

**CALENDAR ITEM
C115**

A 74

09/20/13

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S. Scheiber

**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
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658

The City of Newport Beach (City) is trustee of sovereign tide and submerged lands granted to it by the Legislature pursuant to Chapter 74, Statutes of 1978, as amended (statutory trust grant).

BACKGROUND:

Pursuant to Chapter 74, Statutes of 1978 (Chapter 74), the Legislature 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, that were within the corporate limits of the city on July 25, 1919. In the 1920's, certain tide and submerged lands in Beacon Bay were filled and reclaimed as part of the development of the harbor in lower Newport Bay. Chapter 74 recognized that these lands had been filled and were being used for purposes inconsistent with the public trust doctrine. Chapter 74 refers to these parcels as Parcel A, B, and C and authorized the non-conforming use, subject to certain specified conditions. In addition to the filled tide and submerged lands identified in Chapter 74, 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 purposes inconsistent with the public trust – an apartment building. However, Chapter 74 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 to private parties for 50 years. The Balboa Bay Club (BBC) is the successor to this lease and has developed the property as a private club, marina, and residential apartment complex (the Terrace Apartments), located on Parcel D. When the lease was originally signed, the legal character of Parcel D and the adjoining lands had not been resolved. In 1952, a judicial determination involving the City of Newport Beach, County of Orange and State of

CALENDAR ITEM NO. **C115** (CONT'D)

California confirmed that the BBC lease site and certain adjoining lands were in fact tide and submerged lands.

In 1986, the City of Newport Beach and the BBC entered into a new lease 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 (Commission).

Pursuant to Chapter 728, Statutes of 1994, the Legislature allowed the non-conforming residential use of Parcel D to continue for the duration of its useful life but in no event to extend beyond December 31, 2044. On October 25, 2000, the City of Newport Beach and the BBC entered into a new lease for 50 years, which included the private club, marina, residential apartment complex, public hotel, and a requirement to develop a redevelopment plan to open a majority of the site to the public.

The City and the BBC would like to terminate the current lease and enter into a new lease that includes Parcel D for the maximum term of 50 years, pursuant to Chapter 74, Statutes of 1978. The maximum term of 50 years will not apply to the non-conforming residential use of Parcel D, which must terminate by December 31, 2044. As provided in Chapter 728, the City has requested the Commission approve the form of the lease and consideration of the new Amended and Restated Ground Lease.

STAFF ANALYSIS:

In Chapter 728, Statutes of 1994 (Chapter 728), the Legislature acknowledged the non-conforming residential use of Parcel D and authorized the continuance of the non-conforming residential use as a residential apartment until no later than December 31, 2044, subject to certain restrictions. Section (8)(c) of Chapter 728 states that the Commission must determine that any continuation of the nonconforming use for an additional period of time is in the best interest of the public and in furtherance of public trust purposes. If such a finding is made by the Commission, Parcel D may be leased for an additional period, but in no event beyond December 31, 2044. Although the Amended and Restated Ground Lease is increasing the term for the parcel adjoining Parcel D, the lease term for Parcel D does not change under the new Amended and Restated Ground Lease because by statute the use must terminate by December 31, 2044.

Pursuant to Section 1(b) of Chapter 74, Statutes of 1978, the City may grant leases for a period of time not exceeding 50 years. Section (8)(d) of Chapter 728 provides that the consideration for any future lease or amendment to the current lease, which includes Parcel D, must be fair market value. Section (8)(e) of Chapter 728 requires that the form

CALENDAR ITEM NO. **C115** (CONT'D)

of the lease or amendment and the consideration must be subject to approval by the Commission.

The Commission staff has reviewed the Amended and Restated Ground Lease for the Balboa Bay Club and analyzed the percentage rents and additional consideration to be received by the City and finds that the consideration is at fair market rent value. The rent provisions calls for the greater of the base rent, currently set at \$2,202,387 or the percentage rent, broken down as follows:

CATEGORY	PERCENTAGE RENT
Dues Revenue	6%
Apartment Revenue	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%
Cell Tower	15%

In the opinion of the Commission staff, the Amended and Restated Ground Lease provides for acceptable terms as to both form of lease and rate of consideration.

OTHER PERTINENT FACTS

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 fund accounts:
 - 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.
 - Five percent (5%) shall be deposited in the Kapiloff Land Bank Fund for expenditure by the Commission for purposes of providing necessary state review of management of legislative grantee's public trust property as provided by Section 6301 and 6306 of the Public Resources Code.

