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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

ORIGINAL

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 12, 1989
11:30 A.M.

Ronald J. Peters
Certified Shorthand Reporter
License Number 2780

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1 COMMISSION MEMBERS PRESENT

2 Honorable Leo T. McCarthy, Lieutenant Governor,
3 Chairman

4 Mr. Gray Davis, State Controller, represented by
5 Mr. James Tucker, Chief Deputy Controller

6 STAFF PRESENT

7 Ms. Claire T. Dedrick, Executive Officer

8 Mr. James F. Trout, Assistant Executive Officer

9 Mr. Robert C. Hight, Chief Counsel

10 Mr. W.M. Thompson, Chief, Long Beach

11 ALSO PRESENT

12 Mr. N. Gregory Taylor, Assistant Attorney General
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P R O C E E D I N G S

1
2 CHAIRMAN MCCARTHY: Ladies and gentlemen, thank
3 you for your patience. I apologize for the delay in the
4 beginning of this Commission meeting.

5 My colleague, Commissioner Jim Tucker, is on my
6 left. My name is Leo McCarthy.

7 We want to approve the minutes of the previous
8 meeting, first of all. If there is no objections on those,
9 they are approved.

10 I do want to mention, if there is anybody in the
11 audience, that items 17, 25 and 26 are pulled from the
12 calendar, if anyone is here in connection with those three
13 items, 17, 25 and 26.

14 I want to take a personal moment here, if I may.
15 We have a seat change occurring in the leadership of this
16 Commission, and often we leave these things to the end of
17 the Commission's business day, but I'd like to handle it a
18 different way this time, if the Californians in the audience
19 would allow us.

20 Our Chief Executive Officer, Claire Dedrick, is
21 leaving after years of outstanding service, leaving the
22 position of CEO. She is an extraordinary person for whom I
23 have a good deal of affection, and has provided tremendous
24 devotion and intensity to her work on behalf of the State
25 Lands Commission, and we want to pass a resolution at this

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1 point which heartily tells our thanks and our gratitude to
2 Claire. But we want to do this, and maybe we can find other
3 ways to more properly and amply express our feelings for
4 her.

5 I'd like to read this resolution personally, if I
6 may.

7 "Whereas Claire T. Dedrick, after
8 nearly eight years as Executive Officer
9 of the State Lands Commission, is
10 leaving the staff; and

11 "Whereas Claire has spent the last
12 15 years in public service to the people
13 of California, including stints as
14 Secretary for Resources, a member of the
15 Public Utilities Commission and a member
16 of the Air Resources Board;

17 "Whereas during her tenure with the
18 Commission, environmental protection and
19 conservation became paramount in carrying
20 out the duties entrusted to her, and
21 established the Commission as one of the
22 premier State environmental protection
23 agencies; and

24 "Whereas in these years, the Commission
25 was provided with the opportunity to provide

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1 and to protect more than 32,000 acres of
2 wetlands, make 22 boundary and title
3 settlements, turn over \$1.8 billion to
4 the General Fund, and generated over
5 \$3 million for the acquisition of public
6 trust lands through the Kapiloff Land Bank;

7 "Therefore be it resolved that the
8 State Lands Commission congratulates her
9 for dedicated service to the people of
10 California, and wishes her every success
11 in whatever endeavor she next undertakes."

12 And I would add personally, I want her to stay
13 close to us in whatever she does.

14 Ladies and gentlemen, Claire Dedrick, our
15 Executive Officer.

16 (Applause.)

17 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, thank
18 you very much. That is kind of overwhelming. I did not
19 expect to get resolved this morning.

20 (Laughter.)

21 EXECUTIVE OFFICER DEDRICK: I am not used to this
22 kind of thing.

23 I wanted to thank you both, all three of you, even
24 though Stan can't be here today because of the Finance
25 Committee, finance work, but I just wanted to say a few

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1 words, and I appreciate you giving me the time to do that.

2 I have had three commissions in eight years, and
3 every one of them a very fine commission. The outstanding
4 thing about the State Lands Commission and the State Lands
5 Commissioners that I have worked with in these eight years
6 is there has never been a time ever in those eight years
7 where any commissioner's dedication and sure devotion to the
8 protection of the public trust has ever wavered, regardless
9 of the political issues on both sides or on any side. Never
10 has there been a political consideration. That is a very
11 high accomplishment or a real high dedication to public
12 service that seems to come with the people who sit in these
13 jobs.

14 Now, I am speaking to you as a staff person, and
15 staff people don't say things like that gratuitously. I
16 mean what I say. I have been very very proud to work for
17 all of the Lands Commissioners that I have worked for.

18 I have a particular affection, as you know, for
19 this particular Commission, and certainly for you, Governor.

20 In the future, I think I am seeing two exceedingly
21 important areas beyond the ones that are most occupying your
22 minds today. Back in 1969 I was very active in the creation
23 of the Bay Conservation and Development Commission, and what
24 I am seeing, I think, here in the delta now, is about where
25 the Bay Area was in the late '50s and early '60s before the

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1 ladies from Berkeley began the effort to create the BCDC.

2 I think that you have recognized and have taken
3 action to prove that you recognize that, that the State
4 Lands Commission's responsibilities in that area, the
5 protection of the waterways and the habitat and the
6 recreational uses of the delta, while in conjunction with
7 ongoing development or developing development, that that is
8 a major responsibility and a major authority of this
9 Commission. And I really know that you recognize this and I
10 think that's something that is going to occupy staff and the
11 Commission increasingly more in the next few years,
12 certainly within your terms as commissioners.

