

MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

ORIGINAL

STATE CAPITOL
ROOM 127
SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 9, 1993

1:55 P. M.

Nadine J. Parks
Shorthand Reporter

MEMBERS PRESENT

Leo T. McCarthy, Lieutenant Governor, Chairman

Gray Davis, State Controller, Commissioner

LaFenus Stancell for Russell S. Gould,
Director of Finance, Commissioner

Staff:

Charles Warren, Executive Officer

James Trout, Assistant Executive Officer

Bob Hight, General Counsel

Richard H. Frank, Supervising Deputy Attorney General

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P R O C E E D I N G S

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CHAIRMAN MC CARTHY: Good afternoon, ladies and gentlemen. This is the meeting of the State Lands Commission. On my right is Commissioner Gray Davis. On my left is Commissioner Stan Stancell.

Without objection, the minutes of the previous Commission meeting are approved.

Consent Calendar, there are two items removed, Item 36 and Item 44; otherwise, the rest of the Consent Calendar is before us. And that takes us through Item 51.

Any comment from any member of the public on the Consent Calendar? Any members of the Commission?

COMMISSIONER DAVIS: I just have one. Is this Item 25, offer on the sale of State School Lands in San Bernardino County, does that in any way affect the desert protection legislation that Senator Feinstein is bringing through the Congress?

CHAIRMAN MC CARTHY: Let's find out.

ASSISTANT EXECUTIVE OFFICER TROUT: No, Mr. Davis, it doesn't. It's not within the area identified in S 21 or the House version of the desert bill.

COMMISSIONER DAVIS: So, it, in no way, diminishes the chances of passage of that legislation?

ASSISTANT EXECUTIVE OFFICER TROUT: I'm sorry?

1 COMMISSIONER DAVIS: It, in no way -- approval of
2 this item in no way diminishes the chances of passage of
3 that legislation?

4 ASSISTANT EXECUTIVE OFFICER TROUT: No, it does
5 not. And we'll be back to the Commission after it's been
6 advertised for sale.

7 COMMISSIONER DAVIS: Okay.

8 CHAIRMAN MC CARTHY: All right. Without
9 objection, the Consent Calendar, as modified, is passed.

10 Now, on to the Regular Calendar. Mr. Warren,
11 would you have the staff present Item 52, please.

12 EXECUTIVE OFFICER WARREN: Mr. Chairman and
13 Commissioners, Item 52, Curtis Fossum of our legal staff
14 will present this item.

15 MR. FOSSUM: Mr. Chairman, Commissioners, my name
16 is Curtis Fossum, Senior Staff Counsel.

17 The item before you is a settlement of a lawsuit
18 that's pending in Federal Court. The Ahadpours filed this
19 action earlier this year, a quiet title action with other
20 claims involved.

21 The Commission heard this settlement in July in
22 executive session and approved it. This is brought to you
23 as a formal open session item to take advantage of the
24 Kapiloff Land Bank Act and the provisions of that.

25 To summarize, this title dispute involves

1 approximately 12 acres of property in the City of Huntington
2 Beach. The parcels are shown on your exhibits.

3 Basically, the parcels that the staff is proposing
4 terminating claims of a public trust easement on are Lots 1,
5 6, and 7. Those parcels, which are relatively small, total
6 a combined acreage of 2.6 acres of the 12 acres involved in
7 the property that the Ahadpours own.

8 These parcels have been -- the trust termination
9 parcels have been improved, bulkheaded, filled, and
10 reclaimed for the improvement of navigation and enhancement
11 of shoreline, and are no longer, in fact, tide and submerged
12 lands, nor are they littoral to the waters of Huntington
13 Harbour. That has been that way since the early 1960s.

14 The settlement, basically, is that the Ahadpours
15 have offered to resolve the title dispute by offering the
16 Commission a dedication of an easement for public trust
17 purposes over approximately 80 percent of their property.
18 That will include the entire water-covered property, which
19 includes a navigable channel, commercial marina. It will
20 also include two public accessways that are adjacent to and
21 littoral to the waters that provide public access.

22 There are other public access easements that have
23 been accepted by the City of Huntington Beach already that
24 these would connect to.

25 Valuedwise, the Commission would be obtaining an

1 interest in lands that constitute 64 percent of the value of
2 the entire parcel.

