

MINUTE ITEM

This Calendar Item No. C77 was approved as Minute Item No. 77 by the California State Lands Commission by a vote of 3 to 0 at its 8/21/96 meeting.

CALENDAR ITEM

C77

A 70

S 35

8/21/96

G 09-02.9

C. Fossum

A. Scott

J. Smith

**CONSIDER APPROVAL OF CITY OF NEWPORT BEACH PROPOSED LEASE
PURSUANT TO CHAPTER 728, STATUTES OF 1994
(BALBOA BAY CLUB PROPERTY)**

APPLICANT:

City of Newport Beach
Attn: Kevin Murphy
City Manager
3300 Newport Boulevard
Newport Beach, CA 92658-8915

BACKGROUND

Pursuant to Chapter 74, Statutes of 1978, the Legislature repealed all prior statutes involving the granting of public trust lands to the City of Newport Beach and re-granted in trust to the City all tide and submerged lands, whether filled or unfilled, bordering upon or under the Pacific Ocean or Newport Bay, which were within the corporate limits of the city on July 25, 1919. The 1978 statute recognized certain tide and submerged lands (in Beacon Bay) were filled and reclaimed in the 1920s as part of the development of the harbor in lower Newport Bay and were being used for purposes inconsistent with the public trust doctrine, but authorized the non-conforming use to remain subject to certain specified conditions. In addition to the filled tide and submerged lands identified in the 1978 statute, another parcel (hereafter referred to as Parcel D) had been filled and reclaimed as part of the harbor development and was also being used for a purpose inconsistent with the public trust -- an apartment building. However, the 1978 statute did not specifically authorize the continuing use of Parcel D for residential purposes.

In 1948, Parcel D and adjacent property were leased by the City for 50 years to private parties. The Balboa Bay Club (BBC) is the successor to that lease and has developed the property as a private club and a residential apartment complex which is located on Parcel D (the Terrace Apartments). At the time of entering into the lease, the legal character of Parcel D and the adjoining lands involving the Club lease was not resolved. A judicial determination involving the City of Newport Beach, County of Orange and State of California in 1952 confirmed that the Club lease site and certain

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adjoining lands were in fact tide and submerged lands.

In 1986 the Club lease was extended by the City of Newport Beach for twenty-five years, requiring that the use of Parcel D conform to public trust purposes as of December 31, 1998, in the absence of legislation, a judicial determination, or an agreement with the State Lands Commission.

Legislation was enacted in 1994, (Chapter 728, Statutes of 1994), which states that although it is a use inconsistent with the trust, under certain conditions, Parcel D may continue to be used as an apartment for residential use until December 31, 2044. Chapter 728 also provides that "The consideration received by the City for any future lease or amendment to the current lease which includes Parcel D shall be the fair market rental value of the real property and improvements, subject to any presently existing contractual obligations during the period the property is used for private purposes" and "The form of any future lease or amendment of the current lease involving Parcel D and the consideration to be received by the City, shall be subject to approval by the State Lands Commission."

Specifically, the BBC prepared, and the City and California Coastal Commission have approved, a redevelopment plan which will allow full public access to the majority of the site currently occupied by the private club. The proposed lease, which will only become effective if the Commission approves it and the BBC exercises its option within a five year period, will generate substantially more tideland trust revenue than the existing lease (refer to Exhibit B attached).

Effective July 1, 1995, all money received by the City from the existing lease or any future lease that includes Parcel D shall be deposited in the following trust fund accounts:

- o Ninety-five percent (95%) shall be deposited in a City tidelands trust fund with the revenue available only for purposes consistent with the promotion of public trust uses, including public access.
- o Five percent (5%) shall be deposited in the Land Bank Fund for expenditure by the State Lands Commission for purposes of providing necessary state review of management of legislative grantee's public trust property as provided by Sections 6301 and 6306 of the Public Resources

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Code.

- o Five years after the effective date of any new lease or amendment to the current lease, the revenue percentages shall be modified to provide for deposit of ninety percent (90%) in the city tidelands trust fund and ten percent (10%) to the Land Bank Fund.

In order to make the lease/option effective and allow the BBC to implement the redevelopment plan and secure financing, the City has requested the State Lands Commission approval of the form of an Option and Ground Lease Agreement, approved by the City Council on June 24, 1996 as amended August 12, 1996.

