

ATTACHMENT D

Senate Bill No. 573

CHAPTER 317

An act to amend Sections 1 and 2 of Chapter 74 of, and to add Section 2.5 to, the Statutes of 1978, relating to tide and submerged lands in the City of Newport Beach.

[Approved by Governor August 18, 1997. Filed with
Secretary of State August 18, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 573, Johnson. City of Newport Beach: tide and submerged lands.

Existing law grants in trust to the City of Newport Beach all tide and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay, as described, subject to specified conditions.

The legislative grant requires the city to establish a separate tidelands trust fund or separate tidelands trust funds as may be approved by the State Lands Commission and requires the city to deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted tide and submerged lands, including a city tideland capital fund, into which revenues from Parcels A, B, and C, as described, are required to be deposited, to be available only for the acquisition of real property that will further the purposes of the trust.

Existing law creates the Land Bank Fund in the State Treasury, which is appropriated to the commission for the management and improvement of public trust lands. The legislative grant requires a specified percentage of lease revenue from Parcel D, as described, to be deposited in that fund.

This bill would revise the legislative grant to require the city to establish a Tideland Capital Fund, a Tideland Operation and Maintenance Fund, and an Upper Newport Bay Restoration Fund. The bill would require that 80% of the revenues from Parcels A, B, and C be deposited in the Tideland Capital Fund and in the Tideland Operation and Maintenance Fund, allocated as determined by the city, and would require 10% of those revenues to be deposited in the Upper Newport Bay Restoration Fund and 10% in the Land Bank Fund. The bill would prescribe the uses for which the money in the funds could be expended.

The bill would authorize the city to transfer, subject to commission approval, city-owned real property not subject to the public trust to the trust created pursuant to the legislative grant, and to compensate its general fund for any such transfer, as specified.

The bill would require the city, by December 31, 1998, to dedicate as public trust lands to be held subject to the public trust and the provisions of the legislative grant, any lands that the commission has determined have equal or greater value and utility to the public trust than Parcels A, B, and C and that would provide a satisfactory substitution.

The bill would make related changes in the legislative grant.

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

SECTION 1. Section 1 of Chapter 74 of the Statutes of 1978 is amended to read:

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) 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, public or private entity, 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 terms 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).

(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 act and for terms 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 existing and future leases of those lots shall be deposited in the city tideland trust funds as provided in Section 2.

(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 those portions of the lands so transferred by the city to the state for those 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

benefits 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 a manner as may be approved by the State Lands Commission, and the city shall deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted tidelands in the city.

(j) In accordance with 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 or from any additional trust assets, for any or all of the purposes set forth in this act on public trust lands within the City of Newport Beach. Those 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 public trust lands within the city 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 30 days prior to the time of any disbursement therefor or in connection therewith. The executive officer of the commission shall notify the city within 30 days from the date of the filing, if the proposed expenditure raises significant issues. Upon receipt of the notification, the city shall not make any disbursement in connection with the proposed expenditure for 60 days or until the commission has acted on the proposed expenditure, whichever is the shorter period. Within 60 days of the notification by the executive officer, the State Lands Commission may determine and notify the city that the capital improvement is not in the statewide interest and benefit or is not authorized by the provisions of subdivision (j). The State Lands Commission may request the opinion of the Attorney General on the matter; and, if it does so, a copy of the opinion shall be delivered to the city with the notice of its determination. If the State Lands Commission notifies the city that the capital improvement is not authorized, the city shall not disburse any revenue for or in connection with the 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 the 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 improvements on lands transferred to the state pursuant to subdivision (h) 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). The excess revenue, as determined pursuant to this subdivision, shall be allocated as follows: 85 percent shall be transmitted to the 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 in 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 90 calendar days, for filing any report or statement required by this act, that was not filed due to mistake or inadvertence.