3 The Commission does not claim any title interest
4 in this property other than the easement. The fee interest
5 was sold around the turn of the century, and any claims of
6 the fee title in this area were resolved in the early 1960s
7 in a title settlement. So, there's only a claim of an
8 easement on this property, and the Commission is being asked
9 to basically look to the interests of the public by
10 preserving those areas that are still usable for public
11 trust purposes, and accept a conveyance of money into the
12 Kapiloff Land Bank to buy lands in the area would provide
13 beneficial uses of open space, or wetlands preservation, or
14 public access.

15 So, that's the summary of the settlement that's
16 proposed.

17 CHAIRMAN MC CARTHY: Any other staff comment on
18 this proposal?

19 EXECUTIVE OFFICER WARREN: No, Mr. Chairman. We
20 have witnesses that indicate they wish to be heard on the
21 item.

22 CHAIRMAN MC CARTHY: I don't have any slips -- oh,
23 yes, I do. Excuse me.

24 EXECUTIVE OFFICER WARREN: There's one person who
25 wishes to appear in opposition, and then there's another

1 witness who is available for --

2 CHAIRMAN MC CARTHY: Patricia Snyder --

3 MS. SNYDER: Yes.

4 CHAIRMAN MC CARTHY: -- would you like to step
5 forward, please?

6 And Marty Klarin? Am I pronouncing that right?

7 EXECUTIVE OFFICER WARREN: Ms. Snyder is an
8 attorney for the applicant, and indicates is available only
9 for -- perhaps to respond to questions. Perhaps it would be
10 better if we heard from Marty Klarin.

11 CHAIRMAN MC CARTHY: Ms. Klarin, would you like to
12 come up and testify, please?

13 MS. KLARIN: Good afternoon. My name is Marty
14 Klarin, and I live at 17164 Edgewater Lane in Huntington
15 Beach, directly across the street from Mr. Ahadpour's
16 property.

17 I have a short prepared statement to read to you
18 today. It was actually written by my next door neighbor,
19 Barbara Devlin, who appeared before you a couple of years
20 ago in an earlier related hearing on this matter.

21 She would be with you personally today, except
22 she's unavoidably tied up in Boston. However, her thoughts
23 are also mine and, so, I will read to you our joint
24 presentation.

25 The report entitled, "Compromise Title Settlement"

1 certainly makes it seem like Mr. Ahadpour's giving up so
2 very much and getting so very little in return. But, in
3 truth, the matter is that he's getting everything he wants
4 and everything of any possible value to him, everything that
5 the State and its citizens would want and should maintain.

6 The State is getting nothing as far as I'm
7 concerned. The State nor the citizens can use the submerged
8 land, which is really most of what we would be getting.

9 The wording on the calendar, page 2, No. 4, states
10 the land is relatively small parcels totaling 2.631 acres.
11 And further on page 2 in No. 5, it states that the easement
12 involves almost 80 percent of the total area and 64 percent
13 of the land value.

14 The report gives the impression that Mr.
15 Ahadpour's giving up almost everything. Actually, he's
16 giving up everything that is of no possible value. Almost
17 all of these lands are under water. He cannot build or
18 develop on them. It is the rest of the property, Lots 1, 6,
19 and 7, that are very valuable to him and is the only land he
20 can develop or build upon.

21 That is why he wants the land trust to be
22 terminated. These lots are the only land that Mr. Ahadpour
23 or the public can do anything with. These are the only
24 lands that are valuable to the State and to the public. All
25 the other land is submerged and along with the bulkheads.

1 Upon close scrutiny, I feel that this proposed
2 agreement seems to have been completely written by Mr.
3 Ahadpour's attorney, if not by Mr. Ahadpour himself. And
4 more than a cursory review of the proposed agreement clearly
5 shows it's obvious -- it obviously gives Mr. Ahadpour
6 absolutely everything that he wants -- anything and
7 everything that he can possibly use to develop; in short, it
8 obviously gives him anything and everything that could be of
9 any possible monetary value.

10 If the proposed agreement really is a fair and
11 equal exchange, I submit it would be quite fair and much
12 better for all of the citizens of the State if the exact
13 opposite were to take place. If Mr. Ahadpour were to keep
14 the land trust easement on the land that he's giving up and
15 the State were to keep the land trust easement on the rest
16 of the property, evaluating a proposed settlement like that
17 by looking at it from the very opposite point of view is
18 certainly the very best way to evaluate the fairness that I
19 know of.

