

MINUTE ITEM

This Calendar Item No. 25  
was approved as Minute Item  
No. 25 by the State Lands  
Commission by a vote of 3  
0 at its 3/5/81  
meeting.

MINUTE ITEM

3/5/81  
G 09-02.2  
Trout  
W 7227

25 CITY OF NEWPORT BEACH, DEVELOPMENT OF OIL AND GAS RESOURCES  
ON TIDE AND SUBMERGED LANDS

During consideration of Calendar Item 25 attached, representatives from Armstrong Petroleum Company appeared in opposition to the staff's recommendation. They included Robert Buchanan, attorney; and Robert Armstrong, President.

It was their position that pursuant to the terms of the contract, they are not obligated to turn over the rights of access to the drillsites in the upland areas which intercede and affect their other property rights or to turn over the attendant facilities. Mr. Buchanan stated they had asked the City for arbitration on that issue but were refused. He explained that the City's position was that it was not an arbitrable issue within the meaning of the contract. He further explained they then filed a declaratory relief action seeking the court's determination on these issues. However, as of this time, the court has not ruled. Mr. Buchanan went on to say a subsequent meeting was held with the City wherein Armstrong Petroleum suggested that pending resolution of the contract dispute, they would continue to operate these wells for the benefit of the City, not waiving on either part any rights, and that during the interim period, the City could realize 35 percent royalty as opposed to the 12-1/2 percent which it was receiving before the termination of the contract. It was their feeling this proposal was a way to handle the situation on an interim basis without depriving the City of income. However, it was not accepted by the City and the wells were therefore shut down.

Commission-Alternate Susanne Morgan stated since the contract had been in effect for a long period of time, it was her feeling it is time to go out and test the market again. Mr. Armstrong agreed, but felt that should not be done until the court had rendered its opinion. Until then, he contended the wells should be allowed to continue to operate.

Mike McCormick of Rutan & Tucker, the attorney representing the City of Newport Beach, appeared in support of the staff's recommendation. He stated it is the City's position that the contract has expired; that it now must be let by competitive bid; and that the contract included provisions whereby upon its termination, the facilities could be turned over to the City. However, Armstrong Petroleum advised the City they would not turn over the facilities to them. Armstrong Petroleum had advised they would litigate the matter and keep it in the courts for years.

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(Non-substantive revision,  
5/28/81)

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As a result, Mr. McCormick stated the City was forced to think of the alternative measure of condemning the property in order to obtain immediate possession. In conclusion, he stated it is the City's position that 1) they cannot rely on the courts to resolve the litigation fast enough to get the wells into production, and 2) it is not in the public's interests to allow Armstrong Petroleum to dictate the terms of the contract by refusing to abide by the terms of the preceding contract.

Mr. Ackerman was concerned that the proposed action would prejudice the existing litigation; however, Robert C. Hight, Chief Counsel, advised it would not.

At the conclusion of the discussion, Ms. Morgan indicated she did not have any problems with the staff's recommendation. However, she did not want this action to imply that the Commission supports what she considers to be poor business practices on the part of the City in handling this matter in an untimely manner. Mr. Ackerman asked when could the wells resume operations if the Commission approved the staff's recommendation. Mr. Hight stated that the staff's proposal is the more expeditious method, and he ventured a guess that it would take approximately two months before operations could be resumed. Mr. Ackerman then stated he concurred with the staff's recommendation with the stipulation that this action does not prejudice the pending litigation.

Chairman Cory asked if Armstrong Petroleum would be interested in allowing a third party, i.e. the State, to come in and operate the wells during the interim period and hold the money in trust until the lawsuit had been settled. Mr. Armstrong agreed with that proposal. Mr. Northrop asked him if they would have any problems if the City acted as the State's representative. However, Mr. Cory stated the staff should confer with Mr. Armstrong, his attorney and the City to see if that avenue could be explored. It was Mr. Cory's opinion that this would be permitted under the proposed resolution.

Upon motion duly made and carried, the resolution as presented in Calendar Item 25 was approved by a vote of 3-0 with the stipulation that the City proceed as expeditiously as possible in resuming production of the wells.