(n) If the city fails or refuse 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 from the date of the occurrence of the 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 determine to be 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 determines to be in probable conflict with 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 the tidelands and submerged lands is revoked for gross and willful violation 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 Commission 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) as to any lands transferred to the state pursuant to subdivision (h).

(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 subdivision (a) of Section 2 of this act. Whenever practicable, the city shall obtain the mineral rights in real property acquired pursuant to subdivision (a) of Section 2 of this act.

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

Sec. 2. (a) The City of Newport Beach shall establish a Tideland Capital Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Tideland Capital Fund shall be used by the city in conformity with the following terms and conditions:

(1) Expenditures from the fund may be made for the acquisition of real property that will further the purposes of the trust created by this act or for capital improvements for those purposes.

(2) The city may make 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 this act.

(3) For purposes of this subdivision, acquisition or improvement of real property by the city for purposes of enhancing the public trust lands administered by the Department of Fish and Game pursuant to Chapter 415 of the Statutes of 1975 shall be deemed to be authorized by, and to be in furtherance of, the trust created by this act.

(4) The city may expend municipal funds to acquire real property for purposes specified in this subdivision. The city may transfer amounts from the Tideland Capital Fund to reimburse municipal funds for any such expenditures, together with an appropriate amount of interest on the municipal funds advanced, if the State Lands Commission gives advance approval of the transaction.

(b) The city shall establish a Tideland Operation and Maintenance Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Tideland Operation and Maintenance Fund shall be used by the city for the operation and maintenance of the tide and submerged lands granted by this act and any additional lands and assets that are made subject to the public trust pursuant to this act in furtherance of the purposes of the trust created by this act.

(c) The city shall establish an Upper Newport Bay Restoration Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Upper Newport Bay Restoration Fund shall be used by the city for Upper Newport Bay environmental restoration and improvement on tide and submerged lands described in paragraph (3) of subdivision (a) or otherwise made subject to the public trust pursuant to this act and located in Upper Newport Bay, to do both of the following:

(1) Construct improvements to, or otherwise physically alter, those public trust lands if the construction or alteration directly benefits those lands.

(2) Fund environmental documents, planning studies, or scientific analyses, or experiments directly related to the improvement or enhancement of the habitat values of those lands and the water quality of the overlying waters.

(d) (1) Eighty percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Tideland Capital Fund described in subdivision (a) and in the Tideland Operation and Maintenance Fund described in subdivision (b), the allocation between those funds to be determined by the city.

(2) Ten percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Upper Newport Bay Restoration Fund described in subdivision (c).

(3) Ten percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Land

Bank Fund created in the State Treasury pursuant to Section 8610 of the Public Resources Code, available for expenditure by the State Lands Commission as described in subparagraph (B) of paragraph (1) of subdivision (f) of Section 4.5 of this act.

(4) The city may deposit in the city funds established pursuant to subdivisions (a), (b), and (c) any other income from the tide and submerged lands granted to the city pursuant to this act or from lands otherwise held in the public trust pursuant to this act that the city determines to be appropriate and consistent with this act and the public trust.

SEC. 3. Section 2.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 2.5. (a) The city may transfer to the trust created by this act, any city-owned real property not subject to the public trust for the purposes specified in Section 1 of this act. The city may compensate the city general fund for the fair market value of the transferred real property if the transfer and that expenditure of trust funds occur after January 1, 1998, and the State Lands Commission has given advance approval of the transaction.

(b) On or before December 31, 1998, the city shall dedicate as public trust lands, to be held subject to the public trust and the provisions of this act, any lands that the State Lands Commission has determined (1) have equal or greater value and utility to the public trust than the lands described as Parcels A, B, and C in Section 6 of this act and (2) that the dedication of lands as trust lands will provide satisfactory substitution for the requirements prescribed in subdivision (a) of Section 2 of this act as enacted by Chapter 74 of the Statutes of 1978. Upon a demonstration of necessity, the Executive Officer of the State Lands Commission may extend that deadline to not later than December 31, 1999.