

## Assembly Bill No. 425

### CHAPTER 361

An act to amend Section 2 of Chapter 317 of the Statutes of 1997, to add Sections 4.5 and 5.5 to Chapter 74 of the Statutes of 1978, and to add Sections 2 and 3 to Chapter 526 of the Statutes of 1919, relating to public trust lands.

[Approved by Governor August 27, 2004. Filed with  
Secretary of State August 30, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 425, Campbell. City of Newport Beach: public trust 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. Existing law specifies that, for purposes of provisions related to the City of Newport Beach establishment of a Tideland Capital Fund, 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 shall be deemed to be authorized by, and be in furtherance of, the trust created pursuant to existing law.

This bill would instead provide that, for purposes of those provisions acquisition or improvement of real property by the City of Newport Beach for purposes of enhancing the Upper Newport Bay Ecological Reserve shall be deemed to be authorized by, and in furtherance of, the trust created by those specified provisions.

The bill would authorize, upon formal concurrence of the State Lands Commission, that specified tide and submerged lands acquired by the City of Newport Beach and dedicated in trust to the city, be transferred and conveyed by the city to the County of Orange to be held in trust by the county pursuant to the terms of a specified statute. The bill would further permit the County of Orange, upon formal concurrence of the State Lands Commission, to transfer and convey to the City of Newport Beach specified tide and submerged lands to be held in trust by the city pursuant to the terms of a specified statute.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Subdivision (h) of Section 1 of Chapter 415 of the Statutes of 1975 directed the County of Orange and the State Lands Commission to

provide certain described lands in Upper Newport Bay to the Department of Fish and Game for the establishment, improvement and conduct of an ecological reserve, or wildlife refuge, or both, and other compatible uses.

(b) Subdivision (h) of Section 1 of Chapter 74 of the Statutes of 1978 authorized the City of Newport Beach to transfer portions of the lands conveyed to it by that act to 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. Subdivision (c) of Section 2 of Chapter 74 of the Statutes of 1978 further authorized the City of Newport Beach to acquire real property for purposes of enhancing lands administered by the Department of Fish and Game pursuant to Chapter 415 of the Statutes of 1975.

(c) The Upper Newport Bay Ecological Reserve has been established as an ecological reserve under the provisions of Article 4 (commencing with Section 1580) of Chapter 5 of Division 2 of the Fish and Game Code.

(d) Chapter 715 of the Statutes of 1984 authorizes the County of Orange and the City of Newport Beach to expend revenues from leases of certain described tide and submerged lands surrounding Harbor Island in Lower Newport Bay for purposes of enhancing the Upper Newport Bay Ecological Reserve.

(e) Section 2 of Chapter 317 of the Statutes of 1997 directed the City of Newport Beach to establish funds, including a Tideland Capital Fund and an Upper Newport Bay Restoration Fund, and authorizes the city to use the money in those funds on certain described lands administered by the Department of Fish and Game and other lands made subject to the public trust pursuant to that act and located in Upper Newport Bay.

(f) In addition to the lands granted by the Legislature to the County of Orange pursuant to Chapter 415 of the Statutes of 1975, the county has acquired additional lands adjacent to the Upper Newport Bay Ecological Reserve and desires to make these lands assets of the public trust and the legislative trust created by Chapter 526 of the Statutes of 1919, as amended by Chapter 415 of the Statutes of 1975. The State Lands Commission has approved the inclusion of these lands to be held as assets of those trusts and desires legislative adoption of the lands as trust assets.

