

Summary Minutes of the
Delta Protection Commission Meeting
Thursday, May 22, 2008

ADMINISTRATIVE AGENDA (Items 1-3)

1. Call to Order/Flag Salute

Chairman Simonsen called the meeting to order at 5:40 p.m.

2. Roll Call

Present: Chairman Simonsen; Commissioners Armor, Cabaldon, Dawson, Ferguson, Johnson, Johnston, Kelly, McGowan, Newton, Nottoli, Piepho, Reagan, Ruhstaller, Shaffer, Tilghman, van Loben Sels, Daniel Wilson.

Absent: Commissioners Calone, Dresser, Mark Wilson.

3. Public Comment

No one addressed the Commission during general public comment.

CONSENT AGENDA (Items 4-14)

Commissioner Johnson moved Agenda Item 6 to the Regular Agenda.

Commissioner Kelly moved Agenda Item 7 to the Regular Agenda for the July 24, 2008 meeting.

Commissioner Cabaldon moved Agenda item 11 to the Regular Agenda.

Commissioner Johnson moved approval of the Consent Agenda; Commissioner Shaffer seconded. The motion was approved unanimously.

REGULAR AGENDA (Items 6, 7, 11, 15, 16, 17, 18, 19, 20)

6. Adopt Position of Support for Assembly Bill 2504 (DeSaulnier), Delta Tourism and Marketing Plan

Commissioner Johnson stated he would abstain from voting on AB 2504. He said that the Resources Agency had concerns with the bill and asked where the budget would come from to implement the legislation, as he did not see a connection with the legislation and any potential funding. Ms. Fiack responded that funding would come from grants because the legislation states that there be no general fund allocation. She also said she would follow-up with the Resources Agency.

Commissioner van Loben Sels stated the Commission should not do any planning on the item until funding information was available. Ms. Fiack responded that funding would come from private and/or public sources.

Commissioner Daniel Wilson moved to postpone item; Commission Piepho seconded. The item was postponed.

7. Adopt Position of Support for Assembly Bill 2502, (Wolk) Delta Ecological Restoration and Recreation Areas, Consistent with the Previous Action of Support Taken by the Commission on H.R. 3554 (Ose).

This item was postponed.

11. Receive Informational Update on Bay Delta Conservation Plan Environmental Review Process.

Commissioner Cabaldon asked that Commission staff give an update on the BDCP. Ms. Fiack reported that Commission staff was in the process of submitting comments and getting input from in Delta interests and agency staff.

Commissioner van Loben Sels asked if the Commission had a seat on the BDCP Steering Committee. Ms. Fiack responded no.

Commissioner Kelly responded that the BDCP Steering Committee was comprised of water users, regulatory entities, Mirant Power, and representatives from the environmental sector. She said that the process has been underway for over a year, and DWR has taken the lead for implementing the program for environmental coverage. She said that scoping meetings have begun for NEPA and CEQA. Commissioner Kelly said a key element of the conservation plan is to improve the way the State moves water from north to south so that there would be less of an impact on fish. She said there are proposals for habitat. Commissioner Kelly said there are very definitive steps that must be done in order to involve the public in the scoping process.

Commissioner Cabaldon said the Commission should pay attention to the issues of the BDCP. He said that while the Commission was not the local government for the Delta itself, and could not speak for the counties, it was in was in the best possible position to help with the flow of information.

Commissioner Daniel Wilson reported that the BDCP maps were the subject of much talk as they were seen as a secret plan to destroy the Delta. He also commented that whomever created them should come forward.

Chair Simonsen asked that the Executive Director continue to keep the Commission updated on the BDCP and to notify the Commission if any red flags are raised.

Commissioner Kelly moved approval of Agenda Item 11; Commissioner Ferguson seconded. The motion was approved unanimously.

15. Receive Informational Presentation From Staff of the Department of Fish and Game on the Invasive Species K9 Program.

Chair Simonsen reported that this agenda item would be postponed, as Warden Lynette Shimek was unable to make her presentation.

Commission Daniel Wilson moved to postpone the item; Commission Johnson seconded. The item was postponed.

