

MINUTE ITEM

11/79
Thompson

28. APPROVAL OF AGREEMENT SETTLING THE AMOUNTS OF SUBSIDENCE
COST EXPENDITURE

Calendar Item 28 attached, was pulled from the agenda prior to
the meeting.

Attachment: Calendar Item 28. (11 Pages)

CALENDAR ITEM

28.

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APPROVAL OF AGREEMENT SETTLING THE
AMOUNTS OF SUBSIDENCE COST EXPENDITURE

SUBSIDENCE REMEDIAL PROJECTS:

- Subsidence Maintenance Accounts, April 1, 1956 to June 30, 1978.
- Subsidence Studies Accounts, April 1, 1956 to June 30, 1978.
- Town Lot Maintenance and Materials Yard.
- Broadway Sewer Rehabilitation.
- Pier A, Berth 5 Wharf Remedial Work.
- Town Lot East Fill and Oil Facilities Raising.
- Seventh Street Yard Area Storm Drain.

FISCAL IMPACT:

Total subsidence costs for these projects amount to \$_____. There will be a credit of \$_____ to the City of Long Beach.

The amount of \$_____ is determined to be the total amount of all subsidence cost approved by the Commission which were expended by the City between September 1, 1964 and December 31, 1968. The City shall be entitled to 50% of this amount from the reserve account for subsidence contingencies upon termination of that account, as provided under Chapter 138/1964 Section 4(f).

CONDITIONS FULFILLED:

1. That the amount to be allowed as subsidence costs for these accounts under Chapter 29, Statutes of 1956, First Extraordinary Session, Section 5(a) and Chapter 138, Statutes of 1964, First Extraordinary Session, Section 4(d) will be determined by the Commission upon an engineering review and final audit of each account following completion of the work.

The subsidence costs determined herein are confirmed by such engineering reviews and final audits.

A 57, 58

S 27, 31

CALENDAR PAGE	212
MINUTE PAGE	2413

CALENDAR ITEM NO. 28. (CONTD)

2. That the work conform in essential details to plans and information submitted by the City.

The work performed has been inspected and verified.

PERTINENT INFORMATION:

The accounts listed in Exhibit "A" have been left unclosed because of certain unresolved differences in interpretation of the intent of the provisions of Chapter 29, Statutes of 1956, First Extraordinary Session, and Chapter 138, Statutes of 1964, First Extraordinary Session, relating to subsidence cost expenditures. These differences in interpretation resulted in a total dollar difference of approximately \$512,000. During recent months, discussions were held between representatives of the State and the City of Long Beach which led to a proposed agreement to settle this total dollar difference without settling any differences in principal or establishing any precedent for the future; a copy of this Agreement is attached as Exhibit "B". The Office of the Attorney General participated in the negotiations and approves the proposed Agreement.

In view of the complex nature and divergence of opinions on the various issues, the staff, with the concurrence of the Attorney General's Office, is of the opinion that the proposed Agreement, while a compromise, is in the State's best interests.

The closing of these accounts will finally resolve the subsidence cost expenditures for all subsidence remedial projects and the annual subsidence maintenance and studies accounts which have been completed through June 30, 1978.

EXHIBITS:

- A. Subsidence Cost Determination, Settlement with City of Long Beach Supported by Engineering Reviews of Projects and Final Audits of Accounts.

CALENDAR ITEM NO. 28. (CONTD)

B. Agreement to Settle and Close Certain
Accounts of Tideland Oil Revenue
Expenditures for Subsidence Remedial
Work.*

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT IT IS IN THE BEST INTERESTS OF THE STATE TO SETTLE ITS DISAGREEMENTS WITH THE CITY OF LONG BEACH REGARDING THE SUBSIDENCE PROJECTS AS PROPOSED IN THE AGREEMENT ATTACHED HERETO AS EXHIBIT "B" AND BY REFERENCE MADE A PART HEREOF.
2. APPROVE THE AGREEMENT SHOWN IN EXHIBIT "B" AND AUTHORIZE ITS EXECUTION BY THE EXECUTIVE OFFICER.
3. DETERMINE THAT FOR PURPOSES OF SETTLEMENT THE SUBSIDENCE COSTS DEDUCTIBLE FROM TIDELAND OIL REVENUE UNDER CHAPTER 29, 1956, FIRST EXTRAORDINARY SESSION, SECTION 5(a) AND CHAPTER 138, STATUTES OF 1964, FIRST EXTRAORDINARY SESSION, SECTION 4(d) FOR PORT OF LONG BEACH SUBSIDENCE PROJECTS IDENTIFIED IN EXHIBIT "A" ATTACHED ARE AS SHOWN THEREIN AND IN EXHIBIT "B".
4. ON THE BASIS OF THIS DETERMINATION, AUTHORIZE THE EXECUTION OF WRITTEN INSTRUMENTS TO FINALLY CLOSE THESE ACCOUNTS.
5. DETERMINE THAT FOR PURPOSES OF THIS SETTLEMENT, THE TOTAL OF ALL SUBSIDENCE COSTS APPROVED AND DISBURSED BY THE CITY BETWEEN SEPTEMBER 1, 1964 AND DECEMBER 31, 1968, FOR PROJECTS PREVIOUSLY CLOSED BY THE COMMISSION AND BY THE DETERMINATION OF SUBSIDENCE COSTS SHOWN IN EXHIBIT "A" AND "B" ATTACHED ARE \$ _____ THE CITY SHALL BE ENTITLED TO AN AMOUNT EQUAL TO 50% OF THESE SUBSIDENCE COSTS FROM THE RESERVE ACCOUNT FOR SUBSIDENCE CONTINGENCIES UPON TERMINATION OF SAID RESERVE ACCOUNT, AS PROVIDED UNDER CHAPTER 138, STATUTES OF 1964, FIRST EXTRAORDINARY SESSION, SECTION 4(f).