Attachment:  
Calendar Item 25

CALENDAR ITEM

25

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CITY OF NEWPORT BEACH  
DEVELOPMENT OF OIL AND GAS RESOURCES  
ON TIDE AND SUBMERGED LANDS

The City of Newport Beach has had administrative responsibility for state tide and submerged lands within the City since the first Legislative Grant to it in 1919. The last grant statute was enacted in 1978 as Chapter 74. Included in the City's trust obligation is that of developing the oil and gas resources from the state lands. In 1943 the City entered into a contract with D. W. Elliot to produce the petroleum asset of the granted lands. The contract was transferred a number of times and extended finally expiring January 25, 1981. Armstrong Petroleum Company was the holder of the contract at termination. Oil production under the contract was from two sites adjacent to, but northerly of, the City boundary (See Exhibit B).

Under the terms of the contract the City was entitled to:

1. All tanks and improvements on the drillsite.
2. Acquire at fair market value, the pumps.
3. All necessary rights of access for production of the resource.

The present situation is that the last contractor has apparently refused to comply with all or some of the provisions of the contract with regard to the City's rights at termination. As a result, the 16 wells are now shut down. The City is attempting to acquire the pass-through and other rights needed to offer the oil operation for lease by competitive bid. Such lease would require findings by the Commission pursuant to Section 6878 of the P.R.C. The findings would include the need for drilling to be done from a site littoral to an upland of the mean high tide line.

Several options are available to the City as trustee and to the State. Legal action may be initiated to compel performance under provisions of the contract. The City can consider exercise of its power of eminent domain for acquisition of the nonexclusive easement required for the drillsite operations and storage tanks. Legislation could be passed which would amend the trust grant to empower the City to

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exercise condemnation beyond its boundaries where necessary for exploration and production of tideland oil and gas.

Another option is that the State might acquire the needed easement through condemnation proceedings. Clearly, irreparable harm is being done to the public welfare while the wells are not producing. The longer the wells remain shut down the greater the damage. There is also the increased potential for serious adverse effects to eventual resumption of production.

Positive and negative impacts of the several options are being evaluated. At this time the analysis is incomplete. However, several things are clear. The existing and continued shutdown of production has various financial consequences for the public and the City. Revenues from the oil and gas resources are used by the City for statewide public benefit in operating and maintaining facilities on the tide and submerged lands. Recreational beach use and boating by the general public will suffer from a lack of funds for operation, maintenance and protection of the public facilities.

Beyond a concern for the immediate impact on the City of Newport Beach and the general public which uses the tide and submerged lands in the City, the State has additional responsibilities as Settlor - Beneficiary of the trust grant. The Commission, as the state agency charged with sovereign trust land management, is charged by subsection (o) of Section 1 of Chapter 74, to "...from time to time, recommend to the legislature such amendments as it may deem necessary in the terms and conditions of this Act" (the Newport Beach grant).

In view of the number of options available, the staff believes a broad authorization for effort on several fronts is warranted.

EXHIBITS:           A. Site Map.    B. Parcel Map.

IT IS RECOMMENDED THAT THE COMMISSION:

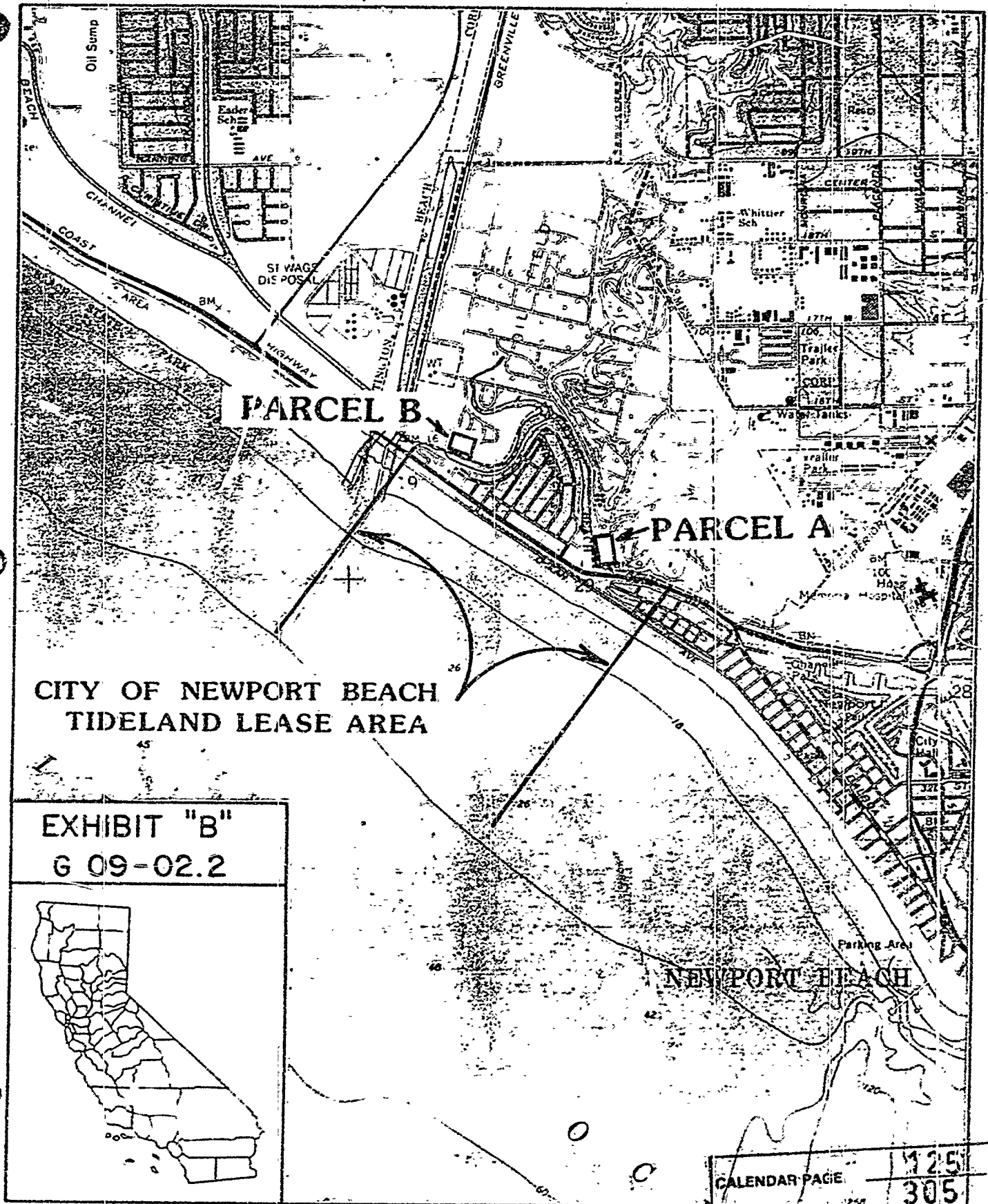
1. FIND THAT IRREPARABLE HARM WILL OCCUR TO THE SOVEREIGN TRUST IF THE WELLS DRILLED INTO THE OIL AND GAS RESOURCES REMAIN SHUT DOWN.
2. FIND THAT ACQUISITION BY THE CITY OF NEWPORT BEACH AND/OR THE STATE OF CALIFORNIA OF A NON-EXCLUSIVE EASEMENT OVER THE PARCELS SHOWN ON EXHIBIT B IS NECESSARY FOR THE EXPLORATION AND PRODUCTION OF OIL AND GAS FROM STATE-OWNED LAND AND FOR THEIR REMOVAL, TRANSPORTATION,

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STORAGE AND SALE BY THE CITY OF NEWPORT BEACH AS TRUSTEE FOR THE STATE OF CALIFORNIA.

3. AUTHORIZE THE STAFF OF THE COMMISSION, THE OFFICE OF THE ATTORNEY GENERAL AND THE CITY OF NEWPORT BEACH AS TRUSTEE FOR THE STATE, TO TAKE SUCH STEPS AS MAY BE NECESSARY TO ACQUIRE A NON-EXCLUSIVE EASEMENT OVER THE PARCELS SHOWN ON EXHIBIT B, INCLUDING LITIGATION AND CONDEMNATIONS.
4. AUTHORIZE THE STAFF TO SUPPORT LEGISLATION WHICH WOULD EMPOWER THE CITY OF NEWPORT BEACH TO UTILIZE THE POWER OF EMINENT DOMAIN OUTSIDE ITS CORPORATE BOUNDARIES FOR THE PURPOSES OF EXPLORATION, DRILLING OR PRODUCTION OPERATIONS NECESSARY FOR OIL AND GAS RESOURCES UNDER TIDE AND SUBMERGED LANDS GRANTED TO THE CITY.





**PARCEL B**

**PARCEL A**

**CITY OF NEWPORT BEACH  
TIDELAND LEASE AREA**

**EXHIBIT "B"**  
**G 09-02.2**



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