

From: [Matthew Herron](#)
To: [CSLC CommissionMeetings](#)
Cc: [Redacted]
Subject: Recent Court of Appeal Decision
Date: Thursday, April 18, 2024 9:17:10 AM
Attachments: [2024-04-10 Opinion.pdf](#)

Attention: This email originated from outside of SLC and should be treated with extra caution.

Attached is a recent decision by the California Court of Appeal which concerns whether public trust duties apply to a City in possession of public trust property under a lease from the Port of San Diego.

Surprisingly, the Court of Appeal holds the City cannot be sued for breach of the public trust.

We are planning to request review by the California Supreme Court and provide this opinion to invite the Commission to join in or support this request.

Please let me know if Staff has any questions or would be interested in any further background or material.

Thank you for your consideration.

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MATTHEW V. HERRON



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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DENISE M. HERRON,

Plaintiff and Appellant,

v.

CITY OF CORONADO,

Defendant and Respondent.

D081462

(Super. Ct. No. 37-2020-
00036537-CU-OR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Carolyn M. Caietti, Judge. Affirmed.

Stephen M. Hogan for Plaintiff and Appellant.

Burke, Williams & Sorensen, Mark J. Austin for Defendant and Respondent.

Denise M. Herron appeals from a judgment entered in favor of the City of Coronado (the City) following its successful motion for summary judgment challenging Herron's remaining cause of action for declaratory relief in which she sought a declaration that the City is in breach of the public trust based on its agreement to allow the operation of a restaurant at the Coronado

Municipal Golf Course on land that it leases from the San Diego Unified Port District (the Port District). We conclude that the trial court properly granted summary judgment in favor of the City. We accordingly affirm the judgment.

I.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation involves a dispute over the operation of a restaurant on the Coronado Municipal Golf Course (the Golf Course). Herron’s operative Second Amended Complaint (SAC) alleges that the land on which the Golf Course is situated was originally part of the tidelands or submerged lands that make up San Diego Bay.¹ “The State of California holds title to the navigable waterways and the land beneath them within its borders as a trustee for the public,” including tidelands, but “as trustee, may delegate its authority to manage and control public use to a local agency.” (*Graf v. San Diego Unified Port Dist.* (1992) 7 Cal.App.4th 1224, 1228–1229 (*Graf*).

According to the SAC, “[i]n 1923, the State Lands Commission conveyed what was then submerged property under Glorietta Bay to the City to be held and used in trust.” (See *City of Coronado v. San Diego Unified Port Dist.* (1964) 227 Cal.App.2d 455, 468–469 [describing the history of the state’s conveyance of certain tide and submerged lands to the City].) Subsequently, as alleged in the SAC, the City filled in the submerged lands and tidelands and constructed the Golf Course, which opened in 1957. (See *ibid.* [describing a 1957 amendment to the original grant, which “expanded the uses to which the land might be employed to include ‘construction,

¹ Although this appeal follows an order granting summary judgment, the parties did not submit evidence detailing the history of the Golf Course in connection with that proceeding. Accordingly, we rely upon the allegations of the SAC for the relevant historical background.

maintenance and operation of public buildings, public works and playgrounds, and for public recreational purposes’ ”].)²

In 1962, the Legislature enacted the San Diego Unified Port District Act (Stats. 1962, 1st Ex. Sess., ch. 67) (the Act), which created the Port District to manage and control “the tidelands and lands lying under the inland navigable waters of San Diego Bay.” (Harb. & Nav. Code, appen. 1, § 4; see also *Graf, supra*, 7 Cal.App.4th at p. 1229.) The Act required that each city surrounding San Diego Bay (San Diego, Chula Vista, Coronado, National City, and Imperial Beach) (Harb. & Nav. Code, appen. 1, § 5) “convey to the [Port District] all its right, title and interest in and to the tidelands and submerged lands, together with any facilities thereon, which are owned by the city, including any such lands which have been granted in trust to the city by the State in the Bay of San Diego.” (*Id.*, appen. 1, § 14.) As specified in the Act, after conveyance by the relevant city, “the title to such lands shall reside in the [Port District], and the [Port District] shall hold such lands in trust for the uses and purposes and upon the conditions which are declared in this [A]ct.” (*Ibid.*) As required by the Act, the City conveyed the Golf Course to the Port District.

The City currently leases the Golf Course from the Port District pursuant to a 1997 lease and its subsequent amendments, for a term ending on January 31, 2039 (the Golf Course Lease). The Golf Course Lease specifies the allowed uses of the premises: “[The City] agrees that the leased premises shall be used only and exclusively for the construction, operation,

² Reclamation of tidelands by filling them in “does not [i]pso facto terminate the public trust.” (*Marks v. Whitney* (1971) 6 Cal.3d 251, 261 (*Marks*); see also *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 478–479.)

and maintenance of a public golf course open and available for use by the general public including driving range, pro shop, golf cart rental, and snack bar including the sale of alcoholic beverages, and for no other purposes whatsoever. . . . [The City] further agrees not to construct or operate any hotel, motel, restaurant, or cocktail lounge on the premises or in conjunction with said golf course.” The Golf Course Lease references the Act in the following provision: “[The Port District’s] title is derived from the provisions of [the Act], and is subject to the provisions of said Act. This [Golf Course] Lease is granted subject to the terms and conditions of said Act.”

The City contracts with Feast and Fareway, LLC (Feast) to provide food and beverage service at the Golf Course. The terms of the agreement between the City and Feast are set forth in a 2018 agreement (the Concession Agreement). According to the declaration of Feast’s general manager, Feast is open to the general public daily from 7 a.m. to sunset. Feast also hosts private events, such as meetings and celebrations, but those events do not preclude the general public from accessing Feast during normal business hours.

On January 8, 2020, Feast barred Herron from its premises.³ Herron filed a lawsuit against the City and Feast on October 13, 2020.

The SAC, filed June 23, 2021, alleged three causes of action against the City and Feast: declaratory relief, violation of the Unruh Civil Rights Act

³ Herron alleges that she was barred from Feast after she identified an alleged instance of sexual harassment between two employees. Feast’s general manager confirmed in a declaration that Feast asked Herron to leave the premises after she claimed to have witnessed sexual harassment involving two employees, although, according to the declaration, Herron’s sexual harassment allegations followed previous instances of disruptive behavior by Herron while intoxicated.

(Civ. Code, § 51), and retaliation in violation of Government Code section 12940, subdivision (h) (alleged against Feast alone). After the trial court's rulings on the parties' demurrers, Feast was dismissed from the case entirely and the only remaining cause of action against the City was for declaratory relief.⁴

The remaining cause of action for declaratory relief against the City alleges that “[t]he [Concession] Agreement under which [Feast] purports to operate is void and illegal because it violates the [Golf Course] Lease as amended and the Public Trust Doctrine by allowing to [Feast] to operate a restaurant as well as private events and banquets, all of which is prohibited by the [Golf Course] Lease as amended.” The SAC alleges that “[a]s a member of the public, [Herron] has been and is now entitled to use this area and [the City and Feast] have no right to exclude [Herron] from the inside area described in the [Concession] Agreement or from the patios which are not controlled by [Feast].”⁵ According to the SAC, “[a]n actual dispute has

⁴ We affirmed the judgment of dismissal as to Feast in an unpublished opinion. (*Herron v. Feast and Fareway, LLC* (May 17, 2023, D079915) [nonpub. opn.].) With respect to the declaratory relief cause of action against Feast, we concluded “as a matter of law that the facts Herron has alleged [in the SAC] do not amount to a breach of the public trust.” In the instant appeal, the parties have not attempted to argue that the doctrines of law of the case or issue preclusion apply here, and based on our resolution of this appeal on other grounds, we have no occasion to consider them.

⁵ Herron contends that Feast does not control the patio areas of the clubhouse on the Golf Course because the architectural drawing attached to the Concession Agreement as Exhibit A, which shows the premises where Feast will operate, purportedly does not show the outside patio areas of the clubhouse. Although Herron focuses on Exhibit A, we note that Exhibit F to the Concession Agreement contains extensive conceptual renderings that include several patio dining areas.

arisen concerning [Herron's] use of the public facilities" as well as "concerning the [Concession] Agreement, and [Feast's] operations, because the [Concession] Agreement and operations violate the [Golf Course] Lease as amended and the Public Trust Doctrine. [Feast] has no legal right to operate its prohibited restaurant or private event business and therefore has no basis to exclude [Herron] from this public property."

The SAC specifically sought a declaration that (1) "[the City and Feast] could not, and cannot, exclude [Herron] from either the area in which [Feast] may operate its concession under the [Concession] Agreement or the patio area, which is not included in the [Concession] Agreement"; and (2) "the [Concession] Agreement under which [Feast] purports to operate is void and illegal, and . . . its operations are prohibited by the [Golf Course] Lease as amended and the Public Trust Doctrine."

On May 16, 2022, Herron filed a motion for summary judgment against the City on her remaining cause of action for declaratory relief. Herron clarified that she was relying exclusively on the public trust doctrine to support her claim for relief. Specifically, Herron "request[ed] the court declare that the [City] is in breach of the public trust by the operation of its restaurant and private events venue at the [Golf Course]." On August 30, 2022, the trial court denied Herron's motion for summary judgment. Among other things, the trial court noted that "[t]here is no question, the Port District is the trustee of the City's golf course land, and at a minimum, should be a party in this action to participate in the litigation given their duties under the public trust doctrine."

On October 3, 2022, Herron filed a separate action against the Port District, in which she relied on the public trust doctrine to seek a writ of mandate ordering the Port District to require, among other things, that the

City no longer allow Feast to operate at the Golf Course. (*Herron v. San Diego Unified Port Dist.* (Super. Ct. San Diego County, 2022, No. 37-2022-00039580-CU-WM-CTL).) The action was coordinated with Herron’s litigation against the City, but not consolidated with it.

Meanwhile, on June 10, 2022, the City filed a motion for summary judgment challenging the SAC’s remaining cause of action for declaratory relief. The motion for summary judgment was based on multiple grounds. First, the City argued that to the extent Herron relied upon the public trust doctrine, Herron was not entitled to relief for three reasons: (1) the Port District, not the City, was the public entity charged with protecting the public trust, requiring that Herron proceed against the Port District, not the City; (2) even if Herron could proceed against the City for an alleged breach of the public trust, Feast’s operation at the Golf Course did not violate the public trust; and (3) insofar as Herron sought to invalidate the Concession Agreement based on the public trust doctrine, Feast was a necessary and indispensable party to that issue but was no longer a party to the litigation. Second, the City argued that to the extent Herron sought a declaration concerning the interpretation or validity of either the Concession Agreement or the Golf Course Lease, Herron was not entitled to such relief because she was neither a party to either contract nor a third party beneficiary.

On November 18, 2022, the trial court granted the City’s motion for summary judgment. As the trial court characterized the SAC, it sought a declaration that the Concession Agreement “is void and illegal because it violates the Public Trust Doctrine by allowing Feast to operate a restaurant in violation of the [Golf Course Lease] and because Feast holds private events.” Citing *Center for Biological Diversity, Inc. v. FPL Grp., Inc.* (2008) 166 Cal.App.4th 1349 (*Center for Biological Diversity*), the trial court

explained that “[t]he public entity charged with preserving the public trust is the only party entitled to bring an action to stop a public trust violation. . . . If the entity declines to do so, a private party, such as [Herron], may seek to enforce the public trust doctrine by suing the public entity charged with protecting the public trust by way of a writ of mandate.” The trial court ruled that “the City met its burden and the undisputed facts show the Port District is the trustee of the public trust land that includes the [Golf Course],” and it was not persuaded by Herron’s contention that the City acted as a “‘co-trustee.’” According to the trial court, because the Port District was not named in the action, dismissal was justified. The trial court also observed that it was in “no position at this time and on this record to pass judgment on the sufficiency of the Port District’s efforts or to express any opinion as to whether the public trust over the natural resources at issue is being adequately enforced.”

In the same minute order, the trial court also denied Herron’s motion for leave to amend the SAC to add the Port District as a party, which she filed on November 2, 2022. As the trial court explained, Herron was on notice for nearly a year that she should proceed against the Port District, but she unreasonably delayed in seeking leave to amend,⁶ and the trial date was rapidly approaching. The trial court also noted that Herron had recently filed a petition for writ of mandate against the Port District, and she would have “recourse” by pursuing that litigation.

The trial court subsequently entered judgment in favor of the City. Herron appeals from the judgment.

⁶ In December 2021, the City first argued in its reply memorandum for its demurrer to the SAC that Herron was required to proceed against the Port District.

II. DISCUSSION

A. *Legal Standards for Review of a Ruling on a Motion for Summary Judgment*

This appeal arises from an order granting summary judgment. “‘A trial court properly grants a motion for summary judgment where “all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c).)’” (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347.) We “‘take the facts from the record that was before the trial court when it ruled on that motion. [Citation.] “‘We review the trial court’s decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.’” [Citation.] We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.’” (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 39.)

B. *The Public Trust Doctrine*

As Herron has confirmed in the course of this litigation, her cause of action for declaratory relief against the City is based solely on her allegation that the City is in violation of the public trust by virtue of Feast’s operations at the Golf Course.⁷

⁷ Due to its broad wording, the SAC might be read as alleging that Herron also seeks declaratory relief on the separate issues of (1) whether the City is in violation of the Golf Course Lease by allowing Feast to operate at the Golf Course, and (2) whether the City and Feast are in violation of the Concession Agreement due to Feast’s operation in the patio areas of the clubhouse. We note, however, that the trial court’s ruling on Herron’s motion for summary judgment on the declaratory relief cause of action determined

The public trust doctrine is derived from the English common law concept of the public trust, “under which the sovereign owns ‘all of its navigable waterways and the lands lying beneath them “as trustee of a public trust for the benefit of the people.” ’ [Citation.] The State of California acquired title as trustee to such lands and waterways upon its admission to the union” (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434 (*National Audubon*); see also Pub. Resources Code, § 6009, subd. (a) [“Upon admission to the United States, and as incident of its sovereignty, California received title to the tidelands, submerged lands, and beds of navigable lakes and rivers within its borders, to be held subject to the public trust for statewide public purposes, including commerce, navigation, fisheries, and other recognized uses, and for preservation in their natural state.”].) The doctrine “is comprised of a set of principles that protect the public’s right to use and enjoy property held within the public trust. . . . While the public trust doctrine is a source of state power over sovereign lands, it also imposes an obligation on the state trustee ‘ “to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the

Herron did not have standing to seek declaratory relief regarding a contract to which she is not a party or a third party beneficiary. Herron does not question that determination in her appellate briefing, and she does not describe her declaratory relief claim as seeking a ruling on any breach of contract theory. Instead, she focuses exclusively on her contention that the City is in breach of the public trust.

As Herron states in her appellate briefing, her current theory is that the City’s Concession Agreement with Feast creates a breach of the public trust in two ways: (1) the City improperly delegates the use of the Golf Course property to Feast instead of (a) imposing the use restrictions contained in the Golf Course Lease, and (b) prohibiting Feast from excluding members of the public from the premises, including Herron; and (2) the City engages in self-dealing by collecting substantial rents from Feast.

abandonment of that right is consistent with the purposes of the trust.” ’ ”
(*San Francisco Baykeeper, Inc. v. State Lands Com.* (2018) 29 Cal.App.5th 562, 569, citations omitted.) “[T]he state or trustee has ‘an affirmative duty to take the public trust into account in the planning and allocation of [trust] resources, and to protect public trust uses whenever feasible.’ ” (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 234.)

As we have explained, the state “as trustee, may delegate its authority to manage and control public use to a local agency.” (*Graf, supra*, 7 Cal.App.4th at p. 1229.) Pursuant to the Act, the state delegated to the Port District that authority concerning the tidelands and submerged lands on which the Golf Course is located. (Harb. & Nav. Code, appen. 1, § 14.) By statute, “[t]idelands and submerged lands granted by the Legislature to local entities *remain subject to the public trust*, and remain subject to the oversight authority of the state by and through the State Lands Commission.” (Pub. Resources Code, § 6009, subd. (c), italics added.) Further, grantees, such as the Port District, “are required to manage the state’s tidelands and submerged lands consistent with the terms and obligations of their grants *and the public trust . . .*” (*Id.* at subd. (d), italics added.) Accordingly, the Port District acts as the trustee of the public trust with respect to the Golf Course.

C. *Herron Was Required to Proceed Against the Port District to Enforce the Public Trust Because It Is the Trustee*

In granting summary judgment, the trial court relied on *Center for Biological Diversity*, which held that a member of the public may not proceed directly against a third party that it alleges to be acting in violation of the public trust and must instead attempt to proceed against the public trustee. (*Center for Biological Diversity, supra*, 166 Cal.App.4th at pp. 1367–1368.)

As *Center for Biological Diversity* explains, this rule derives from “traditional trust concepts,” under which “plaintiffs, viewed as beneficiaries of the public trust, are not entitled to bring an action against those whom they allege are harming trust property. The trustee charged with the responsibility to implement and preserve the trust alone has the right to bring such an action.” (*Id.* at p. 1367.) As the rule is applied in traditional trust cases, “where a trustee cannot or will not enforce a valid cause of action that the trustee ought to bring against a third person, a trust beneficiary may seek judicial compulsion against the trustee.” (*Saks v. Damon Raike & Co.* (1992) 7 Cal.App.4th 419, 427.) Thus, in the context of the public trust doctrine, “members of the public may seek to compel the [trustee] agency to perform its duties, but neither members of the public nor the court may assume the task of administering the trust.” (*Center for Biological Diversity*, at p. 1368.) Based on an analogy to traditional trust principles, “the action must be brought against the appropriate representative of the state [or its grantee] as the trustee of the public trust.” (*Id.* at p. 1367.)

Although *Center for Biological Diversity* adopted and relied upon the procedures required in traditional trust cases, it explained that its holding was “supported by more than analogy” to the procedures used in those cases. (*Center for Biological Diversity, supra*, 166 Cal.App.4th at p. 1368.) As *Center for Biological Diversity* emphasized, determining whether a breach of the public trust has occurred in the area of natural resource management often requires the state or its grantee agency to apply its expertise and discretion. (*Id.* at p. 1354.) If a member of the public was permitted to proceed against a third party without involving the public trustee, such a proceeding would

constitute an impermissible “attempt to ‘bypass’ the expertise” of the public trustee. (*Id.* at p. 1368.)⁸

As we have explained, the Port District is the public trustee of the public trust land on which the Golf Course is located. Based on the holding of *Center for Biological Diversity, supra*, 166 Cal.App.4th 1349, Herron was required to proceed against the Port District, as the trustee of the public trust, rather than against the City.

