

29. PROPOSED EXPENDITURE OF TIDELAND OIL REVENUE FOR R.M.S. "QUEEN MARY," CITY OF LONG BEACH - W-10,248.

During consideration of Calendar Item 29 attached, appearances were made by:

Robert W. Parkin, Deputy City Attorney, City of Long Beach, who spoke on behalf of approval of the application.

Ed Binon, Editor of "Stop" (a monthly publication in the City of Long Beach), who raised several questions about expenditures, but who nevertheless urged the Commission to approve the application.

The Commissioners discussed the matter at length, and asked the Executive Officer and Assistant Attorney General Jay L. Shavelson to clarify several points on which they had questions. The Chairman then noted that there were no legal bases for objecting to the proposed expenditures pursuant to Ch. 138/64, 1st E.S. Commissioner Orr concurred.

Peter Tweedt, Administrative Deputy to the Lieutenant Governor, read into the record a letter of October 22, 1970, from Ed Reinecke, Lieutenant Governor, Member of the Commission, directed to the Chairman, stating that inasmuch as Statutes do not provide the Commission with discretion as to the amount spent by the City of Long Beach, he saw no way that the Commission could object to the proposed expenditure by the City of its share of tideland revenue, and giving his approval subject to verification by audit that the funds are expended in accordance with Section 6 of Chapter 138 of the Statutes of 1964, First Extraordinary Session.

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

THE COMMISSION AT THIS TIME INTERPOSES NO OBJECTION TO THE EXPENDITURE PROPOSED ON THE R.M.S. QUEEN MARY OF \$9,790,874 BY THE CITY OF LONG BEACH FROM ITS SHARE OF TIDELAND OIL REVENUE, TO CONTINUE CONVERSION OF THE SHIP TO A MARITIME MUSEUM AND CONSTRUCTION OF A BERTHING SITE, PARKING LOTS, AND OTHER LAND SUPPORTIVE FACILITIES, PURSUANT TO THE PROVISIONS OF CH. 138/64, 1ST E.S.; SAID NONOBJECTION TO BE SUBJECT TO THE CONDITION THAT THE WORK CONFORM IN ESSENTIAL DETAILS TO THE PLANS AND BACKGROUND MATERIAL HERETOFORE SUBMITTED; AND SUBJECT ALSO TO THE FOLLOWING DETERMINATIONS, CONDITIONS, AND AGREEMENT BETWEEN THE CITY AND THE STATE LANDS COMMISSION:

ENGINEERING DATA ARE VOLUMINOUS AND CANNOT BE SUFFICIENTLY REVIEWED WITHIN THE STATUTORY PERIOD SET FORTH IN CHAPTER 138, STATUTES OF 1964, FIRST EXTRAORDINARY SESSION, TO DETERMINE SATISFACTORILY AND FINALLY THAT THE CRITERIA OF SAID STATUTE HAVE BEEN FULLY MET.

THE STATE LANDS COMMISSION DOES NOT OBJECT TO THE EXPENDITURES PROPOSED IN THE CITY'S DESCRIPTION OF OCTOBER 13, 1970, THOUGH UPON THE CONDITION THAT THE STATE LANDS COMMISSION AND STAFF MAY REVIEW WORK PROGRESS FROM TIME TO TIME TO INSURE THAT THE REQUIREMENTS OF SAID STATUTE ARE MET, AND UPON THE FURTHER CONDITIONS AS HEREINAFTER SET FORTH.

MINUTE ITEM 29. (CONTD.)

