

MEETING
BEFORE THE
STATE LANDS COMMISSION
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 127
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 21, 1996

1:00 P.M.

Nadine J. Parks
Shorthand Reporter

MEMBERS PRESENT

Kathleen Connell, Ph.D., State Controller, Chairwoman

Gray Davis, Lieutenant Governor

Theresa Parker, Chief Deputy Director of Finance,
for Craig L. Brown, Director of Finance

Staff:

Robert Hight, Esq.
Executive Officer

Jack Rump, Esq.
Chief Counsel

Bill Morrison
Assistant Executive Officer

Jan Stevens, Esq.
Deputy Attorney General

Paul Thayer
Legislative Liaison

Rick Ludlow, Esq.
Senior Staff Attorney

Jane Sekelsky
Chief, Land Management Division

Sharon Shaw
Administrative Assistant II

Lynda Smallwood
Calendar Coordinator

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P R O C E E D I N G S

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CHAIRWOMAN CONNELL: I call this meeting to order. All three representatives of the Commission are present, I believe.

The first item of business will be the adoption of the minutes from our last meeting.

May I have a motion to approve the minutes?

COMMISSIONER PARKER: I move approval of the minutes.

COMMISSIONER DAVIS: Second.

CHAIRWOMAN CONNELL: All in favor? Obviously "aye."

(Ayes.)

CHAIRWOMAN CONNELL: Unanimously.

Moving on. The next order of business will be adoption of the consent calendar.

Mr. Hight, could you tell the members of the Commission which items have been removed?

MR. HIGHT: Yes, Madam Chair. Item No. C23, C80, C82, and C01 have been -- will not be heard today and will be heard at a later time.

CHAIRWOMAN CONNELL: Can you repeat those? Some members of the audience didn't hear.

MR. HIGHT: 23, 80, 82, and 1.

1 And, by the way, our microphones -- the P.A.
2 system isn't working. So, we're just going to have to --

3 CHAIRWOMAN CONNELL: Did everyone hear that?
4 Because I noticed some people were straining.

5 Okay. Thank you. I guess that would take us to
6 the regular calendar.

7 MR. HIGHT: Yes.

8 CHAIRWOMAN CONNELL: And we would go to Item No.
9 90.

10 For the members of the audience who do not have
11 the material in front of them, Item No. 90 is an agreement
12 between the Commission and nine public agencies that outline
13 the procedures for the potential acquisition and restoration
14 of Bolsa Chica wetlands.

15 And, Mr. Hight, could you brief the Commission on
16 the item?

17 COMMISSIONER PARKER: Madam Chair? Are we going
18 to move the consent calendar?

19 COMMISSIONER DAVIS: Yes, we haven't.

20 CHAIRWOMAN CONNELL: Oh, I'm sorry.

21 COMMISSIONER DAVIS: I so move the consent
22 calendar.

23 CHAIRWOMAN CONNELL: Okay. Thank you.

24 I'm going too quickly here.

25 COMMISSIONER PARKER: Second.

1 CHAIRWOMAN CONNELL: It's been voted on.

2 Now we'll move to Item No. 90.

3 MR. HIGHT: Item No. 90, Members, in your little
4 blue folder, you will find letters of support from the Port
5 of Long Beach and the Port of Los Angeles.

6 In addition, we have today to speak some people
7 from --

8 CHAIRWOMAN CONNELL: Actually, I have only one
9 request for speaking in support of Item 90, Bill McDonald.

10 MR. HIGHT: Yes, and we also have Mr. Terry Dolan
11 of the Amigos de Bolsa Chica.

12 CHAIRWOMAN CONNELL: I don't have that one. Thank
13 you. Would you like to make a presentation first, Mr.
14 Hight, and then we'll take --

15 MR. HIGHT: Yes.

16 CHAIRWOMAN CONNELL: -- members of the audience?

17 MR. HIGHT: Let me capsulize it and then Rick
18 Ludlow, Senior Staff Attorney, to go into a little more
19 detail.

20 The concept that the Commission is being asked to
21 approve today is a memorandum of understanding between a
22 number of State and Federal agencies. And I have to say, at
23 this point, that this has been a long process. But this is
24 a process that has worked and proved that governmental
25 agencies can work together. And this has been -- I can't

1 emphasize how large a project this is. The blue area behind
2 you would basically be acquired by the Commission with
3 monies from the Port of L. A. and Long Beach.

4 And I'll let Rick Ludlow go into a little more
5 detail on this.

6 MR. LUDLOW: Okay.

7 MR. HIGHT: After I've already explained the
8 project.

9 (Laughter.)

10 MR. LUDLOW: Want me to start now, Bob?

11 (Laughter.)

12 MR. LUDLOW: He's finished the project.

13 Madam Chair, Commissioners, my name is Rick
14 Ludlow. I'm Senior Counsel for the Commission, and I've
15 been working with Bob on the Bolsa Chica project.

16 Basically --

17 (Thereupon, the reporter requested
18 Mr. Ludlow to speak up because of noise
19 in the audience.)

20 COMMISSIONER DAVIS: Could we keep down, please?

21 MR. LUDLOW: As Bob said, what we have before you
22 today is a proposal, a blueprint of how we would go forward
23 if we would acquire this property in Bolsa Chica. And this
24 agreement, proposed agreement, lays out the responsibilities
25 about who does what, and has a few decision points in it.

1 But if it is brought to fruition, two things
2 basically have to happen.

3 When we acquire the property, the Ports of Long
4 Beach and Los Angeles will receive mitigation credits that
5 they can then use to expand their harbor facilities in order
6 to remain competitive into the 21st Century.

7 On the public side, the State Lands Commission
8 would acquire the property you see in blue, the Bolsa Chica
9 Lowlands in addition to this other acreage here, about 25
10 acres, on this side, combined with the present acreage that
11 we own of 306 acres, which will give us almost two square
12 miles of what is the largest remaining restorable wetlands
13 in Southern California.

14 The agreement is set up so that the Ports of Long
15 Beach and Los Angeles will each contribute a total of almost
16 \$67 million, with other billion dollars from the Coastal
17 Conservancy. A portion of that money then will be used to
18 purchase from Koll the 880 acres you see in blue here.

19 The 25 acres would be donated by the Metropolitan
20 Water district, for a total of 905 acres.

21 If we do accept title to this property, it would
22 be a Kapiloff Land Bank transaction. At that same point in
23 time, the mitigation credits for the Ports would be vested
24 in them.

25 The remaining funds then would be deposited in the

1 Kapiloff Land Bank and would be used first -- 5 million of
2 it would be set aside to fund the management of the restored
3 wetlands, the income from that.

4 The remaining funds would then be used to restore
5 this area. The plan is to initially create about 384 acre
6 full tidal basin in here, with a tidal inlet that would
7 intersect the Pacific Coast Highway under it (indicating on
8 map), and then the property this way (indicating), and with
9 some mitigation done up here.

10 This, then, would be a first -- the very first
11 step in the restoration.

12 Our role in this is the acquiring agency. The
13 Coastal Conservancy will be preparing the plan, the
14 restoration plan, for the lowland.

15 We, then, will take that restoration plan, along
16 with the Army Corps of Engineers and the U.S. Fish &
17 Wildlife Service, and serve as co-leads for the
18 environmental documents, CEQA and NEPA.

19 We'll take it through the environmental process.
20 And during that process, the public and local government
21 will have a tremendous input into what this restoration will
22 look like in its final form.

23 The results of the CEQA/NEPA process then will be
24 taken by the Coastal Conservancy; the formal plans and
25 details will be drawn up to reflect the results of that

1 process.

2 We will then get our final permits. And the Fish
3 and Wildlife Service then will take the lead and actually do
4 the construction.

5 Now, through all this process, you, as Kapiloff
6 Land Bankers (sic) will be the bank. You'll have the money,
7 and the Kapiloff account will have to make periodic
8 accountings on how the money is spent, and we'll have a
9 tremendous amount of control over the process and,
10 ultimately, probably have the final say on what this
11 restoration is going to look like.

12 After restoration is completed, probably either
13 the U.S. fish and Wildlife Service or the California
14 Department of Fish & Game would be offered control,
15 management control of his property, managed as a wildlife
16 refuge.

17 And we would serve as the bank in allocation of
18 the income from the funds that have been set aside for that
19 purpose.

20 If they decline to do that, we can, of course,
21 manage it ourselves. That would be an option, or seek
22 someone else to manage it.

23 At this point in time, this agreement does not
24 bind the Commission to purchase this property. There's a
25 lot of work that's being done before anyone could come to

1 you with a recommendation on that.

2 We are presently engaged in appraisal. We're
3 working out the terms of a purchase and sale agreement.
4 There's an environmental assessment being conducted that's
5 underway now. It's costing \$450,000. It's, in essence, a
6 toxic assessment, because this has been an operating oil
7 field for well over 50 years.

8 CHAIRWOMAN CONNELL: Who held it?

9 MR. LUDLOW: Well, the predecessor to Phillips
10 Petroleum, actually, that was here (indicating on map), and
11 Chevron on up in this area. This is called the Edward's
12 Thumb.

13 Right now, the majority of the oil operation is
14 located in this area of the property. But over the years,
15 this was all oil, including this upland area, which we call
16 the Balsa Chica Mesa.

17 So, we're doing an environmental assessment --
18 boring, sampling, tissue sampling, an enormous amount of
19 analysis. And that probably won't be completed until
20 mid-October. And there'll have to be an analysis and review
21 of that.

22 We've been very fortunate in this process to have
23 been able to obtain the services of O'Melvin and Myers, a
24 Los Angeles law firm. And they have special expertise,
25 which we don't have on staff, concerning the evaluation of

1 toxic liability, especially in this area. Because this is
2 all the City of Huntington Beach surrounding this line, and
3 this is unincorporated in Orange County.

4 And this all was oil field at one time. And
5 O'Melvin, the attorneys we're working with, have worked on
6 toxic evaluations, and have worked out the agreements to
7 protect people.

8 CHAIRWOMAN CONNELL: When will you complete your
9 evaluation so that we know whether there's any risk from
10 liability to the State because of pollutants on the land,
11 the toxic waste?

12 MR. LUDLOW: We expect to have a report sometime
13 in October from the contractor that's preparing it.

14 U.S. Fish and Wildlife Service is going to do an
15 analysis. And this will all be brought back. And the Fish
16 and Wildlife Service will then do an analysis on it. And
17 we'll see what that analysis says, and that will give us a
18 very, very good indication about what's there.