16. Findings and Analysis of the Commission Concerning Appeals Filed on November, 3, 2006 by (1) the Natural Resources Defense Counsel and (2) the Concerned Citizens of Clarksburg, et al., Relative to the Clarksburg Old Sugar Mill Specific Plan and Related Documents (OSMSP).

Dan Siegel reported that at the March 27, 2008 meeting, the Commission determined that the OSMSP as revised was consistent with Land Use Policy 3 and not consistent with Levees Policy 3. He said the Commission requested additional information regarding Land Use Policy 4 and would only be looking at written findings concerning the decisions reached at the March 27, 2008 meeting. Mr. Siegel said the questions before the Commission would be if the staff findings and analysis were consistent with the March 27, 2008 meeting's determinations. He requested that a technical edit be made on page 6 of the staff report to be changed to read "*The Commission continues to conclude, as was the case with the OSMSP approved by Yolo County on October 24, 2006, that if the OSMSP proceeded, residences, albeit fewer, could have been constructed even though levee (infrastructure) improvements that might have been required to provide adequate flood protection might not have occurred due to infeasibility (from the perspective of the Yolo County Board of Supervisors).*"

Mr. Siegel reminded the Commission not to engage in ex-parte communication and any communication should be disclosed at the meeting. He also reminded that Commissioners who were absent from the last meeting could still vote as long as they have adequately familiarized themselves with the record.

Commissioner van Loben Sels reported that he received two phone calls from the River News Herald; he returned the phone calls and said he had no comment.

Commissioner Daniel Wilson reported that he received a phone call from the River News Herald and said he had no comment.

Public Testimony

Peggy Bohl, Concerned Citizens of Clarksburg thanked the Commission for its time and effort regarding the OSMSP. Ms. Bohl said the Concerned Citizens of Clarksburg filed an appeal with the Commission because the County of Yolo ignored the will of a large number of residents of Clarksburg. She said her group concurs with staff's findings that the revised OSMSP is not consistent with Levees Policy 3 and that the Commission should find the project not consistent with Land Use Policy 4.

Phil Pogledich, Legal Counsel, County of Yolo, referenced the County of Yolo's May 6, 2008 letter to the Commission requesting reconsideration of Levees Policy 3. He asked that the Commission move the item for discussion until after Agenda Item 17 because of the debate on Land Use Policy 4. He said that both policies control location of new development to existing towns and it did not make sense to read Levees Policy 3 when Land Use Policy 4 speaks on development and allow it in certain circumstances.

End of Public Testimony.

Chair Simonsen said that under Roberts Rules of Order motions for reconsideration are acceptable and with the meeting already having taken place it would be out of order for reconsideration.

Commissioner McGowan asked if the Commission was bound by Roberts Rules of Order. Mr. Siegel responded that the Commission was not bound by Roberts Rules of Order; therefore it was at the Commission's discretion to reconsider the item. Moreover, a consideration of the merits was not on the current agenda, so if the Commission were to reconsider the item, it would have to be done at a future noticed meeting.

Mr. Pogledich said Roberts Rules of Order would be appropriate because the motion for reconsideration rules apply to the final decision and the decision was not final until the findings were adopted.

Commissioner McGowan asked if the request could be honored.

Commissioner van Loben Sels stated that he made his decision based on what he heard at the prior hearing, therefore, he did not want the item moved.

Commissioner Wilson stated he did not have a problem moving the item.

Commissioner Johnston stated that he favored voting on the item as is and not moving the item.

Commissioner Tilghman noted that clerical errors on Page 7, line 2 of the staff report should be changed to read "in March the Commission staff viewed".

