

~~MINUTE ITEM~~  
This Calendar Item No. 20  
was approved as Minute Item  
No. 20 by the State Lands  
Commission by a vote of 3  
to 0 at its 4/26/89  
meeting.

CALENDAR ITEM

A 74  
S 37

20

04/26/89  
W 24223  
Townsend

DENY APPLICATION FOR  
GENERAL LEASE - PUBLIC AGENCY USE

APPLICANT: Michael D. Farrier, Secretary,  
Board of Directors  
Capistrano Bay Community Services District  
35000 Beach Road  
Capistrano Beach, California 92624

APPLICANT STATUS:  
Applicant is owner of upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:  
Filing fee and processing costs have been  
received.

STATUTORY AND OTHER REFERENCES:  
A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.  
B. Cal. Code Regs.: Title 2, Div. 3;  
Title 14, Div. 6.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. The Capistrano Bay District is a California Community Services District formed pursuant to Section 61000 et seq. of the Government Code. Its westerly boundary lies, for its entire length, next to State-owned beaches on the Pacific Ocean.

The District submitted an application for a General Lease - Public Agency Use, which would provide it with the official sanction

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to enforce animal control laws along the entire beach area. The District passed Ordinance 113A which authorizes and directs the public officers and employees of the District to enforce Section 4-1-45, of the Ordinances of the County, on the State's land.

Immediately prior to making a recommendation to the Commission, problems arose relative to the District's application. The first and primary of these problems was the incorporation of the City of Dana Point, effective January 1, 1989. It is now necessary for the District to obtain authorization from the City to enforce animal control laws. Second, staff has been informed that there is public controversy regarding the District's application. Staff feels that the grievances which were presented to it are of a local nature, and should be resolved at that level. In addition, staff advised the District that it has been the past practice of the Commission to work with a full-service agency that is empowered to provide all of the necessary services to State-owned land, for a long period of time. These services may include, in addition to police powers, trash receptacles and related services, signs, lifeguard services, etc.

Staff met with the City Manager of Dana Point, and staff of the District to determine if these problems were resolvable. The City has determined that it will contract with the County or with a neighboring City for this particular police power. It has not, however, decided which entity it will select. Another question which arose was whether or not the District can enforce this police power outside of its boundaries. It was determined that the controversy regarding the District's application stems from inside the District itself, and staff continues to believe that it should be resolved at that level. Due to the time period for action by the Commission, staff recommended that the

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District withdraw its application and resubmit it, pending a meeting with the County to further resolve its concerns.

A meeting was held with County staff as well as with a representative of the City. The County indicated that it will be conducting a study to determine the cost effectiveness of providing this police power to those cities which are presently under contract. The City indicated the probability that it will contract with the neighboring City of San Clemente. The specific functions that can be exercised by the District remain questionable; however, based on an Opinion from the County Counsel, County of Orange (OP. 81-173; C-1320) any arrest made below the mean high tide line would in effect be a private person arrest pursuant to Penal Code Section 837.

In conclusion, staffs of the Commission, the City, and the County all concur that the transfer of this police power to the District would create an overlapping of jurisdiction with the City, or the entity that the City will contract with to provide this service. Staff of the Commission recommends that the application resubmitted by the District be denied.

2. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to P.R.C. 6370, et seq. However, the Commission has declared that all tide and submerged lands are "significant" by nature of their public ownership (as opposed to "environmental significant"). Since such declaration of significance is not based upon the requirements and criteria of P.R.C. 6370, et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by 2 Cal. Code Regs. 2954 is not applicable.

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3. 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 statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: P.R.C. 21080(b)(5) and 14 Cal. Code Regs. 15270.

- EXHIBITS:
- A. Land Description.
  - B. Location Map.

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 STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080(b)(5) AND 14 CAL. CODE REGS. 15270, PROJECTS WHICH A PUBLIC AGENCY REJECTS OR DISAPPROVES.
2. DENY THE APPLICATION SUBMITTED BY THE CAPISTRANO BAY COMMUNITY SERVICES DISTRICT FOR A GENERAL LEASE - PUBLIC AGENCY USE, FOR THE ENFORCEMENT OF ANIMAL CONTROL REGULATIONS ON THE LAND DESCRIBED IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