19 And we're working with the present oil company,
20 which is Cal Resources -- that's a subsidiary of Shell --
21 and with their predecessor, Phillips, and with the
22 landowner, Koll, for a remediation agreement; in other
23 words, a clean-up agreement.

24 CHAIRWOMAN CONNELL: Isn't there a point of law
25 that says that the present owner, as well as past owners,

1 can be liable --

2 MR. LUDLOW: Yes.

3 CHAIRWOMAN CONNELL: -- when toxic waste occurs?

4 Is there any way to shield the State of California
5 from that -- that threat of liability?

6 MR. LUDLOW: That's what we're working on --
7 through mediation agreements and also through insurance. In
8 other words, you can buy insurance policies that can protect
9 the State against what we don't know about.

10 In other words, we'll find out what's there; we'll
11 get an agreement from the companies that clean that up. If
12 there are things there that we don't know about, the idea
13 would be to purchase insurance to cover that.

14 I was surprised that you could purchase such
15 insurance. That insurance is on the market and has been
16 used successfully in other situations. We're looking at
17 that. We'll be preparing an analysis of the situation and
18 you'll have that review so you can evaluate the entire
19 process.

20 COMMISSIONER DAVIS: Is any portion of the amount
21 of money that's being allocated by the two ports earmarked
22 for the risk the State will be assuming, or has the risk
23 been qualified by anybody?

24 MR. LUDLOW: No, we haven't quantified that. We
25 won't be able to do anything like that until we get the

1 study completed to see what's actually out there.

2 A lot of the potential problem comes when you
3 start disturbing the land. We're going to be digging, in
4 essence, a 384 acre hole in the ground and filling it full
5 of water.

6 And so, that's the focus there to see what that
7 does.

8 The goal would be to put this Commission in a
9 situation where the risk here is the same as any other ocean
10 property you might have here. That has a different meaning.
11 Somebody could drown on a piece of property, but we're not
12 going to be sitting here spending millions and millions of
13 dollars cleaning it up, hopefully.

14 That is also one of the issues. The regulatory
15 agencies are looking at this to see if they can give the
16 ports their mitigation, for instance, to see if there's
17 enough money, \$67 million of the purchase price out here,
18 and to set aside \$5 million for management. Is there enough
19 money in the budget to do the restoration and whatever
20 cleanup that would need to be done if the present property
21 owner and the oil companies don't do it all. That's an
22 impact there.

23 But once -- the idea is that once the ports put up
24 their money, as far as they're concerned, they don't want to
25 be involved in this anymore.

1 CHAIRWOMAN CONNELL: I have a question. If you
2 structured it not as a purchase of the land but as a
3 long-term lease, is there any way that would shield us to a
4 greater extent from liability if we later found that there
5 were environmental wastes on the land?

6 If we don't own the land, would we be protecting
7 ourselves from the obligation?

8 MR. LUDLOW: I can look into that further. But
9 just standing here today, without having researched that, I
10 would say we still potentially have liability even though it
11 was a long-term lease.

12 CHAIRWOMAN CONNELL: Even as the present user --

13 MR. LUDLOW: Yes.

14 CHAIRWOMAN CONNELL: -- but not an owner?

15 MR. LUDLOW: Yes.

16 CHAIRWOMAN CONNELL: Could you look into that?

17 MR. LUDLOW: Sure.

18 COMMISSIONER DAVIS: Will the oil companies that,
19 I guess, are currently operating on at least a portion of
20 this, will they continue to function, or will they cease
21 functioning once they --

22 MR. LUDLOW: (Interjecting) No. They will
23 continue to function in the areas where they're primarily
24 functioning, which is this area (indicating on map). And
25 they will stay there as long as it's an economic operation.

1 But the plan is that, as they withdraw and clean
2 up the property, then the restoration moves in. And
3 hopefully more monies will be available from other sources,
4 because the money we have now is just sufficient to do this
5 initial restoration.

6 COMMISSIONER DAVIS: When they withdraw, are they
7 still -- do they still have some legal culpability for
8 anything that might be found --

9 MR. LUDLOW: Yes.

10 COMMISSIONER DAVIS: --- on the property?

11 MR. LUDLOW: Yes. Yes, they do.

12 CHAIRWOMAN CONNELL: But the question is, Gray,
13 how we split that liability in the longer term.

14 COMMISSIONER DAVIS: And I gather there have been
15 no negotiations as far as --

16 MR. HIGHT: We're negotiating now and --

17 MR. LUDLOW: We're in the process of negotiating.

18 MR. HIGHT: Our goal, naturally, is to insulate us
19 a hundred percent. That's our ultimate goal.

20 COMMISSIONER PARKER: What's the track record of
21 either of these companies -- if they have had other fields
22 which they have abandoned -- cleaning up or mitigating
23 whatever problems where they essentially leave and there is
24 a transfer of land? Has there been long litigation in other
25 areas where they have abandoned and transferred land to

1 another seller?

2 MR. LUDLOW: I don't know of other State
3 experience. But in the State of California, we've had
4 considerable experience with Cal Resources and its
5 predecessor Shell. We've also had considerable experience
6 with Phillips, as well as other State agencies. They've
7 both been good operators. We've had excellent cooperation
8 with Cal Resources and Shell. And Phillips, of course, has
9 pretty much pulled out of the State as a producer.

10 We have litigated with Shell, but not over
11 restoration problems, over trust problems. And they've been
12 extremely cooperative, extremely cooperative -- the Shell
13 people have.

14 But the Phillips people, they're down in
15 Bartlesville, Oklahoma, and I've got a letter from them.
16 And it said, "Thank you for letting us know what's going on,
17 but we don't think we're involved."

18 And we're written back to them and said, "We're
19 going to keep you informed," the attorney for Koll did,
20 "because we think you're in the loop." We think that
21 Phillips is still very much in the loop and is responsible
22 out there. And we are negotiating with them, also.

23 But that's basically where we are now.

24 MR. HIGHT: Okay.

25 MR. LUDLOW: And we don't -- this agreement does

1 not require the Commission, when all the information is
2 before you, to take the next step and go forward with this.

3 MR. HIGHT: Okay.

4 CHAIRWOMAN CONNELL: Shall I take comments from
5 the audience at this point?

6 MR. HIGHT: Yes. I think probably Bill McDonald
7 from the Department of Interior. He's Assistant Regional
8 Solicitor. And Bill has done absolutely a yeoman's job
9 preparing the legal documents to get us this far, and has
10 spent many, many hours on this.

11 CHAIRWOMAN CONNELL: We appreciate that. Mr.
12 McDonald, would you like to identify yourself for the record
13 and make any remarks?

14 MR. MC DONALD: Yes, ma'am. Thank you very much.

15 For the record, my name is Bill McDonald. I am
16 the Assistant Regional Solicitor in the Regional Solicitor's
17 Office here in Sacramento, United States Department of the
18 Interior, who has been representing the Department and its
19 agencies in this matter for the last year or so.

20 First of all, let me simply thank you for the
21 opportunity to say a few words. In sum, I'm here to urge
22 your support and authorization for your Executive Officer to
23 execute the Bolsa Chica interagency agreement.

24 After 18 months of hard labor, which I understand
25 has been preceded by 20 or 25 years of various efforts by

1 numerous parties to bring this particular property into
2 public ownership and achieve restoration of the last major
3 remnant of coastal wetlands in the Southern California bite.

4 I could go on for an hour about the tremendous
5 interagency we've had. But just let me say, it's one of the
6 stellar examples that I've been acquainted with in my 25
7 year government career in both State Government and Federal
8 Government, and a major success story.

9 There are certainly a number of contingencies and
10 issues to be addressed that Rick has alluded. And,
11 essentially, the agreement in front of you provides the
12 mechanism by which, in the next four months, we work our way
13 through those issues. And each of the State and Federal
14 agencies, if not satisfied in their unfettered, sole
15 discretion, can step out of the agreement.

16 At that point in time, on the other hand, if we
17 reach that go/no go decision, as I characterize it, in late
18 December, then the balance of the agreement says what the
19 structure is to go forward on into the future in this very
20 major restoration opportunity.

21 I think the last thing I'd merely comment on is
22 the ten agencies that are parties are in the process of
23 executing it. And I can report to you today that, at this
24 point in time, it has been approved and executed by the two
25 ports, acting through their Board of Harbor Commissioners.

1 It has been signed by the Regional Administrator of the
2 Environmental Protection Agency and by the Regional Director
3 of the U.S. Fish and Wildlife Service.

4 It has been signed by Secretary Wheeler of the
5 Resources Agency for the State of California, and action is
6 pending, obviously, in front of you and also the Coastal
7 Conservancy tomorrow.

8 So, we're moving along quite nicely. And we
9 expect, subject to the balance of those approvals, to have
10 this wrapped up and on its way by the end of the month.

11 CHAIRWOMAN CONNELL: Thank you, Mr. McDonald.

12 MR. MC DONALD: With that, Madam Chair, I'd
13 respond to questions if you have any.

14 CHAIRWOMAN CONNELL: Certainly. Are there any
15 questions from the Commissioners?

16 COMMISSIONER DAVIS: Just that you noted that you
17 anticipated that all these contingencies would be resolved
18 by the end of the year.

19 MR. MC DONALD: Right.

20 COMMISSIONER DAVIS: Are we under some legal --
21 not that I want to delay the project any longer. Are we
22 under some legal obligation to complete it by a time
23 certain?

24 MR. MC DONALD: What the interagency agreement
25 provides is a series of deadlines which, if not met,

1 automatically terminate the agreement.

2 So, in that sense, it creates a legal set of
3 deadlines that have to be met by the ten parties.

4 COMMISSIONER DAVIS: Including final action at
5 some point in December?

6 MR. MC DONALD: Yes, by your Commission.

7 COMMISSIONER PARKER: Following the Lieutenant
8 Governor's comment, since you are reliant on the
9 environmental assessment and also the property appraisal to
10 be accomplished in that time frame, to the extent that there
11 are delays in that, how will that -- will there, in that
12 sense, need to be a reratification by all of these entities
13 to expand the time frame?

14 MR. MC DONALD: Well, essentially, what the
15 interagency agreement provides for, Ms. Parker, is we've got
16 to meet some deadlines. And if that stuff is not done, the
17 interagency agreement will automatically terminate, and
18 nobody will have any obligations.

19 Obviously, if we run into some snag unforeseen --
20 and I certainly don't think we are -- then, we'd all have
21 the opportunity to amend the agreement, which, in part,
22 would be contingent on the Koll Real Estate Group still
23 being willing to sell it with an extended time line. And
24 they may or may not be. That's entirely up to them.

