

CHAPTER 728

An act to amend Section 6 of, and to add Section 4.5 to, Chapter 74 of the Statutes of 1978, relating to tide and submerged lands in the City of Newport Beach.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 4.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 4.5. (a) The Legislature hereby finds and declares all of the following:

(1) In Section 1 of this act, the Legislature granted certain tide and submerged lands in trust to the City of Newport Beach upon express conditions and for certain public trust uses and purposes, but primarily for the promotion and accommodation of commerce, fishing, and navigation.

(2) Portions of those tide and submerged lands were filled and reclaimed as a result of the implementation in the 1920's of a plan of improvement, including the development of lower Newport Bay as a harbor to promote and accommodate commerce, fishing, recreational boating, and navigation. In addition to those filled tide and submerged lands, an additional parcel, as described in Section 6 of this act, as amended by the act adding this section, hereafter designated Parcel D, has been filled and reclaimed as part of the public project of developing lower Newport Bay as a harbor.

(3) Prior to a judicial determination in 1952 that Parcel D and certain adjoining lands were state tidelands and submerged lands granted to the city pursuant to Chapter 70 of the Statutes of 1927, the legal character of the property was subject to question. In 1948, the city leased Parcel D and adjoining property to a private entity which constructed a private club on the adjoining property and a residential apartment complex of 142 units on Parcel D. The term of that lease was extended in 1986, and the lease requires that the use of Parcel D conform to public trust purposes as of December 31, 1998, in the absence of an act of the Legislature, a judicial determination, or an agreement with the State Lands Commission.

(4) Since 1985, the residential apartment complex on Parcel D has produced substantial income, all of which the city has used to directly promote and support public use of tide and submerged lands held in trust by the city by providing services to those public trust lands, including lifeguards, beach cleanup, police, and fire protection, and by constructing facilities which improve the quality and extent of public use of, and access to, tide and submerged lands.

(5) Private residential use of tide and submerged lands, whether filled or unfilled, is in conflict with the common law public trust and

the intent of the Legislature in enacting this act.

(6) Many members of the public have made the apartment complex their residence for many years and have come to look upon the apartments as their permanent home despite the nature of their tenancy.

(7) Parcel D, a relatively small portion of the public trust lands in Newport Bay, has been filled and reclaimed so that it is no longer submerged or below the mean high tide line, is not in its present state usable for public trust uses and purposes, and, given the large amount of public trust lands that the City of Newport Beach makes available to the public, Parcel D may be more valuable as a generator of revenue devoted to the support of public trust purposes than as a parcel used by the public for trust purposes.

(8) Public trust land adjacent to Parcel D has been developed as a private club with extremely limited public access. The current lessee of the private club and Parcel D has proposed, and the city has approved, a redevelopment plan which, if implemented, will allow full public access to the majority of the site currently occupied by the private club and will generate substantially more tideland revenue from existing uses. However, the current lessee will be required to pledge revenue from the apartment complex on Parcel D to secure the financing necessary to implement the redevelopment plan, and any uncertainty regarding the permissible use of Parcel D could impede or prevent redevelopment and postpone, for more than 17 years, the public's right of access to the property.

(b) In view of the potential hardships resulting from the removal of the current tenants on or before December 31, 1998, the economic benefit to the trust from the revenue generated by the continuing use of Parcel D as an apartment complex, the benefits to the public if revenue generated by Parcel D is used to secure the financing necessary to implement the redevelopment plan for the adjoining property, which will dramatically improve public access to tide and submerged lands, the availability of current public facilities and the potential needs for expanded facilities for public trust uses and purposes and in recognition of the facts set forth in paragraphs (2), (3), (4), (5), (6), and (7) of subdivision (a), and in view of the amount of public trust land remaining in Newport Bay that is suitable for public trust use, the current nonconforming residential use of Parcel D may continue for the duration of its useful life, until the structure is removed, until the current or new lease expires, or until five years after expiration of the financing secured by Parcel D revenues, whichever occurs first, but in no event later than December 31, 2044, subject to the requirement that all revenue be devoted to public trust uses and purposes as provided in subdivision (f).

