

Summary Minutes of the
Delta Protection Commission Meeting
Thursday, January 25, 2007

ADMINISTRATIVE AGENDA

1. Call to Order/Flag Salute

Chairman McGowan called the meeting to order at 6:40 p.m.

2. Roll Call

Present: Chairman McGowan, Commissioners Armor, Calone, Johnson, Johnston, Kelly, Nottoli, Perez, Reagan, Ruhstaller, Sanders, Shaffer, Simonsen, van Loben Sels, and Wilson.

Absent: Commissioners Cabaldon, Ferguson, Piepho, and Scriven.

Chairman McGowan announced that Commissioners Beckman, Morey, Ornellas and Trott left the Commission. He announced that Chuck Armor, Patrick Johnston and Larry Ruhstaller were the newest members of the Commission.

4. Public Comment - Opportunity for members of the public to address the Commission. Comments also Welcome as Agenda Items are discussed.

No one addressed the Commission

5. Commissioner Comments/Announcements

Commissioner Johnson reported that the Quagga Mussel was discovered in Lake Mead and Lake Havasu. He said that if the mussel gets hold of the water systems and conveyance it would be an ecological disaster because the mussel would take over all wildlife in the area. He said the Department of Boating and Waterways, Department of Water Resources, State Lands Commission, the Department of Fish and Game and the Department of Food and Agriculture are working on the issue to get an emergency response to the potential disaster.

CONSENT AGENDA (Items 6-16)

Chair McGowan moved agenda items 6 and 7 to the regular agenda. Commissioner van Loben Sels asked that agenda item 8 be moved to the regular agenda.

Commissioner van Loben Sels moved approval of the Consent Agenda; Commissioner Kelly seconded. The Consent Agenda was approved unanimously.

REGULAR AGENDA (Items 17-18)

6. Approve Minutes of Meeting of November 16, 2006

Linda Fiack asked that a correction be made on the minutes to delete the name of Commissioner Ornellas as he has been replaced. She also asked that item #13b, paragraph 9 on the minutes be changed to state "contact the Commission through letters to staff" instead of contact the Commission.

Commissioner Calone moved approval of the minutes; Commission Shaffer seconded. The minutes were approved unanimously by voice vote.

8. APPROVE Revised Membership of Commission Budget Committee to be Comprised of a State, County and Water Agency Representative to Focus on the Development of a Plan for Commission Member Contributions to Commission Budget, and Draft Memorandum of Understanding for Implementation, Consistent with the Funding Strategy of the 2006-2011 Strategic Plan.

Commissioner van Loben Sels asked for details of the Commission membership contributions. Ms. Fiack reported that Strategic Plan calls for Commission member contributions to establish a delta fund within their budgets from which they could pull from for items contributing to the Commission and the other to have full member contributions. She said it is recommended that Commissioners Johnson and Simonsen sit on a committee to explore establishing a Commission line item within their respective budgets.

Ms. Fiack also reported that at a meeting of the San Joaquin Board of Supervisors considered the adoption of an ag. ordinance and a recommendation from the public to exclude the delta from having conservation easements for ag in the Primary Zone. She said she attended the meeting to provide clarification on the matter. Ms. Fiack also reported that discussion DWR is conducting several workshops to consider small communities.

Commissioner van Loben Sels moved approval of Agenda Item #8; Commissioner Simonsen seconded. The item was approved unanimously.