25 COMMISSIONER PARKER: But I'm just saying that, to

1 the extent that there was -- for example, in the property
2 appraisal -- some unforeseen situation that happened that
3 may or may not be highly significant on the quality of the
4 product, but that would require every entity to come back?
5 There is no ability in the agreement to the MOU to
6 essentially have any flexibility on those time lines if they
7 were --

8 MR. MC DONALD: We've essentially set the
9 interagency agreement up with three key dates. It assumes
10 that we put matters before the California Coastal Commission
11 that are subject to their regulatory jurisdiction in
12 October, with an automatic possibility to extend it to the
13 Commission's November meeting if Koll is still a willing
14 seller based on that extension.

15 It, secondly, sets up December 19th, as I recall,
16 as the go/no go decision at which the three State agencies
17 and the four Federal agencies, each acting in their sole
18 discretion, we're ready to proceed or we're not.

19 It provides one safety valve, again contingent on
20 Koll being a willing seller, that would allow the Coastal
21 Commission action in January of '97, with closing pushed out
22 until March.

23 But if we got beyond that, the deal automatically
24 terminates by its own terms. And it would require an
25 amendment to extend it further.

1 COMMISSIONER PARKER: Thank you.

2 CHAIRWOMAN CONNELL: If there are no other
3 questions, thank you again.

4 MR. MC DONALD: Thank you, Madam Chair.

5 CHAIRWOMAN CONNELL: I believe our next speaker is
6 Terry Dalton. Mr. Dalton, would you please join us and
7 identify yourself for the record.

8 MR. DALTON: My name is Terry Dalton. I'm past
9 president of the Amigos de Bolsa Chica, and represent Amigos
10 de Bolsa Chica thanking the Chair and the Commission for the
11 opportunity to speak on a subject which we have been dealing
12 with for quite some time.

13 Amigos de Bolsa Chica has been involved in this
14 issue for 20 years, trying to go from the time the land
15 exchange contract was signed to today, to try and see that
16 the maximum restoration of wetlands and public acquisition
17 of those properties occurs.

18 We have done many things during that time, but one
19 of them, of course, was to go through Prop. 70 to qualify a
20 million and a half dollars for the Bolsa Chica area, either
21 to be used in the linear park or to be used in the lowlands.

22 Approximately 200,000 was spent putting in a
23 temporary interpretive center at Warner and Pacific Coast
24 Highway; another several hundred thousand was part of the
25 money to do the oil study. And we stand ready with the

1 other million to give permission to the Coastal Conservancy
2 to proceed with the acquisition of additional properties
3 that would not come under the jurisdiction of those that the
4 ports need to deal with that.

5 We've conducted workshops, tours, cleanups,
6 whatever you might wish in regards to this property to keep
7 it in as pristine a state as it can be, with public
8 involvement, working both with State and Federal agencies.

9 Knowing that many of the State agencies do not
10 have the manpower, we have found citizens who are willing to
11 come into the area to monitor activities and cleaning up
12 things that just are beyond the capability of some of the
13 agencies.

14 As you understand -- and you've got a beautiful
15 photograph up here of Bolsa Chica in the wintertime. You
16 can see the extent of water in this particular area. It
17 does become quite wet when there is rain.

18 It does represent the largest restorable wetlands
19 in Southern California, and one that is situated in a highly
20 populated urban area, which is sort of unusual that it still
21 remains.

22 Probably the reason that it still remains is the
23 one issue that you're dealing with most aggressively, and
24 that's the oil. If the oil had not been there, that
25 probably would have even been a marina or another kind of

1 development at this point in time.

2 This particular project represents a unique
3 opportunity to actually increase the amount of State
4 wetlands. I think EPA originally was about 914 acres of
5 wetlands (sic). We put over a thousand acres. At this
6 time, I think they have subsequently reduced their number of
7 wetland acres for this area. So, it would be one of the few
8 times we'd have an increase in wetland acres in the State of
9 California, with the idea that we lost 90 percent of the
10 wetlands, particularly coastal wetlands. So, it would be
11 nice to reverse the trend.

12 We're still hoping that actually 1996 will be a
13 historical year for Bolsa Chica. Whether you're aware of it
14 or not, the Orange County plan that went before the Orange
15 County Board of Supervisors and then on to the Coastal
16 Commission did contain a restoration plan for the Bolsa
17 Chica, and that was approved by both of those bodies this
18 year.

19 It does contain an extensive restoration element,
20 which started with the work of Michael Jocelyn back in the
21 late 1980s.

22 We just recently -- yesterday -- met with a group
23 of homeowners and the County of Orange with regards to
24 what's called the Area Linear Park which is on Huntington
25 Beach, which is immediately adjacent to this property, and

1 basically forming the upland on the south side.

2 We seem to finally have agreement and consensus on
3 that area as well, which is 106 acres of potential park
4 development, basically in a native plant community, probably
5 primarily coastal shrub.

6 We've also worked with the local fishing people to
7 put out a white sea bass project in Huntington Harbor to
8 restore that particular species to this coast. And this
9 agreement would mark another great milestone in 1996.

10 So, we've been waiting 20 years. We hope that the
11 time line that you have will work in that particular way.

12 We're appreciative of the fact that this program
13 looks for flexibility in those credits. We realize that the
14 ports are dealing with deep water habitat. But the loss
15 here and throughout the State of California is the wetlands
16 habitat. And we urge everyone to keep that in mind, and the
17 fact is that we're looking at the maximum habitat value for
18 the State, and I think some flexibility on how those credits
19 are given on what kinds of projects qualify certainly
20 requires some due consideration.

21 The timing -- I've never seen a time schedule in
22 the Bolsa Chica that's ever held. It has probably been the
23 most untimely project --

24 CHAIRWOMAN CONNELL: I hope it will be better than
25 the 20 years you've worked on it.

1 (Laughter.)

2 MR. DOLAN: Right. We certainly would hope so.

3 But with regards to the Linear Park, if that
4 proceeds, they're looking at planting, which would occur in
5 the fall of 1998, just before -- a year before activity
6 would begin on this portion, which would be ideal.

7 We look at this as a very biodiverse area. You're
8 looking at the fact that you have various different kinds of
9 plant, bird, and fish species that would be in this area.
10 Because of subsidence and other things, you'll have an area
11 that ranges from seasonal ponds, to deep water, to upland
12 habitat and the like. And we think that that is important.

13 You'll see a tidal inlet -- and I appreciate the
14 fact that this proposal refers to that as historical. Prior
15 to man's intervention at the turn of the century, this
16 particular area did have tidal influence. That tidal
17 influence was closed so that the county floods (sic) could
18 better control that particular land.

19 We feel that that is absolutely critical to the
20 restoration of this particular area. Water now takes a
21 residence time of about 28 days to make it in and out of the
22 tidal area.

23 The proposals or the things with regards to the
24 new tidal entrance would reduce that to four days.

25 So, the water quality in that area is extremely

1 important for biodiversity in terms of how many different
2 species we have there as well as how well they develop and
3 grow in their numbers.

4 We look for minimal coastal contact. I know
5 there's some concerns from some of the agencies. But we
6 have a similar opening down the coast at Talbert Marsh,
7 where the actual jetties do not extend to the tidal zone.
8 And, therefore, water and sand are able to pass by. That is
9 a good example of a similar outlet that we're looking or
10 inlet that we're looking to for this particular project.

11 One thing that is in here as an option, and I'd
12 like to stress, is on the Wintersberg Channel -- that's a
13 flood control channel that comes down through this area.
14 And, as you'll see in the County of Orange program, that is
15 scheduled to come through this particular piece of project
16 and be changed in its location.

17 One of the primary reasons for that is that
18 they're looking at the fact that that would have to be
19 upgraded to meet the hundred-year storm, which means that
20 you dredge out of Bolsa, which is the most pristine and the
21 mudflat area for this particular area, extensive rip-
22 rapping. So, in a sense, to avoid a conflict between safety
23 and environmental issues, we have suggested that that
24 particular flood control be rerouted through this area.

25 It would also provide for quicker mixing of any

1 pollutants that are in that surface water and discharge to
2 the open ocean.

3 If they go through now, they just basically go
4 through Huntington Harbor, and take five miles to get out to
5 the open ocean.

6 There are a lot of things that we would like to
7 see, but we're very pleased that this plan is before you.
8 One of the things that we'd like to also recommend that you
9 consider is -- and that's citizen involvement. Our group
10 has been here. We know that there are others who've been
11 extensively involved politically.

12 If you ever see a campaign in the City of
13 Huntington Beach, everybody stands in front of the Bolsa
14 Chica sign and says, "I support it."

15 So, politically and otherwise, it is a very
16 significant issue and has a lot of public support for
17 acquisitioning as much acreage as we can and restoration for
18 the maximum amount of acreage.

19 We do recommend that you approve this. It'll at
20 least give us an opportunity to review this and get us into
21 the front door of acquisition, which many of us have been
22 looking for for 20 or more years.

23 And it's nice to see everybody lined on the same
24 side. But that has not always been the case, and we
25 certainly appreciate that opportunity.

1 CHAIRWOMAN CONNELL: Thank you very much. Are
2 there any questions by members of the Commission?

3 I don't have any other requests to speak. Is
4 there anyone else in the audience that didn't indicate and
5 they desire to speak? No?

6 Okay. Then it's appropriate to take a motion, I
7 believe?

8 MR. HIGHT: Yes.

9 COMMISSIONER DAVIS: I move we adopt the proposal.

10 COMMISSIONER PARKER: I second that.

11 CHAIRWOMAN CONNELL: Unanimous vote.

12 Then, I believe, Mr. Hight, we move to Item No.

13 91?

14 MR. HIGHT: Yes.

15 CHAIRWOMAN CONNELL: It's a boundary line
16 agreement with the United States Navy for the resolution of
17 titles, which will allow for the base reuse of the former
18 naval civil engineering laboratory at Port Hueneme.

19 Would you give us the details, please.

20 MR. HIGHT: Yes. This item is the first base
21 closure issue that the staff has completed. There are 14
22 bases closing in California that contain some sort of
23 sovereign lands. And in order for the local base reuse
24 agencies or the city, whichever the case may be, to proceed
25 with the redevelopment of the base, we have to come to an

1 agreement with the Federal Government as to where the
2 boundary is.

3 And this is the first one. This area will be used
4 for port jobs, and the city anticipates that as many as 400
5 new jobs will be created by this agreement. And there's a
6 letter of support from the city as an attachment to your
7 material.

8 This is here just to highlight that we're
9 continuing to press forward on all of the base closure
10 issues, and that it is a tremendous problem, and that
11 working with the Navy sometimes is not the most pleasant
12 thing to do.