Commissioner Cabaldon stated that he was concerned that the findings were so broad that no local government could ever meet the findings the way they are written. He said he felt there was a way to make them more "surgical" and less of a "hammer". He further stated that the Commission is going too far and should be careful to not use the actions that local governments use to protect public health, welfare and safety against them. He also said there is a substantial amount of research being conducted by FEMA, DWR, local agencies and RDs on the levees, and the Commission should be careful in having staff observations about levee integrity when staff is untrained to form the basis for the findings. Furthermore the Commission was not prepared to make a judgment on the policy, in the absence of a technical report. Commissioner Cabaldon said that no project would ever be able to achieve a zero level of risk on flood protection and if that is the basis for the decision, that the government has not carefully exercised its responsibility to protect public safety, then the Commission has made a very broad policy declaration about what may occur in the Delta. He said that the Commission was not the Legislature and could not make new policy in administrative actions, as it must be borne under existing previous decisions in the statute and regulations. Commissioner Cabaldon said he supported a conclusion of we do not know because from a policy standpoint, he felt that the language in the Plan is wrong and the Commission should come back at some point to review said language.

Chair Simonsen asked if the findings were reflective of the data that was presented. Ms. Fiack responded that the site specific references were observed by Commission staff along with a

certified engineer. Secondly, many of the findings were pulled directly from the County's environmental documents.

Mr. Siegel stated that under the Administrative Procedures Act, certain decisions could be precedent setting, however, before the precedent could be set, the Commission must set up certain procedures—which it has not done. Mr. Siegel also said that when staff drafted the findings they tried to tie them as close as possible to the specific language in the Commission's policies.

Commissioner Cabaldon pointed out that the Commission's job was not to reflect in the findings what is said, but rather the findings should reflect the Commission's independent judgment of the facts in the case. He said he did not want to see a local government vs. state agency situation. He said the Commission must maintain some kind of policy consistency.

Commissioner van Loben Sels commented that he agreed with the staff report on Levee Policy 3. He reported that a letter sent to landowners by the RDs stated that levees in Solano County and Clarksburg provided less than 100 year flood protection. He also said the County EIR states that implementation of the project may expose people and structures to deep flooding because of a levee failure and because of this he could not change his position.

Commissioner Daniel Wilson commented that any vote would be used as a precedent, and as such, every single development in the legacy towns in the Delta would be appealed to the Commission. He said he was uncomfortable basing findings on language that is not relevant to the project, and in essence the Commission would be shutting down future development in the Primary Zone.

Commissioner Kelly said that she is concerned with the second part of Levees Policy 3 because it states that levees in the Delta could be improved to minimize the amount of hazard to local communities. She said that even if this were the case, the Commission would still not be able to allow a project to be built to have a higher density than what was in the general plan in 1992. She said that even with improved protection, towns would still be limited, per the Policy, to the densities that were approved in 1992; as there are rigid rules within the Plan that would prevent extensive development in existing towns.

Commissioner Reagan stated that he agreed with Commissioner Cabaldon that the policy is overly broad. He said this would be a rapid death for the Primary Zone and he is opposed.

Commissioner Cabaldon moved to amend the motion to adopt the findings and analysis of the staff report and removing all the language on Page 6, Paragraph 4 to the middle of Page 8 be excised from the staff report; Commissioner Reagan seconded. The motion failed 6:11:1 by roll call vote. (Ayes: Cabaldon, McGowan, Piepho, Reagan, Ruhstaller, Daniel Wilson. Noes: Armor, Dawson, Feguson, Johnson, Johnston, Kelly, Newton, Shaffer, Simonsen, Tilghman, van Loben Sels. Abstain: Nottoli)

Mr. Siegel stated that if the language was removed as suggested, then it would make it more difficult to defend the Commission's position in court.

Commissioner Newton commented that much of the language Commissioner Cabaldon suggested to be removed in the substitute motion deals with the uncertainty issue that he wanted the findings to discuss in his earlier comments.

Commissioner van Loben Sels said he was opposed to removing the language because the Commission has given significant weight to Yolo County's acknowledgment of flood dangers.

Commissioner Johnston stated that the amendment was not acceptable.

Commissioner Shaffer asked that the word regulation be changed to regulated on page 5 of the report.

Commissioner Johnston moved to adopt the findings and analysis in the staff report that the OSMSP is consistent with Land Use Policy 3; Commissioner Tilghman seconded. The motion was approved unanimously, with changes.

