

CHAPTER 74

An act relating to tide and submerged lands in the City of Newport Beach, and in this connection repealing Chapter 494 of the Statutes of 1919, Chapter 70 of the Statutes of 1927, Chapter 142 of the Statutes of 1929, Chapter 574 of the Statutes of 1929, Chapter 813 of the Statutes of 1929, and Chapter 200 of the Statutes of 1931, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 6, 1978. Filed with
Secretary of State April 7, 1978.]

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

SECTION 1. There is hereby granted to the City of Newport Beach and its successors all of the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay in the County of Orange, which were within the corporate limits of the City of Newport Beach, a municipal corporation, on July 25, 1919; the same to be forever held by the city and its successors in trust for the uses and purposes and upon the following express conditions:

(a) That the lands shall be used by the city and its successors for purposes in which there is a general statewide interest, as follows:

(1) For the establishment, improvement, and conduct of a public harbor; and 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.

(2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.

(3) For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

(b) Except as otherwise provided in this section, the city or its successors shall not, at any time, grant, convey, give, or alienate the lands, or any part thereof, to any individual, firm, or corporation for

any purposes whatever; except, that the city or its successors may grant franchises thereon for a period not exceeding 50 years for wharves and other public uses and purposes and may lease the lands, or any part thereof, for a period not exceeding 50 years for purposes consistent with the trust upon which the lands are held by the state and with the uses specified in this section.

(c) The lands shall be improved without expense to the state; provided, however, that nothing contained in this act shall preclude expenditures for the development of the lands for the purposes authorized by this act, by the state, or any board, agency, or commission thereof, or expenditures by the city of any funds received for such purpose from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The state shall have the right to use without charge any transportation, landing, or storage improvements, betterments, or structures constructed upon the lands for any vessel or other watercraft or railroad owned or operated by the state.

(f) There is hereby reserved to the people of the state the right to fish in the waters on the lands with the right of convenient access to the waters over the lands for such purpose, which rights shall be subject, however, to such rules and regulations as are necessary for the accomplishment of the purposes specified in subdivision (a) of this section.

(g) Notwithstanding any provision of this section to the contrary, the city may lease the lots located within Parcels A, B, and C described in Section 6 of this act for the purposes set forth in this section and for a period not to exceed 50 years. The consideration to be received by the city for such leases shall be the fair market rental value of such lots as finished subdivided lots with streets constructed and all utilities installed. The form of such leases and the range of consideration to be received by the city shall be approved by the State Lands Commission prior to the issuance of any such lease. All money received by the city from such existing and future leases of such lots shall be deposited in the city tideland capital fund in accordance with the provisions of this act.

(h) With the approval of the State Lands Commission, the city may transfer portions of the lands granted by this act, or held pursuant to this act, to the state acting by and through the State Lands Commission, for lease to the Department of Fish and Game for an ecological reserve or wildlife refuge, or both, and other compatible uses to be undertaken by the department; provided, however, that if at any time the Department of Fish and Game no longer uses such portions of the lands so transferred by the city to the state for such purposes, the lands so transferred shall revert to the city to be held pursuant to the provisions of this act. Upon approving

such a transfer from the city to the state, the State Lands Commission shall lease the lands so transferred to the Department of Fish and Game. The public benefit shall be the sole consideration to be received by the State Lands Commission from the Department of Fish and Game for that lease. Any and all income received by the Department of Fish and Game from the lands so leased shall be used only in connection with the department's improvement and administration of the leased lands.

(i) The city shall establish a separate tidelands trust fund or funds in such manner as may be approved by the State Lands Commission, and the city shall deposit in the fund or funds all moneys received directly from, or indirectly attributable to, the granted tidelands in the city.

(j) In accordance with the provisions of this act, the city, acting either alone or jointly with another local or state agency, may use revenues accruing from or out of the use of the granted tidelands for any or all of the purposes set forth in this act. Such revenues may be deposited in one or more reserve funds for use in accordance with the terms and conditions set forth in this act.