On two grounds, Herron contends that she was not required to proceed against the Port District in this action rather than against the City. First, she contends that the City *also* serves in the role of trustee of the public trust, making it appropriate for her to proceed against the City alone. Second, she contends that both common law trust principles and case law applying the public trust doctrine require that she be allowed to proceed with her litigation against the City. We discuss each argument in turn.

1. *There Is No Merit to Herron’s Contention That the City Acts as a Trustee of the Public Trust in Addition to the Port District*

We first consider Herron’s contention that her lawsuit against the City should have been allowed to proceed because the City is *also* a trustee of the public trust in the Golf Course tidelands.

⁸ Herron’s reply brief at times seems to frame the issue as whether she has *standing* to raise a claim based on an alleged violation of the public trust. However, neither the trial court’s ruling nor *Center for Biological Diversity, supra*, 166 Cal.App.4th 1349, was based on the lack of standing to raise issues concerning the public trust. Case law makes clear that members of the public have standing to assert a violation of the public trust. (*National Audubon, supra*, 33 Cal.3d at p. 431, fn. 11.) Regardless of her standing, Herron’s lawsuit against the City fails because it is directed at the wrong party in that it seeks relief against the City rather than the Port District.

Herron relies on certain provisions in Division 6 of the Public Resources Code that refer to the public trust responsibilities of entities to whom the state has made grants of public trust land. Herron points to Public Resources Code section 6009, which states that “(c) Tidelands and submerged lands granted by the Legislature to local entities remain subject to the public trust, and remain subject to the oversight authority of the state by and through the State Lands Commission. [¶] (d) Grantees are required to manage the state’s tidelands and submerged lands consistent with the terms and obligations of their grants and the public trust” (*Id.* at subds. (c), (d).) Herron also points to Public Resources Code section 6305, which states that “[t]he powers granted by this chapter to the [State Lands Commission] as to leasing or granting of rights or privileges with relation to the lands owned by the state are hereby conferred upon the local trustee of granted public trust lands to which those lands have been granted.” (*Id.*, § 6305.)

Although her argument is somewhat unclear, Herron appears to contend that by virtue of the Golf Course Lease, the City is a “grantee” (Pub. Resources Code, § 6009, subd. (d)) or a “local trustee of granted public trust lands” (*id.*, § 6305) as those terms are used in the Public Resources Code, and therefore the City (along with the Port District) acts as a trustee of the public trust.

We reject the argument because it is contrary to the meaning of the terms “grantee” and “local trustee of granted public trust lands” as used in Division 6 of the Public Resources Code. (Pub. Resources Code, §§ 6009, subd. (d), 6305.) Section 6306, subdivision (a) of the Public Resources Code specifically states that “[f]or purposes of this division, ‘local trustee of granted public trust lands’ means a county, city, or district, including a water, sanitary, regional park, port, or harbor district, or any other local, political,

or corporate subdivision that has been granted, conveyed, or transferred by statute, public trust lands, including tidelands, submerged lands, or the beds of navigable waters, *through a legislative grant.*” (*Ibid.*, italics added.) Similarly, the “grantee” referred to in Public Resources Code section 6009, subdivision (d) is identified in the previous subdivision as a grantee who holds “[t]idelands and submerged lands *granted by the Legislature* to local entities.” (*Id.* at subd. (c), italics added.) Herron cannot point to any *legislative grant* in favor of the City with respect to the Golf Course. Instead, the City has a legal interest in the Golf Course due solely to the Golf Course Lease with the Port District. The Public Resources Code provisions upon which Herron relies accordingly do not apply to the City.

Herron also points to certain parts of the Golf Course Lease to argue that the City “agreed to perform [the Port District’s] duties[,] including its trust duties under the Act.” Herron specifically relies upon (1) paragraph 24, which states that the Port District’s title is derived from the Act and that the lease “is granted subject to the terms and conditions of said Act”; and (2) paragraph 18, which states that the City agrees that in its activities and uses of the leased premises, it will “abide by and conform to all laws and regulations prescribed by [the Act]” and other applicable laws. Herron’s reliance on these provisions does not advance her argument because, on their face, neither contractual provision contains any agreement that the City will carry out the Port District’s duties as a trustee. Further, as the City points out, the evidence it relied upon for its summary judgment motion included the undisputed statement in the declaration of the Port District’s Department Manager for the Real Estate Department that the Golf Course Lease “did not delegate trust duties from the Port District to the [City], all of which were

retained by the Port District with respect to the portions of the Golf Course leased to the [City].”

Finally, in her reply brief, Herron appears to argue that because the City is *a public agency* in the State of California, its status as lessee of public trust land gives it a duty to protect the public trust. To support this argument, Herron relies on *Center for Biological Diversity, supra*, 166 Cal.App.4th 1349. In that case, the issue was whether the plaintiff could assert a violation of the public trust against private parties who operated power generating wind turbines. The County of Alameda had approved the wind turbines, but plaintiff contended that the wind turbines harmed birds in violation of the public trust. (*Id.* at pp. 1355–1356.) *Center for Biological Diversity* explained that the public trust doctrine protected wildlife in general, not only water-related resources (*id.* at pp. 1359–1364), but it concluded that the plaintiff was required to proceed against the public agencies who acted as trustees of the public trust, rather than against the private wind turbine operators. (*Id.* at pp. 1366–1367.) In the specific situation before the court, *Center for Biological Diversity* identified those public agencies as including “the County of Alameda, which has authorized the use of the wind turbine generators,” and “any agency such as California’s Department of Fish and Game that has been given the statutory responsibility of protecting the affected natural resources.” (*Id.* at p. 1367.)

Herron argues that in this case, the City, like the County of Alameda, is a public agency that acts a trustee of the public trust. We disagree because the court’s identification of the County of Alameda as a public trustee in *Center for Biological Diversity, supra*, 166 Cal.App.4th 1349, was based on the specific facts of that case. Focusing on the dispute over the management of wildlife natural resources at issue, *Center for Biological Diversity*

explained that the County of Alameda “as a subdivision of the state, shares responsibility for protecting our natural resources and may not approve of destructive activities without giving due regard to the preservation of those resources.” (*Id.* at p. 1371, fn. 19.) It specifically cited the California Environmental Quality Act, which sets forth the policy of “ ‘insur[ing] that fish and wildlife populations do not drop below self-perpetuating levels,’ ” and requires public agencies to regulate private activities “ ‘so that major consideration is given to preventing environmental damage.’ ” (*Center for Biological Diversity*, at p. 1371, fn. 19, quoting Pub. Resources Code, §§ 21001, subd. (c), 21000, subd. (g).) Those considerations do not apply where, as here, the breach of the public trust does not concern the management of wildlife resources, and the City is involved with the Golf Course solely as a lessee. Nothing in *Center for Biological Diversity* supports the proposition that a public agency assumes a duty, as trustee, to protect the public trust merely by becoming the lessee of trust property.

2. *Case Law Does Not Allow Herron to Proceed Against a Party That Is Not the Trustee of the Public Trust*

Herron contends that she should have been permitted to proceed against the City because “firmly established law recognizes beneficiaries’ rights to protect the public trust by suing third-parties who are harming it.” The argument relies on two sources: (1) case law discussing traditional trust principles, and (2) case law discussing the public trust doctrine.

In relying upon traditional trust principles, Herron cites to *King v. Johnston* (2009) 178 Cal.App.4th 1488, 1500, which explains that “a beneficiary may pursue claims against a third party on his or her own, without participation by the trustee, when that third party actively participated in, or knowingly benefited from, a trustee’s breach of trust.” *King* acknowledges the general rule that “ ‘a trust beneficiary cannot sue in

the name of the trust,’ ” but then identifies an important exception. (*Ibid.*) “ ‘[A] trust beneficiary can bring a proceeding against a trustee for breach of trust’ ” and “ ‘can pursue a cause of action against a third party who actively participates in or knowingly benefits from a trustee’s breach of trust.’ ” (*Ibid.*) “ ‘[I]t is not necessary to join the trustee in the suit, because “primarily it is the beneficiaries who are wronged and who are entitled to sue” [Citation.] The liability of the third party is to the beneficiaries, rather than to the trustee, “and the right of the beneficiaries against the [third party] is a *direct right* and not one that is derivative through the trustee.” ’ ” (*Ibid.*) Accordingly, “ ‘ “[w]hen the claim being asserted rests in whole or in part on alleged breaches of trust *by the trustee*, a beneficiary has standing to pursue such a claim against . . . such third parties *alone*.” ’ ” (*Id.* at pp. 1500–1501, italics added.) The exception described in *King* does not apply here because Herron does not contend that the Port District, as trustee, breached the public trust and that the City benefited from that breach. Instead, Herron’s theory is that the City, *itself*, has violated the public trust by allowing Feast to operate at the Golf Course.⁹

With respect to case law discussing the public trust doctrine, Herron relies primarily upon *Marks, supra*, 6 Cal.3d 251. She characterizes that case as “recogniz[ing] [a party’s] standing to sue [a] private citizen for breach of the public trust without so much as suggesting such a suit could only be

⁹ Herron also cites Witkin’s description of two circumstances in which a beneficiary can sue a third party: (1) where the trustee has failed to act, the third party maybe be joined in a suit against the trustee; and (2) where the trustee has wrongfully transferred trust property to third parties. (13 Witkin, Summary of Cal. Law (11th ed. 2023) Trusts, § 168.) The first circumstance does not assist Herron, because it requires a suit against the trustee. The second circumstance is not relevant here because there is no allegation that the trustee wrongfully transferred trust property.

brought against the state” as the trustee of the public trust. *Marks* does not support Herron’s argument.

Marks was a quiet title action between two private landowners. (*Marks, supra*, 6 Cal.3d at p. 256.) The first landowner owned waterfront property, with title to the tidelands on that property. (*Ibid.*) A dispute arose over whether the first landowner could fill in the tidelands that adjoined the second landowner’s upland property. (*Ibid.*) As part of the quiet title proceeding, the second landowner sought a declaration that the first landowner’s title “was burdened with a public trust easement.” (*Ibid.*) *Marks* held that the second landowner had standing to ask the court “to recognize and declare [a] public trust easement” over the first landowner’s property (*id.* at p. 261, italics omitted), although the court was permitted to address the issue in any event because “the court may take judicial notice of public trust burdens in quieting title to tidelands,” as a matter “of great public importance” to “avoid needless future litigation.” (*Id.* at p. 257.) *Marks* did not consider whether the state was a necessary party. The issue appears not to have been raised, perhaps due to the fact that the state, through the State Lands Commission, *did* participate as amicus curiae and asked the court “to declare the existence of the public easement and to recognize the right of [the second landowner] as a member of the public and as a littoral owner to have the existence of the easement in these tidelands declared in this action.” (*Id.* at p. 257 & fn. 1.) The instant litigation is not a quiet title action, and we do not view *Marks* as supporting Herron’s contention that she may “protect the public trust by suing third-parties who are harming it,” without involving the Port District.

In sum, we conclude that the trial court properly granted summary judgment in favor of the City on the ground that the trial court identified,

namely, that Herron did not have a cause of action directly against the City alleging a violation of the public trust.¹⁰

D. *The Trial Court Was Not Required to Order Joinder of the Port District as an Indispensable Party*

Herron contends that the trial court had a “statutory duty to order joinder” of the Port District in this action as an indispensable party instead of dismissing the action.

For this argument, Herron relies on Code of Civil Procedure section 389. That section provides, in relevant part:

“(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

“(b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable.” (Code Civ. Proc., § 389.)

¹⁰ Because we affirm the order granting the City’s motion for summary judgment on the ground relied upon by the trial court, we need not, and do not, address the alternative grounds for summary judgment advanced by the City.

According to Herron, the trial court misapplied this provision because it did not consider whether it was possible to join the Port District in the action and did not order joinder. Herron further argues that if, for some reason, the Port District could *not* be joined, dismissal should have been *without* prejudice pursuant to Code of Civil Procedure section 389, subdivision (b).¹¹

Herron's argument fails because it is premised on the erroneous assumption that the trial court determined the Port District was an indispensable party as described in Code of Civil Procedure section 389 and granted summary judgment in favor of the City on that basis. Based on our review of the trial court's ruling, it did not rely on a determination that the Port District was an indispensable party that could not be joined. Although the trial court noted in its prefatory comments that one of the City's affirmative defenses was failure to join an indispensable party, the trial court's explanation of its summary judgment ruling does not rely on Code of Civil Procedure section 389 and does not state that the Port District is an indispensable party within the meaning of that provision. Instead, the trial court based its ruling on the holding of *Center for Biological Diversity, supra*, 166 Cal.App.4th 1349, under which a member of the public lacks a direct cause of action against a third party for an alleged violation of the public

¹¹ We note that Herron argues a dismissal without prejudice was warranted because it "would have permitted [her] to file a new action in which she could have joined the Port District." Herron's statement overlooks the fact that she *already* had an action pending against the Port District when the trial court entered judgment in favor of the City. The judgment in favor of the City in the instant case did not prevent Herron from proceeding with the action against the Port District.

trust and must instead attempt to proceed against the public agency that serves as the trustee.¹²

DISPOSITION

The judgment is affirmed.

IRION, Acting P. J.

WE CONCUR:

DATO, J.

BUCHANAN, J.

¹² Significantly, *Center for Biological Diversity, supra*, 166 Cal.App.4th 1349, identified the failure to join an indispensable party as an *alternative* ground for dismissing the action against the wind turbine operators. However, its holding that a member of the public cannot proceed against a third party for a violation of the public trust did not depend on that doctrine. Specifically, *Center for Biological Diversity* explained that “[e]ven if the court were to recognize a theoretical cause of action on behalf of the public against the wind farm operators” (*id.* at p. 1371), “it is now too late for an action against the county to set aside the conditional use permits that have already been issued. The dismissal of the action, therefore, *also* may be justified by the absence of a necessary and indispensable party.” (*Id.* at p. 1372, italics added.)

From: [Edward Stancil](#)
To: [CSLC CommissionMeetings](#)
Cc:
Subject: Docktown. Redwood Creek
Date: Wednesday, May 29, 2024 7:41:07 AM

Attention: This email originated from outside of SLC and should be treated with extra caution.

Commissioners .. I m the last home left
In docktown..
I moved to Steinberger 6/2018
Prevailed with prejudice against the cities
Eviction UD claims..

Now City wants to kick me off
Lands that they do not own or lease

Please tell you tenant that they need
To do a survey.. and That Steinberger is
A different tributary then Redwood Creek

My wife, Helen, and I spoke (and other members of the community there now Lost, and gone forever)
The Commission "work with the city"
City must remove Any Affordable housing.. Tenant Owned ..

If every bedroom is important why not
Mine ..

City is removing docks that provide
Access to Redwood creek ..

These are inter structure and should be preserved and maintained not destroyed and tossed out ,.

Reid suggested that check on other agencies that maybe can. inforce ..

But how hard is it ?

City of Redwood City is your Tenant..

You Must Take responsibility..

Of Your Mess ..

They have not filed any paperwork

Which I believe is required when you take a quarter-mile of docs off the water

If you need a permit to put them in, you need a permit to pull them out !!

Please respond ..

Thanks for your help in preserving water access for all of California ..

At Docktown

Edward Stancil

Thank you Edward Stancil

From: [Edward Stancil](#)
To: [REDACTED]
Subject: Docktown. Docks are being Removed !!
Date: Thursday, June 6, 2024 2:29:10 PM

Attention: This email originated from outside of SLC and should be treated with extra caution.



Hi. I am last resident at docktown..
Everyone else has settled and left

I moved off Redwood Creek to
Steinberger in June 2018.

I have prevailed in my UD eviction case

I have contacted all agencies that could be involved .. but now thinking I shouldn't have to contact other agencies I could hold you accountable for your stewardship of Redwood Creek .. since you are the Grantor..

Your Tenant "the city of Redwood City"
Is removing Docks and warfs at [REDACTED] Redwood City, CA [REDACTED] ..

This is being done.. because of the city
Has NOT maintained this public asset..

And now without obtaining a permit to remove and destroy docks ..

Every day more and more docks are removed ..
Their electrical wires and pipes in the water
Satellite dishes on poles it's not complete, nor is it BEST marine practices ..

PLEASE stop this destruction of ACCESS to

Redwood creek ..

Make City bring back docks Until they have
Filed permit. And filed ALL necessary documents. And a environmental impact report .

Thanks you for your attention on this issue..
Of Access.. to Stateland s of redwood creek

Edward Stancil

Redwood City ca

From: [theresamcrae](#)
To: [CSLC CommissionMeetings](#)
Subject: PLEASE DON'T LET THEM CLOSE THIS WATERFRONT ROAD
Date: Saturday, April 13, 2024 5:11:03 PM

Attention: This email originated from outside of SLC and should be treated with extra caution.

Empire Tract Road is a 1.25-mile levee road on the west end of Eight Mile Road in Stockton that was raised and resurfaced as a scenic route, funded by a \$10 million grant from the State. The City of Stockton maintains the road. It is policed by the County Sheriff, and Fish and Wildlife sends people there as well.

This road has been used for decades for fishing, exercising, and just relaxing in nature. Many families fish for their next dinner, teaching their children. It is where residents of Little Venice Island access the mainland. I spend between two and six hours there every day, walking for an hour, reading, writing, composing music, and watching wildlife. It is also the access road for Stockton's water treatment plant.

Some landowners have asked San Joaquin County to close this road. They simply don't want us on it. The County is reportedly moving towards approving this request.

It seems that one or two landowners see the road as their property. Yesterday, I was blasted by a recorded message: "You are trespassing. Please leave immediately. You have already been video recorded." I was walking on the public road, nowhere near private property, and there was nobody else there. A few months ago, the same message was broadcast constantly, perhaps in the hope that the harassment would cause people to leave the public land next to the property in question. I have never seen anybody enter that property - and I spend a lot of time on that road.

