

RESOLUTION NO. 216161

JUN 9 1976

WHEREAS, the matter of the improvements including docks and piers which exist in an area of Crescent Bay in Mission Bay Park which area is subject to leases which expire May 31, 1976, was referred by the Public Facilities and Recreation Committee to the Park and Recreation Board for recommendations; and

WHEREAS, on March 16, 1976, the Park and Recreation Board adopted the following resolutions:

Crescent Beach Development Association Lease: That all of the encroachments be removed, except that the ZLAC dock-- if a suitable, bona fide public organization is incorporated, chartered and is able to arrange appropriate terms with the City--be leased to such an organization for rowing purposes.

F. T. Scripps Lease: That the fence at the end of the Catamaran property currently preventing access to the beach be removed; that all docks in the western area where the beach is accessible to the public or could easily be made accessible be removed, except that the Catamaran dock--since it is public--might remain, if they are able to enter into a suitable lease with the City; that docks in the eastern area where there is no practical public passage at this time continue to be there on a permit basis, if they meet all legal requirements, subject to removal when a program for providing public access is made.

; and

MICROFILMED

MAY 24 1978

01702

WHEREAS, on April 20, 1976 the Park and Recreation Board reconsidered its March 16 resolution with regard to the Crescent Beach Development Association lease and after such reconsideration adopted the following resolution:

The Park and Recreation Board endorses the concept of existing dock owners forming a non-profit association to rent or obtain the appropriate license pertaining to the existing "approved" docks and slips on a non-preferential basis, if the appropriate organizational vehicle to manage the situation can be established, and if the encumbrances crossing the usable beach area are removed and all public accesses are opened. The revenues derived from such operation should be placed in a special fund and used solely for the development and improvement, in accordance with current plans of the Crescent Beach area for the use of the general public, as soon as practical. The City should retain the right to terminate occupancy of the docks on short notice. It is the intent of the Park and Recreation Board that the continuance of the docks' presence be considered only a temporary condition in that, with the more extensive development of the beach area, the docks would be removed at the expense of the association.

; and

MICROFILMED

MAY 24 1978

216161 01703

WHEREAS, the Public Facilities and Recreation Committee, at its meeting of April 26, 1976, discussed, heard public input, and considered the recommendation of the Park and Recreation Board and recommended that the following resolution be adopted; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the recommendations of the Park and Recreation Board, dated March 16, 1976 as modified by said Board at its April 20, 1976 meeting, are hereby accepted and approved with the following amendments:

1. The recommendations contained in the Report to the Honorable Mayor and City Council from the City Manager dated June 7, 1976 on the subject of Crescent Bay are hereby accepted and incorporated into this resolution, attached hereto as Exhibit A.

2. Anything to the contrary in the recommendations of the Manager and the Park and Recreation Board notwithstanding, the docks which are recommended for modification and public use, as opposed to immediate demolition and removal, shall be operated by the City for the benefit of the general public.

3. The City Manager and City Attorney are authorized and directed to prepare for execution by the owners of the docks which are to be allowed to temporarily remain, an operating agreement which shall contain the following basic provisions:

a. The docks shall remain privately owned.

MICROFILMED
MAY 24 1978

- b. The City will operate the docks and make them available to the general public on a non-preferential and nondiscriminatory basis.
 - c. The dock owners shall provide public liability insurance and a performance bond to guarantee removal of the docks on or before June 8, 1978.
 - d. The dock owners shall modify the docks in such a way as to provide approximately 25 feet of access between the dock and the private property lines.
 - e. The City will charge appropriate rents for the use of the docks and from the revenues received from such rents shall provide necessary maintenance and utility costs, if any.
 - f. The City Manager and City Attorney are authorized and directed to prepare appropriate encroachment agreements for those docks which are to be allowed to remain within the Scripps Lease area, other than the Catamarran dock, which encroachment agreements shall provide for removal of such docks on or before June 8, 1978.
4. In the event any owner declines to enter into an operating agreement or encroachment agreement in accordance with the Council direction, the City Manager shall require the immediate removal

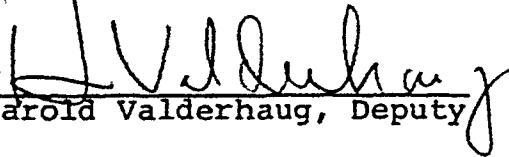
MICROFILMED

MAY 24 1978

216161 01705

of the dock or docks in question.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold Valderhaug, Deputy

HOV:n
7-6-76 (Rev.)
Or. Dept. P.F. & R. Committee

-5-

MICROFILMED
MAY 24 1978

216161

01706

REPORT

THE CITY OF SAN DIEGO



To the Honorable Mayor and City Council From the City Manager

DATE ISSUED: June 7, 1976

FOR DOCKET OF: June 9, 1976

SUBJECT: Crescent Bay

REFERENCES: Report to Council dated June 2, 1976, same subject.
Report to Council dated May 24, 1976, same subject.
Report to Public Facilities and Recreation Committee dated April 23, 1976.
Report to Public Facilities and Recreation Committee dated April 22, 1976.
Report to Public Facilities and Recreation Committee dated November 15, 1974.

At the Council meeting of June 2, 1976, the Council directed that the Manager provide certain additional specific information regarding the docks in Crescent Bay to that contained in the referenced reports listed above. The information desired by Council has been broken down into four basic questions which are indicated below with the Manager's response following each question. For identification purposes, the 28 docks in Crescent Bay have been numbered clockwise starting with Dock #1 which abuts the Catamaran Hotel.

