

Newport Mooring Association

Objection to Proposed Shore Mooring Fee Increase

Date: January 31, 2022

To: The Newport Beach Harbor Ad Hoc Mooring Committee

Commissioner Bill Kenney

Commissioner Ira Beer

Commissioner Scott Cunningham

The Newport Mooring Association strongly objects to the proposed radical increase in the annual fees to be charged for recreational shore moorings located on California waterways in Newport Beach. The proposal would increase the annual fees charged by over 1,000% (from \$341 to \$4,320). The Newport Mooring Association also objects to the process by which this proposed rate increase was developed, which excluded public input and review.

Overview

The Newport Mooring Association (“NMA”), has studied the proposed fee increase, staff report and Netzer appraisal (“Netzer Report”), and finds that:

- The proposal significantly threatens affordable recreational boating
- The proposal highly discriminates in fees charged by the City of Newport Beach for other tidelands use in direct violation of the Beacon Bay Bill
- The proposal violates the reported and stated goals of the City to provide affordable boating access
- The proposal and methods used in the Netzer Report contradicts the customary method used for determining fees charged for tidelands use, including the State Lands Commission, and contradicts the City’s own 2017 appraisal and valuation of tidelands for almost all other use, and
- The Netzer Report itself is based on wrong mythology and contains numerous false assumptions and errors.

Given the radical nature of the proposal, the clear discrimination in rates prohibited by the Beacon Bay Bill, and the clear contraction in method, rates, and conclusions in the City’s own formal appraisal report for values charged for use of the tidelands, the NMA is requesting that any further discussion by the Harbor Commission be delayed no less than 90 days to allow the Commission, Staff, and the Stakeholders to provide input on any proposal to raise rates for the onshore recreational moorings.

Discussion

Boating and sailing are the heart and soul of Newport Beach. One needs only look at the logo of the City shown everywhere, from signs as you enter the City to the City's website and letterhead. The social and recreational activities in the area, the commercial, restaurant, and entertainment of the City, and the unique values of properties, are all uniquely connected with the current and historical connection to boating and sailing. Put another way, if the tidelands were just an open marshland, like those seen up and down the coast of California, Newport Beach would be nothing like it is today.

Preservation of this tradition is not possible without affordable and entry level boating and sailing. Young boaters and sailors learn their skills on smaller or older boats that are only in the harbor because there is affordable access. The Harbor Commission and the City should commit to supporting affordable boating and sailing. The NMA is concerned that, this Commission will be the first in the history of Newport Beach to take steps to displace, diminish, and destroy the importance of sailing and boating in Newport Beach.

I. Discrimination in Rates

The Beacon Bay Bill, often referenced by the City of Newport Beach as guiding its administration of the harbor, provides that:

(d) In the management, conduct, operation, and control of the lands or 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 (See Exhibit 1).

The proposed fee increase will clearly discriminate in rates charged for the use of the same tidelands. For example, in 2017 the City received an extensive appraisal from George Hamilton Jones ("GHJ Appraisal") which assessed the rental charges to be applied to most of the uses in Newport Harbor, most of which were commercial, and some non-commercial uses. Uses not covered were called "Other Uses." In effect, the rates charged for every one of these uses, from large marinas, small marinas, fuel docks, shipyards, yacht club guest slips and "other uses" looked at the square footage of tidelands used by the particular use and applied a similar rate (with some very minor adjustments), including a few discounted rates. The general non-discounted rate was \$.76 (76 cents) a square foot per year for the use of that area of tidelands. That amount was indexed to a CPI adjustment which is still in use, and today's published rate is \$.83 per square foot per year, including the rate for "other uses." This rate has already been published by the City for 2022 and 2023 (See Exhibit 2).

The Netzer report assumes the square footage of tidelands used by a shore mooring is 288 square feet (36 ft x 8ft = 288). While the NMA believes the square footage is substantially lower, using the Netzer calculations, and applying the City's published and approved non-discounted published rates, the annual, non-discriminatory rate for a shore mooring would be \$240 per year (288 x \$.83 = 239.04). This is a rate somewhat less than the current rate.