Commissioner Johnston moved to adopt the findings and analysis in the staff report that the OSMSP is inconsistent with Levees Policy 3; Commissioner Tilghman seconded. The motion was approved 11:7 by roll call vote. (Ayes: Armor, Dawson, Ferguson, Johnson, Johnston, Kelly, Newton, Shaffer, Simonsen, Tilghman, van Loben Sels. Noes: Cabaldon, McGowan, Nottoli, Piepho, Reagan, Ruhstaller, Daniel Wilson).

17. Public Hearing on Resubmitted Old Sugar Mill Specific Plan (OSMSP) – Land Use Policy 4.

Dan Siegel reported that at the March 27, 2008 meeting the Commission requested additional information concerning Land Use Policy 4, SB 5 and more technical information concerning levees. He reminded the Commission that the decision should be based upon the record, testimony presented, documents previously presented, and any documentation submitted for the hearing. He said the decision is a de novo decision, meaning, the Commission does not need to give weight to the County decision. He said the Commission could either find the revised OSMSP consistent, and if so, staff would come back with new findings, or find the project is not consistent with the Policy and adopt staff's findings and remand the project back to the County.

Ms. Fiack reported that the item consisted of staff providing information in response to discussions at the March 27, 2008 meeting. She reviewed Land Use Policy 4 and said that in researching the information, staff has determined that the need for housing remains to be in question and the timing of studies underway provides recognition of the uncertainties that currently exist as to the level of flood protection in place currently. Ms. Fiack said that Commission staff convened a panel of experts to make presentations on the issue and referenced a letter submitted to the Commission from the Sierra Club Yolano Group, and a County staff report providing recommended County positions on State legislation and fiscal priorities.

Dan Siegel reported that SB 5, AB 162 and AB 70 are three bills relevant to the project. He said that none of these enacted measures alter the Delta Protection Act; the Commission's authority has not been legally limited, but rather in exercising its discretion it has the option of looking at

those measures to guide the exercise of discretion. Additionally, the Commission's jurisdiction under the Act is limited. It has no jurisdiction over existing zoning entitlements or work done on farm dwellings, or outside of the Primary Zone.

Mr. Siegel reported that SB 5 contains 3 policy related provisions. It will eventually provide for greater flood protection for urban areas with stricter limits on residential development vs. non residential development and it seems to encourage focusing development and flood protection on urban areas. AB 162 requires that cities and counties must come up with a fair share housing need that must be met; and AB 70 requires that local governments share in liability caused by flooding if local government approves certain development in an undeveloped area protected by the State Flood Project. It also provides for a safe harbor if SB 5 measures are implanted at the local level.

Commissioner Cabaldon commented that SB 5 declares that an adequate level of protection is the FEMA standard. He said the OSMSP is in a catch 22 as FEMA has not made a determination in the case, therefore Clarksburg is still counted for recalculation purposes until it loses its FEMA status.

Dave Gutierrez, Acting Deputy Director for Public Safety, Department of Water Resources reported that levee safety is at the forefront. He said there are project levees, federal/state levees, 300 miles of urban levees and 1200-1400 miles of non urban levees. Mr. Gutierrez said that the consequence of failure of an urban levee is much higher than a rural. He said that California's level of protection is less than much of the country. Mr. Gutierrez said that excessive seepage and overtopping are the reasons most levees fail. He said the State has spent a considerable amount of time repairing its levees by using riprap or seepage berm, particularly in areas where homes are close to the levees. Mr. Gutierrez said that the State needs a more accurate survey to determine a better understanding of topography of Delta islands, in addition to refining hydraulic and hydrology studies. He said that DWR would be going to the public to solicit comments on its strategic plan and is working with the Corps and FEMA to deal with the issues.

Roger Henderson, Associate Chief, Corps of Engineers, Geotechnical and Environmental Engineering Branch reported on the differences between certified and accredited levees. He said that certified levees are those that meet minimum design, operation and maintenance standards as specified in 44 CFR 65.10, whereas accredited levees are those that FEMA has shown as providing protection from the 1 percent annual chance or greater flood.

