

1. SETTLEMENT OF STATE-CITY OF LONG BEACH DIFFERENCES REGARDING THE QUEEN MARY AND PACIFIC TERRACE CENTER PROJECTS - W 10252, W 10248.

During consideration of Calendar Item 1 attached, Mr. E. N. Gladish, Executive Officer, State Lands Commission, summarized the events leading up to the settlement between the City of Long Beach and the State Lands Commission regarding the Queen Mary and Pacific Terrace Center Projects. He stated that as a result of a review of the Queen Mary Project by the staff, the Commission authorized the Attorney General to file a suit against the City for recovery of any funds expended on the Queen Mary Project in violation of the provisions of Chapter 138 or the general tidelands trust. In addition, the Division reported that the City had announced its intention to proceed with the construction of the Pacific Terrace Center, raising some serious legal and practical problems. Subsequently, a report on the Queen Mary Project review was forwarded to the Legislature with recommendations for remedial legislation. In conjunction with the Attorney General's Office, the Division has sought a settlement of these disputes and has now reached an agreement with the City. At this time, Mr. Gladish asked Warren J. Abbott, Deputy Attorney General, to outline the legal and associated practical problems relating to both the Queen Mary and Pacific Terrace Center Projects and explain the proposed settlement.

With regard to the legal problems concerning the Queen Mary Project, Mr. Abbott stated that the Office of the Attorney General in late December of last year issued an opinion concluding that substantial amounts of tideland trust funds had been expended by the City of Long Beach for purposes not authorized by Chapter 138 and the tideland trust. The total unauthorized expenditures amounted to \$15.3 million. In April, the Commission authorized suit be brought to recover the unauthorized expenditures. Mr. Abbott explained that suit had not been filed to avoid upsetting negotiations which the City was engaged in with its general contractor on the Project to resolve many outstanding disputes which would require the expenditures of some oil revenue. In addition, the City and the State have been negotiating the settlement before the Commission.

With regard to the practical problems on the Queen Mary Project, Mr. Abbott reminded the Commission of its limited role in Long Beach tideland projects: Chapter 138 obligates the Commission to oversee City tideland trust expenditures, yet fails to give the Commission discretionary authority over those expenditures.

Mr. Abbott then turned to the Pacific Terrace Center Project and its problems. He briefed the Commission on the background of the Project. He then set forth the legal problems connected with it. In addition to several technical legal problems, one of the main problems is whether the project is a proper use of the tidelands and the tidelands trust funds. On the practical side, the Pacific Terrace Center could mean a repeat of the Queen Mary Project -- substantial plan and concept changes and drastic increased costs without a commensurate authority on the part of the Commission to do anything about it.

In outlining the settlement, Mr. Abbott pointed out that combining the Queen Mary and the Pacific Terrace Center Projects was the most practical approach. The State wanted municipal funds put into the tideland trust on account of the Queen Mary Project, and the City was willing to use municipal funds on the Pacific Terrace Center -- a tidelands trust Project.

In the settlement, the City of Long Beach is 1) putting \$7.4 million of general municipal funds into the tidelands trust; and 2) executing a Declaration of Trust dedicating all improvements of the Pacific Terrace Center to the tidelands trust irrespective of the source of funds used on the Project. In addition, however, the City continues to deny any illegal expenditures or improper actions in the Queen Mary Project.

In return for the actions by the City, the State will waive and release the State's claims as to tidelands trust expenditures on the Queen Mary Project; the Commission will rescind its authorization to sue and will make certain determinations as to the Pacific Terrace Center. Mr. Abbott pointed out that the practical side of escalating costs and change of scope is past history, but the agreement specifically provides that the Commission will not recall its Queen Mary report and legislative recommendations which it sent to the Legislature. Further, members of the Commission, past or present, are free to take whatever position with respect to proposed legislation concerning Long Beach tidelands.

