

**CALENDAR ITEM
C88**

A 74

06/21/13

S 37

G 09-02
S. Guerrieri

**CONSIDER APPROVAL OF THE ESTABLISHMENT OF A NEWPORT HARBOR
CAPITAL FUND TO FUND NEWPORT HARBOR CAPITAL IMPROVEMENTS AND
MAINTENANCE ACTIVITIES WITHIN THE NEWPORT HARBOR, IN THE CITY OF
NEWPORT BEACH, ORANGE COUNTY**

APPLICANT:

City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658

BACKGROUND:

Pursuant to Chapter 74, Statutes of 1978, as amended by Chapter 317, Statutes of 1997 (Chapter 317), Chapter 361, Statutes of 2004, and Chapter 286, Statutes of 2012, the City of Newport Beach (City) has requested State Lands Commission (Commission) approval for the establishment of a Newport Harbor Capital Fund (Harbor Fund) to fund Newport Harbor capital improvements and maintenance activities within Newport Harbor.

The City adopted new permit and lease templates and adjusted commercial and noncommercial tidelands rent to fair market value in December 2012. The proposed Harbor Fund would collect the net incremental increase in revenue generated from the recently adjusted rental rates as well as any additional trust funds, at the City Council's discretion.

All revenue deposited into the Harbor Fund would be spent exclusively upon legislatively-granted sovereign lands located within Newport Harbor as shown on Exhibit A. The Harbor Fund may be used by the City to: (1) reimburse the General Fund for monies loaned to the tidelands funds for Newport Harbor improvements and maintenance activities, if the loan request was formalized in advance of any expenditures from the General Fund; and (2) fund the improvements and maintenance activities provided in the Five-Year Tidelands Capital Plan for Newport Harbor, which was approved by the Newport Beach City Council on November 27, 2012.

CALENDAR ITEM NO. **C88** (CONT'D)

The City has identified the net incremental rent received from the following sources as appropriate for deposit into the Harbor Fund:

- (1) Tidelands revenues derived from the Balboa Yacht Basin as a result of Resolution No. 2010-134, or any successor resolution;
- (2) Existing moorings as a result of Resolution No. 2010-132 and Resolution No. 2011-5, or any successor resolutions;
- (3) Existing large commercial marinas as a result of Resolution No. 2012-96, or any successor resolution;
- (4) Existing commercial tidelands uses resulting from Resolution No. 2012-98, or any successor resolution;
- (5) Existing residential piers resulting from Resolution No. 2012-120, or any successor resolution; and
- (6) New or revised Newport Harbor tidelands leases for those properties listed below:
 - a. American Legion, 215 East 15th Street
 - b. Bahia Corinthian Yacht Club, 1601 Bayside Drive
 - c. Balboa Bay Club, 1221 West Coast Highway
 - d. Balboa Island Ferry, 78 Agate Ave and 401 Palm Street
 - e. Basin Marine, 829 Harbor Island Drive #A
 - f. Galley Café, 829 Harbor Island Drive
 - g. Golden Hills Property, LLC (OC Dock/Harbor Marina), 3333 West Coast Highway
 - h. Heritage Yacht Sales, 829 Harbor Island Drive
 - i. Lido Island Community Association (Antibes Marina), 701 Via Lido Soud
 - j. San Pedro Bait Barge, Channel Harbor Entrance
 - k. Schock Boats, 29th Street end

To determine the amount of net incremental rent received by the City, the rent charged immediately preceding the year in which the initial increase in rent is charged under such resolution(s) shall be used as the base year (i.e., if an increase, or series of increases begin to take effect in 2013, 2012 should be used as the base, etc.). The base year shall remain unchanged following a harbor-wide appraisal (i.e., if 2012 is the base year for large commercial marinas and an appraisal occurs in 2018, 2012 shall

CALENDAR ITEM NO. **C88** (CONT'D)

remain the base year for purposes of this Harbor Fund). For revised permits or leases that are in replacement of a prior lease or permit, the amount of increase under the revised permit or lease, compared to the most recent annual accounting of income under the old lease or permit, shall be deposited. The base amount would not change if an owner of a pier changes and/or the pier is renovated/reconfigured. However, if the use of the pier changes from residential to non-residential use, the entirety of the rent shall go to the Tidelands Fund.

STAFF ANALYSIS:

Section 1(j) of Chapter 317 authorizes the City to use revenues accruing from or out of the use of the granted tidelands or from any additional trust assets for any or all of the purposes set forth in this act on public trust lands within the City of Newport Beach and that those revenues may be deposited in one or more reserve funds for use in accordance with the terms and conditions set forth in in this act. Section 1(a)(1) of Chapter 317 authorizes the legislatively granted sovereign land to be used for purposes in which there is a general statewide interest, for the establishment, improvement and conduct of a public harbor; for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.