13 The other area which you may not be quite so
14 cognizant of, because it isn't in a controversial mode at
15 the moment, is the Colorado River. The Colorado is a major
16 recreational resource for southern California, and it is
17 only just beginning to become recognized as such. Of
18 course, the Commission has jurisdiction in odd ways there.
19 You have jurisdiction over the former bed of the Colorado
20 River which is sometimes several miles from the current bed
21 of the Colorado River. And we have been making settlements
22 in that area with every effort to obtain access to the
23 existing waterway and to obtain land along the existing
24 waterway for wildlife habitat or for access.

25 In addition to that, there are several -- well,

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1 there are pretty close to a million dollars in the escrow
2 fund for the Kapiloff Land Bank for acquisition down there.
3 That's an area, Commissioners, where, as I have said, you
4 haven't had a lot of controversy yet and I hope you don't
5 have any controversy. But it is an area where I think the
6 Commission can do really great things to serve the public in
7 southern California with a long-term recreational area.

8 Those are my predictions for the future.

9 And the only other thing I wanted to tell you is
10 something that you also already know, and that is that you
11 have an excellent staff. You have a group of fine,
12 hardworking, well educated, dedicated people, and it has
13 been a real pleasure for me in this last eight years to have
14 those people to work with and to on good days direct. When
15 I took over the so-called wheel in the Executive Office, my
16 predecessor, Bill Northrup, said, "don't get it into your
17 head that that thing is ever hooked up." As a matter of
18 fact, it rarely is.

19 But I want to thank you all very very much for
20 eight fruitful years and also for your very fine work,
21 Governor.

22 CHAIRMAN MCCARTHY: Thank you very much.

23 The Commission unanimously adopts this resolution.

24 All right. If we may begin with the Consent
25 Calendar, now, please.

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1 Any objections to any of the items on the Consent
2 Calendar?

3 If not, C01-C13 is adopted as recommended.

4 Now, we are on item 14.

5 EXECUTIVE OFFICER DEDRICK: Item 14, Mr. Chairman,
6 the lessee is Albert Giovanni. This is to approve the
7 change in annual rental from \$333 to \$420 per year. This is
8 a result of a five-year rent review.

9 CHAIRMAN McCARTHY: Any questions from the
10 audience?

11 If not, the recommendation is accepted by the
12 Commission.

13 Fifteen.

14 EXECUTIVE OFFICER DEDRICK: Fifteen is for the
15 Bertagnollis, who are applicants for a five-year
16 Recreational Pier Permit and partial reconstruction of a
17 pier at the Lake Tahoe in Placer County.

18 CHAIRMAN McCARTHY: Questions from the audience?
19 If not, accepted as recommended.

20 Eighteen.

21 EXECUTIVE OFFICER DEDRICK: Riverbank Holding
22 Company. This is to approve an encumbrance of a leasehold
23 interest on the lease on the riverbank which is about 5.2
24 acres in the Sacramento River.

25 CHAIRMAN McCARTHY: Any questions?

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1 Yes, Mr. Tucker.

2 ACTING COMMISSIONER TUCKER: Once again, this
3 doesn't involve the other issues that we are concerned about
4 in terms of riverbanks, proposed developments, et cetera?

5 CHIEF COUNSEL HIGHT: That is correct.

6 ACTING COMMISSIONER TUCKER: Is that correct?

7 CHIEF COUNSEL HIGHT: That is correct.

8 CHAIRMAN MCCARTHY: All right. Any other
9 questions?

10 All right. Item 18, by the Commission, is
11 accepted.

12 Nineteen.

13 EXECUTIVE OFFICER DEDRICK: Let's see. That was
14 Item 16, sir.

15 Item 18.

16 CHAIRMAN MCCARTHY: I'm sorry.

17 EXECUTIVE OFFICER DEDRICK: That's okay.

18 The Kissel Company, dba Paradise Cove Land
19 Company. This is approval of a ten-year General
20 Permit-Recreational Use for a parcel of land in Santa Monica
21 Bay.

22 CHAIRMAN MCCARTHY: Any questions?

23 All right. That is authorized.

24 Nineteen.

25 EXECUTIVE OFFICER DEDRICK: Nineteen, Pacific Gas

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1 and Electric. That's a maintenance dredging for Suisun Bay
2 in Contra Costa County, with the material being disposed of
3 at the San Francisco -- that's off Alcatraz, is it not,
4 SF 9.

5 CHAIRMAN MCCARTHY: Questions from the audience or
6 the Commission?

7 All right. That's authorized.

8 Twenty.

9 EXECUTIVE OFFICER DEDRICK: Twenty, Gary Hamilton.
10 It's to authorize removal of 225 cubic yards of material at
11 Newport Bay at Harbor Island in Orange County for
12 navigational purposes.

13 Again, the dump in this case is the EPA approved
14 Los Angeles 3.

15 CHAIRMAN MCCARTHY: Questions from the audience?

16 All right. That's authorized.

17 Twenty-one.

18 EXECUTIVE OFFICER DEDRICK: Twenty-one.
19 Twenty-one is the removal of 500 cubic yards of material by
20 Steele/Todisco, who is the applicant, at Harbor Island in
21 Orange County, the same dumping procedure.

22 CHAIRMAN MCCARTHY: Questions from the audience?

23 All right. That's authorized.

24 Twenty-two.

25 EXECUTIVE OFFICER DEDRICK: Twenty-two, Robert

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1 Cohen. This is the same area, same dumping procedure, 740
2 cubic yards.

3 CHAIRMAN MCCARTHY: Any questions from the
4 audience?

5 All right. That's authorized.

6 Twenty-three.

7 EXECUTIVE OFFICER DEDRICK: Twenty-three, TXO
8 Production Corporation. This is to approve the acceptance
9 of a quitclaim deed for sub-surface oil and gas, it's
10 actually a gas lease, under the bed of the Sacramento River
11 in Colusa and Sutter Counties.