Unless the Commission and City were to recommend a substantial increase in rates being charged to the various Newport large marinas, small marinas, restaurant docks, shipyards, and guest docks, in singling out the recreational shore moorings for a 10 times increase in yearly charges charged for the very same tidelands would be clearly a discrimination in rates, tolls, or charges in uses that cannot be justified in any manner, and would be an outrageous violation of the City's obligations under the Beacon Bay Bill.

II. Violation of the City's Reported Commitment to Affordable Boating

The NMA believes that the Staff report incorrectly implies that the City's hands are tied and that the City must charge maximum fair market permit fees. In reality, the City has in the past taken a more reasonable, fair and affordable approach to setting mooring fees.

- A. The staff report should point out that that the precedent setting City resolution on setting mooring fees (Res #2016-17) gives the City flexibility in setting fair, reasonable and affordable mooring fees.
- B. The staff report dated 1/12/2022 incorrectly states that the state lands grant (aka Beacon Bay Bill) requires the City to charge fair market rents (as if they were landlords in the private sector renting real estate without regard to other factors, including providing accessible and affordable recreational use of the tidelands). The "fair market" language in the Beacon Bay Bill, however, only relates to the private residential lots in Beacon Bay, and not the tidelands in general (**See Exhibit 1**). Any local ordinance or resolution that relies on or repeats the incorrect reading of the Beacon Bay Bill cannot be used to justify increases in recreation uses in the Harbor. In fact, the City has always recognized special treatment for recreational use considerations. See, for example, the City's justification for lower rates charged for recreational and other uses of the tidelands in relation to boating activities – the City's Resolution 2017-49, Section 3 (**See Exhibit 3, and Compare Different Rates in Exhibit 2 for Tidelands use**).
- C. The staff report should also include City Council Policy F-7 (E) (**Exhibit 4**) which gives the city flexibility and discretion to keep fees at an affordable level for recreational purposes.

- D. The State Lands Commission (SLC), the State agency responsible for oversight of these tidelands, has approved, and utilizes better methodologies (ie. Benchmarking) in determining fair and reasonable tideland fees. Resolution 2016-17, NBMC 17.60.060 (D) and the Beacon Bay Bill (**Exhibit 1**) give the City citywide discretion in determining the best methodology in determining fair and reasonable rents for moorings. Moreover, in the Tomales Bay Mooring Valuation Report (**Exhibit 5**), just one year ago, SLC has used a totally different mythology, a methodology consistent with the method used by the City of Newport Beach in its GHJ Appraisal 2016/2017 valuation of rates for different uses of the tidelands in the harbor.

- E. The staff report fails to include, and should include, City Policy 3.3.2-3 (LCP/CLU) (**Exhibit 6**) whereby the City will continue to provide shore moorings as an important source of low-cost public access to the water and harbor. The omission of this policy from the staff report is a failure to inform the Harbor Commission, City Council and the general public that the city has made a promise to keep mooring fees reasonable and affordable which is an important factor in determining any discretionary fee increase.

III. The Netzer Report Ignores State and City Approved and Established Methods

The proposed Netzer Report takes a radically different approach to the approach to valuing what his report refers to as the 288 square feet of tidelands in question. Again, while the NMA disagrees with the amount of square footage of tidelands the Netzer Report assumes in taken up by a shore mooring, the report ignores the methods used by both the City, the City's appraiser, and by State Lands when valuing an appropriate fee to be charge for the use of tidelands in general, and in Newport Harbor in particular. Staff and Counsel should review both the 2016/2017 GHJ Appraisal and City resolution regarding the rates and methods applied to valuation of the Newport Harbor tidelands, and also review and include the methods used by SLC in its recent determinations of rates to be charged in SLC's Tamales Bay Report.