20 Actually, I feel the proposed agreement isn't a
21 compromise. It's a sellout, a sellout of a valuable right
22 held by all the citizens of the State. And it's something
23 that Mr. Ahadpour was well aware of when he bought the
24 property many years ago, because it is a matter of record
25 that the attorneys for the beach club property received a

1 letter from the State Lands Commission prior to Mr.
2 Ahadpour's buying the property that clearly informed him of
3 the public land trust easement on the property. And even
4 after the attorneys received this letter, Mr. Ahadpour
5 continued using the services of this law firm for almost a
6 year after buying the property.

7 But perhaps, even way back then, he probably also
8 knew far more about politics and how to manipulate things
9 than I ever will.

10 I was told by an employee of the Coastal
11 Commission that the control of and the rights to and/or
12 ownership of the submerged land -- submerged lands in
13 Huntington Harbour that at present arguably held (sic) by
14 Mr. Ahadpour is either unique or at least unusual in the
15 State of California. And that, of course, is the only thing
16 that Mr. Ahadpour is relinquishing in return for his clear
17 title on the remainder of all the submerged -- nonsubmerged
18 land to enable him to develop what has always been land that
19 had a land trust easement on it and that limited the land to
20 purposes of navigation, commerce, and fisheries, a trust
21 that only you can prevent this small land area from becoming
22 another permanent and tragic loss in the ever dwindling area
23 of open space, public land trust easement property, which I
24 submit would be your sworn duty to preserve.

25 I respectfully urge each of you to use your own

1 native intelligence and common sense as you evaluate this
2 proposed agreement, and then to vote your conscience.
3 Please protect the citizens of the State of California and
4 deny this proposed agreement and Mr. Ahadpour's request. to
5 do otherwise would really be a travesty of justice.

6 Thank you, and respectfully submitted, Barbara
7 Devlin and Marty Klarin.

8 CHAIRMAN MC CARTHY: Thank you very much. Any
9 questions of the witness? Thank you very much.

10 MS. KLARIN: Uh-huh.

11 CHAIRMAN MC CARTHY: Would staff like to respond?

12 EXECUTIVE OFFICER WARREN: I think perhaps, if you
13 would, after you hear from Patricia Snyder, the attorney for
14 the applicant, who may be able to respond.

15 CHAIRMAN MC CARTHY: I thought Ms. Snyder
16 indicated she was here to answer questions and not give
17 affirmative testimony. Would you like to testify, Ms.
18 Snyder?

19 MS. SNYDER: Only if there are questions of me,
20 Mr. Chairman.

21

22 CHAIRMAN MC CARTHY: All right. Let's hold on for
23 a minute, then, please.

24 EXECUTIVE OFFICER WARREN: I think Mr. Fossum has
25 some comments.

1 MR. FOSSUM: Yes, Mr. Chairman. I would like to
2 respond. First of all, Mrs. Devlin did participate for and
3 did speak to you twice before on the Destiny II settlement,
4 which you approved in 1992, and it's shown here on the
5 colored copy of the Assessor's Map you have before you.

6 As neighbors, we understand the concern that the
7 speaker that just spoke and Mrs. Devlin have, the impact on
8 their neighborhood by this property owner developing his
9 property. Obviously, it's had an impact on them, as it does
10 on anybody who's a neighbor to a development.

11 The Commission staff, in analyzing this and
12 participating in the lawsuit, had to look at a lot of
13 different information. First of all, as I said earlier, the
14 State sold this property around the turn of the century and
15 has not owned it since then.

16 The argument that the State has that there's a
17 potential easement over portions of the property is one
18 that's been developed by research into historical files,
19 evidence, and so forth.

20 In evaluating that and looking at that evidence,
21 the Commission staff also looked at the potential utility
22 of this property for the public in the future. That utility
23 would require the State to take possession of the property,
24 would have to pay the property owner for the improvements on
25 the land.

1 In order for us to do so, it would probably take
2 several million dollars of taxpayers' money to take
3 possession of that property and to use it for a trust
4 purpose if the Commission so sought.

5 It's been the history of the State that we have
6 not done that in the past -- taken possession of
7 improvements on property such as this.

8 The city has sent a letter to you, signed by the
9 mayor, which has addressed their concern about what the
10 Commission is being asked to do today. Their concern is the
11 future of the property as well.

12 The future of the property is in the hands of the
13 owner and the city, who is the police power that would
14 decide what land uses are appropriate for this land. The
15 Commission is not a land-use regulatory agency; the city is.
16 Both the city and the Coastal Commission would have to
17 change the land-use designations for this property
18 consistent with the Coastal Act for there to be any
19 development other than the existing development.