State Lands Commission staff has reviewed the Fair Market Rental Value Appraisal and the Option and Ground Lease Agreement for the Balboa Bay Club. The rent provision calls for the greater of \$1,125,000 or the percentage rent, broken down as follows:

<u>CATEGORY</u>	<u>PERCENTAGE RENT</u>
Dues Revenues	6%
Apartment Revenues	16.5%
Marina Revenues	31%
Storage Revenues	20%
Charter Commission Revenues	20%
Charter Revenues	6%
Room Revenues	5%
Beverage Revenues	5%
Food Revenues	3%
Retail Revenues	5%
Miscellaneous Revenues	10%

In the opinion of the staff, the Option and Ground Lease Agreement provide for acceptable terms as to both form of lease and consideration and therefore submits it to the State Lands Commission with a recommendation for approval.

CALENDAR ITEM NO. C77 (CONT'D)

OTHER PERTINENT INFORMATION:

Final EIR No. 152 for the Balboa Bay Club Expansion and Remodeling Project (SCH 93101052) was prepared and adopted by the City of Newport Beach on July 25, 1994 (Exhibit D). In addition the California Coastal Commission granted to the Balboa Bay Club permit 5-94-265, which was acknowledged by the permittee on May 1, 1995. The State Lands Commission's staff has reviewed both documents.

AB 884:

N/A

EXHIBITS:

- A. Location Map
- B. Legislative Public Access Letter
- C. Chapter 728, Statutes of 1994
- D. City of Newport Beach Resolution No. 94-73, Certifying Final EIR

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT A FINAL EIR (SCH 93101052) WAS PREPARED AND ADOPTED FOR THE BALBOA BAY CLUB EXPANSION AND REMODELING PROJECT BY THE CITY OF NEWPORT BEACH AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.
2. FIND THAT, PURSUANT TO THE REQUIREMENTS OF SECTION 8 (c) OF CHAPTER 728, STATUTES OF 1994, AND BASED UPON THE PROVISIONS OF CHAPTER 728 AND THE TERMS OF THE OPTION AND GROUND LEASE AGREEMENT, INCLUDING BUT NOT LIMITED TO THE PROVISION FOR INCREASED REVENUES TO SUPPORT PUBLIC TRUST NEEDS AND ENHANCED PUBLIC ACCESS AT THE BALBOA BAY CLUB, THE CONTINUATION OF THE PRESENT NON-CONFORMING USE OF PARCEL D FOR AN ADDITIONAL PERIOD, NOT TO EXTEND BEYOND DECEMBER 31, 2044, IS IN THE BEST INTERESTS OF THE PUBLIC, AND IN FURTHERANCE OF PUBLIC TRUST PURPOSES.

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3. APPROVE THE PROPOSED FORM OF OPTION AND GROUND LEASE AGREEMENT AND THE RATE OF CONSIDERATION, AS REQUIRED BY SECTIONS 8 (d) AND 8 (e) OF CHAPTER 728, STATUTES OF 1994, BETWEEN THE CITY OF NEWPORT BEACH AND THE BALBOA BAY CLUB INVOLVING THE PROPERTY DESCRIBED AS PARCELS A, B, C AND D IN EXHIBIT C AND SHOWN ON EXHIBIT A ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