I'm sure it would be easier for the County if the road were closed. There is no trash service there, so there is garbage. But there are better solutions: warning signs about littering, a dumpster, a volunteer cadre that picks up trash.

All the stakeholders should be involved in finding ways to meet everybody's needs. Such a major public investment that benefits so many people shouldn't be essentially given away to landowners who simply don't like people on the road next to their land.

From: [Barbara](#)
To: [CSLC CommissionMeetings](#)
Subject: Fwd: public comment non-agenda item April 4th SLC-Please Stop the Class Discrimination in Newport Harbor
Date: Tuesday, April 9, 2024 3:41:49 PM

Attention: This email originated from outside of SLC and should be treated with extra caution.

Sent from my iPhone

Begin forwarded message:

From: Barbara [REDACTED]
Date: March 30, 2024 at 12:53:31 PM PDT
To: CSLC.CommissionMeetings@slc.ca.gov
Subject: public comment non-agenda item April 4th SLC-Please Stop the Class Discrimination in Newport Harbor

Hello SLC

With so many emails and people contacting you regarding the Mooring issue in Newport Beach I surely hope that you pay attention to the findings. The city continues to use Netzer as an appraisal company. Many believe that there is collusion within the city. There is proof through emails, with city staff members, and the Harbor commissioners, telling Mr. Netzer how to organize and charge the rates for this increase and other increases through the many years that Netzer has worked with the city. You will find that Mr. Netzer has a conflict of interest since he sits on a board in Newport Harbor and has done over many years. He has never once disclosed that matter.

Many people in our Newport community believe that we no longer have a say since it is basically run by the very wealthy.

I know Newport Mooring Association, is a trusted and reliable resource that has valuable information and I am sure they have contacted you. When the city contacts SLC I am sure they will persuade you to think as they do, please take a step back. There is something seriously wrong with our city, and the truthfulness of what is actually going on.

Thank you,
Barbara

From: [Pit Kaz](#)
To: [CSLC CommissionMeetings](#)
Subject: How couldn't you look at a 3rd party appraisal for Newport Beach mooring rate hikes
Date: Wednesday, April 10, 2024 5:34:50 PM

Attention: This email originated from outside of SLC and should be treated with extra caution.

Hi

Please advise why the California land commission is not looking to look into 3rd party appraisal? Why do you think the city has provided fair market value?

We have been also discriminated against houses docks slip rate.

Please be fair, we don't have any other voices

Thanks
Peter

On Thu, Apr 4, 2024, 9:25 AM Pit Kaz [REDACTED] wrote:

Please note the city of Newport Beach has not taken to consideration 3rd party rent evaluation.. also they are insisting on using evaluation made from an insider person that is giving them a favor in return on low or no rent in harbor. There is a huge conflict of interest and coordination in the city of Newport Beach..

There have been emails and evidence between city harbor masters and city commission with evaluation agency..

Please note we are already paying more than other moorings, for example San Diego.. and San Diego has 27/7 public dinghy and much better parking...

Please protect us from this unjustified and discriminated rate hikes..

You are the only chance before we take the matter to the court as we have secured an attorney/lawyer with lots of evidence already.

Thanks
Peter Kaz

From: [Lucchesi, Jennifer@SLC](mailto:Lucchesi.Jennifer@SLC)
To: [CSLC CommissionMeetings](#)
Subject: FW: The City of Newport Beach: Tidelands Rate Discrimination and A Gift of Public Tidelands
Date: Thursday, May 16, 2024 5:09:16 AM
Attachments: [ATTACHMENT C DOCK VS SHORE MOORING AT 351 E-BAY FRONT2.PDF](#)
[ATTACHMENT F IRA BEER 9000 BOATS.png](#)
[ATTACHMENT G Amendments 8Vol1 - S1978Ch74.pdf](#)
[Attachent A p2 2016-17 - Setting the Fair Market Value Rent for Moorings Located Upon Tidelands in Newport Harbor.pdf](#)
[ATTACHMENT F2 USE OF SAME WATER FOR SAME PURPOSE.pdf](#)
[ATTACHMENT B PROPOSAL Item No. 6.pdf](#)
[ATTACHMENT D p4 RESOLUTION 2015-10 - Adjusting The Rental Calculation And Approving A Revised Model Permit Template For Residential Piers Located Upon Tidelands.pdf](#)
[ATTACHMENT E p20 FULL Tide and Submerged Lands Annual Financial Report 6.30.22.pdf](#)
[ATTACHMENT B1 page 2 Amendments 8Vol1 - S1978Ch74.pdf](#)

From: Hein [REDACTED]
Sent: Thursday, May 16, 2024 1:00 AM
To: Lucchesi, Jennifer@[REDACTED]
Cc: [REDACTED]
Subject: The City of Newport Beach: Tidelands Rate Discrimination and A Gift of Public Tidelands

Attention: This email originated from outside of SLC and should be treated with extra caution.

Dear Jennifer, and Honorable State Lands Commissioners,

Thank you for listening to the Mooring Holders in Newport Beach.

WILLFUL VIOLATIONS BY THE CITY OF NEWPORT BEACH

On April 10, the Newport Beach Harbor Commission voted to recommend a rate increase for all the Moorings in Newport Harbor. The City Council is expected to approve this recommendation in the coming weeks. Moorings have been paying the highest rates in the Harbor for decades, and Mooring Rates automatically increase by 2% each year according to the Consumer Price Index. (See Attachment A p2 Resolution 2016) If an additional 400% rate increase is approved, many working class mooring holders, and boaters on fixed incomes will be driven out of Newport Harbor, and many liveaboards will be driven into homelessness.

The City of Newport Beach is committing two violations:

VIOLATION #1: The City is practicing unbridled rate discrimination between different private users of the same Tidelands, for the same use, which is in clear violation of the CA Granting Statutes that state, “the City or its successors shall make NO DISCRIMINATION in rates, tolls, and charges for ANY USE or services in connection therewith.” (See Attachment B1, p 2) Yet, The City’s newest “fair market value” rates for a small shore mooring is \$1600/yr, while a large dock next to it, with seven boats, pays only \$600/yr. (See Attachment C, IMAGE OF DOCK VS SHORE MOORING)

Harbor Commissioner Ira Beer recommended \$7.71/lf/yr rent for 18' (Onshore) moorings effective July 1, 2029 = \$1,665/yr (See ATTACHMENT B1 p11 Proposal), but this rate will be much higher as moorings will be coupled to the Balboa Yacht Basin Marina slip rates under the new proposal, where the slip rates increase by 15%/yr, compared to the dock rate increases of 2%/yr in accordance with the annual CPI increases.

VIOLATION #2: The City Gifts Public Tidelands Water Space to the Private Docks, and allows thousands of yachts to park free of charge in Newport Harbor (See Attachment C, IMAGE OF DOCK VS SHORE MOORING)

The City charges private docks the standard CA Mooring Bench Mark Rate of 55c/sq/yr, and charges only for the Dock Footprint, not the water around the docks. (See Attachment D, p5, Resolution 2015-10)

According to Attachment C, the Private Dock, located at 351 E BAY FRONT, NPB, is an 1125/sq dock that pays \$600/yr, including the water occupied by seven boats. The water area is free and can be rented. (See Attachment D, p5, Resolution) The Onshore Mooring next door (Mooring E-42) can moor only one boat of up to 18ft max, and will need to pay \$1600/yr, or more, to satisfy the City’s new definition of “FAIR MARKET VALUE” for Moorings.

Further more, according to the City’s Tidelands revenue statement of 2022, the 1200 moorings, (onshore and offshore combined) generated \$1.3M in Tidelands Revenue, while the docks generated only \$300k. (See ATTACHMENT E, Revenue p 20.) According to Harbor Commissioner Ira Beer, there are 900 boats in and around the Harbor, and only 1200 moorings. (See Attachment F, HC Slide) This means that moorings already generate a significant disproportionate amount

of the Tidelands revenue, while the vast majority of the boats in the Harbor are allowed to park free of charge, most of them around private docks.

In other words, The City of Newport Beach is failing in its most basic duty which is to collect Tidelands Revenue from all Tidelands Users in Newport Harbor, for the State of California.

In sum, all Private Docks belong to multi-million dollar waterfront properties, while most mooring permittees are ordinary working class citizens who continue to pay a lot more than the Wealthy Waterfront Home Owners, for less use of the Tidelands. At the very least, Mooring Holders ought to pay the same low CA Tidelands Bench Mark Rates as the Wealthy Private Docks. Mooring Holders also want to see the SLC step in and require Private Docks to pay their fair share for all the FREE Tidelands Water Space around their docks that they occupy, and can rent. Equality on the Tidelands means all Tidelands users pay the same \$55c/sqf/yr, for the same use, and all Tidelands users pay for all the space their docks and boats occupy on the water. (See Attachment F2, Use of Same Water for Same Purpose)

What steps can I take to get the **Attorney General of California** involved as per the Grant Statutes? According to the Granting Statutes, "The **Attorney General** shall bring an action in the Superior Court of 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 provisions of law." (See ATTACHMENT G, Granting Statutes of 1978).

Thank you for your consideration, and service to our State

Hein Austin (Mooring Holder in Newport Harbor)



Link to City Dock Size Website (wait for website to load, then zoom in):

<https://nbgis.newportbeachca.gov/NewportHTML5Viewer/?viewer=pierpermitsinfo>

RESOLUTION NO. 2016-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, SETTING THE FAIR MARKET VALUE RENT FOR MOORINGS LOCATED UPON TIDELANDS IN NEWPORT HARBOR

WHEREAS, pursuant to the 1978 Beacon Bay Bill, as amended, ("Beacon Bay Bill") the City of Newport Beach ("City") acts on behalf of the State of California as the trustee of tidelands located within the City's limits, including Newport Harbor;

WHEREAS, the Beacon Bay Bill and Chapter 17.60 of the Newport Beach Municipal Code ("NBMC") allow the City to issue permits to third parties to construct/maintain moorings upon tidelands;

WHEREAS, the City offers two types of moorings, onshore and offshore, that provide an affordable option allowing residents of California to use and enjoy the tidelands in Newport Harbor;

WHEREAS, onshore moorings are located on the perimeter of the shore within Newport Harbor, and offshore moorings are located offshore within the waters of Newport Harbor;

WHEREAS, the mooring permits issued by the City do not convey any underlying property interest, and instead only allow for the temporary mooring of a vessel upon the waters of Newport Harbor;

WHEREAS, the Beacon Bay Bill, California Constitution Article 16, Section 6, NBMC Subsection 17.60.060(D) and City Council Policy F-7(D) require the City to receive fair market value rent from third parties using the tidelands;

WHEREAS, the City Council has the exclusive discretion to determine fair market value rent based, in part, upon the findings of a City-selected appraiser;

WHEREAS, an appraisal report was prepared by Netzer & Associates and delivered to the City and has been reviewed and considered by the City Council, which report is made a part of the record for this matter;

WHEREAS, on November 23, 2010, the City Council adopted Resolution No. 2010-132, which established fair market value rental rates for onshore and offshore moorings in Newport Harbor;

WHEREAS, the City Council is committed to periodically reviewing tidelands rent to ensure the rent is reflective of fair market value;

WHEREAS, on June 16, 2015, the City Council held a special meeting to receive and consider a comprehensive study conducted by the City's Harbor Commission regarding various aspects of mooring permits, including, but not limited to, fair market value rental rates;

WHEREAS, at the City Council's special meeting, the City Council considered the feedback and ideas gathered during the Harbor Commission's study and outreach meetings, and directed staff to bring back the mooring fair market value rental amounts in this resolution; and

WHEREAS, the City Council has considered all documents and comments in the record in connection with this resolution.

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

Section 1: The Recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

Section 2: Resolution No. 2010-132 is hereby repealed. The City Council finds that the rent provisions contained in this resolution provide for the charging of fair market value rent and that the rental rate (and adjustments) constitutes fair market value rent for moorings located upon tidelands, which findings are made by the City Council in its exclusive discretion but are based, in part, on the information in the appraisal of its City-selected appraiser and, in addition, on other testimony and documents in the record for this matter. The City Council further finds and determines the rent for moorings located upon tidelands, operating under a permit, shall be set in accordance with the provisions of this resolution. The rent established in this resolution shall only be applicable to permittees with a mooring located over City managed tidelands. The fair market value rent for moorings located upon tidelands in Newport Harbor shall be set and adjusted as follows:

Onshore Mooring	\$17.50* linear foot	*Adjusted annually by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers ("CPI"), Los Angeles-Riverside-Orange County Region or 2%, whichever is less.
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The City may conduct a new appraisal of mooring rental rates in Newport Harbor after March 1, 2018, and every fifth (5th) year thereafter, as part of the appraisal required by Resolution No. 2012-96, or any successor resolution.

Offshore Mooring	\$35.00* linear foot
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Section 3: The City Council finds the setting of fair market value rent for moorings located upon tidelands 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. Alternatively, the City Council finds the setting of fair market value rent for moorings located upon tidelands is entitled to a Class 1 Categorical Exemption pursuant to CEQA Regulation Section 15301 because the mooring rent contemplates the continued use of existing facilities, with no expansion of the proposed use. Further, the City Council finds the setting of fair market value rent for moorings located upon tidelands is entitled to a Statutory Exemption pursuant to CEQA Regulation Section 15273(a)(1) because the fair market value rent established by the City Council will be used to meet operating expenses within the tidelands. Lastly, the City Council finds the setting of fair market value rent for moorings located upon tidelands is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 4: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

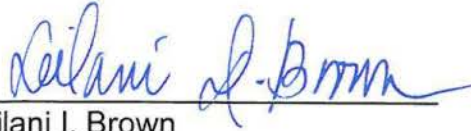
Section 5: This resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 26th day of January, 2016.



Diane B. Dixon
Mayor

ATTEST:



Leilani I. Brown
City Clerk



STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2016-17 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 26th day of January, 2016, and that the same was so passed and adopted by the following vote, to wit:

AYES: Council Member Peotter, Council Member Duffield, Council Member Petros,
 Mayor Pro Tem Muldoon, Mayor Dixon
NAYS: Council Member Selich, Council Member Curry

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of January, 2016.

Leilani I. Brown

City Clerk
Newport Beach, California

(Seal)





Newport Beach Harbor Commission

Review and Discuss Recommendations for Fair Market Rental Rates for Offshore and Onshore Moorings

April 10, 2024

Presented by Ira Beer, Harbor Commissioner



Harbor Commission Objective 2.2

Market Rent to be Charged for Onshore and Offshore Moorings

- The Harbor Commission has been tasked with the objective to update and provide a recommendation establishing Fair Market Rental Rates for the onshore and offshore moorings located within the Newport Harbor Mooring Fields
- The State of California has entrusted to the City of Newport Beach the tidelands in and around Newport Harbor. The City is obligated to charge fair market rents for the use of these public assets, which include moorings, residential docks, commercial marinas, yacht clubs, and fuel docks. These charges are not taxes or fees but are rent for the private, exclusive use over public tidelands. Charging less than fair market rates for the use and occupation of granted sovereign land may constitute an unconstitutional gift of public funds and a violation of the City's fiduciary duties to the state.



Mooring Rental Rate Revenue Importance

The revenue generated from offshore and onshore mooring rent goes directly to the Tidelands Fund, which among other important functions, invests in:

- Funding The Newport Beach Harbor Department
- The Maintenance and Enhancement of Public Tidelands
- Funding Environmental Protection Initiatives
- Supporting Public Access and Recreation Activities

Charging Fair Market Rates:

- Prevents the subsidization of private entities or individuals using public lands
- Ensures that mariners mooring vessels over public tidelands pay an equitable amount for the privilege of accessing their vessel while enjoying the use of these valuable and limited resources
- Reduces the burden on the city of having to utilize dollars from the General Fund to subsidize deficits within the Tideland Funds. The deficit for the 2023 fiscal year was approximately \$4.6 million per the Harbor & Beaches Master Plan Proforma Budget.



Public Outreach for Onshore and Offshore Mooring Rental Rates from 2022 to 2024

January 12, 2022	Review Onshore Mooring Appraisal and Recommended Mooring Rental Rate Increases	February 1, 2024	Special Meeting to Discuss Increase to Onshore and Offshore Mooring Rental Fees
February 3, 2022	Special NMA Meeting to Discuss Increase to Onshore Mooring Rental Fees	February 14, 2024	Review Public Comments and Recommended Mooring Rental Rate Increases
February 9, 2022	Review Public Comments and Recommended Appraisal Rental Rate Increases to Onshore Moorings	March 12, 2024	Special NMA Meeting to Review Appraisals and Discuss Increase to Mooring Rental Fees
March 21, 2022	Special Meeting to Review Appraisals and Discuss Increase to Onshore Mooring Rental Fees	March 18, 2024	Review Public Comments and Recommended Onshore and Offshore Mooring Rental Rate Increases
January 10, 2024	Review Offshore Mooring Appraisal and Recommended Mooring Rental Rate Increases	April 10, 2024	Review Public Comments and Recommended Onshore and Offshore Mooring Rental Rate Increases

The following pages summarize often heard concerns resulting from feedback at the above public meetings and through written correspondence.



Response to Public Comment

“Mooring Rental Rates Should Not Be Tied To Slip Rates”

In 2006-2007 there was an OC Grand Jury Investigation as to “Newport Harbor Moorings: Are They Held in the Public Trust or for Private Profit. The Final Grand Jury Report included Recommendation 6 which reads, “Establish a regularly scheduled independent appraisal for the fair market value of mooring permit fees, e.g., based on a percentage of the cost of a slip.” The City responded on July 24, 2007, and indicated, “The recommendation will be implemented, and a proposed revision will be presented to the City Council for consideration by November 2007. An analysis of mooring permit fees utilizing relevant methodologies is under way.”

Public access to boat storage over public tidelands and submerged land in Newport Harbor is available by way of utilizing boat slips at public marinas or moorings. Comparing these primary two alternatives for boat storage appears to be a reasonable way to monitor and maintain fair market rental rates.



Response to Public Comments

“Mooring Permittees are Being Discriminated Against and Raising Mooring Rents Over 300% is Unfair”

“Mooring Permittees Are Being Discriminated Against Compared to Residential and Commercial Dock Owners”

When tidelands are reserved for exclusive use by third parties and not open to the general public, the City is required to obtain fair market rent in exchange for that exclusive use and shall make no discrimination in rates, tolls, or charges for any use. The City may charge different rates for different uses when it is supported by an appraisal that makes distinctions in value (i.e., an on-shore mooring versus an offshore mooring; Residential docks versus commercial docks and marinas, etc.).