(g) The lands described in Section 2 of Chapter 415 of the Statutes of 1975 included lands, which were the subject of, and affected by, the “Upper Newport Bay Settlement Agreement for Transfer of Certain Real Property to the County of Orange and the City of Newport Beach, Jointly, and the State of California by the Irvine Company and for



Settlement of Pending Litigation” (hereafter “agreement”), which was recorded on April 14, 1975, in Book 11376, Page 1514 of the Official Records of Orange County. Pursuant to that agreement, by the Grant Deed recorded on April 22, 1975, in Book 11382, Page 1876 of the Official Records of Orange County, the Irvine Company granted to the state, and the state acquired, by purchase from the Irvine Company certain described lands in and adjacent to Upper Newport Bay. The lands so acquired from the Irvine Company are included in the Upper Newport Bay Ecological Reserve. Some of those lands are subject to the public trust and others are not. The boundaries separating trust lands from non-trust lands in some of the Upper Newport Bay Ecological Reserve area have not been fixed. However, all of the lands, including those lands that are not subject to the public trust, are integral to the operation of the Upper Newport Bay Ecological Reserve and provide ecological benefits in the form of habitat that supports adjacent tide and submerged lands.

(h) It is the Legislature’s intent to authorize the trustees, the County of Orange, and the City of Newport Beach to expend revenues generated from public trust lands that the county and city hold pursuant to Chapter 415 of the Statutes of 1975, Chapter 74 of the Statutes of 1978, and Chapter 317 of the Statutes of 1997, on those lands described in subdivisions (c), (e), and (g) above.

SEC. 2. Section 2 of Chapter 74 of the Statutes of 1978, as amended by Chapter 317 of the Statutes of 1997: 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 section, acquisition or improvement of real property by the city for purposes of enhancing the Upper Newport Bay Ecological Reserve shall be deemed to be authorized by, and 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 operation and maintenance, as follows:

(1) On the tide and submerged lands granted by this act.

(2) On any additional lands and assets that are made subject to the public trust pursuant to this act.

(3) In furtherance of the purposes of the trust created by this act, including on lands and facilities within the Upper Newport Bay Ecological Reserve.

(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 lands described in paragraph (3) of subdivision (a) or otherwise authorized by, in furtherance of, or 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 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 4.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 4.5. The lands acquired by the City of Newport Beach, as described in instrument #139051436, recorded on January 7, 1981, in the Official Records of Orange County and dedicated to the trust by the city, as approved by the State Lands Commission pursuant to the Commission's Minute Item #27 on May 28, 1981, may, upon formal concurrence of the State Lands Commission, be transferred and conveyed by the City of Newport Beach to the County of Orange to be held in trust by the county pursuant to the terms of Chapter 415 of the Statutes of 1975.

SEC. 4. Section 5.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 5.5. The City of Newport Beach may, upon formal concurrence of the State Lands Commission, transfer and convey trust lands to the County of Orange to be held in trust by the county pursuant to the terms of Chapter 526 of the Statutes of 1919, as amended by Chapter 415 of the Statutes of 1975.

SEC. 5. Section 2 is added to Chapter 526 of the Statutes of 1919, to read:

Sec. 2. (a) The lands owned by the County of Orange, pursuant to the instruments recorded in the Official Records of Orange County listed in subdivisions (b) to (e), inclusive, listed below, and dedicated by the county to the trust on December 16, 2003, by Resolution 03-385, and approved by the State Lands Commission pursuant to the Commission's Minute Item #24 on April 5, 2004, as assets of the public trust, are hereby accepted as assets of the public trust and shall be held in trust by the County of Orange, pursuant to the provisions of this act.

(b) 85-138036 OR, recorded April 18, 1985.

(c) 85-138037 OR, recorded April 18, 1985.

(d) 89-388787 OR, recorded July 24, 1989.

(e) 90-395556 OR, recorded July 27, 1990.

SEC. 6. Section 3 is added to Chapter 526 of the Statutes of 1919, to read:

Sec. 3. The County of Orange may, upon formal concurrence of the State Lands Commission, transfer and convey trust lands to the City of Newport Beach to be held in trust by the city pursuant to the terms of



Chapter 74 of the Statutes of 1978, as amended by Chapter 317 of the Statutes of 1997.

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