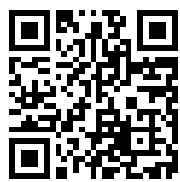

ROLES OF THE CORPS OF ENGINEERS AND U.S. FISH AND WILDLIFE SERVICE IN FOSTER CITY, CALIF.

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

SEPTEMBER 12 AND 13, 1975

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APPENDIX

ROLES OF THE CORPS OF ENGINEERS AND U.S. FISH AND WILDLIFE SERVICE IN FOSTER CITY, CALIF.

FRIDAY, SEPTEMBER 12, 1975

HOUSE OF REPRESENTATIVES,
CONSERVATION, ENERGY,
AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Foster City, Calif.

The subcommittee met, pursuant to call, at 1 p.m., in the Foster City Recreation Center, Foster City, Calif., Hon. William S. Moorhead (chairman of the subcommittee) presiding.

Present: Representatives William S. Moorhead, Leo J. Ryan, John L. Burton, and Paul N. McCloskey, Jr.

Also present: Norman G. Cornish, staff director; David A. Schuenke, counsel; and Stephen M. Daniels, minority professional staff, Committee on Government Operations.

Mr. MOORHEAD. The Conservation, Energy, and Natural Resources Subcommittee will please come to order.

The subcommittee is meeting here today in Foster City in public hearing to examine the effectiveness with which agencies of the Federal Government carry on their missions.

In particular, we wish to consider their coordination with each other and their harmony with State and local governments to achieve the purposes of law and the benefit of the community and the people.

I might say personally it is delightful for me to be back in the San Francisco Bay area. Congressman Ryan and I had the opportunity to participate in a helicopter ride all over the southern bay area and it again increased my enthusiasm and affection for the beauty of this area.

The sight of the water framed by the hills, the constant changing of patterns of the sun on the moving sails, and the distant hills captures the admiration of any visitor, particularly one of the devotees of sailing like Congressman Ryan.

But my enthusiasm is slight compared to the enthusiasm of the residents and natives. I have learned this from three of my colleagues on the subcommittee, Congressman Leo Ryan, Congressman John Burton, and Congressman Pete McCloskey—all of them from the bay area.

I am glad to see that we have with us Mr. Ryan and Mr. McCloskey. We hope that Mr. Burton will be able to join us.

The interest and continuing concern of the subcommittee is long-standing. Previously the subcommittee conducted extensive hearings on the protection of the San Francisco Bay Estuary, culminating in a report containing numerous recommendations.

Our purpose here today is a logical followup on those hearings and report. However, these hearings are not intended to examine all the broad environmental conservation and development issues facing the area.

They are intended to examine the effectiveness of Federal agencies' implementation of a number of interrelated laws and requirements.

In recent years, the Congress and State and local legislatures have enacted laws, regulations and requirements intended to protect the environment, protect fish and wildlife, protect wholesome and orderly growth, involve citizens in decisionmaking processes to consider the available alternatives and consequences of governmental decisions.

Because the problems are often complex, the legal requirements and safeguards are often complex. Ultimately these legal requirements have validity only if they make sense as they apply to the specific local problems for which they were intended.

The only way these multiple requirements can make sense when applied to those cases is to weave them into a consistent, sensible, understandable pattern. This calls for a great deal of skill, knowledge, and dedication on the part of officials at every level of government.

If achieved, the benefits are substantial and far reaching. If the harmony cannot be achieved, if Government agency coordination is not effective, if requirements are applied mechanically without regard for the overall context, or if the safeguards are neglected or misapplied, the detriments to the community and to the whole bay area can be devastating.

We have selected Foster City as a prototype or microcosm of the question. We believe the experience of Redwood City also would be helpful to us. We are not here to berate or pressure anyone. We are here to learn. We want to learn the facts. We want you to share your experience with us.

We hope that through these hearings we may find ways to achieve more efficient and more beneficial government action. We may uncover problems or obstacles that we might work together to solve.

Our purpose is the same as all of yours, to protect, preserve and enhance the bay, the magnificent San Francisco Bay with its wonderful people and communities and its unparalleled natural beauty.

I would like to take this opportunity to commend Congressman Leo Ryan whose unceasing concern with these issues has been largely instrumental in scheduling today's hearings. And I know that Congressmen John Burton and Pete McCloskey fully share that concern, as do I.

I believe now that a few words on the procedure we will follow in today's hearings are in order.

The witnesses, all of whom represent Government entities, will present their oral testimony. Questioning will be limited to members of the subcommittee. We are not able to permit questions or statements from the audience or from the press or others during the hearing.