17. Receive and Consider Information Provided by Commission Staff on the Clarksburg Old Sugar Mill Specific Plan

Dan Siegel reported that two appeals were filed with the Commission challenging the Yolo County Board of Supervisors approval of the Clarksburg Old Sugar Mill; one by the Natural Resources Defense Council (NRDC) and the Concerned Citizens of Clarksburg. He said that under the Commission regulations, appeals are heard in a two step process. He said the first step was heard in November 2006 to determine whether or not the Commission has jurisdiction over the matter and whether or not appealable issues have been raised. During the hearing it was determined that the Commission has jurisdiction over the matter and that one or more appealable issues were raised. Mr. Siegel said the second step was to have hearing on the merits of the project, in which case the Commission could (1) deny the appeal; or (2) agree with the appeals and remand the project back to Yolo County for reconsideration. He said the Commission should also direct staff to draft findings to bring the item back at the next regularly scheduled meeting, which is February 22, 2007, consider those findings and adopt them. The final decision would be made on February 22, 2007 because the clock for anyone to challenge a decision is made when the decision is adopted. He said the hearing is a DeNovo hearing, which means that it is a fresh hearing and the Commission could not give weight one way or another to what the County has done. Mr. Siegel also reminded the Commission to refrain from engaging in ex-parte communications; however, if they have received the contacts, they would have to be disclosed. He referenced a letters from Kristen Castanos, Somach, Simmons and John Carvalho, Jr. respectively as being received by the Commissioners.

Mr. Siegel said he entered a “Tolling” agreement at the County’s request. The agreement stopped; the statute of limitation so that if any party disagrees with the Commission’s November 25, 2006 decision the party can go to court within 60 days of the Commission’s final decision. Mr. Siegel said that the January 8, 2007 letter submitted by Ms. Castanos asserts that the Commission lacks the ability to hear the appeal based upon a 60 day provision to hear an appeal which is in the Act. Mr. Siegel said the DOJ analysis strongly disagrees Ms. Castanos because the Commission is acting consistent with the Commission’s regulations which are modeled on case law that existed when the regulations were adopted.

Greg Loarie, EarthJustice, said that the question before the Commission is whether the Old Sugarmill Project is consistent with the Act and the Plan. He said the NRDC believes the project is not consistent and should be remanded back to Yolo County. Mr. Loarie said that many of the Clarksburg residents are not in support of the project as it would double the number of buildings in the town; it is inconsistent with the Commission’s policies; and it would have a direct impact on ag., particularly the 12/20 as Yolo asked to add more ag. land. The project is controversial and will forever change the town of Clarksburg.

This is the first dense urban development that has ever been approved in the Primary Zone. Mr. Loarie said the project is inconsistent with Land Use Policies P-2, P-3 and P-4, as the project will have an impact on agriculture as it will convert the vast majority of ag parcels into urban residential and commercial development. He said the on Dec 20, 2006 Yolo County Planning Commission recommended that the County add 100 new acres of ag. industrial zoning to the Clarksburg area. Doesn’t make sense to rezone ag. industrial land to make room for subdivision at the same time its rezoning existing crop land to make room for new ag. industrial. The project will also have indirect impacts on agriculture because it is difficult if not impossible to put dense urban development in an ag area without causing conflicts. He said that 8,500 new vehicle trips would be added and neighboring vineyards would face increased restrictions on when/where they can spray their fields. He also said that Commission staff and the Yolo County Farm bureau have raised similar issues such as noise and night harvest. **Dense urban development and agriculture do not mix, as farming becoming difficult, development pressures increase and agriculture is squeezed out.**

Mr. Loarie said that the project will build a sewage treatment facility, which is in conflict of Utilities and Infrastructure Policy P-3 that the RWQCB when it reviewed the project agreed with the Commission’s assessment. Is the proposed facility a new or upgrade to existing facility meant to serve lands already zoned for residential development. While Clarksburg has no existing sewage treatment facility, a new facility would serve lands that have been zoned ag/industrial. The Sugarmill facility would be demolished in favor of a new facility which would accommodate a different waste stream and require a permanent from the RWQCB. **Which makes it inconsistent with Policy P-3.**

The project will built behind a levee that was built in 1918. He referenced the Wood-Rodgers report. It is bad policy to build a residential development behind levees that were never built for that purpose. He said that Yolo County acknowledges the project will still entail significant risk even with the mitigation measure.