12 CHAIRMAN MCCARTHY: Questions from the audience?

13 All right. That's authorized.

14 Twenty-four.

15 EXECUTIVE OFFICER DEDRICK: Twenty-four. This is
16 an application for prospecting permit for minerals and not
17 for oil, gas, geothermal, sand or gravel, by Bond Gold
18 Colosseum, Inc., and the permit would be in San Bernardino
19 County.

20 CHAIRMAN MCCARTHY: Questions from the audience?

21 All right. That's recommended.

22 Twenty-seven.

23 EXECUTIVE OFFICER DEDRICK: Twenty-seven. This is
24 approval of an award of a crude oil sales contract for the
25 City of Long Beach for the city's share of some production.

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1 The winning bidder has bid fifty-seven and a half cents.

2 CHAIRMAN MCCARTHY: Questions from the audience?

3 Recommended and accepted.

4 Twenty-eight.

5 EXECUTIVE OFFICER DEDRICK: Chem-Oil Corporation.

6 Again, this is a Royalty Oil Sale, and in this case in the

7 Ellwood Field in Santa Barbara County. The winning bid is

8 55.1 cents.

9 CHAIRMAN MCCARTHY: Questions from the audience?

10 All right. Recommended.

11 Twenty-nine.

12 EXECUTIVE OFFICER DEDRICK: Twenty-nine and 30 are

13 both dispositions of Royalty Oil Sales Contracts where staff

14 is asking permission to authorize awarding them to the

15 highest bidders. The bid will not be opened or couldn't be

16 opened in time for us to act today for us to give you the

17 details today.

18 CHAIRMAN MCCARTHY: All right. Are there any

19 questions from the audience?

20 That is authorized.

21 Thirty-one.

22 EXECUTIVE OFFICER DEDRICK: Okay. Thirty-one,

23 another Royalty Oil Sale, Ultramar. The bid is 30.01 cents.

24 CHAIRMAN MCCARTHY: Questions from the audience?

25 All right. That's authorized.

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1 Thirty-two.

2 EXECUTIVE OFFICER DEDRICK: Thirty-two, Ultramar,
3 is again the highest responsible bidder on a tract in Los
4 Angeles, the Wilmington Field, 51 cents.

5 CHAIRMAN MCCARTHY: Questions from the audience?

6 All right. That is authorized.

7 Next.

8 EXECUTIVE OFFICER DEDRICK: Item 33 is that we are
9 advising you of the results of the subsidence and seismic
10 hazard studies in the Wilmington Field. The answer is that
11 there is no subsidence.

12 CHAIRMAN MCCARTHY: All right. Thank you for the
13 advice.

14 Thirty-four.

15 EXECUTIVE OFFICER DEDRICK: Okay. That is
16 approval of the first modification of the 1989-'90 Plan of
17 Development for the Long Beach Unit, and it is basically a
18 report on involving the changes in the projections of
19 revenue.

20 CHAIRMAN MCCARTHY: All right.

21 Questions?

22 That is accepted as suggested.

23 Thirty-five.

24 EXECUTIVE OFFICER DEDRICK: Thirty-five is to
25 approve consent by the City of Long Beach to the assignments

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1 to Arco of the interests of Texaco, Unocal and Shell in the
2 Field Contractor's share of the Long Beach Unit.

3 CHAIRMAN McCARTHY: All right. Any questions from
4 the audience?

5 If not, that is accepted.

6 Item 36.

7 EXECUTIVE OFFICER DEDRICK: Bob, would you take
8 the lead over on item 36?

9 CHIEF COUNSEL HIGHT: Mr. Chairman, do we want to
10 move 36 to the end? What is your pleasure?

11 CHAIRMAN McCARTHY: If those here in Item 36
12 wouldn't mind our proceeding to dispose of the rest of the
13 calendar, we have no controversy that I am aware of on any
14 other items. It turns out that if we do, we will come back
15 to Item 36.

16 All right. Thirty-seven.

17 EXECUTIVE OFFICER DEDRICK: Thirty-seven. I just
18 asked Bob to do these, but I wanted to do this one because
19 this is the establishment of some underwater parks, and as
20 you may recall, Governor, when you very first came into
21 office, we were having a controversy. It has taken this
22 many years, but we have reached an amicable solution and
23 this is the approval of those underwater parks.

24 CHAIRMAN McCARTHY: Okay. Thank you.

25 Accepted.

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1 Thirty-eight.

2 CHIEF COUNSEL HIGHT: Thirty-eight, Mr. Chairman,
3 is the amendment to an existing exchange at Owens Lake
4 whereby the Commission exchanges land with Los Angeles Water
5 and Power and acquires some other.

6 CHAIRMAN McCARTHY: All right. No questions?
7 Accepted.

8 Thirty-nine.

9 CHIEF COUNSEL HIGHT: Thirty-nine, Mr. Chairman,
10 is an approval of a Settlement of Trespass in San Diego
11 County.

12 CHAIRMAN McCARTHY: Any questions?

13 If not, accepted.

14 Forty.

15 CHIEF COUNSEL HIGHT: Forty, Mr. Chairman, is the
16 approval to enter into a Boundary Line Agreement which will
17 settle the State's boundary to the Ten-Mile River.

18 CHAIRMAN McCARTHY: Questions?

19 All right. Accepted.

20 Next.

21 CHIEF COUNSEL HIGHT: Forty-one, Mr. Chairman, is
22 the authorization to enter into a sand extraction lease with
23 Monterey Sand Company.

24 CHAIRMAN McCARTHY: Questions?

25 All right. You have the authorization.

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1 Forty-two.

