

MINUTE ITEM

This Calendar Item No. 27  
was approved as Minute Item  
No. 27 by the State Lands  
Commission by a vote of 2-0  
to \_\_\_\_\_ at its 5/28/81  
meeting.

CALENDAR ITEM

27

5/81  
G 09-02.4  
Rasmussen

SUMMARY OF PROPOSED COMPLIANCE WITH  
STATS. 1978, CH. 74 (BEACON BAY)  
BY CITY OF NEWPORT BEACH

HISTORY AND BACKGROUND:

The first legislative grant of tide and submerged lands to the City of Newport Beach was made in 1919. Thereafter, in 1927, certain portions of the tidelands were filled and reclaimed as part of a plan of improvement which included the dredging of a channel to navigable waters of Newport Bay and development of a harbor facility. In 1938 a small portion of the filled tidelands, together with adjacent uplands, were leased for, inter alia, residential purposes. Subdivision of the land and the construction of residences followed. This area, known as Beacon Bay, has been a residential community under lease from the city since that time.

Questions regarding the private, exclusive use of said filled tidelands for residential purposes were resolved by the Legislature's amendment of the City of Newport Beach tidelands grant in 1978. (Stats. 1978, ch. 74.) The Legislature therein determined that the filled, leased tidelands, comprising approximately three acres, are a relatively small portion of the city's granted tide and submerged lands, that through the leases the lands are producing income to support the statutory tidelands trusts, and, except for the production of income to support such trusts, the lands are no longer required or needed for the promotion of such trusts or for purposes of commerce, navigation, and fisheries. The Legislature therefore found that the filled tidelands were to be freed of the Common Law Public Trust and could continue to be leased for residential purposes provided that:

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1. The city acquire or transfer such parcels of real property to the trust as the Commission determines to be appropriate, taking into consideration the size of the area to be freed from the trust and the utility and value of the land to be conveyed to the trust;
2. The Commission's determination regarding the substitute property be reflected in an appropriate document and recorded in the Office of the County Recorder of the County of Orange;
3. If the city chooses to lease the freed tidelands for residential use, the Commission must approve the form of such leases and the range of consideration (fair market rental value as finished subdivided lots with streets constructed and utilities installed) prior to the issuance of any such lease;
4. The lands freed from the Common Law Public Trust for commerce, navigation, and fisheries shall continue to be held in trust by the city subject to the other terms and provisions of the statutory grant to the city and other laws applicable to tide and submerged lands;
5. The revenues derived from the leasing or administration of the filled tidelands shall be deposited in a separate city tideland capital fund for the acquisition of real property to further the purposes of the trust and for capital improvements thereon, and for the operation and maintenance of any acquired property or capital improvements;
6. The Public Trust for Commerce, Navigation, and Fisheries is not to be terminated over the streets and beaches of the filled tidelands.

**TRANSFER OF REAL PROPERTY TO THE TRUST:**

The City of Newport Beach proposes to comply with the statutory prerequisite that a substitute parcel be conveyed to the trust prior to the filled tidelands being freed from the trust by transferring to the trust

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a parcel of real property of approximately six acres which it owns in its municipal capacity. The property was granted to the city by the Irvine Company as mitigation for a subdivision approved by the city and is located on a bluff overlooking Upper Newport Bay. Its easterly boundary coincides with the area operated by the State Department of Fish and Game as the Upper Newport Bay Ecological Reserve. Its westerly boundary runs along Irvine Avenue providing more than adequate access to the parcel.

The Irvine grant was conditioned upon the property's use only for public park purposes. This coincides with the city's proposal to designate the land as a public park/view area in its present undeveloped condition, thereby taking advantage of its scenic location. The parcel is labeled "Proposed Acquisition Parcel" on Exhibit "A". (A copy of the legal description and map is available in the Office of the State Lands Commission, Sacramento, and incorporated herein by reference.)