Jim Pahl, Concerned Citizens of Clarksburg said that Land Use Policy P-4 Mr. Pahl said that Levee Policy P-3. It is not prudent for and said that is not prudent for Yolo County to build 164 homes next to a levee that does not have 100 year flood protection. He said the towns of Walnut

Grove a flood protection for the project is not provided because it lack and at issue is the project site which is at elevation 10 ft above sea level—(100 flood elevation is 25 ft above sea level).

Mr. Pachl said that problems of concern that the developer will do a flood protection plan for that section of the levee only and then will implement the improvements which the county deems feasible. He said the issue is setbacks—as the recommended ...

He said Yolo has not shown any evidence that there is 100- year protection; Walnut Grove and Courtland have sewage and wastewater whereas Clarks has no community wastewater supply. The project will increase density

He said the County is not attempting to

Phil Pogledich, Deputy County Counsel, Yolo County, said that when the County held public hearings on the project, a number of Clarksburg residents told the Council their town was dying. The town was losing its heritage and historic connection to agriculture and the economic benefits of having businesses and a large employer in town. He said the Yolo Board of Supervisors saw the project as a way to respond to the residents. Mr. Pogledich said the opportunities the project brings do not expand the urban footprint of Clarksburg. He said the project is within the urban limit line of Clarksburg, which has been in place since 1959. It has been zoned/used for industrial purposes for many decades. He said the project converts an obsolete industrial site into a mixed uses development. Mr. Pogledich was carefully planned and is an integrated redevelopment project that brings many benefits to the town of Clarksburg with the goal of restoring the agricultural heritage to the town.

Mr. Pogledich provided a copy of a management plan compliance flow chart. He said that Agriculture Policy 4/Land Use Policy 2 are not intended to apply to individual projects in the Primary Zone, but are intended to is guide local land use planning as an overall matter. Therefore the two policies are not properly at issue in this appeal, as they were not written to apply to individual projects and should not apply to this project. Mr. Pogledich said the project supports Agriculture Policy 4 because it provides much needed ag processing centers, a base for tourism, and a much needed supply of housing for workers in the Clarksburg area, it does not convert ag. land. He said that with respect to Land Use Policy 2, the project does provide clustering, which in turn has eliminated urban sprawl, prevented impacts on ag operations and reduced the need for housing in other rural areas.

Mr. Pogledich said that levees Policy 2, 3 and 4 are also general policies that do not apply to specific projects. Additional reasons these policies do not apply are P-2 county does not do levee maintenance in Clarksburg area, don't need guidelines, therefore is not relevant to the appeal; P-3 county has adopted flood ordinance based on FEMA model. This policy applies only to construction within flood hazard areas—the project is no within a flood hazard areas therefore does not apply. P-4 does not apply because neither appellant specifically mentions P-4 in their submissions And although it was mentioned in the staff report. He said the Commission's regulations require an appellant to state the specific grounds for the appeal and provide a detailed statement of the facts on which the appeal is based. He said that with respect Land use policy P-3 –the county always imposes buffers on new urban development if that development is net to ag. land. The buffers are fully adequate and protect the vineyard west of the project site.

Land Use Policy P-4 does not apply because it does not require that a particular level of flood protection. The responsibility is with local government.

Land Use Policy P-7: Mr. Pogledich said that project fully complies with the policy and goes beyond what the policy is asking for in that it includes a 50 ft permanent setback from the levee.

and Levees Policy P-1, P-2, P-3, P-4, P-5

Utilities and Infrastructure Policy P-2 has not been raised or address by either appellant. This policy applies to the Sugarmill project.

Mr. Pogledich said that the County looked at each policy in responding to comment letters and proactively making sure the project was consistent with the Plan. He suggested that the appellants address the specific basis, policy interpretation to support their allegations that the Commission's actions will be precedent setting against rapid urbanization against the Primary Zone. He also suggested the appellants provide the specific basis in the Act and Plan for the Commission to decide the appeals based on flood protection experience, as there is nothing in the Act/Plan that allows the Commission to decide the appeals based on those concerns.