2 EXECUTIVE OFFICER DEDRICK: Do you want to do this
3 one?

4 ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman,
5 item 42 is to allow the Commission to enter into an
6 agreement with the Orange County and other Federal and State
7 agencies to do an EIR to implement the Bolsa Chica Coalition
8 Plan. An environmental report will be required and the
9 County is doing an Environmental Impact Report right now on
10 that part of it, and it will be the Federal part under
11 Environmental Impact Statement. So we are asking to
12 participate in that development.

13 CHAIRMAN MCCARTHY: Okay.

14 Any questions from any member of the audience?

15 If not, that is authorized.

16 Forty-three.

17 ASSISTANT EXECUTIVE OFFICER TROUT: Forty-three.
18 Under the Bolsa Chica Conservation Plan, Coalition Plan, the
19 interpretation of the restored wetlands would be conducted
20 by a Conservancy. To form a Conservancy, the initial Board
21 of Directors needs to be named in advance. It is proposed
22 that the Directors of the Conservancy be the same five
23 agencies and members that were on the Bolsa Chica Planning
24 Coalition, and so this is to allow us to be a member of that
25 Conservancy and to appoint myself as the initial director

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1 with Dan Gorfain, the Project Manager, as the backup. Other
2 representatives would be from Orange County, the City of
3 Huntington Beach, the Amigos De Bolsa Chica and the Signal
4 Landmark Company.

5 After the plan is implemented, the Conservancy
6 would then follow however the Plan ultimately turns out in
7 terms of maybe the Department of Fish and Game would
8 thereupon take over this seat on it.

9 CHAIRMAN MCCARTHY: Any questions?

10 All right. That's authorized by the Commission.

11 Now, we revert back to 36 at this point. I have
12 slips from four Californians who desire to be heard.

13 Mayor Dave Karp from San Leandro. Mr. James
14 Sullivan, representing the Citation Homes. Ms. Barbara
15 Shockley, representing Citizens for Alameda's Last
16 Marshlands. And Ms. Janice Delfino, representing the Ohlone
17 Audubon Society.

18 Let's start with Mayor Karp.

19 Welcome, Mr. Mayor.

20 MAYOR KARP: It is nice to see you, Leo.

21 Chairman McCarthy, Commissioner Tucker, good
22 morning.

23 My name is Dave Karp, as was mentioned before. I
24 am Mayor of the City of San Leandro. I am here today on
25 behalf of the citizens of San Leandro, to talk for a

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1 continuance of the Title Settlement between the State Lands
2 Commission, the City of San Leandro and Citation Homes.

3 The City is committed towards achieving the
4 following goals.

5 One, resolution of completing jurisdictional
6 claims in the resolution of outstanding obligations by all
7 parties including the City.

8 Two, the City's acquisition of adequate and fully
9 engineered dredge spoils areas, sufficient in size to
10 accommodate future dredging requirements for San Leandro
11 Marina. As you know, dredging is getting to be a problem.

12 There is no place within the Bay now with the exception of
13 Alcatraz in our dredge spoil site for removal of dredge
14 spoils for our beautiful marina, of which that is a Federal
15 channel and has to be dredged every four years.

16 The development of a plan that provides for the
17 acquisition and operation by the appropriate government
18 agencies of a workable habitat area. This is something that
19 is very important to all of us, and we need to work out some
20 sort of a habitat area so the people of Alameda County, the
21 people that want to enjoy that, can use that area as well as
22 the schools where we can bring the youngsters down to teach
23 them something about the background of the habitat that
24 migrate within that area.

25 The creation of additional habitat or enhancement

1 of existing habitat to provide for maximum developable
2 acreage for the property consistent with the jurisdictional
3 claims and the requirements of the various agencies
4 involved, as well as the provisions of the San Leandro
5 General Plan.

6 Fifth, the full performance of the compromise
7 Settlement Agreement with the State Lands Commission. We
8 are happy to work with those groups that are interested in
9 working in the area and working out some sort of compromise.

10 We are very proud of the four miles of shoreline
11 that we have developed in San Leandro, which is now the
12 largest public ownership of recreational land in the Bay
13 Area. It was transformed from a cesspool of rubble and
14 tires into a marina park and golf course which is now
15 recognized as one of the premier areas of recreation in the
16 whole Bay Area. You have to see it to believe it.

17 I humbly ask for some continuance by the State
18 Lands Commission so that we may come to an agreement with
19 the community and with the State Lands Commission.

20 Thank you very much for your time.

21 Any questions?

22 CHAIRMAN MCCARTHY: Not at the moment. Thank you,
23 Mr. Mayor.

24 MAYOR KARP: Thank you.

25 CHAIRMAN MCCARTHY: Mr. Sullivan.

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1 MR. SULLIVAN: Good morning, Chairman McCarthy and
2 Commissioner Tucker.

3 The compromise Title Settlement Agreement of 1985
4 that was entered into by Citation Homes, the City of San
5 Leandro and the State Lands Commission, if not extended,
6 will expire and become null and void on its own terms on
7 January 8th, 1990. Although five years may be considered a
8 long time, we at Citation Homes have been faced with
9 problems beyond our control.

10 Redesignation of the habitat enhancement area, due
11 in main part to the 1987 jurisdictional claim of additional
12 wetlands by the US Army Corps of Engineers and the discovery
13 of the salt marsh harvest mouse in previously unidentified
14 areas, have forced us to deal with these time consuming
15 issues. Prior to this hearing, we have been requesting a
16 three-year extension. We now, however, feel that we may
17 accomplish and fulfill the conditions of our agreement
18 within an 18-month timeframe.

19 We have a good working relationship with the City
20 of San Leandro and we feel that we can now progress towards
21 a final resolution with the Army Corps of Engineers and US
22 Fish and Wildlife Service.

