

MINUTE ITEM

This Calendar Item No. 26
was approved as Minute Item
No. 26 by the State Lands
Commission by a vote of 3
to 0 at its 5-28-81
meeting.

CALENDAR ITEM

F 26

5/81
WP 791
Horn

AMENDMENT TO INDUSTRIAL LEASE PRC 791.1

APPLICANT: San Diego Gas & Electric Company
P. O. Box 1831
San Diego, California 92112
Attn: J. C. Barnett

AREA, TYPE LAND AND LOCATION:
Approximately 76 acres of coastal tide
and submerged lands at Encina, San Diego
County.

LAND USE: Marine oil terminal together with necessary
appurtenances.

TERMS OF CURRENT LEASE:

Initial period: 49 years from March 24,
1953.

Renewal options: None.

Surety bond: \$50,000.

Public liability insurance: \$200,000/600,000
per occurrence for bodily
injury and \$5,000,000
for property damage.

Consideration: \$13,662, 5-year review.

This amendment changes the annual rental as occasioned
by the occurrence of a 5-year rent review of the lease.
In addition to changing the rental amount, a special provision
is being added which details the impounding of volumetric
rentals in excess of the minimum annual rental. The new
annual rental is as follows:

\$0.01 per barrel until the minimum annual rental
(below) is equaled; thereafter
\$0.002 per barrel for the next 5 million barrels;
and thereafter

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\$0.005 per barrel for each additional barrel passing over the State's land in that same lease year.

The new minimum annual rental is \$70,000. The State reserves the right to fix a different rental on each fifth anniversary of the lease. The effective date of this change is March 24, 1981.

BASIS FOR CONSIDERATION:

Volumetric rental pursuant to 2 Cal. Adm. Code 2005 and 2006.

PREREQUISITE TERMS, FEES AND EXPENSES:

Applicant is owner of upland.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 & 2.

R. Cal. Adm. Code: Title 2, Div. 3.

OTHER PERTINENT INFORMATION:

1. This activity is exempt from CEQA because it is not a project within the meaning of CEQA and the State EIR Guidelines.

Authority: PRC 21065, 14 Cal. Adm. Code 15031 and 15060.

2. This activity is situated on State land identified as possessing significant environmental values pursuant to P.R.C. 6370.1, and is classified in a use category, Class "B", which authorizes Limited Use.

Staff review indicates that there will be no significant effect upon the identified environmental values. This is an existing facility for which no adverse comments have been received.

3. This transaction is not a development project within the meaning of the Commission's Coastal Regulations.

4. For some time, Staff and San Diego Gas and Electric Company have been

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attempting to resolve, in lieu of litigation, a dispute relative to language in the existing lease which authorizes the Commission to adjust the rental at each fifth anniversary of the lease. The staff took the opinion that volumetric rental was an allowable commission option under the rent review clause and the effective date should have been the 1977 anniversary of the lease. San Diego Gas and Electric Company took the position that the rent review clause did not allow the Commission the volumetric option. In compromise and settlement of this dispute, Staff is recommending that the Commission authorize an amendment to the lease that changes the rental to the volumetric rental alternative commencing March 24, 1981. The next anniversary for review and possible change of the rental would be March 24, 1982. Other modifications in the lease would bring it into conformity with existing leasing policies.

APPROVALS OBTAINED:

No other approvals required.

EXHIBIT:

B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21065, 14 CAL. ADM. CODE 15037 AND 15060 AND 2 CAL. ADM. CODE 2903(d).
2. FIND THAT GRANTING OF THE AMENDMENT WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1, OF THE P.R.C.
3. DETERMINE THAT THIS PROJECT IS EXEMPT FROM THE REQUIREMENTS OF ARTICLE 6.5, OF TITLE 2, OF THE CAL. ADM. CODE BECAUSE THIS PROJECT IS NOT A DEVELOPMENT WITHIN THE MEANING OF SECTION 2503, OF TITLE 2, OF THE CAL. ADM. CODE AND SECTION 30105 OF THE P.R.C.

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4. AUTHORIZE ISSUANCE TO SAN DIEGO GAS AND ELECTRIC COMPANY OF AN AMENDMENT TO LEASE PRC 791.1 WHICH:

(a) CHANGES THE ANNUAL RENTAL TO THE VOLUMETRIC RENTAL ALTERNATIVE AS FOLLOWS:

1. UNTIL THE MINIMUM ANNUAL RENTAL PROVIDED FOR IN SUBPARAGRAPH 4(a)3 HEREOF IS EQUALED IN EACH LEASE YEAR, THE ANNUAL RENTAL SHALL BE COMPUTED BY MULTIPLYING THE NUMBER OF BARRELS OF PETROLEUM PRODUCTS PASSING OVER THE STATE'S LAND BY \$0.01.
2. FOR THE NEXT 5,000,000 BARRELS BEYOND THE NUMBER OF BARRELS NECESSARY TO SATISFY THE MINIMUM RENTAL UNDER SUBPARAGRAPH 4(a)1 ABOVE, THE RENTAL SHALL BE \$0.002 PER BARREL; AND, THEREAFTER, \$0.005 PER BARREL FOR EACH ADDITIONAL BARREL OF SUCH COMMODITIES PASSING OVER THE STATE'S LAND IN THAT SAME LEASE YEAR.
3. THE MINIMUM ANNUAL RENTAL SHALL BE \$70,000.
4. THE STATE RESERVES THE RIGHT TO FIX A DIFFERENT RENTAL ON EACH FIFTH ANNIVERSARY OF THE LEASE AMENDMENT, WITH THE NEXT ANNIVERSARY BEING MARCH 24, 1982.

