MINUTE ITEM
This Calendar Item No. 23
was approved as Minute Item
No. 23 by the State Lands
Commission by a vote of 3
0 at its 2/5/92
meeting.

CALENDAR ITEM

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REVIEW OF COUNTY OF ORANGE PROPOSED LEASES
INVOLVING GRANTED FILLED TIDE AND SUBMERGED LANDS

PARTY:

County of Orange
P. O. Box 4106
Santa Ana, California 92702-4106

BACKGROUND

Harbor Island in Newport Bay is composed of 33 upland private residential lots. The island is surrounded by a strip of filled tidelands approximately 30 feet wide (see Exhibit "A"). There is no public access to Harbor Island except via the water-covered tide and submerged lands of Newport Bay. At the eastern end of the island are three lots within the legislative grant to the City of Newport Beach (Chapter 74, Statutes of 1978), the remaining 30 are within the legislative trust grant to the County of Orange (Chapter 526, Statues of 1919, later amended by Chapter 415, Statutes of 1975).

The boundary of the tidelands was litigated with the upland owners in 1928. As Newport Bay was dredged and filled to create one of the world's largest small craft harbors, certain portions of the tidelands surrounding Harbor Island were filled between the adjudicated mean high tide line and the United States Army Corps of Engineers Bulkhead Line. These lands subsequently were improved with patios, decks, sprinklers, landscaping and other yard improvements by the upland owners and remain generally inaccessible to the public.

In 1983, while legislation was being pursued for a longer period, an interim five-year lease, allowing existing landscape uses, was negotiated and entered into between the County and the homeowners. The leases called for back rent to be charged from 1981.

CHAPTER 715, STATUTES OF 1984

In 1984 the Legislature enacted Chapter 715, Statutes of 1984. The Legislature found that the filled tidelands surrounding Harbor Island had been filled and reclaimed, were no longer submerged or below the mean high tide line, were improved with landscaping and other yard improvements, were generally inaccessible to the public and in their existing condition were not suitable for public trust uses. The Legislature also found that in view of the amount of public trust land remaining in Newport Bay that is suitable for public trust use that the Harbor Island tidelands had been leased to the owners of adjacent upland residences on a short term basis. The Legislature further found that except for the production of income to support the statutory trust, the lands were not presently needed for use by the public and that Orange County could enter into a lease with the homeowners for these yard areas for a period of 49 years or less. During the term of the leases, the lands were to be considered excess to public trust needs in the area and the public trust easement was not to be exercised on the leased land. The Legislature specified that the consideration to be received by the County for the leases of the Harbor Island tidelands was to be the fair market value of the lands, taking into account the added value to the adjacent uplands provided by acreage, usage, and littoral location of the tidelands, as well as the benefits of their exclusive use by the adjacent upland owner. The form of the leases and the range of consideration to be received by the County were required to be approved by the State Lands Commission. Rental from these leases is to be deposited into the County trust fund for tideland trust uses, including enhancement of the Upper Newport Bay Ecological Reserve.

VALUATION

In 1980, the County hired John Donahue, MAI, to appraise the tidelands parcels and determine rent for issuance of annual encroachment permits. Donahue's total rent calculation was $82,700 per year.

The homeowners disputed the Donahue report. They requested and were granted additional time to review the report and analyze the encroachment issues. George Hamilton Jones, MAI, was retained by the Harbor Island Homeowner's Association to appraise the rental value of the tidelands. Jones concluded that rent should be $31,378 per year.

In 1983, the homeowners entered into five-year Interim Tidelands Lease agreements with the County. The agreement provided that both parties would choose and split the cost of an additional

appraisal report to determine fair market rent. Rent was to be retroactive to 1981. Robert Foreman, MAI, Real Estate Analysts of Newport, was mutually selected to do the appraisal. The Foreman appraisal concluded that the County should receive rent of $26,910 per year. The County staff and staff of the State Lands Commission disagreed with the results of the appraisal claiming that Foreman's rate of return was too low and the utilizatic , discount was too high.

The staff of the Commission and office of the Attorney General have been working with Orange County on the resolution of this problem since 1981. Since that time, three appraisals have been done by independent MAI appraisers. All three have discounted the fee value by 75 percent or more. Reasons given for the discount to fee value are that uses permitted in the County leases are restricted by legislation to landscaping and other yard improvements and that the filled tidelands do not increase the buildable area permitted on the adjacent "upland" lots.

There has been continuing disagreement over the percentage of discount since there is no market data which supports a specific discount, only these appraisers' opinions. The SLC staff recognizes there are limitations on the use of the filled tidelands but has felt that a 75 percent discount was too great - 50 percent was proposed by staff. The County and the homeowners have agreed to a compromise discount of 62.5 percent. Rent would then be based on 37.5 percent of fee value.

The other major point of disagreement has been the rate of return. The homeowners had proposed rent at 4 percent of the discounted land value based on the two most recent appraisals. The SLC staff had suggested the County receive 9 percent, similar to the rate of return on State Lands' leases. The County negotiators and the homeowners at one point agreed to a compromise rate of return at 6.5 percent. Staff of the Commission determined that compromise on either the discount factor or the rate of return could be justified but not both. The negotiators for the parties have now adopted the 62.5 percent discount factor and 9 percent rate of return, with requirements for Consumer Price Index (CPI) increases and periodic reappraisals.

The proposed 49-year lease would run from March 22, 1988 to coincide with the expiration of the interim lease period, and provides for a CPI adjustment of rent every three years with reappraisal of fee value every 10 years. In no event would the rent decrease. The discount rate of 62.5 percent and return rate

of 9 percent would remain in effect for the entire 49 year lease term. The homeowners are required to pay back rent from 1981.

SUMMARY OF APPRAISALS AND PROPOSED SETTLEMENT

	Donahue	Jones	Foreman	Appraisal Average	Settlement
% Discount for Land Utilization	85.2 (average)	75-100	75	78.4-86.7	62.5
Total Tidelands: $ Value after Utilization Discount	$827,000	$1,255,057	$672,761	$918,272	$1,009,139
Rate of Return (%):	10.0	2.5	4.0	5.5	9.0
Rent to County per year (81 - 86)	$82,700	$31,378	$26,910	$46,996	$90,822

USE: Residential yard, landscaping and non-permanent recreational purposes

TERM: 49 years, commencing March 22, 1988

RETROACTIVE RENT: January 1, 1981 to March 21, 1988: $669,934

RENT: Paid annually. Calculated by $ (appraised land value) x .375 (land utilization discount factor) x 9% (rate of return)

LATE CHARGE: $100 plus 1.5 per cent per month

REVISION OF RENT: CPI adjustment every 3 years (1991, 1994, 1997, etc.)