At this point Mr. Abbott described the legal and practical problems of the Pacific Terrace Center. In settling the legal problems of the Pacific Terrace Center, the City has agreed and represented:

1. that the real or main purpose of the Project is the promotion and accommodation of the tidelands trust;
2. to actively solicit and seek qualified trust events for the center;
3. to give priority to trust events; and
4. to continue the practice of making up out of municipal funds any losses incurred from staging nontrust events at the center -- and the City has agreed to an accounting system for this, as requested by the State.

With regard to the technical legal problems, the City has also submitted the data required by Chapter 138 and identified the intended expenditures of tidelands trust funds on the Project.

Mr. Abbott further explained that based on the data submitted, the State, in turn, will determine that the Pacific Terrace Center Project and the tidelands trust fund expenditures for it are in conformance with Chapter 138 and the tidelands trust.

As the Commission's attorney, Mr. Abbott commented; that 1) it is the opinion of the Office of the Attorney General that there are sufficient data and assurances before the Commission so that legally it may make this determination and 2) this action is a Chapter 138 determination. He stressed that the Commission is not passing judgment on the wisdom of the Project. The Commission's function is that of making a legal determination that the Project is in conformance with the tidelands trust.

In addition to the legal problems, there are still the practical problems concerning the danger of escalating costs and changing plans. However, Mr. Abbott reported that to meet these types of problems, the City has agreed to two things:

- 1) the City has agreed that it will not change the scope, concept or purpose of the Project from the plans as submitted and the Project as outlined in the City's submittal without prior discretionary approval of the State Lands Commission; and
- 2) the City has agreed to a ceiling on tidelands trust fund expenditures on the Project.

Mr. Abbott concluded that:

- 1) it is the Office of the Attorney General's opinion that the Commission legally may accept the settlement and adopt the settlement; and
- 2) the Office of the Attorney General concludes the settlement to be fair and just and a reasonable resolution of the legal issues, and an alternative to nonproductive litigation between the two public entities. Accordingly, the Office of the Attorney General recommends its acceptance as being in the public interest.

Mr. Gladish stated that in reviewing the alternatives before the Commission concerning the Queen Mary and Pacific Terrace Center Projects, it is his opinion that acceptance of the settlement is overwhelmingly in the public interest. He pointed out that pursuing the litigation would be expensive and time consuming and would be essentially non-productive. A strong, positive point in the settlement is that it is deliberately designed to avoid a repetition of the problems which confronted the Commission on the Queen Mary and against which the Commission was legally powerless. The negotiated settlement before the Commission gives the Commission discretionary authority over the Pacific Terrace Center Project beyond that provided by present law. In addition, the settlement will allow both the future Commission and Legislature to take a dispassionate look at the City's tidelands trust and perhaps all tidelands grants.

Of immediate concern, Mr. Gladish stated, is that acceptance of the settlement would create an atmosphere on the part of both parties to resolve some long-standing oil revenue accounting disputes and to get on with the mutually advantageous business of maximizing profits from the tidelands oil fields.

After Mr. Gladish's statement, Commissioners Flournoy and Fryer raised some questions which were thereupon answered. Mr. Flournoy pointed out that if the Commission had not waived the suit and had gone ahead, and if the Commission were totally successful, the money would then go back to the tidelands trust for the future use of the City for trust purposes pursuant to Chapter 138. The money would then be available for use in the Pacific Terrace Center Project without discretionary approval, which approval the Commission will obtain in approving the settlement. At that time, Mr. Abbott interjected that the discretionary approval applied to future expenditures above the agreed-to ceiling, being \$41 million with an inflationary index built in.

Considering the circumstances under which the Commission operates in reviewing the tideland expenditures of the City of Long Beach, Mr. Flourncy stated that the proposed settlement obviously appears to be in the best interests of the State. He underscored, from his point of view, the recommendations and findings of the staff and the untenable position that the Commission has found itself in this matter. He commented that even if the Commission were to pursue the litigation, consistent with the responsibilities the Commission has under the law to see that the trust funds of the City are expended for tideland purposes, it would impose a significant cost upon the taxpayers of the State of California and would result in no net gain. He stated it would merely restore funds so misspent back to the trust fund for future use of the City for trust purposes under Chapter 138. Mr. Flournoy again called the Legislature's attention to some of the recommendations the Commission made in the report referred to previously. Mr. Flournoy stated that in his opinion the relationship between the State Lands Commission and the City of Long Beach for expenditure of these funds, for whatever purposes the Legislature has allowed them, should be clarified and made far meaningful or be abandoned altogether. He hoped there will be attention paid to that in the next Legislature in order to provide, in essence, a workable relationship between the City and State over the Commission's supervision of these funds.

