

MINUTE ITEM

This Calendar Item No. 24
was approved as Minute Item
No. 24 by the State Lands
Commission by a vote of 2
to 0 at its 2/9/82
meeting.

CALENDAR ITEM

24

1/28/82
W 10367
Thompson
Collins

AGREEMENT SETTLING ALL "SUBSIDENCE COSTS"
CLAIMS OF THE CITY OF LONG BEACH
FOR PAST SUBSIDENCE OCCURRING WITHIN
THE LONG BEACH HARBOR DISTRICT

Staff of the State Lands Commission and the Attorney General's Office recommend approval of the "Agreement Settling All Claims of the City of Long Beach For Reimbursement of 'Subsidence Costs' For Past Subsidence Within the Long Beach Harbor District", a copy of which is attached as Exhibit I hereto.

Under this Agreement, the City of Long Beach, acting by and through its Board of Harbor Commissioners, would be allowed to deduct a total of \$37,000,000 from oil revenue derived from the Long Beach tidelands over a four-year period according to the following schedule:

- (a) \$5,000,000 during the month in which the Agreement becomes effective;
- (b) \$8,000,000 in July 1983;
- (c) \$8,000,000 in December 1983;
- (d) \$8,000,000 in October 1984; and
- (e) \$8,000,000 in October 1985.

This Agreement would settle all of the City's claims and potential claims, known or unknown, suspected or not suspected to exist, for "subsidence costs" to remedy or protect against the effects of past subsidence within the Long Beach Harbor District. This settlement is also intended to constitute a final closing of all "subsidence costs" of ongoing and completed projects which have received the Commission's prior approval but which have not been closed by the Commission. Such ongoing and completed projects include certain projects whose "subsidence costs" have not been deducted from oil revenue. Also included are the City's annual claims for general subsidence maintenance and subsidence studies (except the City shall continue to be reimbursed for horizontal and vertical measurements). The Agreement further requires that the City spend the amount received under the Agreement on subsidence remedial projects within the Harbor District; therefore, any capital improvements for which this money is used will become and remain assets of the public trust.

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CALENDAR ITEM NO. 24 (CONTD)

In summary, this settlement will eliminate any and all of the City's rights to "subsidence costs" under Chapter 138 (Statutes of 1964, First Extraordinary Session) for projects whose purpose is to "remedy or protect against the effects of land subsidence heretofore occurring [i.e., as of the effective date of the Agreement] within the boundaries of the Long Beach Harbor District." Any rights of the City which may arise under Chapter 138 for subsidence costs to remedy or protect against the effects of future subsidence or past subsidence occurring within the City of Long Beach outside of the Long Beach Harbor District will not be affected by this Agreement.

The background report, which is attached as Exhibit II hereto, sets forth the reasons why staff and the Attorney General's Office believe that this settlement is in the best interest of the State.

AB 884: N/A.

- EXHIBITS:
- I. Agreement Settling All Claims of the City of Long Beach for Reimbursement of "Subsidence Costs" For Past Subsidence Within the Long Beach Harbor District.
 - II. Background Report.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT IT IS IN THE BEST INTERESTS OF THE STATE TO ENTER INTO THE "AGREEMENT SETTLING ALL CLAIMS OF THE CITY OF LONG BEACH FOR REIMBURSEMENT OF SUBSIDENCE COSTS FOR PAST SUBSIDENCE WITHIN THE LONG BEACH HARBOR DISTRICT."
2. APPROVE SAID SETTLEMENT AGREEMENT AND AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE STATE AND TO PERFORM ALL OTHER ACTS NECESSARY OR PROPER TO EFFECTUATE THE PROVISIONS OF SAID AGREEMENT.
3. GIVE ITS PRIOR APPROVAL OF THE EXPENDITURE, AS SUBSIDENCE COSTS, BY THE CITY OF LONG BEACH, OF THE \$37,000,000 TO BE DEDUCTED FROM TIDELANDS OIL REVENUE UNDER THE PROVISIONS OF CHAPTER 138 (STATUTES OF 1964, FIRST EXTRAORDINARY SESSION) ACCORDING TO THE PROVISIONS OF SAID SETTLEMENT AGREEMENT.
4. FIND THAT SAID SETTLEMENT AGREEMENT CONSTITUTES A FINAL CLOSING OF ALL SUBSIDENCE COSTS UNDER CHAPTER 138 FOR PAST SUBSIDENCE WITHIN THE HARBOR DISTRICT AND THAT SAID SUBSIDENCE AGREEMENT DISCHARGES THE STATE OF ANY OR ALL OF THE CITY'S RIGHTS, CLAIMS, OR CAUSES OF ACTION KNOWN OR UNKNOWN, SUSPECTED OR NOT SUSPECTED TO EXIST, FOR SUCH SUBSIDENCE COSTS.

(Revised 1/21/82)

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EXHIBIT I

1 AGREEMENT SETTLING ALL CLAIMS OF THE
2 CITY OF LONG BEACH FOR REIMBURSEMENT OF
3 "SUBSIDENCE COSTS" FOR PAST SUBSIDENCE
4 WITHIN THE LONG BEACH HARBOR DISTRICT

5 THIS AGREEMENT is made and entered into this _____
6 day of _____, 1982 by and between the CITY OF
7 LONG BEACH, a municipal corporation, acting by and through its
8 Board of Harbor Commissioners (hereinafter the "CITY"), and the
9 STATE OF CALIFORNIA, acting by and through its State Lands Commis-
10 sion (hereinafter the "STATE").