The prepared statements of today's witnesses are available for members of the press. If anyone would like to offer a written statement for consideration for inclusion in the record of the hearing, we will be pleased to have them. Such statements may be given to me or to our staff director, Mr. Norman Cornish. Or they may be sent to us in

Washington. We will keep the record of the hearing open for 1 month for that purpose.

Since we are an investigative subcommittee, we will ask each of the witnesses to be sworn and to answer questions under oath.

Mr. Ryan, do you have any opening remarks?

Mr. RYAN. Thank you very much, Mr. Chairman.

I don't have any remarks, except to just welcome you and the subcommittee to Foster City. Pete is very familiar with the problem here. I am, because of my own experience in the past. John Burton, a little bit further away, is familiar with it too.

So, I think it is significant that on this one committee of the Congress, this one subcommittee of the Government Operations Committee, there are three Congressmen who are joining each other dealing with conservation matters. I think that should have a significant impact on the national policy.

And our experiences here I think give us a strong hand in having some influence on what the future looks like. And I would only repeat and reinforce what you have already said, Mr. Chairman.

I think that the purpose of the committee being here is to find out what we can do to resolve the ambitions and hopes of the various groups that are involved in trying to make some kind of better environment while at the same time allowing us to live and move ahead in getting the work done in developing this area with a minimal amount of damage, if any, to the environment and in fact improving the environment where we can.

I hope that the hearings today and tomorrow morning will give this subcommittee a chance to put in the record some pretty crucial problems that we face. And the problems faced by Redwood City and by Foster City right here are so typical of what the rest of the Nation faces in many ways.

And the conflict that exists between what our various government agencies ask local government to do, that has to be resolved. We have to find a way to get the work done that needs to be done. And that is the purpose of the hearing today.

I thank you very much for this chance to make some brief remarks.

Mr. MOORHEAD. Thank you.

Mr. McCloskey?

Mr. MCCLOSKEY. Mr. Chairman, I want to thank the Chairman for bringing the subcommittee here. And it is hard not to somewhat bemusedly reflect——

VOICES FROM THE AUDIENCE. I can't hear you.

Mr. MCCLOSKEY. As I say, I wanted to thank the Chairman for bringing the subcommittee here and to state that it is hard not to reflect on the fact that some 7 years ago it was this subcommittee that held the first hearings on the filling of the San Francisco Bay.

And out of the work of this full committee has come the national enactment and interpretation of the National Estuary Act, the Environmental Protection Act, and the real search for understanding of the Corps of Engineers' obligation not to grant a permit unless it was in the public interest.

For many years, as the Chairman will recall, we were in a continuing battle with the Corps of Engineers to try and make that agency perceptive of new environmental priorities.

Now the question is, in view of the Corps' rather rapid change into an environmental agency, whether or not we have a proper balance in the law as to the considerations that the Corps must undertake in balancing development and economic issues against the issue of preserving the environment.

I might also comment that out of this subcommittee's hearings 7 years ago and out of the concerns of the citizens of this area, Mr. Chairman, have come the pioneering efforts and achievements of the law, of protecting against fill, of creating first a national coastal zone protection law, and then a State coastal initiative that was enacted in this State several years ago and is now in the final stages of being consummated.

In all of these areas the bay area has set a pattern for the Nation. The concern of the citizens here matched by the beauty of the area which is unique—which the Chairman has commented upon—has made the results of these committee hearings and the results of the search for balance have considerable national impact.

And I would say to Colonel Flertzheim, who I see here in the audience, that the Colonel is familiar with the fact that the decisions of this particular district engineer have had some impact on the Corps nationally. And the Colonel's predecessors have played a major part in a change of almost incredible proportion in the attitude of the Corps of Engineers.

So, I look forward to these hearings with great anticipation to try and be brought up to date on the work that was started 7 years ago, and to discover whether or not in our zeal to protect the environment we may have gone too far, and whether or not there is not some need for restoration of balance.

Thank you.

Mr. MOORHEAD. Thank you, Mr. McCloskey.

The subcommittee would now like to hear from Mayor John Lappin, mayor of Foster City.

And, Mr. Mayor, if it seems proper, I would suggest that we also have Mr. Jack Rogoway, city planning director, here with you. You could both present your testimony before you have questions from the subcommittee.

At this time, in accordance with our practice, Mr. Mayor, Mr. Rogoway, if you would rise I would like to administer the oath.

[The witnesses were duly sworn.]

STATEMENT OF JOHN LAPPIN, MAYOR, FOSTER CITY, CALIF.; ACCOMPANIED BY JACK ROGOWAY, CITY PLANNING DIRECTOR

Mr. LAPPIN. Thank you, Congressman Moorhead.