(b) PROVIDES FOR PAYMENT OF RENTALS IN EXCESS OF THE MINIMUM ANNUAL RENTAL INTO A SPECIAL DEPOSIT ACCOUNT IN THE STATE TREASURY PENDING A FINAL DISPOSITION OF CURRENT LITIGATION CONCERNING THE VALIDITY OF THE COMMISSION'S RENTAL REGULATIONS; SAID IMPOUNDED RENTALS TO BE REFUNDED AND A NEW REASONABLE RENTAL DETERMINED BY THE COMMISSION SHOULD THE COMMISSION'S VOLUMETRIC RENTAL REGULATIONS BE INVALIDATED.

(c) CONTINUES THE OPERATION OF AN OFFSHORE MARINE TERMINAL TOGETHER WITH NECESSARY APPURTENANCES ON THE LAND DESCRIBED ON EXHIBIT "A" OF AMENDED LEASE PRC 791.1 AND BY REFERENCE MADE A PART HEREOF; PROVIDED THAT ALL OTHER TERMS AND CONDITIONS OF LEASE PRC 791.1 SHALL REMAIN IN FULL FORCE AND EFFECT. THE EFFECTIVE DATE OF THIS AMENDMENT IS MARCH 24, 1981.

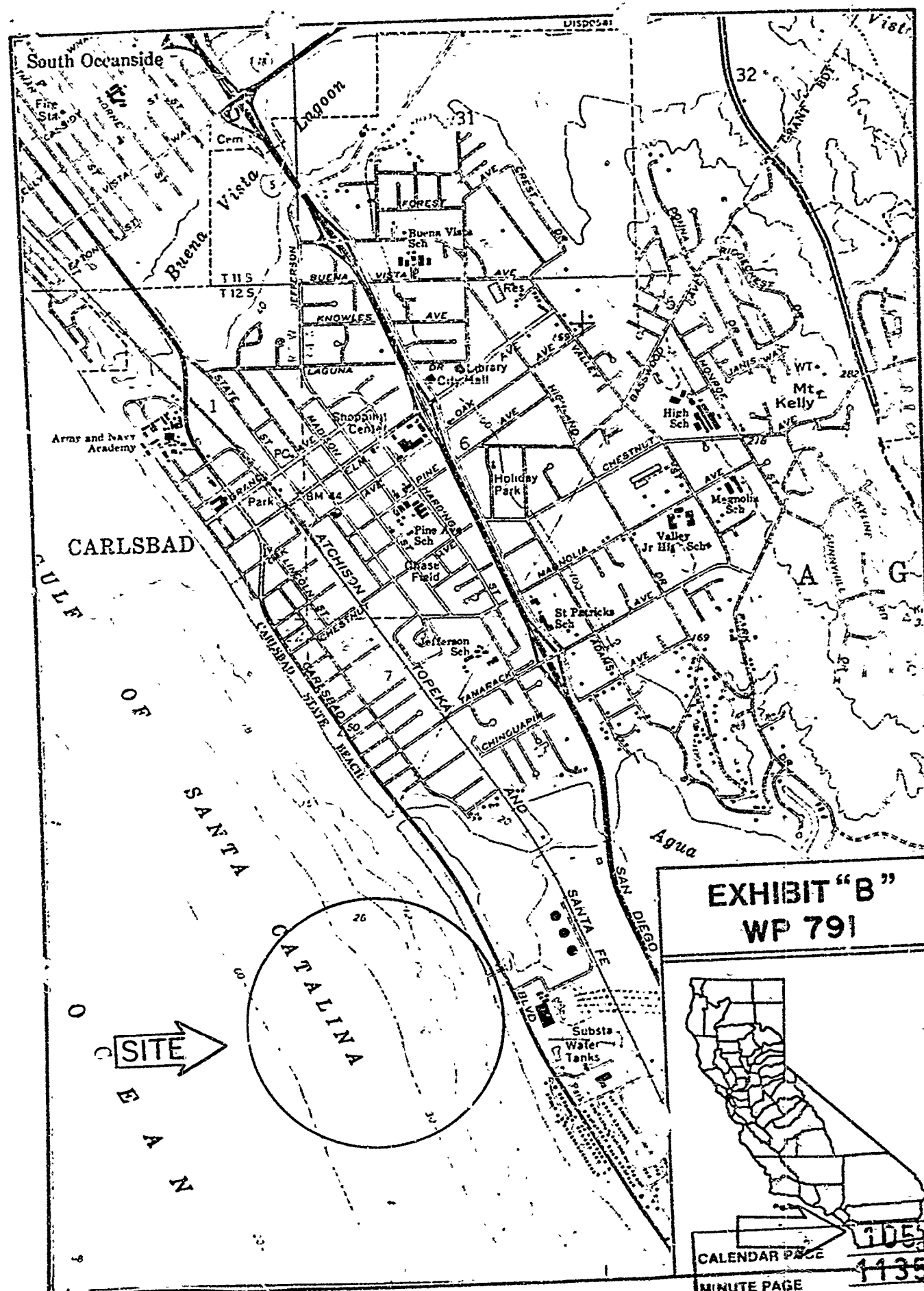


EXHIBIT "B"
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