11 WITNESSETH

12 WHEREAS, the City of Long Beach, a municipal corpora-
13 tion, is the grantee in trust of certain tidelands by grants from
14 the State in Chapter 676, Statutes of 1911, Chapter 102, Statutes
15 of 1925, and Chapter 158, Statutes of 1935, as further defined by
16 Chapter 29, Statutes of 1956, First Extraordinary Session (herein-
17 after "Chapter 29") and Chapter 138, Statutes of 1964, First
18 Extraordinary Sesssion (hereinafter "Chapter 138"); and

19 WHEREAS, Section 4(d) of Chapter 138 allows the City to
20 retain out of the "oil revenue," which is received each month
21 from the sale of oil and gas produced from the Long Beach tide-
22 lands, an amount equal to all "subsidence costs" expended by the
23 City; and

24 WHEREAS, Section 1(e) of Chapter 138 in pertinent part
25 defines "subsidence costs" as follows:

26 "'Subsidence costs' means costs expended
27 by the City of Long Beach with the prior approval of
28 the State Lands Commission to remedy or protect against
(1) the effects of subsidence of the land surface, here-
before or hereafter occurring, within the boundaries of

(Added 1/26/82)

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Robert W. Parkin
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

Robert W. Parkin
City Attorney
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 the Long Beach Harbor District (as such boundaries were
2 defined on April 1, 1956) and within the boundaries of
3 the Long Beach tidelands situated outside of said Long
4 Beach Harbor District, and (2) the effects of subsidence
5 of the land surface, hereafter occurring, within any
6 other portion of the city, which may be attributable, in
7 whole or in part, as determined by the State Lands
8 Commission, to production from the Long Beach tidelands.
9 The cost of repressuring operations shall not be con-
10 sidered a 'subsidence cost,' but shall be considered a
11 cost of production'

12 WHEREAS, in 1979 the City requested prior approval under
13 said Section 1(e) of the State Lands Commission of certain "sub-
14 sidence costs" for four earthfill projects identified as Projects
15 Nos. 12, 14, and 16 and a part of Project No. 15 ("Projects") in
16 the City's "Estimate of Future Costs to Remedy Past Subsidence
17 Within the Port" submitted to the State on March 30, 1979; and

18 WHEREAS, said Projects involve the placement of large
19 quantities of earthfill and the raising of numerous oil facili-
20 ties, as well as construction of other improvements, on parcels
21 of land within the boundaries of the Harbor District for purposes
22 of harbor facility development; and

23 WHEREAS, the State contends the parcels of land involved
24 in the Projects were purchased by the City after the periods of
25 time in which they sustained significant effects of subsidence;
26 and

27 WHEREAS, the State contends that the provisions of
28 Chapter 138 relating to "subsidence costs" do not apply to sub-
sidence of lands which occurs prior to the dates such lands are
acquired by the City and that, therefore, expenditures to remedy
the effects of such subsidence are not reimbursable to the City
as "subsidence costs;" and

WHEREAS, the City contends that it

is entitled to	69 A
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Robert W. Parkin
City Attorney, Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 reimbursement for costs expended to remedy the effects of sub-
2 sidence on lands within the Harbor District without regard to
3 the date of purchase of such lands; and

4 WHEREAS, this dispute between the City and the State
5 over interpretation of Chapter 138, which has been referred to
6 as the "after-acquired property issue," has not been resolved
7 despite extended discussions; and

8 WHEREAS, Chapter 138 requires prior approval of the
9 State Lands Commission of any expenditures by the City to remedy
10 the effects of subsidence in order that the City may receive
11 reimbursement of such expenditures as "subsidence costs;" and

12 WHEREAS, it would be necessary for the State Lands
13 Commission to hold extended hearings on the City's applications
14 for prior approval of the Projects; and

15 WHEREAS, such hearings and any judicial proceedings
16 concerning the Commission's decisions on such applications would
17 substantially delay the Projects and it was the desire of the
18 City to proceed immediately with the Projects if it could have
19 done so without prejudice to its claims that expenditures there-
20 for were reimbursable as "subsidence costs" under Chapter 138;
21 and

22 WHEREAS, the City and State entered into an agree-
23 ment entitled "Agreement Allowing City of Long Beach to Proceed
24 with Certain Earthfill Projects Without Prejudice to Its Claims
25 for Reimbursement Under the Subsidence Provisions of Chapter
26 138," dated January 4, 1980 (hereinafter the "1980 Agreement"),
27 which allowed the City to proceed immediately with the Projects
28 but did not entitle the City reimbursement for expenditures

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Robert W. Parkin
City Attorney Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 therefor out of "oil revenue" unless and until such expenditures
2 were determined to be "subsidence costs" in accordance with the
3 procedures provided for in said 1980 Agreement; and

4 WHEREAS, it was in the best interests of the State
5 and City to enter into the 1980 Agreement because any delays of
6 the Projects would have been detrimental to both parties since
7 the costs of the Projects, whether to be ultimately paid out
8 of the City's Harbor Revenue Fund or out of "oil revenue,"
9 would have increased with inflation; and

10 WHEREAS, the City has completed much of the work on
11 the Projects; and

12 WHEREAS, if this settlement is not made and if the
13 decision on the "after-acquired property issue" is favorable
14 to the City, these purported "subsidence costs" would be
15 reimbursable out of "oil revenue" in the month following the
16 month in which any such decision becomes final under the terms
17 of the 1980 Agreement; and

18 WHEREAS, over the past 25 years, since the passage
19 of Chapter 29, the Commission has given its prior approval
20 for and the City has expended approximately Fifty Million
21 Dollars in "subsidence costs;" and

22 WHEREAS, during this period of time there have been
23 many disputes between the City and the State involving interpreta-
24 tion of the subsidence provisions of Chapters 29 and 138; and

25 WHEREAS, these disputes have resulted in high admin-
26 istrative expenses and have often hampered the working relation-
27 ship between the City and State Lands Staff in administering the
28 provisions of Chapter 138; and

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Robert W. Parkin
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 WHEREAS, during the discussions which led to the 1980
2 Agreement, the City proposed a lump sum settlement with the State
3 which would have settled for all time all "subsidence costs"
4 claims of the City for "past subsidence" within the Long Beach
5 Harbor District; and

6 WHEREAS, this proposed settlement was based upon the
7 City's "Estimate of Future Costs to Remedy Past Subsidence Within
8 the Port" which listed the various projects within the Harbor
9 District which the City anticipated completing in the future which
10 the City contends would involve "subsidence costs;" and

11 WHEREAS, it was the City's intent by that proposed set-
12 tlement to settle any and all claims, known and unknown, which it
13 may have or may arise in the future for "subsidence costs" attri-
14 butable to "past subsidence" of any and all lands located within
15 the Harbor District; and

16 WHEREAS, the State Lands staff, in analyzing that pro-
17 posed settlement determined that the State would be liable, under
18 Chapter 138, in the future for a minimum amount in "subsidence
19 costs" for the subsidence of tideland or upland areas acquired
20 by the City prior to the occurrence of subsidence, which was
21 significantly lower than the City's settlement figure; and

22 WHEREAS, this difference, which could be expected to
23 increase with inflation, was indicative of the extreme differences
24 over the interpretation of the subsidence provisions of Chapter
25 138 existing between the City and the State. These differences
26 included, but were not limited to, differences over: the "after-
27 acquired property issue;" the scope of work necessary to remedy
28 the effects of subsidence for each particular project, the amount

