

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 215192
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, Statutes 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 utilization 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

	<u>Donahue</u>	<u>Jones</u>	<u>Foreman</u>	<u>Appraisal Average</u>	<u>Settlement</u>
% 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.

<u>HARBOR ISLAND RENT (March 22, 1991 through March 21, 1992)</u>			
<u>LOT</u>	<u>RENT</u>	<u>LOT</u>	<u>RENT</u>
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").

CALENDAR ITEM NO. 23 (CONT'D)

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.

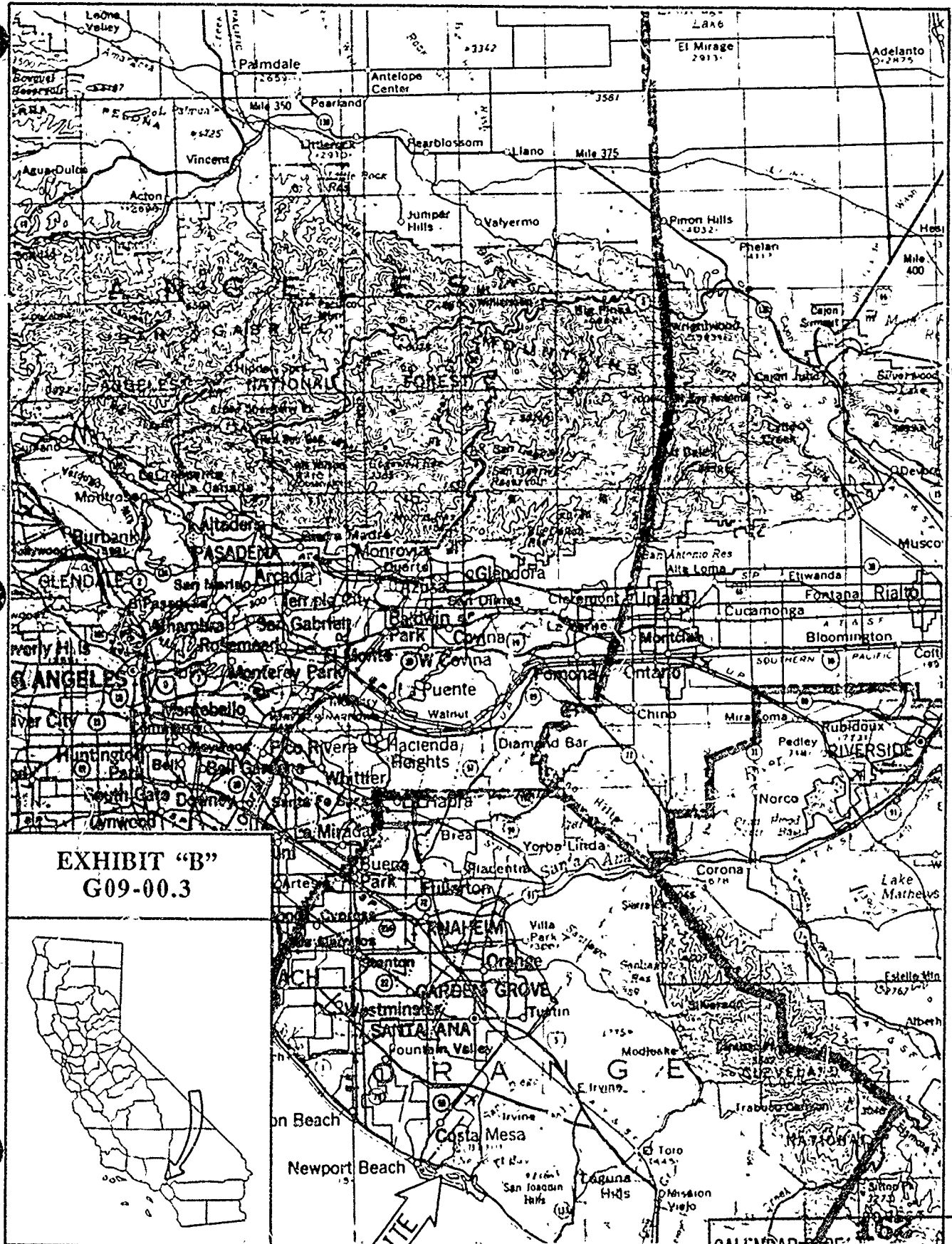


EXHIBIT "B"
G09-00.3



SITE

1 HA55D-26
2 Lower Newport Bay
3 (Tidelands)

EXHIBIT "C"