“Raising Mooring Rents Over 300% is Unfair”

The City Municipal Code requires a regularly scheduled appraisal be used to determine Fair Market Value. While a 300% increase seems very substantial, rates have seen only one adjustment over the past 28 years that was pulled back in 2016. Subsequently, the only rate adjustments that had been applied did not keep up even with the CPI index as they are limited to not exceed 2% annually. The subcommittee is recommending an increase to phase in over several years.



Response to Public Comments

“Various Comments Related to the Netzer Appraisal”

Comments to the Netzer appraisal have been discussed at length at each prior public meeting and in a direct meeting with the NMA.

The Subcommittee requested that Mr. Netzer provide further information and/or clarification of items that were discussed with the State Lands Commission, which include the following:

- Distinguish the difference between yacht club membership fees and mooring rental fees in the Comparative Rental Analysis of the appraisal report
- Provide information as how dinghy storage is calculated in the Comparable Rental Analysis
- Provide more detail regarding responsibility for costs of maintaining gear and tackle
- Provide information related how the 30% ratio applied to average slip rates in the harbor was used as a fair market method to determined fair market rental rates for moorings

Mr. Netzer has provided a memo dated April 5, 2024 detailing responses to the foregoing request for information. The Memo is attached to the Staff Report for this April 10, 2024 meeting and is incorporated to this presentation by reference.



Response to Public Comment

"The Netzer Appraisal is Flawed"

Letter Dated April 9, 2024

CALIFORNIA STATE LANDS COMMISSION [Review of Netzer Appraisal – Key Points]

Subject: State Lands Commission Staff Review of City of Newport Beach Mooring Rate Appraisal

"Commission staff regularly provide informal advice to assist trustees in meeting their obligations under their granting statutes, and in that spirit agreed to review the appraisal" [commonly referred to as the Netzer Appraisal] ...

*"Staff reviewed the appraisal at a high level to determine whether we [State Lands Commission] believed the City could reasonably rely on its concluded fair market mooring rates"..."**After reviewing the City's appraisal, staff believes its approach, methodologies, and its recommendations are reasonable**"...*

"Charging less than fair market rates for the use and occupation of granted sovereign land may constitute an unconstitutional gift of public funds and a violation of the City's fiduciary duties to the state"....

Sincerely,
REID BOGGIANO
Granted Lands Program Manager

Note: For the full letter – see the Meeting Packet Additional Material Received - Item No. 6.1 Rental Rates for Mooring Permits Staff Memo/State Lands Letter April 10, 2024 Harbor Commission Meeting



Why the Harbor Commission Subcommittee Believes the Recommendation is a Fair Adjustment to Mooring Rental Rates

There are only two ways to store a boat on Newport Harbor – a slip or a mooring. The Netzer appraisal uses a ratio (mooring to slip) of about 30% of the City Marina Index for the FMV determination. This is consistent with many marinas along the coast of California and two yacht clubs in Newport Harbor (BYB and NYHC).

City Adopted Marina Index is approximately 25% less than other average slip rental rates in Newport Harbor

The State Lands Commission believes the methodologies and recommendations in the Netzer Appraisal are reasonable

The Harbor Commission Subcommittee used 25% less than the Netzer appraisal in its recommendation

The Subcommittee recommendation takes into consideration the cost of maintenance of the tackle and gear by reducing rates below the current City Mooring License rates

The recommended new rental rates are below the current rates for City Licenses with a wait list of over 100 people

The Harbor Commission must provide a recommendation not less than fair market value for the use of moorings over public tidelands and submerged lands held in trust by the City of Newport Beach for the State of California.

The recommendation suggests a gradual increase over more than 5 years to reach the fair market rental rates

The new mooring rate recommendations are consistent with actual comparable rates in Newport Harbor as shown in the following Rental Rate Comparison chart



FMV Mooring Appraisal and Rental Rate Comparisons

Current Rental Fee Comparative Analysis For Two-point Moorings in Newport Harbor						
Based on a 40' Offshore Mooring Length	Current Rate for City Mooring Permits	Netzer Professional Appraisal	Current Rate for Balboa Yacht Club	Current Rate for Newport Harbor Yacht Club	Current Rate for City Mooring Licenses	Recommended Rate for City Mooring Permits 5 Year Phase-in
\$ Per Linear Foot	3.34	16.00	16.00	13.55	13.52	12.02
\$ Per Month	133.60	640.00	640.00	542.00	540.80	480.80
<p>Notes:</p> <ul style="list-style-type: none"> - 40' moorings are one of the most common mooring lengths in Newport Harbor. - No moorings are currently available for any size at the Balboa Yacht Club, the Newport Harbor Yacht Club or for City Mooring Licenses - Yacht Club rates are based on based on the Netzer appraisal or recently gathered information. - Yacht Club mooring rentals and City Licenses are non-transferrable and provide annual maintenance of moorings, whereas City Mooring Permits are transferrable and the permittee provides the maintenance. Maintenance costs are estimated at approximately \$1200 every 2 years or about \$1.25/ft per month. - The new City Mooring License program sold out during the first 90-day opening of 16 mooring licenses to the public. Currently, there is a growing wait list of approximately 100 people waiting to pay higher rates for the same size two-point moorings than the recommended new FMV rates being proposed for the City Mooring Permits. - The recommendation for new rates to City Mooring Permits is proposed to be phased in over more than 5 years. - The recommended rates are based on 24% of the City adopted Marina Index, and will adjust at that same percentage each year at the time the index is adjusted. 						



Mooring Rental Rate Phased-in Recommendation

Notes:

No increase in rates until January 1, 2025.

Six Proportionate increases over almost 6 years.

BYB (Balboa Yacht Basin) rates are based on the City adopted Marina Index of 5 marinas in Newport Harbor per the Netzer appraisal.

January 1, 2025 and July 1, 2025 increases are about one-tenth the difference between current rates and the adjusted FMV.

Each fiscal year beginning July 1, the annual adjustment is about one-fifth the difference between current rates and the adjusted FMV.

Each year the increase will be adjusted based on 24% of the annual adjustment percentage per the City Marina Index for slip rentals.

Each year the rates will be adjusted based on the FYE 2030 rates equaling 24% of the current Marina Index rates. An adjustment will be applied each year to the Effective Rates for FYE 2030, and the net increase or decrease will be divided and applied equally to the prior remaining years. For example, if there was an adjustment that resulted in a \$1.00 increase to the FYE 2030 rates and there remained four scheduled increases until FYE 2030, then the increase would result in \$0.25 per linear foot added to the above rate schedule for each year until FYE 2030.

18' LOA Mooring is for onshore mooring rates

Rate Comparisons			Increase Is Phased-in Through FYE 2030 Price Per Linear Foot Per Month					
Designated Mooring Lengths	BYB Average Slip Rental Rate \$/LF	Current Mooring Rates \$/LF	Effective Jan 1, 2025	Effective July 1, 2025	Effective July 1, 2026	Effective July 1, 2027	Effective July 1, 2028	Effective July 1, 2029
LOA Feet	\$ per LF	\$ per LF	FYE 2025	FYE 2026	FYE 2027	FYE 2028	FYE 2029	FYE 2030
18	32.23	1.67	2.27	2.88	4.08	5.29	6.50	7.71
25	32.38	3.34	3.74	4.19	5.08	5.98	6.87	7.77
30	39.60	3.34	3.91	4.53	5.78	7.02	8.26	9.50
35	42.59	3.34	3.98	4.68	6.06	7.45	8.84	10.22
40	50.09	3.34	4.16	5.04	6.78	8.53	10.28	12.02
45	51.27	3.34	4.19	5.09	6.90	8.70	10.50	12.30
50	60.59	3.34	4.42	5.54	7.79	10.04	12.29	14.54
60	70.65	3.34	4.66	6.02	8.76	11.49	14.22	16.96
70	74.08	3.34	4.74	6.19	9.09	11.98	14.88	17.78

Designated Mooring Lengths/Feet	BYB Average Slip Rental Rate \$/Month	Current Mooring Rates \$/Month	Price Per Mooring LOA Per Month					
			Jan 1, 2025 FYE 2025	July 1, 2025 FYE 2026	July 1, 2026 FYE 2027	July 1, 2027 FYE 2028	July 1, 2028 FYE 2029	July 1, 2029 FYE 2030
18	580.14	30.06	40.93	51.79	73.52	95.25	116.98	138.72
25	809.50	83.50	93.46	104.75	127.00	149.50	171.75	194.25
30	1,188.00	100.20	117.34	135.90	173.40	210.60	247.80	285.00
35	1,490.65	116.90	139.41	163.80	212.10	260.75	309.40	357.70
40	2,003.60	133.60	166.52	201.60	271.20	341.20	411.20	480.80
45	2,307.15	150.30	188.62	229.05	310.50	391.50	472.50	553.50
50	3,029.50	167.00	220.76	277.00	389.50	502.00	614.50	727.00
60	4,239.00	200.40	279.41	361.20	525.60	689.40	853.20	1,017.60
70	5,185.83	233.80	331.72	433.30	636.30	838.60	1,041.60	1,244.60



*Discuss Recommendations for
Fair Market Rental Rates for
Offshore and Onshore Moorings*

Question & Answer

Session
for
Harbor Commissioners

April 10, 2024



Public Comments

Open Forum



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° 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.

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.

RATE DISCRIMINATION
DOCK VS SHORE MOORING
DOCK PAYS \$600/YR
MOORING WILL PAY \$1600/YR+

DOCK AT 351 E BAY FRONT NPB
DOCK 1125/sqf
\$600/yr INCLUDING WATER
OCCUPIED BY 7 BOATS
WATER AREA IS FREE
CAN RENT FREE WATER SPACE

SHORE MOORING >
E-42
18ft BOAT MAX
\$1600/yr +

E Bay Front

E Bay

RESOLUTION NO. 2015-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADJUSTING THE RENTAL CALCULATION AND APPROVING A REVISED MODEL PERMIT TEMPLATE FOR RESIDENTIAL PIERS LOCATED UPON TIDELANDS

WHEREAS, pursuant to the 1978 Beacon Bay Bill, as amended, ("Beacon Bay Bill") the City of Newport Beach ("City") acts on behalf of the State of California as the trustee of tidelands located within the City's limits, including Newport Harbor;

WHEREAS, the Beacon Bay Bill and Chapter 17.60 of the Newport Beach Municipal Code ("NBMC") allow the City to authorize third parties to construct/maintain residential piers upon tidelands;

WHEREAS, the Beacon Bay Bill, California Constitution Article 16, Section 6, NBMC Section 17.60.060(D) and City Council Policy F-7(D) require the City to receive fair market value rent from third parties using the tidelands;

WHEREAS, the City Council has the exclusive discretion to determine fair market value rent based, in part, upon the findings of a City-selected appraiser;

WHEREAS, an appraisal report by Rasmuson Appraisal Services, and an appraisal report by Netzer & Associates, were prepared and delivered to the City and have been reviewed and considered by the City Council, which reports are part of the record for this matter;

WHEREAS, on November 26, 2013, the City Council adopted Resolution No. 2013-88, approving a model residential pier permit for residential piers located upon tidelands and establishing fair market value rent;

WHEREAS, on January 27, 2015, the City Council considered, at its regularly scheduled study session, the current status of the City's tidelands regulations and rents for moorings, commercial piers and residential piers and directed staff to bring back certain amendments contained in this resolution to improve the tidelands rent process;

WHEREAS, the City Council has considered all documents and comments in the record in connection with this resolution; and

WHEREAS, all previous resolutions, or portions thereof, and actions regarding the fair market value rent for residential piers and the model pier permit template for residential piers that are in conflict with the provisions in this resolution are hereby repealed.

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

Section 1: The Recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

Section 2: The City Council finds that the rent provisions contained in the attached Adjusted Residential Pier Tidelands Rent Calculations, which is incorporated by reference, provide for the charging of fair market value rent and that the rental rate (and adjustments) in the attachment constitute fair market value rent for residential piers located upon tidelands, which findings are made by the City Council in its exclusive discretion but are based, in part, on the information in the appraisals of its City-selected appraisers and, in addition, on other testimony and documents in the record for this matter. The City Council further finds and determines the rent for residential piers located upon tidelands, operating under a permit, shall be set in accordance with the attached Adjusted Residential Pier Tidelands Rent Calculations. The rent established in this resolution shall only be applicable to permittees with a residential pier located over tidelands.

Section 3: The City Council adopts the revised model residential pier tidelands permit attached to this resolution, and incorporated by this reference, for use by residential pier tidelands users. The City Council finds that the residential tidelands users subject to the attached model permit are not subject to the open bid process found in City Council Policy F-7 because redevelopment/reuse of the tidelands by a third party would require excessive time, resources and costs which would outweigh other financial benefits.

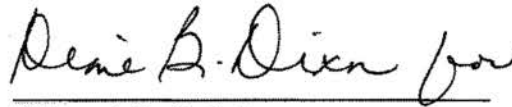
Section 4: The City Council finds the adjustment of residential pier rent and the approval of a revised model permit template for residential piers located upon tidelands is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result 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. Alternatively, the City Council finds the adjustment of residential pier rent and the approval of a revised model permit template for residential piers located upon tidelands is entitled to a Class 1 Categorical Exemption pursuant to CEQA Regulation Section 15301 because the residential pier rent and permit contemplate the continued use of existing facilities, with no expansion of the proposed use. Further, the City Council finds the adjustment of residential pier rent for piers located upon tidelands is entitled to a Statutory Exemption pursuant to CEQA Regulation Section 15273(a)(1) because the fair market value rent established by the City Council will be used to meet operating expenses within the tidelands. Lastly, the City Council finds the adjustment of residential pier rent and the approval of a revised model permit template for residential piers located upon tidelands is not a project under

CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 5: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared invalid or unconstitutional.

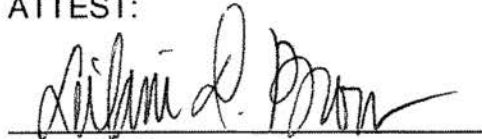
Section 6: This resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 10th day of February, 2015.



Edward D. Selich,
Mayor

ATTEST:



Leilani I. Brown,
City Clerk



Attachments: (1) Adjusted Residential Pier Tidelands Rent Calculations
(2) Revised Model Permit Template for Residential Piers

Adjusted Residential Pier Tidelands Rent Calculations

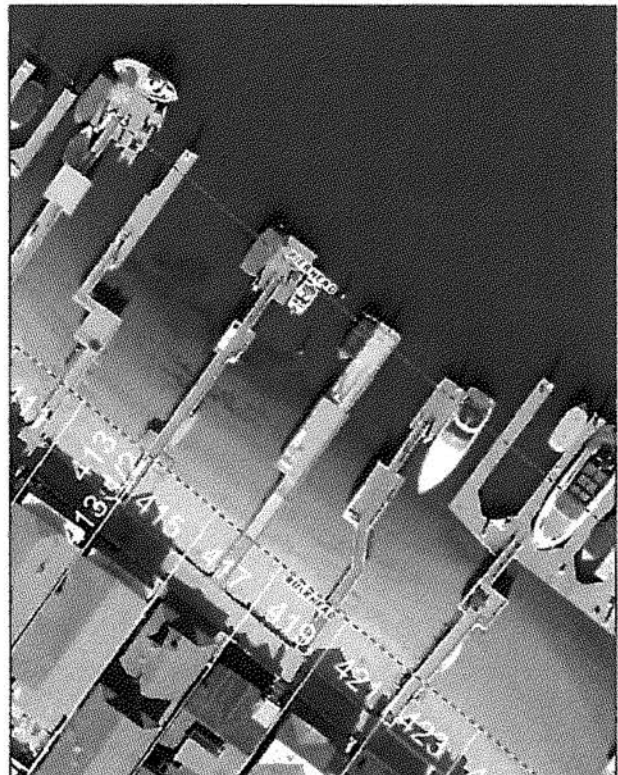
Residential Pier Rent

- (1) Residential Pier Permittees shall pay as Rent Fifty Cents (\$0.50) per square foot of the Premises, as phased in and adjusted pursuant to this resolution. Two (2) examples of the Rent calculation are provided below for illustrative purposes:



Proposed - 215 VIA LIDO SOUD

Total Permit Area = 992 sq. ft.
2017 Rental Fee = **\$496**
(\$0.50/sq. ft.)



Proposed - 417 EDGEWATER PL

Total Permit Area = 637 sq. ft.
2017 Rental Fee = **\$318.95**
(\$0.50/sq. ft.)

- (2) Permittees that desire to rent/lease their Residential Pier shall notify the City in writing. Permittees that rent/lease their Residential Pier, either in whole or in part, shall pay the Rent applicable to Small Commercial Marinas as established in Resolution No. 2012-98, or any successor resolution, for the Premises.
- (3) To the extent a Residential Pier is shared by two (2) or more Permittees, the Rent shall be apportioned equally among the Permittees (*i.e.*, if a

Residential Pier is shared by two (2) Permittees, half (1/2) of the Rent shall be billed to one (1) Permittee and the other half (1/2) of the Rent shall be billed to the other Permittee). The Permittees shall be jointly and severally liable for the Rent. Each Permittee shall receive a permit from the City indicating the percentage of the Premises apportioned to the Permittee.

Periodic Adjustments of Rent and Phase In

Rent for Residential Piers provided by this resolution, shall be phased-in and adjusted as follows in the table below. In the table, "A" represents the calculated rent based on the known square footage under permit in 2012, multiplied by Fifty Cents a square foot (\$0.50/SF):

Fifty Cents (\$0.50) Rent Phase-in Table and Adjustment

Examples	2012	2013	2014	2015	2016	2017
	\$100	$\frac{[A-\$100]}{5} + \100	$\frac{[A-\$100]}{5} + 2013 \text{ Rent}$	$\frac{[A-\$100]}{5} + 2014 \text{ Rent}$	$\frac{[A-\$100]}{5} + 2015 \text{ Rent}$	Fully Phased-In Rent (A)
Example #1: 1,139 SF	\$100	\$194	\$288	\$382	\$476	\$570
Example #2: 1,426 SF	\$100	\$223	\$345	\$468	\$590	\$713
Example #3: 3,480 SF	\$100	\$428	\$756	\$1,084	\$1,412	\$1,740

A = square footage x \$0.50

Rent for Residential Piers of one hundred ninety square feet (190') or less shall pay the fully phased in Rent immediately and be subject to CPI adjustment beginning in 2018. During the phase-in period there shall be no adjustment by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers ("CPI"), Los Angeles-Riverside-Orange County region or otherwise.