Commissioner van Loben Sels asked if the Corps, in its discussions with DWR or FEMA, would help provide flood control for West Walnut Grove and Clarksburg. Mr. Henderson responded that the data for those levees is scarce and the Corps only works on the money that Congress gives for the projects. He said the State could come up with plans and go to Congress to authorize a project for the Corps.

Commissioner Daniel Wilson asked for information on the certifications for the Pocket and Natomas areas. Mr. Henderson responded that with respect to Natomas, the Corps certified the levees in 1996/97; however, in 2006 the Corps wrote FEMA that they could not stand by that certification and FEMA went through a re-mapping effort; however, the levees have been de-

certified. He did not report on the Pocket area. He did however, state that the Corps takes certifying levees seriously because of lessons learned; and that few Delta levees have been certified by the Corps.

Commissioner McGowan asked which levees in RD 999 were Corps levees, which were certified levees, and what was the level of flood protection in Clarksburg now. Mr. Henderson responded that he did not know as there was not enough information to answer what the level of protection was in Clarksburg; however the analysis would be gathered next month. He said that funding/economics played a part as to when the levees would be fixed.

Commissioner Nottoli commented that there will not be enough money to do all levee fixes. He asked why FEMA was getting out ahead of everything, particularly when DWR and the Corps have not done their reconnaissance. Mr. Henderson responded that FEMA has their own program but wants to give an element of truth to the equation by giving people an understanding of the risks of living behind a levee.

Commissioner Cabaldon said that the standards are based on the FEMA standard, and it is likely they will not meet the certification standards. He said that he has not heard any evidence from the presentation that Clarksburg is in any more danger than the other cities/towns in the Primary and Secondary Zones. Commissioner Cabaldon asked about the timeframe for the Plan. Mr. Gutierrez responded that it was being developed at the present time as they have been mandated to complete the flood plan by 2012.

Commissioner van Loben Sels asked if DWR was looking at a benefit analysis of looking at areas like Clarksburg to take an approach for the dense areas in the Delta. Mr. Gutierrez said that DWR would be looking into the matter.

Commissioner McGowan said that advocating for ring levees would make the situation moot, as it would take no longer for a ring levee to be built than for the miles of levees, because a break anywhere is an unacceptable risk. Mr. Gutierrez said that it was premature to talk about ring levees because information would need to be gathered before drawing any conclusions.

Commissioner Reagan asked if ring levees were built and ag levees fail, would the State have to restore the ag lands to production. Mr. Gutierrez responded that it was hard to predict the future, but judging from past experiences (Jones Tract) the State would repair and restore the ag lands.

Chair Simonsen convened the public hearing.

Phil Pogledich said that the Commission needs to determine the proper interpretation of Land Use Policy 4 and the Act. He said that SB 5 requires all housing in rural areas to be constructed in accordance with FEMA standards if it is mapped in a special flood hazard area. He said that the Act does not allow the Commission to create new authority rules; it only authorizes the Commission to review amendments to the General Plans, therefore the Commission does not have authority to regulate development that does not increase the risk of flooding. Mr. Pogledich stated that the proposed housing in Clarksburg does not create an increased flood hazard and the Commission should take a close look at the language of the Act so that its decisions are

consistent with the authority given to it by the Legislature. He said that if the Commission does not have authority under the Act, it cannot create authority in the Plan or by adopting other regulations. He further stated that Land Use Policy 4 does not specify what level of flood protection is needed. Mr. Pogledich stated that Land Use Policy 4 is about putting development where it belongs. He said the project is reasonable and in good faith and the County has addressed the “need” for the housing by identifying that farmland is being converted to rural ranchettes, 497 households will have employment due to the 600 new jobs created, and that a portion of the single family homes would be dedicated to low income.

Greg Loarie, EarthJustice said that the Clarksburg General Plan indicates it would need 26 new units for 2020 and SACOG indicated that 22 units would be needed for 2012. Mr. Loarie said that no one knows what level of protection the Clarksburg levees provide. He said that 200 year flood protection, not 100 year flood protection is appropriate for a project of this magnitude. Mr. Loarie said that it is the duty of the Commission to limit exposure to increased flood risk and nothing in SB 5 limits the Commission’s authority. He said that the reality of the project would have a greater density than any area protected under SB 5, which is why mitigation measure 4.7.8 in the County’s EIR requires a geotechnical study to prepare a flood control plan to bring the levees up to a 200 year protection.

