

MINUTE ITEM

9/29/75
RCH
503.649

37. AUTHORIZATION AND AGREEMENT TO SETTLE PENDING LITIGATION, CITY OF LONG BEACH V. FRANK W. BUTLER, ET AL., LASCO NO. SOC 23014, LONG BEACH, LOS ANGELES COUNTY - W 503.649.

After consideration of Calendar Item 35 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. DETERMINES THAT EXPENDITURE OF \$150,000 BY THE CITY OF LONG BEACH FROM ITS SHARE OF TIDELAND OIL REVENUES FOR THE ACQUISITION OF THE UPLAND PARCEL AND FOR SETTLEMENT OF LITIGATION IS IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 138/64 1ST E.S., SUBJECT TO THE CONDITION THAT THE EXPENDITURE CONFORM IN ESSENTIAL DETAILS TO THE INFORMATION HERETOFORE SUBMITTED TO THE COMMISSION.
2. AUTHORIZES THE STAFF AND THE ATTORNEY GENERAL TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE SETTLEMENT HERETOFORE DESCRIBED BETWEEN THE CITY OF LONG BEACH, THE PRIVATE PARTIES AND THE STATE.
3. AUTHORIZES THE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE FOREGOING.

Attachment:

Calendar Item 35 (3 pages)

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CALENDAR ITEM

35.

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AUTHORIZATION AND AGREEMENT TO SETTLE PENDING LITIGATION,
CITY OF LONG BEACH V. FRANK W. BUTLER, ET AL.,
LASCO NO. SOC 23014, LONG BEACH
LOS ANGELES COUNTY

Since prior to 1938, a dispute has existed between the City of Long Beach and the private operators of "Ross' Boat Works" concerning the extent of public and private title within the area occupied by the boat works.

"Ross' Boat Works" is located on the shore of and within Alamitos Bay. The private parties asserted title primarily upon the contention that the area was included within Rancho Los Alamitos. The City asserted title to a substantial portion of the occupied water area by virtue of the conveyance by the State of all tide and submerged lands, in trust, to the City pursuant to the provisions of Chapter 102, Statutes of 1925 as subsequently amended and modified.

In May of 1970, the City of Long Beach filed a complaint in two causes of action: (1) to condemn a triangular parcel of real property situated on the southerly shore of Alamitos Bay in the City of Long Beach (hereinafter referred to as the "upland parcel") and (2) to recover possession of and to recover damages for, wrongful occupancy of property immediately adjacent to and bayward of the upland parcel, which private defendants were using as a small boat marina (hereinafter referred to as the "tide and submerged lands"). The case is entitled City of Long Beach v. Frank W. Butler, et al. LASC No. SOC 23014.

Pursuant to section 6308 of the Public Resources Code, the State was named as a necessary party since boundaries of granted tide and submerged lands were at issue.

Subsequently the City abandoned its cause of action for condemnation and the issue of damages was settled by stipulation.

In September 1970, the private defendants in the state court action filed a complaint in the United States District Court against the City of Long Beach for alleged violation of their civil rights, George Winslow Knowlton, et al., v. City of Long Beach, et al., United States District Court No. 70-2091. The civil rights case concerned the asserted actions of the City

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in connection with the real property which is the subject matter of the state court action and involved issues common to both cases which included the same questions of title and boundaries. Pending the outcome of the state court action, trial of the federal court action was postponed.

In the state court action after more than 34 days of court proceedings, the court determined the boundary between the upland parcel and the tide and submerged lands in conformity with the State and City's position and found that the City was entitled to possession of the tide and submerged lands. Judgment was entered on October 17, 1974. The private defendants have appealed said state court judgment to the State Court of Appeal.

Following entry of judgment in the state court, the federal court sought to set a trial date for the federal action while at the same time urging all parties to settle the case. Had the federal trial commenced, it would have been necessary to relitigate the questions raised in state court with the possibility of conflicting judgments being entered.

It has been estimated that an additional five to seven years would be required for the completion of the federal trial and state and federal appellate proceedings.

After numerous settlement conferences in both the State and federal courts, and after evaluating the facts and circumstances, the parties have agreed to a complete compromise whereby the private parties will deliver to the City a grant deed to the upland parcel with a surface release of the oil and mineral rights together with a quitclaim to the tide and submerged lands and the private parties will abandon and waive all right to appeal from or object to the state court judgment and abandon their pending action for damages in the United State District Court, in return for which the City will pay the sum of \$150,000 to the private parties and will lease the upland parcel and the tide and submerged lands together with the improvements thereto to the private parties for a period of eight (8) years at \$100.00 per month rent.

Approval of the State Lands Commission is necessary since the State is a party to the state court action and since the City proposes to expend tideland oil revenues for the \$150,000 payment for settlement of litigation and acquisition of the upland parcel.

The City is presently requesting a determination that the expenditure of said \$150,000 from the City's share of tideland oil revenues is proper pursuant to section 6 of Chapter 138.

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The Staff of the State Lands Commission has reviewed the agreement and has concluded that the provisions thereof are satisfactory.

The Office of the Attorney General has participated in the settlement negotiations and concurs with staff and the City that the settlement is in the best interest of all concerned in light of the favorable boundary line determination in the state court judgment, the avoidance of expensive, prolonged litigation in the federal courts and the state and federal courts of appeal, and the final settlement of the long standing dispute with the City being determined the undisputed owner of all the property.

A copy of the Settlement Agreement is on file in the Office of the State Lands Commission and by reference made a part hereof.

EXHIBIT: A. Vicinity Map.

IT IS RECOMMENDED THAT THE COMMISSION:

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