* Schedule I of this Agreement is not included in this Calendar Item; a complete copy of this Agreement, including Schedule I, is on file in the Office of the State Lands Commission and is incorporated herein by this reference.

NO. 11 1968	214
NO. 11 1968	2415

EXHIBIT "A"

SUBSIDENCE COST DETERMINATION
Settlement With City of Long Beach Supported
by Engineering Reviews of Projects and
Final Audits of Accounts

<u>LBWO</u>	<u>LBHD</u> <u>AFE</u>	<u>PROJECT TITLE</u>
(See page 2)		Subsidence Maintenance Accounts, April 1, 1956 to June 30, 1978.
(See page 2)		Subsidence Studies Accounts, April 1, 1956 to June 30, 1978.
W10291	909	Town Lot Maintenance and Materials Yard
W10128	945	Town Lot Fill and Oil Facilities Raising
W10281	994	Broadway Sewer Rehabilitation
W10298	1054	Pier "A", Berth 5 Wharf Remedial Work
W10301	1066	Town Lot East Fill and Oil Facilities Raising
W10302	1119	Seventh Street Yard Area Storm Drain

SUBSIDENCE COST DETERMINATION FOR THE ABOVE LISTED PROJECTS IS:

<u>Final Subsidence Costs</u>	<u>Amounts Previously Withheld by City</u>	<u>Credit Due City</u>
\$	\$	\$

DATE	215
AMOUNTS	2416

Exhibit "A" (Contd.)

LONG BEACH WORK ORDERS FOR SUBSIDENCE MAINTENANCE AND
SUBSIDENCE STUDIES ACCOUNTS FROM APRIL 1, 1956 TO JUNE 30, 1978

<u>Subsidence Maintenance</u>	<u>Subsidence Studies</u>	<u>Period</u>
W10057	W10057	4-1-56 to 7-5-56
W10004	W10004	7-5-56 to 7-31-56
W10004	W10004	8-1-56 to 8-31-56
W10003	W10014	9-1-56 to 6-30-57
W10025	W10024	7-1-57 to 6-30-58
W10073	W10072	7-1-58 to 6-30-59
W10095	W10094	7-1-59 to 6-30-60
W10129	W10114	7-1-60 to 6-30-61
W10145	W10146	7-1-61 to 6-30-62
W10160	W10161	7-1-62 to 6-30-63
W10176	W10177	7-1-63 to 6-30-64
W10199	W10200	7-1-64 to 6-30-65
W10214	W10215	7-1-65 to 6-30-66
W10233	W10232	7-1-66 to 6-30-67
W10246	W10247	7-1-67 to 6-30-68
W10256	W10257	7-1-68 to 6-30-69
W10267	W10268	7-1-69 to 6-30-70
W10272	W10273	7-1-70 to 6-30-71
W10279	W10280	7-1-71 to 6-30-72
W10284	W10283	7-1-72 to 6-30-73
W10289	W10288	7-1-73 to 6-30-74
W10294	W10293	7-1-74 to 6-30-75
W10304	W10305	7-1-75 to 6-30-76
W10320	W10321	7-1-76 to 6-30-77
W10332	W10331	7-1-77 to 6-30-78

DATE PAID _____ 216
MINUTE PAGE _____ 2417

EXHIBIT "B"

AGREEMENT TO SETTLE AND CLOSE CERTAIN ACCOUNTS OF
TIDELAND OIL REVENUE EXPENDITURES FOR SUBSIDENCE

THIS AGREEMENT is made and entered into by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners (hereinafter referred to as the "CITY"), and the STATE OF CALIFORNIA, acting by and through its State Lands Commission (hereinafter referred to as the "STATE").

