

CALENDAR ITEM

C42

MINUTE ITEM

This Calendar Item No. C42 was approved as Minute Item No. 42 by the State Lands Commission by a vote of 3 to 0 at its 5/26/94 meeting.

A 70
S 35

05/26/94
G 09-02.6
Fossum
Grimes
A. Scott
J. Smith

REVIEW OF CITY OF NEWPORT BEACH
PROPOSED LEASES INVOLVING
GRANTED FILLED TIDE AND SUBMERGED LANDS - BEACON BAY

PARTY:

City of Newport Beach
Attn: Kenneth J. Delino
Deputy City Manager
3300 Newport Boulevard
Newport Beach, California 92658-8915

BACKGROUND

The State Lands Commission, by its adoption of Minute Item #27 at its meeting of May 28, 1981, approved, among other things, a form of lease and schedule of rents to allow the City of Newport Beach to lease certain filled tide and submerged lands in Newport Beach for residential use. Of 72 lots to be leased by the City, 38 lots consisted partially or entirely of filled tide and submerged lands granted to the City by the California Legislature (see Exhibit A).

The subject leases were specifically authorized by the California Legislature pursuant to Chapter 74, Statutes of 1978. SEC. 1. (g) of Chapter 74 authorizes leases for a maximum of 50 years. However, at the time of the Commission's 1981 approval, and because of a condition in the City Charter, the form of the leases submitted by the City provided for a term of 25 year. Subsequently, on November 3, 1987 and November 3, 1992, the City, pursuant to its charter, held elections at which the majority of voters authorized leasing the property for up to 50 years, thereby providing for the maximum term authorized by the Legislature.

The City subsequently entered into negotiations with the homeowners (current tenants) to allow for termination of the existing 25-year leases and entering into new 50-year leases. The proposed new leases are modified as to form and process for rent calculation from the current leases.

CALENDAR ITEM NO. C42 (CONT'D)

The City hired an appraiser, George Hamilton Jones, M.A.I., to conduct an appraisal of the Fair Market Rental Value and to calculate Net Rent for the lots. The Net Rent is the Fair Market Rent adjusted to reflect certain improvement costs and proration of the value of the current homeowners' leasehold advantage. A copy of the proposed lease form and the appraisal, dated October 3, 1993, are on file in the Office of the State Lands Commission in Sacramento, and are incorporated herein by reference.

Staff has reviewed the appraisal and found it to be comprehensive, complex and exhaustive. The rental rates for the existing leases, as well as Fee Lot Value, Fair Market Rental Value, Existing Contract Rent and First Year Effective Net Rent are shown on attached Exhibit B.

The new leases initially proposed by the City adopted a rather complicated rent formula which took the Fair Market Rental Value of a new 50 year lease as appraised by Jones and adjusted that amount for various "advantages" held by the current lease holders. Those advantages include a reduction for value attributable to the lower current leasehold rental rates and what is termed a tax advantage based on taxes paid reflecting current lease contract values. The City approved those proposed lease forms and rental schedules last year. A summary of the major lease impacts is provided in the attached memo from the Deputy City Manager regarding City Council Agenda Item #8, dated June 28, 1993 (Exhibit C).

An additional change from the existing lease form is the provision that rents could theoretically go down if the formula proposed to determine future rents, using certain future lease sales, reflects a lower rate. While this is considered unlikely, it should be noted that the existing leases provide (in paragraph 4. (d)) for the "greater" amount of either the base rental or the calculated rents following a lease sale.

Staff believes that neither the statutory trust created by Chapter 74, nor Public Trust principles, allow the trustee local government to consider the property tax impact as a means of lowering the return to the trust.

While neither the tax advantage nor the provision for eliminating the "greater" provision in the rental rate is likely to involve substantial sums and the City believes these sums will be more than compensated for by future lease sales and

CALENDAR ITEM NO. C42 (CONT'D)

recalculations of rent based thereon, the staff of the Commission urged the City to renegotiate the "tax advantage" and provision for possible lowering of rents based on averaging of future sales prices. The City and homeowners went back to the table and have resubmitted a new lease which eliminates the average of future sales for calculating 7 year rent reviews and instead adopts a Consumer Price Index escalator. The new lease will also ensure that the Tidelands Trust Account will not lose revenue based upon use of the tax advantage formula. The City has agreed that any reduced rental amount for tideland parcels impacted by the tax advantage discount will be covered by a deposit or credit transfer to the Trust Account by the City (see Exhibit D).