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MINUTE PAGE	001962

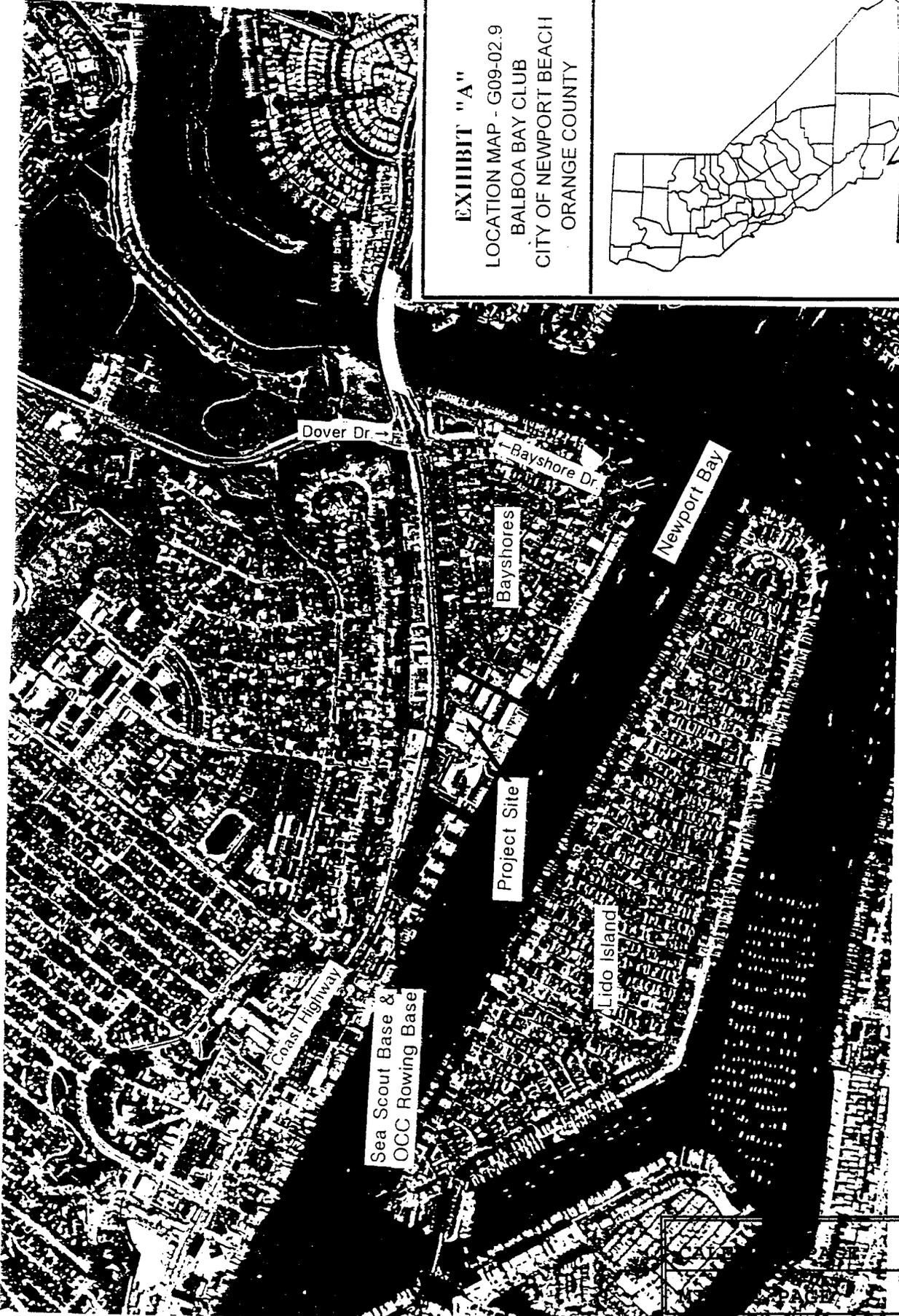
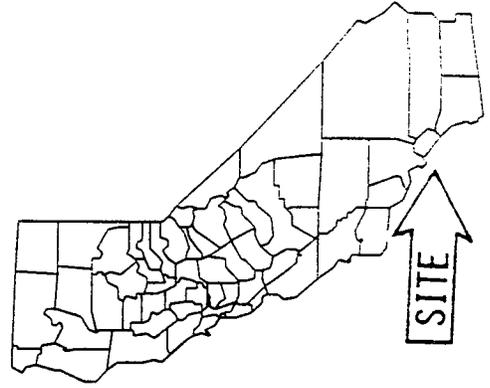


EXHIBIT "A"
 LOCATION MAP - G09-02.9
 BALBOA BAY CLUB
 CITY OF NEWPORT BEACH
 ORANGE COUNTY



491.5
 001963

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

August 31, 1994

Honorable Willie Lewis Brown, Jr.
Speaker
California State Assembly
State Capitol, Room 219
Sacramento, California 95814

Dear Mr. Speaker:

We are the author and principal coauthor of Assembly Bill 3139, sponsored by the City of Newport Beach, which allows the State Lands Commission to extend the lease on a specific parcel of tide and submerged land.