20 So, I think any concern that the State is giving
21 away anything here is, although very well articulated, is
22 clearly wrong. We're not giving away very much interest in
23 the property, and we're getting a great deal. The idea that
24 the State is not concerned about submerged lands or
25 tidelands, I think, as you understand, is clearly erroneous.

1 And those are the lands that the State acquired and needs to
2 protect and public access to those lands, and preservation.

3 When these lands have been bulkheaded and filled
4 for 30-some years and put to a private use -- a private
5 club, in fact, in this instance -- while the State is an
6 adjacent owner and concerned body, there's a lot more
7 important lands for the State to preserve in the area. The
8 Coastal Act does affect these properties. And whoever wants
9 to do something with them will have to comply with that.

10 And to say that the State is not getting anything,
11 besides getting an interest in virtually 80 percent of the
12 property, acknowledgment by the property owner that the
13 public trust will apply in the future to these properties,
14 we're also getting \$300,000 with which to buy additional
15 properties for the State and the people of the State for
16 access or preservation.

17 Any questions?

18 CHAIRMAN MC CARTHY: Any questions by the
19 Commissioners? Commissioner Davis?

20 COMMISSIONER DAVIS: Yes. Isn't it our practice
21 basically to negotiate with private landowners in return for
22 waiving any right of an easement under terms of public
23 access or donations to the Kapiloff Fund?

24 MR. FOSSUM: Yes. This is one of hundreds of
25 transactions that the State has entered into establishing

1 relationships of either boundaries or interest in land that
2 result, in fact, when we're dealing with water boundaries
3 and property. Our analysis of this is that there are some
4 claims by the State in the area. In some instances, those
5 claims are better than others within this subject area.
6 It's 12 acres. We are not claiming the entire area and
7 we're not claiming any ownership. We're only claiming an
8 easement in the property.

9 And that easement we will continue to protect
10 those water-covered areas and the access areas. And that
11 is, the staff feels, very important, and would recommend
12 your approval of this item.

13 COMMISSIONER DAVIS: And the second question has
14 to do with the mayor's letter.

15 MR. FOSSUM: We spoke at length, both the
16 representative of the Attorney General's Office and myself,
17 with both the city attorney, the city administrator and his
18 assistant, and the planning director last week and discussed
19 these issues. And we were told that we could expect a
20 letter that did not object to this Commission's approval of
21 this, but would express some concern about what would happen
22 in the future on the property.

23 That's in their hands. It's in the owner's hands,
24 and in the city's hands as to what they want to have the
25 property be in the future, and the Coastal Commission as

1 well, because those three interested parties are the ones
2 who have to make those land-use decisions in the future.

3 COMMISSIONER DAVIS: We wouldn't affect the
4 character of any development of those lands. All we can do
5 is negotiate away our right to easement.

6 MR. HIGHT: Correct.

7 MR. FOSSUM: And it should be pointed out that the
8 claim of easement exists over many existing homes within the
9 Harbour; that it's possible that the woman who spoke to you
10 before, based on the evidence we have -- and Mrs. Devlin,
11 we've told her this before -- our evidence shows that they
12 are possibly on their home -- their land is on a public
13 trust easement as well.

14 So, you know, we understand -- everybody I think
15 understands the concern of owning a home and having the
16 neighborhood change and be developed. But those things
17 occur.

18 COMMISSIONER DAVIS: And there are remedies.

19 MR. FOSSUM: And the city, I'm sure, would be
20 looking very closely at this. They have already looked at
21 it in the past and made decisions as to what the use shall
22 be. There's a local coastal plan adopted for this area.

23 And our change in eliminating a claiming there's
24 an easement on the property will allow them to apply to the
25 city, but there's no requirement that the city change any

1 land-use designations or anything else.

2 COMMISSIONER DAVIS: Did they apply to the city?

3 MR. FOSSUM: In fact, they did, and the State
4 Lands Commission staff wrote a letter to them saying, we
5 believe you ought to ensure that the title for this property
6 is cleared up so that any questions will be resolved as to
7 that issue.

8 COMMISSIONER DAVIS: Thank you.

9 CHAIRMAN MC CARTHY: Any further questions? You
10 ready for the issue? Is there a motion?

11 COMMISSIONER STANCELL: Moved.

12 CHAIRMAN MC CARTHY: Mr. Stancell moves. Mr.
13 Davis seconds. The Commission unanimously approves the
14 recommendation of the staff.