REAPPRAISAL OF RENT: Every 10 years (March 1998, 2008, etc.)

INSURANCE: $500,000 Comprehensive General Liability

ASSIGNMENT: Prior written consent of Orange County Director, EMA/Harbors, Beaches, and Parks required, except by lender in the event of foreclosure or sublease to adjacent owner.

IMPROVEMENTS: Director, Environmental Management Agency/Harbors, Beaches, and Parks consent required for construction of any non-listed improvement. Removal of improvements at Tenant's cost at expiration or termination of lease.

The leases are for a term of 49 years. Aggregate rent will be $90,822 per year - 1981 through 1986; $102,527 per year from 1987 to March 1991; and $118,086 from March 1991 through March 1992. Total rent due through March 1992 is $1,095,604. All retroactive rent will be paid at the time the leases are signed by the homeowners. A breakdown showing individual lots and corresponding rent due for 1991 - 1992 is shown below.

HARBOR ISLAND RENT (March 22, 1991 through March 21, 1992)

LOT	RENT	LOT	RENT
1	$5,826.64	16	$3,425.08
2	2,414.07	PAR 1	26,435.49
3	2,154.11	PAR 2	15,579.51
4	2,154.11	20 & 21	6,938.20
5	1,938.70	22	3,469.62
6	1,938.70	23	3,136.08
7	2,369.53	24 & 25	6,533.48
8	2,369.75	26	3,441.36
9	1,864.02	27	3,469.10
10	1,864.02	28	3,122.22
11	2,314.50	29	3,455.23
12	1,864.02	30	2,909.43
13	1,864.02	31	693.79
14	1,764.93	32	982.93
15	1,608.41	33	185.00
total lots - 30	total current rent per year		$118,086.05

LEGAL REQUIREMENTS

To authorize the leasing of the tidelands to the homeowners, special legislation was required. The existing residential landscaping use was determined not consistent with the public trust purposes of promoting commerce and navigation. In 1984, the Orange County Board of Supervisors approved Resolution Number 84-582 which supported Assembly Bill 2940. The bill was enacted as Chapter 715. In it, the Legislature found that Harbor Island is generally inaccessible and not suitable for public trust uses and authorized the County to lease the tidelands parcels to the adjacent homeowners for private residential yard use with a term not to exceed 49 years. The statute also provided that the form of the lease and rent would be subject to approval by the State Lands Commission prior to execution. The form of the lease is attached as Exhibit "C".

A four-fifths vote of the Orange County Board of Supervisors is required to enter into the leases (Government Code 25536). The Supervisors voted unanimously (5 - 0) on January 28, 1992 to approve the leases.

PROPOSED SETTLEMENT

The unique situation and varying opinions of value by qualified appraisers demonstrate the difficulty of determining what is the fair rent for use of these tidelands. Ongoing negotiations with representatives of the Harbor Island Homeowners Association have resulted in an agreement that has now been approved by the homeowners and the tidelands trustee - the Orange County Board of Supervisors. The State Lands Commission staff has been involved in extensive negotiations and review of the proposed leases and schedule of rent and is hereby recommending to the commission that it approve the leases as to form and range of consideration.

AB 884:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project, as described in CHapter 715, Statutes of 1984, and in the proposed leases of Orange County, as set forth in Exhibit "C", is exempt under Class 1, Maintenance of Existing Facilities, 14 Cal. Code Regs. 15301.

   Authority: P.R.C. 21084 and 14 Cal. Code Regs. 15300.

EXHIBIT:

A. Site Map
B: Location Map
C: Proposed Lease Form

IT IS RECOMMENDED THAT COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, MAINTENANCE OF EXISTING FACILITIES (14 CAL. CODE REGS. 15301), AS DESCRIBED IN CHAPTER 715, STATUTES OF 1984, AND IN THE LEASES PROPOSED BY THE COUNTY OF ORANGE (EXHIBIT "C").

2. FIND THAT, IN CONFORMANCE WITH CHAPTER 715, STATUTES OF 1984, THE FORM AND RANGE OF CONSIDERATION TO BE RECEIVED BY THE COUNTY OF ORANGE INVOLVING THE PROPOSED LEASES, AS SET FORTH IN EXHIBIT "C", HAVE BEEN REVIEWED BY AND ARE APPROVED BY THE COMMISSION.

