

MINUTE ITEM

This Calendar Item No. 65 was approved as
Minute Item No. 65 by the California State Lands
Commission by a vote of 3 to 0 at its
4-9-02 meeting.

**MINUTE ITEM
65**

04/09/02
W 2400.198
C. Fossum
J. Lucchesi

**HARBOR STUDY FOUNDATION
(PARTY)**

Calendar Item 65: Commission listened to a staff presentation on Harbor Secession. They listened to concerns from public. Commission approved item but asked that staff bring back a report on community relations at the 5 major harbors.

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**CALENDAR ITEM
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**CONSIDERATION OF A REQUEST FOR CONSENT TO INCLUDE TERRITORY
INVOLVING SOVEREIGN TIDE AND SUBMERGED LANDS IN A SPECIAL
REORGANIZATION THAT WOULD DETACH THOSE SOVEREIGN LANDS FROM
THE CITY OF LOS ANGELES AND INCORPORATE THEM INTO A NEW
PROPOSED CITY INCLUDING THE AREAS OF SAN PEDRO, WILMINGTON, AND
HARBOR CITY, LOS ANGELES COUNTY**

APPLICANT:

Harbor Study Foundation
1931 North Gaffey Street, Suite A
San Pedro, CA 90731
Attn: Andrew Mardesich – Director

I. BACKGROUND

In September 2000, the California State Lands Commission (Commission) received a request from the Harbor Study Foundation to approve the offshore boundaries involving tide and submerged lands presently within the City of Los Angeles and consent to incorporation of those lands into the proposed City of San Pedro / Wilmington / Harbor City area (new harbor city), pursuant to Government Code Section 56108 (since renumbered to Section 56740). There are currently additional communities within the City of Los Angeles (San Fernando Valley and Hollywood) seeking de-annexation from the city and creation of new cities.

The Harbor Study Foundation initiated the special reorganization process pursuant to the Cortese – Knox Local Government Reorganization Act (Government Code Section 56000, et seq.). Ultimately, if placed on the ballot by the Los Angeles County Local Agency Formation Commission (LAFCO) the process will allow the voters to decide on whether they wish to secede from the City of Los Angeles and incorporate into a new city, which although referred to herein as the new harbor city, has not had a name officially determined at this time. The Harbor Study Foundation alleges that unresponsiveness, and inadequacy of services provided, by the City of Los Angeles justify a special reorganization. In addition, the Harbor Study Foundation advocates that such a special reorganization will provide additional local government involvement in the development and operation of Port facilities, seeking to check and balance the

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management of Port lands by the City of Los Angeles, as well as, eliminating wasteful expenditures by "delivering more municipal output services at a lesser cost."

Precedent to a vote by the citizens within the City of Los Angeles, LAFCO, is required to prepare a Comprehensive Fiscal Analysis (CFA) and a recommendation on the proposal. The purpose of the CFA is to assess the fiscal impact of an incorporation of a new harbor city. On January 9, 2002 LAFCO issued its CFA for the new harbor city and subsequently issued a Supplemental CFA dated February 21, 2002. Prior to the approval of any proposal for reorganization LAFCO must find that the "proposed harbor city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation." (CFA, January 9, 2002, page 1) In addition, negative impacts on the remaining City of Los Angeles are to be mitigated or ameliorated.

The City of Los Angeles on February 11, 2002 requested the State Controller's Office (SCO) review, pursuant to Government Code Section 56801, the adequacy of the CFA's analysis for the purposes of determining fiscal viability, and costs and provision of police and fire services in the Harbor area. The SCO report was issued on April 1, 2002.

Pursuant to Section 56108 of the Government Code the Commission is required to make two decisions regarding special reorganization, including approval of offshore boundary descriptions and consent to inclusion of tide and submerged lands (tidelands) within the proposed new city. At its November 27, 2000 meeting the Commission made its first of two decisions required by Section 56108 of the Government Code by approving a legal description for the offshore boundaries for the new harbor city. That approval was conditioned upon the following: 1) subsequent formal Commission consent to the inclusion of the state tide and submerged lands held in trust by the City of Los Angeles into the proposed new harbor city, 2) the approval of voters in both the entire City of Los Angeles and the area of the new harbor city, and 3) completion of the election process prior to November 27, 2002.