(k) As to the accumulation and expenditure of revenues for any single capital improvement on the granted lands involving an amount in excess of two hundred fifty thousand dollars (\$250,000) in the aggregate, the city shall file with the State Lands Commission a detailed description of such capital improvement not less than 90 days prior to the time of any disbursement therefor or in connection therewith. Within 90 days after the time of such filing, the State Lands Commission may determine and notify the city that such capital improvement is not in the statewide interest and benefit or is not authorized by the provisions of subdivision (j) of this section. The State Lands Commission may request the opinion of the Attorney General on the matter; and, if it does so, a copy of such opinion shall be delivered to the city with the notice of its determination. In the event the State Lands Commission notifies the city that such capital improvement is not authorized, the city shall not disburse any revenue for or in connection with such capital improvement unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction. The city is authorized to bring suit against the state for the purpose of securing such an order or adjudication, which suit shall have priority over all other civil matters. Service of process shall be made upon the Executive Officer of the State Lands Commission and the Attorney General, and the Attorney General shall defend the state in such suit. If judgment be given against the state in such suit, no costs shall be recovered against it.

(l) On June 30, 1978, and on June 30 of every third fiscal year thereafter, that portion of the city tideland trust revenues in excess of two hundred fifty thousand dollars (\$250,000) remaining after deducting current and accrued operating costs and expenditures directly related to the operation or maintenance of tideland trust

activities shall be deemed excess revenues. However, any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the granted lands shall not be deemed excess revenue. Capital improvements of the granted lands for purposes authorized by this act, including such improvements on lands transferred to the state pursuant to subdivision (h) of this section and paid for by the city, may be considered as expenditures for the purpose of determining excess revenues; provided, however, that if made after the effective date of this act they may be so considered only if made in accordance with subdivision (k) of this section. The excess revenue, as determined pursuant to this subdivision, shall be allocated as follows: 85 percent shall be transmitted to the State Treasurer for deposit in the General Fund in the State Treasury, and 15 percent shall be retained by the city for deposit in the trust fund for use for any purpose authorized by subdivision (j) of this section.

(m) At the request of the city, the State Lands Commission shall grant an extension of time, not to exceed 30 calendar days, for filing any report or statement required by this act, which was not filed due to mistake or inadvertence.

(n) In the event that the city fails or refuses to file with the State Lands Commission any report, statement, or document required by any provision of this act, or any extension period granted pursuant to this act, or fails or refuses to carry out the terms of this act, the Attorney General shall, upon the request of the State Lands Commission, bring such judicial proceedings for correction and enforcement as are appropriate and shall act to protect any improvements to, or assets situated upon, the granted lands or diverted therefrom. The State Lands Commission shall notify the Chief Clerk of the Assembly and the Secretary of the Senate within 30 days of the occurrence of such failure or refusal and of actions taken as a result thereof.

(o) The State Lands Commission shall, from time to time, recommend to the Legislature such amendments as it may deem necessary in the terms and conditions of this act.

(p) The State Lands Commission shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with in good faith.

(q) On or before December 31 of each year, the State Lands Commission shall report to the Chief Clerk of the Assembly and to the Secretary of the Senate the full details of any transaction or condition reported to the commission pursuant to this act which it deems in probable conflict with the requirements of this act or with any other provision of law. Upon request by resolution of either house of the Legislature, or upon formal request of the State Lands Commission made only after a noticed public hearing at which the city has been given an opportunity to express fully any disagreement with the commission's findings or to describe any extenuating

circumstances causing the violation, the Attorney General shall bring an action in the Superior Court in the County of Orange to declare that the grant under which the city holds such tidelands and submerged lands is revoked for gross and willful violation of the provisions of this act or any other provision of law or to compel compliance with the requirements of this act and any other provision of law.

(r) The city shall cause to be made and filed annually with the State Lands Division a detailed statement of receipts and expenditures by it of all rents, revenues, issues, and profits in any manner arising after the effective date of this act from the granted lands or any improvements, betterments, or structures thereon.