15 Item No. 53.

16 EXECUTIVE OFFICER WARREN: Mr. Chairman, that item
17 will be presented by our General Counsel, Mr. Hight.

18 MR. HIGHT: 53, Mr. Chairman and members, is an
19 application for a dredging permit by Citation Homes in the
20 City of San Leandro.

21 The proposal is to dredge about 2,000 yards to
22 widen Roberts Landing Slough and to remove about 20,000
23 yards of levee bench in order to provide water access to
24 Citation land that will be as mitigation. The water would
25 be used to enhance the value of the land and create

1 additional wetlands, which is required as a condition of the
2 development on another portion of Citation's land.

3 Also, in front of you, we have a packet that has
4 letters of opposition and support that we've received.
5 We've received letters of support from the City of San
6 Leandro, the Building and Construction Trade Council of
7 Alameda County, Mr. David Taylor and Mr. David Perry. We
8 received one letter in opposition from Mr. Jeff Houston of
9 Citizens for Alameda's Last Marshland.

10 I believe we have some speakers who desire to
11 speak on this subject.

12 CHAIRMAN MC CARTHY: I have four slips. Mr. Ed
13 Alvarez, Mr. Tom Sweeney. I think they're both in support.
14 Mr. Frank Delfino and Ms. Janice Delfino. I take it they're
15 in opposition; is that correct?

16 Well, let's hear first from the proponents, Mr.
17 Alvarez and Mr. Sweeney.

18 MR. ALVAREZ: Thank you, Mr. Chairman and
19 Commissioners.

20 Basically, the action that you're being asked
21 today -- to take today is part of the process that started
22 actually back in 1982. And, as you know, we entered into a
23 title settlement agreement with the State Lands Commission
24 in 1985, and we transferred a portion of the subject
25 property to the State in 1990.

1 This is part of the project which not only
2 involves a residential component on about 80 acres of this
3 500-acre site, and also involves -- and your action will
4 certainly facilitate -- the restoration of almost 300 acres
5 of wetlands. And you're going to see at some time in the
6 future the City of San Leandro's application for work to
7 actually be done on your property. The work that is
8 proposed to be done by Citation Homes on the State property
9 is not major in and of itself, but opens up the area for a
10 major restoration on about 106 acres of Citation property.

11 We're worked with nine different agencies in
12 coming up with a plan that we believe and the agencies
13 believe to be an environmentally sensitive plan. The
14 important part of what's happening here in San Leandro is
15 that the residential project involves an investment of
16 almost \$150 million in construction by Citation Homes and
17 all the attendant jobs that will come from that, as well as
18 approximately \$5 million to be put into the wetland
19 restoration and the long-term maintenance of the area, which
20 would include the State Lands property, the 172 acres -- 28
21 acres of State-owned property -- of city-owned property,
22 which the State has an easement, and a hundred acres of
23 Citation property.

24 So, we certainly feel that this is a proper step
25 for State Lands to take, and certainly will permit us to

1 continue forward with the remaining agencies that need to
2 approve the process that we're involved in, which ultimately
3 is the restoration of wetlands.

4 So, with that, I'd be happy to answer any
5 questions you might have as you see fit. But that's the
6 only statement that I wish to make at this time.

7 CHAIRMAN MC CARTHY: Questions? Let's hear some
8 more testimony. Thank you, Mr. Alvarez.

9 Mr. Sweeney?

10 MR. SWEENEY: Good afternoon. My name is Thomas
11 Sweeney. I'm the Secretary/Treasurer of the Alameda County
12 Building Trades since July 9th of this year. Prior to that
13 time, I was the business manager of the Electrical Workers--
14 International Electrical Workers for 29 years in Alameda
15 County.

16 And I'm here to support this dredging for the
17 Citation Home project, not just for Citation, but I was a
18 Commissioner on the Port of Oakland for four years. And, as
19 you people sit here today know, the Port of Oakland has
20 tried to get the estuary dredged for a lot of years to
21 deepen the channel so that we get larger ships in there, so
22 we can provide jobs for the citizens of Oakland.

23 I'm here primarily not to speak really in favor of
24 Citation, but to speak here in favor of jobs. And Alameda
25 County and in Southern California, we've got pretty close to

1 30 to 35 percent of our people unemployed.

2 And everytime we try to get projects started to
3 provide work for our members -- not only for our union
4 members, but for any other people who work in the State of
5 California -- we wind up facing all these regulatory and
6 deregulatory (sic) requirements that delay everything for
7 months and months.