The Commission's consent to the inclusion of the state tide and submerged lands in the proposed new harbor city was deferred until after the January 2001 settlement of its then pending lawsuit against the City of Los Angeles (POLA litigation) and the financial impact of the proposal had been analyzed by LAFCO and its report had been reviewed by the Commission and its staff.

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II. COMMISSION REQUIRED CONSENT TO INCLUSION OF LANDS WITHIN PROPOSED NEW HARBOR CITY

In addition to requiring the Commission to approve offshore boundaries for the new harbor city, Section 56108 (a) of the Government Code provides that "No tidelands or submerged lands, as defined in subdivision (g), which are owned by the state or by its grantees in trust shall be incorporated into, or annexed to, a city, except lands which may be approved by the State Lands Commission." This section expresses the Legislature's delegation of authority to the Commission for the decision of whether to include sovereign public trust lands within a particular municipal jurisdiction by annexation, incorporation or reorganization. Public Resources Code Section 6301 provides, *inter alia*: "The commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State.... All jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the commission."

Unlike the lands occupied by the local citizens adjacent to the tidelands, where those citizens may cast their ballot to decide whether they wish to create a new municipal government to govern them, the tide and submerged lands granted by the Legislature to the City of Los Angeles are all publicly owned lands and held in trust by the City, as trustee of the State, for purposes of "commerce, navigation and fisheries." This area constitutes over half the lands proposed to be included within the new harbor city. Section 56108 (a) provides the vehicle for decision as to whether the State wants its sovereign trust property to be transferred from being within one local political jurisdiction to that of another.

De-annexation of and incorporation, or special reorganization, of tide and submerged lands into the proposed new harbor city will not affect the terms of the legislative statutory grants of tidelands to the City of Los Angeles. Transfer of tidelands from one statutory trustee to another requires an act of the Legislature modifying the current law designating the City of Los Angeles as the trustee of those lands. The control and management of the tidelands and other lands acquired by the Port as public trust lands will continue to be held and managed by the City of Los Angeles pursuant to the terms of the granting statutes.

The Commission's authority to consent to or disapprove inclusion of tide and submerged lands in a special reorganization that could place those lands within a new city is limited to those tide and submerged lands that the Legislature granted to the City of Los Angeles pursuant to Chapter 656, Statutes of 1911 and Chapter 651, Statutes of 1929, as amended. The precise location of these lands has been the subject of considerable litigation and boundary settlement agreements for nearly 150 years. The

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boundary is the natural mean high tide line as it was located prior to any fill or artificially induced accretions. Although the Port has acquired additional lands as assets of the statutory trust, and which are subject to the terms of the trust, they are not tide and submerged lands as described in Government Code Section 56108 (a) and (g) and are outside of the Commission's specific authority to either consent or deny approval of their municipal reorganization.

Exhibit A depicts the proposed boundaries of the new harbor city area including the sovereign tide and submerged lands held in trust by the City of Los Angeles. Exhibit B identifies non-water covered Port owned lands in yellow with a red line separating the tide and submerged lands granted by the Legislature from the lands acquired by the Port as additional trust assets. Filled tide and submerged lands constitute approximately 67% of the land, as opposed to water, area of the Port, while approximately 33% of Port lands are non-tide and submerged lands acquired by the Port as assets of the trust. If the Commission's decision is to withhold its consent to include the tide and submerged lands in the new harbor city, jurisdiction of the upland portion of the Port would still pass to the new harbor city. To prevent this bifurcation of municipal jurisdiction over the Port the Commission could then recommend to LAFCO -- that LAFCO, in consultation with the new harbor city proponents and the Port of Los Angeles, set appropriate boundaries along a more practical and logical boundary separating Port operations from the local community.

The Commission must evaluate potential impacts to the operations of the Port to decide if it is in the best interest of the State for the tide and submerged lands located in the City of Los Angeles to be incorporated into the new harbor city. The quality and reliability of the municipal services to be provided to these trust lands by a new harbor city and the potential impacts of a new municipal authority on the Port's operations are issues of significant importance.