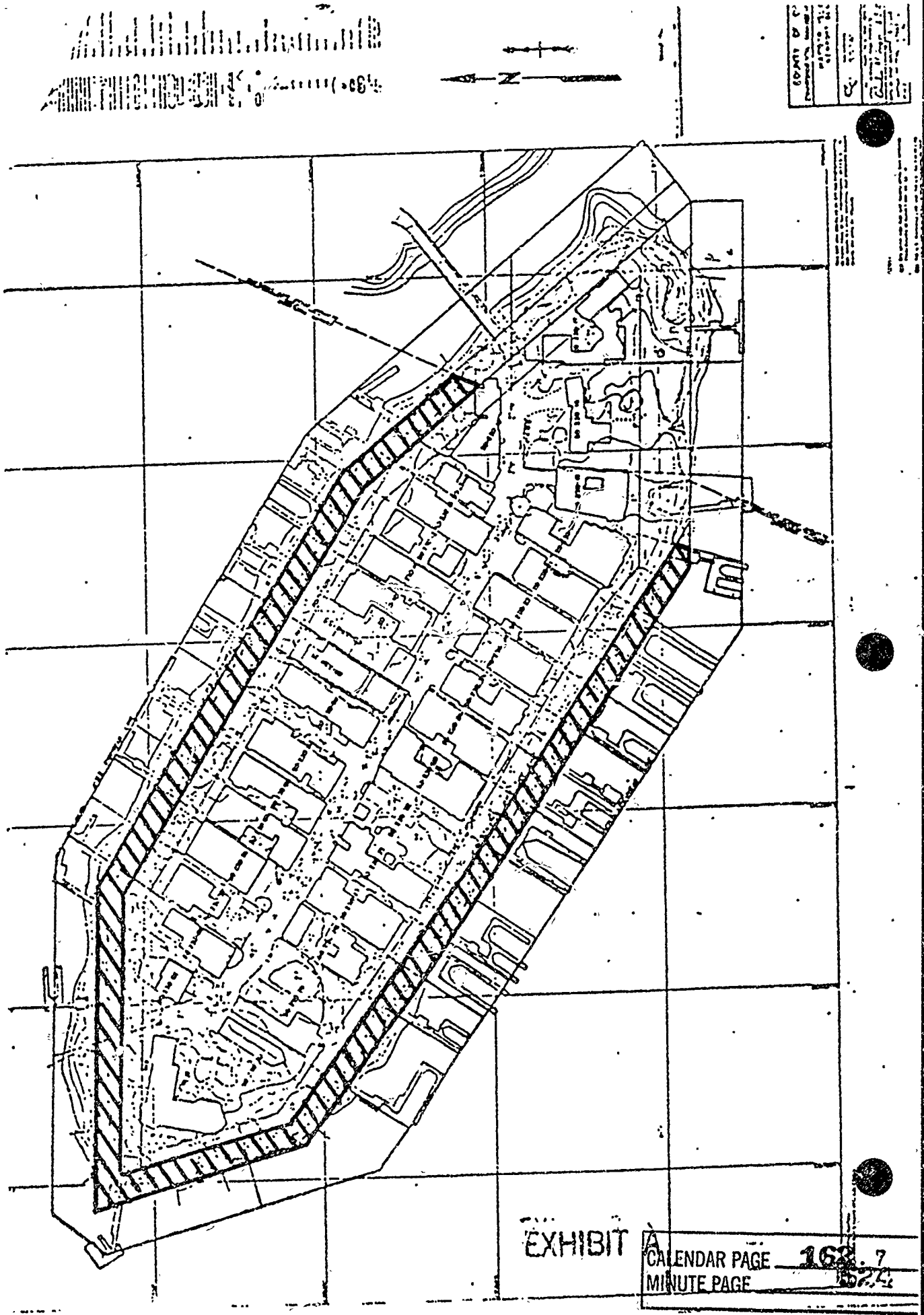
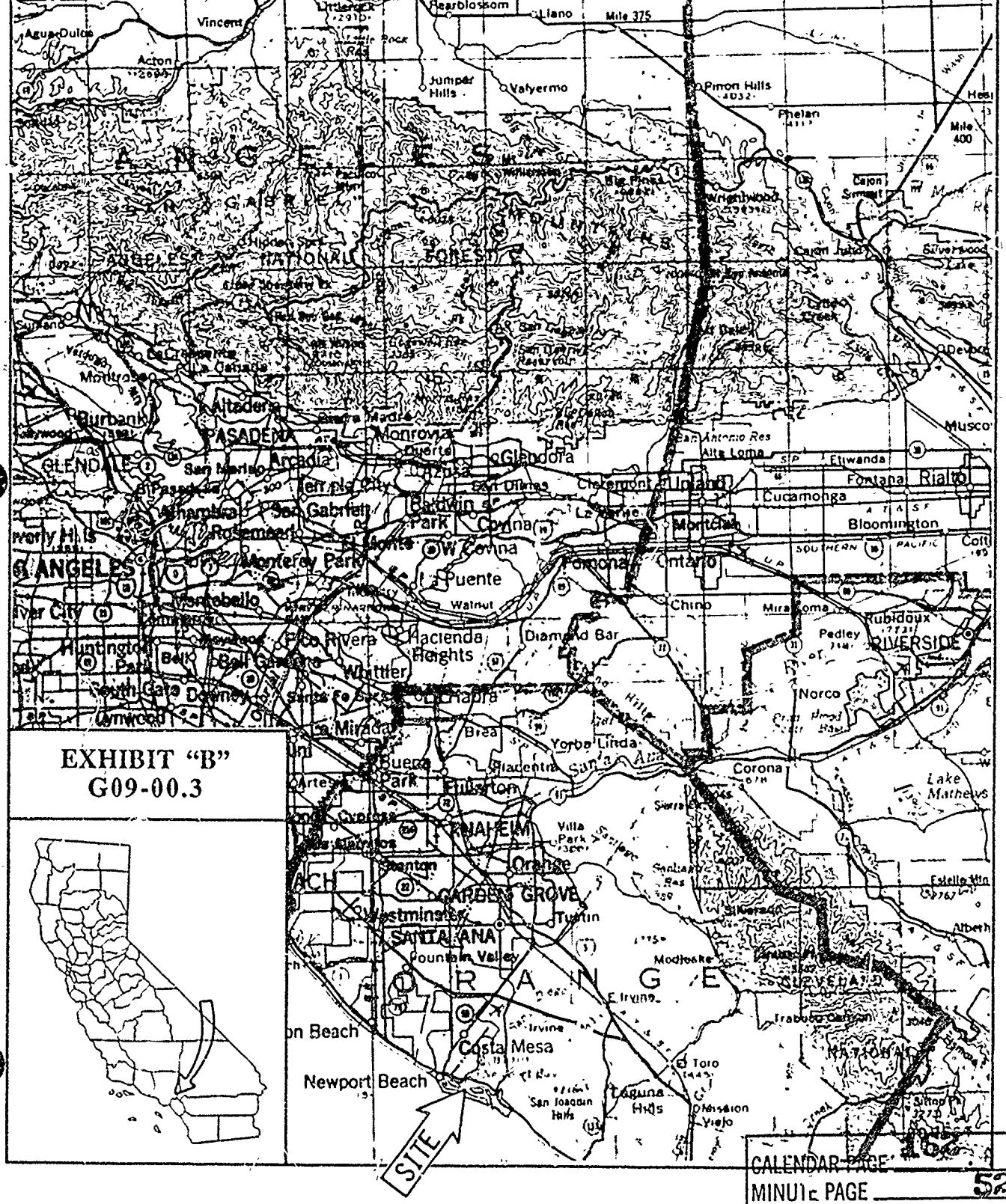


EXHIBIT A

CALENDAR PAGE 163.7
MINUTE PAGE 624



CALENDAR PAGE
MINUTE PAGE 525

HA55D-26
Lower Newport Bay
(Tidelands)

EXHIBIT "C"

LEASE

Table of Contents

Clause Number and Name	Page
1. Definitions	1
2. Premises	1
3. Termination of Prior Agreements	1
4. Limitations of the Leasehold	2
5. Use	2
6. Term	3
7. Retroactive Rent	3
8. Rent	3
9. Revision of Rent	3
10. Reappraisal of Rent	4
11. Rent Payment Procedure	7
12. Charge for Late Payment	7
13. Construction and/or Alteration by Tenant	7
14. Maintenance Obligations of Tenant	8
15. Insurance	8
16. Assigning, Subletting and Encumbering	9
17. State Lands Commission Leasing Policy	11
18. Notices	11
19. Memorandum of Lease	11
20. Attachments to Lease	12

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1-13-92

General Conditions
(5 pages)

Clause Number and Name

1. Time
2. Lease Organization
3. Permits and Licenses
4. Amendments
5. Unlawful Use
6. Inspection
7. Hold Harmless
8. Taxes and Assessments
9. Successors in Interest
10. Circumstances Which Excuse Performance
11. Partial Invalidity
12. Utilities
13. Waiver of Rights
14. Default in Terms of Lease by Tenant
15. Reservations to Lessor
16. Holding Over
17. Condition of Demised Premises Upon Termination
18. Disposition of Abandoned Property
19. Quitclaim of Tenant's Interest Upon Termination
20. Lessor's Right to Re-Enter
21. Removal of Improvements

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HA55D-26
Lower Newport Bay
(Tidelands)

LEASE **DRAFT**

THIS LEASE, hereinafter referred to as "Lease", is made by and between COUNTY OF ORANGE, hereinafter referred to as "LESSOR," and _____ hereinafter referred to as "TENANT," without regard to number and gender.