Beginning in 2018 and indefinitely beyond, the rental rate shall be adjusted by the change in the CPI or two percent (2%) whichever is less. The City may conduct a new appraisal of residential pier rental rates in Newport Harbor after March 1, 2018, and every fifth (5th) year thereafter, as part of the appraisal required by Resolution No. 2012-96, or any successor resolution. The City Council, at its discretion, may use the appraisal to adjust Rent for the following year (i.e., the Rent determined by the appraisal following March 1, 2018 shall be effective March 1, 2019). If the City Council chooses not to adjust Rent across the Class of Permit, it shall use the appraisal's results to adjust the Rent of only those individual Permits that transfer ownership following each appraisal. Once adjusted, these transferred Permits shall be adjusted by the change in CPI or two percent (2%), whichever is less, until such time that a new appraisal applies to this Permit or Class of Permit.

Definitions

Unless otherwise provided, the terms provided in the Newport Beach Municipal Code ("NBMC") shall apply to this resolution. The singular of any term also includes the plural.

- (1) Class of Permit means all Permits for Residential Piers in Newport Harbor.
- (2) Permit refers to a permit issued by the City authorizing a Residential Pier upon the Premises.
- (3) Permittee means a person who has a permit from the City to construct/maintain a Residential Pier.
- (4) Premises means those Tidelands which are subject to the applicable permit and are more particularly described and depicted in the applicable permit, excluding any Private Waterways and improvements owned by the Permittee or Tidelands subject to recorded easements for pier and slip purposes. The Premises shall include only the portion of the Tidelands located under a Residential Pier and shall exclude the interior U-Shape of a slip.
- (5) Private Waterways means privately owned submerged lands or submerged lands subject to recorded easements for pier and slip purposes.
- (6) Rent means the annual fair market rent charged on a square footage basis for the use of the Premises.
- (7) Residential Pier means a pier used by the owner(s), occupant(s), guest(s) or lessee(s) of the abutting residentially zoned upland property. A Residential Pier shall include the entire pier system, including, but not limited to, the float, gangway, gangway landing, pier, and pier platform. The Residential Pier shall specifically exclude the interior U-Shape of a slip.
- (8) Tidelands mean certain tidelands and submerged land (whether filled or unfilled), located in the City of Newport Beach, County of Orange, State of California, granted to the City of Newport Beach, as trustee, by the State of California, pursuant to the Tidelands Grant.
- (9) Tidelands Grant means uncodified legislation related to the State of California's grant of certain rights in the Tidelands to the City of Newport Beach, including, without limitation, the Beacon Bay Bill (Chapter 74 of the Statutes of 1978, as amended [citations omitted]).

ATTACHMENT B

Residential Tidelands Pier Permit

- (1) **Permittee:** This Permit is issued on _____ to _____ ("Permittee") to construct/maintain a residential pier located upon City of Newport Beach ("City") tidelands, as more particularly described and depicted in Attachment 1 ("Premises"), which is attached hereto and incorporated by reference. By acceptance of this Permit, the Permittee agrees to be bound by the terms contained in this Permit.
- (2) **Term:** This Permit shall be valid for a period of ____ year(s) beginning on March 1, 20____ and expiring on February __, 20____, unless terminated earlier as provided herein. A new permit may be automatically issued upon expiration, provided rent is paid and the pier is maintained. The City's longstanding policy is to re-issue residential permits to the upland property owner, who also owns the physical dock associated with the Premises.
- (3) **Rent:** Rent shall be calculated pursuant to Resolution No. 2015-__ or any successor/amended resolution. Resolution No. 2015-__ and any successor/amended resolution are automatically incorporated by reference into this Permit, without any further action by the parties, when adopted by the Newport Beach City Council.
- (A) **Payment of Rent:** All rent shall be annually prorated and billed through Permittee's Municipal Services Statement ("MSS"). All rent shall be due and payable pursuant to the terms of Permittee's MSS.
- (B) **Late Charges:** A ten percent (10%) late charge shall be added to all payments due but not received by City by the due date.
- (C) **Third-Party Use:** This Permit allows / does not allow (check one) the Permittee to rent/lease the Premises to a third-party.
- (4) **Utilities and Taxes:** The Permittee is solely responsible for obtaining all utilities and paying all taxes (including possessory interest tax, if applicable), fees and assessments for the Premises or improvements located thereon.
- (5) **Maintenance:** The Permittee assumes full responsibility for operation and maintenance and repair of the Premises and associated improvements throughout the term of this Permit at its sole cost, and without expense to the City.
- (6) **Transfer/Assignment:** This Permit may be transferred or assigned by the Permittee as provided in the Newport Beach Municipal Code.
- (7) **Property Right Protection:** The residential pier maintained under this Permit is private property and shall be protected to the maximum extent under the law from unlawful seizure.
- (8) **Settlement Agreement:** This Permit is in full compliance with the February 21, 2014 Settlement Agreement entered into between the City and the Newport Beach Dock Owners Association.

ATTACHMENT B

Attachment 1

Description & Depiction of Premises

Premise's Address (or description of general location):

Premise's Square Footage:

Premise's Depiction:

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2015-10 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 10th day of February, 2015, and that the same was so passed and adopted by the following vote, to wit:

AYES: Council Member Peotter, Council Member Petros, Council Member Muldoon,
 Mayor Pro Tem Dixon
NAYS: Council Member Curry
RECUSED: Council Member Duffield, Mayor Selich

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 11th day of February, 2015.



City Clerk
Newport Beach, California

(Seal)



CITY OF NEWPORT BEACH

TIDE & SUBMERGED LANDS ANNUAL FINANCIAL REPORT

For the Fiscal Year Ended June 30, 2022



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CITY OF NEWPORT BEACH
Tide & Submerged Lands Annual Financial Report
Year Ended June 30, 2022

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CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949 644-3127 | 949 644-3339 FAX
newportbeachca.gov/finance

March 21, 2023

Honorable Mayor, Members of the City Council, Residents of the City of Newport Beach, and Citizens of the State of California,

I am pleased to present the City of Newport Beach – Tide and Submerged Lands (Tidelands) Fiscal Year 2021-22 Annual Financial Report. The Tidelands Report is a report for the residents of California and provides a concise, easy to read document that enables us to highlight information on the City's administration of the Tidelands pursuant to grants from the State of California.

This report reflects Tidelands fund balances, that when aggregated, agree to amounts presented in the audited, Fiscal Year 2021-22 Annual Comprehensive Financial Report (ACFR) for the City of Newport Beach, CA, which includes the Tidelands – Operating Fund and Tidelands – Harbor Capital Fund as major fund types, subject to audit.

This report only presents information on the financial condition of the Tidelands funds, and does not address the financial condition of the City of Newport Beach, CA as a whole. For more information on the financial condition of the City of Newport Beach, CA, please see the City's ACFR, which can be viewed on our website, at: www.newportbeachca.gov/ACFR.

Jason Al-Imam
Finance Director/Treasurer

CITY OF NEWPORT BEACH

Tide and Submerged Lands Annual Financial Report for the Year Ending June 30, 2022

Overview

The City of Newport Beach manages and administers the Tidelands on behalf of all the people of California and is subject to specific legislative grants. The Tidelands within the city's boundaries are owned by the State of California and overseen by the California State Lands Commission (SLC). Some of the lands are administered by the County of Orange, but still are owned by the State.

The City, as a trustee, is required to submit an annual financial report to the SLC. This report enables us to highlight information on the City's financial administration of the Tidelands in more detail than the City's Annual Comprehensive Financial Report (ACFR). This report only presents information on the financial position of the Tide and Submerged Land funds, and does not address the financial position of the City of Newport Beach, CA as a whole. The City's audited ACFR, can be obtained at: www.newportbeachca.gov/acfr.

The City's granted Tidelands consist primarily of the land bayward of the bulkhead and portions of the bay beaches in the Lower Bay (Coastward of the Upper Bay Bridge). Newport Beach Tidelands also include large portions of the City's ocean beaches and land covered by the Pacific Ocean from the shoreline to three (3) miles out to sea. Additionally, some areas within the Tidelands were filled in and developed long ago, and these are known as filled Tidelands. The portion of State Tidelands administered by the City is illustrated on the map below:



Guiding Legislation

The granted Tidelands must be used for purposes consistent with the public trust. Legislation known as the Beacon Bay Bill, adopted in 1978 and subsequently amended multiple times, is the guiding document that outlines how the City is to use and manage Tidelands, as well as how the City accounts for revenues and expenditures generated within Tidelands. According to the Bill, Tidelands can only be used for purposes in which there is a general statewide interest. These purposes are generally as follows:

- Establishing, improving, and operating a public harbor.
- Establishing, maintaining, and operating wharves, docks, piers, slips, quays, ways and streets, or utilities to promote commerce, fishing, or navigation.
- Establishing, improving, and operating beaches, marinas, aquatic playgrounds, and similar recreational facilities open to the public.
- Preserving, maintaining, and enhancing Tidelands in their natural state for use in scientific study, open space, and wildlife habitat.

The City has the power to regulate the use of Tidelands through leases, permits, policies, and ordinances that are consistent with the trust and relevant legislation.

Additionally, the Public Trust Doctrine and the California Constitution advise the City. The Public Trust Doctrine says that:

...The Legislature has the power to delegate the management responsibility of tidelands and submerged lands to local governments. When it does so, these lands are known as granted lands, and the grantees that manage them must ensure that they are used in ways that are consistent with the public trust and with any other conditions the Legislature imposes...

The State Constitution (Article XVI, Section 6) says that:

...The Legislature shall have no power ...to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever...

Accounting for Tidelands Revenues and Expenditures

Funds are used by the City as a means to track and control resources intended for specific purposes. The Tidelands funds are utilized to control and manage resources intended for purposes described in the Beacon Bay Bill.

At this time, the City uses a two-fund approach to track and control resources intended for Tidelands accounting purposes.

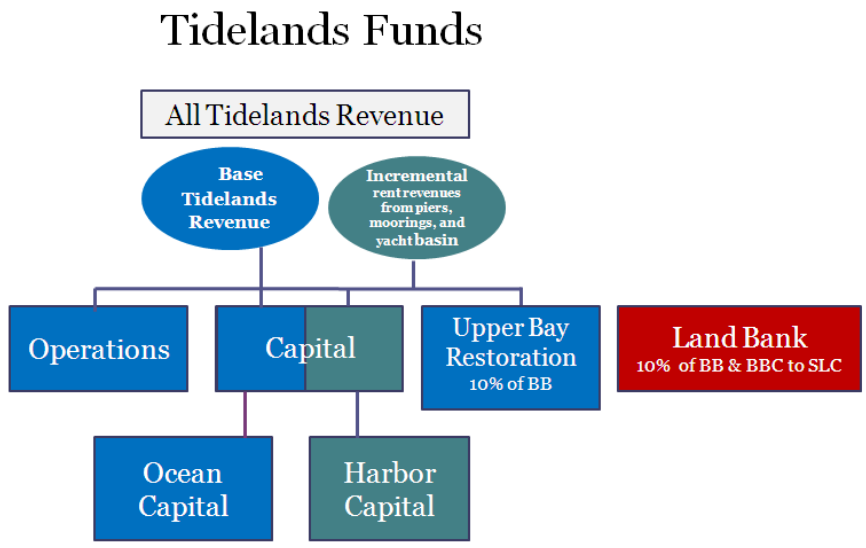
Operating Fund

The Tidelands Operating fund is used to account for revenues related to the operation of the Tidelands under City jurisdiction, including beaches and marinas, and the related expenditures. Revenue from tideland operations includes, but is not limited to, rents from moorings, piers, and leases, as well as income from parking lots, meters, and the sale of oil. Funds intended for the Upper Bay Restoration are also accounted for in this fund in a separate reserve account.

Harbor Capital Fund

With the adoption of new permit and the adjustment of lease templates and adjusted commercial and noncommercial tidelands rent to fair market value in the years immediately subsequent to 2010, the City Council asked the State Lands Commission for permission to create a Harbor Capital Fund. This allows for the sequestration of incremental increases from tidelands rent adjustments solely to finance critical in-Harbor capital improvements, like sea walls repair, dredging, piers, and important amenities.

The following illustration identifies the structure of the City's Tidelands funds and the allocation of revenue between those funds. Additionally, the City has some discretion on the use of Tidelands revenues within the operating and capital funds.



BB and BBC represents Beacon Bay and Balboa Bay Club respectively.

In 2011, the City Council formed the Tidelands Management Committee, a committee of three (3) Council members plus seven (7) citizen advisors, that would meet in public to make recommendations to the City Council on the prioritization and implementation of large infrastructure needs of the harbor through the publicly-available Tidelands Capital Plan. In 2017, the Council dissolved the Tidelands Management Committee and shifted its duties to the Harbor Commission. The City now manages the operations of the Tidelands. Similar to several other “master plans”, the City annually plans for the replacement, timing and means of financing critical infrastructure through the Tidelands, Harbors, and Beaches Capital Plan.

Advances and the General Fund Subsidy

Beginning in FY 2008-09, the City had an opportunity to complete a long-awaited maintenance dredging project within Lower Newport Bay, and a similar opportunity arose to remove sediments not suitable for ocean disposal that sat at the bottom of the Rhine Channel. The timing was critical, as much of the sediment within the Harbor and the Rhine needed a special repository – and that repository was in fill areas at the Port of Long Beach as the Port embarked on a major terminal expansion. To take advantage of the Port’s space for sediment not suitable for ocean disposal (where the sediment would be buried and encased in a support structure and secured), the City Council advanced a loan from the General Fund to the Tidelands Harbor Capital Fund of \$9.7 million.

In addition, City Council approved another \$6.1 million in loan advances to the Harbor Capital Fund to cover the cost of developing the 23-space visitor-serving marina at the Marina Park project on the Peninsula. These advances are non-interest bearing, and are to be paid back to the General Fund from incremental revenue increases generated from certain leases, mooring rents, and commercial and residential pier rents. The balance of advance due to the General Fund as of June 30, 2022 is \$8.2 million. Please see the notes to the financial statement for the repayment schedule.

Historically, the Tidelands Operating Fund does not generate sufficient revenue to cover the full cost of operations – in large part because of the public safety costs (lifeguarding, EMS response, and police services) associated with the ocean beaches. This is still the case in FY 2021-22. Due to the ongoing

gap between revenues and expenditures, the City's General Fund transfers money to subsidize the operations of the Tidelands Operating Fund, on an annual basis. As Tidelands revenues and expenditures fluctuate year to year, the General Fund subsidy also fluctuates. For FY 2021-22, the General Fund transferred \$8.7 million to subsidize the Tidelands Operating Fund.

Revenues

The Beacon Bay Bill requires the City to set up a separate Tidelands trust fund or funds, and mandates that the City deposit into these funds "all moneys received directly from, or indirectly attributable to..." the granted Tidelands in the City.

Why aren't property taxes and other taxes allocated to the Tidelands trust?
Very simply, the property owner or trustee of the property is not the intended recipient of the tax. For example, all revenue from property taxes are intended for local governments, not the property owner or trustee of the property. Regardless of who owns or operates the Tidelands property, the 1% property tax is distributed to local jurisdictions in accordance with Senate Bill 154 passed in 1978 and amended thereafter. This distribution formula includes counties, cities, special districts but does not include the property owner or trustee of the property.

Revenue from all sources total \$18.2 million for FY 2021-22. The allocation of revenue may be based on specific locations, or on a percentage located within the Tidelands. For instance, several leases are split between the General Fund and the Tidelands Operating Fund based on the location of specific rental units, or based on the percentage of units located within the Tidelands. Revenues attributable to the Tidelands are deposited and accounted for in the Tidelands Fund, consistent with grant and trust requirements.

As noted, the City has committed to using revenues generated by certain incremental increases in rental rates for leases, moorings, and piers over designated base years to support Harbor related capital improvements in the Harbor Capital Fund. This incremental increase consisted of \$2.2 million from Balboa Bay Club; \$1.1 million from on-shore, off-shore, guest, and transfer moorings; \$832,339 from commercial piers; \$639,517 in increased revenues from Balboa Yacht Basin rentals of slips, apartments, and garages; and \$155,911 from residential piers.

The table to the right shows the top Tidelands Fund revenue producers for FY 2021-22.

Property income is the primary source in revenue attributable to both Tidelands Funds. Combined Tidelands property income is \$19.4 million, and is made up of \$9.7 million from leases, \$4.2 million from parking lots, \$3.2 million from rents for moorings, residential and commercial piers, \$1.7 million from the sale of oil, and \$519,922 from other property income. For more details on revenue, please refer to the Statement of Revenues, Expenditures, and Changes in Fund Balance on page 10.

Top Tidelands Revenue Producers			
Top Tidelands Revenue Producers	Tide and Submerged Land - Operating	Tide and Submerged Land - Harbor Capital	Tide and Submerged Land Total
Balboa Bay Club	\$ 3,011,162	\$ 2,246,724	\$ 5,257,886
Balboa Pier Parking Lot	2,296,881	-	2,296,881
Oceanfront/Other Parking Meters	1,937,368	-	1,937,368
Petroleum Royalties	1,679,870	-	1,679,870
Beacon Bay Residences	1,543,443	-	1,543,443
Other Leases	1,312,058	217,036	1,529,094
Balboa Yacht Basin	745,506	639,517	1,385,023
Commercial Piers	398,500	832,339	1,230,839
Offshore Moorings	617,608	548,624	1,166,232
Other Property Income	519,922	-	519,922
Other Moorings	-	408,234	408,234
Residential Piers	118,000	155,911	273,911
Other Revenue	188,841	-	188,841
Onshore Moorings	69,546	94,642	164,188
Investments-Related	(387,765)	(1,018,682)	(1,406,447)
Total	\$ 14,050,940	\$ 4,124,345	\$ 18,175,285

Parking revenue of \$4.2 million is made up of \$2.3 million from the Balboa Parking Lot, \$1.3 million from the Ocean Front Lot, and \$668,412 from a combination of smaller lots.