CALENDAR ITEM NO. **C115** (CONT'D)

- Pursuant to Section (f)(2), five years after the effective date of any new lease or amendment, 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 Kapiloff Land Bank Fund. A new lease was entered into, effective October 25, 2000, that triggered the modification of revenue to be deposited into the tidelands trust fund and Kapiloff Land Bank Fund beginning on October 25, 2005, five years later.
- 2. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

- 3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. It is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

SIGNIFICANT LANDS FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

CALENDAR ITEM NO. **C115** (CONT'D)

AUTHORIZATION:

Approve the form of the lease and the rate of consideration, as required by Section 8(d) and 8(e) of Chapter 728, Statutes of 1994, for the Amended and Restated Ground Lease between the City of Newport Beach and the Balboa Bay Club involving the property described and shown in Exhibit A, attached hereto and by reference made a part hereof.

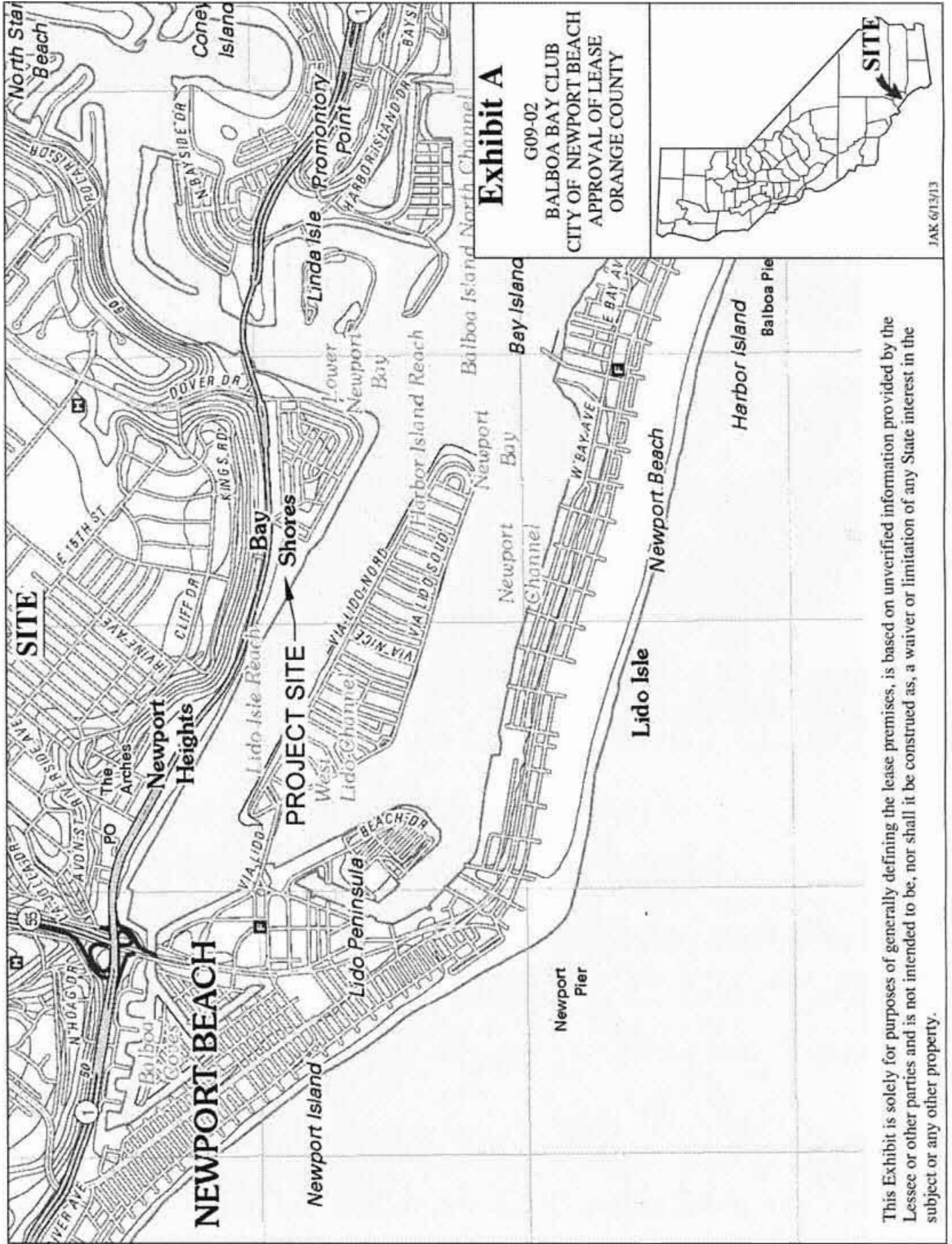


Exhibit A

G09-02
 BALBOA BAY CLUB
 CITY OF NEWPORT BEACH
 APPROVAL OF LEASE
 ORANGE COUNTY



JAK 6/13/13

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.