In the opinion of the staff, the actions taken by the City as trustee for the statewide public, with the above modifications, are based upon reasonable administrative and business judgments and the leases are comprehensive and equitable and adequately protect the public interest. Furthermore, staff believes, while the lease and its consideration do not necessarily reflect Commission practice as to provisions or means of rent calculation, based upon the above modifications and the additional provisions of the lease, the lease provides for acceptable terms as to both form of lease and range of consideration and therefore submits it to the Commission with a recommendation for approval.

OTHER PERTINENT INFORMATION:

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, 14 Cal. Code Regs. 15301.

Authority: P.R.C. 21084 and 14 Cal. Code Regs. 15300.

AB 884:
N/A

EXHIBITS:

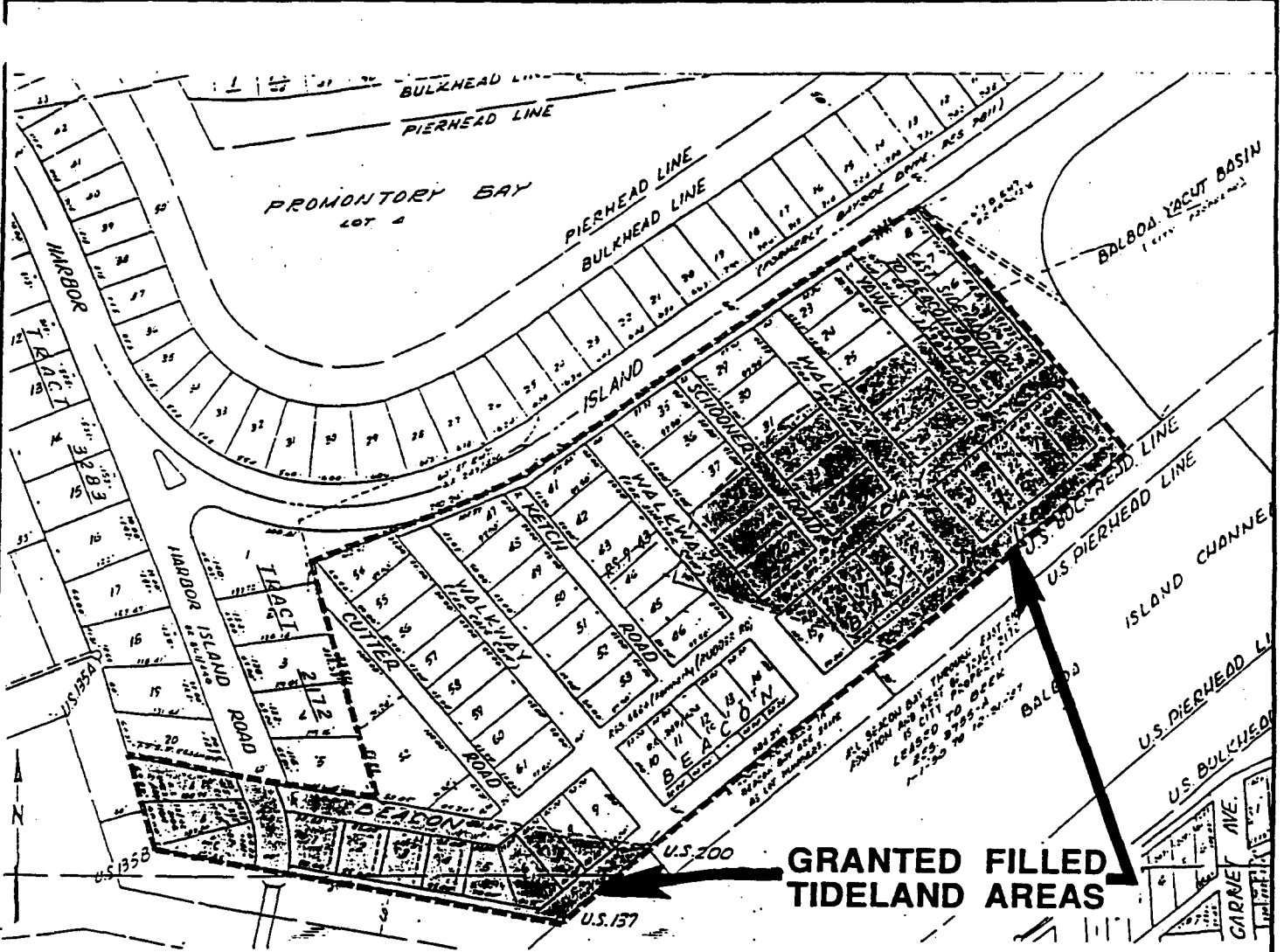
- A. Location/Site Map.
- B. Summary of Values and Rents.
- C. City Memorandum.
- D. Recalculated Distribution of Rents and Tax Advantage between Tidelands and Uplands.
- E. City of Newport Beach Council Approval.