III. IMPORTANCE OF THE PORT OF LOS ANGELES TO CALIFORNIA AND ITS ECONOMY:

In terms of its size and activities, the Port of Los Angeles is one of the world's largest and busiest ports. Within its boundaries lie approximately 7,500 acres of land and water, encompassing 30 cargo terminals. Two major railroads serve the Port, and it lies at the terminus of two major freeways within the Southern California freeway system. Subsurface pipelines link the Port to many major refineries and petroleum distribution terminals within the Los Angeles Basin. Further, the Port provides leases to more than 250 tenants, ranging from individual stalls at the fish market to a 484-acre cargo terminal. The Port of Los Angeles currently handles the largest volume of containerized

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cargo of all U.S. ports and additionally ranks as number one in cargo value for U.S. waterborne foreign traffic.

As the Port of Los Angeles is one of the world's largest trade gateways, its economic contributions to the regional economy are far-reaching. The economic impact of the Port touches not only the City and County of Los Angeles, but also the surrounding four counties of Orange, Ventura, Riverside, and San Bernardino. The Port directly and indirectly generates employment for approximately 260,000 people in Southern California, and approximately one million jobs nationwide. Additionally, the Port generates \$26.8 billion annually in industry sales, resulting in \$8.4 billion annually in regional wages and salaries and \$1.4 billion annually in state and local taxes. The Port is not subsidized by tax dollars and has maintained its financial strength through generated revenues. The Port of Los Angeles is one of the few U.S. ports that remain self-sufficient.

IV. FISCAL ANALYSIS:

The first issue to be considered by the Commission, of whether such an inclusion of tidelands in the new harbor city is within the best interests of the State, is the quality and reliability of the municipal services to be provided to these tidelands by a new harbor city. The Harbor Study Foundation claims that the inclusion of tide and submerged lands within the new harbor city could potentially result in cost savings for fire and police services. They contend that by becoming a "contract city" and initially contracting with the City of Los Angeles or the County of Los Angeles for services and then transitioning into providing their own services, they could eventually provide more cost efficient services.

The Comprehensive Fiscal Analysis prepared by LAFCO found that the Harbor Study Foundation's analysis failed to provide a written description of the assumptions used to develop budget projections. The CFA concluded that "Based upon the tables and notes provided, it appears the projections rely on . . . key assumptions: . . . Upon evaluation, several of the assumptions do not appear realistic." The CFA further found that the proposed new harbor city would not appear to be fiscally viable unless certain qualifying factors were met. The factors this analysis assumed are that 1) the new harbor city would include the tide and submerged lands of the Port of Los Angeles, and 2) the new harbor city could successfully implement significant cost saving measures through reduction of municipal services. It also assumed that the State / POLA litigation settlement would be assigned, so that the new harbor city would benefit by not only obtaining possessory interest taxes, utility taxes and business taxes, but would also pay only 25% of the cost of general fire services for the Port. The issue of the City of Los Angeles's payments for the 15 year \$53.4 million credit it owes to the Port for future

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services, provided for in the POLA litigation settlement, was not discussed. Any change of service provider may complicate this re-credit provision.

The CFA found that the new harbor city would need to reduce its expenditures by \$47.8 million in order to meet available revenues. (CFA, January 9, 2002, page 9). The supplemental CFA further clarifies the new harbor city shortfall in its budget by stating that the new harbor city would need to reduce its expenditures by \$51.3 million annually in order to meet its available revenues. (Supplemental Report to the CFA, February 21, 2002, page 2) The shortfall in revenues stated by the CFA and the supplemental CFA illustrates that even with the assumption that all Port properties would be included in the new harbor city, the new harbor city would still not be fiscally viable, unless services were substantially reduced. The CFA suggests that the proposed new harbor city could possibly reduce fire services in order to cover such a shortfall by reducing such services to a level that approximates the per capita spending for fire services in Irvine, Carson, Torrance, Pomona, and Garden Grove (CFA, January 9, 2002, page I-24). Additionally, the CFA states "that the new harbor city could achieve cost reductions by implementing cost saving or service reduction initiatives, however, the resulting service impact of these initiatives is unknown." (CFA, Appendix I-14). Comparing the new harbor city area to cities like Torrance, Carson, Irvine, and Pomona may be simplistic because those cities do not contain one of the largest cargo ports in the world.