Lease revenue of \$9.7 million consists of the following:

- 1) \$5.3 million from the Balboa Bay Club lease
Per the amendment to the ground lease in FY 2014 with the Balboa Bay Club and the State Lands statute, revenues from the Balboa Bay Club are split – 95% to Tidelands operating fund and 5% to the State Lands Commission’s Land Bank fund. Starting in FY 2019, they were modified – 90% to Tidelands operating fund and 10% to the State Lands Commission’s Land Bank fund.
- 2) \$1.5 million from Beacon Bay residential leases
Tidelands-related Beacon Bay lease revenues are split – 80% to the Tideland Operating fund, 10% restricted within the Tidelands Operating fund for Upper Newport Bay Restoration, and 10% deposited in the Land Bank fund held and administered by the State Lands Commission. Some of the Beacon Bay residences are actually on uplands, and lease revenue from these properties goes to the General Fund.
- 3) \$1.4 million from Balboa Yacht Basin leases for slips, apartments, garages, offices, and electricity
Balboa Yacht Basin revenues are split – 53% to the General fund and 47% to Tidelands based on the percentage of area in the Tidelands.
- 4) The remaining \$1.5 million is derived from a variety of smaller leases.

Newport Beach is home to approximately 4,300 boats, 1,200 moorings, 1,200 residential piers, and 1,900 commercial slips and ties, resulting in \$3.2 million in revenue from rentals, including \$1.7 million in revenue from off-shore, on-shore, guest, and transfer moorings, \$1.2 million from commercial piers, and \$273,911 from residential piers.

The City received \$1.7 million in revenues from the sale of oil. During FY 2021-22, 19,718 barrels of oil were produced from 12 working wells located in West Newport. The City has set aside \$800,000 in the Tideland’s Operating Fund for future improvements to these oil wells, but as of the date of this report, no determination has been made to proceed with these improvements.

Additional revenue sources include:

- 1) \$121,046 from licenses and permits, derived from pier transfer fees, live aboard permits, dredging permit application fees, and marine activities permits.
- 2) \$30,430 in charges for services from harbor appeals, impound release fees, and waitlist fees.
- 3) \$37,365 from fines and forfeitures for administrative fines, abandoned vessels, and delinquencies.
- 4) \$543,587 from investment income offset by a \$2.0 million net decrease in fair value of investments, resulting in a net decrease of \$1.4 million in investment-related revenues. The fair value decreases are usually unrealized as the City normally holds investments to maturity and receives the full par value at the time of maturity.

Expenditures

Generally, the Beacon Bay Bill permits the City to expend the revenues accruing from use of the Tidelands for the management, operation, and control of the lands and/or any improvements, betterments, or structures, as well as for any use that furthers the purposes of the trust. Total Tidelands expenditures for FY 2021-22 totaled \$23.2 million. The City’s expenditure approach is reviewed regularly between City staff and SLC staff.

Direct Costs are those activities, programs, or functions whose primary purpose wholly or substantially benefit the Tidelands. These expenditures are charged directly to the activity, program, or function that benefits from them. There are currently five (5) types of expenditures charged directly to the Tidelands funds: 1) Harbor Operations division operating costs of \$1.8 million; 2) Public Works - Utilities operating costs of \$1.5 million; 3) Tidelands Management division operating costs of \$356,413; 4) Community Development operating costs of \$3,543; and 5) capital projects directly benefitting, or located within the Tidelands of \$2.0 million.

Indirect Costs are those City-wide costs for services that support a variety of City activities, programs, and functions and are centrally budgeted. Examples include but are not limited to; 1) Public safety services to Tidelands users, including Police, Fire, and Marine safety services of \$12.7 million; 2) Public Works services that protect or otherwise support the Tidelands, such as water quality, stormwater protection, dredging, infrastructure maintenance, and municipal operations of \$3.4 million; and 3) General government administrative services of \$1.5 million including City Council, City Clerk, City Attorney, City Manager, Finance, Human Resources, building use, which generally consists of the Tidelands' share of this overhead, and parking operations.

The City uses outside cost allocation experts, currently MGT of America Inc. (MGT), to develop the indirect cost allocation plan that identifies and distributes these indirect costs to all operating activities, programs, and functions within the City's organizational structure. This allocation plan includes allocation of costs to the Tidelands Operating fund.

The cost allocation plan takes a detailed approach to analyzing the costs attributable to Tidelands Operations. MGT interviewed staff in each department and analyzed data within each central activity to determine: 1) what services are provided; 2) which functions or departments receive benefits from these services; and 3) how to determine the amount of benefit received, or what is the best driver for allocating centrally budgeted services to programs or functions receiving the benefits.

For example, Public Works salaries and operating expenses may be allocated based on a time study of which programs or functions were worked on; Accounts Payable salaries and operating expenses may be allocated on the number of checks processed for a program or function; City Clerk salaries and operating expenses may be allocated based on the number of agenda items per program or function. There are many alternative drivers to choose from, and the City relies on MGT's expertise in selecting these drivers.

The drivers are used to allocate General government activities among the City's departments and divisions, then administrative costs within the departments and divisions are allocated to the various activities, programs, and functions of the City using similar methodologies. Indirect costs are added to direct costs to determine the full cost of each activity, program, and function.

Finally, a share of the full cost of activities, programs, and functions that provide services to the Tidelands are allocated using the best drivers and methodologies identified by MGT. For FY 2021-22, total expenditures of \$23.2 million for both funds included indirect cost allocations to the Tidelands Operating Fund totaling \$17.6 million.

The City regularly reports its expenditure information, including the indirect cost allocation, to the State Lands Commission for review and approval to ensure the City is meeting all the obligations of the Beacon Bay Bill; using Tidelands funds only for Tidelands purposes.

Conclusion

The City endeavors to manage and administer Tidelands in accordance with the appropriate legislation while working with the California State Lands Commission to ensure Newport Harbor continues to be a prosperous and effective harbor. It is always fair to re-evaluate both Tidelands revenue sources and expenditure purposes on a regular basis, and the City does so with the City Council, the community, and the State Lands Commission. Changes to the allocations, if consistent with the Trust and related legislation, should be viewed both on their merits and how they might impact City operations, services, and other funds.

Comprehensive financial detail on City of Newport Beach Tidelands can be found in the financial statements that follow.

CITY OF NEWPORT BEACH
Tide and Submerged Lands
Balance Sheet
June 30, 2022

	Tide and Submerged Land - Operating	Tide and Submerged Land - Harbor Capital	Tide and Submerged Land Total Funds
Assets			
Cash and investments	\$ 4,745,087	\$ 39,666,573	\$ 44,411,660
Receivables:			
Accounts (net of allowance)	1,972,271	-	1,972,271
Interest	50,387	107,649	158,036
Lease Receivables (note 2)	176,798,702	-	176,798,702
Total assets	<u>\$ 183,566,447</u>	<u>\$ 39,774,222</u>	<u>\$ 223,340,669</u>
 Liabilities, Deferred Inflows of Resources, and Fund Balances			
Liabilities:			
Accounts payable	\$ 1,710,218	\$ 63,091	\$ 1,773,309
Accrued payroll	38,725	-	38,725
Deposits payable	192,589	-	192,589
Unearned Revenue	757,105	-	757,105
Advance from other funds (note 3)	-	8,176,659	8,176,659
Total liabilities	<u>2,698,637</u>	<u>8,239,750</u>	<u>10,938,387</u>
Deferred Inflows of Resources:			
Deferred amount from leases (note 2)	176,320,010	-	176,320,010
Total deferred inflows of resources	<u>176,320,010</u>	<u>-</u>	<u>176,320,010</u>
 Fund balances:			
Restricted:			
Upper Newport Bay Restoration	1,318,126	-	1,318,126
Other	2,429,674	31,534,472	33,964,146
Committed:			
Oil and Gas Liabilities	800,000	-	800,000
Total fund balances	<u>4,547,800</u>	<u>31,534,472</u>	<u>36,082,272</u>
Total liabilities, deferred inflows of resources, and fund balances	<u>\$ 183,566,447</u>	<u>\$ 39,774,222</u>	<u>\$ 223,340,669</u>

See accompanying notes to basic financial statements

CITY OF NEWPORT BEACH
Tide and Submerged Lands
Statement of Revenues, Expenditures, and Changes in Fund Balance
For the Fiscal Year Ended June 30, 2022

	Tide and Submerged Land - Operating	Tide and Submerged Land - Harbor Capital	Tide and Submerged Land Total Funds
Revenues:			
Licenses, permits, and fees	\$ 121,046	\$ -	\$ 121,046
Charges for services	30,430	-	30,430
Fines and forfeitures	37,365	-	37,365
Investment income	127,362	416,225	543,587
Net decrease in fair value of investments	(515,127)	(1,434,907)	(1,950,034)
Income from the use of property and money			
Parking			
Balboa Lot	2,296,881	-	2,296,881
Other parking	1,937,368	-	1,937,368
Total Parking	<u>4,234,249</u>	<u>-</u>	<u>4,234,249</u>
Leases			
Balboa Yacht Basin Slips (net of increment)	653,171	600,292	1,253,463
Balboa Yacht Basin Garages (net of increment)	35,344	36,042	71,386
Balboa Yacht Basin Apartments (net of increment)	30,456	3,183	33,639
Balboa Yacht Basin Offices	17,930	-	17,930
Balboa Yacht Basin Electricity	8,605	-	8,605
Balboa Bay Club	3,011,162	2,246,724	5,257,886
Beacon Bay	1,543,443	-	1,543,443
Other Leases	1,312,058	217,036	1,529,094
Total Leases	<u>6,612,169</u>	<u>3,103,277</u>	<u>9,715,446</u>
Rent			
Moorings Off-Shore (net of increment)	617,608	548,624	1,166,232
Moorings On-Shore (net of increment)	69,546	94,642	164,188
Moorings Guest (net of increment)	-	331,810	331,810
Moorings Transfers (net of increment)	-	76,424	76,424
Residential Piers Rent (net of increment)	118,000	155,911	273,911
Commercial Piers Rent (net of increment)			
Large Com Marina Rent	248,441	541,278	789,719
Medium Com Marina Rent	-	85,465	85,465
Small Com Marina Rent	47,662	96,365	144,027
Vessel Charter Bus Rent	26,833	31,475	58,308
Vessel Rental Facility Rent	20,560	25,547	46,107
HOA NONMEM <13,000 sqf	5,693	14,672	20,365
HOA NONMEM 13K-30K sqf	6,927	7,746	14,673
Yacht Club Guest Slip Rent	13,471	1,296	14,767
Restaurant Rent	7,873	1,774	9,647
Shipyard Rent	6,559	10,084	16,643
Other Rent - Bldg over Tld	5,325	5,903	11,228
Fuel Dock - Base/Plus Rent	4,710	5,522	10,232
Sport Fishing Charter Rent	4,446	5,212	9,658
Total Commercial Piers Rent	<u>398,500</u>	<u>832,339</u>	<u>1,230,839</u>
Total Rent	<u>1,203,654</u>	<u>2,039,750</u>	<u>3,243,404</u>
Sale of Oil	1,679,870	-	1,679,870
Other	519,922	-	519,922
Total property income	<u>14,249,864</u>	<u>5,143,027</u>	<u>19,392,891</u>
Total Revenues	<u>\$ 14,050,940</u>	<u>\$ 4,124,345</u>	<u>\$ 18,175,285</u>

See accompanying notes to basic financial statements

CITY OF NEWPORT BEACH
Tide and Submerged Lands
Statement of Revenues, Expenditures, and Changes in Fund Balance
For the Fiscal Year Ended June 30, 2022

Continued

	Tide and Submerged Land - Operating	Tide and Submerged Land - Harbor Capital	Tide and Submerged Land Total Funds
Expenditures:			
General government:			
City council - Indirect	\$ 34,265	\$ -	\$ 34,265
City clerk - Indirect	10,684	-	10,684
City attorney - Indirect	216,454	-	216,454
City manager - Indirect	143,810	-	143,810
Finance - Indirect	144,242	-	144,242
Human resources - Indirect	44,752	-	44,752
Building use - Indirect	171,331	-	171,331
Parking operations - Indirect	816,627	-	816,627
Total General government	<u>1,582,165</u>	<u>-</u>	<u>1,582,165</u>
Public safety:			
Police - Indirect	3,346,380	-	3,346,380
Fire - Indirect	2,350,445	-	2,350,445
Marine safety - Indirect	6,957,463	-	6,957,463
Total Public safety	<u>12,654,288</u>	<u>-</u>	<u>12,654,288</u>
Public works:			
Public works - Indirect	10,006	-	10,006
Public works - Utilities - Direct	1,479,786	-	1,479,786
Public works - Utilities - Indirect	3,344,447	-	3,344,447
Public works - Tidelands management - Direct	356,413	-	356,413
Total Public works	<u>5,190,652</u>	<u>-</u>	<u>5,190,652</u>
Community development:			
Community development - Direct	3,543	-	3,543
Total Community development	<u>3,543</u>	<u>-</u>	<u>3,543</u>
Community services:			
Harbor operations - Direct	1,774,413	-	1,774,413
Total Community services	<u>1,774,413</u>	<u>-</u>	<u>1,774,413</u>
Capital improvement projects: - All are Direct			
Abandoned Watercraft Abatement	-	12,715	12,715
Abandoned Watercraft Grant	239	-	239
American Legion Bulkhead	-	54,256	54,256
Arches Storm Drain Diversion	-	26,111	26,111
Beach and Bay Sand Management	466,399	-	466,399
Big Canyon Restoration - Phase 2A	7,975	-	7,975
Bilge Pumpout/Oil Collection	-	5,833	5,833
Harbor Bulkheads and Seawall Repair	65,281	-	65,281
Harbor Dredging/Planning	-	73,046	73,046
Harbor Maintenance/Minor Improv	-	8,079	8,079
Harbor Piers Rehabilitation	2,066	76,079	78,145
Newport Bay Water Wheel	266,466	-	266,466
Newport Pier Building Platform/Piles	-	44,996	44,996
Newport Pier Platform and Piles	191,503	-	191,503
Ocean Piers Inspect/Maintenance	-	365,192	365,192
Ocean Piers Inspection & Maint	279,848	-	279,848
Tide Valve Replacement Program	-	315	315
TMDL Compliance/Water Quality Imp	-	21,567	21,567
Vessel Pumpouts Replacement	-	9,680	9,680
Total Capital improvement projects	<u>1,279,777</u>	<u>697,869</u>	<u>1,977,646</u>
Total Expenditures	<u>\$ 22,484,838</u>	<u>\$ 697,869</u>	<u>\$ 23,182,707</u>
Other financing sources (uses):			
Transfers in	8,668,941	4,500,000	13,168,941
Total other financing sources (uses)	<u>8,668,941</u>	<u>4,500,000</u>	<u>13,168,941</u>
Net change in fund balance	235,043	7,926,476	8,161,519
Fund balance, beginning	<u>4,312,757</u>	<u>23,607,996</u>	<u>27,920,753</u>
Fund balance, ending	<u>\$ 4,547,800</u>	<u>\$ 31,534,472</u>	<u>\$ 36,082,272</u>

See accompanying notes to basic financial statements

NOTES

1) Basis of Accounting and Measurement Focus

The basic financial statements of the Newport Beach, CA Tide and Submerged Lands are comprised of fund financial statements and notes to the financial statements.

The fund financial statements utilize the current financial resources measurement focus and thus have a short-term focus measuring inflows of current spendable assets. The resulting net difference between current financial assets, deferred outflows of resources, current financial liabilities, and deferred inflows of resources is otherwise known as fund balance. Fund balance is similar to net working capital in the private sector, a measure of the entity's ability to finance activities in the near term.

Tidelands are accounted for in two Special Revenue funds. These Special Revenue funds are used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditure for the Tide and Submerged Lands. Fund descriptions are:

Tide and Submerged Land – Operating Fund is a Special Revenue fund used to account for revenues related to the operation of the City's tidelands, including beaches and marinas, and the related expenditures. Revenue from tideland operations includes, but is not limited to, rents from moorings, piers, and leases, as well as income from parking lots, meters, and the sale of oil.

Tide and Submerged Land – Harbor Capital Fund is used to account for incremental increases in revenue from certain property leases, piers, and mooring rentals that exceed Council designated base year revenue amounts, as well as other designated revenues and the related expenditures for capital projects, maintenance, and servicing of loan advances from the General fund.

These funds are presented using the *modified accrual basis of accounting*. Their revenues are recognized when they become measurable and available as net current assets. *Measurable* means that the amounts can be estimated or otherwise determined. *Available* means that the amounts were collected during the reporting period or soon enough thereafter to be available to finance the expenditures accrued for the reporting period. The City uses an availability period of 60 days for all revenues in the Tidelands fund.

2) Leases

In FY 2021-22, the City implemented GASB Statement No. 87 – “Leases”, effective for periods beginning after June 15, 2021. This statement changed the calculation and presentation of lease related amounts in the City's financial statements.

Lease liabilities and receivables are estimated present values of future lease payments. Estimating present values involves various related estimates, including lease terms and interest rates. The estimated lease term is the time period that the lease is noncancelable, plus extension and termination time periods if based on the lease agreement it is reasonable that the extensions will be exercised and the terminations will not be exercised. When a lease's implicit interest rate is not known, estimates are made of either the City's incremental borrowing rate or the rate the City may charge a lessee. Non-lease components of lease agreements have been treated as separate non-lease agreements when practicable, and are excluded from the City's estimated lease liabilities and receivables. Leases that do not meet the Governmental Accounting Standards Board's definition of a lease liability or receivable (e.g. short-term leases, etc.) also are excluded from the City's estimated lease liabilities and receivables.

Lease agreements that meet the requirements of GASB 87 for which the City is lessor are disclosed as lease receivables on the City's financial statements. GASB 87 excludes certain inflows (e.g. certain variable payments, etc.) from the measurement of lease receivables. For the fiscal year ending

June 30, 2022, both Tidelands Funds accounted for the succeeding amounts associated with GASB 87. Variable payments related to the lease receivables that were excluded from the measurement of the lease receivables amounted to \$3,178,278. Lease inflows, including inflows excluded from GASB 87, are included on the City's financial statements as property income. Lease inflows for interest revenue from amortization of the GASB 87 lease receivables totaled \$1,196,247. Lease inflows for lease revenue from amortization of the related GASB 87 deferred inflows of resources from leases was \$4,755,058.

