provide notice to local citizens. For the Newport Back Bay, one would expect to see a notice of this sort in the

[10] CBRE Appraisal Report for Vacant Land APN 439-051-14, December 10, 2020.
[11] Private citizens cannot acquire ownership of County land through adverse possession by fencing off or otherwise taking control of the property.
[12] *Ibid*.
[13] May 5, 2021, TIC Revocation of Termination of Use Restriction and Reversionary Interest for APN 439-051-14.
[14] CEO Real Estate Real Property Conveyance Questionnaire for APN 439-051-14, attachment F to January 26, 2021 BOS Agenda Staff Report, Abandonment and Conveyance of Property in Upper Newport Bay.
BOS Staff Report submitted with the minutes for the BOS meeting of January 26, 2021.

Orange County Register or Daily Pilot. In addition, the legal notices published do not provide average interested citizens true notice of what is being sold as the notices are purely legal in nature and the properties are often described by plot number and other technical identifiers.

The Ordinance also requires the following:

> Not less than four (4) copies of the resolution shall be posted conspicuously not more than one hundred (100) feet apart at the point where any public highway or highways or park road or roads providing access into or through such park across the park boundaries and along the route of such highways or roads within the park boundaries.

Despite CEO Real Estate following the postings requirements, there is no official record documenting the postings, nor is there evidence that these notices provided effective notice to adjacent homeowners, the citizens that routinely enjoy the Back Bay pathways, or the general public interested in preserving park land. Unsurprisingly, news of the proposed sale reportedly only came to light through neighborhood word of mouth.

Stopping the Sale

On April 13, 2021, the BOS was scheduled to vote to approve the sale. Had the Supervisor representing District 2 remained in office, the sale of this land would most likely have gone through. However, newly elected District 2 Supervisor Katrina Foley became aware of the pending sale and asked to table that vote. As a result, Item 45 was taken off the agenda and moved to May 11, 2021.

Meanwhile, having learned of the proposal to abandon this public land by word-of-mouth, a petition was circulated by concerned citizens seeking to stop the sale. Under the Government Code and local ordinance, a petition carrying a minimum of 200 voters is sufficient to force the BOS to either stop the sale or put it to a countywide public vote.[15] On May 7, 2021, Supervisor Foley sent out a newsletter stating:

> More than 790 residents signed a petition to oppose the sale and many of you have reached out to me to express frustration and concern with the loss of open space. I decided to remove this item from the agenda instead of moving forward with a vote. OC Parks will work to revoke the fence.

The petitioners, which ended up numbering more than 1300, were successful in causing the scheduled vote on the sale of APN 439-051-14 to be deleted from the May 11, 2021 agenda. No further official action has been taken with respect to the sale of that parcel.

Of concern is that the parcel in question remains fenced off by the homeowner who attempted to purchase the land. As discussed above, the fenced-off parcel sits adjacent to a pathway that has been established for recreational use and has a view of the back bay. It is also within 40 feet of the paved pedestrian road/bikeway/equestrian trail that runs around the Back Bay. If the fence were not there, the property would remain as originally intended and would provide additional open space for the public as well as the wildlife found in the Back Bay.

[15] OCCO § 2-5-301.

After the failed attempt to purchase the property and the movement to remove the fence was underway, on July 8, 2021, the law firm of Rutan and Tucker sent a letter on behalf of the homeowner threatening to sue the County if they followed through with their intention to remove the fence. Their argument was, in part, based on the claim that the homeowner and, allegedly, the County, believed the Subject Property belonged to the homeowner. This is nonsensical in view of his attempt to purchase the land and at no time has the County (or the City of Newport Beach[16]) indicated that the land was not County property. After a closed session hearing, the BOS directed CEO Real Estate to respond by confirming that although the land remained County property, no action would be taken with respect to the fence. This letter was sent out on July 14, 2021.

In addition to being an eyesore, the existing fence restricts public and wildlife access to land that has consistently been identified as public land trust property and declared an "integral part" of the adjacent tidelands. It was reported to the OCGJ that the decision to allow the fence to remain in place was to avoid the homeowner from reclaiming a small section of land that exists just outside of his fence and is part of the walking path. However, this very small swath of land is not comparable to the property that he has fenced off that belongs to the public. Furthermore, if the

[16] In response to a citizen inquiry in August 2021, a representative from the City of Newport Beach wrote that the fence in question "is on County land" and the County has jurisdiction to remove the fence.

homeowner were to enclose his property, the walking pathway would be adjusted accordingly with little impact. It is, therefore, not a reasonable trade-off.

Ironically, the Coastal Commission has a sign posted upon entering the Back Bay entitled "Making Stewardship a Priority" that emphasizes the need to protect that land and ecosystem for present and future generations. The County remains the owner of the property and the homeowner may not build on the land. However, with the chain link fence in place, the homeowner has effectively usurped that valuable land parcel at no cost and without the permission of the State Land Commission or the Coastal Commission. The fence is an eyesore. It is inconsistent with the purpose and goals of the public trust designation put in place by the Orange County Board of Supervisors, the Coastal Commission, and the State Land Commission.