Pursuant to the POLA litigation settlement agreement, currently, the Port of Los Angeles reimburses the City of Los Angeles for 75% of general fire services and 100% of special fire services (i.e. fire boats, etc.), which equates to approximately \$13.2 million annually. The Port of Los Angeles also reimburses the City of Los Angeles \$3.6 million for "non-department – general" for trust related park services (which lie within the proposed new harbor city boundary), and \$6 million to cover a variety of other services including City Attorney services and Bureau of Contract Administration. Should the special reorganization movement be successful and include the Port of Los Angeles, the Port presumably would then reimburse the new harbor city an estimated \$16.8 million for fire and non-department – general services. The Port of Los Angeles would continue to reimburse the City of Los Angeles the \$6 million for the other services because the management of the Port would continue to reside with the City of Los Angeles, as explained above. The \$3.6 million may be assignable to the new city for operation of trust related parks adjacent to the tidelands. It is important to note that the CFA reports the \$16.8 million as revenue to the new harbor city rather than as a reimbursement of actual costs and an offset to those expenditures, as also noted in the SCO report. These reimbursements would cover many of the Port related costs to the new harbor city, but not, the 25% of port related fire costs.

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The supplemental CFA found that the exclusion of the Port of Los Angeles property from the boundaries of the new harbor city would significantly reduce its revenues, including a \$13.9 million loss in possessory interest tax revenue and losses in other tax revenues, such as utility taxes and business taxes.

The CFA prepared for the proposed new harbor city has received some substantial criticism from both the Harbor Study Foundation, proponent of the special reorganization, and the City of Los Angeles. These criticisms include alleged inadequacy of the CFA analysis relating to the Port of Los Angeles, as the CFA did not quantify tax revenues accruing from Port property separately from other general fund tax revenues generated in the new harbor city area. Further, the City of Los Angeles asserts the CFA did not include an adequate analysis of the costs of certain services within the new harbor city and how those services would be provided.

The SCO report issued April 1st concludes that the CFA correctly determined that the proposed new harbor city will not be fiscally viable without making significant reductions in expenditures and services and notes that the proposed new harbor city's ability to do so is "highly uncertain."

In light of the above stated fiscal uncertainties and revenue shortfalls, the new harbor city would likely have to either raise taxes or significantly cut services, or both, to cover the revenue shortfalls and become fiscally viable. Either result could adversely affect the Port and consequently the State of California.

V. MANAGEMENT AND OPERATION ANALYSIS:

The second issue for the Commission's consideration is to determine whether the management and operation of the tide and submerged lands by the statutory trustee is likely to be benefited or hampered by inclusion of the trust property in a municipal reorganization that would place the port within a new harbor city.

A) POTENTIAL CONFLICT BETWEEN THE CITY OF LOS ANGELES AND THE NEW HARBOR CITY

Although, the Harbor Study Foundation advocates additional local government involvement in the development and operation of Port facilities, seeking to check and balance the current management of Port lands by the City of Los Angeles, there is a possibility that a new harbor city, with the authority for taxation, levying of development fees, establishing building codes and other local ordinances, etc., could attempt to disrupt the administration of the Port and its maritime commerce. Proponents of the secession, and of inclusion of the Port area in the proposed new city, claim that the Port owes the local community \$100 million dollars for mitigation of Port development activities above what is required by regulatory agencies. This suggests that the new

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harbor city may levy a tax on containers or implement other methods to extract money from Port operations, and intend to constrain redevelopment of the Port. This could lead to a fundamental conflict over Port operations between the Port and a new harbor city and hence the potential for severe disruption of Port operations.

Further, the Los Angeles Police Department (LAPD), Los Angeles Fire Department (LAFD), US Coast Guard, Federal Bureau of Investigation, and the US Custom Services have worked together for many years to provide security within the Port. The Port is currently fully integrated into the emergency response and disaster preparedness plans for the City of Los Angeles. The Port Police, LAPD, and LAFD all share an emergency command center within the City of LA, their protocols and procedures are integrated and their communication systems are compatible allowing for cross communications during time of emergency. There is uncertainty as to whether the new harbor city could procedurally incorporate itself into such an integrated system. A small city with its own fire service may not have immediate access to a variety of specialized resources such as helicopters, hazardous materials squads and urban search and rescue teams. According to the CFA, it is unclear and cannot be determined at this time whether the new harbor city could provide the same level of police and fire service as the City of Los Angeles. This would depend on the new harbor city's ability to increase the productivity of its police and fire service (i.e. provide the same level of output with fewer personnel). The current Port Police operate independent from the LAPD. Los Angeles City Charter Section 657 provides for a specialized force under the control of the Harbor Department. It is unclear whether the proposed special reorganization would leave this force with any authority to operate.