CALENDAR ITEM NO. C42 (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, MAINTENANCE OF EXISTING FACILITIES, (14 CAL. CODE REGS. 15301).
2. FIND THAT IN ACCORDANCE WITH CHAPTER 74, STATUTES OF 1978, THE CITY OF NEWPORT BEACH MAY ENTER INTO LEASES OF CERTAIN DESCRIBED FILLED AND RECLAIMED TIDE AND SUBMERGED LANDS FOR A PERIOD NOT TO EXCEED 50 YEARS.
3. APPROVE THE CITY OF NEWPORT BEACH'S PROPOSED FORM OF LEASE AND THE RANGE OF CONSIDERATION AS REFLECTED IN THE RENTAL RATES AND PROVISIONS FOR RATE ADJUSTMENT AS PROVIDED IN THE REVISED LEASE AND SUBMITTALS, SUBJECT TO THE CITY'S AGREEMENT TO GUARANTEE THAT THE TIDELANDS TRUST FUND BE COMPENSATED AT FULL FAIR RENTAL VALUE, WITH NO TAX ADVANTAGE DISCOUNT FOR PROPERTY RENTAL CALCULATION IMPACTING TRUST PROPERTY, AS SHOWN ON EXHIBIT D.

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MAP OF BEACON BAY

**GRANTED FILLED
TIDELAND AREAS**

EXHIBIT A
G - 09 - 02.6

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|---------------|-------|
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| MINUTE PAGE | 2166 |

EXHIBIT B - 1 OF 3

SUMMARY OF SALIENT FACTS AND CONCLUSIONS - continued

SUMMARY OF VALUE INDICATIONS:

| Lot No. | Unencumbered Fee Lot Value | Fair Market Rental Value | Existing Contract Rent | (1st year) Effective Net Rent |
|-------------------------|-------------------------------|-----------------------------|------------------------------|-------------------------------------|
| Water Front Lots | | | | |
| A | \$1,330,000 | \$48,520 | \$23,125.08 | \$31,940.00 |
| B | \$1,200,000 | \$43,320 | \$12,506.85 | \$22,270.00 |
| C | \$1,031,000 | \$37,560 | \$16,625.04 | \$22,480.00 |
| 1 | \$947,000 | \$34,200 | \$8,020.80 | \$15,030.00 |
| 2 | \$1,131,000 | \$41,640 | \$8,825.40 | \$17,950.00 |
| 3 | \$1,263,000 | \$46,920 | \$14,875.08 | \$24,110.00 |
| 4 | \$1,318,000 | \$49,120 | \$10,458.96 | \$21,260.00 |
| 5 | \$1,341,000 | \$50,120 | \$20,012.04 | \$28,840.00 |
| 6 | \$1,386,000 | \$51,680 | \$25,000.00 | \$34,260.00 |
| 7 | \$1,210,000 | \$44,800 | \$10,631.52 | \$19,260.00 |
| 8 | \$1,177,000 | \$43,480 | \$43,750.00 | \$43,480.00 |
| 9 | \$1,298,000 | \$47,840 | \$42,500.04 | \$44,350.00 |
| 10 | \$1,342,000 | \$49,600 | \$24,999.96 | \$33,540.00 |
| 11 | \$1,122,000 | \$41,280 | \$9,020.52 | \$17,020.00 |
| 12 | \$1,100,000 | \$40,400 | \$14,250.00 | \$22,190.00 |
| 13 | \$1,100,000 | \$40,400 | \$23,625.00 | \$29,450.00 |
| 14 | \$1,243,000 | \$45,640 | \$10,312.56 | \$19,690.00 |
| 15 | \$1,265,000 | \$46,520 | \$10,836.47 | \$20,240.00 |
| 16 | \$1,067,000 | \$39,080 | \$8,508.48 | \$16,480.00 |
| 17 | \$1,067,000 | \$39,080 | \$16,250.04 | \$21,750.00 |
| 18 | \$1,067,000 | \$39,080 | \$8,508.48 | \$16,480.00 |
| 19 | \$1,243,000 | \$45,640 | \$10,020.02 | \$19,500.00 |
| 20 | \$1,147,000 | \$42,320 | \$8,727.84 | \$17,910.00 |
| 21 | \$1,058,000 | \$38,760 | \$13,625.04 | \$21,170.00 |
| 22 | \$1,036,000 | \$37,880 | \$41,250.00 | \$37,880.00 |
| ES 1 | \$1,037,000 | \$37,880 | \$28,749.96 | \$31,920.00 |
| ES 2 | \$1,037,000 | \$37,880 | \$24,625.00 | \$29,220.00 |
| Subtotals: | \$31,563,000 | \$1,160,640 | \$489,640.18 | \$679,670.00 |