THE PROVISIONS OF SECTION 6(h) OF CHAPTER 138 TO THE CONTRARY NOTWITHSTANDING, IT IS EXPRESSLY UNDERSTOOD THAT THE STATE LANDS COMMISSION'S FAILURE TO INTERJECT AN OBJECTION TO SAID EXPENDITURE WITHIN 60 DAYS OF SAID DESCRIPTION OF OCTOBER 13, 1970, SHALL NOT CONSTITUTE A WAIVER OR ABROGATION OF ANY AND ALL RIGHTS THAT THE STATE WOULD HAVE HAD, HAD SUCH NOTICE OF OBJECTION BEEN TIMELY GIVEN. IT IS EXPRESSLY UNDERSTOOD THAT NOTHING HEREIN SHALL AFFECT THE REQUIREMENT OF PRIOR COMMISSION APPROVAL OF ANY EXPENDITURE PURSUANT TO SECTION 6(g) OF CHAPTER 138, AND NOTHING HEREIN SHALL PRECLUDE THE CITY FROM APPLYING FOR APPROVAL OF ANY EXPENDITURE PURSUANT TO SAID SECTION 6(g). ALSO, THIS CONDITIONAL NONOBJECTION IS SUBJECT TO THE FURTHER CONDITION THAT THE CITY OF LONG BEACH ENTER INTO AN AGREEMENT WITH THE STATE EXTENDING TO TWO YEARS FROM THE DATE OF THE LAST EXPENDITURE OF TIDELAND OIL REVENUES ON THE QUEEN MARY THE TIME WITHIN WHICH THE STATE MAY INTERPOSE AN OBJECTION OR COMMENCE ANY LEGAL ACTION PURSUANT TO CHAPTER 138, AND AGREEING THAT THE CITY SHALL NOT INTERPOSE A DEFENSE TO ANY LEGAL ACTION BASED UPON THE PASSAGE OF TIME, INCLUDING BUT NOT LIMITED TO, LIMITATIONS, LACHES, ESTOPPEL, OR FAILURE TO INTERPOSE A TIMELY OBJECTION PURSUANT TO SECTION 6(h) OF CHAPTER 138.

Attachment:

Calendar Item 29 (3 pages)

CALENDAR ITEM

10/70
W-10,248

29.

PROPOSED EXPENDITURE OF TIDELAND OIL REVENUE FOR R.M.S. "QUEEN MARY,"
CITY OF LONG BEACH - W-10,248.

On October 13, 1970, the City of Long Beach submitted an application to the State Lands Commission proposing to expend \$9,790,874 from the City share of tideland oil revenues for additional costs of museum and tour areas of the Queen Mary, and site development, detailed as follows:

- (1) Work in the commercial areas necessary to ensure the safety of the Queen Mary structure..... \$1,700,775
 - (2) Work in the commercial areas that must be done before noncommercial areas of the Queen Mary can be completed. 871,000
 - (3) Additional costs of work in the City or museum areas of the Queen Mary made necessary by Diners actions..... 4,146,750
 - (4) Additional costs of work in the City or museum areas of the Queen Mary not referable to Diners actions..... 1,523,641
 - (5) Unresolved items presented by Smith-Amelco, the prime contractor..... 387,704
 - (6) Increased site development costs..... 1,161,004
- TOTAL..... \$9,790,874

On October 16, the City of Long Beach sent a telegram to the Commission stating that:

"THE CITY OF LONG BEACH URGENTLY REQUEST SPECIAL MEETING OF THE STATE LANDS COMMISSION TO CONSIDER NOTICE OF OCTOBER 6TH AS MODIFIED ON OCTOBER 13 RE QUEEN MARY. CONTRACTOR ONLY GUARANTEED COST PREPARED FOR NOTICES TO OCTOBER 12 BUT WILL EXTEND SHORT PERIOD MORE. CONTRACTOR INSISTS ON EARLY AUTHORIZATION TO PROCEED WITH ADDITIONAL WORK PACKAGE IN ORDER TO MAINTAIN SCHEDULE OR MUST CURTAIL WORK DRASTICALLY. FURTHER DELAYS WILL SUBSTANTIALLY INCREASE COST AND SERIOUSLY AFFECT PROJECTED COMPLETION SCHEDULE. JOHN R. MANSELL, CITY MANAGER."