In reviewing the city's proposal, Commission staff considered the size of the area affected by the termination of the Common Law Public Trust in comparison to the size of the parcel to be transferred to the trust, the trust purposes that can be accomplished by the proposed transfer parcel, and the value of the proposed transfer parcel as is directed in Chapter 74 of the Statutes of 1978.

Size: The filled tidelands to be freed from the Common Law Public Trust consist of the residential lots within three separate parcels labeled A, B, C on Exhibit "A" attached. The residential lots within the three parcels total 2.8 acres more or less, out of an approximate total area of over 12,400 acres of tide and submerged land granted to the City of Newport Beach. Since the proposed acquisition parcel to be transferred to the trust contains approximately six acres, the size comparison between the two is favorable to the public trust.

Utility: In its present undeveloped condition, the transfer parcel would further the purposes of the trust by serving as a site for passive

recreation, an ecological unit for scientific study, as open space, and as a lookout point providing a panoramic vista of Upper Newport Bay for public enjoyment. Moreover, the fact that this parcel is located immediately adjacent to and overlooking the Department of Fish and Game's Upper Newport Bay Ecological Reserve enhances the reserve and also expands the trust utility of the parcel. The development plans for this parcel include a possible Fish and Game interpretive center for the ecological reserve and a natural history museum. Thus, the parcel offers opportunities for diverse trust uses and is accessible to the public as well, thereby resulting in considerable utility to the trust.

Value: The last area of consideration under the terms of Chapter 74, the value of the proposed acquisition parcel, was studied in a staff appraisal of the lands. (A copy of the appraisal is in the Office of the State Lands Commission, Sacramento, and is incorporated by reference herein.) The value of the land as developable to its highest and best use (residential) is \$280,000 per acre or \$1,680,000 total. Restricted to park use, its value is \$162,221 per acre or \$973,330 total. Staff believes that the proposed acquisition parcel would be a valuable asset to the trust.

LEASE FORMS AND RANGE OF CONSIDERATION:

Section 1(g) of Stats. 1978, ch. 74, allows the city to lease the filled tidelands, portions of Parcels A, B, and C, for residential purposes at fair market rental value as finished subdivided lots with streets constructed and all utilities installed for a period not to exceed 50 years. Before any lease is issued, however, the statute requires that (1) the form of the leases and (2) the range of consideration be approved by the State Lands Commission.

The city has made the decision that it is in its' best interest to so lease all of the lots within the community of Beacon Bay. Not all of the lots are on filled

tidelands, however. Some are located on adjacent uplands owned by the city in its municipal capacity. The Commission is herein concerned only with the filled tidelands lots. In this connection, staff has worked closely with the city to develop forms for the leasing of the former tidelands lots. (These forms will also be used in the leasing of the upland lots.)

The city proposes to lease each residential lot individually and to lease the common areas to the Beacon Bay Community Association. However, the leases cannot begin to run until January 1988 because of a pre-existing lease which does not expire until December 31, 1987 ("Beek Lease"). For this reason, the city has prepared an "Agreement to Lease," running from the date of execution to December 1987, wherein the city will contract with individual Beacon Bay homeowners to lease to them beginning in 1988 and for this promise the city will receive consideration equal to fair market rental value less the amount each homeowner must pay under pre-existing subleases ("Beek Subleases"). In the agreement to lease, the Beacon Bay homeowners will be compensated for entering into this agreement through recognition of their "annualized rental advantage." The leases will run from January 1988 to July 2006.

In the opinion of staff, the agreement to lease and lease forms are comprehensive and equitable and adequately protect the public interest. Of particular importance is the express agreement therein contained to hold open the common areas on tidelands to the public.

Fair market rental value has been ascertained through an appraisal conducted by George Hamilton Jones, M.A.I., at the request of the city. (A copy of the appraisal and explanatory letters from Mr. Jones dated May 8, 1981 and May 20, 1981 are on file in the Office of the State Lands Commission, Sacramento and are incorporated herein

by reference.) It should be noted that the rental increases provided for both in the agreement to lease and lease will insure that the rents received by the city will always reflect the prevailing real estate market increases but will never decrease below the initial rental which has as its basis the fair market rental value of the property as of September 1980.