Question 1:

Which docks should be demolished immediately at owner expense?

Docks #2, 3, 4, and 5 located between the Catamaran dock and Braemar Lane should be removed immediately because they effectively serve as a barrier to the public's use of this portion of the beach. These docks are in good condition.

Dock #8 located at the mid-point between East and West Briarfield Drives appears to be entirely on private property. If the survey presently being conducted indicates that any of the dock is on City property, that portion thereof should immediately be removed since it is in poor condition. It is anticipated that this survey information will be available on or about July 20, 1976.

EXHIBIT 'A'

MICROFILMED

MAY 24 1978

216161 01707

Question 1: (cont.)

Docks #14, 15, and 16 located immediately west of Everts Street should be removed immediately because they are in poor condition.

Docks #18 and 19 located immediately east and west of Fanuel should be removed immediately because of their poor condition.

Dock #22 located immediately south of Graham Street should be removed immediately because of its poor condition.

A portable dock located between docks #25 and 26 (and not shown on the map) should be removed immediately because of its poor condition.

In all of the above cases, the cost of removal should be borne by the lessee. If, for any reason, the lessee is unwilling to remove the docks, it should be done by City forces and Council should direct the City Attorney to seek reimbursement for this work from the lessee through legal means.

Question 2:

Which docks should not be demolished immediately, which would include those that are in good condition and (a) are accessible to the public now; (b) are not accessible to the public now but could be modified immediately to provide public access at owner expense; (c) are not accessible to the public now but may be depending on the nature of the development plan?

The balance of the docks should remain pending the start of construction of the public improvements in Crescent Bay. Modifications required to make these docks accessible and usable by the public are:

Dock #1 is at the Catamaran Hotel and no modification is required.

Docks #6, 7, 9, 10, and 11 are only usable from private property and need not be modified at present because the actual tide line generally extends up to the private property line and the docks do not interfere with the use of the beach. They should be permitted to remain for private use on an encroachment permit basis until the commencement of the development work indicated above. These structures cannot be modified for public use.

Dock #12 is at the Zlac Rowing Club. Steps should be installed by the lessee to permit people to cross this dock while staying on the public beach. It is further recommended that this dock be temporarily retained in this portion of Mission Bay if a suitable public organization contracts with the City to lease this facility for public rowing purposes.

MICROFILMED

MAY 24 1978

216161 01708

Question 2 (cont.)

Docks 13,^{17,} 20, 21, 23, 24, 25, 26, and 27 should be modified by removing portions of the docks which presently impede pedestrian use of the beach area. Free and clear pedestrian access of 25 feet should be maintained at these locations between the private property line and the shoreward end of the pier.

All of these modifications should be performed at the lessees' expense. It is not anticipated that any docks which are presently not accessible will become accessible as the result of the development plan. It is anticipated that when the development of Crescent Bay is completed, only the Catamaran and Zlac docks will remain. The others will have been removed thereby opening up public unimpeded use of existing or increased beach area.

Question 3:

What are the implications of City ownership: (a) liability, (b) use control process, (c) maintenance responsibilities, and (d) other implications?

The continued existence of the above docks under City ownership would create potential City liability and would place all maintenance responsibilities on the City. If the above docks are permitted to remain pending the commencement of improvements, a total of 92 berthing spaces will be available, 73 of which would be designated for public use. It is anticipated that persons wishing to sign up for these 73 berths will submit a request in writing to the Aquatics Division and a "drawing" will be held to select those individuals who can use the docks. This process is necessary since the City is legally constrained from giving anyone a preferential privilege for use of the public docks. Not only the maintenance responsibility but the remodeling of the piers to create a public access would become the City's responsibility and not the dock owners' responsibility.

Question 4:

What legal action should be taken for the City to assume ownership with responsibility for dock removal by the owner at a later date, if required, i.e., (a) some sort of additional legal agreement and (b) how long can the docks remain in private ownership before necessary agreements should be executed (i.e., so as to not hurt our legal standing in requiring the owner to pay for removal at a later date)?

MICROFILMED

MAY 24 1978

216161 C1709

Question 4: (cont.)

We have been advised by the Attorney's office that (a) in order for the City to assume ownership and still assure that the "lessees" remain responsible for dock removal, it would be desirable that an appropriate additional written agreement be entered into between the City and the "lessees" and (b) if the docks remain in private ownership, since the statute of limitations with regard to filing suits for breach of written contract is four years and since the "lessees" have a contractual obligation to remove the docks "on or after June 1, 1976" pursuant to the 1960 agreement, the City has four years after the breach in which to file a legal action. In order to determine when the four year period begins, it is desirable that demand be made upon the "lessees" to remove the docks by some specific date within a 60-120 day period after June 1, 1976.

Respectfully submitted,



HUGH MC KINLEY
City Manager

Mendoza

MICROFILMED

MAY 24 1978

216161

01710

JUN 9 1976

Passed and adopted by the Council of The City of San Diego on
by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lee Hubbard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Gade	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Ellis	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jess D. Haro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

EDWARD NIELSEN

City Clerk of The City of San Diego, California.

By *Kathleen Martinez*, Deputy.

RECEIVED *LB*
CITY CLERK'S OFFICE
1976 JUL -7 PM 2:29
SAN DIEGO, CALIF.

Office of the City Clerk, San Diego, California	
Resolution Number	216161
Adopted	JUN 9 1976

CC-1276 (REV. 12-75)

MICROFILMED

MAY 24 1978

01711