Ultimately, the operation and management, as well as, the security and safety of the Port may be compromised. Such a fundamental conflict in management and operations, including, a potential for inadequate security and safety services may jeopardize the viability and safety of the Port of Los Angeles. These issues have recently led to increased levels of concern due to worldwide events. Such a situation could make other ports along the Pacific Coast more attractive, driving maritime commerce to other regions, states or nations. A disruption to Port operations could lead to adverse impacts on the local, regional, and state economies.

As stated in the beginning of this staff report, the Commission's authority lies with the tide and submerged lands as opposed to the Port acquired lands. This separation bifurcates the Port controlled property, as shown on Exhibit B. Should the Commission withhold its consent and approval of the inclusion of tide and submerged lands within the proposed special reorganization, a potential bifurcation of municipal jurisdiction may occur. LAFCO has the authority and responsibility to set boundaries for the new harbor city pursuant to Government Code Section 56000, et seq. The Commission may

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recommend to LAFCO that it consider establishing the new harbor city boundaries by excluding substantially all Port controlled property.

B) CONSIDERATION OF SIMILAR SITUATIONS INVOLVING CONFLICTING JURISDICTIONS

A limited number of situations exist around the state where a legislative trustee of tidelands operates under a trust grant that is within another political body's police power jurisdiction.

Of the 80+ legislative grants of tidelands to local governments, the Legislature has intentionally placed tidelands located within one municipal or county jurisdiction under the management and control of another in only two instances, including San Francisco Airport within San Mateo County and the County of San Diego administration site within the City of San Diego. This illustrates the Legislature's prevailing practice, which ensures that the special responsibilities involving management of trust property by a local entity, on behalf of the State, are better carried out through a unified administration of laws rather than being thwarted by overlapping and conflicting authorities.

Staff is aware of only two instances where tidelands initially granted to one jurisdiction were subsequently incorporated within the political boundaries of another. Orange County was granted tidelands in two unincorporated areas that have since been incorporated within the cities of Dana Point and Newport Beach.

In at least three out of the above four situations conflicts have arisen resulting in confusion over jurisdictional issues that have impeded planned developments by the trustees and even fostered litigation and legislation.

VI. CONSIDERATION OF ALTERNATIVES:

The Commission may:

1. Consent to inclusion of City of Los Angeles tide and submerged lands within the proposed municipal reorganization of the new harbor city area.
2. Withhold consent and approval of inclusion of tide and submerged lands within the proposed municipal reorganization of the harbor area. If the Commission withholds its consent to include the Port tide and submerged lands from the reorganization, the Commission could then recommend to LAFCO to consult with the new harbor city proponents and the Port of Los Angeles and set appropriate boundaries for the new harbor city to separate Port operations from the local community.

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Regardless of which of the above Commission alternatives is chosen, many of the proponents of the new harbor city appear to be opponents of the Port and its development. The City of Los Angeles or the Legislature has the authority to respond to those citizen complaints and if deemed valid to take action to resolve those problems. In fact, the City of Los Angeles has recently established local boards to address the neighboring communities' concerns relating to environmental and developmental issues in the harbor area. The California Legislature could amend provisions of the statutory trust grant if deemed appropriate; i.e. Port operations could, where appropriate, include more visitor serving waterfront uses not just industrial harbor uses. (AB 2769 by Assemblyman Lowenthal was recently introduced and could provide such a vehicle if the Legislature supports such a modification).

VII. CONCLUSIONS:

Staff believes based upon the information submitted from proponents, opponents and neutral third parties:

1. That there is a substantial risk to the ongoing operations of the Port of Los Angeles if the tide and submerged lands granted by the Legislature to the City of Los Angeles were to be included within the proposed new city.
2. That it is not in the best interest of the State of California that the lands granted by the Legislature to the City of Los Angeles be included within the proposed new harbor city.
3. Should the Commission withhold its consent and approval of inclusion of tide and submerged lands within the special reorganization, the Commission should recommend to LAFCO that it set an appropriate boundary that would provide a logical separation of the Port lands managed by the City of Los Angeles from neighborhoods of San Pedro and Wilmington.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code, Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Code of Regs. Title 2, Div. 3; Title 14, Div. 6.
- C. Government Code Section 56108 (a).