Robert M. Parkin
City Attorney, Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 of credit for depreciation which the State should be allowed for
2 projects involving depreciated structures and facilities; the
3 expenditures for each project which should be attributed to
4 "betterment" rather than subsidence; the appropriate allowance
5 for discounts for subsidence which the City may have received
6 from third parties; and the amount of actual subsidence which may
7 have occurred in particular areas within the Harbor District as
8 determined by maps, photographs and surveys; and

9 WHEREAS, due to the large amounts of money involved
10 it was expected that such differences regarding the various
11 anticipated projects would result in lengthy proceedings before
12 the State Lands Commission, extended litigation and costly
13 appeals; and

14 WHEREAS, during the discovery proceedings in late
15 1981 which were leading up to the Commission's hearing of the
16 "after-acquired property issue," settlement discussions were
17 reinstated; and

18 WHEREAS, after extensive negotiations the City and
19 State have agreed to settle all of the City's claims, known
20 or unknown, suspected or not suspected to exist, for "subsi-
21 dence costs" to remedy or protect against the effects of past
22 subsidence of lands within the Long Beach Harbor District for
23 a sum of \$37,000,000 to be deducted by the City from "oil
24 revenue" over a four-year period according to the schedule
25 set forth herein; and

26 WHEREAS, this Agreement is intended to be a request by
27 the City for prior approval of the Commission of all "subsidence
28 costs" necessary or appropriate to remedy or protect against the

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Robert W. Parkin
City Attorney, Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 580-6061

1 effects of subsidence of land surface heretofore (that is, as of
2 the effective date of this Agreement) occurring within the Long
3 Beach Harbor District. The projects in this request include all
4 completed, ongoing, annual, planned, anticipated and unanticipated
5 projects, including but not limited to the projects listed in the
6 City's "Estimate of Future Costs to Remedy Past Subsidence Within
7 the Port;" and

8 WHEREAS, this Agreement is also intended to constitute
9 prior approval by the State Lands Commission of such "subsidence
10 costs" to the extent and as limited by the terms of this Agree-
11 ment; and

12 WHEREAS, this Agreement is also intended to be a
13 settlement in lieu of litigation of the disputes set forth in
14 the 1980 Agreement and all other disputes which have arisen
15 or could arise in the future relating to interpretation of
16 the subsidence costs provisions of Chapter 138 as they relate
17 to "past subsidence" within the Long Beach Harbor District;
18 and

19 WHEREAS, this settlement is in the best interest of
20 the State and the City for the reasons set forth herein and in
21 the "Background Report" attached to the State Lands Commission
22 Calendar Item of January 28, 1982, by which the State approved
23 this Agreement.

24 NOW, THEREFORE, in consideration of the mutual cove-
25 nants and agreements herein contained, it is agreed as follows:

26 1. The phrase "past subsidence," as used in this Agree-
27 ment, shall mean: any and all subsidence of land surface situated
28 within the boundaries of the Long Beach Harbor District, as shown

(Revised 2/2/82)

Robert W. Parkin
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 boundaries exist on the effective date of this Agreement, which
2 has occurred on or before the effective date of this Agreement.
3 "Future subsidence" shall mean: any subsidence of land surface
4 situated within the boundaries of the Long Beach Harbor District
5 which may occur after the effective date of this Agreement. In
6 determining the degree of "past subsidence", if any, which exists
7 at any particular location on the effective date of this Agree-
8 ment, consideration shall be given to all relevant surveys, maps,
9 photographs, reports, testimony, and other matters useful in
10 determining such "past subsidence".

11 2. This Agreement shall constitute a request by the
12 City of Long Beach, under Section 1(e) of Chapter 138, for prior
13 approval of the State Lands Commission of all "subsidence costs,"
14 known or unknown, suspected or not suspected to exist, to remedy
15 or protect against the effects of "past subsidence" occurring
16 within the boundaries of the Long Beach Harbor District. Such
17 "subsidence costs" include, but are not limited to, the costs
18 for the projects listed in the City's "Estimate of Future Costs
19 to Remedy Past Subsidence Within the Port" submitted to the State
20 on March 30, 1979. This Agreement shall also constitute prior
21 approval by the State Lands Commission of such "subsidence costs"
22 to the extent and as limited by the terms of this Agreement. This
23 Agreement shall also constitute a final closing (except as pro-
24 vided in paragraph 6) of such "subsidence costs," including the
25 "subsidence costs" for all completed, ongoing and annual projects
26 which have previously received prior approval of the State Lands
27 Commission. Such projects shall be closed at the amounts of "sub-
28 sidence costs" which have been deducted by the City from "oil

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1 revenue" for them as of the effective date of this Agreement.

2 3. The total "subsidence costs" requested by the City
3 and approved by the Commission, as described in paragraph 2 above,
4 is Thirty-seven Million Dollars (\$37,000,000.00). This amount
5 shall be deducted from "oil revenue," as that phrase is defined
6 in Section 1(b) of Chapter 138 in accordance with the following
7 schedule:

8 (a) Five Million Dollars (\$5,000,000.00), in the
9 month in which this Agreement becomes effective;

10 (b) Eight Million Dollars (\$8,000,000.00), during
11 the month of July, 1983;

12 (c) Eight Million Dollars (\$8,000,000.00), during
13 the month of December, 1983;

14 (d) Eight Million Dollars (\$8,000,000.00), during
15 the month of October, 1984;

16 (e) Eight Million Dollars (\$8,000,000.00), during
17 the month of October, 1985.

18 4. In consideration of the deductions of "subsidence
19 costs" approved by the State Lands Commission as set forth in
20 paragraph 3 hereof, the City hereby releases the State from,
21 waives and forever disclaims each and every right, claim, and
22 cause of action, known or unknown, suspected or not suspected to
23 exist, that the City might now have or in the future might have
24 for additional "subsidence costs" to remedy or protect against
25 the effects of "past subsidence" occurring within the boundaries
26 of the Long Beach Harbor District. The parties hereby agree that
27 any and all issues upon which any such rights, claims, or causes
28 of action can or could be based, because of "past subsidence"

(Revised 2/2/82)

Robert W. Parkin
City Attorney Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

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Robert W. Parkin
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 of any lands within the Long Beach Harbor District, are
2 forever compromised and settled. The City hereby specifically
3 waives and relinquishes all rights and benefits under Section 1542
4 of the Civil Code of the State of California, which provides as
5 follows:

6 "A general release does not extend to claims
7 which the creditor does not know or suspect to exist
8 in his favor at the time of executing the release,
9 which if known by him must have materially affected
10 his settlement with the debtor."