IV. The Netzer Report Uses the Wrong Methods and Contains Numerous Errors.

The NMA has received input from owners who have boats on recreational shore moorings, from real estate professionals, and numerous other people familiar with shore moorings and appraising. The NMA has also considered comments by Commissioners at the last

Harbor Commission meeting who, themselves, had concerns about the methods and assumptions in the Netzer Report. Among these we note the following:

- A. **Ignoring Established Methods.** The report totally ignores the methods of both the City in the recent past appraisal, and the methods used by State Lands, and is a major mistake. The State Lands report clearly says it is using the principle of “Substitution” – namely what the State would receive for the same tidelands if rented to a known use such as a marina owner. In effect, that was the same method used by the 2016/2017 City approved appraisal. The Netzer report states clearly that it is not using the principle of Substitution, ignoring established methods, and instead makes up methods never seen before as the report struggles to establish a type of “comparable” that the Netzer report admits does not exist, or did not want to go to distant harbors to find.
- B. **Use of Wrong Comparables.** Using the price of expensive land and comparing land to water (tidelands) makes no sense and is not any type of established method. Put simply, you can build a house on land, but not on water, and the values simply can’t be compared.
- C. **Not understanding A Shore Mooring.** To “compare” to properties or two items one needs to understand how the two are alike and not alike. The Netzer report clearly shows a lack of understanding of how shore mooring are used, and compares a shore mooring to a slip without proper evaluation and proper offset for:
 - lack of walk-on access,
 - lack of electricity,
 - cost of batteries needed to start an engine,
 - lack of water,
 - lack of restrooms,
 - lack of dedicated parking,
 - lack of trash removal,
 - dealing with and cost of installing and maintaining the buoy system,
 - cost of installing and maintaining the lines to the shore,
 - cost of installing and maintaining the post on the beach,
 - the monthly cost of cleaning the lines which get covered with marine life,
 - having to often step into the water to launch to boat or to leave the boat
 - finding that the boat is on the beach and cannot be used many days
 - the weight of the boat that does not allow it to be pulled off the beach

Each of the above would need to be understood with an appropriate off-set when attempting to compare a shore mooring to dock space for an 18-foot boat. The Netzer report discount allocated does not come close to taking these factors into account.

- D. **Failure to Account of Capital Investment.** In comparing a shore mooring to a slip, there is no consideration to the fact that, unlike a person renting slip space, the person using a mooring is likely to have a substantial capital investment of \$20,000 to \$25,000. A person renting a slip does not have to pay any money other than rent. In addition, people who rent small slips often take their boats out and put them on a trailer for the winter months. Fees for shore moorings are on an annual basis and are payable whether or not you have a boat on the mooring.
- E. **The Reference to the Lido Leases is Limited.** This reference to the Lido Island leases is very limited and does not take into consideration the walkway available to the mooring, the upkeep of the sandy beaches compared to the mud bottom and difficulty of access of shore mooring located elsewhere.
- F. **Using the wrong size for a mooring for calculations.** The mooring takes up the water the boat sits on. It has no side fingers for access to the boat, and the area surrounding the shore mooring is available to swimmers and the public. An 18-foot boat, with a 7-foot beam, only takes up 126 square feet, plus 4 square feet for the buoy. The report uses a far larger area. Moreover, there are boats that are less than 18 feet, and using an average of boat sizes would be more appropriate for calculations. By contrast, a marina typically has very few boats that are less than the length of the slip.

The NMA has also had the Netzer appraisal report reviewed by an MAI commercial appraiser, who is a 20-year MAI commercial appraiser with CBRE (the world's largest real estate services company). He is a Newport Beach resident who is very familiar with shore moorings. After his unofficial review of the Netzer report, he stated that he found it to be "completely without merit and unsupported." He also wrote that if Mr. Netzer attempted to defend his report in Court, the report "would get picked apart to oblivion." After he sent his comments, he was asked to look at NMA's above stated comments on the report, and he responded that the NMA's comments are "thorough and excellent."

CONCLUSION AND REQUEST TO CONTINUE

For the reasons stated above, and given the major public interest in the issue, and the important of current and future boating and sailing in Newport Harbor, and given the extraordinary proposed increase in fees, and given what appears to be a proposal that clearly discriminates in use rates, and a clear violation of the Beacon Bay Bill, and given the clear contraction in methods, rates, and conclusions in the City's own formal appraisal report for values charged for use of the tidelands, as stated above, the NMA is requesting that any further discussion by the Harbor Commission be delayed no less than 90 days to allow the Commission, Staff, and the Stakeholders to provide input on any proposal to raise rates for the onshore recreational moorings.