13 CHAIRWOMAN CONNELL: Are there any members of the
14 public who wish to address this item?

15 COMMISSIONER PARKER: Madam Chair, may I ask a
16 question?

17 CHAIRWOMAN CONNELL: Sure.

18 COMMISSIONER PARKER: Mr. Hight, does this
19 resolution serve as kind of the model that we will be using
20 with the Federal Government in other base --

21 MR. HIGHT: It is certainly our hope that we can,
22 having once broken through, we can say we did it here and
23 let's do it the same way again. That's our goal.

24 COMMISSIONER PARKER: I would certainly hope so,
25 because my understanding is that this is a very long

1 process. And in that sense, these communities need to move
2 on.

3 MR. HIGHT: Yes.

4 CHAIRWOMAN CONNELL: Any other questions of our
5 staff?

6 Then, may I have a motion from the Commission?

7 COMMISSIONER DAVIS: So move.

8 COMMISSIONER PARKER: Second.

9 CHAIRWOMAN CONNELL: Unanimous vote.

10 We will now move to Item 92. And Item 92 is an
11 exchange of lands under the California Desert Protection Act
12 with the City of Pomona.

13 And again, Mr. Hight, would you give us the
14 information in your presentation?

15 MR. HIGHT: Yes, Madam Chair and Commissioners.

16 This is the second item that the staff has brought
17 to the Commission to further the -- to implement the
18 California Desert Protection Act.

19 It trades 55,000 acres of desert land for 100
20 acres of a former Navy installation in the City of Pomona,
21 and sells that installation to the City of Pomona. And the
22 city will basically use it for two purposes: one, a waste
23 disposal facility; and, then, two, they're hoping to get a
24 furniture manufacturing plant.

25 The mayor of the City of Pomona is here, Mr.

1 Cortez. And, also, in your material we have numerous
2 letters of support -- one from Senator Boxer, one from
3 Assemblyman Bob Margett, Senator Ruben Ayala, and
4 Assemblyman Fred Aguiar.

5 I think now would be an appropriate time to hear
6 the Mayor.

7 CHAIRWOMAN CONNELL: Mayor Cortez, if you would
8 join us, please. Welcome.

9 Please identify yourself here for the record, if
10 you may.

11 MAYOR CORTEZ: Thank you, Madam Chair, and good
12 afternoon, Commission. My name is Edward Cortez. I'm Mayor
13 of the City of Pomona.

14 And at this time, moving back a few years ago,
15 when General Dynamics was in its heydays, we were employing
16 approximately anywhere from a minimum of 10,000 employees,
17 upwards to as high as 14,000.

18 Now, fast forward, we've come to the downsizing of
19 the defense industry. And, all of a sudden, we have a
20 vacant facility there. Needless to say, we have an
21 opportunity now to provide some positive benefits for the
22 City of Pomona.

23 With this new project, we could possibly come up
24 with anywhere from 2,000 to 5,000 jobs, ranging from
25 low-level entry clear up to professional.

1 We have the opportunity to provide about 300
2 temporary construction jobs. Of course, with that, we do
3 have the opportunity then to improve the blighted area;
4 notwithstanding, when you do that, you certainly improve the
5 image of the city.

6 Not only talking about jobs and the esthetics of
7 the project, but moving on to the revenue side of it, we
8 have an opportunity to have \$100 million project combined
9 with private investments, too.

10 We have the opportunity to put the property back
11 on the tax rolls, which would bring about some increment
12 there for us.

13 We have the opportunity, also, for the spin-off
14 effect of the -- for the rest of the local businesses. And,
15 of course, we're asking for your approval on this item,
16 taking staff's recommendation. And I'm asking for your
17 approval on this item.

18 The staff members I have with me here today to
19 answer any questions are our City Administrator, Sivera
20 Escovil, and our Economic Development Director, Daryl
21 George. If you have any questions, we'll try to answer on
22 any or all questions.

23 CHAIRWOMAN CONNELL: Are there questions from the
24 Commissioners?

25 This is so unusual for us. You should know that

1 this is a positive sign.

2 (Laughter.)

3 COMMISSIONER PARKER: I would say, though, as both
4 a member of the Lands Commission and also of STRS, that
5 represents retired teachers, I have again an opportunity for
6 a transaction of the School Lands -- which, in this case,
7 obviously benefits the City of Pomona and benefits the
8 retired teachers. And I think that's just -- it's nice to
9 get a two-fer, you know, the best of all worlds.

10 MR. CORTEZ: Yes, it is.

11 COMMISSIONER PARKER: I'm certainly in support of
12 the project before us.

13 MR. CORTEZ: And this certainly shows that people
14 working together can accomplish much.

15 CHAIRWOMAN CONNELL: Thank you. May I have a
16 motion from our Commission?

17 COMMISSIONER DAVIS: So moved.

18 COMMISSIONER PARKER: Second.

19 CHAIRWOMAN CONNELL: It's unanimous. Thank you.

20 MR. CORTEZ: Thank you very much.

21 CHAIRWOMAN CONNELL: We are going to move now, if
22 we may, to Item 93. Item 93, for members of the audience,
23 is an application for an existing pier and the construction
24 of a gangway and boat dock.

25 Mr. Hight, will you brief the Commission on this?

1 And I do believe we have some members of the audience who
2 wish to speak as well.

3 MR. HIGHT: Yes. I'd like to have Jane Sekelsky,
4 Manager of the Commission's Land Management Division, to
5 present this item.

6 CHAIRWOMAN CONNELL: Fine. Would you introduce
7 yourself, please, for the record?

8 MS. SEKELSKY: Yes. Madam Chair, Commissioners,
9 and for the record, my name is Jane Sekelsky. I'm Chief of
10 the Land Management Division.

11 You have before you, in Item 93, an application
12 from the Delta Windsurf Company to maintain for their
13 personal use an existing pier, and to install a gangplank,
14 or gangway, and dock associated with that pier.

15 As shown on Exhibit A, this pier is located on
16 Horsehoe Bend, which is a waterway that leaves the
17 Sacramento River down this way (indicating on photograph).

18 If you're coming from Sacramento, you're going to
19 be coming down Route 160 right here, moving down, down this
20 way. You would come off 160 on the East Sherman Island
21 levee road. And the facility we're concerned with is right
22 in here.

23 See, the upland business is there, and there is a
24 little dock that runs out from there.

25 The boats and barges that you see at the end of

1 the dock are no longer there. This photo was taken in 1992,
2 and those vessels have been removed.

3 However, the middle barge over here remains in the
4 water at that location.

5 The applicant operates a windsurf business on the
6 privately held upland that adjoins the parcel that you're
7 being asked to lease to them.

8 By letter and by execution of our lease, they have
9 agreed that they will not use the leased premises for
10 commercial facilities or commercial operations.

11 Now, by prohibiting commercial use of the leased
12 premises in the lease, we have precluded them from using
13 those facilities in conjunction with the upland business.
14 In other words, they'll not be able to demonstrate their
15 equipment or launch the windsurf equipment from the dock or
16 the pier.

17 They have told us that they want to use the dock
18 for their own personal business. They will occasionally
19 come to work with their own boat and dock at the dock. So,
20 it is for their private purposes that they intend to
21 construct this facility.

22 The aerial photo shows the vicinity of the
23 proposed lease. It's on Sherman Island. And it is, as I
24 said, off of Highway 160 on lower Sherman Island Road.

25 The barge that you see that remains is in the

1 water approximately 50 to 100 feet away from the proposed
2 leased premises.

3 We have contacted the Corps of Engineers and
4 contacted the Coast Guard, and made other efforts to try to
5 identify who the barge belongs to and who is responsible for
6 it, but have been unsuccessful to date.

7 We'll continue our efforts in that regard. But
8 there is no evidence whatsoever that this applicant is
9 responsible in any way for that barge being there.

10 Five individuals have submitted letters to you
11 objecting to this project, and asking that you deny the
12 application. Those letters, as well as copies of the
13 applicant's letter saying they will use the facilities only
14 for personal use, and the lease prohibiting commercial use
15 is in your supplemental materials.

16 The objecting parties have raised four main issues
17 here. The issue that seems to be of greatest concern is a
18 traffic safety issue. It has to do with vehicles coming
19 down the levee road in front of the windsurf business.

20 As you can see, both from the aerial and from
21 these ground photos, the building that houses the windsurf
22 business is very close to the road. In fact, it --
23 basically, the front door of the building comes right out on
24 the edge of the road.

25 And there is also, as you can see, a curve when

1 you come past the building going in a -- it's easterly or
2 westerly -- but it's going in this direction (indicating).
3 You'll see that there's a curve in the road, which has a
4 blinding effect on traffic coming through there.

5 As indicated in the calendar item, the county has
6 studied traffic in the area and has made a decision and
7 determination that this business will not contribute a
8 significant increment to traffic in the area.

9 But in response to concerns raised by several
10 parties before the county, the county required the applicant
11 to agree to do a road realignment and to put in 12 parking
12 spaces on the waterward side of the levee road.

13 So, their hope is that will reduce the amount of
14 pedestrian traffic going back and forth across the road to
15 access the windsurf shop.

16 And the county has right now before them the plans
17 to do that work. It is our understanding, based on
18 conversations with county staff just this morning, that the
19 only thing holding that up is receipt from the contractor of
20 the bond and the signed contract.

21 So, it's our understanding that the county has
22 approved those plans conceptually, and the final approval
23 pends on the receipt of the materials from the contractor.

24 The objecting parties have also complained about t
25 he septic system at the facility being inadequate to handle

1 the facility's business.

2 The county did inspect that system; did require
3 corrections, which we understand have been made, and have
4 put in the condition in their use permit that should upland
5 use change, they will be required to replace the system.
6 But for now, we understand the system is adequate.

7 The objecting parties have also indicated that the
8 applicant operated the business for some time without
9 obtaining a county use permit. That was true. The
10 applicants did go to the county, after operating for
11 approximately two years without a permit, and did obtain a
12 use permit in March of 1995.

13 The objecting parties have questioned the
14 consistency of the upland business with the local zoning
15 there. Obviously, the use permit was issued finding that
16 the business is consistent with the local zoning in this
17 area.

18 The objecting parties believe that, if the pier
19 and the dock are not part of the commercial operation, that
20 this business will not qualify for the Delta waterway
21 zoning, which is a commercial zoning, water-related
22 commercial zoning.

23 We have asked the county staff about that, and the
24 county staff has indicated to us that, in fact, as long as
25 the business is water-related, it does not have to have

1 waterside facilities to qualify.