WHEREAS, the City of Long Beach, a municipal corporation, is the grantee in trust of certain tidelands by grants from the State in Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925, and Chapter 158, Statutes of 1935, as further defined by Chapter 29, Statutes of 1956, First Extraordinary Session (hereinafter referred to as "Chapter 29"), and Chapter 138, Statutes of 1964, First Extraordinary Session (hereinafter referred to as "Chapter 138");

WHEREAS, certain disputes have arisen between the City and the State with respect to the interpretation and effect of the provisions of Chapter 29 and Chapter 138, relating to expenditures by the City of tideland oil for subsidence remedial work;

WHEREAS, some of these disputes have continued unresolved for many years to the prejudice of both the City and the State and have deferred final subsidence cost determinations and closings of a number of subsidence cost accounts;

CALENDAR PAGE	217
MINUTE PAGE	2418

WHEREAS, the total dollar difference between the State and City, as determined by summation of the differences in each of these unsettled accounts, is approximately \$512,000;

WHEREAS, extended discussions have been held between representatives of the State and City, the purpose of which was to resolve these disputes but which did not lead to resolution of the parties' differences relating to the interpretation and effect of Chapters 29 and 138;

WHEREAS, more recent discussions have been held between representatives of the State and City, the purpose of which was to settle upon a total subsidence cost determination covering all of these accounts without prejudicing either party's positions on the interpretation and effect of Chapters 29 and 138;

WHEREAS, such discussions have led to an agreement, as set forth below, to settle the total dollar difference between the parties without settling any differences in principle or establishing any precedent for the future;

WHEREAS, it is in the best interests of the State and the City to settle these matters as set forth below because the complex nature and divergence of opinions on the various issues would make litigation thereof very costly and the net result of such litigation would probably not be very different from the resolution agreed to herein;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, it is agreed as follows:

CALENDAR PAGE	218
MINUTE PAGE	2419

1. The subsidence Authorized Fund Expenditures (AFE's) and annual Subsidence Maintenance and Subsidence Studies accounts from April 1, 1956, to June 30, 1978, listed in Schedule I to this agreement by this reference made a part hereof, and only those AFE's and annual accounts are the subject of this settlement. The listings in Schedule I contain, among other items, each AFE number and annual account work order number, the project description for each of the AFE's and annual accounts, the amount of subsidence costs for each of the AFE's and annual accounts already reimbursed to the City, the subsidence costs claimed by the City for each of the AFE's and annual accounts, and the subsidence costs which the State considers to be allowable for each of the AFE's and annual accounts.

2. As is also shown in Schedule I, the total amount of subsidence costs claimed by the City for all of the listed AFE's and annual accounts is \$ _____; the total amount of subsidence costs which the State considers to be allowable for all of the listed AFE's and annual accounts is \$ _____.

3. For the sole and limited purpose of settling this dispute and for no other purpose whatsoever, the State and City agree that the total subsidence cost determination for all of the listed AFE's and annual accounts shall be \$ _____. It is further agreed that this total subsidence cost determination shall, for accounting purposes, be distributed among each of the AFE's and annual accounts as shown in Schedule I; with such distributions, the final subsidence cost determinations for each AFE and annual account shall be closed as shown.

4. The City and State agree that the settlement made herein shall constitute the final settlement of the amounts owing between the parties as to the AFE's and annual accounts listed in Schedule I. The City and State forever waive any and all claims against each other as to these AFE's and annual accounts, including any claims not reflected in Schedule I.

5. The settlement herein made does not constitute agreement by any of the parties as to the propriety of any of the matters claimed as subsidence costs with respect to the AFE's and annual accounts settled, including, without limitation, those items claimed as qualifying for subsidence costs and the methods used in determining subsidence costs. Nothing with respect to the settlement of any of the AFE's and annual accounts listed in Schedule I shall constitute a precedent for the future settlement of subsidence projects, AFE's or annual accounts, nor shall anything with respect to such settlement be used by any party to this agreement in any controversy, including, without limitation, any legal action with respect to any other subsidence project, AFE or annual account or with respect to any other matter. Furthermore, the distribution of the total dollar difference between the State and City to each of the AFE's and annual accounts, as agreed to in Paragraph 3, is for accounting purposes only and shall in no way be construed as a statement or admission of either party as to the relative credibility of either party's position relating to disputes over any, some or all of the AFE's and annual accounts listed in Schedule I.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on this _____ day of November, 1979.

CITY OF LONG BEACH,
a municipal corporation,
acting by and through
its Board of Harbor
Commissioners

By _____
General Manager

CITY

The foregoing agreement is approved as to form
this _____ day of November, 1979.

ROBERT PARKIN, City Attorney

By _____
Deputy

CALENDAR PAGE	221
MINUTE PAGE	2423

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on this _____ day of November, 1979.

STATE OF CALIFORNIA

By _____
WILLIAM NORTHROP
Executive Officer
State Lands Commission

STATE

The foregoing agreement is approved as to form this _____ day of November, 1979.

GEORGE DEUKMEJIAN
Attorney General

By _____
Deputy Attorney General

CALENDAR PAGE	222
MINUTE PAGE	2423