Helen Thompson, Yolo County Board of Supervisors, said that the mission/goal of the Yolo County BOS historically and currently is to support agricultural land and open space. She said the County of Yolo has taken a no competition position with its cities with regard to urban growth and it does not compete with the cities for sprawl. She said that approval of the project is the right thing for the right reason as it is keeping faith with the policies of the Act. She said that when she first spoke with Senator Johnston about the Act she strongly supported the Act and continues to support it today. She said that at that time, Senator Johnston assured her that small rural Delta towns such as Clarksburg would not be negatively affected as the Act was specifically intended not to affect any territory with a 1992 existing urban limit line. She said the project site is within the urban limit line of the town of Clarksburg. She said at no point in the past four years has she seen the project as a test of her support of the Act or the Commission. Supervisor Thompson said she believes the project meets and/or exceeds the standards of the Act and the project does not convert farm lands or habitat to urban development in the Delta. She also said she believes the project is what is needed under what the Act. The project also provides the most progressive flood protection in the entire Sacramento region. She asked that the Commission recognize that the County of Yolo has put in many years of hard work in studying the project.

Kristin Castanos, Somach, Simmons and Dunn said that the project is an infill project—a redevelopment of an industrial site which does not include any productive agricultural land. She said that project is located within the Clarksburg urban limit line as defined within the Yolo County and Clarksburg general plans since 1959. Ms. Castanos said the general plan designated the site as a specific plan area to allow for a redevelopment of the site to create a mixed use environment. She said the old Sugarmill specific plan is the long awaited specific plan for the site. The project focuses on the agricultural industry, commercial and hospitality industries, in addition to recreational uses which include a park and public dock. Ms. Castanos said the residential component of the project is small, as residential uses on the 105 acre site will occur on 20 acres and will add 7 percent residential land to the Clarksburg urban area. She said the Act or Plan prohibit growth but provide guidelines to ensure growth occurs within appropriate areas in the Delta. She said the project does not provide for new growth because it is an infill project

in the urban area. She said there is nothing in the Act or Plan that prohibits new residential or other uses that don't currently exist. She said the project is consistent with the Land Use, Agriculture, and Utilities Infrastructure Policies. She said the appellants have ignored Policy P-2 which is on point with the project to accommodate new uses and avoids overburdening existing resources. The facilities are designed to assure the highest feasible standards are met. The applicant has been in constant contact with the RWQCB regarding the required permits and the requirements for meeting water quality standards. She said the applicant is prepared to submit his application for wastewater system but has not done so because of the impending appeal. P-3 must be read in the context of P-2 and the other policies to allow for new uses. The project does not include any new wastewater facilities. There are domestic and industrial wastewater facilities since the 1930's.

Commissioner van Loben Sels asked if Land Use Policy P-4 was part of the appeal. Ms. Fiack responded that the policy was part of the appeal.

Commissioner Sanders asked where the 100 acres agriculture processing zoning would be located. Mr. Pogledich responded that there were no 100 acres of new zoning as the Yolo Planning Commission does not have the authority to rezone land. He said that the Planning Commission had a package of different recommendations made to the Board of Supervisors there were made during part of the general plan update process and it was suggested that there be a rezoning of 100 acres in the Clarksburg general plan planning area. He said the proposal is for 100 acres to be rezoned for potential use of ag industrial purposes at some point in the next 23 years. He said it was a few steps away from policy and has not been endorsed by staff and has not been considered by the Board of Supervisors.

Commissioner Nottoli asked if the general plan update had gone through environmental review. Mr. Pogledich responded that the County was at an early part of the general plan process and was a long time away from having anything that would be considered under CEQA.