Section 1(i) of Chapter 317 requires the City to establish a separate tidelands trust fund or funds in such a manner as may be approved by the Commission. To fulfill this requirement, staff recommends the establishment of the Harbor Fund include additional notification requirements to the Commission for future loans to the Harbor Fund that will be reimbursed to the General Fund. Specifically, staff recommends that the Commission's approval include a requirement that the City must notify the Commission in advance of any additional or future loans to the Harbor Fund that will be reimbursed to the General Fund and provide supporting documents, including a City resolution, confirming that the loan to the Harbor Fund has been formalized in advance of any expenditure from the General Fund. If a loan to the Harbor Fund will exceed one million dollars, the City must obtain Commission approval prior to procurement of the loan.

Based on the information provided by the City, the proposed establishment of a Harbor Fund is consistent with the language set forth in Sections 1(i), 1(j), and 1(a)(1) of Chapter 317.

CALENDAR ITEM NO. **C88** (CONT'D)

OTHER PERTINENT INFORMATION:

- The City has identified \$9,676,658.50 in current loans to the tidelands funds for Newport Harbor improvements and maintenance activities that will be reimbursed to the General fund:

Year	Project Name	Actual	Encumbrances	Total Expenditures / Advance
2011-12	Harbor Dredging Project	222.00		
2011-12	Lower Harbor Dredging	2,779,649.01	-	
2011-12	Rhine Channel Dredging	4,069,102.11	-	
2011-12	Linda Isle Dredging	30,730.00	-	
2012-13	Lower Harbor Dredging	3,876,245.46	25,026.84	
2012-13	Rhine Channel Dredging	124,531.25	9,151.83	
2013-14	Lower Harbor Dredging		300,000.00	
		10,880,479.83	334,178.67	11,214,658.50
			Less: Orange County Contribution	(1,538,000.00)
			Total Advance	9,676,658.50

- Currently the City allocates its revenues generated from legislatively granted sovereign lands into five funds. Pursuant to section 2(a)-(c) of Chapter 317, the City maintains separate tidelands accounts identified as the Tidelands Capital Fund, Tidelands Operation and Maintenance Fund, and an Upper Newport Bay Restoration Fund. The city also allocates money to a Land Bank Fund that was created by the State Treasury pursuant to section 8610 of the Public Resources Code and is available to the Commission as described in Chapter 317. The City also allocates money to a Tidelands Trust Fund.

CALENDAR ITEM NO. **C88** (CONT'D)

3. Chapter 317 requires that 80% of the revenues from Parcels A, B, and C, as described in Chapter 74, Statutes of 1978, be deposited in the Tideland Capital Fund and in the Tideland Operation and Maintenance Fund, allocated as determined by the City. Additionally, 10% of those revenues are to be deposited in the Upper Newport Bay Restoration Fund and 10% in the Land Bank Fund. Pursuant to Chapter 728, Statutes of 1994, 95% of the revenues generated from Parcel D will be allocated to the Tidelands Trust Fund and 5% will be allocated to the Land Bank Fund. Any additional revenue generated on the granted lands is currently allocated to the Tidelands Fund, or as determined by the City.
4. The City, as a trustee, is required to submit an annual financial report to the Commission. Pursuant to section 6306 of the Public Resources Code and Chapter 317, the City shall submit to the Commission an annual detailed statement of revenues and expenditures for all of its rents, revenues, issues, and profits in any manner from the granted lands or any improvements, betterments, or structures thereon.
5. The staff recommends that the Commission find that the subject consistency determination of the proposed establishment of a Harbor Fund does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.
6. This activity involves lands statutorily exempted from Public Resources Code sections 6370 et seq., pursuant to Public Resources Code section 6377.

EXHIBIT:

- A. Location and Site Map

CALENDAR ITEM NO. **C88** (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject consistency determination of a proposed establishment of a Harbor Fund is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

SIGNIFICANT LANDS FINDING:

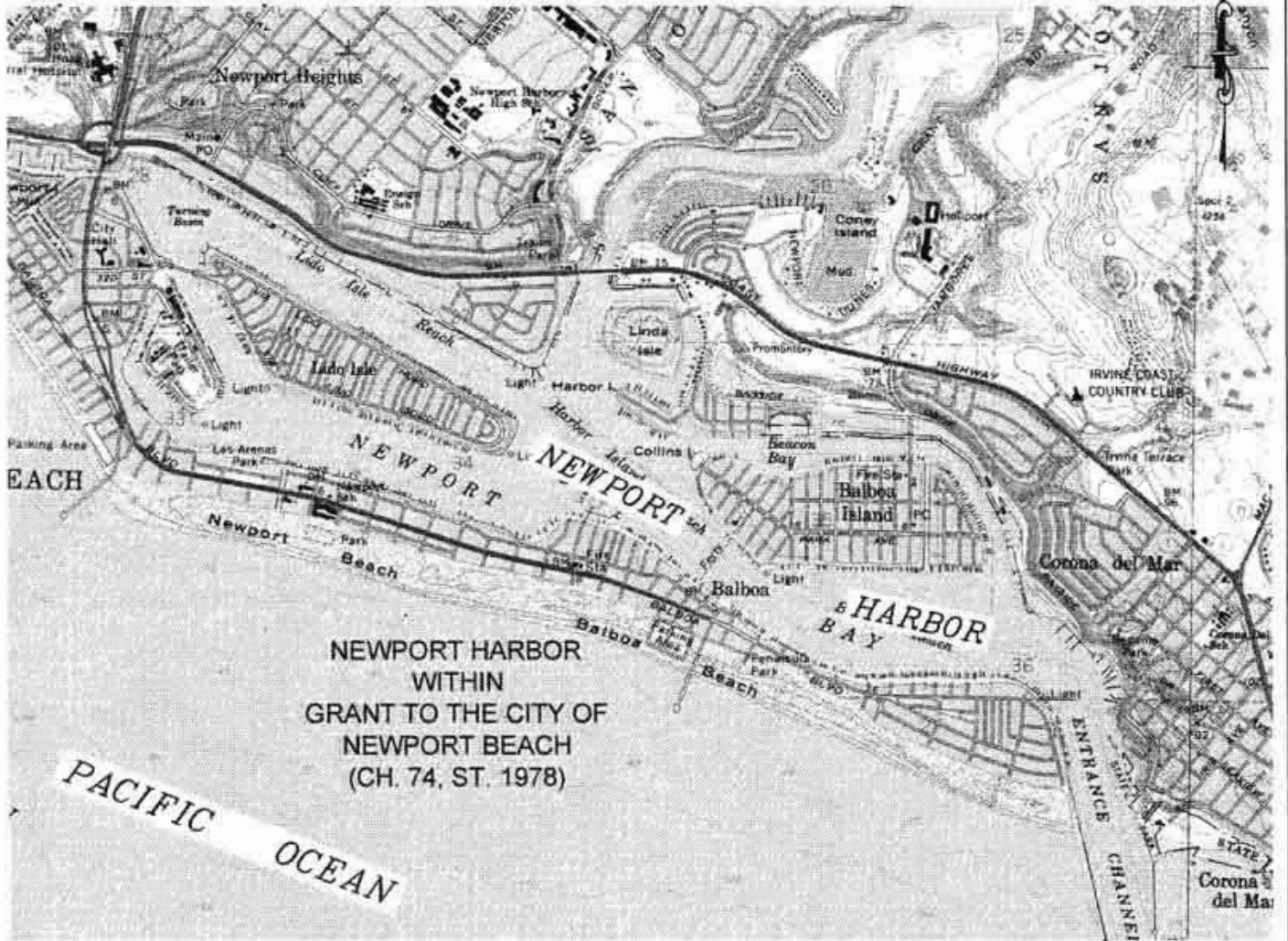
Find that this activity is statutorily exempt from Public Resources Code sections 6370 et seq., pursuant to Public Resources Code section 6377.

AUTHORIZATION:

Find that the proposed establishment of a Newport Harbor Capital Fund to fund Newport Harbor capital improvements and maintenance activities within Newport Harbor in the City of Newport Beach, is consistent with the requirements set forth in Chapter 74, Statutes of 1978, as amended by Chapter 317, Statutes of 1997, with the condition that the Commission is notified in advance of additional or future loans to the Harbor Fund that will be reimbursed by the City and provide supporting documents, including a City resolution, confirming that the loan to the Harbor Fund has been formalized in advance of any expenditure from the General Fund. And, if the loan to the Harbor Fund will exceed one million dollars, the City must obtain Commission approval prior to procurement of the loan.

NO SCALE

SITE



NEWPORT HARBOR
 WITHIN
 GRANT TO THE CITY OF
 NEWPORT BEACH
 (CH. 74, ST. 1978)

NEWPORT HARBOR, NEWPORT BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

G 09-02
 CITY OF NEWPORT
 BEACH
 APPROVAL OF TIDELAND
 TRUST FUND
 ORANGE COUNTY