23 Citation Homes appreciates the efforts and fully
24 appreciates the frustration that Jane Sekelsky has felt in
25 dealing with this issue. However, we feel that we have made

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1 progress, both in a meeting on September 18th of this year
2 and additionally, a meeting scheduled between Citation, the
3 City and the various agencies that are laying claim to this
4 jurisdiction of property, and we feel that through these
5 kind of meetings, it will be beneficial to all parties
6 involved.

7 I apologize for Mr. Schott, the General Manager of
8 Citation Homes not being here personally, however he was
9 unavoidably detained on personal business.

10 Do you have any questions for me, Chairman
11 McCarthy or Commissioner Tucker?

12 CHAIRMAN McCARTHY: I am told that there is a
13 meeting that will involve all the parties tomorrow down in
14 San Leandro --

15 MR. SULLIVAN: Yes, sir. It is scheduled for
16 tomorrow.

17 CHAIRMAN McCARTHY: -- that you are going to
18 participate in. And just so you understand what may be a
19 dearth of questions today, I think the Commission will be
20 well represented tomorrow.

21 Are you going, yourself?

22 ACTING COMMISSIONER TUCKER: Yes.

23 CHAIRMAN McCARTHY: Mr. Tucker tells me he is
24 going to be there personally and a member of my staff will
25 be there, and of course the State Lands Commission staff

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1 will be there as well to try to look at this at the moment.

2 Is anybody here from the Army Corps of Engineers?

3 We have been shown some maps which apparently
4 reflect the Army Corps of Engineers' redefinition of what
5 constitutes wetlands, or a contention on their part that
6 there are some areas that are now wet that were not defined
7 as wet when this agreement was approved by this Commission
8 approximately five and a half years ago.

9 Is the Army Corps of Engineers going to be a party
10 to those discussions tomorrow?

11 CHIEF COUNSEL HIGHT: Yes.

12 CHAIRMAN MCCARTHY: Okay. So I really don't have
13 anything more to ask at this point. I am sorry that those
14 discussions didn't start a couple of months ago. I think
15 the kind that is going to occur tomorrow involving citizens,
16 a representative of all interests and the company and the
17 City and the State Lands Commission, I guess, and other
18 State or Federal agencies, it's too bad that it's this close
19 to the January 8th date. It would have been good if we
20 could have started those discussions a couple of months ago
21 to see what latitude there is for action in this whole area.
22 But at least we'll get to it tomorrow.

23 And then, if there is the necessity for Commission
24 action on or before January 8th, the Commission can convene
25 another meeting at that time.

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1 MR. SULLIVAN: Okay, sir.

2 CHAIRMAN McCARTHY: At this moment we don't know
3 what is going to come out of those discussions tomorrow.

4 ACTING COMMISSIONER TUCKER: I have a question.

5 CHAIRMAN McCARTHY: Commissioner Tucker.

6 ACTING COMMISSIONER TUCKER: I just wanted to add
7 one thing, and this is really directed to everybody that is
8 interested in this to think about for tomorrow, we are being
9 advised by the Attorney General that there are legal
10 constraints on simply extending this agreement, and that
11 those legal constraints may be such that it simply is
12 impossible to simply say, okay, we have got the same
13 agreement and let's continue it for some period of time,
14 that if we were going to do anything, that we would, in
15 effect, have to negotiate a new agreement either by the 8th
16 or sometime after the 8th.

17 Okay. That's one consideration for Citation and
18 for the City of San Leandro to keep in mind. And that's a
19 constraint that is based upon the advice of our counsel and
20 so that's what we have to live with. And I'm sure it's good
21 advice.

22 The other side of this, though, I think, for the
23 people from the citizens' groups, et cetera, to keep in
24 mind, is that we are not a permitting agency. We are not
25 reviewing this project to determine if it is a good project

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1 or a bad project or, you know, it should have more houses or
2 fewer houses or anything along that nature, that's a
3 function of your local government, and it's not a role that
4 we really would want to take on, that we have the expertise
5 to take on or that we are provided by law with having to
6 take on. We have a boundary dispute with the owners of this
7 property.

8 Our goal is to try and define a boundary for them
9 that indicates where the State has title to its property and
10 where the State does not. This is based on a number of
11 historical factors and it is pretty complicated. And that's
12 why we have got lots of lawyers that advise us. But you
13 need to keep in mind that your comments to us really should
14 be directed to that one issue. That is, what does the State
15 have a legitimate claim to and how might we best fulfill our
16 claim and our obligation? That's all we can deal with.

17 So, to the extent that you don't like what they
18 want to do, et cetera, obviously we are happy to hear any
19 comments that you would like to address to us, but I think
20 it's really important that you remember we are only one
21 party in this and that we have only, and I think it's an
22 important responsibility but it's limited to certain legally
23 defined roles, and that other concerns that you may have
24 about this development, you really have to address to your
25 local government, to the planning commission, to the

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1 regional planning officers and the county, et cetera.

2 So I think if you will keep that in mind for
3 tomorrow's discussions, obviously we are going to be there
4 to try and facilitate everyone meeting their goals, if there
5 is a way of accommodating everybody, fine. And if we can
6 help, that's what we want to do. But there's only so much
7 that we can do and we have a fairly well-defined role in all
8 of this. So I hope everybody will keep it in mind.

9 Citation has to remember our legal constraints as do the
10 people who would like something else to happen with that.

11 CHAIRMAN MCCARTHY: I might say, just to extend
12 that comment, that my staff advises me and reminds me
13 earlier today that in signing off on that boundary agreement
14 five and a half years ago, they think we struck a good deal
15 for the people of California in ensuring a hundred sixty
16 acres of wetlands at that time. This is prior to the Corps
17 of Engineers redefining, and the EPA redefining what
18 wetlands was.