When the Committee on Consumer Protection, Governmental Efficiency and Economic Development reviewed AB 3139 for concurrence in the Senate amendments, the Committee asked us to place a letter in the Journal to further explain the bill's intent.

It is the Legislature's intent, and it is our understanding that the project developers agree, that maximum public access shall be provided, pursuant to, among other things, Chapter 3, Article 2 of Division 20 of the Public Resources Code, to the lands affected by Chapter 74 of the Statutes of 1978, as amended by AB 3139, in order to be consistent with the public trust.

We appreciate your consideration in this matter.

Cordially,



CURT FRINGLE
68th Assembly District



MARIAN BERGESON
Senator, 35th District

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MINUTE PAGE 0C1964

An act to amend Section 6 of, and to add Section 4.5 to, Chapter 74 of the Statutes of 1978, relating to tide and submerged lands in the City of Newport Beach.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3139, Pringle. Tidelands: Newport Beach.

Existing law grants in trust to the City of Newport Beach all tide and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay, which were within the corporate limits of the city on July 25, 1919, subject to specified conditions.

This bill would permit a current nonconforming residential use of a specified parcel within that grant to continue to be used for a specified period, subject to specified conditions. The bill would require all money received by the city from that use to be deposited, as prescribed, and to be available for specified purposes. The bill would make related legislative findings and declarations.

The people of the State of California do enact as follows:

SECTION 1. Section 4.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 4.5. (a) The Legislature hereby finds and declares all of the following:

(1) In Section 1 of this act, the Legislature granted certain tide and submerged lands in trust to the City of Newport Beach upon express conditions and for certain public trust uses and purposes, but primarily for the promotion and accommodation of commerce, fishing, and navigation.

(2) Portions of those tide and submerged lands were filled and reclaimed as a result of the implementation in the 1920's of a plan of improvement, including the development of lower Newport Bay as a harbor to promote and accommodate commerce, fishing, recreational boating, and navigation. In addition to those filled tide and submerged lands, an additional parcel, as described in Section 6 of this act, as amended by the act adding this section, hereafter designated Parcel D, has been filled and reclaimed as part of the public project of developing lower Newport Bay as a harbor.

(3) Prior to a judicial determination in 1952 that Parcel D and certain adjoining lands were state tidelands and submerged lands granted to the city pursuant to Chapter 70 of the Statutes of 1927, the

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legal character of the property was subject to question. In 1948, the city leased Parcel D and adjoining property to a private entity which constructed a private club on the adjoining property and a residential apartment complex of 142 units on Parcel D. The term of that lease was extended in 1986, and the lease requires that the use of Parcel D conform to public trust purposes as of December 31, 1998, in the absence of an act of the Legislature, a judicial determination, or an agreement with the State Lands Commission.

(4) Since 1985, the residential apartment complex on Parcel D has produced substantial income, all of which the city has used to directly promote and support public use of tide and submerged lands held in trust by the city by providing services to those public trust lands, including lifeguards, beach cleanup, police, and fire protection, and by constructing facilities which improve the quality and extent of public use of, and access to, tide and submerged lands.

(5) Private residential use of tide and submerged lands, whether filled or unfilled, is in conflict with the common law public trust and the intent of the Legislature in enacting this act.

(6) Many members of the public have made the apartment complex their residence for many years and have come to look upon the apartments as their permanent home despite the nature of their tenancy.

(7) Parcel D, a relatively small portion of the public trust lands in Newport Bay, has been filled and reclaimed so that it is no longer submerged or below the mean high tide line, is not in its present state usable for public trust uses and purposes, and, given the large amount of public trust lands that the City of Newport Beach makes available to the public, Parcel D may be more valuable as a generator of revenue devoted to the support of public trust purposes than as a parcel used by the public for trust purposes.

(8) Public trust land adjacent to Parcel D has been developed as a private club with extremely limited public access. The current lessee of the private club and Parcel D has proposed, and the city has approved, a redevelopment plan which, if implemented, will allow full public access to the majority of the site currently occupied by the private club and will generate substantially more tideland revenue from existing uses. However, the current lessee will be required to pledge revenue from the apartment complex on Parcel D to secure the financing necessary to implement the redevelopment plan, and any uncertainty regarding the permissible use of Parcel D could impede or prevent redevelopment and postpone, for more than 17 years, the public's right of access to the property.