Upon motion duly made and carried, the following resolution was adopted:

THE STATE LANDS COMMISSION:

1. FINDS THAT IT IS IN THE BEST INTEREST OF THE STATE TO SETTLE ITS CLAIMS AGAINST THE CITY OF LONG BEACH REGARDING THE QUEEN MARY PROJECT, RATHER THAN PURSUING SUCH CLAIMS THROUGH LITIGATION.
2. ACCEPTS THE CITY OF LONG BEACH'S OFFER TO SETTLE THE QUEEN MARY PROJECT DISPUTE AS SET FORTH IN ITS LETTER OF SEPTEMBER 10, 1974.
3. RECOGNIZES THAT THE CITY OF LONG BEACH, IN ITS OFFER OF SETTLEMENT, DOES NOT ADMIT THAT IT HAS MADE ANY ILLEGAL EXPENDITURES OR IN ANY WAY ACTED IMPROPERLY IN RELATION TO THE QUEEN MARY PROJECT.
4. RESCINDS THAT SPECIFIC PORTION OF ITS ACTION OF APRIL 4, 1974, AUTHORIZING SUIT AGAINST THE CITY OF LONG BEACH ON THE QUEEN MARY PROJECT.
5. WAIVES ANY AND ALL CLAIMS OF THE STATE OF CALIFORNIA AS TO TIDELAND TRUST FUND EXPENDITURES BY THE CITY OF LONG BEACH ON THE QUEEN MARY PROJECT AS SET FORTH IN PARAGRAPH 7a OF THAT CERTAIN PACIFIC TERRACE AGREEMENT APPROVED BY THE CITY COUNCIL OF THE CITY OF LONG BEACH ON SEPTEMBER 10, 1974.
6. DETERMINES THAT THE CITY OF LONG BEACH HAS FULLY COMPLIED WITH THAT CERTAIN AGREEMENT DATED OCTOBER 22, 1970, BETWEEN THE CITY AND THE STATE RELATING TO CERTAIN NON-OBJECTIONS BY THE COMMISSION CONCERNING CERTAIN NOTIFICATIONS ON THE QUEEN MARY PROJECT, AND AGREES TO TERMINATE SAID AGREEMENT.

7. DETERMINES THAT THE CITY OF LONG BEACH'S PACIFIC TERRACE PROJECT AND ASSOCIATED TIDELAND TRUST EXPENDITURES, AS OUTLINED IN THE CITY'S LETTER OF SEPTEMBER 6, 1974, ARE IN CONFORMANCE WITH CHAPTER 138, STATUTES OF 1964, 1ST E.S., AND THE TIDELANDS TRUST.
8. AUTHORIZES THE EXECUTIVE OFFICER TO EXECUTE, RECEIVE, ACKNOWLEDGE, RECORD AND FILE ANY DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECT THE SETTLEMENT AS AUTHORIZED BY THIS RESOLUTION, INCLUDING BUT NOT LIMITED TO THAT CERTAIN PACIFIC TERRACE AGREEMENT AND DECLARATION OF TRUST AND AGREEMENT APPROVED BY THE CITY COUNCIL OF THE CITY OF LONG BEACH ON SEPTEMBER 10, 1974.
9. DIRECTS THE EXECUTIVE OFFICER TO INFORM THE STATE LEGISLATURE OF THIS SETTLEMENT.

Attachment:

Calendar Item 1 (7 pages)

CALENDAR ITEM

9/12/74  
ENG  
(WJA)

1.