11 It is further understood that the facts in respect of which this
12 settlement is made may hereafter turn out to be different from
13 the facts now known by any of the parties or believed by any of
14 them to be true; each of the parties expressly accepts and
15 assumes the risk of the facts turning out to be so different and
16 agrees that the foregoing settlement, prior approval and releases
17 shall be, in all respects, effective and not subject to termina-
18 tion or rescission by reason of any such difference in facts.

19 5. While this Agreement settles, for all time, all of
20 the City's rights, claims, and causes of action for "subsidence
21 costs" for "past subsidence" within the Long Beach Harbor Dis-
22 trict, it does not affect and shall not be construed to affect any
23 rights of the City, which may arise under Section 1(e) of Chapter
24 138, to receive "subsidence costs" to remedy or protect against
25 the effects of "future subsidence" of land surface occurring
26 within the Long Beach Harbor District or of past and future sub-
27 sidence of land outside of the Harbor District. Notwithstanding
28 the above, in the event of "future subsidence" of land within the
boundaries of the Long Beach Harbor District, the City shall not
be entitled to any "subsidence costs" which are attributable

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Robert W. Parkin
City Attorney, Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 the replacement, rehabilitation, or raising of any utility,
2 facility, oil well or any other structure on any such land which
3 has not been filled and raised prior to the occurrence of such
4 "future subsidence".

5 6. Except as provided below, this settlement includes
6 the "subsidence costs" for all completed, ongoing and annual
7 projects to remedy or protect against the effects of "past sub-
8 sidence" within the Long Beach Harbor District. No further
9 deductions from "oil revenue" of "subsidence costs" for such
10 projects shall be allowed on or after the effective date of this
11 Agreement. The City may retain the "subsidence costs" for such
12 projects which it has deducted prior to the effective date of
13 this Agreement. Notwithstanding anything in this Agreement
14 to the contrary, this Agreement shall not be applicable to "sub-
15 sidence costs" for the annual projects referred to as "Vertical
16 Measurements and Studies" and "Horizontal Measurements and
17 Studies" in the "Definitions and Procedures for Subsidence
18 Maintenance and Repair and Subsidence Studies" which were agreed
19 to by the City and adopted by the State Lands Commission on July
20 29, 1979. Said "Definitions and Procedures" shall continue in
21 effect as applied to Vertical Measurements and Studies and Hori-
22 zontal Measurements and Studies.

23 7. In making the deductions provided for in paragraph 3
24 hereof, the City shall transfer by journal entry the amounts set
25 forth in paragraph 3 from the City's Tideland Oil Revenue Fund
26 to a special account of the Harbor Revenue Fund. Such amounts
27 deposited to the credit of said special account may only be
28 used for projects to remedy or protect against the effects of

Robert W. Parkin
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6081

1 subsidence of City lands (regardless of date of acquisition there-
2 of) situated within the Long Beach Harbor District. Whenever such
3 money is applied, the Executive Director of the Harbor Department
4 shall notify the Executive Officer of the State Lands Commission
5 of any such application and the amount so applied.

6 8. This Agreement shall supersede the provisions of
7 the "Agreement Allowing City of Long Beach to Proceed With Certain
8 Earthfill Projects Without Prejudice to Its Claims for Reimburse-
9 ment Under the Provisions of Chapter 138," which became effective
10 January 4, 1980.

11 9. The settlement herein made does not constitute an
12 agreement or admission by either of the parties as to liability
13 or the propriety of the contentions which have been or are
14 presently advanced by either party with respect to any matters
15 relating to "subsidence costs" under Chapter 138. This settle-
16 ment is a compromise made solely for the purpose of assuring a
17 final and complete resolution of the subject matter contained in
18 this Agreement; it may not be used or construed for any other
19 purposes.

20 10. The State Lands Commission at its meeting of
21 February 9, 1982, formally approved this Agreement after finding
22 that it is in the best interest of the State of California and
23 authorized its execution, on behalf of the State, by the Execu-
24 tive Officer of the State Lands Commission.

25 11. The Board of Harbor Commissioners at its meeting
26 of January 25, 1982, formally approved this Agreement after
27 finding that it is in the best interest of the City of Long
28 Beach and authorized its execution, on behalf of the City, by

(Revised 2/2/82)

Robert W. Parkin
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

1 the Executive Director of the Long Beach Harbor Department.

2 12. This Agreement shall be fully executed in two
3 counterparts; one counterpart shall be retained by the City,
4 the other by the State.

5 13. The terms, provisions and conditions hereof shall
6 be binding upon and inure to the benefit of the successor and
7 assigns of the parties hereto.

8 14. The effective date of this Agreement shall be
9 February 9, 1982.

10 IN WITNESS WHEREOF, each part has caused this Agree-
11 ment to be executed on the day indicated below.

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

15 Dated: _____

16 By: _____
17 JAMES H. McJUNKIN, Executive,
18 Director - Long Beach Harbor
19 Department

20 Approved as to form and content this _____ day of January, 1982.

21 ROBERT W. PARKIN, City Attorney
22 of the City of Long Beach

23 Dated: _____

24 By: _____
25 EINAR C. PETERSEN, Sr. Deputy

26 STATE OF CALIFORNIA

27 Dated: _____

28 By: _____
WILLIAM F. NORTROP, Executive
Officer - State Lands Commis-
sion

(Revised 2/2/82)

1 Approved as to form and content this _____ day of January, 1982.

2 GEORGE DEUKMEJIAN, Attorney General

3
4 By:

ROBERT G. COLLINS, Deputy
Attorney General

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11 Robert M. Parkin
City Attorney, Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

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EXHIBIT II

BACKGROUND REPORT

Under Chapter 138, Statutes of 1964, First Extraordinary Session, the City of Long Beach is allowed to deduct from the "oil revenue", derived from the Long Beach tidelands, the costs which it expends, with prior approval of the State Lands Commission, to remedy or protect against the effects of subsidence within the Long Beach Harbor District. In determining whether to give its prior approval of such costs for a particular project, it is the duty of the Commission to determine whether such costs are in fact "subsidence costs." Section 1(e) of Chapter 138, defines "subsidence costs" as follows:

"'Subsidence costs' means costs expended by the City of Long Beach with the prior approval of the State Lands Commission to remedy or protect against (1) the effects of subsidence of the land surface, heretofore or hereafter occurring, within the boundaries of the Long Beach Harbor District (as such boundaries were defined on April 1, 1956) and within the boundaries of the Long Beach tidelands situated outside of the Long Beach Harbor District, and (2) the effects of subsidence of the land surface, hereafter occurring, within any other portion of the city, which may be attributable, in whole or in part, as determined by the State Lands Commission, to production from the Long Beach tidelands. The cost of repressuring operations shall not be considered a 'subsidence cost,' but shall be considered a cost of production"

The subsidence cost provisions of Chapter 138 as they relate to the Harbor District are essentially a reenactment of the subsidence costs provisions of Chapter 29, Statutes of 1956, First Extraordinary Session. Chapter 29, in essence, was a legislatively approved compromise and settlement of the disputes between the State and City of Long Beach arising out of Mallon v. City of Long Beach (1955) 44 Cal.2d 199. In Mallon, the California Supreme Court held that Chapter 915, Statutes of 1951, which "freed" one-half of the City's tideland oil revenue from the public trust, actually created a "resulting trust" in those revenues in favor of the State. Immediately after the Mallon decision, the Attorney General filed People v. City of Long Beach, L.A.S.C. No. 649466 (1955), which asked for an impoundment and an accounting of the oil revenues held by the City in this resulting trust, and for declaratory relief establishing how the tideland oil revenues would be accounted for in the future.

In response to this lawsuit, the City interposed numerous claims, counterclaims, and legal contentions whose intended effect was to forestall the final accounting

1.

(Added 1/26/82)

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and to reduce the amount owed the State. Hoping to settle this lawsuit without protracted litigation, representatives of the City and State initiated a series of meetings and negotiations. During those meetings the City interposed a claim of offset for its past and future expenditures to combat and remedy the effects of subsidence within its Harbor District. The City based this claim on its contention that such expenditures were "costs of production" chargeable against tideland oil revenues. After extensive negotiations a settlement of People v. City of Long Beach was reached; as part of this settlement the State agreed to allow the City credit for such subsidence costs. In the final accounting of oil revenues owed the State from past production, which totaled \$120,000,000, the City received credit for one-half of the \$25,000,000 which it had already expended on subsidence remedial projects. The City was also allowed to deduct its future costs to remedy or protect against subsidence within the Harbor District, or the Long Beach tidelands, off the top of the future oil revenue. This settlement was ratified by the legislature in the form of Chapter 29, and by the Court, in the form of a stipulated judgment in People v. City of Long Beach.

In 1964, the legislature enacted Chapter 138 which significantly altered the relationship between the State and City in regard to distribution of the tidelands oil revenues and control of oil production. This statute, however, did not disturb the subsidence costs provisions of Chapter 29 relating to the Long Beach Harbor District except to increase the State's responsibility for such costs.^{1/}

1. Under the formula for distribution of oil revenues in Chapter 138, the State receives all "oil revenues" over a fixed amount set aside for the City. Since "subsidence costs" are deducted "off the top" of the oil revenue and since there has always been enough oil revenue to pay the City its fixed amount, the State pays all "subsidence costs" expended by the City. Hale Champion, the Director of Finance and Chairman of the State Lands Commission in 1964, described the effect of Chapter 138 to the Legislature's Joint Tidelands Committee (which was chaired by Jesse Unruh) as follows:

"A large part of our discussion was on revenue distribution. There was agreement that there should be a substantial change in favor of the State. It was also agreed that subsidence cost should be considered as a cost of production and should be deducted in computing the revenue available for distribution. Subsidence costs should come off the top." (Transcript of the March 16, 1964 hearing of Joint Committee on Tidelands, page 2.)

2.

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Over the past 25 years, since the passage of Chapter 29, the State Lands Commission has given its prior approval for, and the City has expended, approximately fifty million dollars in "subsidence costs." These costs have involved hundreds of projects within the Harbor District; such projects have included wharf raising, transit shed raising, sewer and storm drain replacement and repair, street and bridge raising and repair, building replacements, dike and bulkhead reconstruction and repair, pump station construction, earth filling of subsided areas, oil well and oil facility raising, railroad track raising and repair, water main and electrical conduit replacement and repair, townlot redevelopment, and property purchases for subsidence remedial purposes. "Subsidence costs" have also involved certain continuing projects such as vertical and horizontal measurement surveys, preliminary engineering studies, State Lands expense and general subsidence maintenance. During this period of time there have been numerous disputes between the City and the State Lands staff involving interpretation of the subsidence costs provisions of Chapters 29 and 138. These disputes resulted in high administrative expenses for both the City and State; the City, of course, could charge such expenses against the State's oil revenue as "subsidence costs."

While most of the past disputes involving subsidence costs allowances for particular projects were eventually settled, rarely did such settlements set precedents for the future. There are still extreme differences between the City and State Lands staff over interpretation of the subsidence costs provisions of Chapter 138. These differences include, but are not limited to differences over: the scope of work necessary to remedy the effects of subsidence for particular projects; the amount of credit for depreciation which the State should be allowed for projects involving depreciated structures and facilities; the costs expended on projects which should be attributed to "betterment" rather than subsidence; the appropriate allowance for discounts for subsidence which the City may have received from third parties; the amount of actual subsidence which may have occurred in particular areas within the Harbor District as determined by maps, photographs and surveys; and whether the costs expended on subsidence remedial projects on lands which were acquired by the City after they had suffered subsidence damages qualify as "subsidence costs." This last difference between the City and staff, which has been referred to as the "after-acquired property issue", is the subject of a current dispute involving four earthfill projects whose "subsidence costs" have been estimated by the City to total \$35,000,000. These four projects, in fact, caused the City and staff to initiate discussions which have finally led to this proposed settlement.