3) Advances

Advances from the General Fund to the Tide and Submerged Land – Harbor Capital Fund are primarily for the purpose of funding expenditures for dredging, seawall repairs and maintenance, and other high impact projects within the City's tidelands, specifically within, or benefitting the Newport Harbor. Over the years, the General Fund has advanced \$15.8 million to the Tide and Submerged Land – Harbor Capital Fund. The balance of advance due to the General Fund as of June 30, 2022 is \$8.2 million.

	<u>Advance from</u>	<u>Advance to</u>
General Fund	\$ 8,176,659	\$ -
Tide and Submerged Land - Harbor Capital Fund	-	8,176,659
Total	<u>\$ 8,176,659</u>	<u>\$ 8,176,659</u>

The advances will be paid back to the General Fund from incremental revenue increases generated from certain leases, mooring rents, and commercial and residential pier rents. Below is the repayment schedule:

Harbor Capital Fund Advance - Repayment Terms (Zero Interest Advance)			
	Advance #1 Dredging Projects	Advance #2 Marina Park Project	Total
Fiscal Year	Repayment	Repayment	Repayment
2023	750,000	500,000	1,250,000
2024	750,000	500,000	1,250,000
2025	750,000	500,000	1,250,000
2026	750,000	500,000	1,250,000
2027	750,000	500,000	1,250,000
2028	426,659	500,000	926,659
2029	-	500,000	500,000
2030	-	500,000	500,000
Total	\$ 4,176,659	\$ 4,000,000	\$ 8,176,659

4) Revenue

In some instances, governmental accounting standards permit revenues in governmental funds to be reported net of certain costs. Accordingly, parking meter revenues and other property income are reported net of credit card service costs, refunds, rebates, and bad debt.



City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
(949) 644-3123
www.newportbeachca.gov/tidelands

Pier/Dock Permit Rate compared to Mooring Permit Rate (Use of Same Water for Same Purpose)

Pier/Dock Permit Rate

1. Residential Pier Rates are \$0.55 per square foot per year (see exhibit A below)
2. **Therefore a 1,200 sq ft pier/dock permit costs \$660 per year.**

Mooring Permit Rate

1. According to the NB City Harbormaster a mooring for a 40ft vessel encumbers 1,200 sq ft. (see exhibit B below)
2. The City currently charges \$3.34 per linear foot/month for a 40ft mooring permit. **Therefore, a 1,200 sq ft mooring costs \$1,603/year.**
3. **If the Harbor Commission mooring rate recommendation is adopted, the same 1,200 sq ft mooring will cost \$5,770+ per year.**

*Please note that a typical pier to berth the same 40ft boat may be less than 600 square feet and may cost less than \$330 per year.

**Please note existing mooring rates are \$1.33 per sq ft per year (\$1,603/1,200= \$1.33 per sq ft). See #2 above.

***Please note SLC recommends a rate of \$0.451 per square foot in Southern California (SLC Benchmark Category 1)

Conclusion: Private Pier/Dock permit annual rate of \$660 compared to mooring permit annual rate of \$5,770 for use of same 1,200 sq ft is not fair or equitable and results in obvious price discrimination.

Exhibit B (Page 26/27 of City sponsored appraisal)

within this range. According to information provided by the Harbormaster the largest population of moorings are 40-feet. It is recognized that this is not the only length mooring, but it is used as a "benchmark" or "typical" mooring in the analysis. It was further reported that the "typical" vessel on a 40-foot mooring would measure 40' x 14', but that the mooring takes up more water area as the distance from the vessel to each mooring ball/buoy is approximately 10-feet. The "typical" 40-foot mooring occupies a water surface area of 60' x 20', or a total water surface area

Newport Harbor Offshore Moorings
Newport Beach, California
December 26, 2023
NETZER & ASSOCIATES

of 1,200 square feet. It was noted that if the sea floor is used in the analysis, the distance from the

Exhibit A (Resolut. 2024-29 Page 14-72)

City of Newport Beach - Schedule of Rents, Fines and Fees
PUBLIC WORKS - HARBOR RESOURCES

Description	FY 23/24 Fee	FY 24/25 Fee	Charge Basis	Note	Subject to CPI
1 Piers					
a) Residential	\$0.55	\$0.55	per sq ft		No

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

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825
(Sent via e-mail)

May 30, 2024

Re: 05/28/2024 Meeting Follow-up.

Dear Ms. Lucchesi; Ms. Pemberton; Ms. Lunetta; Mr. Boggiano; Mr. Connor;
Mr. Wong; Mr. Johnson;

While speaking during the meeting between State Lands Commission personnel, and Newport Beach Mooring Permit holders, I lost internet connectivity, and was unable to reestablish prior to the conclusion of the meeting. I apologize for those technical issues, and wanted to take opportunity to further my remarks.

As stated, I was addressing materials sourced from various Public Records Requests. Some of these materials, I've seen presented at local City, and Yacht Club meetings. I'd e-mailed a PDF of the "Presentation BYC Meeting" documents, along with other relevant materials on 05/21/2024, requesting that Ms. Lunetta distribute them. Most of what I reference below, begins on Page 23 of that particular PDF, but please don't be dissuaded from viewing materials in their entirety. In effort to assist, I've broken out some of the pages for direct attachment here, to wit:

The timing of Newport Beach Harbor Commissioner Cunningham's e-mail of July 22, 2020, as related to the relative RFP, I find quite concerning. The RFP for the Appraisal wasn't even "Posted" by the City, until April of the following year. In response, four firms submitted bids.

Harbor Commissioner Cunningham, having seemingly known more than 8 months in advance, that James B. "Jim" Netzer would be the Appraiser selected, and knowing from "two long conversations with Jim" prior to his selection, that the resulting appraisal would deviate substantially from 2016, tends towards indication of a curated appraisal. Commissioner Cunningham, also took it upon himself to e-mail the chosen Appraiser online listings of Mooring Permits purportedly for sale. This looks to me, like effort to influence the Appraisal.

Other communications indicate that Newport Beach's Harbormaster was also intimately involved with the appraisal. Mr. Netzer tells the Harbormaster that although boats on shore moorings are restricted to no more than 8' wide, and 18' long, he uses a length of 36' for his calculations. The Harbormaster responds in kind, with likewise inflated numbers, writing that a boat on a 40' Mooring would typically be 14' wide, and

40' long (Note: Boats with rectangular footprints are very uncommon). The Harbor-master also opines that the actual square footage of Tide/Submerged lands a mooring would encumber, could be 20' x 60', or 20' x 80'.

Important to understand, is that boats on moorings do not continually occupy any such amount of space, and that other Tide/Submerged land users regularly transition through, and use much of that supposed mooring space for their activities. Moreover, in Newport Beach, parties holding Residential Pier/Dock Permits, are assessed City fees of .56 cents per square foot per year, on **only** the square footage of the physical pier/dock. Typically, **no** fees at all are assessed for the actual space vessels at those piers/docks occupy.

Other e-mails show the Harbormaster telling the Appraiser to price 25' Moorings at the 30' rate. Similarly, the Phase-in documents the City provided State Lands, applies the rate for 20', well-appointed **marina slips** at the City's Balboa Yacht Basin Marina (\$32.23 per lf), to 18', challenging to use, permitted shore moorings. Conclusions based upon using **more** space than **actually** encumbered by **moored** vessels, in conjunction with applying **higher** fee rates to **lower** tier **permits, unrealistically** inflates prices.

The Harbormaster **eventually** recused himself from these matters, saying that discussions may affect him financially. A **number** of other involved parties suffer from similar conflict, and should **not** have participated in the process. Recusal as an **afterthought** though, does **not** provide corrective remedy.

And very troubling, is that the Harbormaster Update of May 11, 2022, Page 5, mandates that the Harbormaster:

“does not participate in discussions or the development of recommendations related to use or financial arrangements associated with offshore moorings” and “reminds anyone with an interest that input on recommendations related to offshore mooring permits are made by Real Property Administration staff”

Consequently, the Netzer Appraisal Report that the City had State Lands review, and which State Lands deemed “reasonable” in letter form on April 9, 2024, has strong indications of being much less than “Independent”. Considering this, along with other shortcomings The SLC letter noted with the appraisal, I suggest that reliance on it is **not** “reasonable”.

And did State Lands know, that in early October of 2023, Jim Netzer, acting for The Newport Aquatic Center (Hereafter NAC) was involved in negotiating from the City, a 3 to 5 decade long, “Amended and Restarted” **zero** fee ground lease, for **acres** of prime, waterfront sovereign land? And that the City waived its policy F-7 requirement, that full fair market value be obtained under said lease? (Mr. Netzer is a Board Member **of**, and

his family members have close ties **with** The NAC. Please refer to “Presentation BYC Meeting”, starting on page 23, of PDF previously provided)

Just a couple of weeks subsequent to the lease, a Microsoft Teams meeting, captioned “Appraisal Kick-Off Call Off-shore Moorings” was arranged. City personnel, **including** the Harbormaster and Commissioner Cunningham, as well as the Appraiser, were to participate. The timing of the no-cost lease, so **closely** coinciding with the kick-off for an Appraisal Report that Harbor Commissioner Cunningham said would quote – unquote “look much different”, along with Mr. Netzer’s reversal of his 2016 position that a slip to mooring ratio is not judged a reliable measure of Fair Market Rent, **and** the involvement of parties with financial interests, who thus, should **not** have been involved, raise numerous concerns, quid pro quo being one. In governance, I commonly contend that there should be no impropriety, nor even the appearance of impropriety. That standard has not been met in these matters.

As I’ve stated, I would like to believe that The State Lands Commission, when regularly determining Benchmark Rates, has the knowledge and expertise to do so accurately and fairly. The City’s Residential Pier Permit rate is a bit higher than the current, applicable SLC Category 1 Benchmark rate for Orange County. I can attribute that to the fact that we’re talking about Newport Beach. Mooring permittees however, already pay multiple **times** beyond that rate, and multiple **times** beyond the City’s residential Pier Permit rate. The City increasing this disparity and rate discrimination even further, would strip away Harbor and Ocean access for many of us less affluent. The SLC, in granting such a high level of autonomy to the City of Newport Beach, has enabled a situation wherein a number of vested Decisionmakers wrongfully imply that others, who pay **more** in fees than they do, could be beneficiaries of the gifting of State lands, while at the same time, for use of the **same** State lands, some Decisionmakers pay much less, or absolutely nothing for the physical water-space **their** boats encumber. This flies in the face of logic and reason. I feel that The SLC should recognize the possibility that it has been duped by the City. I contend that in considering **all** the facts, **including** the CBRE Appraisal, it would be wrongful, and improper, for State Lands to **knowingly** acquiesce to, or endorse the City’s Netzer based mooring rate “Recommendation”.

Regards,



Adam Leverenz



On Jul 22, 2020, at 1:48 PM, Cunningham, Scott
<[REDACTED]> wrote:

Removing Jim.

Hi All,

I've had two long conversations with Jim regarding the 2016 Mooring Appraisal.
The net net is when we are ready (and funded) the appraisal results will look much different than the 2016 numbers.

Note the dates:

Scotts email – 7/22/2020

RFP 21-53 Published – 4/8/2021

TENTATIVE PROJECT SCHEDULE	
RFP Published:	April 8, 2021

Bid Opportunities

Found 862 bids

Posted	Project Title	Invitation #	Due Date	Remaining	Stage	Format
04/08/2021	Tidelands On-Shore & Off-Shore Appraisal Services	21-53	05/20/2021 01:00pm		Awarded	Electronic
04/27/2021	Landfill Gas (LFG) Control System Operation & Mainte...	21-57	05/18/2021 01:00pm		Awarded	Electronic
04/20/2021	Business License and Permit Processing Software	21-55	05/18/2021 01:00pm		Awarded	Electronic
04/28/2021	(4) 2021 Ford F-150 2WD SuperCab Trucks	21-58	05/12/2021 01:00pm		Closed	Electronic
04/19/2021	On-Call Traffic/Transportation Engineering	21-09	05/10/2021 03:00pm		Awarded	Electronic
04/15/2021	FY2020-21 Traffic Signal Rehabilitation	C-7791-1	05/10/2021 10:00am		Closed	Electronic
04/13/2021	Establishment of Eligibility List for Referral of Real Est...	21-54	04/28/2021 01:00pm		Closed	Electronic
04/01/2021	Armored Transport Services	21-52	04/28/2021 01:00pm		Awarded	Electronic
03/19/2021	UNDERGROUND STORAGE TANKS - TESTING, DESIG...	7223-1	04/20/2021 02:00pm		Award Pending	Electronic
03/22/2021	Parking Code Consulting Services	21-43	04/13/2021 01:00pm		Awarded	Electronic
03/19/2021	AS-NEEDED SPORT & RECREATIONAL FIELD LANDS...	7997-1	04/08/2021 02:00pm		Awarded	Electronic
03/24/2021	As-Needed Athletic and Recreational Field Services	21-45	04/08/2021 01:00pm		Awarded	Electronic
03/25/2021	Dover Shores Traffic Calming Improvements	7998-1	04/08/2021 10:00am		Closed	Electronic
03/24/2021	(3) 2021 Toyota Tacoma 4x4 Double Cab Vehicles	21-46	04/07/2021 01:00pm		Closed	Electronic
02/18/2021	UNDERGROUND UTILITY ASSESSMENT DISTRICT N...	7979-1	04/07/2021 10:00am		Awarded	Electronic
03/10/2021	Generator Maintenance & Repair Services	21-41	04/06/2021 01:00pm		Awarded	Electronic

[Back to Bid Search](#)

Tidelands On-Shore & Off-Shore Appraisal Services 21-53

Awarded

- Bid Information
- Documents
- Addenda/Emails
- Q&A
- Prospective Bidders
- Bid Results**
- Awards

Showing 4 Bid Results

Vendor	Type	Bid Amount	Ranking	Responsive
Lea Associates, Inc. 1631 Pontius Avenue Los Angeles, California 90025 Contact: Robert M. Lea, MAI Phone: 310-477-6595			\$0.0000 0	Yes
Netzer & Associates 170 E. Seventeenth Street, Suite 206 Costa Mesa, California 92627 Contact: James Netzer, MAI Phone: 9496316799			\$0.0000 0	Yes
R. P. Laurain & Associates, Inc. 3353 Linden Avenue Suite 200 Long Beach, California 90807 Contact: John P Laurain Phone: 5624260477			\$0.0000 0	Yes
The Dore Group Inc 1010 University Avenue Suite C207 San Diego, California 92103 Contact: Lance W. Dore Phone: 619-933-5040 ext. 101	DGS		\$0.0000 0	Yes

[< Back to Bid Search](#)

Tidelands On-Shore & Off-Shore Appraisal Services 21-53

Awarded

- [Bid Information](#)
- [Documents](#)
- [Addenda/Emails](#)
- [Q&A](#)
- [Prospective Bidders](#)
- [Bid Results](#)
- [Awards](#)**

Awarded on August 3, 2021

The project has been **awarded** to Netzer & Associates [View](#)

Please see the attached Notice of Intent to Award (also uploaded under the "Addenda & Emails" tab of this RFP page) for additional details regarding the evaluation and award process for RFP 21-53.

Item #	Item Code	Description	UOM	Qty
1		Tidelands On-Shore & Off-Shore Appraisal Services	Complete Project	1

From: Scott Cunningham
To: Jim Netzer
Cc: Wooding, Lauren
Subject: 45" Newport Offshore Mooring in D Field - boats - by owner - marine sale - craigslist
Date: September 20, 2023 1:03:50 PM
Attachments: 45" Newport Offshore Mooring in D Field - boats - by owner - marine sale - craigslist.png

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Nice tidy profit...

From: Cunningham, Scott
To: Jim Netzer
Cc: [REDACTED]
Subject: Fwd: alert: Newport Mooring
Date: June 09, 2022 10:17:32 AM

Hi Jim,

Probably going to move forward with offshore appraisal towards end of Summer but wanted you to keep this for your records. Check out last sentence.

Thanks,

Scott

Scott Cunningham

Begin forwarded message:

From: CL Search <[REDACTED]>
Date: June 9, 2022 at 9:36:41 AM PDT
To: [REDACTED]
Subject: alert: Newport Mooring

1 new result for search terms: Newport Mooring, sort: relevant, as of 2022-06-09 09:36:37 AM PDT

- [Newport Mooring - \\$48,000 \(Newport Beach\)](#)

[View all the results.](#)

[Unsubscribe from this alert.](#)

Commissioner Cunningham is seen here sending emails of craigslist ads, which shows the purported listings of craigslist ads for offshore moorings for sale

From: james
To: Wooding, Lauren; Blank, Paul
Subject: Offshore Mooring Appraisal Question
Date: December 05, 2023 4:08:15 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Lauren & Paul,

I am trying to get the draft appraisal completed but I have a question about the size of a "typical" mooring and the square feet of tidelands that it encumbers. On methodology I apply the "land value" to the square footage and convert it to a rental rate. In the onshore mooring appraisal I based the value on an onshore mooring encumbering an area of 288 square feet (36' x 8') based on the "typical" area from the point of attachment (seawall) to the mooring buoy/ball and an 8' beam. What dimensions and square footage should I use for the offshore mooring?

Thanks for your assistance!

Regards,

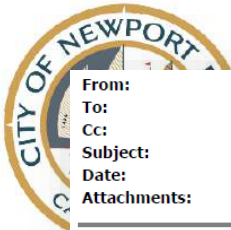
Jim Netzer

From: [Blank, Paul](#)
To: [james](#)
Subject: RE: DRAFT - Offshore Mooring Appraisal w/ Tiered rates
Date: December 27, 2023 10:23:00 AM
Attachments: [image001.png](#)

Great work!!

Thank you.

Have a great New Year.



Paul Blank
Harbormaster

From: [Blank, Paul](#)
To: [jamesbnetzer](#)
Cc: [Wooding, Lauren](#)
Subject: Re: Offshore Mooring Appraisal Question
Date: December 05, 2023 4:48:06 PM
Attachments: [PastedGraphic-2.png](#)

The cool thing about onshore moorings is they are essentially all the same size.