Case Study: Land Adjacent to Peter's Canyon Regional Park

The Back Bay parcel was not the only subject of the complaints that the OCGJ received regarding public land sales. Complainants contend that public land located in the City of Orange adjacent to Peter's Canyon Regional Park was sold in January 2021 without following the proper procedures. It was alleged that this was against the public interest and amounted to another improper gift of public lands. However, further examination into this land transfer did not raise the same concerns as the Newport Back Bay proposed transaction.

The property in question, identified as APN 104-290-19 and 104-290-26 (together, the "Orange Parcels"), was given to the County via an "irrevocable dedication" by TIC in 1992. The property was designated as open space but was never classified as public trust land. It also was not within the perimeter fencing of Peter's Canyon Regional Park. This property was situated behind the property of a private homeowner and was inaccessible to the public. The homeowner requested that he be allowed an access easement for another entrance to his property and to purchase the Orange Parcel located directly behind his property.

Unlike the staff report for the Newport Back Bay transaction, the staff report completed for the Orange property indicated investigation and analysis had gone into the process.[17] The parcel was appraised at $130,000. This was charged to the purchaser along with a processing fee of $2,500. The purchase agreement also required that before any construction began, the owner must create and maintain a designated fuel modification zone where drought-tolerant and fire-resistant vegetation would replace existing plants.

Given the positioning of this land parcel, the fact that it was not a part of Peter's Canyon Regional Park, and was not designated as public trust land, its sale does not raise the same concerns as the Back Bay property.

Effective Notice

When the County is considering selling land that has been designated as park land, open space or land encumbered by conservation restrictions or easements, the government is charged with being a steward for that land. In the case of dedicated public trust land, the Public Trust Doctrine places a *duty* on the government to protect the people's common heritage of trust resources.

Even if the BOS comes to its own conclusion that the sale of public park or public trust land is appropriate, it is incumbent upon the County to ensure that the public is properly advised of the proposed sale. Unfortunately, the legal requirements for public notice and postings intended to provide awareness do not achieve that goal. If the "publication of general circulation" used is no more than a legal transaction reporter and posted notices are limited to a small area with only minimal detail, that does not provide proper information or transparency to the public.

Similarly, Section 2-5-301 of the County's land abandonment ordinance requires the following with respect to postings:

[17] January 26, 2021 BOS Agenda Staff Report, with attachments, for Conveyance of Real Property and Access Easements at Peter's Canyon Regional Park.

> Not less than four (4) copies of the resolution shall be posted conspicuously not more than 100 feet apart at the point where any public highway or highways or park roads or roads providing access into or through such park across the park boundaries and along the route of such highways or roads within the park boundaries.

Portions of a park or natural habitat may be "off the beaten path," but are still important to the overall environment, wildlife, and conservation values. In addition, citizens who do not currently live nearby or regularly visit the property also wish to preserve natural habitats and park land; these open spaces are not only for current residents and visitors, but also for future generations.

To be effective, notices must: 1) be clear in describing and depicting the land in question, 2) be placed in publications and physical areas that are readily observed, 3) provide notice to interested parties that may not physically visit the property during the notice period, and 4) be written in a manner that is easily understood by the public. To this end, the OCGJ encourages that mailers, social media, meaningful newspaper notices, and physical postings all be utilized to provide proper notice to the public at large

COMMENDATIONS

CEO Real Estate for its consistent and conscientious efforts to protect the County's public land and assets.

FINDINGS

F1 Public land trust dedications and other conservation easements affecting County land are not always properly recorded in County or State records, which impacts later County land sales decisions and notice requirements.

F2 Owing to the influence of the office of the District 2 Supervisor at the time, the Board of Supervisors Staff Report and the OC Park Commission Staff Report prepared for the 2021 potential sale of Newport Beach Back Bay parcel APN 439-051-14 were conclusory, incomplete, and contained inaccurate statements.

F3 Posting and notice requirements by the State and County fail to provide adequate information to interested citizens of the proposed sale of public land designated for park or open space use.

F4 There is no public record of the State Coastal Commission being notified of the potential sale of a parcel of the Newport Beach Back Bay which was in the Commission's jurisdiction.

F5 By allowing the owner-installed fence surrounding APN 439-051-14 to remain in place, the County has permitted the homeowner to inappropriately privatize this parcel at no cost to the homeowner and in a manner inconsistent with the well-established public trust designation.

RECOMMENDATIONS

R1 CEO Real Estate should ensure that conservation easements, designations of public trust land, and similar restrictions are properly researched and recorded with the County Recorder prior to any sale. F1 Timeline: Immediate and ongoing.

R2 The Orange County Board of Supervisors, CEO Real Estate, and OC Parks Commission should establish and follow procedures to ensure that staff reports are factually accurate, complete, and include any conservation easements or public trust designations. F2 Timeline: Immediate and ongoing.