(b) In view of the potential hardships resulting from the removal of the current tenants on or before December 31, 1998, the economic benefit to the trust from the revenue generated by the continuing use of Parcel D as an apartment complex, the benefits to the public if revenue generated by Parcel D is used to secure the financing necessary to implement the redevelopment plan for the adjoining

property, which will dramatically improve public access to tide and submerged lands, the availability of current public facilities and the potential needs for expanded facilities for public trust uses and purposes and in recognition of the facts set forth in paragraphs (3), (4), (5), (6), and (7) of subdivision (a), and in view of the amount of public trust land remaining in Newport Bay that is suitable for public trust use, the current nonconforming residential use of Parcel D may continue for the duration of its useful life until the structure is removed, until the current or new lease expires, or until five years after expiration of the financing secured by Parcel D revenues, whichever occurs first, but in no event later than December 31, 2044, subject to the requirement that all revenues be devoted to public trust uses and purposes as provided in subdivision (f).

(c) If the city determines that land use, economic conditions, and public needs associated with Parcel D will extend beyond the term of the present lease, the city shall apply to the State Lands Commission for a determination by the commission that the continuation of that nonconforming use for an additional period is in the best interest of the public and in furtherance of public trust purposes. If the commission makes that finding, Parcel D may be leased for residential purposes for an additional period, but in no event beyond December 31, 2044.

(d) The consideration received by the city for any future lease or amendment to the current lease which includes Parcel D shall be the fair market rental value of the real property and improvements, subject to any presently existing contractual obligations during the period the property is used for private purposes.

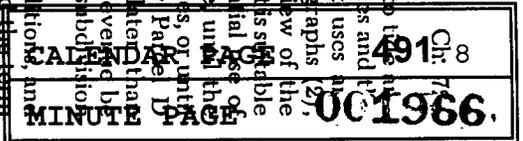
(e) The form of any future lease or amendment of the current lease involving Parcel D, and the consideration to be received by the city, shall be subject to approval by the State Lands Commission.

(f) (1) Effective July 1, 1995, all money received by the city from the existing lease or any future lease that includes Parcel D shall be deposited in the following trust funds:

(A) Ninety-five percent shall be deposited in a city tidelands trust fund with the revenue available only for purposes consistent with the promotion of public trust uses, including public access, over the remaining tide and submerged lands granted to the city.

(B) Five percent shall be deposited in the Land Bank Fund to be available, without regard to fiscal years, pursuant to subdivision (c) of Section 8625 of the Public Resources Code, for expenditure by the State Lands Commission for purposes of providing necessary state review of management of public trust property as provided by Sections 6301 and 6306 of the Public Resources Code.

(2) Five years after the effective date of any new lease or amendment to the current lease, the revenue percentages shall be modified to provide for the deposit of 90 percent in the city tidelands trust fund as specified in subparagraph (A) of paragraph (1) and 10



percent in the Land Bank Fund as specified in subparagraph (B) of paragraph (1).

(g) Nothing in this act is intended to limit the application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) or the jurisdiction of the California Coastal Commission.

SEC. 2. Section 6 of Chapter 74 of the Statutes of 1978 is amended to read:

Sec. 6. The parcels of real property referred to in this act are described as follows:

PARCEL A

Beginning at Station No. 8 in the Line of Mean High Tide per judgment rendered in Case No. 20436, Superior Court of California, County of Orange, recorded in Book 651, page 72 of Deeds, records of said Orange County, said Station No. 8 being at the easterly terminus of that certain course in said Line of Mean High Tide shown as "North 71° 54' 00" West, 1573.34 Feet" on a map of Tract No. 4003 recorded in Book 188, pages 13 through 19 of Miscellaneous Maps, records of said Orange County, said beginning being a 1½" iron pipe as shown on said map of Tract No. 4003, thence along said Line of Mean High Tide, South 85° 40' 37" East, 606.01 feet to a point in a line parallel with and 100.00 feet easterly from the easterly line of Lot C as shown on a map filed in Book 9, pages 42 and 43 of Record of Surveys, records of said Orange County; thence along said parallel line South 160.46 feet to a point in the Ordinary High Tide Line per judgment rendered in Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said point being the True Point of Beginning of this description; thence along said Ordinary High Tide Line the following courses: North 82° 30' 00" West, 297.66 feet to an angle point therein; thence South 84° 00' 00" West, 160.00 feet; thence South 57° 00' 00" West, 100.00 feet; thence South 32° 52' 00" East, 243.24 feet to a line that is parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead Line, as shown on U.S. Engineer's Map of Harbor Lines of Newport Bay, dated March 20, 1936, and approved April 28, 1936; thence leaving said Ordinary High Tide Line and along said parallel line East, 148.00 feet to the southeasterly corner of Lot 19 as shown on a map filed in Book 9, pages 42 and 43 of Record of Surveys, records of said Orange County; thence along the easterly line of said Lot 19 North 100.00 feet; thence East 40.00 feet; thence South 100.00 feet; thence East 198.10 feet to a line parallel with and distant 20.00 feet westerly, measured at right angles from that certain course and southerly prolongation thereof, recited as, "South, 160.46 feet"; thence along said parallel line North 132.00 feet; thence East 20.00 feet; thence North 104.64 feet to the True Point of Beginning of this description.