2 So, with or without the pier and the dock, this
3 business would qualify for the zoning in this area.

4 They have also raised an issue about the presence
5 of the barge in the waterway. And we agree that that is a
6 concern. It is on the State's land. It is like many other
7 abandoned vessels in our waterways that are of great concern
8 to us, and we continue to make efforts to remove that.

9 However, as I said, so far as we can tell, this
10 applicant has nothing to do with that barge being there and
11 it is not responsible in any way for its removal.

12 I'd like to comment that the objecting parties are
13 obviously very sincere in their concerns about the safety in
14 this area. We sympathize with them. We have tried to
15 investigate the situation to assure ourselves that what you
16 are being asked to approve here is not contributing in any
17 way to those problems on the upland.

18 I think that we have come to a very strong
19 conclusion that that is the case. There is no contribution
20 to the traffic problems they have raised as a result of a
21 dock and pier being here for the owners' and operators'
22 private use.

23 Unfortunately, without that kind of connection,
24 this Commission really is without jurisdiction to effect
25 changes to the roadways or the upland amenities or utilities

1 that are available to you in this area. And the county has,
2 in fact, acted and approved this whole facility, not just
3 the project on our land, but the business operating on the
4 roadway.

5 Therefore, we recommend to you that you do approve
6 the lease as presented.

7 CHAIRWOMAN CONNELL: Thank you very much.

8 I believe three speakers in opposition.

9 COMMISSIONER DAVIS: I'd like to ask a couple of
10 questions.

11 CHAIRWOMAN CONNELL: Sure.

12 COMMISSIONER DAVIS: Could you explain to me the
13 nature of the concern about traffic safety? Is that
14 pedestrians crossing the street, or is that parking, access
15 for parking of people who frequent the business? What's the
16 traffic safety concern?

17 MS. SEKELSKY: There are people who will explain
18 it in more detail to you. But my understanding is that it
19 includes all of those things; that there is, on occasion --
20 particularly when the windsurfing is very active in this
21 area -- you come down the road this way (indicating) and
22 come out to the end of -- a point where there is a
23 tremendous amount of windsurfing in good weather.

24 They are concerned about the blind curve
25 precluding vision as you're coming around. They're

1 concerned about pedestrians walking back and forth across
2 the road to the business. Often, those pedestrians would be
3 carrying equipment -- windsurf equipment itself, which is
4 very bulky and awkward to carry.

5 The parking, as well, has been a concern to them.
6 What was expressed to us is that, right now, people park on
7 either side of the road and make the road even narrower than
8 it normally is. And the road here is between 20 and 30 feet
9 wide in places.

10 One of the thing that the county is requiring is
11 that the road be widened to 32 feet, and that the parking be
12 landward of that, so that it would be off the 32 feet
13 right-of-way. But all of those things come into account.
14 The fact that there's people driving through there, lots of
15 people sometimes --

16 COMMISSIONER DAVIS: Let me just interrupt you.
17 This business is currently operating?

18 MS. SEKELSKY: Yes, it is.

19 COMMISSIONER DAVIS: So, presumably, the concerns
20 about pedestrians and parking are applicable whether or not
21 we approve --

22 MS. SEKELSKY: That's correct.

23 COMMISSIONER DAVIS: -- the use of the pier?

24 MS. SEKELSKY: Yes, that's correct.

25 COMMISSIONER DAVIS: Thank you.

1 COMMISSIONER PARKER: One question. Is it our
2 understanding -- and I would ask you, but I guess I would
3 ask the people who'll testify. Is it our understanding that
4 when the county gave the permit, that these traffic issues
5 were discussed? Because it seems to me they relate to the
6 business. Obviously, we'd want to try to find out how it
7 relates to the pier, which is our purview, but I presume
8 that these traffic issues were dealt with by the county?

9 CHAIRWOMAN CONNELL: Should have been in the use
10 permit.

11 COMMISSIONER PARKER: So, these were issues that
12 were dealt with; is that --

13 MS. SEKELSKY: Yes. The county did address the
14 issues, although I think that some of the speakers question
15 how they dealt with them. They did deal with them. In
16 fact, the project, as defined in the use permit, includes
17 the road realignment and establishment of these 12
18 additional formalized parking spaces.

19 COMMISSIONER PARKER: I just wanted to clarify
20 that for the record.

21 MR. STEVENS: Ms. Parker, if I could interpose. I
22 think you hit the nail on the head. The staff consulted our
23 office with respect to the compliance with CEQA and
24 environmental laws. Christine Sproul has looked at it, and
25 she's here today.

1 And, basically, these issues were addressed within
2 the county use permit, which produced a negative
3 declaration, which was accepted -- or recommended for
4 acceptance by the Commission here today -- the mitigations
5 in the county use permit project treatment, so was
6 consideration of all these impacts.

7 And, basically, the Commission has before it a
8 project which only involves the dock and the use of that
9 dock, and is restricted to noncommercial uses.

10 MS. SPROUL: Christine Sproul from the Attorney
11 General's Office. I just wanted to make it clear that the
12 responsibilities of the responsible agencies, as contrasted
13 to those of the lead agency, are more limited.

14 When a responsible agency considers part of the
15 project already approved by the lead agency, its authority
16 with regard to mitigation and alternatives relates to those
17 parts of the project which it is approving, not the other
18 part which the lead agency has already taken into
19 consideration and approved.

20 And, in fact, the responsible agency relies in
21 part on the fact that lead agencies are bound by law to
22 require enforcement of mitigation; that you can rely on
23 those mitigations to be implemented.

24 COMMISSIONER PARKER: Christine, what's the time
25 frame for the owners of the business to essentially complete

1 the mitigation requirements that were part of the permit
2 approval process?

3 MS. SPROUL: That is specified by the county.

4 COMMISSIONER PARKER: But it is in the document?
5 There are time lines in it?

6 MS. SPROUL: They are compelled to comply with the
7 mitigation monitoring report. I don't know all the details
8 of that, but the county did adopt one, and the county has
9 indicated that the operator of the business is required to
10 provide parking and to fund road improvements.

11 So, the Commission at this point really has
12 information that the county has required mitigation. We
13 don't know the exact time frame, but CEQA does indicate that
14 they're required to complete the mitigation measures within
15 the project life and usually before the project commences.

16 In this case, you have an existing business with
17 some alteration, so the time line has probably more
18 flexibility, unlike if it were a beginning project.

19 CHAIRWOMAN CONNELL: Okay. We have Bruce Larsen.
20 Would you like to address the Commission? And if would you
21 identify yourself, please.

22 MR. LARSEN: My name is Bruce Larsen. I'd like to
23 thank the Chair and the Commission for giving me an
24 opportunity to speak.

25 I am a recreational user of the Delta area. And,

1 as a professional --

2 (Thereupon, the reporter was unable to
3 hear the witness and asked him to speak up.)

4 MR. LARSEN: I'm sorry. As I was saying, I'm a
5 recreational user of the Delta area, do fishing and
6 windsurfing in that area.

7 As a professional level way, I support myself as
8 an emergency room nurse. Excuse me. I'm nervous.

9 CHAIRWOMAN CONNELL: We are friends. I think you
10 probably are more at least in front of us than we would be in
11 front of you in the emergency room.

12 (Laughter.)

13 MR. LARSEN: I'm sure. Thank you again.

14 My concern -- and I've also written to the
15 Commission, even though I don't see it as an addition to the
16 calendar.

17 COMMISSIONER PARKER: We do have the document,
18 sir.

19 MR. LARSEN: Oh, I see. Thank you. -- is for the
20 safety issue to the pedestrians with the increase in
21 traffic. I find the whole package to be unacceptable. And
22 frankly, it astonishes me that something like this could be
23 even considered as a viable business location.

24 As you can see, the business is so close to that
25 road that it astonishes me. And I understand that your

1 jurisdiction basically covers the pier.

2 But I, frankly, believe that there will be a
3 substantial increase in traffic; and even with the
4 mitigation of the increased parking, may further increase
5 the risk of traffic and pedestrians using that area.

6 The other concern I have is that I don't
7 understand why, you know, a commercial pier is needed for
8 this business. And based on the owners' previous
9 noncompliant nature, I'm skeptical that they will actually
10 use that as a commercial or personal (sic) business and
11 things will go on and do business as usual.

12 CHAIRWOMAN CONNELL: What were your conversations
13 with the county when they went through the review for the
14 use permit and zoning? Did you have a chance to participate
15 in that decision?

16 MR. LARSEN: No. I believe I came in on this at a
17 later date. But I see certain situations that, you know,
18 based on my profession, it's unbelievable. And with the
19 extended travel times and response times of emergency
20 personnel to this area, you know, I just think that there's
21 a substantial risk of personal injury and potential
22 liability to the county and also the State if you allow a
23 project like this to go onward.

24 I'm not sure what the exact response and travel
25 times to an emergency facility are, but I know that this

1 area is noted for substantial and horrific accidents. And
2 I'd just hate to see a fatality or any kind of injury happen
3 as a result of allowing some kind of insufficient business
4 like this to continue.

5 COMMISSIONER DAVIS: Why weren't these concerns
6 best addressed to the county? We can't decide whether or
7 not this business should exist.

8 MR. LARSEN: Yes, I understand. But you have to
9 speak up wherever you can. I've made the commitment, based
10 on what I do as a living. If I can prevent any injury, for
11 whatever reason, I'll do that.

12 And it's based on my use of the area. This just
13 happened to be something I saw that I wanted to express a
14 concern about.

15 CHAIRWOMAN CONNELL: Do you feel that the risk is
16 related to people crossing the traffic, or is that mitigated
17 at all by putting the parking spaces that were discussed
18 adjacent to the building?

19 MR. LARSEN: Obviously, I think that will help
20 somewhat. But, as you can see, that is located not only
21 along a road but also right in front of another
22 intersection.

23 If you've ever traveled in the Delta, and you know
24 how people drive, I just think there's some serious risk
25 involved.

1 This road that travels westward is a dead-end
2 road, so traffic must come in and out of the same exit
3 (sic). I've heard of several episodes of near accidents.
4 In fact, one of the episodes had to do with a school bus and
5 a delivery truck or something. So, frankly, I think it's
6 just a matter of time before something does occur at that
7 intersection.

8 COMMISSIONER PARKER: Madam Chair?

9 CHAIRWOMAN CONNELL: Yes.

10 COMMISSIONER PARKER: Mr. Larsen, I guess it
11 sounds -- I mean, these are things, the concerns that you
12 have are with respect to the business that exists currently.