19 I think it might be appropriate to ask our own
20 staff and the Attorney General to comment upon your first
21 point, Commissioner Tucker, so that it's understood. I
22 think it's very important. And that is, what findings would
23 have to be made in order for us to consider any extension of
24 this existing agreement with the same terms and conditions?

25 Who wants to go first? Mr. Hight?

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1 Mr. Taylor?

2 ASSISTANT ATTORNEY GENERAL TAYLOR: Mr. Chairman,
3 you would have to remake the findings in order to provide
4 the extension. I understand that given recent studies,
5 there may be some difficulty in doing that. And that would
6 be the issue.

7 ACTING COMMISSIONER TUCKER: Excuse me. Can you
8 explain that a little more for the people out there, what
9 that means? Greg, could you just briefly go through what
10 originally had to be done to enter into the agreement and
11 then what we would have to do now?

12 ASSISTANT ATTORNEY GENERAL TAYLOR: The Commission
13 went through the transaction and made findings concerning
14 the nature of the property as it was understood at that
15 time. It is my understanding that if we were to go through
16 and do that now with the additional information, it would be
17 even more difficult for the Commission to make those
18 findings. And it would seem to be the most defensible
19 position for the Citation Homes to stay with the original
20 agreement and close it because at that time those findings
21 were good. But that means you would have to do it by
22 January the 8th.

23 ACTING COMMISSIONER TUCKER: Greg, it's your
24 opinion that this agreement is, in fact, self-executing,
25 meaning that if Citation were to go ahead and convey the

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1 property, that your advice to the Commission would be that
2 it then go ahead and clear title?

3 ASSISTANT ATTORNEY GENERAL TAYLOR: We believe the
4 Commission is bound to perform under the terms of the
5 agreement as it exists now for the period of time that the
6 agreement runs.

7 CHAIRMAN McCARTHY: Mr. Hight, do you have
8 anything to add?

9 CHIEF COUNSEL HIGHT: No.

10 CHAIRMAN McCARTHY: Mr. Sullivan, do you have
11 anything further that you want to add on this?

12 MR. SULLIVAN: I'd just like to clarify that. I
13 mean, Chairman McCarthy, are we talking that a decision is
14 not necessarily within reach right now but that we are going
15 to wait until after?

16 CHAIRMAN McCARTHY: A decision is not going to be
17 reached today on this. I think we would want that
18 discussion to take place tomorrow that involves all of the
19 parties in interest, government officials, property owners,
20 private citizens and so on.

21 MR. SULLIVAN: Okay. But I mean, there's also,
22 from what I am hearing, that legally the word from the
23 Attorney General is that you, you know, it cannot be
24 extended, the agreement cannot be extended --

25 CHAIRMAN McCARTHY: Without making new findings.

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1 MR. SULLIVAN: Without making new findings. And
2 that would have to be done prior to January 8th of 1990?

3 CHAIRMAN McCARTHY: Well, now, you could enter
4 into a new agreement after that.

5 MR. SULLIVAN: That's something that we are trying
6 to avoid.

7 CHAIRMAN McCARTHY: If that were the mutual will
8 of all of the parties involved.

9 MR. SULLIVAN: I spoke with Mr. Schott also just
10 yesterday. He is down in southern California at the present
11 time. I realize that Citation Homes has pushed for a
12 meeting of all the various agencies. Unfortunately, I
13 wasn't notified until Friday afternoon and received written
14 verification on Monday. There may be a slight problem
15 because we would also like to have our consultants present.
16 We have consultants that are dealing with the Corps of
17 Engineers and with Fish and Wildlife.

18 CHAIRMAN McCARTHY: For tomorrow's meeting?

19 MR. SULLIVAN: For tomorrow's meeting.

20 CHAIRMAN McCARTHY: And the problem is as to
21 whether they are going to be there or not?

22 MR. SULLIVAN: Mr. Schott expressed concern and
23 wanted me to bring that up to yourself and the Commission.

24 CHAIRMAN McCARTHY: Mr. Tucker.

25 ACTING COMMISSIONER TUCKER: The problem we have

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1 is with Christmas and with this deadline, et cetera. If we
2 don't meet soon, maybe we don't meet.

3 MR. SULLIVAN: Well, what I had hoped to do is,
4 you know, I wanted to see you give a decision which could be
5 made, number one, prior to the meeting. It sounds from
6 listening to you gentlemen that basically you want to see
7 what happens at the meeting and then, you know, kind of
8 think about, okay, where do we go from there?

9 So I will have to just impress upon Mr. Schott to
10 press ahead and to meet.

11 MAYOR KARP: Speaking for the City of San Leandro,
12 Mr. Chairman --

13 CHAIRMAN MCCARTHY: Sit down, Mr. Mayor. You can
14 join us up here.

15 MAYOR KARP: Just real briefly, speaking for the
16 City of San Leandro, we are quite anxious to settle this and
17 I am looking forward to the meeting tomorrow. And we want
18 to help in any way we can and come to a resolve on this for
19 the benefit of all of the people of Alameda County and the
20 State. So I just wanted to add that. Okay.

21 MR. SULLIVAN: I have nothing further to add.

22 CHAIRMAN MCCARTHY: Thank you, Mr. Sullivan.

23 Now we would like to hear from Ms. Barbara
24 Shockley representing CALM.

25 Welcome.

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1 MS. SHOCKLEY: Chairman McCarthy, Commissioner
2 Tucker, we are grateful for the opportunity to comment on
3 this matter, Citation Homes, San Leandro, State Lands
4 Commission Title Settlement Agreement agenda item.

5 And as you announced, I am speaking for CALM,
6 which is affiliated with the Citizens' Committee to Complete
7 the Wildlife in the San Francisco Bay Wildlife Refuge. And
8 I would like to suggest that this map includes this property
9 in that extension of the San Francisco Bay Wildlife Refuge.

