MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

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

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

COMMISSIONER DAVIS: Okay.

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

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

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

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

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

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

To summarize, this title dispute involves
approximately 12 acres of property in the City of Huntington Beach. The parcels are shown on your exhibits.

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

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

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

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

Valuewise, the Commission would be obtaining an
interest in lands that constitute 64 percent of the value of
the entire parcel.

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

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

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

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

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

EXECUTIVE OFFICER WARREN: There's one person who
wishes to appear in opposition, and then there's another
witness who is available for --

CHAIRMAN MC CARTHY: Patricia Snyder --

MS. SNYDER: Yes.

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

And Marty Klarin? Am I pronouncing that right?

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

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

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

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

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

The report entitled, "Compromise Title Settlement"
certainly makes it seem like Mr. Ahadpour's giving up so very much and getting so very little in return. But, in truth, the matter is that he's getting everything he wants and everything of any possible value to him, everything that the State and its citizens would want and should maintain.

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

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

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

That is why he wants the land trust to be terminated. These lots are the only land that Mr. Ahadpour or the public can do anything with. These are the only lands that are valuable to the State and to the public. All the other land is submerged and along with the bulkheads.
Upon close scrutiny, I feel that this proposed agreement seems to have been completely written by Mr. Ahadpour's attorney, if not by Mr. Ahadpour himself. And more than a cursory review of the proposed agreement clearly shows it's obvious -- it obviously gives Mr. Ahadpour absolutely everything that he wants -- anything and everything that he can possibly use to develop; in short, it obviously gives him anything and everything that could be of any possible monetary value.

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

Actually, I feel the proposed agreement isn't a compromise. It's a sellout, a sellout of a valuable right held by all the citizens of the State. And it's something that Mr. Ahadpour was well aware of when he bought the property many years ago, because it is a matter of record that the attorneys for the beach club property received a
letter from the State Lands Commission prior to Mr.
Ahadpour's buying the property that clearly informed him of
the public land trust easement on the property. And even
after the attorneys received this letter, Mr. Ahadpour
continued using the services of this law firm for almost a
year after buying the property.

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

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

I respectfully urge each of you to use your own
native intelligence and common sense as you evaluate this proposed agreement, and then to vote your conscience. Please protect the citizens of the State of California and deny this proposed agreement and Mr. Ahadpour's request. To do otherwise would really be a travesty of justice.

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

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

MS. KLARIN: Uh-huh.

CHAIRMAN MC CARTHY: Would staff like to respond?

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

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

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

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

EXECUTIVE OFFICER WARREN: I think Mr. Fossum has some comments.
MR. FOSSUM: Yes, Mr. Chairman. I would like to respond. First of all, Mrs. Devlin did participate for and did speak to you twice before on the Destiny II settlement, which you approved in 1992, and it's shown here on the colored copy of the Assessor's Map you have before you.

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

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

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

In evaluating that and looking at that evidence, the Commission staff also looked at the potential utility of this property for the public in the future. That utility would require the State to take possession of the property, would have to pay the property owner for the improvements on the land.
In order for us to do so, it would probably take several million dollars of taxpayers' money to take possession of that property and to use it for a trust purpose if the Commission so sought.

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

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

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

So, I think any concern that the State is giving away anything here is, although very well articulated, is clearly wrong. We're not giving away very much interest in the property, and we're getting a great deal. The idea that the State is not concerned about submerged lands or tidelands, I think, as you understand, is clearly erroneous.
And those are the lands that the State acquired and needs to
protect and public access to those lands, and preservation.

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

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

Any questions?

CHAIRMAN MC CARthy: Any questions by the
Commissioners? Commissioner Davis?

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

MR. FOSSUM: Yes. This is one of hundreds of
transactions that the State has entered into establishing
relationships of either boundaries or interest in land that result, in fact, when we’re dealing with water boundaries and property. Our analysis of this is that there are some claims by the State in the area. In some instances, those claims are better than others within this subject area. It’s 12 acres. We are not claiming the entire area and we’re not claiming any ownership. We’re only claiming an easement in the property.

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

COMMISSIONER DAVIS: And the second question has to do with the mayor’s letter.

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

That’s in their hands. It’s in the owner’s hands, and in the city’s hands as to what they want to have the property be in the future, and the Coastal Commission as
well, because those three interested parties are the ones
who have to make those land-use decisions in the future.

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

MR. HIGHT: Correct.

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

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

COMMISSIONER DAVIS: And there are remedies.

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

And our change in eliminating a claiming there's
an easement on the property will allow them to apply to the
city, but there's no requirement that the city change any
land-use designations or anything else.

COMMISSIONER DAVIS: Did they apply to the city?

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

COMMISSIONER DAVIS: Thank you.

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

COMMISSIONER STANCELL: Moved.

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

Item No. 53.

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

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

The proposal is to dredge about 2,000 yards to widen Roberts Landing Slough and to remove about 20,000 yards of levee bench in order to provide water access to Citation land that will be as mitigation. The water would be used to enhance the value of the land and create
additional wetlands, which is required as a condition of the
development on another portion of Citation's land.