13 MR. LARSEN: Yes.

14 COMMISSIONER PARKER: I guess, from my
15 perspective, it's a matter of -- to the extent that we grant
16 the owners the ability to use the dock for noncommercial
17 aspects, but for personal use, I'm trying to relate that to
18 your traffic concerns.

19 MR. LARSEN: I believe that will also help
20 increase the traffic to that area by granting that kind of
21 use permit.

22 COMMISSIONER PARKER: And how do you see that
23 occurring?

24 MR. LARSEN: Well, I mean, if people are stopping
25 along there and if they think they can launch or get

1 supplies off of the river (sic) and come in to that area, I
2 can see this being somewhat of a hub of activity. And that
3 doesn't even address the water concerns.

4 I have to believe that the waterway, that would be
5 safe and correctly posted as far as speed limits, and
6 markings, and that type of thing.

7 COMMISSIONER PARKER: Are you suggesting a
8 commercial activity or a personal activity?

9 MR. LARSEN: I'm concerned that by granting them
10 even a personal permit, that eventually that use -- based on
11 their noncompliant nature as previously mentioned -- that
12 eventually they will just use it for whatever purpose they
13 deemed that they want to do, and that that will increase
14 some of the risks to the intersection and to personal safety
15 in that area.

16 CHAIRWOMAN CONNELL: Lieutenant Governor, do you
17 have any questions?

18 COMMISSIONER DAVIS: Maybe we could write in --
19 what happens when people breach conditions that we apply to
20 use of piers or other facilities tha we lease?

21 MR. HIGHT: We do not --

22 COMMISSIONER DAVIS: Assuming there are
23 complaints, then what happens?

24 MR. HIGHT: Then we investigate it. And if it's
25 deemed appropriate, the Commission revoke the permit. And

1 that would be the process that I would suggest that we
2 follow in this case. You know, we have a letter from the
3 applicant. The lease says that it can only be used for
4 private purposes. If we find that that's not the case, then
5 we can deal with it.

6 COMMISSIONER DAVIS: Well, let me ask this
7 question. Let's say somebody rolls up in their boat and
8 docks at the pier, and then goes in and makes some purchases
9 at the store.

10 Now, is that considered a commercial use of the
11 pier or a personal use of the pier?

12 MR. HIGHT: That would be a commercial use, and
13 they do not envision that as a use that they would allow for
14 this pier.

15 COMMISSIONER DAVIS: So, this is just so their
16 families can use it?

17 MR. HIGHT: Right.

18 COMMISSIONER DAVIS: Dock their own personal
19 boats.

20 COMMISSIONER PARKER: That lease would not allow
21 them to do that.

22 MR. HIGHT: Correct.

23 CHAIRWOMAN CONNELL: And if they violate our
24 lease, what is our --

25 MR. HIGHT: We can revoke the lease and require

1 them to remove the facility.

2 COMMISSIONER PARKER: The facility's there now.

3 MR. HIGHT: Yes.

4 COMMISSIONER DAVIS: So, it's being used now?

5 MR. HIGHT: It was a -- the facility has been
6 there for a long time, and they are applying for a permit
7 for it.

8 COMMISSIONER DAVIS: It looks like it's in some
9 state of disrepair. Could a boat dock there? Is it
10 sufficiently --

11 MS. SEKELSKY: The pier facility, I believe, is
12 too high above the water to make it convenient to dock
13 there. And that is why they want to put the gangway down to
14 a dock (sic) that is lower, so they can dock their boats
15 there.

16 COMMISSIONER DAVIS: So, it's effectively not
17 being used now or rarely used.

18 MS. SEKELSKY: It's just --

19 COMMISSIONER PARKER: Not usable?

20 MS. SEKELSKY: No, I think it's usable. You could
21 walk out on it, sit on it, watch the water. But it's not
22 used for boats that I'm aware of.

23 COMMISSIONER PARKER: So, to the extent that they
24 had activity that was not permitted under this lease, by
25 free use of this gangway, then by having us terminate them,

1 they would be required to remove that. So, they would not,
2 in that sense, have the access from the water to the dock?

3 MR. HIGHT: That's correct.

4 MS. SEKELSKY: We could have them remove both the
5 dock, the gangway, and the pier, because it is on our land.

6 The pier was originally constructed for use in
7 conjunction with shipping agricultural products off the
8 island.

9 CHAIRWOMAN CONNELL: Any other questions from
10 members of the Commission of Mr. Larsen?

11 I hope your experience was not too painful?

12 MR. LARSEN: No. Thank you.

13 COMMISSIONER DAVIS: Thank you for coming up.

14 CHAIRWOMAN CONNELL: I do believe we have another
15 individual who wishes to speak with the Commission. Sue de
16 Witt, would you please join us? Thank you.

17 MS. DE WITT: Thank you, Madam Chair, members of
18 the Commission. I, too, am a little bit nervous, and I just
19 want to add to the responses to questions that I believe you
20 asked Mr. Larsen.

21 And one is why, perhaps, it's been difficult to be
22 involved in the county's public process. One of those
23 issues that the county only requires that the applicant
24 notify the neighboring property owners. And in this area,
25 you can see that there aren't many neighbors. In fact,

1 there's probably one or two, if at all.

2 And that makes it very hard to participate in the
3 public process in that area, just because it is so rural.
4 Once you find out about the project, it's usually too late.
5 And, in fact, I was not aware of the Planning Commission's
6 hearing of this project until about four o'clock in the
7 afternoon when I was headed out of town on the day it
8 occurred.

9 I was told two hours before the hearing, you know,
10 "Hey, did you know this was coming up?"

11 And I was just not able to change my plans and get
12 down there for this hearing. What happened, once that was
13 approved that evening -- which, of course, was inevitable,
14 because I did not have the opportunity to express my
15 concerns about it -- once that was approved, then the
16 process is an appeal process.

17 But in order to appeal, you have to come up with a
18 2,000-something dollar fee for the County of Sacramento in
19 order to get your appeal heard. As a private citizen,
20 that's an extremely difficult burden to put on me, as a
21 private citizen, to ask me to pay to appeal a safety issue
22 that I thought that the county had not adequately addressed.

23 So, with that, I'd like to turn to my testimony,
24 which I wrote down, because I was nervous.

25 My name is Sue de Witt, and I'm a resident of Rio

1 Vista and a frequent user of West Sherman Island Road, where
2 this applicant is located.

3 I have served on the Board of Directors of the Rio
4 Vista Windsurfing Association, served for the City of Rio
5 Vista on various windsurfing committees to develop safe and
6 clean windsurfing launch areas collaboratively with public
7 agencies, and private individuals, and companies.

8 I have contributed substantial time and
9 substantial resources to community activities to ensure
10 safety in the California Delta, while encouraging access to
11 its beauty.

12 I'm here to ask you to deny this request for a
13 lease, and I will briefly give you a number of reasons that
14 I think you'll agree are serious problems with this
15 application.

16 First of which, there are inaccuracies in the
17 staff report that I think convey a wrong impression to this
18 Commission. For example, on page 3 of the staff report, it
19 implies the county staff concluded the applicants' parking
20 plan is conceptually adequate to address safety concerns.

21 I have a copy of the county's July 10th, 1996,
22 inspection report showing that compliance with the parking
23 is waiting for drawings. That would indicate, for the
24 record, that County Engineering has not yet signed off on
25 the road construction plans as required by the permit.

1 In fact, their compliance report also shows the
2 applicant has not yet complied with any of the conditions
3 specified in the use permit issued on February 27th, 1995.
4 I think it is easy to understand why these safety issues are
5 so important.

6 Your staff found a Monday traffic tally showing
7 400 to 500 vehicles passing each other on a road not wider
8 than a two-car garage. The building itself is showing signs
9 of collisions and does not need much illustration to imagine
10 the effect such a collision would have on a pedestrian.

11 And I can show you on this map that pedestrians
12 need to walk beside the building in order to enter the
13 building. So, that is part of the problem with pedestrians
14 on the roadway.

15 Also, on page 3, staff asserts that the proposed
16 pier and dock are for the applicants' personal use. The use
17 permit issued by the county added a condition that requires
18 a use permit -- and I quote -- to legalize an existing
19 commercial pier, end quote.

20 Throughout the county's review of this project,
21 this pier was clearly and several times called a commercial
22 pier. However, this application before the Lands
23 Commission's requesting a private recreational pier lease.

24 It would seem that the requirements for a
25 commercial pier, as explained to me by your staff, would

1 require that you consider the serious public health and
2 safety issues. Therefore, it also seems expedient to call
3 it a private pier.

4 Finally, even if your Commission would like to
5 consider this lease, staff has not assessed in their report
6 the impact of the proposed dock on the navigable channel of
7 Horseshoe Bend. With the addition of the proposed dock and
8 boats tied to it, it will be positioned diagonally from a
9 sunken barge near the site.

10 Boaters are using this barge as a tie-up, which
11 should concern someone, because the county has already
12 identified environmental hazards located on the barge.

13 This is anecdotal, but I do -- I have heard that
14 this barge was actually rented to a divorced gentleman that
15 lived on this barge, and that rental was with the Upland
16 Company. But I don't know more about that. That's totally
17 anecdotal.

18 With the proximity of these two obstacles to each
19 other, the navigable channel will be reduced by one-third,
20 causing considerable hardship to boaters. While I
21 understood from the staff that this is something within your
22 jurisdiction, I can't explain why staff did not point this
23 out to you.

24 Your staff and I spoke just prior to this hearing,
25 and suggested that your Commission lacks jurisdiction over

1 public health and safety. Since constitutionally sworn
2 officers, I thought, have a duty to protect public health
3 and welfare, I thought you would indeed have jurisdiction
4 over this matter.

5 I will conclude my statement by saying that there
6 are numerous inconsistencies among the permit applications
7 filed by this company. This permit is simply in no
8 condition to be approved. I have been asking that this not
9 be considered today until these issues were addressed.

10 Therefore, since it's on today's agenda, I'd be
11 pleased to provide further information, still continue to
12 want to participate in the public process, but ask that you
13 please deny the application.

14 Thank you.

15 CHAIRWOMAN CONNELL: Thank you. I'd like to get
16 some response, if we could, from our staff regarding a
17 couple of the comments that were made by Ms. de Witt.

18 What is the status of these conditions that were
19 imposed by the county in February of '95?

20 MS. SEKELSKY: Well, Sue has brought some
21 information that I have not seen. Again, as I indicated
22 earlier, we talked to county staff this morning. And with
23 regard to the road realignment and the provision of the
24 parking spaces, it is our understanding that the county
25 staff has found that those plans are conceptually adequate;

1 that they are waiting for the contractor to submit bonds and
2 a contract that provides the details of the construction.