SETTLEMENT OF STATE-CITY OF LONG BEACH DIFFERENCES  
REGARDING QUEEN MARY AND PACIFIC TERRACE CENTER PROJECTS

At its meeting of December 20, 1973, the State Lands Commission received the report of staff on the City of Long Beach's Queen Mary Project, which concluded that, through December 31, 1972, approximately \$13.9 of tideland trust funds had been spent on that Project in contravention of Chapter 138, Statutes of 1964, 1st E.S., and the tidelands trust. Updated schedules reflecting additional expenditures on the Project from January 1, 1973, through June 30, 1974, have raised the unauthorized total to \$15,274,561.

On April 4, 1973, the Commission authorized the Executive Officer and the Attorney General to take any and all legal action necessary to recover any and all tideland trust funds improperly expended on the Queen Mary Project. The statutorily required notice advising the City of the Commission's action was held in abeyance at the request of the City due to the latter's pending and imminent settlement of contractual disputes with its general contractor on the Project and due to the negotiations concerning possible settlement.

Although suit had been authorized, staff on behalf of the Commission and in conjunction with the Office of the Attorney General, continued efforts to achieve an out-of-court settlement with the City, to avoid, if possible, an inter-governmental lawsuit which would have the additional result of inevitably placing a financial burden upon the tideland trust amounting to hundreds of thousands of dollars.

During this interim period, on June 25, 1974, the City Council of Long Beach adopted revised plans and specifications for its Pacific Terrace Project, as well as adopting a new method of financing. The project, consisting essentially of remodeling of the Auditorium, construction of a new Exhibit Hall, and creation of an underground parking structure, was originally noticed by the City to the Commission in 1967, at a then estimated cost (from the City's share of oil revenue) of \$15 million.

The present proposal, however, envisions a greatly expanded project costing an estimated \$51,546,909, as follows:

A. Previously Expended (from \$15 million authorized in 1967)

|                                                           |                  |
|-----------------------------------------------------------|------------------|
| 1. Land Acquisition                                       | \$ 2,291,909     |
| 2. Architectural, Engineering,<br>and Miscellaneous Costs | <u>1,660,000</u> |
| Total Previously Expended                                 | \$ 3,951,909     |

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B. Current Construction Contract - Low Bid

|                                                                |                  |
|----------------------------------------------------------------|------------------|
| 1. Parking Structure -<br>(Parking Authority Revenue Bonds)    | \$ 8,600,000     |
| 2. Heating and Cooling Plant<br>(Gas Department Revenue Bonds) | 2,000,000        |
| 3. Auditorium and Exhibit Hall                                 |                  |
| a. Ad Valorem Tax Settlement<br>(General Municipal Funds)      | 7,405,000        |
| b. Tideland Oil Revenue Fund                                   | 17,000,000       |
| c. Tideland Operating Fund                                     | <u>7,155,000</u> |
| Sub-total                                                      | (31,560,000)     |
| Total Current Contract                                         | \$42,160,000     |

C. Future Work

|                                                                        |              |
|------------------------------------------------------------------------|--------------|
| Fixtures, Sound Equipment, Furniture,<br>Engineering, Inspection, etc. | \$ 4,435,000 |
|------------------------------------------------------------------------|--------------|

D. Other Items (Either Gas Tax Funds or Tideland Trust Funds)

|                                      |                     |
|--------------------------------------|---------------------|
| Parking Lot Improvements - \$500,000 |                     |
| Street Improvements - \$500,000      | <u>\$ 1,000,000</u> |
| Total Project Estimate               | <u>\$51,546,909</u> |

For some time prior to the City Council's June 25, 1974, action, staff had held some concern over the events being staged at the Auditorium and Arena, events which, in the main, appeared to be of a non-trust character. In 1960, the then State Lands Commission had approved the expenditure of over \$6 million of tideland oil revenue for the construction of the Long Beach Arena. In 1966, the Commission approved the transfer to trust asset status of the Long Beach Auditorium which had been constructed in the early 1930's on tidelands, although with municipal funds. This action was followed in 1967 with the City's notification to the Commission that it intended to spend \$15 million for the Pacific Terrace Project. Preceding each of these actions of the Commission were representations and assurances by the City that the project, whether Arena, Auditorium or Pacific Terrace Center would be used primarily for trust purposes, i.e., promotion and accommodation of the Port of Long Beach and the tidelands. The question presented was whether,

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based on the history of actual events staged at these facilities, the main purpose of the Pacific Terrace Center was to be a proper tideland trust use.