(s) The Department of Fish and Game shall establish the funds and make the deposits required by subdivision (i) of this section and shall prepare and file statements required by subdivision (r) of this section as to any lands transferred to the state pursuant to subdivision (h) of this section.

(t) The provisions of Chapter 2 (commencing with Section 6701) of Part 2 of Division 6 of the Public Resources Code shall be applicable to this section. The provisions of Section 6359 of the Public Resources Code shall not be applicable to this section.

(u) Notwithstanding any other provision of this act, the city shall pay to the state all revenues received from the production of oil, gas, and other minerals derived from or attributable to the real property described in Section 6 of this act and the real property acquired by the city pursuant to Section 2 of this act. Whenever practicable, the city shall obtain the mineral rights in real property acquired pursuant to Section 2 of this act.

SEC. 2. The City of Newport Beach shall establish a city tideland capital fund as one of the funds required by subdivision (i) of Section 1 of this act. All money received by the city pursuant to the provisions of subdivision (g) of Section 1 of this act shall be deposited in the fund. The city may also deposit such other income from the lands granted to the city in trust by this act as the city deems appropriate. All money in the fund shall be used by the city in conformity with the following terms and conditions:

(a) Expenditures from the fund may be made only for the acquisition of real property that will further the purposes of the trust created by this act and for capital improvements for such purposes, to be constructed on such real property so acquired, and the operation and maintenance thereof.

(b) The city is authorized to make such acquisitions of real property by purchase, gift, or other conveyance, including, but not limited to, the transfer of city-owned property held in a municipal capacity to the trust created by this act. All such real property shall be held by the city in trust pursuant to the provisions of this act.

(c) For purposes of this section, acquisitions of real property by the city for purposes of enhancing the lands administered by the Department of Fish and Game pursuant to Chapter 415 of the

Statutes of 1975 shall be deemed to be in furtherance of the purposes of the trust created by this act.

(d) No capital expenditure or transfer pursuant to subdivision (e) of this section may be made from the fund without the advance approval of the State Lands Commission.

(e) The city may expend municipal funds to acquire real property for purposes specified in this section. The city may transfer amounts from the city tideland capital fund to reimburse municipal funds for such expenditures, together with an appropriate amount of interest on such funds advanced, if such expenditures of municipal funds are made after the effective date of this act and the State Lands Commission gives advance approval of such a transaction.

SEC. 3. The Legislature makes the following findings and determinations:

(a) By Chapter 70 of the Statutes of 1927, as amended, the Legislature conveyed certain tide and submerged lands in trust to the City of Newport Beach for the purposes therein stated, primarily for the promotion and accommodation of commerce and navigation.

(b) Certain portions of such tide and submerged lands have been filled and reclaimed as a result of a plan of improvement of the granted tide and submerged lands, including the development of a harbor facility. Such portions are as described in Section 6 of this act and hereinafter are referred to as Parcels A, B, and C.

(c) Those portions of Parcels A, B, and C, as described in Section 6 of this act, which are shown as numbered lots on the Record of Survey recorded in Book 13, Page 42, and the Record of Survey recorded in Book 9, Pages 42 and 43, both in the office of the County Recorder of the County of Orange, together with those portions of Parcel A, as described in Section 6 of this act, which are shown as numbered lots on the City Map of East Side Addition to Beacon Bay on file in the office of the City Engineer of the City of Newport Beach, being a relatively small portion of such granted tide and submerged lands, have been divided into lots and leased and are producing income to support the statutory trusts under which such tide and submerged lands are held by the city, and, except for the production of income to support such trusts, are no longer required or needed for the promotion of such trusts.