Containing 2.694 acres, more or less.

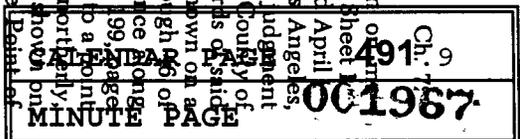
PARCEL B

Beginning at U.S. Bulkhead Station No. 200 as shown on map entitled "Harbor Lines, Newport Bay Harbor, California," Sheet 1 of File Map No. 958, dated March 20, 1936, and approved April 28, 1936, and on file in the office of the U.S. Engineer, Los Angeles, California, also being on the Ordinary High Tide Line per judgment rendered in Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said beginning being a 2" iron pipe as shown on a map of Tract 3867, recorded in Book 301, pages 40 through 46 of Miscellaneous Maps, records of said Orange County; thence along said Ordinary High Tide Line, as described in said Book 199, page 275, of Official Records, North 39° 48' 00" West, 36.44 feet to a point in a line that is parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead Line as shown on said U.S. Engineer's Map, said point also being the True Point of Beginning of this description; thence continuing along said Ordinary High Tide Line, North 39° 48' 00" West, 432.17 feet; thence leaving said Ordinary High Tide Line, South 56° 56' 29" West, 32.24 feet to a point in a nontangent curve, concave northwesterly and having a radius of 171.63 feet, a radial line of said curve from said point bears North 67° 48' 00" West; thence southerly and southwesterly along said curve 76.60 feet through a central angle of 25° 34' 20" to a point of nontangency with a line that is parallel with and distant 105.32 feet southwesterly, measured at right angles, from that certain course recited above as "North 39° 48' 00" West, 432.17 feet"; thence along said parallel line, South 30° 48' 00" East, 398.27 feet to said line described above as being parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead Line as shown on said U.S. Engineer's Map; thence along said parallel line, East, 137.09 feet to the True Point of Beginning of this description.

Containing 0.925 acre, more or less.

PARCEL C

Beginning at U.S. Bulkhead Station No. 200 as shown on map entitled "Harbor Lines, Newport Bay Harbor, California," Sheet 1 of File Map No. 958, dated March 20, 1936, and approved April 28, 1936, and on file in the office of the U.S. Engineer, Los Angeles, California, also being on the Ordinary High Tide Line per judgment rendered on Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said beginning being a 2" iron pipe as shown on a map of Tract No. 3867, recorded in Book 301, pages 40 through 46 of Miscellaneous Maps, records of said Orange County; thence along said Ordinary High Tide Line as described in said Book 199, page 275 of Official Records, North 39° 48' 00" West, 539.22 feet to the True Point of Beginning of this description; thence continuing North 39° 48' 00" West, 146.59 feet; thence South 23° 57' 30" West along the southwesterly prolongation of that certain course described in said Case No. 24026 as "North 23° 57' 30" East, 138.90 feet" a distance of



126.34 feet to a line that is parallel with and distant 113.32 feet southwesterly, measured at right angles, from that certain course recited above as "North 39° 48' 00" West, 146.59 feet"; thence along said parallel line, South 39° 48' 00" East, 137.64 feet to a point in a nontangent curve, concave northwesterly and having a radius of 131.63 feet, said curve being concentric with and 40.00 feet northwesterly, measured radially, from that certain curve described in Parcel B above as having a radius of 171.63 feet, a radial line of said curve from said point bears North 39° 28' 52" West, thence northeasterly and northerly along said curve 74.56 feet through a central angle of 32° 27' 23"; thence tangent to said curve, North 18° 03' 45" East, 50.27 feet to the True Point of Beginning of this description.