In 1979 the City requested prior approval of the State Lands Commission of the purported "subsidence costs" for these four projects which were identified as Projects Nos. 12, 14, and 16 and a part of Project No. 15 in the City's "Estimate of Future Costs to Remedy Past Subsidence Within the Port" submitted to the State on March 30, 1979 (a copy of which is attached to this Report as Exhibit "A"). These projects involved the placement of large quantities of earthfill and the raising of numerous oil facilities, as well as construction of other improvements, for purposes of harbor facility development, on parcels of land within the Harbor District which had been purchased by the City after they had sustained the effects of subsidence. The State Lands staff has contended that the "subsidence costs" provisions of Chapter 138 do not apply to lands which subsided prior to the dates such lands were acquired by the City. This contention is based on the rationale that the intent of Chapters 29 and 138 was to make the City "whole" for the subsidence damages which it suffered purportedly due to oil production.^{2/} Since the subsidence damages to the lands involved in these projects were actually suffered by their former owners prior to their purchase by the City, it is the staff's position that there are no subsidence damages to reimburse the City for. This point is accentuated by the fact that these former owners generally benefited from oil production beneath these lands and that the City purchased these lands from these owners at discounts which reflected their subsidence damages.^{3/}

The City contends that it is entitled to reimbursement for all costs expended to remedy or protect against the effects of subsidence on lands "within the boundaries of the Long Beach Harbor District" without regard to the date of purchase of such lands, and that this position is supported by a literal reading of section 1(e) of Chapter 138.

2. At page 7 of the transcript of the April 2, 1956, hearing of the Assembly Judiciary Committee, George Grover, Committee Counsel to the Assembly Judiciary Subcommittee on Long Beach Tidelands, made the following statement in discussing the background of Chapter 29:

" . . . the theory behind these negotiations was, in part, that if the State is to get the benefit of oil and gas production, it should share in the result of that oil and gas production so far as subsidence costs are concerned."

3. The appraisal reports upon which the City's purchase prices were based indicate such discounts.

4.

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At the time the requests for prior approval of these four earthfill projects were submitted to the Commission, it was evident that, due to the magnitude of money involved and the complexity of the issues,^{4/} extensive discovery and other preparations would be necessary before the Commission could hear the matters. It was also evident that even after extensive hearings and a decision by the Commission on these projects, there could be further delays resulting from judicial appeals. In order to avoid the increased costs which would result from such delays and because of the Port of Long Beach's need to move ahead with these projects, the City and State entered into the "Agreement Allowing City of Long Beach to Proceed with Certain Earthfill Projects Without Prejudice to its Claims for Reimbursement Under the Subsidence Provisions of Chapter 138," dated January 4, 1980 (hereinafter the "1980 Agreement"). This agreement allowed the City to proceed with these projects but did not entitle the City to reimbursement for its expenditures unless and until such expenditures were determined to be "subsidence costs."^{5/}

The City has thus far completed much of the work on these projects, having spent approximately ten million dollars in purported "subsidence costs." If this settlement is not made and if the decision on the "after-acquired property issue" is favorable to the City, the "subsidence costs" for these projects will be reimbursable to the City out of "oil revenue" in the month following the month in which such decision becomes final under the terms of the 1980 Agreement.

During the discussions involving the four earthfill projects leading to the 1980 Agreement, the concept of settling, for all time, all "subsidence costs" claims of the City for past subsidence occurring within the Harbor District was also discussed. The City proposed making such a settlement for a lump sum based upon the City's "Estimate of Future Costs to Remedy Past Subsidence Within the Port" (Exhibit "A" hereof) which listed the various projects

4. In addition to the "after-acquired property issue", these projects raised a number of other significant differences between the City and staff involving the subsidence costs provisions of Chapter 138.

5. It was agreed that the City's proceeding with these projects before the Commission's action on the requests for prior approval would not prejudice the City's claim that the expenditures therefor are reimbursable "subsidence costs" under Chapter 138 nor prejudice any claims of the staff to the contrary.

within the Harbor District which the City anticipated in the future would involve "subsidence costs." This list of anticipated projects included the four earthfill projects involved in the 1980 Agreement together with six other projects on lands which the City anticipates acquiring in the future. This list also included twelve projects on City-owned tidelands or uplands within the Harbor District where the "after-acquired property issue" would not be involved (i.e., on lands where the City would clearly have a right to some amount of "subsidence costs").

The State Lands staff, in analyzing this proposed settlement determined that the State would be liable in the future for a minimum in "subsidence costs" which was significantly lower than the City's settlement figure. As the differences between the City and staff positions at that time was too large for compromise and the settlement discussions were discontinued. This large difference, which could be expected to increase with inflation, was, however, indicative of the extreme differences over interpretation of the subsidence provisions of Chapter 138 existing between the City and staff. It was realized that these differences and the disputes which would result therefrom would cost the State large sums of money in terms of legal fees and staff time before they could be resolved.

During the discovery proceedings in late 1981, which were leading up to the Commission's hearing of the "after-acquired property issue", discussions of an overall settlement were reinstated. After extensive negotiation the City and State Lands staff have agreed to a proposal which would settle all of the City's claims for past subsidence⁶ within the Harbor District for a sum of \$37,000,000 to be deducted by the City from "oil revenue" as follows: (a) \$5,000,000 during the month in which this Agreement becomes effective; (b) \$8,000,000 in July 1983; (c) \$8,000,000 in December 1983; (d) \$8,000,000 in October 1984; (e) \$8,000,000 in October 1985. The present value of this \$37,000,000 is approximately \$29,200,000. This settlement figure also includes all "subsidence costs," which have not been deducted from oil revenue, for all ongoing and completed projects previously receiving the prior approval of the Commission. The Agreement closes the "subsidence costs" for such projects at the amounts deducted as of the effective date of the Agreement.

6. This settlement does affect any rights the City may have under Chapter 138 for costs to remedy future subsidence within the Harbor District. It should be noted, however, there has been no subsidence, of any significance, detected in the City since 1964.

6.

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In conclusion, if this settlement is not made the City will proceed with requests for prior approval of "subsidence costs" for projects which would total more than the settlement figure. Moreover, in such case, "subsidence costs" deductions from oil revenue in a single year could amount to more than the deductions allowed under the schedule provided for under this settlement. Such large, unplanned deductions could have significant, adverse effects on the State's budgetary process.

For the reasons set forth herein the State Lands staff is of the opinion that it is in the best interest of the State to enter into this proposed Settlement Agreement at this time. The Attorney General's Office has participated in the negotiations which led up to this proposed settlement and has reviewed the proposed Agreement; it approves the Agreement as to form and also believes that the settlement is in the best interests of the State. The City of Long Beach, acting by and through its Board of Harbor Commissioners, and the Long Beach City Attorney have approved the Agreement.