EXHIBIT B - 2 OF 3

SUMMARY OF SALIENT FACTS AND CONCLUSIONS - continued

| Lot No. | Unencumbered Fee Lot Value | Fair Market Rental Value | Existing Contract Rent | (1st year) Effective Net Rent |
|----------------------|-------------------------------|-----------------------------|------------------------------|-------------------------------------|
| Interior Lots | | | | |
| 23 | \$478,000 | \$14,487 | \$2,782.32 | \$6,297.00 |
| 24 | \$501,000 | \$15,237 | \$6,125.04 | \$8,897.00 |
| 25 | \$509,000 | \$15,537 | \$3,399.12 | \$6,977.00 |
| 26 | \$511,000 | \$15,612 | \$3,417.72 | \$6,942.00 |
| 27 | \$519,000 | \$15,912 | \$3,436.44 | \$7,102.00 |
| 28 | \$542,000 | \$16,775 | \$4,137.72 | \$7,785.00 |
| 29 | \$518,000 | \$15,650 | \$15,375.00 | \$15,470.00 |
| 30 | \$510,000 | \$15,462 | \$3,551.16 | \$7,102.00 |
| 31 | \$517,000 | \$15,725 | \$8,750.00 | \$10,515.00 |
| 32 | \$520,000 | \$15,837 | \$3,588.48 | \$7,217.00 |
| 33 | \$528,000 | \$16,137 | \$3,607.08 | \$7,307.00 |
| 34 | \$589,000 | \$18,200 | \$4,454.64 | \$8,490.00 |
| 35 | \$559,000 | \$17,000 | \$3,776.28 | \$7,780.00 |
| 36 | \$548,000 | \$16,662 | \$3,795.00 | \$7,672.00 |
| 37 | \$517,000 | \$15,725 | \$14,625.00 | \$15,005.00 |
| 38 | \$520,000 | \$15,837 | \$3,780.36 | \$7,967.00 |
| 39 | \$528,000 | \$16,137 | \$9,125.04 | \$11,557.00 |
| 40 | \$588,000 | \$18,162 | \$11,133.60 | \$13,572.00 |
| 41 | \$513,000 | \$15,500 | \$3,719.64 | \$7,300.00 |
| 42 | \$548,000 | \$16,662 | \$3,795.00 | \$7,672.00 |
| 43 | \$556,000 | \$16,962 | \$11,250.00 | \$13,232.00 |
| 44 | \$558,000 | \$17,037 | \$3,832.20 | \$7,787.00 |
| 45 | \$565,000 | \$17,300 | \$4,056.84 | \$7,990.00 |
| 46 | \$588,000 | \$18,162 | \$4,454.64 | \$8,492.00 |
| 47 | \$539,000 | \$16,475 | \$3,459.36 | \$7,365.00 |
| 48 | \$551,000 | \$16,775 | \$6,249.96 | \$9,305.00 |
| 49 | \$520,000 | \$15,837 | \$3,551.16 | \$7,197.00 |
| 50 | \$523,000 | \$15,950 | \$3,569.76 | \$7,240.00 |
| 51 | \$520,000 | \$15,837 | \$3,780.36 | \$7,857.00 |
| 52 | \$528,000 | \$16,137 | \$12,750.00 | \$13,927.00 |
| 53 | \$588,000 | \$18,162 | \$4,479.00 | \$8,492.00 |
| 54 | \$530,000 | \$15,987 | \$3,344.88 | \$7,227.00 |
| 55 | \$559,000 | \$17,075 | \$10,625.04 | \$12,865.00 |
| 56 | \$567,000 | \$17,375 | \$3,603.96 | \$7,915.00 |
| 57 | \$546,000 | \$16,737 | \$3,551.16 | \$7,427.00 |
| 58 | \$528,000 | \$16,137 | \$6,750.00 | \$10,007.00 |
| 59 | \$525,000 | \$16,025 | \$10,125.00 | \$12,175.00 |
| 60 | \$533,000 | \$16,325 | \$3,533.88 | \$7,315.00 |