3 So, pending that, they are not finally approved.

4 CHAIRWOMAN CONNELL: Now, let's see. That would
5 be a year and a half since February of '95. Is this normal,
6 this kind of delay in meeting the conditions of the county?

7 MS. SEKELSKY: I honestly can't tell you if that's
8 a normal delay with the county.

9 CHAIRWOMAN CONNELL: But they have had continual
10 use of the facility? I'm assuming they have.

11 MS. SEKELSKY: They have been operating their
12 business on the upland --

13 CHAIRWOMAN CONNELL: They are in operation now,
14 correct?

15 MS. SEKELSKY: Yes.

16 CHAIRWOMAN CONNELL: So, they have been operating
17 this business, but not yet in compliance with the conditions
18 that were set forth?

19 MS. SEKELSKY: That is my understanding, yes, with
20 regard to the road realignment and the parking. They have
21 corrected the septic system problem and they have, in fact,
22 obtained the use permit. But they have not met all the
23 conditions in the use permit.

24 COMMISSIONER DAVIS: Although we don't know what
25 time constraints there were on meeting these conditions that

1 were set forth, do we?

2 (Thereupon, Ms. DeWitt's comment in answer
3 to the Commissioner was not heard by the
4 reporter.)

5 MS. DE WITT: I'm sorry. They have three years.
6 It's mentioned in the conditional use permit.

7 COMMISSIONER DAVIS: So they have another year and
8 a half to be in compliance.

9 MS. DE WITT: Essentially. I think that that's
10 been one of the problems with this company, is that they
11 continue to wait until the very end of any term in order to
12 show compliance with anything.

13 In fact, it was at least two and a half years
14 before they even applied for their conditional use permit.

15 CHAIRWOMAN CONNELL: So, they have another year
16 and a half running on their agreement with the county.

17 MS. DE WITT: And then that will expire.

18 COMMISSIONER PARKER: And I guess that goes back
19 to the question about how long it would take something like
20 that to occur. And when the document was drafted, if the
21 people viewed three years as a reasonable amount of time for
22 compliance, the activities to date may or may not be the
23 normal course of events leading up to the accomplishment of
24 what would have to occur to meet essentially the conditions
25 of the permit. I don't have a feel for the planning process

1 to know whether -- I know things move --

2 MR. STEVENS: Slowly.

3 COMMISSIONER PARKER: -- slowly.

4 MS. DE WITT: They were asked to apply for this
5 permit within six months, actually receive it within six
6 months. And, as far as I can tell, they didn't even apply
7 for it until after the six months had lapsed.

8 COMMISSIONER PARKER: I think that's a question--

9 CHAIRWOMAN CONNELL: Go ahead.

10 COMMISSIONER PARKER: Are the applicants here
11 today? When they speak, I have a couple of questions.

12 CHAIRWOMAN CONNELL: Does the applicant wish to
13 address this Commission?

14 MS. MARK: (From the audience) Yeah. I'm Josie
15 Mark.

16 CHAIRWOMAN CONNELL: Could you join us? Where
17 could she join us? Why don't you join us here so you can
18 engage in a conversation with this Commission, if you will,
19 please.

20 And could you also, for purposes of the record,
21 identify yourself? Thank you.

22 MS. MARK: I'm Josie Mark. I'm the project
23 architect for Delta Windsurf. I've been representing them
24 both for the use permit, as well as all the other State and
25 Federal permits.

1 I'm not a hundred percent sure exactly what
2 happened in the past as far as a use permit before I came
3 in. At the time I came in, they needed help on getting use
4 permit and other permits together.

5 They have been acting faithfully every step. And
6 I appreciate Sue's concerns. Sue was aware of the project
7 through other use permit process. And, unfortunately, she
8 was not able to make it to the actual hearing.

9 All concern that has been raised on this project,
10 as far as road realignment and public safety, those has been
11 carefully addressed through the public consultation. Both
12 Public Works and Sacramento County Transportation
13 Department, they both have reviewed it, and we did have the
14 conceptual drawing revised before the use permit for that
15 purpose.

16 And the road realignment is putting the road away
17 from the business building. So, I believe it's roughly --
18 off the top of my head, I think it's ten foot away from the
19 building. So, the real road realignment will actually take
20 care of both the parking as well as pedestrians walking in
21 front of the building.

22 And, as far as in our progress right now, we are
23 ready to go back for, you know, the county and take care of
24 all the paper work, because we're aware that we have a
25 window period of when we can do the road realignment,

1 because we have to deal with the levee and, you know.

2 There's more than just one permit that we have to
3 deal with when we build something on the levee. We have
4 both local reclamation, State Reclamation. We have County
5 Transportation. We have -- you know, we have a list of
6 agencies that high (gesticulating) to deal with for a dinky,
7 little road realignment. And perhaps it's the smallest of
8 all that you've discussed today.

9 But we have permits stacked that high. And for
10 that reason, it did take us more time, you know, of what
11 most people are aware of.

12 But, as you all know, in this business, when we're
13 dealing with different agencies, we are at the mercy of
14 every agency. And every agency, they have certain time
15 limit and we try -- actually would like to do the road
16 realignment before the next flood season.

17 So, we are actually talking to start construction
18 soon.

19 COMMISSIONER PARKER: Madam Chair, if I could ask
20 two questions. And I wasn't clear on whether or not you
21 could address them or not. But since you're representing
22 the applicant, I'll just, for the record, ask them.

23 I guess the concern by the people who have come
24 here in opposition is sort of the credibility of your
25 clients, of the applicants. And so, I guess the two

1 questions I have -- why was it two years before the
2 applicants essentially pursued the permit requirements? Why
3 two years?

4 And then, secondly, if there was this requirement
5 of coming before the Lands Commission within six months --
6 and it appears that that time frame was not met -- could you
7 give us some sense about why that was not complied with?

8 MS. MARK: We have submitted in for the State
9 Lands permit quite a while back. The project's been
10 postponing back.

11 COMMISSIONER PARKER: Was the application within
12 the six months?

13 MR. HIGHT: The application was submitted February
14 27th, '95. And it's taken that long because, as the --

15 COMMISSIONER PARKER: So, the permit was approved
16 by the county in February of '95?

17 MS. SEKELSKY: March.

18 MR. HIGHT: March.

19 MS. SEKELSKY: March of '95.

20 MS. MARK: We submitted it before.

21 COMMISSIONER PARKER: Okay. So, they --

22 MR. HIGHT: Yes.

23 COMMISSIONER PARKER: All right.

24 MS. MARK: So, it was not us causing --

25 COMMISSIONER PARKER: That's fine. Can you speak

1 to the -- why is it two years before the applicant --

2 MS. MARK: I really cannot answer you that,
3 because I did not work for them before, you know, they
4 started on the use permit process. So, I really cannot
5 answer that.

6 All I knew is that ever since I have been on the
7 job, they have been actively pursuing and paying a lot of
8 money going through the process. And when you consider this
9 is a very small windsurf shop, and they have spent a lot of
10 money in trying to get this process through, the road
11 realignment.

12 This is actually, you know, really more burden
13 than a windsurf shop --

14 COMMISSIONER DAVIS: How many employees are
15 employed at this store or shop?

16 MS. MARK: You know, I cannot answer you that.
17 Everytime --

18 COMMISSIONER DAVIS: Is it less than 10?

19 MS. MARK: -- we went there, there are two to
20 three guys there at most.

21 COMMISSIONER DAVIS: So, this is a very small
22 business.

23 MS. MARK: It's a very small business.

24 MS. DE WITT: It's a very small business owned by
25 a multimillion dollar farming concern in this area.

1 COMMISSIONER DAVIS: It doesn't matter who owns
2 it. It's a business.

3 MS. DE WITT: When she pleads the fact this is a
4 small business, I wanted you to know that this was a fairly
5 well-funded operation.

6 COMMISSIONER DAVIS: It still has to sustain
7 itself as a business. If it can't make money, it can't stay
8 in business.

9 MS. MARK: The farming operation is not owned by
10 the owner. The father and his brother owns it. Yes, it's a
11 very wealthy family. But the individual, as a private
12 business owner, no, they are not a wealthy business owner.
13 And the burden that the county has placed it in those
14 projects is actually very heavy on the burden.

15 And they have been acting faithfully ever since
16 I've been involved.

17 COMMISSIONER DAVIS: What are the estimated costs
18 of making the road repairs or the road realignment, plus the
19 parking, the 12 parking spots?

20 MS. MARK: Right now it's at 30,000.

21 COMMISSIONER DAVIS: That's the road?

22 MS. MARK: Yeah. Just this morning, I got the
23 revised bid, and it's coming in at 30,000. Just realign the
24 road.

25 COMMISSIONER DAVIS: And then, what about parking?

1 MS. MARK: And the parking. They're all part of
2 it.

3 CHAIRWOMAN CONNELL: Is there a feeling on the
4 part of the staff that you need to confer beyond your
5 current staff information? You said you received new
6 information as a result of the presentation?

7 MS. SEKELSKY: I have reviewed what she gave us.
8 It does, in fact, indicate that certain conditions in the
9 use permit are still pending or have not been complied with.
10 But I believe that each of those things has been explained.

11 We can go through them, if you'd like, but I don't
12 think that we're going to glean any more information from
13 trying to meet any additional --

14 COMMISSIONER DAVIS: Well, I have a suggestion,
15 Madam Chair.

16 We could do one or two things. We could just
17 approve the permit; we could deny the permit. And we could
18 approve the permit subject to the completion of the
19 conditions to obtain the conditional permit -- the road
20 repair and the parking lot.

21 We can approve the permit and say it expires if
22 the conditions to obtain the conditional use permit are not
23 achieved in year and a half. There's a lot of ways we can
24 do this.

25 But, in fact, if they're just using it for their

1 personal use, there's probably (a) not any great sense of
2 urgency, and (b) -- although, I think they should get it. I
3 see no reason why they shouldn't get it. But whatever the
4 Commission's pleasure is.

5 CHAIRWOMAN CONNELL: Well, what would you like to
6 try? Is there a specific motion you would like to test and
7 see if you got any support of the other Commissioners?

8 (Laughter.)

9 CHAIRWOMAN CONNELL: Well, I don't feel strongly
10 about this. I'd be willing to move that we approve the
11 permit subject to the completion of the requirements
12 mandated by the conditional use permit.

13 CHAIRWOMAN CONNELL: In what time frame?

14 COMMISSIONER PARKER: Lt. Governor, that would
15 mean to the extent that the use permit, the particular
16 roadwork and the parking was not accomplished in a year and
17 a half, which is a three-year time frame, then our lease or
18 our permit would be cancelled?