10 We are pleased that the Citation property is
11 included in the draft in this particular instance. It can
12 be classified under Priority 1, seasonal wetlands with
13 adjacent interspersed uplands, and Citation demonstrates the
14 interrelationship between tidal and mud flats, wetlands and
15 uplands, and I know that I am not talking about the proposed
16 development. I am talking about the land itself and its
17 value to the State.

18 CALM has an interest in the future of that
19 property and the request for a deadline extension. Of
20 course, I have heard only today that there are legal
21 qualifications about what you can do about that.

22 Along with other groups in the Bay Area who have
23 written their comments earlier, we want to express our
24 opposition to any extension. This won't take long.

25 We believe --

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1 CHAIRMAN MCCARTHY: Just a minute. We have not
2 tried to rush you. I hope I didn't imply that.

3 MS. SHOCKLEY: Well, I thought everyone was
4 starting to go to sleep --

5 (Laughter.)

6 MS. SHOCKLEY: -- or maybe you are hungry. I am
7 sorry.

8 We believe that the extension of the denial would
9 serve our purpose -- would not serve our purpose -- which
10 calls for a protection and preservation of wetlands and
11 adjacent uplands in areas which were formerly historic
12 marshlands.

13 Studies made before this Title Agreement was
14 signed, and as recently as this November, indicate that
15 lands covered by the agreement possess significant
16 environmental values of statewide interest. CALM has many
17 concerns, but will mention only these.

18 In '73, 1978, '85, '89, dredge spoils were
19 deposited on an historic wetland. No action to compensate
20 has been taken to date. We haven't heard that record yet
21 today. The public trust values have not been protected in
22 the five-year agreement. In fact, large volumes of illegal
23 fill have been placed in the settlement areas.

24 The jurisdictional determinations are changed, and
25 you say that's not relevant, but it is interesting. The

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1 latest change is evident in the November 14 letter to the
2 City, Citation and the US Corps from the State Regional
3 Water Quality Control Board. The presence of toxic and
4 hazardous wastes which have been placed on the Citation
5 property, it has placed the Citation property on the EPA
6 list of hazardous waste sites, and it was not considered in
7 the Title Settlement Agreement. This fact must be
8 anticipated in any exchange of private land to a public
9 agency such as the State Department of Fish and Game or the
10 East Bay Regional Park District, which are both interested
11 in its future.

12 CALM believes that the Settlement Agreement is no
13 longer relevant. A denial for extension would seem to be in
14 the public interest. The ultimate solution to the complex
15 problem is public acquisition and proper management for the
16 protection of this valuable resource area, and we think that
17 that is saying something. Thank you.

18 CHAIRMAN McCARTHY: Thank you.

19 Was CALM a participant in the discussions five or
20 six years ago?

21 MS. SHOCKLEY: No, it didn't exist then.

22 CHAIRMAN McCARTHY: It didn't exist then?

23 MS. SHOCKLEY: No.

24 CHAIRMAN McCARTHY: Okay. Thank you.

25 Now, Ms. Janice Delfino.

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1 Welcome. You are representing the Ohlone --

2 MS. DELFINO: Ohlone Audubon Society.

3 CHAIRMAN MCCARTHY: Ohlone Audubon Society.

4 MS. DELFINO: Yes. Thank you, Commissioners.

5 Commissioner McCarthy and Commissioner Tucker, I
6 am Janice Delfino of Castro Valley, representing Ohlone
7 Audubon Society.

8 Thank you for this opportunity to express our
9 concern regarding the request by Citation Homes and the City
10 of San Leandro to extend the January 8, 1990 termination
11 date for the Title Settlement Agreement.

12 During the past five years, while the Agreement
13 has been in existence, none of the conditions set forth in
14 the Agreement has been fulfilled. Even the perimeter levee
15 that separates the Roberts Landing Marsh from the proposed
16 Citation Homes development site was placed 60 to 70 feet too
17 far west, thus filling unnecessarily valuable wetland marsh.

18 And that's one of the things that we have to keep
19 in mind.

20 Number two, the City of San Leandro and Citation
21 Homes have been negligent in protecting the wildlife
22 resource values on this 450 acre site in which the State of
23 California has a public interest and trust. These are
24 fragile wetlands with public trust values. To date, San
25 Leandro and Citation Homes have not shown good faith effort

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1 in protecting the area.

2 Now, that isn't exactly what we heard from Mayor
3 Karp. And we have monitored the area for years and we have
4 slides and photos indicating the degradation that has gone
5 on, not only in the wetlands, but on those famous sand dunes
6 that Mr. Karp spoke about, terrible degradation.

7 In the Settlement Agreement on page 6, there is
8 reference to a Habitat Management Plan. Has that plan been
9 completed?

10 As a reminder, and you are involved in this, since
11 1983 the California Legislature, through Senate Concurrent
12 Resolution Number 28, has recognized the importance of
13 wetland preservation and protection. The Legislature
14 declared its desire to increase wetland habitat acreage by
15 50 percent by the year 2000.

16 And with all this information in mind, we ask you
17 to deny an extension of the Title Settlement Agreement.

18 CHAIRMAN MCCARTHY: Ms. Delfino, may I ask you the
19 same question I asked Ms. Shockley?

20 I know the Audubon Society has been in existence
21 for a long time. I assume the Ohlone chapter has been in
22 existence for some time?

23 MS. DELFINO: Yes.

24 CHAIRMAN MCCARTHY: Do you know if anybody from
25 your organization participated in the discussions five to

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1 six years ago on this matter?

2 MS. DELFINO: No. We were not considered a public
3 agency.

4 CHAIRMAN McCARTHY: I am aware of that, but we
5 send notices automatically to all known environmental groups
6 in the area.