**Newport Mooring Association,
Approved by the Board of Directors**

EXHIBITS

Exhibit 1 – Relevant Sections of the Beacon Bay Bill

[Ch. 317] STATUTES OF 1997 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.]

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 us es 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.

EXHIBIT 2 - COMMERCIAL TIDELANDS PERMITS AND LEASES

Commercial use of City Tidelands within Newport Harbor is allowed with the issuance of an annual Commercial Tidelands Permit or under a Commercial Tidelands Lease Agreement.

Permit or Lease Documents

The choice between a Permit or Lease document is at the commercial tidelands user's discretion. Please find samples of the annual Permit and Lease here:

- [Annual Commercial Tidelands Permit](#)
- [Commercial Tidelands Lease Agreement](#)

To obtain a Permit or Lease, please complete and return one of the following forms:

- [Request for Permit Form](#)
- [Request for Lease Form](#)

Transfers

To transfer a Permit or Lease, please follow the instructions found here:

- [Transfer Instructions](#)

Rental Rates

The annual rental rate for each commercial tidelands user is determined based on the type of activity(ies) occurring upon the tidelands, and the square footage dedicated for each activity.

The following rates are effective March 1, 2021 through February 28, 2023:

| Commercial Use Category* | Annual Rental Rate (Per SF) 3/1/21 - 2/28/22 | Annual Rental Rate (Per SF) 3/1/22 - 2/28/23 |
|---------------------------------|---|---|
| Large Commercial Marinas | \$1.26 | \$1.34 |
| Medium Commercial Marinas | \$0.96 | \$1.02 |
| Small Commercial Marinas | \$0.83 | \$0.88 |
| Shipyards | \$0.40 | \$0.42 |

| | | |
|---|---------------|---------------|
| HOA Marinas/Docks for Non-members' Use | | |
| > 30,000 SF | \$1.26 | \$1.34 |
| 13,000 SF to 30,000 SF | \$0.96 | \$1.02 |
| < 13,000 SF | \$0.83 | \$0.88 |
| Yacht Club Guest Slips | \$0.40 | \$0.42 |
| Free Public Access Docks (not associated with a restaurant) | \$ - | \$ - |
| Vessel Rental Facility (Boat Rentals) | \$0.83 | \$0.88 |
| Sport Fishing Charters | \$0.83 | \$0.88 |
| Restaurants' Guest Slips | \$0.40 | \$0.42 |
| Vessel Charters | \$0.83 | \$0.88 |
| Fuel Docks * | \$0.83 | \$0.88 |
| All Others | \$0.83 | \$0.88 |

*The Annual Rental Rate for commercial tidelands being used as Fuel Docks can be calculated one of three ways, per City Council Resolution No. 2018-09. The table above reflects the base rent only calculation option.

Beginning on March 1, 2019, annual rental rates may be adjusted on the first day of March each Permit/Lease year to reflect an increase in the cost of living, as indicated by the Consumer Price Index. Additional information regarding rental rates can be found in City Council Resolution No. [2017-49](#) and [No. 2018-09](#).

From: <https://www.newportbeachca.gov/government/departments/harbor/harbor-charges/commercial-tidelands-permits-and-leases>

Exhibit 3 - Section 3 of Resolution 2017-49

Section 3: The City Council sets the rental rates, phase-in, and adjustments contained in the attached *Commercial Tidelands Rent Calculations For Commercial Uses Located Upon Tidelands* for Shipyards, Yacht Club Guest Slips, and Free Public Access Docks (not associated with a restaurant) at less than fair market value. Pursuant to City Council Policy F-7(E)(6), **the City Council finds charging less than fair market value rent for these specific uses promotes the goals of the City to further marine-related services and activities. More specifically, the City Council finds charging less than fair market value rent for these uses promotes public recreation facilities and marine services to the general public, furthers the policies and objectives of the Beacon Bay Bill, and allows for continued operation and improved accessibility to the public.** Thus, the charging of less than fair market value rent for these uses of the Tidelands is a matter of state-wide concern that benefits the citizens of the State of California.