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code of Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

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AUTHORITY:

Public Resources Code Section 21065 and 14 Cal. Code of Regs. 15378.

EXHIBITS:

- A. Proposed new city including Tide and Submerged Lands granted in Trust to City of Los Angeles by the California Legislature.
- B. Tide and Submerged Lands granted in Trust to City of Los Angeles.

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 BECAUSE THE ACTIVITY IS NOT A PROJECT DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND 14 CAL. CODE REGS SECTION 15378.
2. FIND THAT THE INCLUSION OF THE STATE'S TIDE AND SUBMERGED LANDS, GRANTED TO THE CITY OF LOS ANGELES BY CHAPTER 656, STATUTES OF 1911 AND CHAPTER 651, STATUTES OF 1929, AS AMENDED, IN THE PROPOSED REORGANIZATION IS NOT IN THE STATE'S BEST INTEREST.
3. DENY APPROVAL OF AND WITHHOLD CONSENT TO INCLUSION OF THE TIDE AND SUBMERGED LANDS GRANTED TO THE CITY OF LOS ANGELES BY CHAPTER 656, STATUTES OF 1911 AND CHAPTER 651, STATUTES OF 1929, AS AMENDED, IN THE PROPOSED NEW HARBOR CITY AREA REORGANIZATION.
4. RECOMMEND TO LAFCO THAT IT SET A LOGICAL BOUNDARY SEPARATING PORT LANDS MANAGED BY THE CITY OF LOS ANGELES FROM THE PROPOSED SPECIAL REORGANIZATION FOR A NEW HARBOR CITY.