The City's announcement of the revised Pacific Terrace Project, however, afforded staff with the opportunity to resolve the problems presented by both the Queen Mary Project and the Pacific Terrace Project. The two pivotal aspects for the achievement of a resolution were:

1. In settlement of its Queen Mary claims, the State requires the City to reimburse the tideland trust funds from a non-trust source.
2. The City planned to use non-trust funds, in part, for the construction of the Pacific Terrace Center project.

In conjunction with the Office of the Attorney General, staff discussions were held with the City of Long Beach leading to the following proposal:

A. Queen Mary Project

1. The City

- a. The City would irrevocably commit the \$7.4 million of ad valorem tax settlement fund (municipal funds) to the construction of the Pacific Terrace Center Project.
- b. In the event the entire \$7.4 million of ad valorem tax settlement funds is not used on the Pacific Terrace Center Project, the amount's remaining would be transferred irrevocably to a tideland trust fund.
- c. The City would agree to transfer to the tideland trust the Pacific Terrace Center in its entirety, making the Center a trust asset, regardless of the source of funds expended on the construction of the Center. Final conveyance to the trust of the parking structure and central heating plant elements of the Project, both of which are being financed from revenue bonds, would be subject to the repayment of those bonds.

2. The State

- a. The State Lands Commission would rescind its April 4, 1974, authorization to institute suit against the City of Long Beach on the Queen Mary Project.
- b. In return for the settlement, including the Pacific Terrace Center Agreement, the State Lands Commission would waive any and all claims relating to unauthorized expenditures of trust funds on the Queen Mary Project, as shown in the December 1973 staff report, and in the updated (through June 30, 1974) expenditure schedules on file with the Commission, and certain outstanding or contingent and as yet unresolved contract claims.

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B. Pacific Terrace Center

1. The City

- a. The City would obtain a report from an independent qualified consultant on the availability of tenants and exhibitors for the Center whose activities would qualify as trust use, as well as the likelihood of the Center being used primarily for such trust uses. (The prominent consulting firm of Arthur D. Little, Inc., was retained by the City on July 30, 1974, to conduct the study. The written report has been received and concludes ". . . that there can be a significant utilization of the proposed facility by trust-related events.")
- b. The City would represent to the State Lands Commission that it intends the main use of the Center for tideland trust purposes; that it would give priority to such uses, and that it would actively seek tenants and exhibitors qualifying as trust uses.
- c. The City would agree to continue its present practice of defraying from municipal funds any losses resulting from the conduct of any non-trust events. (Agreement has been reached between City and State staffs as to the calculation of losses.)
- d. The City would submit a notification to the Commission covering the Plans and Specifications on the Center as detailed in the City's construction bid proposal, and the financing for the project. The notification would include anticipated capital expenditures from both the Tideland Oil Revenue Fund and the Tideland Operating Fund.
- e. The City would agree that (1) no substantial change in Project concept or program would be initiated and (2) no capital expenditure from either the Tideland Oil Revenue Fund or the Tideland Operating Fund over and above the present planned expenditures plus contingency and inflation factors would be made without prior approval of the Commission. The provision for this is set forth in the settlement agreement. It is stressed that this approval authority on the part of the Commission is discretionary and not simply a Section 6(h) (of Chapter 138) notification requirement.

2. The State

The State Lands Commission, based upon the consultant report and the representations of the City, as well as the opinion of the Attorney General, would determine that the proposed project and proposed trust expenditures as set forth in the City's submittals, are authorized by Chapter 138 and conform to the tidelands trust. (This is not an approval by the Commission, but a normal non-objection procedure under Section 6(h) of Chapter 138.) This determination

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would relate to all presently known or intended tideland trust fund expenditures on the Project as set forth in the City's notification.