Containing 0.387 acre, more or less.

PARCEL D

That portion of Lot 171, Block 54 of Irvine's Subdivision in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 1, Page 88 of Miscellaneous Record Maps in the Office of the County Recorder of the county described as follows: Beginning at a point on the U.S. Bulkhead line extending from U.S. Bulkhead Station No. 129 to U.S. Bulkhead Station No. 130 as that Bulkhead line and Bulkhead stations are laid out and shown on a map of Newport Bay, California, showing harbor lines approved by the War Department, January 18, 1917, that point being distant South 61° 01' 07" East, measured along the Bulkhead line, 700.00 feet from the point of intersection of the Bulkhead line with the southwesterly prolongation of the centerline of Irvine Avenue as shown on a Map of First Addition To Newport Heights recorded in Book 4, Page 94 of Miscellaneous Maps in the Office of the County Recorder, that point of intersection being the most southerly corner of Lot H of Tract No. 919 as shown on a map recorded in Book 29, Pages 31 through 34 of Miscellaneous Maps in the Office of the County Recorder; thence North 23° 58' 53" East 154.19 feet to a point in the southwesterly line of the 100 foot right-of-way of California State Highway ORA-60-B, that point being on a nontangent curve in the right-of-way line concave northeasterly and having a radius of 2050.00 feet, that point being on a line radial to Engineer's Station 6+56.15 in the centerline of that highway, the radial line bears North 19° 37' 57" East; thence along that southwesterly line through the following courses: along the curve southeasterly 142.79 feet through a central angle of 3° 59' 27"; thence tangent from that curve South 74° 21' 30" East 662.08 feet; thence leaving the southwesterly line of that 100 foot right-of-way, South 28° 58' 53" West 195.71 feet; thence South 27° 00' 00" East 16.66 feet; thence South 28° 58' 53" West 130.00 feet to a point on that Bulkhead line, the point being distant South 61° 01' 07" East 798.00 feet from the Point of Beginning; thence along the Bulkhead line North 61° 01' 07" West 798.00 feet to the point of beginning.

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RESOLUTION NO. 94-73

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF NEWPORT BEACH
CERTIFYING FINAL ENVIRONMENTAL IMPACT REPORT NO. 152
FOR THE BALBOA BAY CLUB EXPANSION AND REMODELING PLAN

WHEREAS, the City of Newport Beach proposes to approve the Balboa Bay Club Expansion and Remodeling Plan, which includes the following discretionary actions:

1. Zoning Amendment No. 787
2. Use Permit No. 3524
3. Traffic Study No. 100

WHEREAS, in compliance with the California Environmental Quality Act (California Public Resources Code Sec. 21000 et seq.) and the CEQA Guidelines (Cal. Code of Regulations Sec. 15000 et seq.), Draft Environmental Impact Report (DEIR) No. 152 has been prepared to address the environmental effects, mitigation measures, and project alternatives associated with the discretionary approvals necessary to implement the proposed project; and

WHEREAS, the DEIR was circulated to the public for comment and review; and

WHEREAS, written comments were received from the public during and after the review period; and

WHEREAS, Final EIR 152 contains written responses to such comments as required by CEQA; and

WHEREAS, the Planning Commission and the City Council of the City of Newport Beach conducted public hearings to receive public testimony with respect to the DEIR; and

WHEREAS, Section 21081 of CEQA and Section 15091 of the CEQA Guidelines require that the City Council make one or more of the following findings prior to the approval of a project for which an EIR has been completed, identifying one or more significant effects of the project, along with Statements of Facts supporting each Finding:

FINDING 1: Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects thereof as identified in the EIR.