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EXHIBIT B - 3 OF 3

SUMMARY OF SALIENT FACTS AND CONCLUSIONS - continued

| <u>Lot No.</u> | <u>Unencumbered Fee Lot Value</u> | <u>Fair Market Rental Value</u> | <u>Existing Contract Rent</u> | <u>(1st year) Effective Net Rent</u> |
|---------------------------|---------------------------------------|-------------------------------------|---------------------------------------|--|
| Interior Lots - continued | | | | |
| 61 | \$588,000 | \$18,162 | \$4,436.16 | \$8,482.00 |
| ES 3 | \$474,000 | \$14,225 | \$8,750.04 | \$10,325.00 |
| ES 4 | \$467,000 | \$13,962 | \$3,021.96 | \$6,322.00 |
| ES 5 | \$470,000 | \$14,075 | \$10,000.08 | \$11,415.00 |
| ES 6 | \$468,000 | \$14,000 | \$2,982.96 | \$6,310.00 |
| ES 7 | \$461,000 | \$13,737 | \$2,966.04 | \$6,057.00 |
| ES 8 | \$471,000 | \$13,925 | \$3,118.08 | \$6,455.00 |
| Subtotal Int.: | \$23,786,000 | \$724,637 | \$254,617.16 | \$397,807.00 |
| Subtotal W.F.: | \$31,563,000 | \$1,160,640 | \$489,640.18 | \$679,670.00 |
| Grand Totals: | \$55,349,000 | \$1,885,277 | \$744,257.34 | \$1,077,477.00 |

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**CITY OF NEWPORT BEACH
OFFICE OF THE CITY MANAGER**

JUNE 28, 1993

TO: MAYOR AND CITY COUNCIL
FROM: DEPUTY CITY MANAGER
SUBJECT: BEACON BAY

ACTION: If desired, approve Resolution No. 93-_____ approving a new fifty (50) year lease for Beacon Bay subject to minor technical revisions and approval by the State Lands Commission.

BACKGROUND: The City Council approved the basic terms and conditions of this lease in November, 1992 after five years of negotiations. The lease has now been thoroughly reviewed and redrafted by the City Attorney and the attorney for the Community Association. The membership of the Association approved the lease on June 19th by a vote of 56 to 5 with 11 absent.

DISCUSSION: The approximate new lease rates are shown on the attached pages from the appraisal. These figures are subject to minor adjustments based on the final lease provision and an updating of the appraisal.

The attachment shows the fee lot value were it sold on the open market, the Fair Market Rental Value (FMRV) of a new fifty (50) year lease, the existing rent for the lot and what is called the Effective Net Rent. This is calculated by subtracting from the FMRV the value of the difference between FMRV and the existing rent for the remainder of the existing lease.

This difference, called lease advantage, is a substantial sum as shown on the last page of the attachment under grand totals. While the FMRV for all Beacon Bay is \$2,185,280, the initial rent to the City will be only \$1,068,570. Therefore, the lease advantage is \$1,116,710.

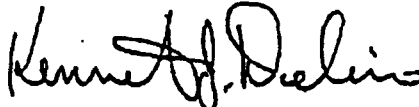
Throughout the negotiations, the City's position was to recoup as much as possible of that lease advantage as soon as possible. The Association's position was primarily to limit the initial increase and the annual increases for the many older lessees on fixed incomes. The proposed lease is a compromise of these positions.

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Current lessees will pay the Effective Net Rent but will have no increase until they transfer the property. When the lease is transferred, rent will go to 2.5% of total value which, experience has shown, closely approximates FMRV. Calculations using actuarial tables indicate that almost all of the lots with lower rents will be transferred within 10 to 15 years. Subsequent transfers will also adjust rent equal to 2.5% of the total consideration. Thus with each transfer, rent will be updated to near FMRV. Also, if there is no subsequent transfer, rent will be adjusted every 7 years up to 40% based on recent sales in Beacon Bay. In summary, all current lessees will pay Effective Net Rent until the lease is transferred. Upon transfer rents will be adjusted to 2.5% of total consideration and will be further adjusted every 7 years thereafter by no more than 40%.

Other provisions include payment of back rent if a current lessee fails to sign the new lease, strict definition of what constitutes a transfer and updated insurance and liability provisions. The primary provisions of the lease are attached. The complete lease is available in my office.

RECOMMENDATION: This lease will increase City revenues while providing the Beacon Bay community the long term assurances they desire. The rental payment structure will provide some short term advantage to the many older residents on fixed incomes, but will provide greater long term financial advantages to the City. The City Council previously approved the terms of this lease, and adoption of this lease will allow staff to forward it to the State Lands Commission for their approval.