LEASE

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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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1 HAS5D-26
2 Lower Newport Bay
(Tidelands)

4 LEASE

DRAFT

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

7 1. DEFINITIONS (MA2.1 S)

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

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

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

14 "Real Estate Director" means the Director, Real Estate, General Services Agency, of
15 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.

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

18 2. PREMISES (PMA3.1 N)

19 LESSOR leases to TENANT that certain property hereinafter referred to as
20 "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
21 sidelines of Lot _____ of Tract 802 from the adjudicated mean high tide
line to the United States bulkhead line, excepting therefrom those lands lying
22 below the existing mean high tide line. Use of submerged "water covered" tidelands
areas is not provided for herein.

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

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

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

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

8 5. USE (PMB1.1 N)

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

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

- 14 a. Patios and decks;
- 15 b. Walks and steps, including dock access walks;
- 16 c. Planters and garden walls not exceeding 36 inches in height above
17 natural grade;
- 18 d. Benches;
- 19 e. Statues;
- 20 f. Landscaping;
- 21 g. Sprinkler systems;
- 22 h. Yard lighting; and
- 23 i. Any and all improvements existing as of August 1, 1990.

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

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

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

3 6. TERM (PMB2.1 S)

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

8 7. RETROACTIVE RENT

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

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

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

17 8. RENT (PMC1.1 S)

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

25 9. REVISION OF RENT (PMC4.2 N)

26 Every three years the rent specified in Clause 8 (RENT) shall be subject to
27 automatic adjustments in proportion to change in the Consumer Price Index for Los
28 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 The first automatic adjustment shall be effective on March 22, 1991 and subsequent
2 adjustments shall be effective on the March 22 anniversary date every third year
3 thereafter (1994, 1997 etc.). Adjusted rent shall be calculated by means of the
4 following formula:

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

4 A = Adjusted Rent

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

7 For calculating 1991, 1994, and 1997 adjustments,

8 C = Monthly Index for March 1988 = 120.6

9 For calculating subsequent adjustments, C shall equal the Monthly Index for
10 the most recent effective date of reappraised rent as set forth in Clause
11 10 (REAPPRAISAL OF RENT) (March 1998, March 2008, March 2018 and March
12 2028).

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

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

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

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

26 10. REAPPRAISAL OF RENT (N)

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

3
$$\text{Rent} = \text{reappraised value of the Premises} \times .375 \text{ (thirty-seven and}$$

4
$$\text{one-half percent)} \times .09 \text{ (nine percent)}$$

5 Note: (.375 is based upon 62.5% discount for land utilization i.e.,
6 $1.0 - .625 = .375$; .09 is based upon rate of return.)

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

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

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

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

28 (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:

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

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

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

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

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

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

27 In no event shall adjusted rent be less than rent payable immediately
28 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 11. RENT PAYMENT PROCEDURE (PMC6.2 N)

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

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

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

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

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

25 Accordingly, if any payment of rent as specified in Clause 8 (RENT) or of any other
26 sum due LESSOR is not received by LESSOR by the due date, a late charge of one and
27 one-half percent (1.5%) of the payment due and unpaid plus \$100 shall be added to
28 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

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

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

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

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

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

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

22 15. INSURANCE (PM5.1.3 N)

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

<u>Coverage</u>	<u>Minimum Limit</u>
General Comprehensive Liability	\$500,000

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

28 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."

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

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

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

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

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

26 Real Estate Director shall notify TENANT in writing of changes in the insurance
27 requirements; and if TENANT does not deliver copies of acceptable insurance
28 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. Assignment

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.

