

**CALENDAR ITEM
C63**

A 74

02/21/14

G 09-02

S 37

R. Boggiano

CONSIDER APPROVING A LOAN OF \$6,132,900 FROM THE CITY OF NEWPORT BEACH GENERAL FUND TO THE NEWPORT HARBOR CAPITAL FUND FOR THE DEVELOPMENT OF THE MARINA PORTION OF MARINA PARK IN THE CITY OF NEWPORT BEACH, ORANGE COUNTY

APPLICANT:

City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 9660

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, and as amended (Chapter 74).

BACKGROUND:

Pursuant to Chapter 74 and the California State Lands Commission's (Commission) prior authorization for the establishment of the Newport Harbor Capital Fund (Harbor Fund), the City has submitted a resolution that formalizes a proposed loan in the amount of \$6,132,900 from the City's General Fund to the Harbor Fund for Commission approval.

Currently, the Harbor Fund may be used by the City to: (1) fund improvements and maintenance activities on legislatively granted sovereign land located within Newport Harbor as shown on Exhibit A; and (2) reimburse the General Fund for monies loaned to the Harbor Fund for Newport Harbor improvements and maintenance activities, if the loan request was formalized in advance of any expenditures from the General Fund and the Commission was notified of the loan. Further, if the loan exceeds one million dollars, it must be approved by the Commission.

The proposed loan of \$6,132,900 to the Harbor Fund will finance the construction of the marina basin and docks for the Marina Park development, located in Newport Harbor. This is a non-interest bearing loan and the City expects to reimburse the General Fund from incremental revenues from the Harbor Fund over a period of 15 to 30 years.

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STAFF ANALYSIS:

The Commission approved the establishment of the Harbor Fund (Calendar Item 88, June 21, 2013) with a requirement that the Commission is notified in advance of additional or future loans to the Harbor Fund from the City's General Fund. The City must provide the Commission with supporting documents, including a City resolution, confirming that the loan to the Harbor Fund has been formalized in advance of any expenditure from the City's General Fund. Additionally, if the loan to the Harbor Fund will exceed one million dollars, the City must obtain Commission approval prior to procurement of the loan.

Because the proposed loan will exceed one million dollars, the Commission is required to approve the loan. The City has provided the Commission a resolution confirming that the loan for \$6,132,900 has been formalized in advance of any expenditure from the General Fund and that the monies will be loaned to the Harbor Fund for Newport Harbor improvements and maintenance activities. The proposed loan will finance the construction of the marina basin and docks in the Marina Park development, a use consistent with Chapter 74, the Public Trust Doctrine, and prior Commission authorization. As such, staff recommends the Commission approve the proposed loan.

OTHER PERTINENT INFORMATION:

1. The City allocates revenue from legislatively granted sovereign lands into five funds. Pursuant to section 2(a)-(c) of Chapter 317, Statutes of 1997 the City maintains separate tidelands accounts identified as the Tideland Capital Fund, Tideland Operation and Maintenance Fund, and an Upper Newport Bay Restoration Fund. The city also allocates money to a Tidelands Trust Fund and a Land Bank Fund that was created pursuant to section 8610 of the Public Resources Code and is available to the Commission for granted lands oversight, as described in Chapter 317, Statutes of 1997.
2. Chapter 317 requires that 80% of the revenues from Parcels A, B, and C, as described in Chapter 74, be deposited in the Tideland Capital Fund and in the Tideland Operation and Maintenance Fund, based on an allocated 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

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revenue generated on the granted lands is currently allocated to the Tidelands Fund, or as determined by the City.

3. When the Commission approved the establishment of the Harbor Fund, it also identified \$9,676,658.50 in existing loans to the trust for Newport Harbor improvements and maintenance activities. The City provided formal notification to the Commission of the existing loan and the Commission acknowledged that the City intends for the loan from the General Fund to be reimbursed from the Harbor Fund.
4. The City, as a trustee of legislatively granted public trust land, is required to submit an annual financial report and standardized reporting form to the Commission. Pursuant to section 6306 of the Public Resources Code and Chapter 74, 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. Commission staff recommends that the Commission find that the subject loan approval 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.

EXHIBITS:

- A. Location and Site Map
- B. City of Newport Resolution

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the loan approval 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.

CALENDAR ITEM NO. **C63** (CONT'D)

AUTHORIZATION:

Approve the proposed loan in the amount of \$6,132,900 from the City of Newport Beach General Fund to the Harbor Fund.

NO SCALE

SITE



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
TRUST LOAN
ORANGE COUNTY



EXHIBIT B

G 09-02

RESOLUTION NO. 2013-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH FORMALIZING THE FORMALIZING THE CITY'S INTENT TO LOAN \$6,132,900.00 FROM THE GENERAL FUND TO THE HARBOR FUND FOR THE DEVELOPMENT OF THE MARINA PORTION OF MARINA PARK

WHEREAS, the California Coastal Commission approved the development of Marina Park in June 2012; and

WHEREAS, the development of the marina portion of Marina Park is an improvement within Newport Harbor; and

WHEREAS, the City adjusted commercial and noncommercial tidelands rent for piers, moorings, marinas, and tidelands leases to fair market value in December 2012; and

WHEREAS, the State Lands Commission ("SLC") approved the establishment of a Newport Harbor Capital Fund to collect the net incremental increase in revenue generated from the adjusted rental rates as well as any additional trust funds, at the City Council's discretion, in order 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; and

WHEREAS, the SLC approved the establishment of the Newport Harbor Capital Fund upon the condition that the City must notify the SLC in advance of any additional or future loans, occurring after June 21, 2013, 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 had been formalized in advance of any expenditure from the General Fund; and if a loan to the Harbor Fund will exceed one million dollars, the City must obtain SLC approval prior to the procurement of the loan; and

WHEREAS, the cost of developing the marina portion of Marina Park is \$6,132,900.00; and

WHEREAS, the City Council desires to formalize this loan from the General Fund to the Newport Harbor Capital fund in advance of any expenditure from the General Fund; and

WHEREAS, the City Council desires the City to seek SLC approval of the loan of \$6,132,900.00 from the General Fund to the Newport Harbor Capital fund.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: Upon SLC approval, the City shall reimburse the General Fund from the Newport Harbor Capital Fund for the cost of developing the marina portion of Marina Park.

Section 2: The cost of such development (excluding the Sailing Center) is \$6,132,900.00.

Section 3: The City Council finds this action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 4: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 26th day of November, 2013.



Keith Curry, Mayor

ATTEST:



Leilani Brown, City Clerk