1. DEFINITIONS (MA2.1 S)

The following words in this Lease have the significance attached to them in this clause unless otherwise apparent from context:

"Board of Supervisors" means the Board of Supervisors of the County of Orange, a political subdivision of the State of California.

"Director" means the Director of Harbors, Beaches and Parks, Environmental Management Agency of the County of Orange, or his designee, or upon written notice to TENANT, such other person or entity as shall be designated by the Board of Supervisors.

"Real Estate Director" means the Director, Real Estate, General Services Agency, of the County of Orange, or his designee, or upon written notice to TENANT, such other person entity as shall be designated by the Board of Supervisors.

"Auditor-Controller" means the Auditor-Controller, County of Orange, or his designee, upon written notice to TENANT, such other person or entity as shall be designated by the Board of Supervisors.

2. PREMISES (PMA3.1 N)

LESSOR leases to TENANT that certain property hereinafter referred to as "Premises," shown on "Exhibit A," attached hereto and by reference made a part hereof, and described as those filled tidelands lying between the extension of the sidelines of Lot _____ of Tract 802 from the adjudicated mean high tide line to the United States bulkhead line, excepting therefrom those lands lying below the existing mean high tide line. Use of submerged "water covered" tidelands areas is not provided for herein.

3. TERMINATION OF PRIOR AGREEMENTS (PMA4.1 S)

It is mutually agreed that this Lease shall terminate and supersede any prior lease agreements between the parties hereto covering all or any portion of the Premises.

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1-14-92

4. LIMITATION OF THE LEASEHOLD (PMA5.1 N)

This Lease and the rights and privileges granted TENANT in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent, including those which are set out in the Tidelands Grant by the State of California to the County of Orange (Chapter 415, of the Statutes of 1975, State of California). Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to TENANT of rights in the Premises which exceed those owned by LESSOR, or any representation or warranty, either expressed or implied, relating to the nature or condition of the Premises or LESSOR's interest therein. TENANT acknowledges that TENANT has conducted a complete and adequate investigation of the Premises and that TENANT has accepted the Premises in its "as is" condition.

5. USE (PMB1.1 N)

a. TENANT shall have the exclusive, private enjoyment of the Premises for residential yard, landscaping and non-permanent recreational purposes as an adjunct to the residence of those single family residences that adjoin the Premises and can exclude public access during the term of the Lease, consistent with Chapter 715, of the Statutes of 1984, State of California.

As used in this Lease, landscaping and non-permanent recreational improvements include the following:

a. Patios and decks;

b. Walks and steps, including dock access walks;

c. Planters and garden walls not exceeding 36 inches in height above natural grade;

d. Benches;

e. Statues;

f. Landscaping;

g. Sprinkler systems;

h. Yard lighting; and

i. Any and all improvements existing as of August 1, 1990.

TENANT agrees not to use the Premises for any other purpose nor to engage in or permit any other activity within or from the Premises.

b. Tenant shall obtain prior written consent of Lessor before the placement of any improvements not listed above. Consent of Lessor shall be obtained through its Environmental Management Agency, Harbors, Beaches and Parks,

Post Office Box 4048, Santa Ana, CA 92702-4048 or at any address the Director may hereafter designate.

6. TERM (PMB2.1 S)

The term of this Lease shall be forty-nine (49) years, commencing on March 22, 1988 to coincide with the expiration of the Interim Tidelands Lease Agreement executed on March 22, 1983. TENANT understands and agrees that this Lease is subject to automatic termination as provided in Clause 15 (INSURANCE).

7. RETROACTIVE RENT

TENANT agrees to pay the sum of $_____ as payment in full of all rent for the Premises during the period from January 1, 1981 through March 21, 1988 under the provisions of the Interim Tidelands Lease Agreement executed March 22, 1983.

In addition, TENANT agrees to pay the sum of $_____ as payment in full of all rent for the premises during the period from March 22, 1988 through March 21, 1992.

Payment of both sums shall be made to the County of Orange, concurrently with the execution of this lease, pursuant to the provisions of Clause 11, (RENT PAYMENT PROCEDURE) of this Lease.

8. RENT (PMC1.1 S)

Commencing March 22, 1992 and continuing until adjusted pursuant to Clause 9 or 10 of this Lease, TENANT agrees to pay as rent for the Premises the sum of _____ per year, payable on or before March 22, 1992 and on or before each anniversary of the effective date of this Lease thereafter, so long as tenancy continues. In the event the obligation to pay rent terminates on some date other than the anniversary of the effective date of this Lease, the rent shall be prorated to reflect the actual period of tenancy.

9. REVISION OF RENT (PMC4.2 N)

Every three years the rent specified in Clause 8 (RENT) shall be subject to automatic adjustments in proportion to change in the Consumer Price Index for Los Angeles-- Anaheim--Riverside, CA (All Urban Consumers--All Items 1982-84=100) promulgated by the Bureau of Labor Statistics of the U. S. Department of Labor (INDEX).

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1-14-92

The first automatic adjustment shall be effective on March 22, 1991 and subsequent adjustments shall be effective on the March 22 anniversary date every third year thereafter (1994, 1997 etc.). Adjusted rent shall be calculated by means of the following formula:

$$A = \frac{\$ \quad *}{} \times \frac{B}{C}$$

A = Adjusted Rent

B = INDEX for the fourth month prior to the month in which each rental rate adjustment is to become effective.

For calculating 1991, 1994, and 1997 adjustments,

C = Monthly Index for March 1988 = 120.6

For calculating subsequent adjustments, C shall equal the Monthly Index for the most recent effective date of reappraised rent as set forth in Clause 10 (REAPPRAISAL OF RENT) (March 1998, March 2008, March 2018 and March 2028).

For calculating 1991, 1994 and 1997 adjustments, * = Base rent established for March 1988.

For calculating subsequent adjustment, * shall equal the rent established for the most recent effective date of reappraised rent as set forth in Clause 10 (REAPPRAISAL OF RENT) (March 22, 1998, March 22, 2008, March 22, 2018, and March 22, 2028).

Notwithstanding the foregoing, in no event shall the annual rent be reduced by reason of such adjustment.