Limits on Proposed Agreement

1. The proposed agreement would not in any manner imply authorization or approval by the State or State Lands Commission for any tideland oil revenue capital expenditures on the Queen Mary Project or related facilities subsequent to June 30, 1974, such as sky rides, conversion of the lower six docks of the Queen Mary forward of frame 168, land based hotels, or further shops and stores, which would be subject to appropriate statutes existent at the time any such expenditures are proposed or made. Nor does the settlement imply authorization or approval by the State Lands Commission for the construction of land fills, future marinas, or such facilities as amusement parks, hotels, restaurants and apartments. Such expenditures also would be subject to appropriate statutes existent at the time the expenditures are proposed or made. Additionally, the proposed settlement would not imply authorization or approval by the State Lands Commission for any additional hotels, restaurants, shops, or other facilities adjoining or adjacent to the Pacific Terrace Center not presently set forth in the Project Plans. Applicable law at the time of such proposals would prevail.
2. By entering into the proposed agreement, the City of Long Beach does not admit thereby that it has made any illegal expenditures or in any way acted in an unauthorized manner in relation to the Queen Mary Project.
3. The proposed agreement does not apply to any other areas of dispute or negotiation between the State and the City such as subsidence expenditure accounts, harbor land rentals and oil revenue accounting.
4. The staff reports filed by the Executive Officer with the State Legislature, at the direction of the State Lands Commission, would not be withdrawn. The proposed settlement, if adopted by the parties concerned, would be transmitted to the Legislature, but would not be intended to restrict that Body in any actions it might wish to take.
5. State and City officials would be free to interpret the proposed agreement from their varying perspectives.

Staff, the Office of the Attorney General and representatives of the City of Long Beach have met to draft the appropriate documents to effect the settlement. The City Council of the City of Long Beach approved the settlement and authorized execution of the documents on September 10, 1974. These documents are presented separately from this Calendar Item. An essential

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element would be the adoption by the Commission of the Resolution attached as Exhibit "A". The Office of the Attorney General has reviewed the proposed settlement and advises it is legally proper for the Commission to enter into the settlement.

EXHIBIT:           A. Resolution.

IT IS RECOMMENDED THAT THE COMMISSION ADOPT EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

Attachment: Exhibit "A"

EXHIBIT "A"

RESOLUTION

THE STATE LANDS COMMISSION:

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2. ACCEPTS THE CITY OF LONG BEACH'S OFFER TO SETTLE THE QUEEN MARY PROJECT DISPUTE AS SET FORTH IN ITS LETTER OF SEPTEMBER 10, 1974.
3. RECOGNIZES THAT THE CITY OF LONG BEACH, IN ITS OFFER OF SETTLEMENT, DOES NOT ADMIT THAT IT HAS MADE ANY ILLEGAL EXPENDITURES OR IN ANY WAY ACTED IMPROPERLY IN RELATION TO THE QUEEN MARY PROJECT.
4. RESCINDS THAT SPECIFIC PORTION OF ITS ACTION OF APRIL 4, 1974, AUTHORIZING SUIT AGAINST THE CITY OF LONG BEACH ON THE QUEEN MARY PROJECT.
5. WAIVES ANY AND ALL CLAIMS OF THE STATE OF CALIFORNIA AS TO TIDELAND TRUST FUND EXPENDITURES BY THE CITY OF LONG BEACH ON THE QUEEN MARY PROJECT AS SET FORTH IN PARAGRAPH 7a OF THAT CERTAIN PACIFIC TERRACE AGREEMENT APPROVED BY THE CITY COUNCIL OF THE CITY OF LONG BEACH ON SEPTEMBER 10, 1974.
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9. DIRECTS THE EXECUTIVE OFFICER TO INFORM THE STATE LEGISLATURE OF THIS SETTLEMENT.