The City indicates that the proposed additional expenditures were necessitated largely due to the unexpected action of the Diners Queen Mary Corporation in purporting to terminate its contractual obligations to the City and its ceasing of all conversion work in connection with the Corporation's commercial nontrust development obligations. The City has represented that failure to make the additional expenditures submitted as of this date could jeopardize the entire project and the tideland trust monies heretofore expended thereon. The City also has submitted a forecast of available trust revenues, which forecast indicates that such revenues, together with existing unencumbered balances, will be sufficient to cover the amounts specified in the present application for conditional nonobjection.

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By agreement between the City of Long Beach and the State Lands Commission, the conditional nonobjections entered by the Commission on December 19, 1968, and on January 7, 1970, were made subject to the condition that the State was not waiving any rights to initiate any appropriate proceedings if it is ultimately determined that any of the expenditures conditionally nonobjected to were legally improper. The Long Beach project review staff of the State Lands Division have been devoting substantially all their time over a period of many months to gathering data necessary for complete engineering, economic, and legal review of these expenditures. By resolution of October 13, 1970, the City Council ratified and reaffirmed the actions taken by the State Lands Commission at its meetings of December 19, 1968, and of January 7, 1970, including all conditions attached thereto. In addition, the City Council authorized the City Attorney to enter into the necessary agreements with the State extending to two years from the date of the last expenditure of tideland oil revenues on the Queen Mary the time within which the State may interpose an objection or commence any legal action pursuant to Chapter 138, and agreeing that the City shall not interpose a defense to any legal action based on the passage of time, included but not limited to, limitations, laches, estoppel, or failure to interpose a timely objection pursuant to Section 6(h) of Chapter 138, Statutes of 1964, First Extra Session.

Under Chapter 138, the State Lands Commission is not vested with any authority to approve or to disapprove, as a matter of policy, proposed capital expenditures from the City's share of tideland oil revenues submitted pursuant to the provisions of Sections 6(a) through 6(f) of Chapter 138. The Commission authority is limited to the interposition of an objection on legal grounds within sixty days of the date of the submittal of such items, in the event it appears to the Commission and the Attorney General that a proposed expenditure is not authorized under the criteria specified in Chapter 138. In light of the voluminous and complex data upon which any such legal conclusion will have to be made, it has been impossible to develop and analyze such data within the time designated by statute. Therefore, the only alternatives of the Commission would have been either a failure to take any action with regard to proposed expenditures, in which case the legal rights of the State would have been waived, or the commencement of legal proceedings, which would necessarily have been based upon inadequate data and analysis, and which could have had the possible additional effect of substantially interfering with all efforts to render the project beneficial to the tideland trust and to the Statewide interest involved therein. Therefore, the procedure of conditional nonobjection has been adopted, and has been deemed the only feasible and responsible action which the State could have taken under the circumstances. It must be emphasized that the actions of the State Lands Commission imply neither an approval of the project as a matter of policy nor a waiver of the legal rights of the State to take effective steps to protect the interests of the tidelands trust if such steps are determined to be necessary at any future time.

IT IS RECOMMENDED THAT THE COMMISSION AT THIS TIME INTERPOSE NO OBJECTION TO THE EXPENDITURE PROPOSED ON THE R.M.S. QUEEN MARY OF \$9,790,874 BY THE CITY OF LONG BEACH FROM ITS SHARE OF TIDELAND OIL REVENUE, TO CONTINUE CONVERSION OF THE SHIP TO A MARITIME MUSEUM AND CONSTRUCTION OF A BERTHING SITE, PARKING LOTS, AND OTHER LAND SUPPORTIVE FACILITIES, PURSUANT TO THE PROVISIONS OF CH. 138/64, 1ST E.S.; SAID NONOBJECTION TO BE SUBJECT TO THE CONDITION THAT THE WORK CONFORM IN ESSENTIAL DETAILS TO THE PLANS AND BACKGROUND MATERIAL HERETOFORE SUBMITTED; AND SUBJECT ALSO TO THE FOLLOWING DETERMINATIONS, CONDITIONS, AND

CALENDAR ITEM 29. (CONTD.)

AGREEMENT BETWEEN THE CITY AND THE STATE LANDS COMMISSION:

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