Staff has reviewed the appraisal and has found it to be exhaustive, complete and based on sound appraisal principles. Exhibit "B" attached is a list of the fair market rental value for each tideland lot which will constitute the net rent to be received by the city for each lot if an agreement to lease is entered into on or before July 1, 1981. ("Schedule of Rents") Adjustments to this amount to accommodate, inter alia, pre-existing Beek subleases, the later execution of the Agreement to Lease and transfers of interest will be computed as provided in the agreement to lease form.

All of the leases will expire on July 1, 2006. The city has determined that greater land management options will thereby be available to the city at the expiration of the residential leases. It is this concern for the ability to reconsider uses of the filled tidelands as well as the uplands that has also led the city to favor a lease term of 25 years. The city believes that a term longer than 25 years is an excessive commitment to residential use and that other uses may be more appropriate in the future. However, the city did study the advisability of a longer term by computing the rental income a longer lease term would provide. This analysis revealed that the city would receive a 12.4% annual increase in rentals with a 35-year lease term. When balanced against the ten years' additional commitment to residential use, it was determined not to offset the disadvantage. The city also determined that the value of present dollars outweighed the benefits to be derived from waiting until 1988 to contract with the Beacon Bay homeowners. It should be

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noted that the city charter restricts the city's ability to contract for a term longer than 25 years without voter approval.

The transfer of the city owned property to the trust and the lease forms were approved by resolution of the City of Newport City Council on May 11, 1981. Staff considers these resolutions to be reasonable administrative and business judgments where the income to the trust is maximized and yet flexibility as to future land use is maintained. (Copies of these resolutions are on file in the Office of the State Lands Commission, Sacramento, and are herein incorporated by reference.)

The City will receive approximately \$225,000 this year for trust purposes if all parties execute the necessary documents on or before July 1, 1981 (and will increase thereafter) as opposed to the previous annual rental of approximately \$5,311 it is presently receiving from this property.

EXHIBITS:

- A. Site Map.
- B. List of Effective Net Rent to be Received by the City for Each Tideland Lot if the Agreement to lease is Entered into on or before July 1, 1981. ("Schedule of Rents").

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT IN ACCORDANCE WITH THE LEGISLATURE'S FINDINGS UNDER CHAPTER 74 OF THE STATUTES OF 1978, CERTAIN PORTIONS OF THE TIDE AND SUBMERGED LANDS GRANTED TO THE CITY OF NEWPORT BEACH IDENTIFIED HEREIN AS PARCELS A, B, AND C HAVE BEEN FILLED AND RECLAIMED AS A RESULT OF A PLAN OF IMPROVEMENT OF THE GRANTED TIDE AND SUBMERGED LANDS.
2. FIND THAT IN ACCORDANCE WITH THE FINDINGS OF THE LEGISLATURE IN CHAPTER 74, STATUTES OF 1978, PORTIONS OF PARCELS A, B, AND C, BEING A RELATIVELY SMALL PORTION OF SUCH GRANTED TIDE AND SUBMERGED LANDS, HAVE BEEN DIVIDED INTO RESIDENTIAL LOTS AND LEASED, AND ARE PRODUCING INCOME TO SUPPORT THE STATUTORY TRUSTS UNDER WHICH

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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 OR PURPOSES OF COMMERCE, NAVIGATION, AND FISHERIES.

