

MEMORANDUM

TO: Board of Trustees

FROM: Tim Callicrate
Chair of the Board

Indra Winquest
General Manager

Josh Nelson
General Counsel

SUBJECT: Review, discuss, and provide potentially approve a scope of work for special legal counsel related to the beach deed and authorize the General Manager to execute a contract with counsel not-to-exceed \$25,000

DATE: September 30, 2021

I. RECOMMENDATION

That the Board of Trustees review, discuss, and provide potentially approve a scope of work for special legal counsel related to the beach deed and authorize the General Manager to execute a contract with counsel not-to-exceed \$25,000.

II. BACKGROUND

IVGID owns and maintains beaches along Lake Tahoe. These beaches were deeded to IVGID in 1968. This deed provides that the beaches shall be used "... only for the purposes of recreation by, and for the benefit of property owners and their tenants (specifically including occupants of motels and hotels) within the Incline Village General Improvement District as now constituted, and as the Board of Trustees of said District may determine, the guests of such property owners...."

Earlier this year, the Board of Trustees considered its historic practice of providing beach access to non-resident employees. During its discussion, the Board of Trustees requested that the General Manager retain special legal counsel to review this issue in more detail. In addition, the General Manager has convened an advisory committee to assist him in considering potential edits to Ordinance No. 7 for Board consideration. Some of these edits likely will involve beach access, and the Board will consider these potential edits in the upcoming months. It may be advisable to have special legal counsel review these potential edits for

consistency with the beach deed. Lastly, the Board may wish to make amendments to Policy 16.1 related to the recreation roll. Again, this may be an area where special counsel could provide assistance.

This item seeks Board approval of the proposed scope, selection process, and not-to-exceed amount for this work. For scope, the Board could retain special legal counsel for (1) a review of IVGID's historic practice of providing beach access to retired Trustees, non-resident employees, retirees and their guests to determine compliance with the deed and (2) to review any proposed edits to Ordinance No. 7 or Policy 16.1 to determine compliance with the deed. Please note that this scope of work reflects comments provided by the Board on September 2nd. It also reflects public comment that objected to the prior use of the word "ensure." Of course, any legal opinion is not legally binding, even if it may be instructive and help inform the Board's consideration of the matter.

To provide a competitive selection process, the Board should consider soliciting proposals from interested firms or attorneys. Selection of the firm or attorney could be structured a number of ways. However, to ensure this project moves forward expeditiously, the Board may wish to authorize the Chair and General Manager with input from the General Counsel to review and select the special counsel. The General Manager would then be authorized to execute a contract with the selected counsel with an expenditure limit of not-to-exceed \$25,000. This is less than the General Manager's general expenditure authority.

Please note that one option noted below would to not move forward with the scope of work at this time but to seek proposals for a judicial confirmation under NRS 43. This has been discussed previously by the Board but included as a potential option to ensure the Board is aware of potential ways forward.

III. FINANCIAL IMPACT AND BUDGET

The proposed impact would be not-to-exceed \$25,000. The funds will come from the Beach Fund.

IV. ALTERNATIVES

Below are alternatives to the recommended action:

1. Review and revise the scope of work for special counsel.
2. Modify the selection process.

3. Provide staff direction to seek proposals from interested special counsel to seek a judicial confirmation under NRS 43.
4. Decline to move forward at this time with this project.

V. **BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

VI. **COMMENTS**

Below is the text of NRS 43 provided as a reference:

CHAPTER 43 - JUDICIAL CONFIRMATION

<u>NRS 43.010</u>	Short title.
<u>NRS 43.020</u>	Legislative declaration.
<u>NRS 43.030</u>	Definitions.
<u>NRS 43.040</u>	"Act" defined.
<u>NRS 43.050</u>	"Executive Officer" defined.
<u>NRS 43.060</u>	"Governing body" defined.
<u>NRS 43.070</u>	"Instrument" defined.
<u>NRS 43.080</u>	"Municipality" defined.
<u>NRS 43.090</u>	"Project" defined.
<u>NRS 43.100</u>	Petition for judicial examination and determination of validity of power, instrument, act or project: Facts; verification.
<u>NRS 43.110</u>	Action in nature of proceeding in rem; jurisdiction of parties.
<u>NRS 43.120</u>	Notice of filing of petition: Contents; service by publication and posting.
<u>NRS 43.130</u>	Owner of property or interested party may move to dismiss or answer; effect of failure to appear.
<u>NRS 43.140</u>	Hearing; findings; judgment and decree; costs.
<u>NRS 43.150</u>	Review of judgment: Time for application.
<u>NRS 43.160</u>	Applicability of Nevada Rules of Civil Procedure; early hearings.
<u>NRS 43.170</u>	Effect of chapter.

NRS 43.010 Short title. This chapter shall be known as the Judicial Confirmation Law.
(Added to NRS by [1969, 134](#))

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NRS 43.020 Legislative declaration. The Legislature of the State of Nevada determines, finds and declares in connection with this chapter:

1. An early judicial examination into and determination of the validity of any power, instrument, act or project of any municipality promotes the health, comfort, safety, convenience and welfare of the people of this state.

2. The provision in this chapter of the purposes, powers, duties, privileges, immunities, rights, liabilities and disabilities pertaining to municipalities will serve a public function and effect a public purpose.

3. Any notice provided for in this chapter is reasonably calculated to inform each person of interest in any proceedings thereunder which may directly and adversely affect the person's legally protected interests, if any.

4. The rule of strict construction shall have no application to this chapter, but this chapter shall be liberally construed to effect the purposes and objects for which it is intended.