19 COMMISSIONER DAVIS: Yes. You could do it that
20 way, or you could say it's not effective until the -- you
21 could do it either way.

22 COMMISSIONER PARKER: So, that seems a year and a
23 half before they would have the ability to use this for
24 recreational purposes?

25 MR. HIGHT: One of the reasons that it is before

1 you today is two reasons. One, under the Permit
2 Streamlining Act, the Commission needs to act one way or the
3 other; and, two, the addition -- the gangway they propose to
4 build, they have a Fish & Game construction window of
5 September. And so, that's one of the reasons.

6 COMMISSIONER DAVIS: When they get an instruction
7 window.

8 MR. HIGHT: Fish & Game says you can only build
9 during --

10 COMMISSIONER DAVIS: Construction window. Excuse
11 me.

12 MR. HIGHT: Construction, yes. And September is
13 their window for building.

14 MS. DE WITT: But they can do it next September.
15 I mean, if it's just for recreational purposes and it has
16 nothing to do with their business, then there's no
17 compelling urgency.

18 MS. MARK: Can I make a few comments? The thing I
19 would like to clarify in the county permit, as far as
20 parking, according to the county requirement, we are
21 required for nine parking stalls and then three overflow
22 parking. Okay?

23 And we basically put it in with the idea that,
24 hey, we would like to have the extra personal. Okay? The
25 required parking stalls by code is 9 parking stalls. The

1 three is overflow.

2 And, secondly, is that -- you know, first of all,
3 they don't feel it urgent to put the dock in. But, however,
4 I still feel that it's unfair that someone put in a
5 condition that has no relationship between the dock versus
6 the business. I mean it's for private use. It's not for
7 commercial use.

8 I agree with the facts that for -- if they put the
9 dock in commercial use, I believe the Commission should
10 stick up -- you know, stand on their gun and say, get out or
11 else.

12 But, as far as putting condition to say that, hey,
13 you know, the roadway alignment is tied to the dock --

14 COMMISSIONER DAVIS: I've got an idea. Can we
15 have a lease that runs for a year and a half?

16 MR. HIGHT: Certainly.

17 COMMISSIONER DAVIS: Want to do that?

18 COMMISSIONER PARKER: Was the applicant -- did you
19 discuss with them appearing themselves at this meeting? And
20 I presume that they knew that there was opposition?

21 MR. HIGHT: Yes.

22 COMMISSIONER PARKER: So, they were invited to
23 come?

24 MR. HIGHT: Yes.

25 COMMISSIONER DAVIS: Moreover, this came up

1 before, didn't we ask --

2 CHAIRWOMAN CONNELL: I thought we delayed this so
3 that we could have them.

4 COMMISSIONER PARKER: I'm just kind of wondering
5 why they did not come themselves to essentially --

6 MS. MARK: The applicant himself?

7 COMMISSIONER PARKER: right.

8 MS. MARK: Why didn't he come? At the time we
9 received the notice, I called and he had other plans; that
10 he's on convention. So, he's out of town.

11 MS. SEKELSKY: Our leases have a standard
12 provision that in order for the lease to be effective -- in
13 order to comply with the terms of the lease, the lessee must
14 comply and be in compliance with all other rules and
15 regulations, laws, et cetera, of any other government
16 agency.

17 If, in fact, at the end of this next year and a
18 half, they are not in compliance with their use permit, they
19 haven't meet the county requirements, that would throw the
20 lease into a status of being out of compliance, at which
21 time we can go in and take affirmative action to do
22 something with it if you choose.

23 CHAIRWOMAN CONNELL: I like the idea of perhaps
24 being more definitive up front. I like the idea of a time
25 certain lease, which gives them a very direct notice that

1 the Commission is aware that they're in the process of
2 transitioning, hopefully, to compliance with the county
3 agreement. But should they not achieve that within the time
4 of our lease agreement, our lease will end. And before this
5 Commission chooses to discuss a renewal of the lease, they
6 will have to be in compliance.

7 I think it's a very firm statement by the
8 Commission as to the importance of being in compliance.

9 COMMISSIONER PARKER: I agree, Madam Chair. I
10 guess my only concern is, to the extent that we were to do
11 that, they would have -- under that, I would presume that
12 they would have the ability this year immediately to
13 construct the docking.

14 MR. HIGHT: Yes.

15 CHAIRWOMAN CONNELL: In September is what you're
16 saying.

17 MR. HIGHT: Yes.

18 COMMISSIONER PARKER: Right. In September. And
19 to the extent that a year from now there was a noncompliance
20 problem, we would have the situation of then having this
21 dock in place and trying to remedy, if there was a problem,
22 which would require them to essentially dismantle --

23 COMMISSIONER DAVIS: You don't have to do that.
24 You just deny their use of it. Granted, it would be tough
25 to enforce, but just say that the dock has to remain

1 vacated, if you will. You can't pull up a point, or a
2 barge, or anything else until you come into compliance with
3 the county requirements, which apparently are incorporated,
4 according to Jane, in the lease documents that will be
5 signed as a matter of course.

6 So, it's not an extraordinary requirement from
7 what we normally have.

8 COMMISSIONER PARKER: My position coming in here
9 was essentially to -- because of particular things the
10 Attorney General's pointed out, I hear the arguments, but I
11 think our purview is really such that, you know, they have
12 met the test.

13 I guess I'd feel more comfortable if I heard from
14 the applicants themselves to come and address their
15 intentions of compliance, not only with the permitting
16 requirements but the limited use of the dock.

17 And it makes it more difficult for me to
18 essentially have to have us take on faith what they're going
19 to do.

20 COMMISSIONER DAVIS: We're not really taking
21 anything on faith. We're giving them a lease for a year and
22 a half. They have to bear all the construction costs --

23 COMMISSIONER PARKER: Right. I know that.

24 COMMISSIONER DAVIS: -- doing that. And they may
25 lose it entirely in a year and a half.

1 COMMISSIONER PARKER: But our enforcement
2 abilities are somewhat limited because of, you know, having
3 to go out there and check to see whether or not; if they did
4 not comply, that they, in the future --

5 (Thereupon, the Commissioners spoke
6 simultaneously.)

7 CHAIRWOMAN CONNELL: I have confidence, after
8 listening to Mr. Larsen and Ms. de Witt, that you will keep
9 the Commission informed.

10 (Laughter.)

11 CHAIRWOMAN CONNELL: I think we have some very
12 committed global activists here that would hopefully help
13 the Commission if we choose to move forward with some kind
14 of an agreement on the lease. I would certainly hope that
15 you've gotten the sense of the concern of this Commission.

16 MS. DE WITT: I appreciate that.

17 CHAIRWOMAN CONNELL: And that you would want to
18 keep us advised and our staff advised if there is not a
19 compliance with this. And should we have to get to an
20 unfortunate situation where we revoke the lease if there is
21 a continuing use of the facility, then we would have to take
22 legal action.

23 I think that can be clarified and communicated by
24 the project architect as well to her client.

25 COMMISSIONER DAVIS: Let me just make a point, if

1 I may.

2 If the lease is a year and a half, we don't revoke
3 anything. The lease ends. There's no rents.

4 I want to make two points. I want small
5 businesses to succeed. My wife ran a small four-person
6 business. Kathleen Connell had a small business. It's
7 important that business succeeds.

8 On the other hand, we can't -- and we can't have
9 endless requirements and endless permit stuff or we'd never
10 get done. On the other hand, people have to operate in good
11 faith.

12 CHAIRWOMAN CONNELL: And legally.

13 COMMISSIONER DAVIS: And there's some sense that
14 that may not be happening. This way, we don't have to make
15 a comment either way. We can say it's a year and a half
16 lease. We'll review it after a year and a half.

17 MS. MARK: If that's a choice, I'm going to just
18 take it as a year and a half and you can revoke it if the
19 conditions are not -- if the road is not --

20 COMMISSIONER DAVIS: We're not going to revoke
21 anything in a year and a half. That's all you have is a
22 year and a half. You have a year and a half lease, period.

23 COMMISSIONER PARKER: You have to come back in a
24 year and a half.

25 COMMISSIONER DAVIS: You'll have to have an

1 extension after that.

2 MS. SEKELSKY: If the year and a half passes, the
3 date I think would be -- it would expire on March 6th, 1998,
4 which be the third -- the end of the third year following
5 issuance of the use permit, your lease would actually
6 expire. And you would have to apply to us for a new lease.

7 MS. MARK: My question is that, if that's the
8 choice, I'd rather have a ten-year lease and if the
9 condition of the road realignment is not complete, you know,
10 by whatever date, you guys have a choice to revoke the
11 lease. This way, it saves the paper work for my client to
12 go through the process again.

13 COMMISSIONER PARKER: But your client has the
14 choice of no lease, a denial, by this Commission, or a year
15 and a half. Which would you prefer?

16 MS. MARK: I think the year and a half.

17 (Laughter.)

18 CHAIRWOMAN CONNELL: I think that may be the
19 option. I will entertain a motion by my fellow
20 Commissioner.

21 COMMISSIONER DAVIS: I move that we grant the
22 lease for a year and a half and, then, presumably there'll
23 be an application for renewal and we can act on that.

24 CHAIRWOMAN CONNELL: Now, do I have a second to
25 that?

1 COMMISSIONER PARKER: Yes.

2 CHAIRWOMAN CONNELL: It's unanimous.

3 MS. SEKELSKY: May I ask for a point of
4 clarification?

5 When you say a year and a half --

6 CHAIRWOMAN CONNELL: Till March, 1998.

7 MS. SEKELSKY: Thank you.

8 MR. HIGHT: Thank you.

9 CHAIRWOMAN CONNELL: Thank you. I thank all the
10 speakers.

11 Are there any other items to come before the
12 Commission?

13 MR. HIGHT: Just the closed session, Madam Chair.

14 CHAIRWOMAN CONNELL: If not, we will close the
15 open session. And before we adjourn to the closed session,
16 I'm advised by our counsel that subsequent to the
17 publication of the closed session agenda, an additional
18 lawsuit, the State versus James O'Leary, Sr., has been
19 filed. As this case has established court-ordered
20 deadlines, it cannot be postponed, and the Commission will
21 discuss this matter in our current closed session, and we
22 will now adjourn into that closed session.

23 (Thereupon, the open session of the
24 meeting was adjourned at 2:40 p.m.)

25 --o0o--

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 the foregoing meeting was reported by me in shorthand writing, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for 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 19th day of September, 1996.

Nadine J. Parks
Shorthand Reporter