**EXHIBIT "A"**

**LAND DESCRIPTION**

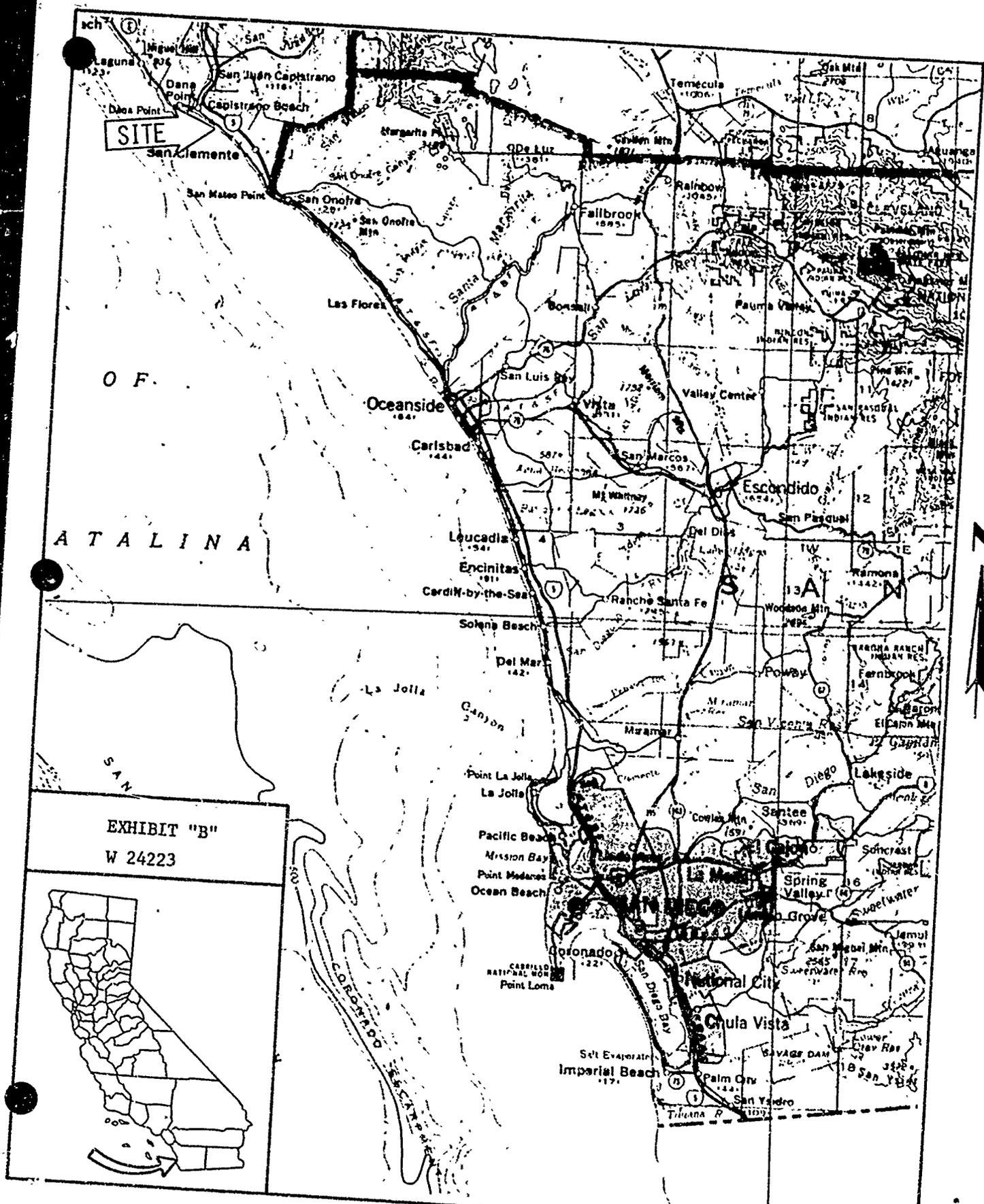
**W 24223**

A strip of tide and submerged land 500 feet wide in Capistrano Beach, Orange County, California lying adjacent to and seaward of Block "C" of Tract 797 recorded in Miscellaneous Maps Book 24 Pages 10 through 15, and all of Tract 889 recorded in Miscellaneous Maps Book 27 Pages 17 through 21, in the County Recorders Office of said county, said strip lying southwesterly and seaward of the ordinary high water mark of the Pacific Ocean.

**END OF DESCRIPTION**

**PREPARED October 6, 1928 BY BIU 1.**

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SITE

O F.

A T A L I N A

EXHIBIT "B"  
W 24223



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