Kenneth J. Delino

KJD:mb
Attachment

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|---------------|-------|
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EXHIBIT D - 1 OF 3

Distribution of Rents and Tax Advantage between Tidelands and Uplands*

| Lot No. | (1st year) Effective Net Rent | % | % | Proportionate Rent Tidelands | Proportionate Rent Uplands | Annual Amort. of PV of Tax Advantage | Tidelands Tax Advantage |
|---------------------------------|-------------------------------------|-----------|---------|------------------------------------|----------------------------------|--|-------------------------------|
| | | Tidelands | Uplands | | | | |
| Waterfront Lots | | | | | | | |
| A | \$31,940 | 100% | 0% | \$31,940 | \$0 | \$0 | \$0 |
| B | \$22,270 | 100% | 0% | \$22,270 | \$0 | \$930 | \$930 |
| C | \$22,480 | 100% | 0% | \$22,480 | \$0 | \$1,410 | \$1,410 |
| 1 | \$15,030 | 100% | 0% | \$15,030 | \$0 | \$2,080 | \$2,080 |
| 2 | \$17,950 | 100% | 0% | \$17,950 | \$0 | \$2,260 | \$2,260 |
| 3 | \$24,110 | 100% | 0% | \$24,110 | \$0 | \$1,890 | \$1,890 |
| 4 | \$21,260 | 100% | 0% | \$21,260 | \$0 | \$2,610 | \$2,610 |
| 5 | \$28,840 | 100% | 0% | \$28,840 | \$0 | \$1,620 | \$1,620 |
| 6 | \$34,260 | 100% | 0% | \$34,260 | \$0 | \$0 | \$0 |
| 7 | \$19,260 | 95% | 5% | \$18,297 | \$963 | \$3,230 | \$3,068 |
| 8 | \$43,480 | 50% | 50% | \$21,740 | \$21,740 | \$0 | \$0 |
| 9 | \$44,350 | 5% | 95% | \$2,217 | \$42,132 | \$0 | \$0 |
| 10 | \$33,540 | 0% | 100% | \$0 | \$33,540 | \$0 | \$0 |
| 11 | \$17,020 | 0% | 100% | \$0 | \$17,020 | \$3,200 | \$0 |
| 12 | \$22,190 | 0% | 100% | \$0 | \$22,190 | \$1,130 | \$0 |
| 13 | \$29,450 | 0% | 100% | \$0 | \$29,450 | \$0 | \$0 |
| 14 | \$19,690 | 0% | 100% | \$0 | \$19,690 | \$2,880 | \$0 |
| 15 | \$20,240 | 20% | 80% | \$4,048 | \$16,192 | \$2,980 | \$596 |
| 16 | \$16,480 | 95% | 5% | \$15,656 | \$824 | \$2,640 | \$2,508 |
| 17 | \$21,750 | 100% | 0% | \$21,750 | \$0 | \$2,420 | \$2,420 |
| 18 | \$16,480 | 100% | 0% | \$16,480 | \$0 | \$2,640 | \$2,640 |
| 19 | \$19,500 | 100% | 0% | \$19,500 | \$0 | \$2,880 | \$2,880 |
| 20 | \$17,910 | 100% | 0% | \$17,910 | \$0 | \$2,470 | \$2,470 |
| 21 | \$21,170 | 100% | 0% | \$21,170 | \$0 | \$1,180 | \$1,180 |
| 22 | \$37,880 | 100% | 0% | \$37,880 | \$0 | \$0 | \$0 |
| ES 1 | \$31,920 | 100% | 0% | \$31,920 | \$0 | \$0 | \$0 |
| ES 2 | \$29,220 | 100% | 0% | \$29,220 | \$0 | \$0 | \$0 |
| Waterfront Subtotal: | \$679,670 | | | \$475,928 | \$203,742 | \$40,450 | \$30,562 |