Summary Sheet Estimated Future Subsidence Cost Including Fill, Oil Well Raising And Facility Replacement

	All in thousands	Fill & Oil Well Raising	R.C. Facilities	E.I.R.	Depreciated Value D.V.	
1	Summary By Area					1
2	1	343.5	747	4382	4174	2
3	2	12277	6720	13003	11814	3
4	3	1687	26324	28505	27081	4
5	4	1564	85	1657	1643	5
6	5	1367	806	2113	1720	6
7	6	137	605	742	665	7
8	7	1484	1810	3214	2922	8
9	8	97	8	97	97	9
10	9	97	8	97	97	10
11	10	784	1932	2716	2484	11
12	11	422	681	1103	1103	12
13	12	350	8	350	350	13
14	13	204	67	265	265	14
15	14	2892	8	2892	2892	15
16	15	1036	1186	2222	2222	16
17	16	10070	336	10406	10406	17
18	17	4317	503	4820	4820	18
19	18	1899	8	1899	1899	19
20	19	1276	3830	5106	5106	20
21	20	1741	148	1889	1889	21
22	21	696	12714	13610	13610	22
23	22	10000	8	10000	10000	23
24		511688	59394	111082	107509	24
25	Summary By Facility					25
26						26
27	Water		2096		1925	27
28	Storm Drain		907		804	28
29	Sewer		1607		1478	29
30	Telephone		345		308	30
31	Electrical		1656		1475	31
32	Gas		535		470	32
33	Fencing		542		472	33
34	Bldg's		39601		37600	34
35	Railroad		3738		3346	35
36	Paving		3072		2729	36
37	Fill		38118		35118	37
38	Oil Well Raising		13570		13570	38
39	WARE		5300		5300	39
40			111082		107509	40
41	D.V. (Depreciated Value) Equal to					41
42	Actual Cost For Fill & (1978 cost Adjusted)					42
43	Oil Well Raising + Depreciated					43
44	Cost For Facility Replacement					44
45	RC = Replacement Cost					45
46						46
47						47

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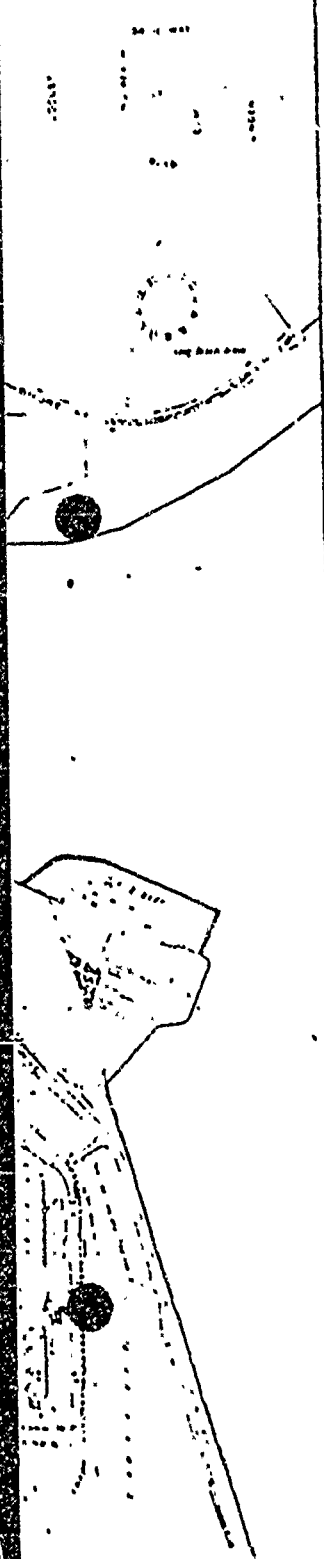
AREA	TOTAL SUBSIDENCE IN CUBIC YARDS	EXISTING ELEV. TO +14' IN CUBIC YARDS
①	264,082	107,599
②	599,953	371,571
③	467,300	323,060
④	90,279	13,178
⑤	100,581	59,515
⑥	37,957	28,563
⑦ LAND	232,071	161,084
⑦ WATER	158,046	332,160
⑧	26,620	14,147
⑨	14,371	14,371
⑩	205,470	177,264
⑪	91,555	87,435
⑫	72,031	57,627
⑬	57,248	70,333
⑭	649,508	412,600
⑮ LAND	203,285	101,891
⑮ WATER	34,353	124,923
⑯	2,503,401	1,858,619
⑰	873,262	825,306
⑱	278,104	224,327
⑳	303,155	241,564
㉑	355,892	212,690
㉒	193,141	197,873
TOTALS	7,811,668	6,022,700

Areas owned by the City before subsidence or acquired after subsidence.
 Areas to be acquired or acquired after effects of subsidence.

cys Fill / cy x 1.2
 TOTAL FILL 9,374,000

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Portion of drawing HD 10-540-07



