

MINUTE ITEM

38. PROPOSED ANNEXATION OF TIDE AND SUBMERGED LANDS IN THE PACIFIC OCEAN BY THE CITY OF SAN CLEMENTE, ORANGE COUNTY - W.O. 2400.37. (DEFERRED FROM MEETINGS OF DECEMBER 21, 1961, AND JANUARY 22, 1962)

In presenting Calendar Item 8 attached, the Executive Officer suggested, in view of information received just prior to convening the meeting, that it would appear appropriate to have the Special City Attorney for the City of San Clemente present the position of that City with respect to the subject application.

Mr. Donald A. Jones, representing the City of San Clemente, asked the Commission not to register any protest in order to give the City of San Clemente a chance to dismiss the annexation.

Mr. William D. Moore, attorney, representing the Capistrano Beach Club Company, questioned the legality of the proposal of the City of San Clemente on the contention that the City has no power to abandon the annexation at this time, and asked the Commission to file a protest.

Mr. Wallace Pinnick, attorney for the Capistrano Beach Road Association, Inc., stated that he would like to see the matter terminated.

Mr. Kenneth Sampson, Manager of the Orange County Harbor Association, representing the Orange County Board of Supervisors, pointed out that a resolution of protest from the Board of Supervisors had been filed.

UPON MOTION MADE BY COMMISSIONER CRANSTON, SECONDED BY COMMISSIONER CHAMPION, AND CARRIED UNANIMOUSLY, A RESOLUTION WAS ADOPTED THAT THE STATUS QUO CONTINUE FOR THE PROPOSED ANNEXATION OF TIDE AND SUBMERGED LANDS IN THE GULF OF SANTA CATALINA BY THE CITY OF SAN CLEMENTE, ORANGE COUNTY, AND THAT THE EXECUTIVE OFFICER HAVE THE CONTINUING POWER TO PROTEST, BUT THAT THERE BE A CLEAR UNDERSTANDING THAT NO PROTEST WOULD BE FILED UNLESS LEGAL QUESTIONS ARISE THAT MAKE A PROTEST NECESSARY.

Following adoption of the resolution, Mr. Julius Oblatt, appearing for the Dana Point Harbor Committee and the Dana Point Harbor Association, urged the Commission to terminate the annexation proceedings. Mr. C. W. Oblatt, President of the Capistrano Beach Association, concurred in Mr. Oblatt's statement.

Attachment

Calendar Item 8 (3 pages)

CALENDAR ITEM

8.

PROPOSED ANNEXATION OF TIDE AND SUBMERGED LANDS IN THE PACIFIC OCEAN BY THE CITY OF SAN CLEMENTE, ORANGE COUNTY - W.O. 2400.37. (DEFERRED FROM MEETINGS OF DECEMBER 21, 1961, AND JANUARY 22, 1962)

On November 28, 1961, the State Lands Commission received notice that the City of San Clemente proposes to extend its corporate limits by the annexation of uninhabited territory known as "San Clemente - Annexation No. 2" (Exhibit "A"), set forth in City Council Resolution No. 1252, dated November 8, 1961, and was requested to determine the value of the tide and submerged lands therein pursuant to Section 35313.1 of the Government Code. The published hearing date for receipt of protests was set for December 20, 1961.

Section 35313.1 of the Government Code provides in part: "When territory proposed to be annexed consists wholly or partly of tide or submerged land owned by the State, the legislative body shall determine the value of such tide or submerged lands for the purpose of this article. For the purpose of such determination, the State Lands Commission shall fix the value of tide or submerged lands owned by the State and shall notify in writing the legislative body of its determination."

The 20,132-acre area described in the annexation proceedings is limited to a 3-mile-wide belt of tide and submerged lands in the Gulf of Santa Catalina, extending approximately 9-1/3 miles upcoast from the most southerly point in the present city boundary. The southerly approximately 4-2/3 miles front on uplands within the present city limits. The northerly approximately 4-2/3 miles front on unincorporated upland communities known as Capistrano Beach, having a 1960 Census population of 2,026, and Dana Point, having a 1960 population of 1,186. The 1960 population of San Clemente was 8,527.

A staff appraisal report of the tide and submerged lands to be annexed reflects a fee value for the 20,132 acres of \$94,380,000, including \$51,480,000 as the value of potential recoverable oil and gas reserves.