Commissioner Shaffer asked for a description of the buffers that would be incorporated into the project. Mr. Pogledich responded that the buffers would be 300 feet. Mr. Loarie said that the 300 ft. buffer is less than the recommended buffer of 500 to 1000 feet. He also said the County of Yolo was beginning the buffers from the first vine instead of the property line; therefore, they were taking credit for property that is in the vineyard itself. Mr. Pogledich said the Yolo Agricultural Commissioner was consulted and the Ag. Commissioner said that 300 foot buffers were needed and the vineyard would not be subject to additional spraying restrictions as a result of the project. Mr. Pachl said that the agricultural processing of the project would be located next to the 164 unit subdivision and that is asking for trouble. He referenced a Yolo County Farm Bureau letter of October 10, 2006 which stated the agriculture processing facilities should be distanced from high density residential divisions because neighbors highly object. Mr. Pogledich reference a letter from the Farm Bureau dated December 20, 2006 which states that notification be given to new resident explaining the county right-to-farm ordinance. He said that the other attorneys are bringing up issues that have already been addressed in the County's EIR. He also said the statute of limitations was over on the issues and the hearing tonight was no reason to use as a forum to bring up the adequacy of the EIR.

Mr. Siegel said that there were no limitations on the issues because the fact that the County did a CEQA determination does not have any legal impact on the Commission's rights to determine whether or not similar impacts are consistent/inconsistent with the Plan.

Chair McGowan asked if the Commission should reexamine the EIR and make an independent determination. Mr. Siegel responded no, because if the Commission denies the appeal, it would not be the equivalent of granting a project, therefore there would be no need to have a CEQA evaluation. Furthermore, if the Commission grants the appeal by ordering a remand, it is likewise not approving a project.

Chair McGowan convened the public hearing

The following people spoke during the public hearing:

Elly Fairclough, Office of Congressman Mike Thompson. Ms. Fairclough provided the Commission with a copy of a letter from Congressman Thompson

Craig Reynolds, Office of Assemblymember Lois Wolk. Mr. Reynolds read a prepared statement from Assemblymember Wolk.

Heidi Tschudin, Contract Planner, County of Yolo. Ms. Tschudin read a prepared statement.

Rick Landon, Agricultural Commissioner, County of Yolo

Wes Ervin, Economic Resources Manager, County of Yolo

Julia McIver, Director, Parks and Natural Resources Management, County of Yolo

Bill Martin, County of Yolo

Mary McTaggart, Clarksburg

Russell van Loben Sels, Clarksburg

Linda McGregor, Clarksburg

Mike Heringer, Concerned Citizens of Clarksburg

Al Medvitz, Rio Vista

Peter Simpson, Concerned Citizens of Clarksburg

Jeff Hart, Hart Restoration

Patty Bogle, Bogle Winery

Don Fenocchio, Clarksburg

Jeanne McCormack, Rio Vista

John Bohl, Concerned Citizens of Clarksburg

Hal Shipley, Clarksburg

Peggy Bohl, Spokesperson, Concerned Citizens of Clarksburg

Ted Smith, Concerned Citizens of Clarksburg

Steve Heringer, Clarksburg

Jerry Spain, Clarksburg

Dave Wilson, Wilson Farms

Katherine Merwin, Clarksburg

Jane Klotz, Clarksburg

Daryl Kelso, Clarksburg

Marlene Marshall, Clarksburg

Richard Marshall, Clarksburg

Mark Wilson, Wilson Farms/Vineyards

Ceci Giacoma, Rio Vista

Nancy Kirchhoff, Clarksburg

Carolyn Hinshaw, Davis

Robert Kirtland, Clarksburg

Joe Muratori, El Dorado County

Jayne Alcorn, Courtland
Tom Merwin, Clarksburg
Don Clark, Clarksburg
Greg Merwin, Clarksburg

Chair McGowan closed the public hearing.