James Pacht, stated that there has been no new evidence of flood protection for the project and the County recognizes that the levees would not pass the certification test. He said the authors of SB 5 were well aware of the Clarksburg situation when they drafted the legislation; SB 5 is a minimum standard and there is nothing that prohibits local government, the State or a State agency from adopting more protective measures.

Public Testimony

Don Fennocchio, Clarksburg, stated that he knows and accepts the risks of living in Clarksburg. He also said that the people in the town are dedicated to allowing the town to grow and the Commission should allow the citizens make their own decisions.

Jim Eaton, Sacramento County, stated that he is looking to buy a home in Clarksburg but it has proved a difficult process. He said the opposition to the project was not a levees issue but a property value issue.

MP Carvahlo Albert, Clarksburg, said the State has abandoned the small communities. She also said the Commission should be careful about the precedent it would set, as it would come back to bite it.

John Bohl, Clarksburg, referenced a July 2006 memo from FEMA stating that all levees in the U.S. must be recertified by a certain time and local jurisdictions would have to pay for the recertification.

Rebuttal Testimony

Phil Pogledich stated that the Clarksburg General Plan referenced 27 units would be needed; however, the County would revisit the issue during the course of processing the project on the OSMSP site. He said the General Plan called for 20-30 acres of new residential development

and that would be reexamined. Mr. Pogledich also said that the figure quoted by EarthJustice and the Concerned Citizens is a red herring because it is not a real figure and the number should be reexamined.

Chair Simonsen closed the public hearing.

Commissioner McGowan said that he had been on the Commission since the beginning. He said he had a clear sense of what the Commission was established to do and that it has carried out that mission. Commissioner McGowan stated that the core values of the Commission are to protect the agricultural land, habitat, open space and environmental integrity and that it should be reminded that Clarksburg is a resource. He said that when the Commission interprets the Plan, is that interpretation consistent with the Legislature, the Plan and the Legislature's decision to leave local jurisdictions with the primary responsibility of implementing the Plan. He said he fears the Commission will go way off track if it does not do this. Commissioner McGowan said the concern is with the law the Commission is charged with carrying out the Plan. He said the OSMSP is a redevelopment plan that would not take any farmland out of production, jeopardize the environment, nor cause any harm to the resources of the Primary Zone. He said the question to be asked is whether the County has followed the Plan or not. He further stated that the County has done its best to interpret the Policies, however it can not read words or standards that are not there because that would be a trap for local government. Commissioner McGowan said the Commission is hard pressed to see that the Policy has a silent standard and he is convinced that the County is correct when it says the Commission is trying to create its own flood protection standards. He said the Commission should leave it up to the Legislature and if it acts on this issue, it is making a grave error.

Commissioner McGowan said that another issue he had was the discussion on the "need" for the 123 housing units. He said that once the housing units are built, the County would not expand the boundaries of the town for new housing or approve new housing outside of the town. He also said that the housing is for those that previously lived in the town and want to move back home, and not as a project for those who live and work in Sacramento. He said he did not believe the County opened the door for urbanization in the Delta, and the Board of Supervisors has given the Commission many reasons why 123 homes is a reasonable number (such as the high number of jobs the development would create) but the Commission has set-aside all the information given to them. He further stated that it is not the Commission's role to set aside the decisions of the elected officials and believes the Commission should defer to locally elected officials. Commissioner McGowan said that the County is not in the business of creating a suburb for Sacramento. He said the Commission brings together representatives who are put there to collaborate and the Commission should give the local members and the County of Yolo the respect they deserve in their decision making.

Commissioner McGowan stated that he believes in the Act and Commission, but the process is tragically flawed. He noted that since the inception of the Commission, representation from the State Agencies has changed from highest level directors to others. Commissioner McGowan asked that the Commission reconsider Levee's Policy 3, and that each Commissioner explain to the County, the applicant and the citizens as to why they voted the way they did.