(Added to NRS by [1969, 134](#))

NRS 43.030 Definitions. Except where the context otherwise requires, the definitions in [NRS 43.040](#) to [43.090](#), inclusive, govern the construction of the Judicial Confirmation Law.

(Added to NRS by [1969, 135](#))

NRS 43.040 "Act" defined. "Act" means any action, proposed or taken, by a municipality in the exercise of any power.

(Added to NRS by [1969, 135](#))

NRS 43.050 "Executive Officer" defined. "Executive Officer" means the de jure or de facto Governor of this state, mayor, chair, president or other titular head or chief official of the municipality proceeding under this chapter, but "Executive Officer" does not include a city manager, county manager or other chief administrator of a municipality who is not its titular head.

(Added to NRS by [1969, 136](#))

NRS 43.060 "Governing body" defined.

1. "Governing body" means:

(a) The state commission or state board responsible for the exercise of a power by the State or responsible for an instrument, act or project of the State to which court proceedings authorized by this chapter and initiated by the State pertain; and

(b) The city council, city commission, board of supervisors, board of commissioners, board of trustees, board of directors, board of regents or other legislative body of a municipality proceeding under this chapter.

2. "Governing body" does not include the Legislature of the State of Nevada if the municipality is the State or any corporation, instrumentality or other agency thereof.

(Added to NRS by [1969, 135](#))

NRS 43.070 "Instrument" defined. "Instrument" means any contract, deed, bond, other security, proceedings or other document of any kind, proposed, or executed or otherwise made, and pertaining to a municipality proceeding under this chapter.

(Added to NRS by [1969, 135](#))

NRS 43.080 "Municipality" defined. "Municipality" means the State of Nevada, or any corporation, instrumentality or other agency thereof, or any incorporated city, any unincorporated town, or any county, school district, conservancy district, drainage district, irrigation district, general improvement district, other corporate district constituting a political subdivision of this State, housing authority, urban renewal authority, other type of authority, the Nevada System of Higher Education, the Board of Regents of the University of Nevada, or any other body corporate and politic of the State of Nevada, but excluding the Federal Government.

(Added to NRS by [1969, 135](#); A [1983, 111](#); [1987, 1717](#); [1993, 362](#); [2005, 362](#))

NRS 43.090 "Project" defined. "Project" means any undertaking, proposed or taken, to which a power, instrument or act of a municipality proceeding under this chapter and before a court for judicial confirmation pertains.

(Added to NRS by [1969, 135](#))

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NRS 43.100 Petition for judicial examination and determination of validity of power, instrument, act or project: Facts; verification.

1. In its discretion the governing body may file or cause to be filed a petition at any time in the district court in and for any county in which the municipality is located or any act or project is undertaken, wholly or in part, praying a judicial examination and determination of the validity of any power conferred or of any instrument, act or project of the municipality, whether or not such power has been exercised, such instrument has been executed or otherwise made or such act or project has been taken.

2. Such petition shall set forth the facts whereon the validity of such power, instrument, act or project is founded and shall be verified by the Executive Officer.

(Added to NRS by [1969, 135](#))

NRS 43.110 Action in nature of proceeding in rem; jurisdiction of parties. The action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as provided in this chapter.

(Added to NRS by [1969, 136](#))

NRS 43.120 Notice of filing of petition: Contents; service by publication and posting.

1. Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any instrument therein mentioned may be examined.

2. The notice shall be served:

(a) By publication at least once a week for 5 consecutive weeks by five weekly insertions, in at least a newspaper of general circulation in the municipality; and

(b) By posting the same in the office of the municipality at least 30 days prior to the date fixed in the notice for the hearing on the petition.

3. Jurisdiction shall be complete after such publication and posting.

(Added to NRS by [1969, 136](#))

NRS 43.130 Owner of property or interested party may move to dismiss or answer; effect of failure to appear.

1. Any owner of property in the municipality or any other person interested in the power, instrument, act or project, or otherwise interested in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court.

2. The petition shall be taken as confessed by all persons who fail so to appear.

(Added to NRS by [1969, 136](#))

NRS 43.140 Hearing; findings; judgment and decree; costs.

1. The petition and notice shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants.

2. Costs may be divided or apportioned among any contesting parties in the discretion of the district court.

(Added to NRS by [1969, 136](#))

NRS 43.150 Review of judgment: Time for application. Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within 30 days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within 30 days.

(Added to NRS by [1969, 136](#))

NRS 43.160 Applicability of Nevada Rules of Civil Procedure; early hearings.

1. Nevada Rules of Civil Procedure shall govern in matters of pleading and practice where not otherwise specified herein.

2. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

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3. All cases in which there may arise a question of the validity of any matter under this chapter shall be advanced as a matter of immediate public interest and concern, and be heard at the earliest practicable moment.

(Added to NRS by 1969, 136)

NRS 43.170 Effect of chapter.

1. This chapter, without reference to other statutes of this state, except as otherwise expressly provided in this chapter, shall constitute full authority for the exercise of the powers therein granted.

2. The powers conferred by this chapter shall be in addition and supplemental to, and not in substitution for, and the limitations imposed thereby shall not affect the powers conferred by, any other law.

3. Nothing contained in this chapter shall be construed as preventing the exercise of any power granted to the municipality, acting by and through the governing body, or any officer, agent or employee of the municipality, or otherwise, by any other law.

4. No part of this chapter shall repeal or affect any other law or part thereof, it being intended that this chapter shall provide a separate method of accomplishing its objectives and not an exclusive one; and this chapter shall not be construed as repealing, amending or changing any such other law.

(Added to NRS by 1969, 136)