Offshore moorings are of a variety of sizes (25', 30', 35', 40'...90'). Any dimensions I give you will be subject to critique as "not representative of the variety of sizes, configurations and conditions" actually out there.

That disclaimer out of the way, the biggest population of moorings out there are 40' moorings. A typical 40' boat on one of those moorings would be 40' long x 14' wide but the mooring takes up much more space than that.

The distance from the boat to each mooring float is approximately 10' - so the space taken up on the surface is approximately 60'. Then there is the placement of the weights on the sea floor. The distance from the float to the weight adds at least 7' and up to as many as 15' to each end of the mooring depending on the depth where the mooring is placed.

If you want to go with just the surface dimensions consumed by the typical mooring on Newport Harbor, go with 60' x 20'.

If you want to go with the dimensions of the entire mooring including what's below the surface, go with 80' x 20'.

Best,



Paul Blank
Harbormaster

From: [Wooding, Lauren](#)
To: ["james](#)
Subject: RE: DRAFT APPRAISAL - Offshore Moorings - Fair Market Rent
Date: December 20, 2023 5:18:00 PM
Attachments: [image001.png](#)

Hi Jim,

Thanks very much for getting this draft in to me before the end of the year. I will be sharing internally and will be in touch after the new year with any comments or changes before we have you finalize the report and take it out of draft mode.

I hope you have a very Merry Christmas and Happy New Year and get to spend time with your family in the next few weeks!

And I look forward to catching up with you in the new year.

Thank you,
Lauren



Lauren Wooding Whitlinger
Real Property Administrator
Community Development Department

On Wednesday, January 3, 2024, 4:56 PM, Wooding, Lauren <[redacted]> wrote:

Hi Jim,

I'm going through the report and have some additional comments and questions that I'd like to address before we publish this, **since I know it will be reviewed very closely.**

Do you have time tomorrow morning to review with me?

Thank you,
Lauren



Lauren Wooding Whitlinger
Real Property Administrator

14 Boats at a Beacon Bay HOA affiliated pier/dock, pay a combined total of \$841.97 annually. $\$841.97 / 14 = \60.14 per year, per Boat Berthing Location. (A Newport Beach Harbor Commissioner served on the HOA board)

The image is a screenshot of a mobile application interface. The top section is a dark blue header with the City of Newport Beach logo and the text "Pier Permit Information City of Newport Beach". Below the header, there is a navigation bar with a back arrow, a search bar containing "Residential Pier Permits (1)", and a menu icon. The main content area is split into two columns. The left column contains text: "Residential Pier Permit", "Address: 2 BEACON BAY", "Permit Area Total Square Footage: 1,477", "Pier is not shared by more than one resident. Fee is based on total square footage.", "Permit Fee", "Current Year: \$841.97", and a link "Pier Permit Exhibit". The right column shows an aerial satellite view of a residential area with houses numbered 12, 13, 14, 15, and 16. A yellow outline highlights a pier structure extending into the water, with 14 boat berths. A red buoy is visible in the water. The text "SHELTER COVE" is visible on a building in the background.

**A pier/dock, CDP Reconfigured under a Newport Beach Harbor Commissioner's name,
pays \$ 352.80 per year / 2 Residences:**

Pier Permit Information
City of Newport Beach

Residential Pier Permits (2) | I want to...

Residential Pier Permit
Address: 1907 BAY AVE E
Permit Area Total Square Footage: 619

Shared pier between two residents. Fee is based on half of the total square footage.

Permit Fee
Current Year: \$176.40

[Pier Permit Exhibit](#)

Residential Pier Permit
Address: [REDACTED]
Permit Area Total Square Footage: 619

Shared pier between two residents. Fee is based on half of the total square footage.

Permit Fee
Current Year: \$176.40

[Pier Permit Exhibit](#)

490 Sq Ft

1905 1907 1909 1911 1913

Displaying 1 - 2 (Total: 2)
Page 1 of 1

Layers Residential Pier Permit...
0 10 20ft

Howdy Jim:

Thanks for taking the meeting this morning.

Upon further inspection of that one 25' mooring in the BYC field, I noticed that an individual holds it and therefore needs a rate set by the City.

I don't think you need to perform some extensive analysis just for that one mooring.

Please just apply the 30' rate you determine to that mooring but definitely add an entry in the report that includes the 25' category.

Sorry for my previous inaccurate or incomplete statement.



Paul Blank

Harbormaster



Balboa Yacht Basin Marina
829 Harbor Island Drive
Newport Beach, CA 92660
www.newportbeachca.gov/byb

Slip Rates

August 2023

Slip Length	2023-2024 Slip Rate (per foot, per month)
20' Slip	\$32.23
25' Slip	\$32.38
31' Slip	\$37.29
32' Slip	\$40.49
34' Slip	\$41.02
35' Slip	\$42.59
37' Slip	\$44.34
40' Slip	\$50.09
45' Slip	\$51.27
50' Slip	\$60.59
60' Slip	\$70.65
75' Slip	\$80.95

Garage: \$444.81 per month

Apartments: \$3,353.81 per month

For information and slip availability, please contact:

BYB Marina Manager Kelly Rinderknecht

949-569-0723

krinderknecht@themarinaatdanapoint.com

Emphasis/Notation Added:

Anticipated slip rates for 40ft boat at BYB assuming city continues with 15% annual slip fee increases (as in recent years):
 Current: \$2,003.60
 FYE 24/25 2,304.14
 25/26 2,649.76
 26/27 3,047.22
 27/28 3,504.30
 28/29 4,029.94 X 24%=\$ 967.18



Mooring Rental Rate Phased-in Recommendation

Notes:

No increase in rates until January 1, 2025.

Six Proportionate increases over almost 6 years.

BYB (Balboa Yacht Basin) rates are based on the City adopted Marina Index of 5 marinas in Newport Harbor per the Netzer appraisal.

January 1, 2025 and July 1, 2025 increases are about one-tenth the difference between current rates and the adjusted FMV.

Each fiscal year beginning July 1, the annual adjustment is about one-fifth the difference between current rates and the adjusted FMV.

In addition to the rate increases shown in this spreadsheet, Each year the increase will be adjusted based on 24% of the annual adjustment percentage per the City Marina Index for slip rentals.

In other words, what you see on this matrix is not what you get. The rate increases will exponentially compounded by the annual rate increases of the Balboa Yacht Basin (BYB) slip fees, which irrationally serve as the index for the unrelated "water only" mooring permit fees. Over the last few years, slips rates at BYB have gone up ≈15% at the BYB. With this in mind, we have applied 15% slip increases on the 40ft column to illustrate what the mooring rate increases may really look like under this plan.

Rate Comparisons			Increase Is Phased-in Through FYE 2030					
Designated Mooring Lengths	BYB Average Slip Rental Rate \$/LF	Current Mooring Rates \$/LF	Price Per Linear Foot Per Month					
			Effective Jan 1, 2025	Effective July 1, 2025	Effective July 1, 2026	Effective July 1, 2027	Effective July 1, 2028	Effective July 1, 2029
LOA Feet	\$ per LF	\$ per LF	FYE 2025	FYE 2026	FYE 2027	FYE 2028	FYE 2029	FYE 2030
18	32.23	1.67	2.27	2.88	4.08	5.29	6.50	7.71
25	32.38	3.34	3.74	4.19	5.08	5.98	6.87	7.77
30	39.60	3.34	3.91	4.53	5.78	7.02	8.26	9.50
35	42.59	3.34	3.98	4.68	6.06	7.45	8.84	10.22
40	50.09	3.34	4.16	5.04	6.78	8.53	10.28	12.02
45	51.27	3.34	4.19	5.09	6.90	8.70	10.50	12.30
50	60.59	3.34	4.42	5.54	7.79	10.04	12.29	14.54
60	70.65	3.34	4.66	6.02	8.76	11.49	14.22	16.96
70	74.08	3.34	4.74	6.19	9.09	11.98	14.88	17.78

Designated Mooring Lengths/Feet	BYB Average Slip Rental Rate \$/Month	Current Mooring Rates \$/Month	Price Per Mooring LOA Per Month					
			Jan 1, 2025	July 1, 2025	July 1, 2026	July 1, 2027	July 1, 2028	July 1, 2029
			FYE 2025	FYE 2026	FYE 2027	FYE 2028	FYE 2029	FYE 2030
18	580.14	30.06	40.93	51.79	73.52	95.25	116.98	138.72
25	809.50	83.50	93.46	104.75	127.00	149.50	171.75	194.25
30	1,188.00	100.20	117.34	135.90	173.40	210.60	247.80	285.00
35	1,490.65	116.90	139.41	163.80	212.10	260.75	309.40	357.70
40	2,003.60	133.60	166.52	201.60	271.20	341.20	411.20	480.80
45	2,307.15	150.30	188.62	229.05	310.50	391.50	472.50	553.50
50	3,029.50	167.00	220.76	277.00	389.50	502.00	614.50	727.00
60	4,239.00	200.40	279.41	361.20	525.60	689.40	853.20	1,017.60
70	5,185.83	233.80	331.72	433.30	636.30	838.60	1,041.60	1,244.60

\$967.18

On March 2nd, 2024 Paul Blank emails a concerned resident stating he has to recuse himself from the matter due to a conflict of interest determined by the City Attorney and City Manager.

Blank was involved in this appraisal since the beginning. Is this too little too late?

From: "Blank, Paul" [REDACTED]
Date: March 2, 2024 at 3:36:07 PM PST
To: [REDACTED]
Subject: RE: CBRE appraisal.

The City Manager and City Attorney have determined I have a conflict of interest related to this matter and can no longer contribute to the discussion or proceedings.

Aloha,



Paul Blank
Harbormaster
Harbor

- Initiatives were launched resulting in better data capture and statistics reporting. Future improvements will include customer satisfaction survey data analysis and calls for service location analysis
- Participated in the Emergency Operations Response to the following:
 - o Elly oil spill
 - o Tsunami warning
 - o Three severe weather occurrences
 - o Sewage spill into the harbor
 - o Out of control stolen boat in the harbor

The Harbormaster has disclosed the arrangements made, at his own expense to alleviate any conflict of interest associated with his ongoing use of an offshore mooring permit. While undergoing the recruitment process, any and all known possible conflicts of interest were disclosed. Prior to the City making an offer of employment, all such possible conflicts were discussed with the City Attorney. Agreements and arrangements satisfactory to all relevant parties were made during that discussion. The Harbormaster was entrusted and empowered to make determinations going forward related to any conflict disclosures. In support of this arrangement, the Harbormaster:

- does not participate in discussions or the development of recommendations related to use or financial arrangements associated with offshore moorings
- reminds anyone with an interest that input on recommendations related to offshore mooring permits are made by Real Property Administration staff
- does not deliberate or vote on any policy related matters before the Harbor Commission
- is expected to answer questions related to policy implementation and impacts on Harbor Department operations
- hereby discloses that the offshore mooring permit he enjoys is held in an irrevocable trust the beneficiary of which is the Balboa Yacht Club. The Balboa Yacht Club holds all the offshore mooring permits adjacent to the subject mooring
- hoping to avoid other conflict of interest concerns also hereby discloses any significant financial interests related to the Balboa Yacht Club including a membership certificate are held in the same irrevocable trust
- further discloses that all remaining financial interests in either the subject offshore mooring permit or membership in the Balboa Yacht Club are de minimis

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find 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

moorings are rented based on the maximum mooring length not the vessel length. The quality and quantity of the market data upon which I have based my direct market comparison is considered good; however, it did warrant adjustments for location and lack of access to dinghy storage. The Balboa Yacht Club mooring data is included for informational purposes as it is not offered on the open market but shows the demand within a closed market and defines an upper limit of the mooring rental range.

The CPI analysis is a trending of the rental rates established at various times (1975 & 1995) for the subject moorings. It is based on the assumption that the rental rates in the base years (1975 & 1995) are market based and that the change in CPI reflects the change in market conditions for moorings in Newport Harbor. The CPI is typically included as an annual adjustment to a lease, with periodic “market rent” adjustments applied to account for changes in market conditions as opposed to a trending of values based on a basket of goods. On the basis of my research, the 1995 figure was determined to be “Fair Market Rent” and is judged to be a more reliable indicator than the 1975 figure. The change in mooring rates at BYC between 2006 and 2015 suggests that the change in CPI may understate the change in market conditions for moorings in Newport Harbor. The CPI analysis using the rent established in 1995 is judged to be more reliable than the 1975 figure and helps define the lower limit of the Fair Market Rent range.

The Ratio analysis attempts to estimate the market rent for moorings as compared to the rent for similar slip spaces in the same marina or harbor. As shown in the analysis, the ratio can vary dramatically (25% to 92%) and, while a potential renter could take this into consideration (cost of a slip v. cost of a mooring), it is not judged to be a reliable measure of Fair Market Rent. This analysis is given little weight in the final reconciliation.

The Tidelands analysis is based on the premise that the Fair Market Rent for an individual mooring is tied to the market rent for the encumbered tidelands. This approach has its merits and the information and assumptions used in the analysis are well supported; however, the typical user of an individual mooring would not complete this analysis to determine market rent. In the final reconciliation this approach is given secondary emphasis.

Given the indications from the four approaches utilized, and the quality and quantity of the available market data, I have given each approach some consideration with primary emphasis placed on the Comparable Rental and CPI approaches. Based on my analysis of the market data uncovered, I have concluded that the subject off-shore moorings have an Annual Fair Market Rent, as of January 6, 2016, of: \$32.00 to \$38.00 per Linear Foot of Mooring.

The above discussion relates to the off-shore moorings throughout Newport Harbor. There is a limited number of on-shore moorings and I did not uncover any information regarding lease rates for on-shore moorings at other harbors. The maximum vessel length is limited on the on-shore

From: [Mike Fleming](#)
To: [CSLC CommissionMeetings](#)
Subject: Fair and equitable stewardship
Date: Friday, June 7, 2024 12:00:38 PM

Attention: This email originated from outside of SLC and should be treated with extra caution.

Dear Commissioners

The City of Newport Beach has gone on record that the offshore mooring permits have not kept up with the fair market value and are dramatically under market value and must be increased. It has been suggested that an increase in the order of 300-400% is in the works stretched over a period of 5 years. It is also suggested that the tideland mooring permit will be tied to the commercial city managed Marina, Basin Marine slip rates, and will continue to increase as the marina rates increase. For some reason the city is tying the tideland offshore mooring value to a commercially profitable slip rate increase. Meanwhile waterfront residential pier permits, which are issued in many cases to docks less than 100-200 feet from the vastly under market valued moorings at 1/12th the cost of the primitive undeveloped moorings. The home owner of those residential permits are allowed to rent out open space on their dock at that fair market value (\$500/ month for a mooring holders dingy), and on up to \$10,000.00/ month for a couple of 60' yachts. This is profiting on a \$15/month permit. If the mooring holders "have been getting away with murder" says harbor one commissioner, who pays \$15/month for his dock, can this behavior be attributed to some logic other than city council voting, wealthy Newport Beach homeowners, and special interest foundation members who have deep pockets for reelection campaigns are more equal than out of town (60% of moorings are permitted to none voting visitors) mooring holders? Who is ultimately responsible for the proper stewardship of the state tidelands,? and the 50+ legal live aboard mooring holders on fixed incomes who will be forced to seek a safe harbor elsewhere?

Mike Fleming
USCG Master 100 tons
[REDACTED]
Newport Beach, Ca. [REDACTED]
[REDACTED]

From: [Jordan Lee](#)
To: [CSLC CommissionMeetings](#)
Subject: SB COUNTY WATER + ASSESSOR RECORDS
Date: Tuesday, May 21, 2024 4:08:02 PM

Attention: This email originated from outside of SLC and should be treated with extra caution.

FOR COMMENT TO THE COMMISSION:

My name is Jordan Lee and I own 9.4 acres in Joshua Tree. I was recently quoted \$390,000 to run a single water pipe to my property for water from the Joshua Basin Water District. This price is astronomical and unaffordable. In my opinion, this is an unconstitutional "taking of land". This cost prohibits me from building a home on my land. In an area where well water is not viable or feasible and hauled water is prohibited, per the over-reach of the states law set in place for 2017 - my only option is to adhere to the county law of piping in water. A few years ago, this same price was quoted to me at \$240,000. Why does the price increase \$150,000 for the same pipe and same water?

Anyone could agree that this price is far beyond what anyone should pay or afford to follow the current state laws regarding the strict codes for potable water.

Furthermore, I researched surrounding properties to my land and I discovered vacant land with listings of "Public Water" - however, when I call to get information from the county on this, I am told they do not have piped water or well water. I have also discovered properties that are listed as hauled water and later changed to well water within the system when the error was called out.

There are problems in the County Assessors Office with accuracy and records of listings.

- Properties that are erroneously marked.
- Poor infrastructure and state laws prohibit affordable access to water.
- Privatized water districts to set prices and construction with absurd costs based on location toward the nearest pipe.

I had to contact SB County Land Services, Environmental Health, and Planning Department. Each tells me to call the other and they actively avoid giving legitimate information. No answers to tax payers. Runarounds.

This is a problem and effects decisions and livelihoods of people buying land in areas where they *think* water is available. Only to find out that there is none - then the water district wants to charge almost half a million dollars for a pipe in some instances - because they failed to build reasonable infrastructure or offer affordable solutions in distant areas to their piping.

- Hauled water needs to be allowed or reasonably reassessed against the state law in rural areas. There needs to be acceptions for rural areas where a cost exceeds a reasonable amount, and a waiver for the property owner related to liability, fire and litigation toward the state for opting-in to utilizing hauled water sources.
- Building new construction in the desert needs to be permitted and allowed differently from the overreach of the state laws currently in place.
- There needs to be serious consideration around the affordability of water infrastructure.
- The assessors records are not correct. I can point to at least 4 properties where this is not accurate.
- This is a problem that needs to be addressed for the sake of development and affordable / reasonable living of property owners who want to live in the hi-desert or rural communities.
- Per the recent Supreme Court ruling against tiered pricing fees for land development, this issue of water pipe costs and mandates due to state law restrictions (an unconstitutional overreach) should also be reviewed and addressed.
- The astronomical prices for viable water in rural areas hinders and should be considered an unconsitutional "taking" of an owners property.

My best,
Jordan

Schedule a Meeting: [REDACTED]