8 Right now, the Port of Oakland would like to
9 expand for the Federal Express/United Parcel, their
10 properties in the Port of Oakland. The City of Alameda's
11 going to object to it.

12 Prior to that, the Port of Oakland wanted to build
13 a big facility for Federal Express, for United Parcel.
14 There was objection from the Audubon Society as you all
15 know. That \$83 million project would have provided between
16 12 and 1400 jobs for semi-skilled minority workers in
17 Oakland. I'm life-long resident of Oakland. I believe in
18 the policies of Oakland. I believe that the women and the
19 minorities should have an opportunity to progress. But
20 everytime we turn around, we keep finding objections.

21 And everytime we find some developer, or some
22 company, or someone that wants to provide work for the
23 people of Oakland or Alameda County, then we find all these
24 regulatory rules, deregulation, and everything else that
25 places stumbling blocks in our way.

1 I'm here to ask you, the State Lands Commission,
2 to consider deeply what effect this is going to be the
3 Alameda County if we can't go on with the Citation project
4 that can provide a lot of jobs, not only for skilled
5 workers, but semi-skilled workers, and those that don't even
6 belong to unions.

7 You have an obligation to start taking a look at
8 how do we develop programs that put the minorities to work
9 and also put the building trades people to work. And those
10 people are being laid off day after day when they merge
11 companies and lay off their white collar workers or when the
12 banks merge and lay off all their people off (sic). And, as
13 you know right now, by the year 2005, 2009, 50 percent of
14 the people working in the workforce in the United States
15 could possibly be working a 20-hour week or less.

16 No one can work at that rate of pay, no one could
17 survive. This State of California right here, and you
18 people right here are going to have to start taking the bull
19 by the horns and start going out and say, "Look. How do we
20 put people back to work in California?" Whether union,
21 nonunion, whether white collar workers or not. The economy
22 in the State of California will never turn around until we
23 put our people back to work.

24 And unless we put our people back to work, you're
25 not going to receive any taxes in the State of California.

1 Thank you very much.

2 CHAIRMAN MC CARTHY: Thank you, Mr. Sweeney.

3 MR. SWEENEY: Any questions, I'll be glad to
4 answer to them.

5 CHAIRMAN MC CARTHY: Not yet. Thank you. Now,
6 Mr. Delfino, Ms. Delfino, in whatever order you wish.

7 MRS. DELFINO: Thank you, gentlemen. My name is
8 Janice Delfino, and I'm representing Ohlone Audubon Society.
9 And I'd like to read this statement and I gave you some
10 comments.

11 The Ohlone Audobon Society has reviewed the soil
12 investigation information on the State Lands Commission
13 property and on Citation Homes property.

14 There is concern that the Roberts Landing Sough,
15 the main drainage channel for the Trojan Powder Factory --
16 Explosive Factory, has not been thoroughly investigated for
17 hazardous wastes.

18 Now, we do have an aerial photograph if that's --
19 if you want to look at it. We can't put it up on the wall.
20 We don't deface State property.

21 But if you want to see this, we'll show it to you.

22 CHAIRMAN MC CARTHY: If you want to bring it up
23 here so we can pass it around.

24 MR. TROUT: It's a little hard to pass around.

25 (Speaking of large map.)

1 CHAIRMAN MC CARTHY: Jim, let's just put it up
2 here behind us.

3 (Thereupon, a map was attached to the wall
4 behind the Commissioners.)

5 MRS. DELFINO: I'll just -- I'll continue on.

6 CHAIRMAN MC CARTHY: Thank you.

7 MRS. DELFINO: The State Lands Commission should
8 either deny the dredging permit or condition the permit --
9 I'll go over that again.

10 State Lands Commission should either deny the
11 dredging permit or condition the permit so that Citation
12 cannot dredge in Roberts Landing Slough until the
13 contaminated soil and groundwater on Citation's property
14 have been remediated.

15 Soil and groundwater tests performed for Regional
16 Water Quality Control Board has shown the presence of lead,
17 mercury, zinc, copper, and beryllium at levels above safe
18 wetland creation limits.

19 Citation -- and zinc, we understand, is quite a
20 very hazardous, very toxic to aquatic life. And I think
21 that's an important issue that the consultants have
22 overlooked.

23 Citation's mitigation and monitoring plan will cut
24 channels -- did you find the (speaking to Mr. Delfino in
25 audience).