Rebuttal Testimony

Phil Pogledich reiterated that the two policies at issue are Utilities and Infrastructure Policies P-2 and P-3. Mr. Pogletich said P-2 is applicable to the project because it pertains to sewage treatment facilities for infill redevelopment projects within existing towns; whereas, Policy P-3 is not applicable because it would be inconsistent with P-2. He said there was no coercion by the applicant to have the County of Yolo change mitigation measures in the EIR, as he was personally involved in all the mitigation measures. He also said that the only flood control policies that apply to the project are levee setbacks for maintenance and levee setbacks for rehabilitation of the levee. He said the project includes for a 300 foot interim setback until it is demonstrated that the area is not needed for a levee enhancement, additionally, the County of Yolo has taken measures to make sure that would jeopardize the integrity of the levee or interfere with routine or emergency maintenance. Mr. Pogledich asked that the Commission find in favor of the County of Yolo on the appeals.

Mr. Loarie said this development is the first of its kind proposed in the Primary Zone. He said the Commission's determinations will define the boundaries of the Act and Plan and if the project goes forward it will set a precedent for more projects. He urged the Commission to remand the project back to the County of Yolo.

Mr. Pachl said this project constitutes a rezone and general plan amendment. He stated the County of Yolo has not committed to 100 year flood protection. And those moving to the residential homes would most likely be commuters and not farmers.

Commissioner Questions

Commissioner Nottoli asked how many units were approved for the property. Mr. Pogledich responded that 162 units were approved but only 128 units would fit on the property. Ms. Tschudin responded that 162 units were approved, but there was no way to predict how many units would be built. Mr. Loarie stated that the appeal before the Commission was based on the approval of 162 units.

Commissioner Kelly asked if the residential setback have a 300 foot setback 50 foot setback. Ms. Tschudin set the 50 foot setback is a permanent setback and the 300 foot setback is an interim setback that would apply only if the area is shown through the geotechnical study not to have 100 year protection.

Senator Machado asked if the geotechnical surveys would be performed by engineers employed by the applicant or in conjunction with what the State is doing with DWR in consultation with the Corps. Mr. Pogledich responded that the surveys would be performed by engineers hired by the applicant but subject to County of Yolo approval.

Senator Machado asked if the levees were project levees, and if so, whose standards would be applicable. Mr. Pogledich responded that the levees were project levees; however, the County

did not consider the scenario; however, if there was a State protocol to be followed then it would be expected that the applicant follow the protocol. Ms. Tschudin responded that the County would use the Federal standard.

Senator Machado asked if the County accepted a survey by the applicant would accept any liability for any breach that would come as a result of accepting the work and certification of a survey from the applicant. Mr. Pogledich responded that a certification comes in before a state survey then the County is obligated to respect that.

Commissioner Shaffer asked if the buffer of the project was on the ag easement land or the project. Mr. Pogledich responded that the buffer is from the vines. Ms. Tschudin responded that the buffer was 600 feet from the property line to the residential development. Kristen Castanos replied that the mitigation measures required that the 300 foot buffer be measured from the first vine row. The buffer starts at the first row of grape vines to the occupied part of the project, there is a road easement; therefore, the applicant is limited to how close they can come to the property line with the existing vines.

Commissioner Shaffer asked if the project would result in an increase of density in terms of urban development. Mr. Pogledich responded no. Mr. Loarie responded that the construction of 162 residential units would definitely increase density because it would put about 5 units per acre, where currently there is 2 units per acre.

Commissioner Sanders asked what the price range of the homes. Mr. Pogledich said the prices would be determined by market conditions, however, he did state that 20 percent of the units would be deed restricted as affordable units for lower and middle income families.

Commissioner Shaffer asked if the project site was currently in a flood hazard area. Mr. Pogledich answered no it is not; it is in a 500 year plain. Mr. Loarie responded that the 500 year certification is in serious question and when the rate maps are redrawn it will no longer be in that particular area.