(c) If the city determines that land use, economic conditions, and public needs associated with Parcel D will extend beyond the term of the present lease, the city shall apply to the State Lands Commission for a determination by the commission that the

continuation of that nonconforming use for an additional period is in the best interest of the public and in furtherance of public trust purposes. If the commission makes that finding, Parcel D may be leased for residential purposes for an additional period, but in no event beyond December 31, 2044.

(d) The consideration received by the city for any future lease or amendment to the current lease which includes Parcel D shall be the fair market rental value of the real property and improvements, subject to any presently existing contractual obligations during the period the property is used for private purposes.

(e) The form of any future lease or amendment of the current lease involving Parcel D, and the consideration to be received by the city, shall be subject to approval by the State Lands Commission.

(f) (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 funds:

(A) Ninety-five percent 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, over the remaining tide and submerged lands granted to the city.

(B) Five percent shall be deposited in the Land Bank Fund to be available, without regard to fiscal years, pursuant to subdivision (c) of Section 8625 of the Public Resources Code, for expenditure by the State Lands Commission for purposes of providing necessary state review of management of public trust property as provided by Sections 6301 and 6306 of the Public Resources Code.

(2) Five years after the effective date of any new lease or amendment to the current lease, the revenue percentages shall be modified to provide for the deposit of 90 percent in the city tidelands trust fund as specified in subparagraph (A) of paragraph (1) and 10 percent in the Land Bank Fund as specified in subparagraph (B) of paragraph (1).

(g) Nothing in this act is intended to limit the application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) or the jurisdiction of the California Coastal Commission.

SEC. 2. Section 6 of Chapter 74 of the Statutes of 1978 is amended to read:

Sec. 6. The parcels of real property referred to in this act are described 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° 30' 00" West, 297.66 feet to an angle point therein; thence South 84° 00' 00" West, 160.00 feet; thence South 57° 00' 00" West, 100.00 feet; thence South 32° 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 2,694 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° 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° 48' 00" West, 432.17 feet; thence leaving said Ordinary High Tide Line, South 56° 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° 48' 00" West; thence southerly and southwesterly along said curve 76.60 feet through a central angle of 25° 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° 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.

PARCEL D

That portion of Lot 171, Block 54 of Irvine's Subdivision in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 1, Page 88 of Miscellaneous Record Maps in the Office of the County Recorder of the county described as follows:

Beginning at a point on the U.S. Bulkhead line extending from U.S.

Bulkhead Station No. 129 to U.S. Bulkhead Station No. 130 as that Bulkhead line and Bulkhead stations are laid out and shown on a map of Newport Bay, California, showing harbor lines approved by the War Department, January 18, 1917, that point being distant South 61° 01' 07" East, measured along the Bulkhead line, 700.00 feet from the point of intersection of the Bulkhead line with the southwesterly prolongation of the centerline of Irvine Avenue as shown on a Map of First Addition To Newport Heights recorded in Book 4, Page 94 of Miscellaneous Maps in the Office of the County Recorder, that point of intersection being the most southerly corner of Lot H of Tract No. 919 as shown on a map recorded in Book 29, Pages 31 through 34 of Miscellaneous Maps in the Office of the County Recorder; thence North 28° 58' 53" East 154.19 feet to a point in the southwesterly line of the 100 foot right-of-way of California State Highway ORA-60-B, that point being on a nontangent curve in the right-of-way line concave northeasterly and having a radius of 2050.00 feet, that point being on a line radial to Engineer's Station 6+56.15 in the centerline of that highway, the radial line bears North 19° 37' 57" East; thence along that southwesterly line through the following courses: along the curve southeasterly 142.79 feet through a central angle of 3° 59' 27"; thence tangent from that curve South 74° 21' 30" East 662.08 feet; thence leaving the southwesterly line of that 100 foot right-of-way, South 28° 58' 53" West 195.71 feet; thence South 27° 00' 00" East 16.66 feet; thence South 28° 58' 53" West 130.00 feet to a point on that Bulkhead line, the point being distant South 61° 01' 07" East 798.00 feet from the Point of Beginning; thence along the Bulkhead line North 61° 01' 07" West 798.00 feet to the point of beginning.