

MINUTE ITEM

This Calendar Item No. 27.
was approved as Minute Item
No. 22 by the State Lands
Commission by a vote of 2
to 0 at its 12-20-79
meeting.

MINUTE ITEM

12/79
Thompson
W 10334
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W 10351

27. AGREEMENT FOR PROPOSED EARTHFILL OF PURCHASED PROPERTIES

During consideration of Calendar Item 27 attached, Mr. W. M. Thompson, Chief, Long Beach Operations, explained that the item was a result of a difference of opinion between the staffs of the State Lands Commission and Attorney General's Office and the staff of the City of Long Beach concerning the reimbursable costs for subsidence in raising parcels of land purchased by the City after substantial subsidence on those lands had occurred. It is the staff's position that it is in the best interests of both parties for the Port to proceed with the work as planned in order to avoid additional costs due to inflation, and then to act on a complete presentation by the City and State within 120 days.

Mr. William F. Northrop, Executive Officer, stated the item indicated the Harbor Commissioners had approved this item at its last meeting; however, due to lack of a quorum, it was not.

Mr. Einar Peterson, Deputy City Attorney, City of Long Beach, appeared and confirmed Mr. Northrop's statement concerning a quorum. However, as Mr. Bell pointed out, since the agreement is not effective until all parties have signed, prior approval by the Harbor Commissioners was not necessary.

Upon motion duly made and carried, the resolution as presented in Calendar Item 27 was approved by a vote of 2-0.

Attachment: Calendar Item 27 (4 Pages).

CALENDAR ITEM

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27.

12/79
Thompson

AGREEMENT FOR PROPOSED EARTHFILL
OF PURCHASED PROPERTIES

The City of Long Beach has requested that the State Lands Commission approve, as subsidence costs, first phase expenditures for four proposed projects on land purchased by the City for harbor facilities development purposes.

These projects will involve placement of approximately four million cubic yards of fill material, raising seventy-six oil wells and related facilities and replacement of a sanitary sewer line. The City's preliminary estimate of the total cost for this work is \$17,500,000 (see Exhibit "A" hereof).

The City's request raises an initial question regarding the term "Subsidence Costs" as defined in Chapter 138, Statutes of 1964, First Extraordinary Session. Section 1 (e) of the statutes defines subsidence costs as follows:

"Subsidence costs" means costs expended by the City of Long Beach with the prior approval of State Lands Commission to remedy or protect against (1) the effects of subsidence of land surface, heretofore or hereafter occurring within the boundaries of the Long Beach Harbor District (as such boundaries were defined on April 1, 1956) and . . .

Under the City's interpretation of this section, all of the expenditures which it has proposed for these projects are reimbursable as "subsidence costs" despite the fact that each of the parcels involved was purchased, or is in the process of being purchased, by the City after the periods of time in which these parcels suffered significant effects of subsidence.

The staff does not agree with the City's interpretation of this section. The staff believes that "subsidence costs" means those costs expended to remedy effects of subsidence on City-owned lands occurring after the City acquired title to such land; and therefore in these cases, the City would not be entitled to any subsidence costs for these proposed

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landfill projects. Should the City's position on this issue ultimately be upheld, there may be further questions regarding the amounts to be reimbursed for these projects as "subsidence costs" resulting from other differences with the City as to proper interpretation of Chapter 138, including, but not limited to, the scope of work necessary to remedy the effects of subsidence on these lands and the appropriate allowance for discounts for subsidence which the City may have received in the prices paid while acquiring these lands.

Resolution of these disagreements is expected to be time consuming and may involve litigation. However, it is the desire of the City to proceed immediately with these projects if it can do so without prejudice to its claim that the proposed expenditures are reimbursable as subsidence costs.

Discussions were held with representatives of the City, which has led to a proposed written agreement whereby the City may immediately proceed with these projects but not withhold as subsidence cost any oil revenue due the State until such time as there is an approval by the Commission, or by the court should the Commission's decision be appealed, of the expenditures or portions thereof as "subsidence costs." A copy of this agreement is on file in the office of the State Lands Commission.

Staff is of the opinion that it is in the best interest of the State and City to enter into this agreement at this time because the delays in the initiation of these projects which would otherwise be caused by delays in the resolution of these disputes would be to the substantial disadvantage of both parties since the costs of these projects, whether to be ultimately paid out of the City's harbor revenues or out of tideland oil revenues, may sharply increase with the passage of time due to inflation.

The Attorney General's office has reviewed this agreement and approves it as to form. The City of Long Beach, acting by and through its Board of Harbor Commissioners, has approved the agreement.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT IT IS IN THE BEST INTERESTS OF THE STATE TO ENTER INTO THE AGREEMENT ALLOWING CITY OF LONG BEACH TO PROCEED WITH FOUR PROPOSED EARTHFILL PROJECTS WITHOUT PREJUDICE TO ITS CLAIMS FOR REIMBURSEMENT UNDER SUBSIDENCE PROVISIONS OF CHAPTER 138, STATUTES OF 1964, FIRST EXTRAORDINARY SESSION.

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2. APPROVE THE AGREEMENT AND AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT ON BEHALF OF THE COMMISSION AND TO PERFORM ALL OTHER ACTS NECESSARY OR PROPER TO EFFECTUATE THE PROVISIONS OF THE AGREEMENT.

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| CHAS. J. B. PAUL | 182 |
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EXHIBIT "A"

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PRELIMINARY COST EXTIMATE
Submitted by the City of Long Beach
for Four Proposed Earthfill Projects in
the Harbor Area

| | Quantity | Rate | Cost |
|--|--------------|-------------------|--------------|
| 1. Channel 2, Raise Berth 87 Area (Union Pacific)- | 97 Acres | | |
| Landfill | 3,004,000 cy | \$3/cy | \$ 9,012,000 |
| Oil Facility | 46 wells | \$23,000 ea. | 1,058,000 |
| Sewer 27"VCP | 1400 ft. | \$240/ft. | 336,000 |
| | | Construction Cost | \$10,406,000 |
| | | Contingency | 2,804,000 |
| | | Total | \$13,210,000 |
| 2. Channel 2, Raise Berths 62-67 Area (Southern Pacific) | -32 acres | | |
| Landfill | 780,000 cy | \$3/cy | \$ 2,340,000 |
| Oil Facility | 24 wells | \$23,000 ea | 552,000 |
| | | Construction Cost | \$ 2,892,000 |
| | | Contingency | 608,000 |
| | | Total | \$ 3,500,000 |
| 3. Channel 2, Raise Berth 82 Area (J.H. Baxter) | - 5 acres | | |
| Landfill | 85,300 cy | \$3/cy | \$ 256,000 |
| Oil Facility | 2 wells | \$23,000 ea | 46,000 |
| | | Construction Cost | 302,000 |
| | | Contingency | 68,000 |
| | | Total | \$ 370,000 |
| 4. Channel 2, Berth 86 Back Area Fill (P.D. & T.) | - 2 acres | | |
| Landfill | 86,000 cy | \$3/cy | \$ 258,000 |
| Oil Facility | 4 wells | \$23,000 ea | 92,000 |
| | | Construction Cost | \$ 350,000 |
| | | Contingency | 70,000 |
| | | Total | \$ 420,000 |
| | | Grand Total | \$17,500,000 |

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