Discussion by Commission

Mr. Siegel explained that the Commission had two options: it could deny the appeals or grant the appeals and remand the project back to the County. He said that if it is found that the project is entirely consistent with the Plan, then it should deny the appeals; however, if it is found that the project is inconsistent with one or more policies in the Plan, or one or more elements in the Act, then it should grant the appeals. He said that in either case, the Commission would have to come back next month with written findings that would be reviewed for consistency with the decision it made at the hearing.

Ms. Fiack reminded the Commission the issue on the table was consistency with the Act and the Plan. She also advised that the Commission review the points made by Commissioner Kelly that if the project could go forward if there were remedies to flood control issues, and to determine the flood control parameters.

Commissioner van Loben Sels said that he felt the project was inconsistent with Land Use Policy P-2. He also said that recertification of the levees would have to happen before any new homes are built.

Commissioner Reagan commented that he felt that the levees are State operated, and if the tests find the levees are unsafe, then the State should fix them or pay for the relocation of the current citizens.

Commissioner Johnston said he felt the issue of density to eliminate urban sprawl is only an issue because the project elevates residential housing. He said that if the proposal and project were centered on ag. support and the winery, there would be no issue of setbacks and impacts on agriculture. He said it was important to see that the Primary Zone is designated for protection of agriculture, and within that, communities like Clarksburg must continue to exist. However, the presence of residential housing is what is forcing the issues of flood protection, buffers, etc.

Commissioner Kelly said she was concerned that the project would allow residential development where a levee may not be certified for public safety, which is counter to the Act.

Commissioner Nottoli asked Mr. Siegel if the Commission would lose jurisdiction if it were to continue the matter at a later date. Mr. Siegel responded that he has not fully researched the matter; however, there was at least one case that he knew of that indicated that the hearing could be continued where it would not lose jurisdiction. He said the meeting was only needed to receive feedback to develop findings.

Commissioner Wilson moved that the Commission deny the appeals and direct staff to prepare findings consistent with the motion considered by the Commission on February 22, 2007; Chair McGowan seconded. The motion was denied 5 to 10 by roll call vote. (Ayes: McGowan, Nottoli, Reagan, Ruhstaller, Wilson. Nos: Armor, Calone, Johnson, Johnston, Kelly, Perez, Sanders, Simonsen, Shaffer, van Loben Sels).

Commissioner van Loben Sels moved that the Sugarmill project was inconsistent with Utilities and Infrastructure Policy P-3; Commissioner Johnston seconded. The motion was denied 4 to 11 by roll call vote. (Ayes: Johnson, Johnston, Simonsen, van Loben Sels. Nos: McGowan, Armor, Calone, Kelly, Nottoli, Perez, Reagan, Ruhstaller, Sanders, Shaffer, Wilson).

Commissioner Kelly said she felt that the project was more applicable to and consistent with Policy P-2. Commissioner Shaffer asked if there was a distinction between the two policies. Mr. Siegel responded that the policies interchange the terms but he was not sure that it was the intention that there be a distinction. He also said it is possible that the disposal system described in Policy P-2 could be referring to the two new facilities permitted under Policy P-3. Commissioner van Loben Sels said he was afraid that the problems raised with water quality in Courtland and Walnut Grove would surface in Clarksburg and the time to address is now with exporting the effluent to a regional treatment facility outside of the Primary Zone.

Commissioner Wilson moved that the Sugarmill project was inconsistent with Land Use Policy P-3. The motion was withdrawn.

Commissioner Kelly moved that Sugarmill project was inconsistent with Land Use Policy P-3; Commissioner van Loben Sels seconded. The motion was approved 8 to 7 by roll call vote. (Ayes: Armor, Calone, Johnston, Nottoli, Sanders, Simonsen, Shaffer, van Loben Sels. Nos: McGowan, Johnson, Kelly, Perez, Reagan, Ruhstaller, Wilson).

Commissioner Calone said that P-3 allows for appropriate buffer areas provided, as well as setbacks of 500 to 1,000 feet. He said there is no reference in the Plan for less than 500 feet. He said this was the discussion when the Plan was being adopted because farmers felt that was needed.