7 MS. DELFINO: Yes, there were members, two that I
8 know for sure, did walk the area with Fish and Game and
9 perhaps the Fish and Wildlife people, but when it came to
10 the round-table discussion, I do not believe we were invited
11 to that.

12 CHAIRMAN McCARTHY: Well, see, one of the things
13 I asked our staff to dig out for me this morning was what
14 groups registered any form of objections when this matter
15 was before this Commission five and a half years ago, and
16 there were none.

17 MS. DELFINO: I think that's right, and perhaps we
18 were not -- we were negligent, perhaps, and we did not know
19 what was going on with the State lands. And we were not
20 informed by the City of San Leandro as to this.

21 CHAIRMAN McCARTHY: Well, I had in mind groups
22 that received a notice with some descriptive material about
23 this subject.

24 MS. DELFINO: Okay.

25 CHAIRMAN McCARTHY: We routinely do that. We try

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1 to identify all relevant groups, and particularly because
2 this is an environmentally oriented Commission membership,
3 we notice organizations, and what the staff told me was that
4 none had objected to the agreement bringing 160 acres into
5 habitat area five and a half years ago when the Commission
6 acted upon it.

7 Now, I understand that the Army Corps of Engineers
8 has redefined what constitutes a wetland since then. At
9 that time, when we negotiated, keep in mind, now, our
10 negotiating point from this Commission is, do we have any
11 claim of title in any of the area involved here under State
12 law? Do we have a legal standing to negotiate a boundary
13 settlement? This is what Commissioner Tucker was referring
14 to at the beginning.

15 So when we got a hundred sixty acres committed
16 five and a half years ago, I think the general impression I
17 get is that everybody at that time thought it was a fairly
18 good deal.

19 MS. DELFINO: Yes, I believe that would be true.

20 CHAIRMAN McCARTHY: Anybody is entitled to change
21 their mind.

22 MS. DELFINO: That's why we feel that the
23 agreement should be terminated. I mean, it should be
24 settled and not drag on because our main concern is, by
25 dragging on, and I shouldn't use the word dragging, but

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1 continuing, the degradation in the area of the public trust

2 --

3 CHAIRMAN McCARTHY: So whatever area that we
4 define as wetlands area, you want the management plan to be
5 put in place?

6 MS. DELFINO: It should have been put in place
7 already.

8 CHAIRMAN McCARTHY: You are not suggesting that
9 there should be no homes built on any part of the acreage?

10 MS. DELFINO: No, Citation Homes has to go through
11 the regulatory process. Now, I understand the title and the
12 boundary stuff, and time after time, when we are in that
13 area walking the area where the public trust will be
14 exercised, why we see the degradation and we just feel that
15 termination should be January 8th, and that's it. And then
16 get the Fish and Game management or another public agency in
17 there to manage this.

18 CHAIRMAN McCARTHY: All right.

19 MS. DELFINO: The wildlife habitat value is
20 marvelous and we are going to do a Point Reyes bird
21 observatory shore bird census on Saturday because this is a
22 good tide and a good time to do another census. We did one
23 two months previous.

24 CHAIRMAN McCARTHY: Okay.

25 MS. DELFINO: So it's a good area, a good wildlife

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1 habitat area.

2 CHAIRMAN McCARTHY: Thank you.

3 MS. DELFING: Thank you.

4 CHAIRMAN McCARTHY: Thank you very much. I assume
5 you both will be there at tomorrow's meeting to enter into
6 more full discussions on this matter.

7 All right. Thank you.

8 That concludes this Commission's business except
9 for one additional item.

10 Since we are losing Claire, we have to take action
11 on replacing her, and there is a name before the Commission
X 12 for that, Charles Warren, the former Chairman of the
13 President's Council on Environmental Quality, a former
14 member of the State Assembly here and a Member of the
15 Coastal Commission.

16 Are you prepared to take action on that?

17 ACTING COMMISSIONER TUCKER: Yes.

18 CHAIRMAN McCARTHY: All right. The Commission
X 19 names Charles Warren as the successor to Claire Dedrick.
20 That will be our official action for this meeting.

21 Thank you all very much.

22 ASSISTANT ATTORNEY GENERAL TAYLOR: Mr. Chairman,
23 before ending, could I just announce that in the Executive
24 Session with regard to the California versus Stockton and
25 the LAFCO of San Joaquin County, an action was taken to send

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1 a counterproposal to Grupe and the City of Stockton which
2 will be sent out to them.

3 In the case of Monterey Sands, we authorized
4 litigation against Monterey Sands and the Corps of Engineers
5 with regard to that transaction.

6 With regard to the Redevelopment Agency of
7 Huntington Beach, we authorized a position consistent with
8 the opinion of the Attorney General of the Commission.

9 And we accepted an accessway in Bess versus
10 Humboldt County and the defense of that litigation.

11 CHAIRMAN McCARTHY: Is there anybody here on those
12 matters that wishes to address the Commission?

13 If not, thank you all very much, ladies and
14 gentlemen.

15 EXECUTIVE OFFICER DEDRICK: Thank you, Governor.

16 CHAIRMAN McCARTHY: Thank you.

17 (Thereupon the December 12, 1989 meeting of the
18 State Lands Commission was adjourned at
19 12:25 p.m.)

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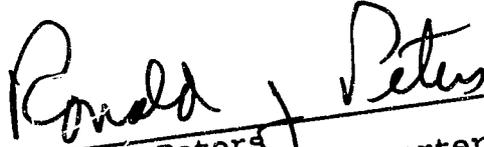
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6 typewriting.

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

10 IN WITNESS WHEREOF, I have hereunto set my hand
11 this 2nd day of January, 1990.

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16 Certified Shorthand Reporter
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