EXHIBIT D - 2 OF 3

Distribution of Rents and Tax Advantage between Tidelands and Uplands*

| Lot No. | (1st year) Effective Net Rent | % Tidelands | % Uplands | Proportionate Rent Tidelands | Proportionate Rent Uplands | Annual Amort. of PV of Tax Advantage | Tidelands Tax Advantage |
|----------------------|-------------------------------------|----------------|--------------|------------------------------------|----------------------------------|--|-------------------------------|
| Interior Lots | | | | | | | |
| 23 | \$6,297 | 0% | 100% | \$0 | \$6,297 | \$550 | \$0 |
| 24 | \$8,897 | 0% | 100% | \$0 | \$8,897 | \$390 | \$0 |
| 25 | \$6,977 | 5% | 95% | \$349 | \$6,628 | \$630 | \$31 |
| 26 | \$6,942 | 99% | 1% | \$6,873 | \$69 | \$710 | \$703 |
| 27 | \$7,102 | 100% | 0% | \$7,102 | \$0 | \$660 | \$660 |
| 28 | \$7,785 | 100% | 0% | \$7,785 | \$0 | \$740 | \$740 |
| 29 | \$15,470 | 0% | 100% | \$0 | \$15,470 | \$0 | \$0 |
| 30 | \$7,102 | 0% | 100% | \$0 | \$7,102 | \$580 | \$0 |
| 31 | \$10,515 | 30% | 70% | \$3,154 | \$7,361 | \$660 | \$198 |
| 32 | \$7,217 | 100% | 0% | \$7,217 | \$0 | \$620 | \$620 |
| 33 | \$7,307 | 100% | 0% | \$7,307 | \$0 | \$650 | \$650 |
| 34 | \$8,490 | 100% | 0% | \$8,490 | \$0 | \$730 | \$730 |
| 35 | \$7,780 | 0% | 100% | \$0 | \$7,780 | \$580 | \$0 |
| 36 | \$7,672 | 0% | 100% | \$0 | \$7,672 | \$590 | \$0 |
| 37 | \$15,005 | 5% | 95% | \$750 | \$14,255 | \$0 | \$0 |
| 38 | \$7,967 | 99% | 1% | \$7,887 | \$80 | \$0 | \$0 |
| 39 | \$11,557 | 100% | 0% | \$11,557 | \$0 | \$0 | \$0 |
| 40 | \$13,572 | 100% | 0% | \$13,572 | \$0 | \$0 | \$0 |
| 41 | \$7,300 | 0% | 100% | \$0 | \$7,300 | \$510 | \$0 |
| 42 | \$7,672 | 0% | 100% | \$0 | \$7,672 | \$590 | \$0 |
| 43 | \$13,232 | 0% | 100% | \$0 | \$13,232 | \$0 | \$0 |
| 44 | \$7,787 | 0% | 100% | \$0 | \$7,787 | \$630 | \$0 |
| 45 | \$7,990 | 15% | 85% | \$1,198 | \$6,792 | \$660 | \$99 |
| 46 | \$8,492 | 0% | 100% | \$0 | \$8,492 | \$720 | \$0 |
| 47 | \$7,365 | 0% | 100% | \$0 | \$7,365 | \$610 | \$0 |
| 48 | \$9,305 | 0% | 100% | \$0 | \$9,305 | \$600 | \$0 |
| 49 | \$7,197 | 0% | 100% | \$0 | \$7,197 | \$620 | \$0 |
| 50 | \$7,240 | 0% | 100% | \$0 | \$7,240 | \$630 | \$0 |
| 51 | \$7,857 | 0% | 100% | \$0 | \$7,857 | \$110 | \$0 |
| 52 | \$13,927 | 0% | 100% | \$0 | \$13,927 | \$0 | \$0 |
| 53 | \$8,492 | 0% | 100% | \$0 | \$8,492 | \$730 | \$0 |
| 54 | \$7,227 | 0% | 100% | \$0 | \$7,227 | \$500 | \$0 |
| 55 | \$12,865 | 0% | 100% | \$0 | \$12,865 | \$0 | \$0 |
| 56 | \$7,915 | 0% | 100% | \$0 | \$7,915 | \$470 | \$0 |
| 57 | \$7,427 | 0% | 100% | \$0 | \$7,427 | \$700 | \$0 |
| 58 | \$10,007 | 0% | 100% | \$0 | \$10,007 | \$0 | \$0 |
| 59 | \$12,175 | 0% | 100% | \$0 | \$12,175 | \$0 | \$0 |
| 60 | \$7,315 | 0% | 100% | \$0 | \$7,315 | \$660 | \$0 |