3. FIND THAT IN ACCORDANCE WITH THE FINDINGS OF THE LEGISLATURE IN CHAPTER 74, STATUTES OF 1978, THE RESIDENTIAL 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 COMMON LAW PUBLIC TRUST FOR NAVIGATION, COMMERCE, AND FISHERIES UPON THE RECORDING OF THE DOCUMENT TRANSFERRING THE PARCEL OF PROPERTY TO THE TRUST DESCRIBED BELOW. SUCH RESIDENTIAL LOTS 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 AS PROVIDED BY AND SUBJECT TO THE OTHER TERMS AND PROVISIONS OF CHAPTER 74 OF THE STATUTES OF 1978, AND OTHER LAWS APPLICABLE TO THE TIDE AND SUBMERGED LANDS INCLUDED IN THE GRANT TO THE CITY. FURTHER, SUCH RESIDENTIAL 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 CHAPTER 74 OF THE STATUTES OF 1978. NOTHING IN THIS ACTION SHALL OPERATE TO TERMINATE THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHERIES OVER THOSE PORTIONS OF PARCELS A, B, AND C WHICH ARE STREETS, ALLEYS, WALKS, AND BEACHES OF NEWPORT BAY.
4. FIND THAT THE TRANSFER OF THE PROPOSED ACQUISITION PARCEL TO THE TRUST CREATED BY CHAPTER 74, STATUTES OF 1978 AS A PREREQUISITE FOR THE RELEASE OF THE RESIDENTIAL LOTS WITHIN PARCELS A, B, AND C, INCLUSIVE, FROM THE COMMON LAW PUBLIC TRUST FOR COMMERCE, NAVIGATION, AND FISHERIES IS APPROPRIATE AND IN THE BEST INTERESTS OF THE PEOPLE OF THE STATE OF CALIFORNIA TAKING INTO CONSIDERATION THE SIZE OF THE AREA AFFECTED BY THE TERMINATION, THE TRUST PURPOSES THAT CAN BE ACCOMPLISHED BY SUCH TRANSFER AND THE VALUE OF THE PROPERTY TO BE TRANSFERRED (SAID CONSIDERATIONS BEING MORE FULLY SET FORTH ABOVE).
5. APPROVE THE CITY OF NEWPORT BEACH'S PROPOSAL TO TRANSFER TO THE TRUST THAT PARCEL OF REAL PROPERTY REFERRED TO HEREIN AS THE "PROPOSED ACQUISITION PARCEL" SHOWN ON EXHIBIT "A" HERETO AS FULFILLING THE REQUIREMENTS



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OF CHAPTER 74, STATUTES OF 1978, SECTION 4, THEREBY FREEING FROM THE COMMON PUBLIC TRUST FOR COMMERCE, NAVIGATION, AND FISHERIES, THE RESIDENTIAL LOTS LOCATED WITHIN PARCELS A, B, AND C, WHICH ARE DESCRIBED IN CHAPTER 74, STATUTES OF 1978, SECTION 6, UPON THE RECORDING OF AN APPROPRIATE DOCUMENT IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ORANGE.

6. FIND THAT THE CITY OF NEWPORT BEACH IS NOT ENTITLED TO REIMBURSEMENT FOR THE COST OF ACQUISITION OF THE PROPOSED ACQUISITION PARCEL AS PROVIDED IN SECTION 2(e) OF CHAPTER 74, STATUTES OF 1978, SINCE NO COSTS WERE INCURRED TO THE CITY IN ACQUIRING SAID PARCEL.
7. APPROVE THE CITY OF NEWPORT BEACH'S PROPOSED "AGREEMENT TO LEASE" AND "LEASE AGREEMENT" FOR THE INDIVIDUAL PARCELS AND FOR THE COMMON AREAS. (ALL OF THE ABOVE DOCUMENTS BEING THOSE APPROVED BY THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ON MAY 11, 1981, WHICH ARE ON FILE IN THE OFFICE OF STATE LANDS COMMISSION, SACRAMENTO, AND INCORPORATED HEREIN BY REFERENCE).
8. APPROVE THE CITY OF NEWPORT BEACH'S SCHEDULE OF RENTS AS PROPOSED IN EXHIBIT "B" HERETO AND APPROVED BY THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ON MAY 11, 1981.
9. AUTHORIZE STAFF OF THE COMMISSION AND THE OFFICE OF ATTORNEY GENERAL TO TAKE ANY AND ALL ACTIONS NECESSARY TO IMPLEMENT THIS ACTION AND THE PROVISION OF CHAPTER 74 OF THE STATUTES OF 1978, INCLUDING BUT NOT LIMITED TO LITIGATION AND EXECUTION OF ALL DOCUMENTS TO ACCOMPLISH THIS MATTER.