In the event that the INDEX is not issued or published for the period for which such annual rent is to be adjusted and computed hereunder, or that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government shall be used and if none is so published, then another index generally recognized and authoritative shall be substituted by LESSOR.

10. REAPPRAISAL OF RENT (N)

LESSOR and TENANT agree that rent payable pursuant to Clause 8 (RENT) and as adjusted by Clause 9 (REVISION OF RENT) of this Lease, shall be subject to periodic adjustment by reappraisal every ten (10) years to be effective on the following dates:

March 22, 1998,
March 22, 2008,
March 22, 2018,
March 22, 2028,

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1-14-92

CALENDAR PAGE 162.14
MINUTE PAGE 531

It is the intent of LESSOR and TENANT that rent payable pursuant to Clause 8 (RENT) of this Lease, shall be calculated by the following formula:

Rent = reappraised value of the Premises x .375 (thirty-seven and one-half percent) x .09 (nine percent)

Note: (.375 is based upon 62.5% discount for land utilization i.e., 1.0 - .625 = .375; .09 is based upon rate of return.)

LESSOR and TENANT shall begin the appraisal process to determine rent adjustment six months prior to the effective date of said rent adjustment and shall use the following procedure:

(1) LESSOR and TENANT shall, no less than 180 days prior to the next scheduled rent adjustment, each employ a qualified real estate appraiser. LESSOR shall use its reasonable efforts to provide TENANT written notice of its obligation to employ an appraiser thirty (30) days prior to the date by which the appraiser must be employed. LESSOR's failure to provide such notice shall not relieve TENANT of obligation to employ an appraiser as set forth in this Lease. The term "qualified real estate appraiser," as used herein shall mean and refer to a real estate appraiser designated as a "senior" member or equivalent by a nationally recognized appraisal organization, hereinafter referred to as "appraiser," and who has at least five years experience appraising this type of property.

a. In the event TENANT fails to employ an appraiser prior to this 180-day period and provide written notice to LESSOR of said employment, then the appraiser employed by the LESSOR shall be the sole appraiser responsible for determining the value of the Premises and his opinion shall be binding upon LESSOR and TENANT.

b. LESSOR and TENANT shall be individually responsible for the fee of the appraiser which it employs.

(2) After selection of the appraiser(s), the Real Estate Director shall immediately fix a time and place for a pre-appraisal meeting with the Real Estate Director, TENANT, and the appraiser(s).

a. At or before the pre-appraisal meeting, the Real Estate Director shall provide the appraiser(s) with a "Scope of Work."

b. The appraiser(s) shall, within 120 days after the pre-appraisal meeting, prepare and deliver to LESSOR and TENANT two copies of a fully documented written report, prepared in accordance with the Scope of Work, containing the appraiser's independent opinion of the value of the Premises.

(3) The rent adjustment shall be determined as follows:

a. If only one appraisal is submitted within the 120-day period, then the rent adjustment shall be based on the estimated value of the Premises as set forth in that appraisal. The rent shall then be determined using the formula set forth above in this Clause 10 (REAPPRAISAL OF RENT).

b. If two appraisals are submitted within the 120-day period, then the rent adjustment shall be on the mathematical average of the estimated value of the Premises of the two appraisals, provided the lower of the two appraisal values is equal to or greater than ninety percent (90%) of the higher of the two appraisal values. The rent shall then be determined using the formula set forth above in this Clause 10 (REAPPRAISAL OF RENT).

(4) In the event two appraisals are submitted but the value of the lower is less than ninety percent (90%) of the higher of the two values, the Real Estate Director shall independently select a third appraiser.

a. The third appraiser shall then have sixty (60) days after its appointment to prepare and deliver to LESSOR and TENANT two (2) copies of a fully documented written report prepared in accordance with the Scope of Work containing that appraiser's independent opinion of the value of the Premises. LESSOR and TENANT shall each pay one half of the fee of the third appraiser.

b. In the event the third appraisal is required, the reappraised value for determining the rent adjustment shall be based on the mathematical average of the two appraisals with the closest estimated values and the Rent shall then be determined by using the formula set forth above in this Clause 10 (REAPPRAISAL OF RENT).

(5) LESSOR and TENANT agree to be bound to the herein described rent adjustment without further dispute.

In no event shall adjusted rent be less than rent payable immediately prior to the subject rent reappraisal date.

Should the adjusted annual rent be determined subsequent to the effective date thereof, said adjusted annual rent shall be retroactive to that date. TENANT shall pay all retroactive rent, without penalty, within 30 days after receipt of notice from LESSOR of the amount of retroactive rent due.

(6) Appraisals or discount factors used for the purposes of rent calculation or adjustment, as provided in this Lease, shall be used only to set consideration for this Lease subject to terms and conditions hereof.

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1-14-92

CALENDAR PAGE 162,16
MINUTE PAGE 533

11. RENT PAYMENT PROCEDURE (PMC6.2 N)

LESSOR shall use its reasonable efforts to provide TENANT with a written statement of the rent due on or before thirty (30) days prior to the date each rent payment is due. LESSOR's failure to provide such written notice shall in no way relieve TENANT of its obligation to pay all rent required by this Lease as and when due.

Rent payments shall be delivered or sent by U.S. Mail to County of Orange, Office of the Auditor-Controller, Post Office Box 567 (630 North Broadway), Santa Ana, California 92702. The designated place of payment may be changed at any time by LESSOR upon ten (10) days written notice TENANT. Rent payments shall be made payable to the County of Orange. TENANT assumes to all risk of loss if payments are made by mail.

All rental shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by TENANT or receipt by LESSOR of a lesser amount than the rent due shall be deemed to be other than on account of the rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and LESSOR shall accept such payment without prejudice to LESSOR's right to recover the balance of said rent or pursue any other remedy in this Lease.

12. CHARGE FOR LATE PAYMENT (PMC7.1 S)

TENANT hereby acknowledges that the late payment of rent or any other sums due hereunder will cause LESSOR to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc.

Accordingly, if any payment of rent as specified in Clause 8 (RENT) or of any other sum due LESSOR is not received by LESSOR by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus $100 shall be added to the payment, and the total sum shall become immediately due and payable to LESSOR. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

TENANT and LESSOR hereby agree that such late charges represent a fair and reasonable estimate of the costs that LESSOR will incur by reason of TENANT's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by LESSOR shall in no event constitute a waiver of TENANT's default with respect to such overdue payment, or prevent LESSOR from exercising any of the other rights and remedies granted hereunder.