R3 Private individuals attempting to purchase public park land that will not be put up for public auction should pay for mailings of the relevant Board of Supervisor Resolution (including photographs accurately and clearly depicting the subject property) to all owners of property adjacent to the subject property and all property/ homeowners within one-quarter mile radius (1,320 feet) of the subject property. F3 Timeline: Effective date no later than December 31, 2022.

R4 In addition to the posting requirements found in Section 2-5-301 of the County's land abandonment ordinance, during the same proscribed time, CEO Real Estate should post copies of the relevant BOS Resolution around the perimeter of the subject property in a conspicuous manner and at reasonable distance intervals as determined by CEO Real Estate. CEO Real Estate should take the following additional measures: check the status of the posting at least once during the posting period and maintain photographs documenting the postings. F2 Timeline: Immediate.

R5 The CEO Real Estate website should list all proposed land transactions and provide a link to the related Board of Supervisors Resolution and transaction documents, if any. F3 Timeline: Effective Date no later than December 31, 2022.

R6 CEO Real Estate should establish and follow a procedure to notify the Coastal Commission and any other applicable agency at least 45 days in advance of a Board of Supervisors vote to sell any public land that has been entrusted to that agency. F4 Timeline: Effective Date no later than December 31, 2022.

R7 The Orange County Board of Supervisors should order the removal of the chain link fence surrounding APN 439-051-14 along with any other encroachments on that parcel to return the land to its natural (original) state. F5 Timeline: Removal to occur on or before December 31, 2022.

RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g., District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required or requested from the following governing bodies within 90 days of the date of the publication of this Report:

Responses required and requested:

90 Day Response Required	F1	F2	F3	F4	F5
OC Board of Supervisors	X	X	X	X	X

90 Day Response Required	R1	R2	R3	R4	R5	R6	R7
OC Board of Supervisors	X	X	X	X	X	X	X

90 Day Response Requested	F1	F2	F3	F4	F5
CEO Real Estate	X	X	X	X	X

90 Day Response Requested	R1	R2	R3	R4	R5	R6	R7
CEO Real Estate	X	X	X	X	X	X	X

90 Day Response Requested	F1	F2	F3	F4	F5
OC Parks Commission		X			X

90 Day Response Requested	R1	R2	R3	R4	R5	R6	R7
OC Parks Commission		X					X

REFERENCES

AB 425 1(g) and 2(a) (amending Section 2 of Chapter 317 of the Statutes of 1997 and adding Sections 4.5 and 5.5 to Chapter 74 of the Statutes of 1978).

California Civil Code section 1009.

California State Lands Commission, Minute Item No, 24 (Calendar Item C24), April 5, 2004. CEO Real Estate file for proposed conveyance of APN 439-051-14; https://www.slc.ca.gov/Meeting_Summaries/2004_Documents/04-05- 04/Items/040504C24.pdf

County Park Abandonment Law, Cal. Government Code section 25580, et. seq.

Correspondence from TIC VP/Assistant General Counsel to homeowner/ potential purchaser and counsel April 30, 2019.

Correspondence between Rutan and Tucker and OC Board of Supervisors dated July 8, 2021, and response from CEO Real Estate dated July 14, 2021 re APN 439-051-14. https://spon-newportbeach.org/wp-content/uploads/2021/07/Thomas-A-Miller-letter-to-Buck-Johns-2021-07-14.jpeg

Irrevocable Offer of Dedication from TIC to the County of Orange for the Westbay and Bluff parcels, recorded as document 89-388787; https://nbgis.newportbeachca.gov/images/pdf/OR/OR_89-388787.pdf.

Codified Ordinances of the County of Orange, Sec. 2-5-300, et. seq.

Orange County Board of Supervisors Board Meeting agenda and minutes, January - May 2021, with related documents, Staff Reports and attachments.

Orange County Board of Supervisors Agenda Staff Report, January 26, 2021: Abandonment and Conveyance of Property in Upper Newport Bay; http://cams.ocgov.com/Web_Publisher_SAM/Agenda01_26_2021_files/images/A20 - 001239.HTM

Orange County Board of Supervisors Agenda Staff Report, January 26, 2021: Conveyance of Real Property and Access Easements at Peter's Canyon Regional Park. http://cams.ocgov.com/Web_Publisher_SAM/Agenda01_26_2021_files/images/A20 - 001245.HTM

Orange County Board of Supervisors Resolution No. 03-385, adopted December 16, 2003.

Orange County Parks Commission meeting agenda and minutes, January 7, 2021.

TIC Termination of the Restriction and Reversionary Interest, December 16, 2020.

TIC Revocation of Termination of Use Restriction and Reversionary Interest for APN 439-051-14, May 5, 2021.

GLOSSARY

BOS	Orange County Board of Supervisors
CEO Real Estate	A public agency that provides real estate analysis, counsel, land development services, leasing representation and lease management services to the Orange County BOS as well as other departments within the County of Orange.
OCCO	Orange County Codified Ordinances
OCGJ	Orange County Grand Jury
TIC	The Irvine Company