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FINDING 2: Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the Finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

FINDING 3: Specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR; and

WHEREAS, Section 15092 of the CEQA Guidelines provides that the City shall not decide to approve or carry out a project for which an EIR was prepared unless it has

- (A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in the findings under Section 15091, and
- (B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093; and

WHEREAS, Section 15093 (a) of the CEQA Guidelines requires the City Council to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project; and

WHEREAS, Section 15093 (b) of the CEQA Guidelines requires, where the decision of the City Council allows the occurrence of significant effects which are identified in the EIR but are not mitigated, the City must state in writing the reasons to support its action based on the EIR or other information in the record; and

WHEREAS, Section 21081.6 of CEQA requires, where an EIR has been prepared for a project for which mitigation measures are adopted, that a mitigation monitoring or reporting program be adopted for the project.

NOW, THEREFORE, BE IT RESOLVED that the City Council has reviewed and considered Final Environmental Impact Report No. 152 for the Balboa Bay Club Expansion and Remodeling Plan and does hereby certify that the Final EIR is complete and adequate in that it addresses all known environmental effects of the proposed project and fully complies with the requirements of the California Environmental Quality Act and the CEQA Guidelines. Final EIR 152 is comprised of the following elements:

1. Draft EIR 152 and Technical Appendices
2. Comments Received on the DEIR and Responses to those Comments

3. Planning Commission Staff Reports
4. Planning Commission Minutes
5. Planning Commission Findings and Recommended Conditions for Approval
6. Mitigation Monitoring and Reporting Program

All of the above information is on file with the Planning Department, City of Newport Beach, City Hall, 3300 Newport Boulevard, Newport Beach, California 92659-1768, (714) 644-3225.

BE IT FURTHER RESOLVED that the Final EIR contains a reasonable range of alternatives that could feasibly attain the basic objectives of the project, even when those alternatives might impede the attainment of other project objectives and might be more costly.

BE IT FURTHER RESOLVED that although the Final EIR identifies certain significant environmental effects that will result if the proposed project is constructed, all feasible mitigation measures that could eliminate or substantially reduce those adverse effects have been included in the proposed project as described in the Final EIR.

BE IT FURTHER RESOLVED that the City Council finds and determines that the proposed project should be approved. In making this determination, the City Council has balanced the benefits of the project against its environmental risks, as required by CEQA. Those alternatives and mitigation measures not incorporated into the project are rejected as infeasible, based upon specific economic, social and other considerations as set forth in the Statement of Findings and Facts, attached hereto as Exhibit A, and the Final EIR. The facts listed in support of each finding with respect to the significant impacts identified in the Final EIR are true and are based upon substantial evidence in the record. The unavoidable significant adverse impacts of the project, as identified in the Statement of Findings and Facts, that have not been reduced to a level of insignificance will be substantially reduced by the imposition of conditions and mitigation measures. The City Council further finds that the remaining unavoidable significant impacts are clearly outweighed by the economic, social and other benefits of the project, as set forth in the Statement of Overriding Considerations (Exhibit B), incorporated herein by reference. The information contained in the Statement of Overriding Considerations is true and is supported by substantial evidence in the record.

BE IT FURTHER RESOLVED that the monitoring requirements of Public Resources Code Sec. 21081.6 (AB 3180 of 1988) will be met through the design of the project, required compliance with City building, grading, and other codes and ordinances, and required compliance with the adopted mitigation measures and conditions of approval. A Mitigation Monitoring and Reporting Program for the project is attached as Exhibit C and incorporated herein by reference.

BE IT FURTHER RESOLVED that Final EIR 152, the Statement of Findings and Facts, and the Statement of Overriding Considerations, and all of the information contained therein accurately reflect the independent judgement of the City Council.

BE IT FURTHER RESOLVED that considering the record as a whole there is no evidence before this agency that the proposed project will have the potential for an adverse effect on wildlife resources or the habitat upon which wildlife depends. On the basis of the evidence in the record, this agency finds that the presumption of adverse effect contained in Section 753.5(d) of Title 14 of the California Code of Regulations (CCR) has been rebutted. Therefore, the proposed project qualifies for a De Minimis Impact Fee Exemption pursuant to Section 753.5(e) of Title 14, CCR.

ADOPTED THIS 25th day of July, 1994.

MAYOR

ATTEST:

CITY CLERK



Attachments:

- Exhibit A: Statement of Findings and Facts
- Exhibit B: Statement of Overriding Considerations
- Exhibit C: Mitigation Monitoring and Reporting Program

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