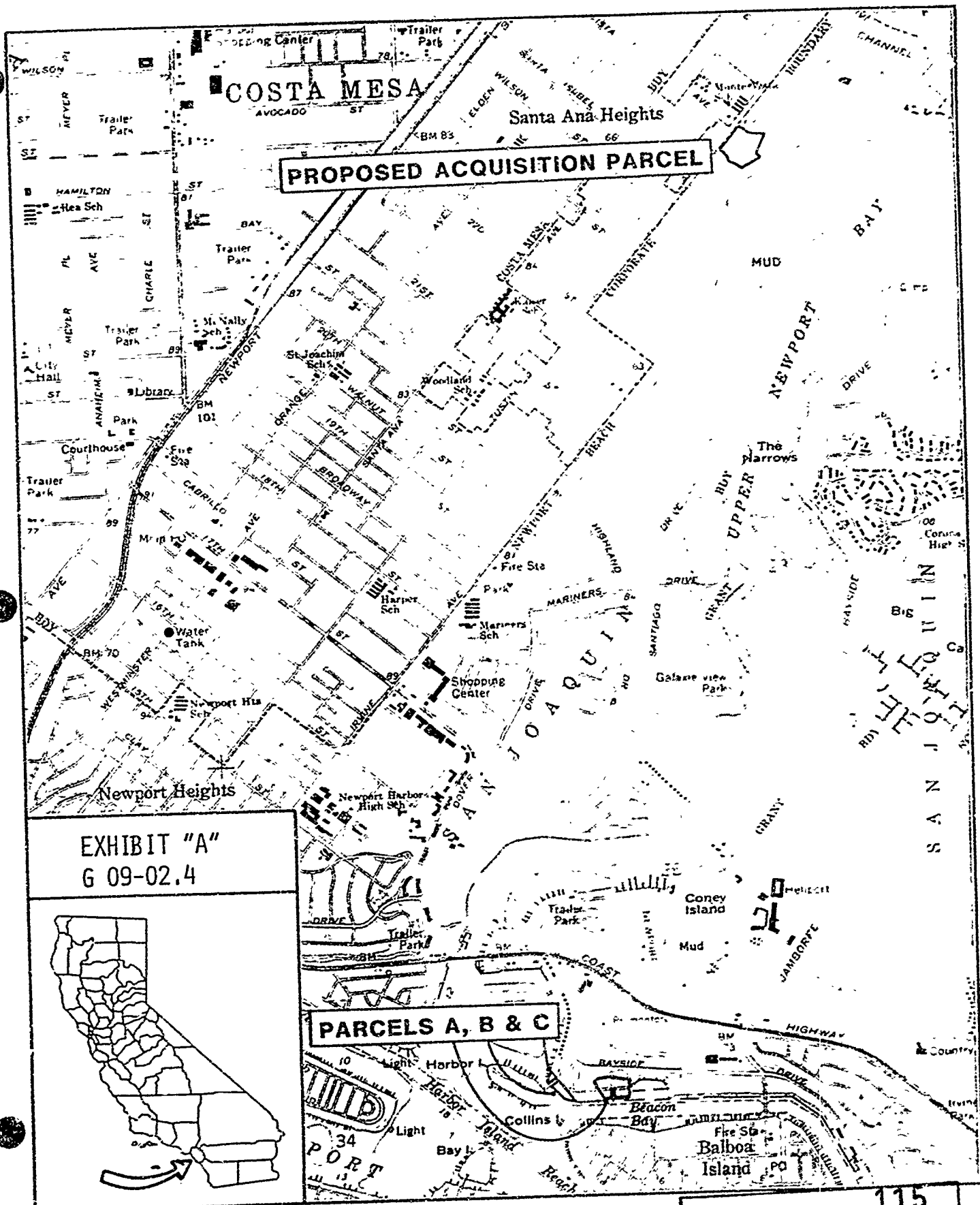


EXHIBIT "A"  
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PARCELS A, B & C