(d) The lots located within Parcels A, B, and C, inclusive, having been filled and reclaimed, are no longer submerged or below the mean high tide line and are no longer needed or required for purposes of navigation, commerce, and fisheries and are freed of the public trust for navigation, commerce, and fisheries, and may continue to be used for those purposes set forth in the existing leases and subleases of such lots, but shall continue to be held in trust by the City of Newport Beach subject to the other terms and provisions of this act and other laws applicable to the tide and submerged lands included in the grant to the city. Further, such lots shall be so held subject to the condition that the revenues derived from the leasing or administration of such lots shall be used as provided in this act.

Nothing in this subdivision shall operate to terminate the public trust for navigation, commerce, and fisheries over those portions of Parcels A, B, and C which are streets and beaches of Newport Bay. The determination and finding set forth in this subdivision shall become effective as provided in Section 4 of this act.

(e) The release of the lots within Parcels A, B, and C, inclusive, from the public trust for commerce, navigation, and fisheries to the extent expressed in subdivision (d) of this section is in the best interests of the people of the state.

SEC. 4. The findings and determinations in Section 3 of this act terminating the public trust for navigation, commerce, and fisheries over the lots located within Parcels A, B, and C shall become effective upon the city's acquiring or transferring such parcels of real property, pursuant to Section 2 of this act, as the State Lands Commission shall determine to be appropriate, taking into consideration the size of the area affected by the termination, the trust purposes that can be accomplished by such acquisition or transfer, and the value of the real property acquired or transferred and upon the recording of an appropriate document in the Office of the County Recorder of the County of Orange reflecting the State Lands Commission's determination.

SEC. 5. The lands granted pursuant to Section 1 of this act shall be held by the city subject to the express reservation and condition that the state may at any time in the future use the lands, or any portion thereof, for highway purposes without compensation to the city, its successors or assigns, or any person, firm, or public or private corporation claiming under it; except that, in the event improvements have been placed upon the property taken by the state for such purposes, compensation shall be made to the person entitled thereto for the value of such person's interest in the improvements taken or the damages to such interest. The provisions of this section shall not be applicable to the lots located within Parcels A, B, and C.

SEC. 6. The parcels of real property referred to in this act are prescribed 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 G 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 $82^{\circ} 30' 00''$ West, 297.66 feet to an angle point therein; thence South $84^{\circ} 00' 00''$ West, 160.00 feet; thence South $57^{\circ} 00' 00''$ West, 100.00 feet; thence South $32^{\circ} 52' 00''$ 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 2.684 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 2 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 $39^{\circ} 48' 00''$ 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 $39^{\circ} 48' 00''$ West, 432.17 feet; thence leaving said Ordinary High Tide Line, South $56^{\circ} 56' 29''$ 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 $67^{\circ} 48' 00''$ West; thence southerly and southwesterly along said curve 76.60 feet through a central angle of $25^{\circ} 34' 20''$ 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 $39^{\circ} 48' 00''$ West, 432.17 feet"; thence along

said parallel line, South 30° 48' 00" East, 328.27 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 2 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.

SEC. 7. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 8. Chapter 494 of the Statutes of 1919 is repealed.

SEC. 9. Chapter 70 of the Statutes of 1927 is repealed.

SEC. 10. Chapter 142 of the Statutes of 1929 is repealed.

SEC. 11. Chapter 574 of the Statutes of 1929 is repealed.

SEC. 12. Chapter 813 of the Statutes of 1929 is repealed.

SEC. 13. Chapter 200 of the Statutes of 1931 is repealed.

SEC. 14. No appropriation is made by this act, nor is any

obligation created thereby under Section 2231 of the Revenue and Taxation Code, for the reimbursement of the City of Newport Beach for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

SEC. 15. The Legislature reserves the right to amend, modify, or revoke, in whole or in part, the tidelands and submerged lands granted and conveyed in trust pursuant to this act; provided, that the state shall thereupon assume and be bound by all lawful transactions and obligations related to such lands entered into or created by the city during its holding of such lands.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that certain restrictions pertaining to certain parcels subject to this act may be removed as soon as possible, thereby providing for a more equitable return to the City of Newport Beach from its tidelands and assuring the proper use of such revenue by the city, it is necessary that this act take effect immediately.