13. CONSTRUCTION AND/OR ALTERATION BY TENANT (PMD2.1 N)

No structures, improvements, or facilities other than those listed in Clause 5 (USE) of this Lease shall be constructed, erected, altered, or made within the Premises without prior written consent of Director. Any conditions relating to the

manner, method, design and construction of said structures, improvements, or facilities fixed by the Director shall be conditions hereof as though originally stated herein.

All improvements constructed by TENANT within the Premises shall be constructed in strict compliance with detailed plans and specifications approved by Director.

14. MAINTENANCE OBLIGATIONS OF TENANT (PME2.1 S)

TENANT shall, to the satisfaction of Director, keep and maintain the Premises and all improvements of any kind which may be erected, installed or made thereon in good condition and in substantial repair. It shall be TENANT's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.

TENANT expressly agrees to maintain the Premises in a safe and clean condition, to the reasonable satisfaction of Director and in compliance with all applicable laws.

If TENANT fails to maintain or make repairs or replacements as required, Director shall notify TENANT in writing of said failure. Should TENANT fail to correct the situation within three days after receipt of written notice, Director may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials, and equipment and administration, shall be paid by TENANT within ten (10) days of receipt of a statement of said cost from Director. Director may, at his option, choose other remedies available herein, or by law.

15. INSURANCE (PME5.1.3 N)

TENANT fully understands that it is extremely important that TENANT shall maintain insurance acceptable to Real Estate Director in full force and effect throughout the term of this Lease. The policy or policies of insurance maintained by TENANT shall provide the following limits and coverages:

Coverage	Minimum Limit
General Comprehensive Liability	$500,000

Insurance shall be in force the first day of the term of this Lease.

Each liability insurance policy required by this Lease shall contain the following three clauses:

A. "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the County of Orange, General Services Agency/Real Estate, P. O. Box 4106, Santa Ana, California 92702-4106."

B. "County of Orange and the State of California are added as additional named insureds as respects activities of the named insured at or from Premises leased from the County of Orange."

C. "It is agreed that any insurance maintained by the County of Orange and the State of California will apply in excess of, and contribute with, insurance provided by this policy."

TENANT agrees to maintain insurance necessary to satisfy Real Estate Director that all provisions of this Lease have been complied with, and to keep such insurance in effect and to deposit certificates of insurance upon demand with the Real Estate Director during the entire term of this Lease.

THIS LEASE SHALL AUTOMATICALLY TERMINATE AT THE SAME TIME TENANT'S INSURANCE COVERAGE IS TERMINATED. IF, WITHIN TEN (10) DAYS AFTER TERMINATION UNDER THIS CLAUSE, TENANT OBTAINS AND PROVIDES EVIDENCE OF THE REQUIRED INSURANCE COVERAGE ACCEPTABLE TO REAL ESTATE DIRECTOR, THIS LEASE MAY BE REINSTATED AT THE SOLE DISCRETION OF REAL ESTATE DIRECTOR. IF REINSTATED, TENANT SHALL PAY FIVE HUNDRED DOLLARS ($500) TO COVER THE PROCESSING COSTS INCURRED BY REAL ESTATE DIRECTOR.

Real Estate Director shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Real Estate Director, insurance provisions in this Lease do not provide adequate protection for LESSOR, Real Estate Director may require TENANT to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Real Estate Director's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks, with respect to the Premises and allowable uses thereof, which exist at the time a change in insurance is required.

Real Estate Director shall notify TENANT in writing of changes in the insurance requirements; and if TENANT does not deliver copies of acceptable insurance policies with Real Estate Director incorporating such changes within thirty days of receipt of such notice, this Lease shall be in default without further notice to TENANT, and LESSOR shall have the sole right to terminate this Lease in addition to other remedies available.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease.

16. ASSIGNING, SUBLETTING AND ENCUMBERING (N)

A. <u>Assignment</u>

TENANT shall not transfer interest in this Lease without the prior written approval of the Director except as provided in paragraph C below of this Clause. As a condition of the Director's approval, TENANT shall notify the Director of the identity of the proposed TENANT and provide a copy of documentation of the transfer of interest.

Approval shall not be withheld or delayed provided said transfer of interest occurs concurrently with the transfer of ownership of the adjacent and contiguous residential property and the proposed transfer of interest is to the Grantee of such residential property.

In the event TENANT has provided Director proper notice, as set forth in Clause 18 (NOTICES), of transfer of its interest in this Lease, and Director has not responded to TENANT within sixty (60) days of receipt of such notice, Director's approval of said transfer shall be deemed granted provided copies of documentation of said transfer have been received by the Director as set forth in this Clause.

Upon written approval of transfer of its interest, TENANT is released of any obligations of this Lease, provided no default of the terms of this Lease exists including payment of all rent due to LESSOR as set forth in Clause 8 (RENT) and Clause 12 (CHARGE FOR LATE PAYMENT).

Failure to obtain Director's approval or deemed approval of transfer of interest shall render such transfer void.

Occupancy of the Premises by a prospective transferee or assignee without approval of the transfer or assignment by the Director shall constitute a breach of this Lease.

Any document used for the purpose of transfer or assignment of the Premises or any part thereof, shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

B. Subletting

Prior approval of the Director shall be required for TENANT to enter into subleases with those residents whose properties adjoin the Premises. All subleases shall be between TENANT and sublessee; the entry into sub-subleases is prohibited and shall constitute a breach of this Lease.

C. Encumbrances

TENANT shall not pledge, hypothecate, mortgage or encumber its interest in this Lease except to convey a security interest to a lender whose loan is also secured by the residential property which is adjacent and contiguous with the premises. The prior written consent of the LESSOR shall not be required for transfer of LESSEE's interest in the Lease to or from any such lender subject to the following convenants and conditions:

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ENDAR PAGE 162.20
TE PAGE 537

1. Said loan and all rights acquired thereunder shall be subject to each and all of the convenants, conditions and restrictions set forth in this Lease and to all rights and interests of LESSOR hereinunder.

2. In the event of any conflict between the provisions of this Lease and the provisions of any loan document, the provisions of this Lease shall control.

3. In the event any such lender subsequently acquires TENANT's interest in this Lease as a result of a foreclosure of its security interest, or an assignment in lieu thereof, such lender shall remain liable for the payment of rent and performance of all other terms, covenants and conditions hereunder only until lender assigns its interest in this Lease.

17. STATE LANDS COMMISSION LEASING POLICY

LESSOR and TENANT acknowledge that the consideration for this Lease and any other terms and conditions provided in this Lease do not necessarily reflect the leasing policy of the State Lands Commission. The method for determining rent provided in this Lease shall not be used for the purpose of establishing rent in any future agreements involving filled or unfilled tide or submerged land.