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

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

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

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

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

Basically, the action that you're being asked
today -- to take today is part of the process that started
actually back in 1982. And, as you know, we entered into a
title settlement agreement with the State Lands Commission
in 1985, and we transferred a portion of the subject
property to the State in 1990.
This is part of the project which not only involves a residential component on about 80 acres of this 500-acre site, and also involves -- and your action will certainly facilitate -- the restoration of almost 300 acres of wetlands. And you're going to see at some time in the future the City of San Leandro's application for work to actually be done on your property. The work that is proposed to be done by Citation Homes on the State property is not major in and of itself, but opens up the area for a major restoration on about 106 acres of Citation property.

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

So, we certainly feel that this is a proper step for State Lands to take, and certainly will permit us to
continue forward with the remaining agencies that need to approve the process that we’re involved in, which ultimately is the restoration of wetlands.

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

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

Mr. Sweeney?

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

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

I’m here primarily not to speak really in favor of Citation, but to speak here in favor of jobs. And Alameda County and in Southern California, we’ve got pretty close to
30 to 35 percent of our people unemployed.

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

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

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

And everytime we find some developer, or some company, or someone that wants to provide work for the people of Oakland or Alameda County, then we find all these regulatory rules, deregulation, and everything else that places stumbling blocks in our way.
I'm here to ask you, the State Lands Commission, to consider deeply what effect this is going to be the Alameda County if we can't go on with the Citation project that can provide a lot of jobs, not only for skilled workers, but semi-skilled workers, and those that don't even belong to unions.

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

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

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

CHAIRMAN MC CARthy: Thank you, Mr. Sweeney.

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

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

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

The Ohlone Audubon Society has reviewed the soil investigation information on the State Lands Commission property and on Citation Homes property.

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

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

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

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

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

(Speaking of large map.)
CHAIRMAN MC CARthy: Jim, let's just put it up here behind us.

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

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

CHAIRMAN MC CARthy: Thank you.

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

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

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

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

Citation's mitigation and monitoring plan will cut channels -- did you find the (speaking to Mr. Delfino in audience).
MR. DELFINO: In your purse or in the --

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

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

MR. DELFINO: Nope.

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

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

And at that time, there were boys who would go down there, sneak in, in the late 1960s up to 1972. They'd sneaked in and they said it was an awful mess. It was
black, gooey, evil smelling stuff. And they said, "Man, it was awful."

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

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

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

MR. DELFINO: Right in here.

MRS. DELFINO: You found it.

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

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

And since we feel that there is still contamination -- hazardous waste in the Roberts Landing Slough. That dredged material should not be used to create islands for an endangered species.
Anyway, that's -- that's enough. Dredge -- let's see. -- until there's assurance that there is -- there are no hazardous wastes.

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

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

MRS. DELFINO: That sounds much better than.

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

State Lands should require a letter of credit, not a performance bond, from Citation to guarantee completion and long-term maintenance of the project.
And, lastly, Citation Homes is proceeding with their developing using the no fill alternative plan. With the no fill plan, Citation is not obligated to provide wetland enhancement nor any marsh amenities. How does the no fill plan affect this State Lands dredging lease to Citation?

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

So, I just say, beware.

CHAIRMAN MC CARTHY: Thank you. Mr. Delfino?

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

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

And that is that you would think that by requiring a cleanup of this property back in here (indicating on map), right in here, that there would be a lot of jobs lost and things like that. And yet, on the other hand, Mr. Alvarez has complained that it cost him half a million dollars to do the research and investigation on that property. That created jobs for people also, the people who run the sampling rigs, the laboratories.
And to require additional testing in this property before any dredging goes on will just create more jobs for more people before any house has gone in.

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

I think that’s about all I have to say, unless there’s some questions.

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

MR. HIGHT: Yes, Mr. Chairman. As part of the Commission’s dredging permit, it will be conditioned on approval of all the necessary permitting agencies. That will include the requirement that before any dredging can occur, there has to be approval of the dredging of Citation’s land, which will require the Regional Water
Quality Control Board and Toxic Substance authority. So, nothing will proceed until all necessary permits are obtained.

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

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

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

CHAIRMAN MC CARTHY: Commissioner Stancell?

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

MR. HIGHT: That's a separate entity.

COMMISSIONER STANCELL: Okay.

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

MR. HIGHT: A large number. BCDC, Army Corps of Engineers, City of San Leandro, Fish and Game, Fish and Wildlife. Have I left anybody out? I think that's about
CHAIRMAN MC CARTHY: Any questions on the part of the members of the Commission?

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

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

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

MR. HIGHT: Correct.

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

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

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

MR. HIGHT: The two are distinct independent projects and both can stand on their own.
CHAIRMAN MC CARthy: Further questions?

COMMISSIONER DAVIS: No.

CHAIRMAN MC CARthy: Ready for the issue before us? All right. Mr. Stancell moves.

COMMISSIONER DAVIS: Second.

CHAIRMAN MC CARthy: Mr. Davis seconds. The staff recommendation is adopted unanimously by the Commission.

Thank you very much, ladies and gentlemen.

That ends this meeting.

(Thereupon, the meeting was adjourned at 2:35 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

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

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