Exhibit 4 - City Council Policy F-7 (E)

NB City Council Policy F7 (paragraph E) allowing city to discount for recreational public use

- E. However, in some circumstances the City may determine that use of a property by the public for recreational, charitable or other nonprofit purpose is preferred and has considerable public support, in which case the City may determine that non-financial benefits justify not maximizing revenue from such property. In such circumstances, the City has a vested interest in ensuring that the lessee of such property operates the activities conducted on or from the property in the manner that has been represented to the City throughout the duration of any lease or contract with the City.

Exhibit 5 - Tomales Bay Mooring Valuation Report

(Excerpt re Mooring Fee Methodology)

Meeting Date: 12/17/20 -Work Order Number: W27247 Staff: D. Tutov, K. Foster

Staff Report 28 - LAND TYPE AND LOCATION: Sovereign land in Tomales Bay, Marin County

Category 1 Benchmark Methodology

Leases are issued by the Commission for private recreational facilities such as docks, piers, and buoys/mooring poles. These facilities offer many of the same amenities as a commercial marina, such as a place for the docking and mooring of boats and the loading and unloading of passengers and equipment. In this manner, these privately owned facilities represent a substitute for a commercial marina berth/buoy. **Accordingly, the method of valuation used in estimating a fair return and a fair rental value is based on what an individual would pay for a similar substitute site in a commercial marina.** Since a Commission-leased site for a privately owned pier or dock is a reasonable substitute for a marina berth, a lessee occupying state land should pay a similar rate for the leased site as the state would receive for leasing the land to a commercial marina.

The current methodology for setting rent for berthing vessels at docks and piers occupying state-owned sovereign land is *based on the principle of substitution described above*. The first step in setting the Tomales Bay Berths Benchmark is to survey local marinas to determine their rental rates. Marinas usually rent their berths on a per-linear-foot basis, based on the length of the berth or vessel. For benchmark purposes, the average surveyed rental rate is used. The rate is multiplied by the average or typical berth length as indicated in the survey data. Based on these inputs, the annual gross income is calculated. For Category 1 benchmarks the State's rent is based on a 5 percent rate of return of this annual income, which represents a comparable fair market compensation rate for the use of State-owned sovereign land. The State's rent is then converted to a per-square foot basis using a table calculated by the California State Parks Division of Boating and Waterways 2005 publication titled "Layout and Design Guidelines for Marina Berthing Facilities" (DBW berthing publication). This publication provides formulas and tables for calculating the submerged land area needed to accommodate various sizes and layouts of berths in marinas. Among other variables, the formulas account for the berth length, berth layout (single or double), and the type of vessel (powerboat or sailboat). The publication can be requested from the Department of Boating and Waterways [here](#).

Category 1 Tomales Bay Benchmarks

The Commission has been using the Tomales Bay benchmarks since 2010. They were last updated in 2015, when the rates were set at \$0.114 per square foot for berths and \$125 per buoy.

For determining the proposed new rental rates, the following summary describes the methodology; more detailed information is included in Exhibit C. A total

of four marinas and/or buoy fields in Tomales Bay were identified. However, due to the lack of comparable rental data information for three of the locations (Marconi Cove Marina, Inverness Yacht Club, and Lawson's Landing), the Tomales Bay Resort (previously Tomales Bay Lodge and Marina, and the Golden Hinde Marina) was the only marina located in Tomales Bay used in the analysis for this benchmark.

Because of the limited number of marinas in Tomales Bay, a survey was done of other nearby marinas outside of Tomales Bay that might be used in absence of the three marinas acknowledged above. Four nearby marinas with slips were also used: Spud Point Marina, Mason's Marina, and Porto Bodega in Bodega Bay, approximately 20 miles northwest; and the Petaluma Marina on the Petaluma River, approximately 24 miles northeast. Thus, a total of five commercial marinas with slips were used in the analysis of the current Tomales Bay benchmark.

These five marinas with berths reported a total of 652 berths available to the public, or an average of 130 berths per marina. The average occupancy was reported at 85 percent.

The survey found that berth sizes in Tomales Bay, Bodega Bay, and the Petaluma River ranged from 12 to 80 linear feet, **with an average of approximately 31 linear feet. Rent for berths is commonly expressed in terms of dollars per linear foot (per month). The survey data yielded an average rent for berths of \$6.20 per linear foot.**

The benchmark rental rate for berths is calculated by multiplying the average berth length by the average monthly rental rate. The product is then multiplied by 12 months to arrive at the gross annual income. **The gross annual income is multiplied by 5 percent to get the income attributable to the submerged land.** The income attributable to the submerged land is then divided by the amount of submerged land needed to accommodate the average berth length within a marina.