At a staff meeting with representatives from the City of San Clemente on December 5, 1961, the city's position relative to the proposed annexation was outlined and discussed. It was pointed out that while Annexation No. 2 includes about 4-2/3 miles of the tide and submerged land adjoining the present city limits, and approximately 4-2/3 miles of tide and submerged lands fronting an unincorporated area, Annexation No. 3 has been commenced to also incorporate those uplands in the city. The situation is somewhat confused by a subsequent action of the City of San Juan Capistrano, which commenced annexation proceedings for a portion of the areas included in both Annexations No. 2 and No. 3 of the City of San Clemente.

The attention of the city representatives was directed to the conflict of meeting dates for action to be taken on the annexation proposal. At the request of the staff, the City Council has acted to formally continue the scheduled December 20, 1961, public hearing until such time as a report from the State Lands Commission is received.

CALENDAR ITEM 8. (CONTD.)

Attached as Exhibit "B" is a copy of the statement of position signed by the Mayor and by the City Manager of San Clemente, which was received on December 11, 1961.

At the Commission meeting of November 22, 1961, Mr. Wallace Pinnick, an attorney from San Clemente representing the Capistrano Bay Improvement District, the City of San Juan Capistrano, and Harvey Company, appeared to protest Annexation No. 2 by the City of San Clemente (not then calendared as an agenda item) on the grounds that a portion of the State lands being annexed does not front on the present city limits.

A telegraphed request that the Commission protest Annexation No. 2 has been received from Mr. William D. Moore of the law firm of O'Melveny & Meyers, representing Capistrano Beach Club Company, Capistrano Beach Pier Company, and members of the Capistrano Beach Road Association.

Another telegram and letter from Mr. John H. Dawson, City Attorney of San Juan Capistrano, requests the Commission to protest Annexation No. 2.

The Dana Point Civic Association has gone on record as having voted unanimously to vehemently protest Annexation No. 2 through the Commission. No reasons for the protest are set forth in its letter to the Commission.

On December 4, 1961, the Orange County Harbor Commission formally and unanimously resolved to request the Orange County Board of Supervisors and the State Lands Commission to protest the annexation of the tide and submerged lands granted to the County of Orange for harbor purposes to any municipality except one into which the adjoining shore and upland area shall have been incorporated or annexed. On December 20, 1961, by resolution, the Orange County Board of Supervisors requested the Commission to protest the annexation.

In discussing the matter with the Orange County Harbor Manager, the point was made that the Harbor Commission would probably have no objection to the annexation of the granted tide and submerged lands to the City of San Clemente if the onshore lands were in the city, but that the Harbor Commission has taken its stand because of the uncertainty of the success of the pending upland annexation which is dependent upon (1) obtaining the signatures of 25% of the inhabitants on a petition and (2) the favorable vote of the majority of the electorate in a subsequent election.

The staff has discussed with special counsel for the City of San Clemente the possibility of continuing the protest hearing on Annexation No. 2 until the result of the upland annexation has been determined. This suggestion was considered undesirable by the city's representative because of time elements involved.

It is the opinion of the staff that if the tide and submerged lands of the State are to be incorporated in a municipality, the interests of local government, city and county, can best be served by permitting the annexation of tide and submerged lands only to the local governmental body having civil jurisdiction over the adjoining uplands.

CALENDAR ITEM 8. (CONTD.)

IT IS RECOMMENDED THAT, PURSUANT TO GOVERNMENT CODE SECTION 35313.1, THE COMMISSION DETERMINE THAT THE PRESENT VALUE OF THE STATE LANDS INCLUDED IN SAN CLEMENTE ANNEXATION NO. 2, SET FORTH IN SAN CLEMENTE CITY COUNCIL RESOLUTION NO. 1252, IS \$94,380,000, AND AUTHORIZE THE EXECUTIVE OFFICER TO SO NOTIFY THE SAN CLEMENTE CITY COUNCIL.

IT IS FURTHER RECOMMENDED THAT THE EXECUTIVE OFFICER BE AUTHORIZED TO PROTEST THE ANNEXATION ON THE GROUNDS THAT "ANNEXATION NO. 2" AS NOW CONSTITUTED IS NOT IN THE BEST PUBLIC INTEREST.