18. NOTICES (PMF8.1 S)

All notices pursuant to this Lease shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested, with postage prepaid. If any notice is sent by registered or certified mail, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above, LESSOR may also provide notices to TENANT by personal delivery or by regular mail and any such notice so given shall be deemed to have been given upon receipt.

LESSOR shall provide access to and/or a copy of the Lease to TENANT and successors upon request to the following office:

County of Orange
GSA/Real Estate
Director
P. O. Box 4106
Santa Ana, CA 92702-4106

19. MEMORANDUM OF LEASE (N)

In order to impart constructive notice of TENANT's obligations under the terms of this Lease, TENANT shall cause any prospective transferee or assignee to sign the "Memorandum of Lease", in a form as shown on "Exhibit B", attached hereto and made a part hereof, and have the signature notarized. The signed and notarized Memorandum

of Lease shall be submitted to the Director as part of the documentation of the transfer of interest as set forth in Clause 16 (ASSIGNING, SUBLETTING AND ENCUMBERING).

LESSOR TENANT

County of Orange
Environmental Management Agency
Director, Harbors, Beaches and Parks
P. O. Box 4048
Santa Ana, CA 92702-4048

and

County of Orange
Director, GSA/Real Estate
P. O. Box 4106
Santa Ana, CA 92702-4106

ATTACHMENTS TO LEASE (MF9.1 S)

20. This Lease includes the following, which are attached hereto and made a part hereof:

GENERAL CONDITIONS--(21 Clauses)

EXHIBIT A (Location Map)

EXHIBIT B (Memorandum of Lease)

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PAGE 162.22
MINUTE PAGE 539

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

TENANT

DRAFT

By_____

By_____

By_____

APPROVED AS TO FORM:
County Counsel

By_____

RECOMMENDED FOR APPROVAL:

General Services Agency
Real Estate

By_____

Environmental Management Agency
Harbors, Beaches and Parks

By_____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By_____
LINDA D. RUTH
Clerk of the Board of Supervisors of the County of Orange

LESSOR

COUNTY OF ORANGE

By_____
Chairman, Board of Supervisors

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1-14-92

I. GENERAL CONDITIONS

1. TIME (PMG1.2 S)

Time is of the essence of this Lease.

2. LEASE ORGANIZATION (PMG5.2 S)

The various headings and numbers herein, the grouping of provisions of this Lease into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

3. PERMITS AND LICENSES (PMG3.1 S)

TENANT shall be required to obtain any and all approvals, permits, and/or licenses which may be required in connection with the operation of the Demised Premises as set out herein. No permit, approval, or consent given by LESSOR, in its governmental capacity, shall affect or limit TENANT's obligations hereunder, nor shall any approvals or consents given by LESSOR as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

4. AMENDMENTS (PMG6.2 S)

This Lease sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

5. UNLAWFUL USE (PMG7.2 S)

TENANT agrees no improvements shall be erected, placed upon, operated, nor maintained within the Premises, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

6. INSPECTION (PMG9.2 S)

LESSOR or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine if the provisions of this Lease are being complied with.

7. HOLD HARMLESS (PMG10.2 N)

TENANT hereby waives all claims and recourse against LESSOR and the State of California including the right of contribution for loss or damage of persons or property arising from growing out of or in any way connected with or related to this agreement except claims arising from the concurrent active or sole negligence of the State of California or LESSOR, or their officers, agents, and employees.

TENANT hereby agrees to indemnify, hold harmless and defend the State of California and LESSOR and their officers, agents, and employees, against any and all claims, loss, demands, damages, cost, expenses or liability costs arising out of the operation or maintenance of the property described herein except for liability arising out of the concurrent active or sole negligence of the State of California and/or LESSOR, their officers, agents, or employees. In the event the State of California and/or LESSOR is named as co-defendant, TENANT shall notify LESSOR of such fact and shall represent the State of California and/or LESSOR in such legal action unless the State of California and/or LESSOR undertakes to represent itself as co-defendant in such legal action, in which event TENANT shall pay to the State of California and/or LESSOR its litigation costs, expenses, and attorney's fees. In the event judgment is entered against the State of California and/or LESSOR and TENANT because of the concurrent active negligence of the State of California and/or LESSOR and TENANT, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

LESSOR agrees to indemnify and hold harmless TENANT, its officers, agents and employees against any and all claims, loss, demands, damages, costs, expenses or liability arising out of the concurrent active or sole negligence of the LESSOR or its officers, agents or employees.

8. TAXES AND ASSESSMENTS (PMG11.2 N)

This lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises shall be the full responsibility of TENANT, and TENANT shall cause said taxes and assessments to be paid promptly.

9. SUCCESSORS IN INTEREST (PMG12.2)

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

10. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (PMG13.2 S)

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this clause shall excuse TENANT from the prompt payment of any rental or other charge required of TENANT except as may be expressly provided elsewhere in this Lease.

11. PARTIAL INVALIDITY (PMG14.2 S)

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

12. UTILITIES (PME1.1 S)

TENANT shall be responsible for and pay, prior to the delinquent date, all charges for utilities supplied to the premises.

13. WAIVER OF RIGHTS (PMG15.2 S)

The failure of LESSOR or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that LESSOR or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease.

14. DEFAULT IN TERMS OF THE LEASE BY TENANT (PMG16.2 N)

Should TENANT default in the performance of any covenant, condition, or agreement contained in this Lease and such default is not corrected within a reasonable time (as determined by LESSOR) after TENANT receives written notice of default from LESSOR, LESSOR may terminate this Lease. All rights of TENANT and those who claim under TENANT, stemming from this Lease, shall end at the time of such termination.

15. RESERVATIONS TO LESSOR (PMG18.2 S)

The Premises are accepted as is and where is by TENANT subject to any and all existing easements and encumbrances. LESSOR reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Premises or any part thereof as may be necessary to serve the Premises, and to enter the Premises for any and all such purposes. LESSOR also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Premises as may be necessary to serve the Premises.

LESSOR agrees that rights granted to third parties by reason of this clause shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction.

LESSOR further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by TENANT, the rental shall be reduced in proportion to the interference with TENANT's use of the Premises.

16. HOLDING OVER (PMG19.2 S)

In the event TENANT shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease.

17. CONDITION OF DEMISED PREMISES UPON TERMINATION (PMG20.2 S)

Except as otherwise agreed to herein, upon termination of this Lease, TENANT shall redeliver possession of said Premises to LESSOR in substantially the same condition that existed immediately prior to TENANT's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted.

18. DISPOSITION OF ABANDONED PERSONAL PROPERTY (PMG21.2 S)

If TENANT abandons the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to TENANT and left on the Premises 15 days after such abandonment or dispossession shall be deemed to have been transferred to LESSOR. LESSOR shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor.

19. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (PMG22.2 S)

Upon termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall execute, acknowledge, and deliver to LESSOR within 30 days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of TENANT in the Premises is quitclaimed to LESSOR. Should TENANT fail or refuse to deliver the required deed to LESSOR, LESSOR may prepare and record a notice reciting the failure of TENANT to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all right of TENANT or those claiming under TENANT in and to the Premises.

20. LESSOR'S RIGHT TO RE-ENTER (PMG23.2 S)

TENANT agrees to yield and peaceably deliver possession of the Premises to LESSOR on the date of termination of this Lease, whatsoever the reason for such termination.

Upon giving written notice of termination to TENANT, LESSOR shall have the right to re-enter and take possession of the Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the Premises by LESSOR shall in no way alter or diminish any obligation of TENANT under the lease terms and shall not constitute an acceptance or surrender.

TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Premises for any lawful reason or in the event LESSOR re-enters and takes possession of the Premises in a lawful manner.

21. REMOVAL OF IMPROVEMENTS (PMD6.1 N)

All improvements constructed or placed within the Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material. LESSOR retains the right to require TENANT, at TENANT's cost, to remove all TENANT improvements located on the Premises at the expiration or termination of this Lease.

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CALENDAR PAGE 162.28
MINUTE PAGE 555

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

_____
_____
_____
_____

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is entered into _____ 19___, by and between COUNTY OF ORANGE ("County") and _____ ("TENANT") for the purpose of recordation in order to give constructive notice of the existence of that certain Lease ("Lease") dated _____ 19___, by and between COUNTY and TENANT. This Memorandum is not intended to and does not modify the Lease nor does it recite all the terms and conditions of the Lease.

COUNTY and TENANT hereby acknowledge the existence of the Lease and agree as follows:

1. Premises. Pursuant to the terms of the Lease, which terms are incorporated herein by this reference, COUNTY has leased to TENANT that certain area (the "Premises") described and shown on Exhibit "A", which Exhibit is attached hereto and incorporated herein by this reference.

2. USE. TENANT has exclusive, private enjoyment of the Premises for residential yard, landscaping and non-permanent recreational purposes as an adjunct to the residence of those single family residences that adjoin the Premises and can exclude public access during the term of the Lease, consistent with Chapter 715, of the Statutes of 1984, State of California.

3. TERM. The term of the Lease commenced March 22, 1988, and shall continue thereafter for a period of forty-nine (49) years.

4. RENT. The Lease provides for payment of annual rent.

"COUNTY"	"TENANT"
COUNTY OF ORANGE	_____
By: _____ Director, GSA/Real Estate	By: _____
	BY: _____

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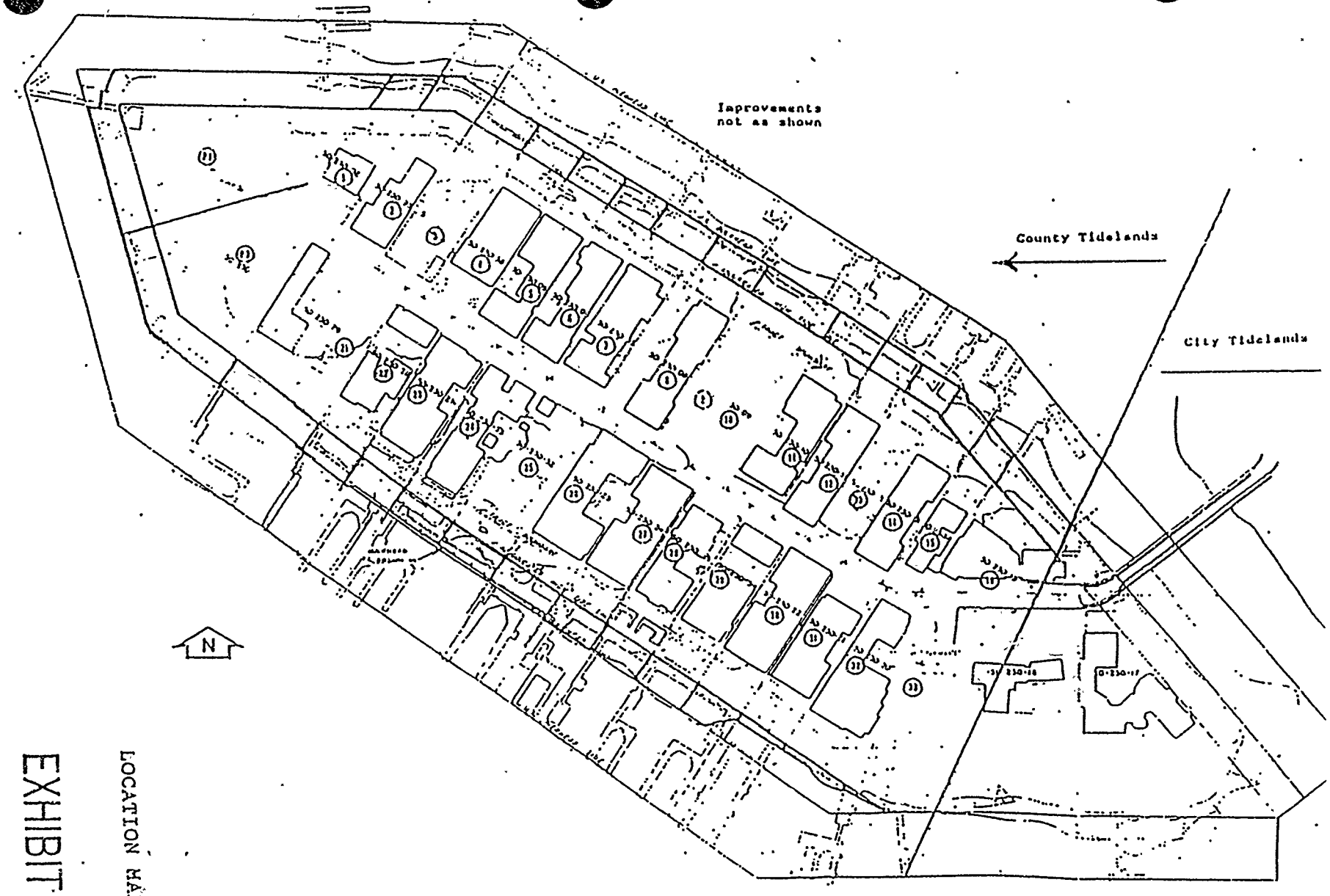
EXHIBIT B

CALENDAR PAGE 162.29
MINUTE PAGE 546



LOCATION MAP

EXHIBIT A

CALENDAR PAGE 103.30
MINUTE PAGE 587

HA55D-26
Lower Newport Bay
Harbor Island