Commissioner Cabaldon said he had conflicting feelings about the project, but strong feelings about the process. He said it was frustrating because this is one of the few arenas he serves on where the prosecutor and the staff advising were the same, and where a clear sense of ownership and defense about the findings and recommendations made it hard to obtain independent, objective advice from legal and policy staff. Commissioner Cabaldon said that the County over stretches the scope of SB5 as it does not preempt the Commission from making policy judgments. He said that the language in the bill to distinguish between urban and non-urban areas was not in the bill originally, but added at the suggestion of amendments proposed by SACOG based on concerns for Clarksburg and Knights Landing. He further stated that the Central Valley Flood Protection Board is the stated leader regarding land use flood protection, but how wide the Commission opens the door regarding this issue does matter. Lastly, he stated that the findings for the policy are far too broad and the Commission should take a new look at the Plan, update it, and align it with all the new policies and initiatives.

Commissioner Reagan stated that there is a “mission creep” and the Commission is trying to adopt a dangerous precedent. He said this would create an adverse condemnation as the Commission’s job is not to protect geographic estuaries but communities. He also said that the State has Paterno liability.

Commissioner Wilson said the Commission was overstepping its bounds and strangling the small communities and destroying the legacy towns in the Delta. He said that denying the project would put a chill on any infill development in the Delta anywhere.

Commissioner van Loben Sels stated the Commission’s policy is not a “no growth” policy but a long term growth policy consistent with the Management Plan.

Commissioner Johnston noted that the Secondary Zone is gradually being committed to urbanization. He said that one-third of the statutory Delta has been built out or is committed to being built out. He said that it would be inevitable in the future that the Primary Zone would prove attractive and thus, the Commission would face the land use issues because of the gradual encroachment of the Secondary Zone. He said the precedent he fears with the OSMSP is that it would create a suburb for Sacramento County.

Commissioner Piepho stated that she sees the OSMSP as a redevelopment project. She said it was not an issue of growth, no growth, or slow growth as those are issues that should come before the Board of Supervisors and not the Commission. She further stated that the Commission was getting ahead of itself and overstepping its role and jurisdiction.

David Johnson said that he was struck that DWR staff could not tell the Commission as to what materials were beneath the levees. He said he could not in due diligence say that flood protection is provided for the project.

Commission Shaffer stated that he based his decision on looking at the project objectively and giving his best judgment. He said he worked with the materials before him, and his focus was on “support infrastructure already provided”. He said he agreed with Commissioner van Loben Sels in that if the project were 30 units instead of 123, then the project would not be before the

Commission. He said he senses that Clarksburg is a community divided and each side had good discussion points, but in his personal judgment, 123 units and additional populations are no “silver bullet” to the problems the town is facing. He said he had to also factor in the uncertainty of climate change and putting in a development in that type of uncertainly and he could not vote for it. He lastly said the project was inconsistent with the policy.

Commission Nottoli stated that he would vote that the project is consistent and it is not the role of the Commission to set the bar so high that it would make it difficult for a community to thrive.

Commissioner Dawson asked how many homes were on the property in question and would there be septic tanks. Commission McGowan responded that there were no homes yet, as the land was previously industrial. He said that he found it troubling that those questions were being asked at this point in the process. Commissioner Dawson stated that she was not on the Commission when the project first started, she had read the materials; however she wanted to hear the answer at the meeting.

David Morrison, Planner, County of Yolo, responded that the specific plan adopted by the Yolo Board of Supervisors would include a municipal waste water treatment plant.

Commissioner Newton said she spent a great deal of time reviewing the materials and would vote inconsistent. She said the one good thing about the project is that it is a Brownfield redevelopment and the site is the good location and does support the proponent if it were an infill. Commissioner Newton sated that with regard to “need”, the number of units is excessive; however, had there been a smaller number of units she could support that. She said she also looked at infrastructure and flood protection, and whether there are adequate evacuation routes for the increased density and number of people. Lastly, she said she does not see adequate flood protection and thinks it would be highly unlikely that the levees would be certified.