EXHIBIT D - 3 OF 3

Distribution of Rents and Tax Advantage between Tidelands and Uplands*

| Lot No. | (1st year) Effective Net Rent | % | % | Proportionate Rent Tidelands | Proportionate Rent Uplands | Annual Amort. of PV of Tax Advantage | Tidelands Tax Advantage |
|----------------------------|-------------------------------------|-----------|---------|------------------------------------|----------------------------------|--|-------------------------------|
| | | Tidelands | Uplands | | | | |
| Interior Lots - continued | | | | | | | |
| 61 | \$8,482 | 0% | 100% | \$0 | \$8,482 | \$720 | \$0 |
| ES 3 | \$10,325 | 100% | 0% | \$10,325 | \$0 | \$320 | \$320 |
| ES 4 | \$6,322 | 100% | 0% | \$6,322 | \$0 | \$500 | \$500 |
| ES 5 | \$11,415 | 85% | 15% | \$9,703 | \$1,712 | \$0 | \$0 |
| ES 6 | \$6,310 | 0% | 100% | \$0 | \$6,310 | \$500 | \$0 |
| ES 7 | \$6,057 | 0% | 100% | \$0 | \$6,057 | \$650 | \$0 |
| ES 8 | \$6,455 | 0% | 100% | \$0 | \$6,455 | \$410 | \$0 |
| Interior Lots Subtotal: | \$397,807 | | | \$109,592 | \$288,215 | \$19,930 | \$5,251 |
| Add Waterfront: | \$679,670 | | | \$475,928 | \$203,742 | \$40,450 | \$30,562 |
| Grand Total: | \$1,077,477 | | | \$585,520 | \$491,957 | \$60,380 | \$35,814 |
| % of Total: | 100% | | | 54% | 46% | 100% | 59% |

*Effective Net Rents consider tax advantage. Discount rate for present value of annual advantage is 6%. Rate for amortization of advantage was 7%. Rent and advantage figures are from 10/8/93 appraisal.

EXHIBIT E - 1 OF 2

SUPPLEMENTAL AGENDA

CITY OF NEWPORT BEACH
OFFICE OF THE CITY MANAGER

MAY 23, 1994

Approved

TO: MAYOR AND CITY COUNCIL
FROM: ASSISTANT CITY MANAGER
SUBJECT: BEACON BAY

ACTION: If desired, approve amendments to previously approved lease substituting CPI for Average Sales Value and requiring City to credit Tidelands Fund in an amount equal to tax advantage.

BACKGROUND: The City Council previously approved the form of a new 50 year lease for Beacon Bay and sent it to the State Lands Commission for approval. Their staff raised several questions which required the negotiating teams for the City and the residents to re-negotiate some provisions and to travel to Sacramento for face-to-face negotiations. As a result, the staff of the State Lands Commission is prepared to recommend approval of the lease and place it on the consent calendar for May 26, 1994 if the proposed amendments are approved by the City Council.

DISCUSSION: One proposed amendment is merely an accounting item to forestall a precedent which might prove detrimental to other negotiations pending before the State Lands Commission. It amounts to the City crediting \$35,800 annually to our state supervised Tidelands Fund. Currently, tideland expenditures exceed revenues by approximately \$1.2 million, so an additional \$35,800 of revenue will have little impact. The credit is compensation for the "tax advantage" granted to current lessees. This amount reflects the additional property tax which some lessees will pay if they sign the new lease. The State Lands Commission believed this credit represented funds transferred to other governmental agencies such as schools which have no tidelands obligations. The proposed transfer into our Tidelands Fund satisfies this concern. Additionally, as properties are sold, this amount will steadily decrease and eventually be eliminated.

The other amendment involves substituting a simple CPI calculation in place of "Average Actual Sales Value" to calculate periodic rental increases. Originally, an index was sought that tracked real estate values, and the method selected employed the average of the last three homes sold in Beacon Bay.

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When this method was exposed to the marketplace, potential buyers and real estate brokers complained loudly that it was (a) difficult to understand, (b) capricious, (c) potentially discriminatory and (d) depressing interest and prices in Beacon Bay. The basic complaint was that rental adjustments were held hostage to whatever high or low priced homes most recently sold and that adjustments should fluctuate widely from year to year. To combat this problem, the negotiating teams requested, and the State Lands Commission staff approved replacing the method with a simple CPI increase.

The use of CPI may actually increase the City's income. While CPI does not normally keep up with real estate values, it nevertheless rarely goes down. More importantly, the large rental adjustments are based upon sale prices, and the simpler index will create a more marketable lease which will result in higher overall rents to the City.

Attached are proposed wording regarding the tidelands credit and a table showing how the amount is calculated. The rental adjustment index will be changed by substituting standard CPI adjustment language for those portions of the original lease dealing with "Average Actual Sales Value".

RECOMMENDATION: Over six and a half years have been spent in the negotiating of this lease. The lease provides for the many older, fixed income residents while allowing the City to achieve full Fair Market Rental Value in the shortest possible time. Approval of these amendments at this time will allow the new lease to take effect on July 1, 1994 and immediately increase City revenues by \$350,000 annually. The new lease will promote turnover of homes in Beacon Bay to the benefit of those eager to sell. Resales in Beacon Bay can generate an additional one million dollars to the City. The proposed amendments are acceptable to the Residents Association, and approval by the City Council is recommended.


Kenneth J. Delino

KJD:mb
Attachments

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