1 Y MR. DELFINO: In your purse or in the --

2 MRS. DELFINO: In where the keys are in the
3 pocket. We just wanted to show you where these -- where
4 Roberts Landing Slough is and where the channels will be cut
5 into -- into Citation's -- that's right -- into Citation's
6 property. And the main drainage is from Citation's
7 property, where the old Trojan Powder Explosive Factory was,
8 going into Roberts Landing Slough. And that has not been
9 remediated. There are hazardous wastes.. And our concern
10 is that, you know, it'll drain into your property, State
11 property.

12 After the Trojan Powder Factory ceased making
13 explosives, a large pit was created in the slough where
14 State Lands and Citation property join. You can't find it?
15 (Speaking to Mr. Delfino.)

16 MR. DELFINO: Nope.

17 MRS. DELFINO: Well, I'll show you. Right in
18 here. Excuse me. Right here. Right here. And there is a
19 levee here now, and that levee covers this pit.

20 Thank you. And was the pit used for discarding
21 wastes? This pit -- and it was large. It was so large that
22 a vehicle was dumped in it. And I've not seen that.

23 And at that time, there were boys who would go
24 down there, sneak in, in the late 1960s up to 1972. They'd
25 sneaked in and they said it was an awful mess. It was

1 black, gooey, evil smelling stuff. And they said, "Man, it
2 was awful."

3 Anyway, that pit occurred after the plant closed.
4 And so, that's why we want an investigation of that area
5 mainly because of the channel -- the channel that will be
6 dredged, that Citation wants to and has to dredge, will be
7 cutting right through that pit.

8 I have here, this pit now located under the
9 Central Levee, is in the path of the proposed dredging and
10 widening of Roberts Landing Slough by Citation. State Lands
11 should insist that this area be investigated. Information
12 on the pit was submitted to Department of Toxic Substance
13 Control and to Water Quality.

14 Dredge material from Roberts Landing Slough should
15 not be used to create Salt Marsh Harvest Mouse islands in
16 the North Marsh. And that's --

17 MR. DELFINO: Right in here.

18 MRS. DELFINO: You found it.

19 MR. DELFINO: I found it. This area here is --

20 MRS. DELFINO: You have to look on the aerial
21 photo.

22 And since we feel that there is still
23 contamination -- hazardous waste in the Roberts Landing
24 Slough. That dredged material should not be used to create
25 islands for an endangered species.

1 Anyway, that's -- that's enough. Dredge -- let's
2 see. -- until there's assurance that there is -- there are
3 no hazardous wastes.

4 And on page 3 of the summery, the summary of the
5 Citation Project on the State Parcel, Item No. 1: Does the
6 information stated here refer to Citation's plan or the City
7 of San Leandro's water circulation and drainage plan? And
8 will the depth of the channel be minus-20 feet as stated
9 here? That's deeper than San Lorenzo Creek.

10 MR. HIGHT: If I could correct that, Mr. Chairman.
11 There's a typographical error, which we will change, in the
12 existing calendar item. It will be a minus-two feet rather
13 than minus-20 feet.

14 MRS. DELFINO: That sounds much better than.

15 And then on page 3 of -- I guess it's called a
16 report of -- well, anyway, it is stated that the City of San
17 Leandro will assume long-term management responsibilities
18 for both the State parcel and the Citation Marsh parcel.
19 There is concern that the city has not demonstrated
20 competence nor has experience in the managing of wetland
21 wildlife habitats. Therefore, State Lands Commission should
22 carefully consider who will be managing the State parcel.

23 State Lands should require a letter of credit,,
24 not a performance bond, from Citation to guarantee
25 completion and long-term maintenance of the project.

1 And, lastly, Citation Homes is proceeding with
2 their developing using the no fill alternative plan. With
3 the no fill plan, Citation is not obligated to provide
4 wetland enhancement nor any marsh amenities. How does the
5 no fill plan affect this State Lands dredging lease to
6 Citation?

7 And I just heard Mr. Alvarez tell you gentlemen
8 that, with this dredging permit, they will be able to open
9 up all these areas and enhance the area, but they are using
10 the no fill plan, and they don't have to do that. And
11 that's in the development agreement with the city.

12 So, I just say, beware.

13 CHAIRMAN MC CARTHY: Thank you. Mr. Delfino?

14 MR. DELFINO: Good afternoon, gentlemen. My name
15 is Frank Delfino of the Ohlone Audubon Society.

16 And I'd like to make a few comments related to
17 some of the things that have been said.

18 And that is that you would think that by requiring
19 a cleanup of this property back in here (indicating on map),
20 right in here, that there would be a lot of jobs lost and
21 things like that. And yet, on the other hand, Mr. Alvarez
22 has complained that it cost him half a million dollars to do
23 the research and investigation on that property. That
24 created jobs for people also, the people who run the
25 sampling rigs, the laboratories.