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"EXHIBIT B"

SCHEDULE OF RENTS  
DISTRIBUTION BETWEEN TIDELANDS AND UPLANDS  
BEACON BAY

LOT NO.	% TIDELANDS	% UPLANDS	\$ RENT TIDELANDS	\$ RENT UPLANDS	\$ RENT TOTAL
A	100		14018.45		14018.45
B	100		12506.85		12506.85
C	100		9020.41		9020.41
1	100		8020.80		8020.80
2	100		8825.37		8825.37
3	100		9410.50		9410.50
4	100		10458.87		10458.87
5	100		12238.66		12238.66
6	100		12238.66		12238.66
7	95	5	9611.66	505.88	10117.54
8	50	50	4912.49	4912.48	9824.97
9	5	95	541.23	10283.35	10824.58
10		100		10727.06	10727.06
11		100		9020.41	9020.41
12		100		9020.41	9020.41
13		100		9020.41	9020.41
14		100		10312.50	10312.50
15	20	80	2062.52	8250.07	10312.59
16	95	5	8083.00	425.42	8508.42
17	100		8508.42		8508.42
18	100		8508.42		8508.42
19	100		10020.02		10020.02
20	100		8727.84		8727.84
21	100		8020.80		8020.80
22	100		8020.80		8020.80
E-1	100		8020.80		8020.80
E-2	100		8020.80		8020.80
E-3	100		3284.33		3284.33
E-4	100		3021.88		3021.88
E-5	85	15	2552.75	450.49	3003.24
E-6		100		2982.91	2982.91
E-7		100		2965.96	2965.96
E-8		100		3117.98	3117.98

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Schedule of Rents, contd.

LOT NO.	% TIDELANDS	% UPLANDS	\$ RENT TIDELANDS	\$ RENT UPLANDS	\$ RENT TOTAL
				3117.98	3117.98
23		100		3380.43	3380.43
24		100		3229.12	3399.07
25	5	95	169.95	34.18	3417.71
26	99	1	3383.53		3436.35
27	100		3436.35		4137.66
28	100		4137.66		4137.66
29		100		3459.31	3459.31
30		100		3551.10	3551.10
31	30	70	1070.92	2498.82	3569.74
32	100		3588.38		3588.38
33	100		3607.02		3607.02
34	100		4454.61		4454.61
35		100		3776.26	3776.26
36		100		3794.90	3794.90
37	5	95	178.49	3391.25	3569.74
38	99	1	3552.50	35.88	3588.38
39	100		3607.02		3607.02
40	100		4454.61		4454.61
41		100		3530.76	3530.76
42		100		3794.90	3794.90
43		100		3813.54	3813.54
44		100		3832.18	3832.18
45	15	85	577.62	3273.20	3850.82
46		100		4454.61	4454.61
47		100		3459.31	3459.31
48		100		3774.57	3774.57
49		100		3551.10	3551.10
50		100		3569.74	3569.74
51		100		3588.38	3588.38
52		100		3607.02	3607.02
53		100		4478.99	4478.99
54		100		3344.85	3344.85
55		100		3586.96	3586.96
56		100		3603.91	3603.91
57		100		3551.10	3551.10
58		100		3496.59	3496.59

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LOT NO.	% <u>TIDELANDS</u>	% <u>UPLANDS</u>	\$ RENT <u>TIDELANDS</u>	\$ RENT <u>UPLANDS</u>	\$ RENT <u>TOTAL</u>
59		100		3515.24	3515.24
60		100		3533.88	3533.88
61		100		4210.80	4019.80
Total			<u>234,874.99</u>	<u>189,836.19</u>	<u>424,711.18</u>

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