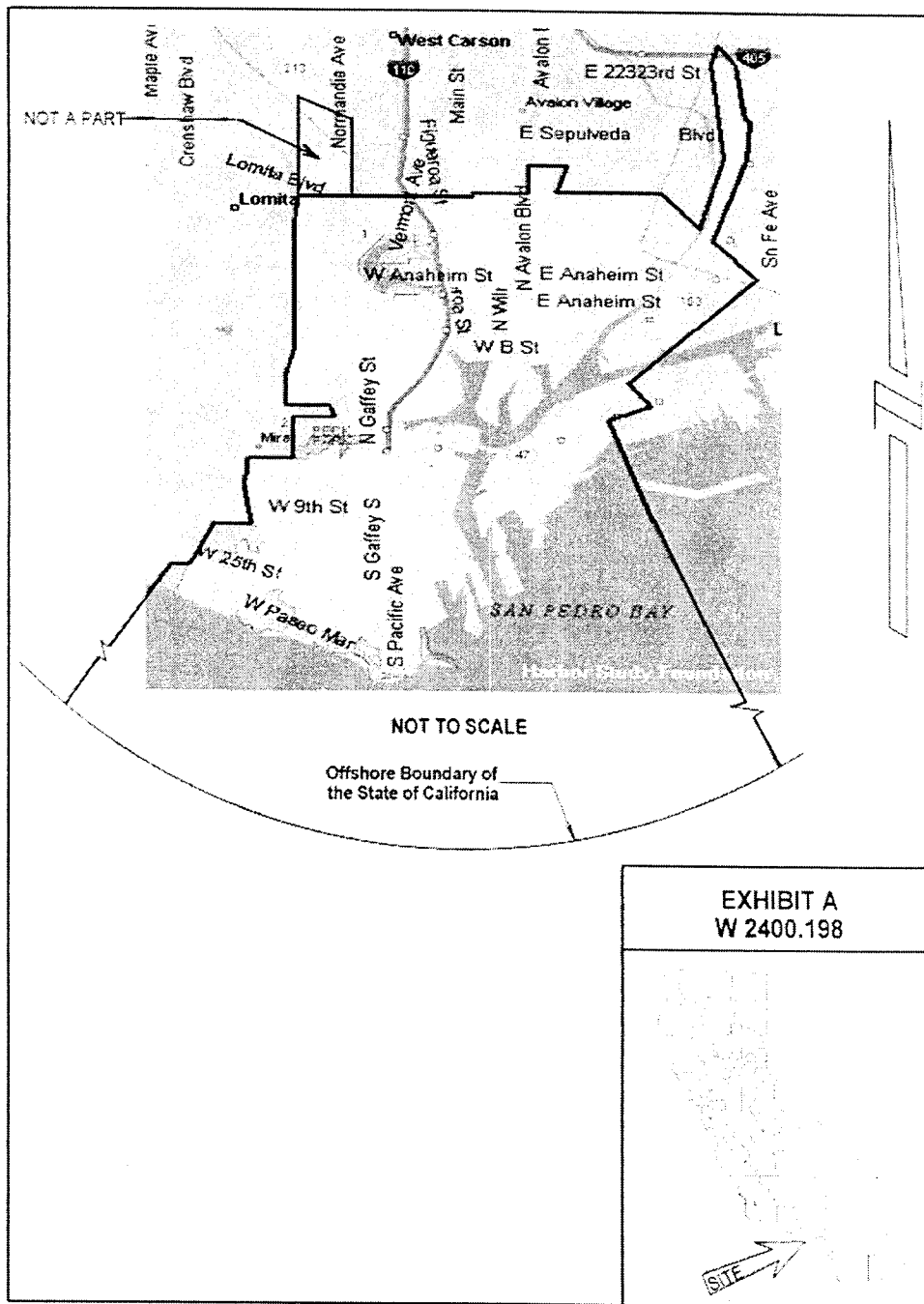


EXHIBIT A
W 2400.198



NO SCALE

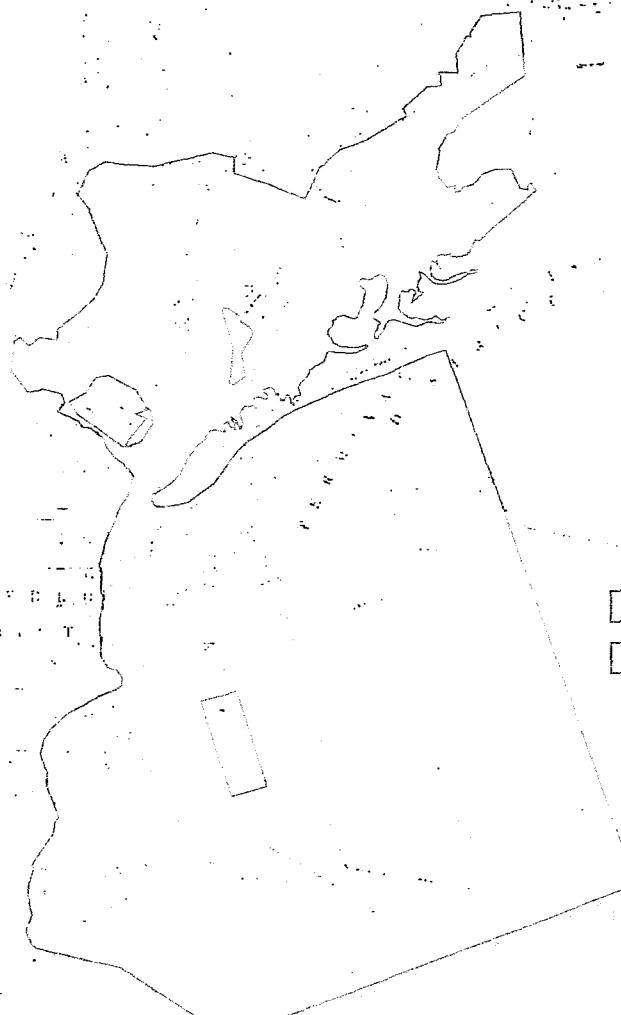
EXHIBIT B

W 2400.198

STATE OF CALIFORNIA

LOS ANGELES COUNTY

CALIFORNIA MAP



- TIDE & SUBMERGED LAND WITHIN HARBOR DISTRICT
- NON TIDE & SUBMERGED LAND WITHIN HARBOR DISTRICT
- HARBOR CONTROLLED PROPERTY**

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This Exhibit is solely for purposes of generally defining the subject property, is based on unverified information provided by the Applicant or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any state interest in the subject or any other property.