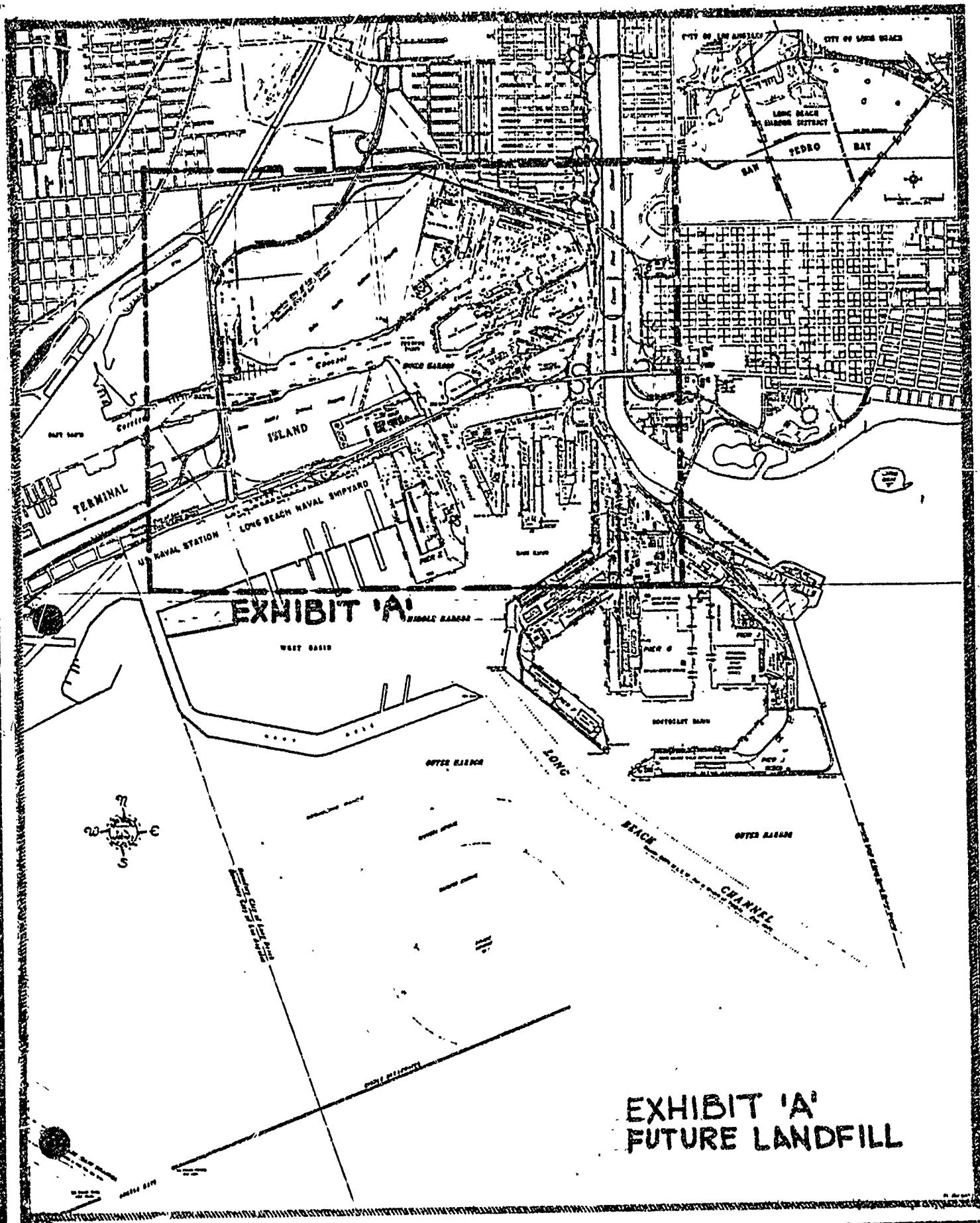


EXHIBIT 'A'
FUTURE LANDFILL

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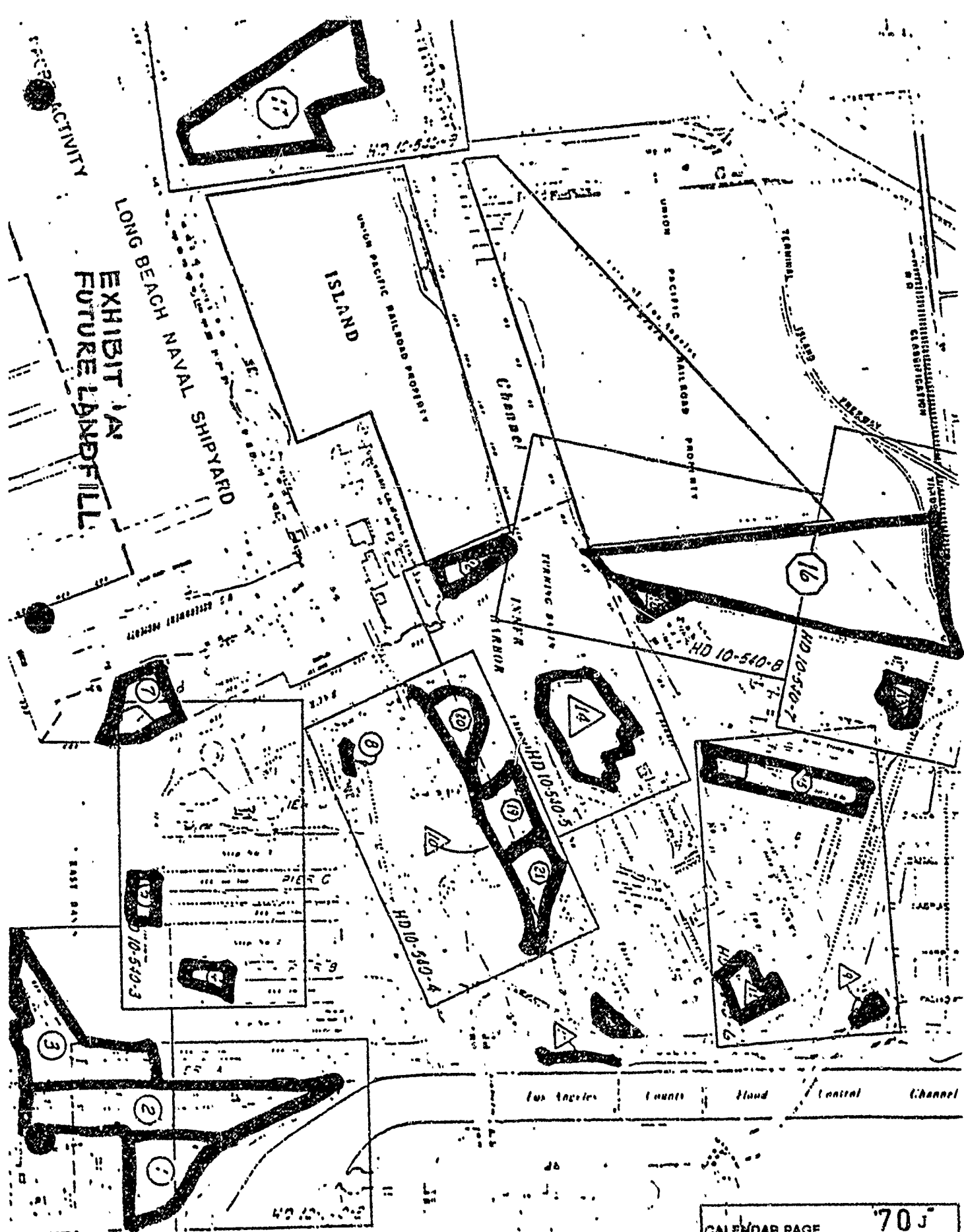


EXHIBIT 'A'
FUTURE LANDFILL

LONG BEACH NAVAL SHIPYARD

ISLAND

UNION PACIFIC RAILROAD PROPERTY

Channel

INNER HARBOR

TURNING BASIN

Los Angeles County Flood Control Channel

PIER C

EAST BAY

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