Commissioner van Loben Sels said he felt the project was inconsistent because the 105 acres combined with the housing and public space would leave less than 50 acres of value added space. He said the Commission supported the “value added” uses of the facility; however, with less than 50 acres, the facility would have no way to expand.

Chair McGowan said he disagreed with Commissioner van Loben Sels because the project enhances the economic viability of the area of Clarksburg. Has to find a way to have smaller communities to remain vital and viable.

Commissioner Reagan moved that the Sugarmill project is consistent with Agriculture Policy P-4; Commissioner Wilson seconded. The motion was approved 12 to 3 by roll call vote. (Ayes: McGowan, Armor, Calone, Johnson, Kelly Nottoli, Perez, Reagan, Ruhstaller, Sanders, Shaffer Wilson. Nos: Johnston, Simonsen, van Loben Sels).

Commissioner Wilson moved that the Sugarmill project is consistent with Land Use Policy P-2; Commissioner Reagan seconded. The motion was approved 8 to 7 by a roll call vote. (Ayes: McGowan, Armor, Kelly, Nottoli, Perez, Reagan, Ruhstaller, Wilson. Nos: Calone, Johnson, Johnston, Sanders, Simonsen, Shaffer, van Loben Sels).

Commissioner Sanders moved that the Sugarmill project is inconsistent with Land Use Policy P-4; Commissioner van Loben Sels seconded. The motion was approved 10 to 5 by roll call vote. (Ayes: Armor, Calone, Johnson, Johnston, Kelly, Nottoli, Perez, Sanders, Simonsen, Shaffer, van Loben Sels. Nos: McGowan, Nottoli, Reagan, Ruhstaller, Wilson)

Commissioner Wilson moved that the Sugarmill project is consistent with Land Use Policy P-7; Commissioner Reagan seconded. The motion was approved 8 to 6 to 1 by roll call vote. (Ayes: McGowan, Armor, Kelly, Nottoli, Perez, Reagan, Ruhstaller, Wilson. Nos: Calone, Johnston, Sanders, Simonsen, Shaffer, van Loben Sels. Abstain: Johnson).

Commissioner Kelly moved that the Sugarmill project is consistent with Levees Policy P-1; Commissioner Nottoli seconded. The motion was approved 14 to 1 by voice vote.

Commissioner Wilson moved that the Sugarmill project is consistent with Levees Policy P-2; Commissioner Reagan seconded. The motion was approved 13 to 2 by voice vote.

Commissioner van Loben Sels moved that the Sugarmill project is inconsistent with Levees Policy P-3; Commissioner Simonsen seconded. The motion was approved 10 to 5 by roll call vote. (Ayes: Armor, Calone, Johnson, Johnston, Kelly, Perez, Sanders, Simonsen, Shaffer, van Loben Sels. Nos: McGowan, Nottoli, Reagan, Ruhstaller, Wilson).

Commissioner Reagan moved that the Sugarmill project is consistent with Levees Policy P-4; Commissioner van Loben Sels seconded. The motion was approved unanimously by voice vote.

Commissioner Wilson moved that the Sugarmill project is consistent with Levees Policy P-5; Commissioner Kelly seconded. The motion was approved unanimously by voice vote.

Commissioner Sanders moved that the Commission remand the matter of the Sugarmill project to the County of Yolo on the grounds that it has determined that the project is inconsistent with the following Policies of the Commission's Land Use and Resource Management Plan: Land Use Policy P-3, Land Use Policy P-4, and Levees Policy P-3; and related policies in the Delta Protection Act, and the Commission direct staff to prepare written findings consistent with this motion to be considered by the Commission at its February 22, 2007 meeting; Commissioner Calone seconded. The motion was approved 12 to 3 by voice vote.

Mr. Siegel reminded Commissioners that the ex-parte communications ban was still in effect.

18. Adjourn

The meeting was adjourned at 1:15 a.m. on Friday January 26, 2007.