Commission Tilghman stated that he would vote not consistent because he felt that the County has not made a showing that the project meets the test of the policy.

Commissioner Ferguson said he while he supported the concern that the Commission might be overextending itself, he felt that as a trustee of a Reclamation District he had problems with the flood protection aspect of the project, because no one should be hurt or there be loss of life because of a levee failure.

Commissioner Cabaldon stated that even if the project were to come back with 30 units it would still be inconsistent because the findings are so overreaching.

Commissioner Wilson said he agreed with Commission Cabaldon.

Commissioner Piepho stated that with the current land use with respect to levees, the Commission is saying that no one can even go to work.

Commissioner McGowan stated that Clarksburg has always had a foot print for its urban limit. He said that the project has nowhere else to go because it is an infill project that has been in the

works for a while and not a mass urbanization in the Delta. He said it is frustrating to go through the process because the County believes it is doing the right thing and keeping faith with the Act and Plan. Nor has the County attempted to create an adversary relationship with threats of litigation—which it is working hard to avoid. Commissioner McGowan said the County does not know what it will do on the site and any project on the OSMSP will have a harder impact on the citizens of Clarksburg because they will complain all that is what will be left is more industrial uses of the site. He further stated that he has issues with how the Commission’s own administration has worked with local jurisdiction to try to get it right.

Commissioner Ruhstaller stated that he supported the project; the County got it right; and he would like to see the same type of project in San Joaquin County.

Chair Simonsen said that the Commission has an obligation to uphold the law in the Act. He said he had difficulty in trying to “fight city hall” and did not see anything in SB5 that singled out the Primary Zone or that said it had to apply or overrule anything in the Primary Zone. Chair Simonsen said the Act does not prevent responsible development. However, the change in the general plan use of the project is out of compliance with the standards of the Act. He said that with respect to flood control, the Commission does not design the standard. He also said that the levees in Clarksburg should have met a standard and the County did not prove that they did. He said he was disappointed in not hearing the applicant speak on the merits of the project because it seemed more of a County project instead of a developer project. He also stated that if the project were smaller in the number of houses then it would not be before the Commission.

Commission Nottoli moved that the OSMSP was consistent with Land Use Policy 4; Commissioner Piepho seconded. The motion failed 8:10 by roll call vote. (Ayes: Armor, Cabaldon, McGowan, Nottoli, Piepho, Reagan, Ruhstaller, Wilson. Noes: Simonsen, Dawson, Ferguson, Johnson, Johnston, Kelly, Newton, Shaffer, Tilghman, van Loben Sels)

Commissioner Johnston moved that the OSMSP is not consistent with Land Use Policy 4 and that the matter be remanded to the County of Yolo; Commissioner Johnson seconded. The motion was approved 10:8 by roll call vote. (Ayes: Dawson, Ferguson, Johnson, Johnston, Kelly, Newton, Shaffer, Simonsen, Tilghman, van Loben Sels. Noes: Armor, Cabaldon, McGowan, Nottoli, Piepho, Reagan, Ruhstaller, Wilson).

18. Commissioner and Staff Comments/Announcements

Commissioner Johnson reported that this would be his last meeting as he was retiring from State service.

Commissioner Feguson asked that staff invite a member of the South Delta to the July 24, 2008 meeting to give a briefing on water hydraulics.

Commissioner Shaffer reported that the State Board of Food and Agriculture is moving forward with an Agriculture Vision for the State and would be holding hearings on May 28 – 29, 2008 and listening sessions in July. He encouraged everyone to view the CDFA website and welcomed comments. Commissioner Shaffer announced that this would be his last meeting also, as he too was retiring from State service.

Commissioner Nottoli thanked Commissioners Johnson and Shaffer for their service on the Commission.

Commissioner Armor announced that he would reschedule the presentation by Warden Lynette Shimek on the Invasive Species K9 Program.

Chair Simonsen said that the Commission should schedule some time at the July 24, 2008 meeting to discuss the recommendations from the Blue Ribbon Task Force.

19. CLOSED SESSION

There was no closed session.

20. ADJOURN

The meeting was adjourned at 10:20 p.m.