Using the DBW berthing publication described above, the submerged land area used in this benchmark analysis is based on a double berth layout (on the premise that it was the most economically efficient for the marina operator) and represents an average of the powerboat and sailboat berths.

From the tables in the publication, **a submerged area of 865 square feet is shown as being necessary to accommodate the 31-foot average slip length indicated by the survey.**

Taking all the inputs into account, the proposed benchmark rental rate is calculated as follows:

31-foot average berth size x \$6.20/linear foot average berth rate = \$192.20/berth/month

\$192.20/berth x 12 months =

\$2,306/berth/year \$2,306 x 5 percent of

gross income = \$115.30 \$115.30 ÷ 865

square feet = \$0.133/square foot

PROPOSED BERTHS BENCHMARK RENTAL RATE = \$0.133/SQUARE FOOT [NMA Comment: This this the annual, not monthly rental rate]

Other than the leases being issued by the Commission, there is no independent market for buoys in Tomales Bay. Therefore, the current minimum annual rent of \$140 is proposed to be applied per buoy. The minimum rent for a Recreational Use lease is set by California Code of Regulations, title 2, section 2003, subdivision (b), and as revised by Commission action on June 28, 2019 ([Item 92, June 28, 2019](#)).

PROPOSED BUOYS BENCHMARK RENTAL RATE = \$140/BUOY

The table below summarizes the comparison between the 2015 and 2020 benchmark rates (**Note by NMA – these are annual not monthly rates**).

Figure 1. Tomales Bay Benchmarks

| Tomales Bay Benchmark | 2015 | 2020 [NMA note : fee per year] |
|-----------------------|---------------------|--------------------------------|
| Category 1 Berths | \$0.114/square foot | \$0.133/square foot |
| Category 1 Buoys | \$125 | \$140 |

[NMA Comment: The entire report can be found here]:

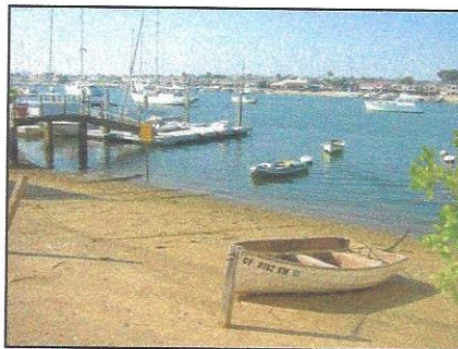
https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2020/12/12-17-20_28.pdf

Exhibit 6 - City Policy 3.3.2-3 (LCP/CLU)

3.3.2-3. Continue to provide shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor.

3.3.2-4. Provide anchorages in designated areas, which minimize interference with navigation and where shore access and support facilities are available.

3.3.2-5. Continue to enforce the ordinances that require moored and docked vessels to be seaworthy and navigable and thereby preserve the positive image of the harbor and promote public use of the water.



11th Street boat launch and onshore moorings

3.3.2-6. Protect, and where feasible, enhance and expand guest docks at public facilities, yacht clubs and at privately owned-marinas, restaurants and other appropriate locations.

3.3.2-7. Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest docks, club guest docks, pump-out stations and other features, through City, County, and private means.

3.3.3 Harbor Support Facilities

Harbor support facilities are uses, equipment, and vessels that provide repair, maintenance, new construction, parts and supplies, fueling, waste removal, cleaning, and related services to vessels berthed in, or visiting the harbor. Harbor support facilities are considered essential to maintaining a working harbor.

Increased environmental regulation and real estate price inflation in coastal communities have impacted a number of harbor support businesses. Those businesses that do not have to be on the water have moved to inland locations. Those that are more water dependent have been involved in land use conflicts with residential and other land uses. Newport Beach has used land use controls as the primary method to provide for the continuation of harbor support uses and minimize land use conflicts. However, additional strategies and incentives may be necessary to protect these facilities.