1 And to require additional testing in this property
2 before any dredging goes on will just create more jobs for
3 more people before any house has gone in.

4 If, as Mrs. Delfino stated, that no fill project
5 is pursued, there won't be any money spent out there. That
6 material's going to stay there and be a problem. The levels
7 are high enough that even in some locations -- and there are
8 hot spots there on that property, which would be hazardous
9 to humans also. Currently, there are a lot of motorcycle
10 activities, a lot of other hiking, and dog running, and
11 rocket launching on the property. And, you know, one of
12 these days, someone's going to complain about something.

13 I think that's about all I have to say, unless
14 there's some questions.

15 CHAIRMAN MC CARTHY: Thank you, Mr. Delfino. Any
16 other member of the public wish to testify on this issue?
17 Any of the Commissioners have some questions? Does staff
18 want to respond to any points raised where there may be some
19 ambiguity?

20 MR. HIGHT: Yes, Mr. Chairman. As part of the
21 Commission's dredging permit, it will be conditioned on
22 approval of all the necessary permitting agencies. That
23 will include the requirement that before any dredging can
24 occur, there has to be approval of the dredging of
25 Citation's land, which will require the Regional Water

1 Quality Control Board and Toxic Substance authority. So,
2 nothing will proceed until all necessary permits are
3 obtained.

4 We have a letter from the Water Board that -- I'll
5 read one sentence from it. It's in your packet. It states,
6 "It is our judgment that the State Lands at Roberts Landing
7 are currently suitable for the City of San Leandro tidal
8 restoration project to proceed." The Water Board has
9 basically -- I'm sorry, Mr. Chairman. It's in this --

10 EXECUTIVE OFFICER WARREN: It's in the
11 supplemental packet.

12 MR. HIGHT: The Water board has tested the area to
13 be dredged and has found no toxics. They're still testing
14 the Citation land, and no dredging will occur until the
15 Water Board has signed off on the Citation land.

16 CHAIRMAN MC CARTHY: Commissioner Stancell?

17 COMMISSIONER STANCELL: Is the Park District part
18 of the city or is that a separate entity?

19 MR. HIGHT: That's a separate entity.

20 COMMISSIONER STANCELL: Okay.

21 CHAIRMAN MC CARTHY: How many government agencies
22 have been reviewing this so far?

23 MR. HIGHT: A large number. BCDC, Army Corps of
24 Engineers, City of San Leandro, Fish and Game, Fish and
25 Wildlife. Have I left anybody out? I think that's about

1 it.

2 CHAIRMAN MC CARTHY: Any questions on the part of
3 the members of the Commission?

4 COMMISSIONER STANCELL: So, your point is that
5 before any activity can proceed on this property, there are
6 certain requirements that the locals will impose to address
7 the uncertainty about the hazardous content of this
8 property?

9 MR. HIGHT: Prior to any activity proceeding on
10 State lands, all the necessary permits must be obtained, and
11 those permits will deal with the issues of toxics on
12 Citation's land.

13 COMMISSIONER DAVIS: What about Mrs. Delfino's
14 point about contamination in this area, which I gather is
15 the land that's been deeded to the State?

16 MR. HIGHT: Correct.

17 COMMISSIONER DAVIS: Has the Regional Water
18 Quality Board done samples in that area?

19 MR. HIGHT: No, they haven't. That is not part of
20 this project. That is a part of the city project, which is
21 yet to come.

22 COMMISSIONER DAVIS: So that's not before us.
23 We'll deal with that later.

24 MR. HIGHT: The two are distinct independent
25 projects and both can stand on their own.

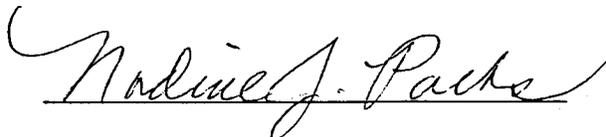
CERTIFICATE OF SHORTHAND REPORTER

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I, Nadine J. Parks, a shorthand reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing proceedings before the State Lands Commission in shorthand writing, and thereafter transcribed my shorthand writing into typewriting.

I further certify that I am not of counsel or attorney to any of the parties to said meeting, nor am I interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of December, 1993.



Nadine J. Parks

Shorthand Reporter