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

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

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

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

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

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

24 B. Subletting

25 Prior approval of the Director shall be required for TENANT to enter into
26 subleases with those residents whose properties adjoin the Premises. All
27 subleases shall be between TENANT and sublessee; the entry into
28 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 covenants and conditions:

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- 1 1. Said loan and all rights acquired thereunder shall be subject to each
2 and all of the covenants, conditions and restrictions set forth in
3 this Lease and to all rights and interests of LESSOR hereinafter.
- 4 2. In the event of any conflict between the provisions of this Lease and
5 the provisions of any loan document, the provisions of this Lease shall
6 control.
- 7 3. In the event any such lender subsequently acquires TENANT's interest in
8 this Lease as a result of a foreclosure of its security interest, or an
9 assignment in lieu thereof, such lender shall remain liable for the
10 payment of rent and performance of all other terms, covenants and
11 conditions hereunder only until lender assigns its interest in this
12 Lease.

13 17. STATE LANDS COMMISSION LEASING POLICY

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

19 18. NOTICES (PMF8.1 S)

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

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

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

3 LESSOR

TENANT

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

7 and

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

10 ATTACHMENTS TO LEASE (MF9.1'S)

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

13 GENERAL CONDITIONS--(21 Clauses)

14 EXHIBIT A (Location Map)

15 EXHIBIT B (Memorandum of Lease)

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

TENANT **DRAFT**

By _____
By _____
By _____

3
4
5
6
7 APPROVED AS TO FORM:
8 County Counsel

9
10 By _____

11 RECOMMENDED FOR APPROVAL:

12
13 General Services Agency
14 Real Estate

15 By _____

16 Environmental Management Agency
17 Harbors, Beaches and Parks

18 By _____

19
20 SIGNED AND CERTIFIED THAT A COPY OF
21 THIS DOCUMENT HAS BEEN DELIVERED TO
22 THE CHAIRMAN OF THE BOARD

LESSOR
COUNTY OF ORANGE

23 By _____
24 LINDA D. RUTH
25 Clerk of the Board of Supervisors of
26 the County of Orange

By _____
Chairman, Board of Supervisors

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1 I. GENERAL CONDITIONS

2
3 1. TIME (PMG1.2 S)

4 Time is of the essence of this Lease.

5 2. LEASE ORGANIZATION (PMG5.2 S)

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

9 3. PERMITS AND LICENSES (PMG3.1 S)

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

17 4. AMENDMENTS (PMG6.2 S)

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

21 5. UNLAWFUL USE (PMG7.2 S)

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

26 6. INSPECTION (PMG9.2 S)

27 LESSOR or its authorized representative shall have the right at all reasonable
28 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.

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

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

21 8. TAXES AND ASSESSMENTS (PMG11.2 N)

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

27 9. SUCCESSORS IN INTEREST (PMG12.2)

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

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

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

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1 11. PARTIAL INVALIDITY (PMG14.2 S)

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

6 12. UTILITIES (PME1.1 S)

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

9 13. WAIVER OF RIGHTS (PMG15.2 S)

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

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

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

21 15. RESERVATIONS TO LESSOR (PMG18.2 S)

22 The Premises are accepted as is and where is by TENANT subject to any and all
23 existing easements and encumbrances. LESSOR reserves the right to install, lay,
24 construct, maintain, repair, and operate such sanitary sewers, drains, storm water
25 sewers, pipelines, manholes, and connections; water, oil, and gas pipelines;
26 telephone and telegraph power lines; and the appliances and appurtenances necessary
27 or convenient in connection therewith, in, over, upon, through, across, and along
28 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.

1 LESSOR further agrees that should the exercise of these rights temporarily
2 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.

3 16. HOLDING OVER (PMG19.2 S)

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

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

8 Except as otherwise agreed to herein, upon termination of this Lease, TENANT shall
9 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.

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

11 If TENANT abandons the Premises or is dispossessed thereof by process of law or
12 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
13 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
14 under TENANT, and shall have no need to account therefor.

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

16 Upon termination of this Lease for any reason, including but not limited to
17 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
18 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
19 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
20 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.

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

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

24 Upon giving written notice of termination to TENANT, LESSOR shall have the right to
25 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
26 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
27 the lease terms and shall not constitute an acceptance or surrender.

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1 TENANT waives any and all right of redemption under any existing or future law or
2 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.

