

33. REQUEST FOR APPROVAL OF EXPENDITURES OF TIDELANDS FUNDS
BY ORANGE COUNTY - G09-00.

During consideration of Calendar Item 33, attached, Mr. N. Gregory Taylor, Assistant Attorney General, stated it was determined, after further discussion, that the staff's recommendation should be changed to "disapprove". Chairman Kenneth Cory asked if a representative from Orange County was present. However, weather difficulties prevented representatives from the County and the Boy Scouts of America to be in attendance. The item was put over until the end of the meeting to accommodate those people having travel problems.

When the matter was heard, Mr. Calvin Wheelock representing the Boy Scouts of America - Sacramento Region - appeared. Mr. Wheelock explained that weather conditions prevented Kenneth Hickenbottom, the Los Angeles representative from the Boy Scouts of America, from attending.

Mr. Taylor explained the item should be turned down at this time, without prejudice, to enable the Division to conduct hearings and talk with the County concerning the exact nature of the expenditures. No objections were raised by the Commission. Chairman Cory indicated the record should reflect the action was taken because: 1) the structure of the law; 2) it is without prejudice to preserve the State's rights to deal with the issue and 3) the representatives could not be here.

Attachment: Calendar Item 33 (4 pages)

CALENDAR ITEM

33.

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REQUEST FOR APPROVAL OF EXPENDITURES OF
TIDELANDS FUNDS BY ORANGE COUNTY

TRUSTEE: County of Orange
Environmental Management Agency
811 Broadway
Santa Ana, California 92702

LOCATION: Lands granted by Chapter 415, Statutes of 1975, bordering upon and under Newport Bay as shown in Exhibit "A", on file with the office of the State Lands Commission and by reference made a part hereof.

PURPOSE: To determine whether the proposed redevelopment of Newport Harbor Sea Scout Base is in the statewide interest and benefit and is consistent with the purposes and conditions set forth in Chapter 415, Statutes of 1975.

BACKGROUND: Section 1(n) of Chapter 415, Statutes of 1975, requires that Orange County file with the State Lands Commission a detailed description of any capital improvement involving tidelands revenues in excess of \$250,000. The Commission may, within 90 days after the time of such filing, determine and notify the County that such capital improvement is not in the statewide interest and benefit or is not authorized by the provisions of subdivision (1) of Section 1.

Chapter 415, Statutes of 1975, authorizes the use of granted tidelands for purposes in which there is a general statewide interest and which specifically include harbor purposes, public bathing beaches, public marinas, public aquatic playgrounds, and preservation, maintenance, and reestablishment of said lands in their natural state. Lands may be leased for periods not exceeding 50 years for purposes consistent with the trust and with the authorized uses.

An expenditure of \$442,752 from the Newport Tidelands Fund is to be used for the redevelopment of Newport Harbor Sea Scout Base. The Orange County Board of Supervisors approved, on October 19, 1976, an option agreement with the Orange County Council Boy Scouts of America,

A 69, 74

B 34, 36

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Inc., for the proposed redevelopment; according to the terms of the agreement, the use of Newport Tidelands funds is contingent upon approval of the entire capital project by the State Lands Commission. On November 12, 1976, a sketchy description of the project was filed with the Commission.

It was noted in the materials submitted that the current Newport Bay Tidelands budget assumes a June 30, 1977 available fund balance of \$709,903. Section 1(o) of Chapter 415, would require that 85% of the year-end balance in excess of \$250,000 be paid into the general fund of the State treasury. The County, in the absence of expenditures or a reserve for appropriate capital projects, would therefore have to turn over approximately \$391,000 to the State.

FACTS SUPPORTING DETERMINATION:

Staff review of the project reveals the following:

1. This proposal has been only approved in concept by the County.
2. There is no present funding for the balance of money required for the proposed project and the trust money is being set aside only on a contingent basis pending efforts by the Boy Scouts to obtain the balance of \$590,292 estimated to be required for the project.
3. A management agreement between the County and Boy Scouts assuring that the area will be used on a statewide basis has not been prepared.
4. The lease agreement between the County and Boy Scouts has not been amended to broaden the anti-discrimination clause as promised and the proposed clause is not available for evaluation at this time.
5. An Environmental Impact Report has not yet been prepared.
6. No explanation is contained concerning the necessity for demolishing existing facilities on the leased premises and replacing them with the proposed improvements.

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7. Detailed plans for the capital project have not been prepared.
8. It is not clear that the trust funds would be used solely on the granted trust lands as opposed to uplands which are not in the grant. (Subsection of Section 1 of Chapter 415, requires the expenditures to be upon the granted lands.)

Based upon the foregoing, it does not appear that the County has submitted the required detailed description of the capital improvement for Commission consideration and evaluation. The County has not sustained the burden of proof that the proposed expenditure is in the Statewide interest and benefit.

Further, the County has not satisfied the requirement of Section 1(a) of Chapter 415, that the proposed development is compatible and does not unreasonably interfere with the use of any portion of the granted lands for one of the purposes set forth in paragraph 3, of Subdivision (a) of said Section 1.

Estimated project costs are summarized as follows:

	<u>Fidelands Fund</u>	<u>Other Sources</u>	<u>Total</u>
General Requirements (permits, fees, insurance, planning)	\$74,922	\$44,580	\$ 119,502
Site Improvements	92,800	33,500	126,300
Building	-0-	512,212	512,212
Docking facilities	<u>275,030</u>	<u>-0-</u>	<u>275,030</u>
	<u>\$442,752</u>	<u>\$890,292</u>	<u>\$1,033,044</u>

EXHIBITS: A. Site Map.

CALENDAR ITEM 33. (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT PURSUANT TO THE PROVISIONS OF SECTION 1(N) OF CHAPTER 415, STATUTES OF 1975, THE EXPENDITURE OF TIDELANDS REVENUES IN THE AMOUNT OF \$442,752 FOR THE REDEVELOPMENT OF NEWPORT HARBOR SLA SCOTT BASE AS DESCRIBED IN CORRESPONDENCE RECEIVED BY THE COMMISSION FROM ORANGE COUNTY ON NOVEMBER 10, 1976, IS AN EXPENDITURE WHICH IS NOT IN THE STATEWIDE INTEREST AND BENEFIT; SAID FINDING BEING WITHOUT PREJUDICE TO THE RIGHT OF THE COUNTY TO REFILE SUCH NOTIFICATION WITH ADEQUATE DETAILED DESCRIPTION OF SUCH PROPOSED CAPITAL EXPENDITURE IN THE FUTURE.
2. AUTHORIZE THE EXECUTIVE OFFICER TO NOTIFY THE COUNTY OF ORANGE, THE SECRETARY OF THE SENATE, AND THE CHIEF CLERK OF THE ASSEMBLY THAT THE COMMISSION HAS MADE A DETERMINATION AUTHORIZED BY THE GRANT STATUTES AND DISAPPROVED THE EXPENDITURE OF TIDELAND REVENUES FOR THE PROJECT DESCRIBED HEREIN, WITHOUT PREJUDICE TO THE RIGHT OF THE COUNTY TO REFILE SUCH NOTIFICATION WITH THE COMMISSION IN THE FUTURE.
3. AUTHORIZE THE EXECUTIVE OFFICER OF THE COMMISSION TO CONDUCT PUBLIC HEARINGS CONCERNING PROPOSED CAPITAL EXPENDITURES OF THE COUNTY PURSUANT TO THE PROVISIONS OF CHAPTER 415, STATUTES OF 1975.
4. AUTHORIZE THE STAFF AND OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY AND APPROPRIATE TO IMPLEMENT THIS ACTION OF THE COMMISSION.