4 21. REMOVAL OF IMPROVEMENTS (PMD6.1 N)

5 All improvements constructed or placed within the Premises by TENANT must, upon
6 completion, be free and clear of all liens, claims, or liability for labor or
7 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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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

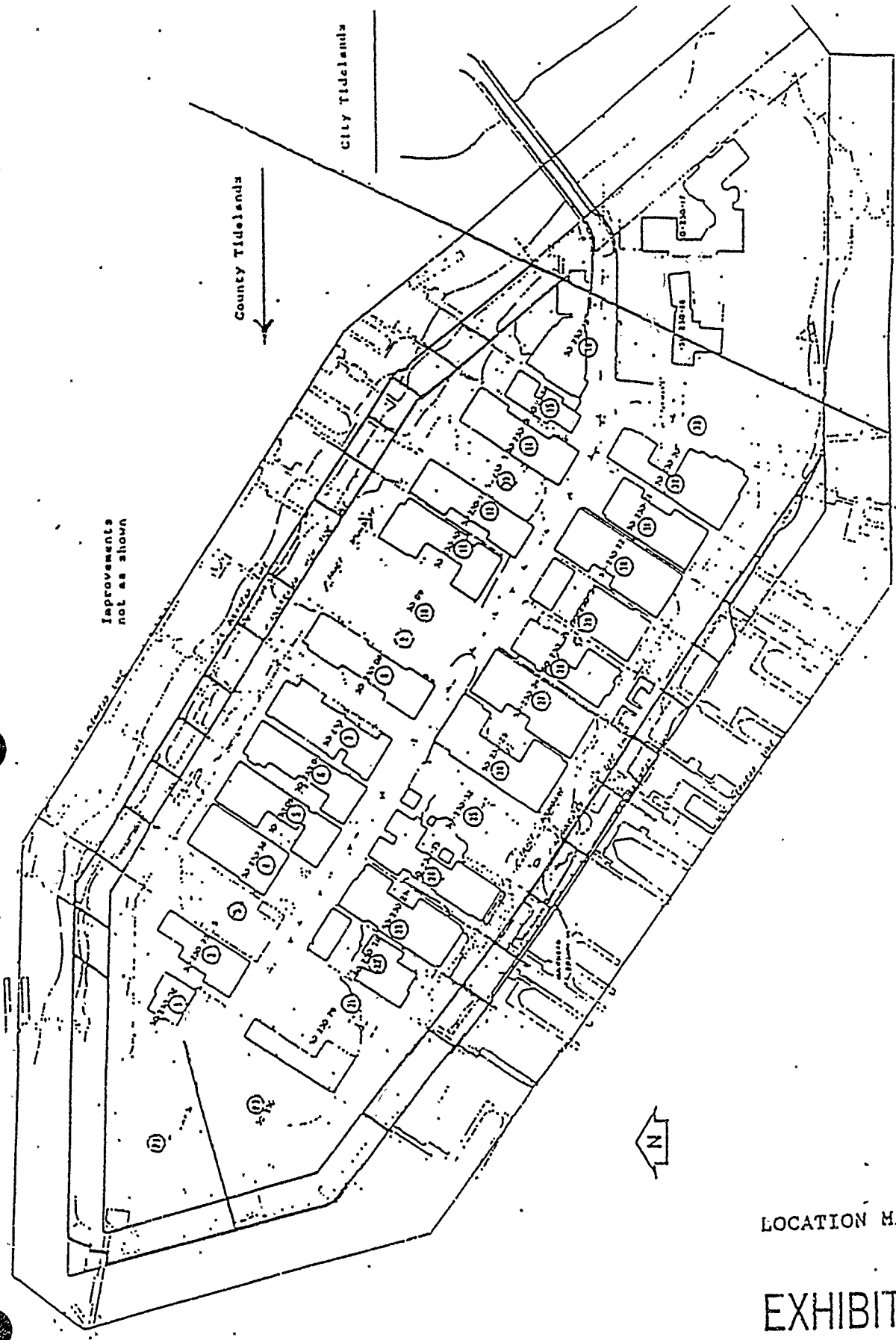
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EXHIBIT B

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HA55D-26
 Lower Newport Bay
 Harbor Island

LOCATION MAP

EXHIBIT A

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