Mr. MOORHEAD. I would like to say, mayor, that, of course, you can summarize your statement if you wish. And you, Mr. Rogoway, may do the same.

Without objection, the full statement will be made part of the record. If you prefer to read the whole statement, that is your choice.

Mr. LAPPIN. Thank you. Mine is not so lengthy that I cannot read it, thank you.

Honorable Congressman Moorhead, members of the committee, welcome to Foster City and California. As mayor, I am pleased to greet

you on behalf of the city. I would be remiss, however, if I did not also express the sentiment that we wish the reasons for your hearings being conducted had not befallen our city.

I am confident that the events we are about to chronicle—the incidences of Federal legal usurpation of local and State responsibility; the attempts at economic blackmail; the elevation of the environmental purpose to the exclusion of all other purposes; the dubious low-level administrative interpretation of statutes; the immense power wielded by obscure bureaucratic zealots; the profound impact on our city in terms of opportunities which have passed us by as well as the constant, repeated, and systematic attempts to, in the vernacular, rip us off—will impress upon each of you our urgent and pressing need for help.

Mr. Rogoway and I will be presenting Foster City's testimony for your committee, but be assured that after 720 days of analyzing, presenting, persuading, arguing, and haggling conflict, any and all of my fellow councilmen and most members of staff could make this presentation without the assistance of notes.

I repeat, the city of Foster City has been working diligently and continuously since August 27, 1973—that is, 2 years and 16 days—to secure authorization from numerous agencies, both State and Federal, to allow us to complete work which cries for completion.

It is this odyssey through a bureaucratic no man's land that we wish to report on, in order that your committee might take steps to compel Federal agencies, specifically U.S. Fish and Wildlife, to publish procedures and standardized criteria for evaluating environmental impacts, making clear and precise their statutory authority for involvement, and to curb the personalized proliferation of administrative judgments—or guidelines, if you will.

We wish to thank all of you for this opportunity to recount the events which we feel have resulted in the misappropriation of Federal energies and the wasteful use of limited local resources.

Our primary purpose, of course, is to secure as soon as possible permission to complete Foster City. Our other purpose is to seek your assistance by directing your collective attentions to remedies which, hopefully, will spare other local governments in the Nation the need to become entangled in similar morass.

It is my intention to address the features of this prolonged effort to proceed with the planned development of Foster City insofar as they relate to the political and decisionmaking processes. Others will speak to specifics of the permit process.

The overriding characteristics which pervaded our dealings with the U.S. Fish and Wildlife Service has been the adversary nature of all the dealings.

The Fish and Wildlife's initial comments in response to the Corps of Engineers' public notice dated August 27, 1973, proposed that the requested permit not be granted and recommended that the land previously filled should be restored to tidal action.

The Fish and Wildlife Service noted that they submitted comments to the original fill permit on December 7, 1960, in which they expressed no objection to issuance of the permit.

However, the same Service, in January, 1974, suggested that the initial public notice of 1960 should not have been titled "Reclamation of Brewer Island," but from their point of view should more appro-

priately have been titled "The Destruction of Brewer Island and Its Fish and Wildlife Resources."

I ask each of you to understand these comments from the perspective of an elected public official. First, we are reminded that there was no objection in 1960 to the placing of fill. [And we know that had the fill operation been completed under the original permit, none of what followed would be necessary.]

The city then incurred $72 million in debt predicated in part on the planned completion of the project. And now, 15 years later, when we seek permission to complete a project which was involuntarily halted, we are told it was a big mistake in 1960 and that we should now be denied the permit to complete our fill.

In fact, R. Kahler Martinson, in a meeting in Foster City which was reported in the press, said, "This gives us an opportunity to second-shot Foster City."

We viewed this position as unreasonable and without any appreciation of the practicalities involved.

This position and all subsequent positions of Fish and Wildlife Service have ignored the fact that Foster City exists, that it has 23,000 residents, a substantial municipal debt—for which the only collateral is the continued planned development—is situated in an intensely populated area at the job of the bay area transportation network and is fiscally, demographically, environmentally, and sociologically committed to continued development in accord with the governmentally approved master plan.

These facts fly in the face of a statement made to me by R. Kahler Martinson concerning the fill permit, and I quote, "If I had to make a decision in this matter between birds and people, I would decide in favor of birds."

The one single factor which has contributed to the inordinate delay and the resultant frustration felt by the elected officials and the citizens of Foster City is the complete lack of guidelines utilized by all agencies, particularly Fish and Wildlife, in evaluating the public interest in terms of Foster City's fill permit application.

Foster City was told by the Fish and Wildlife Service that they objected to the issuance of the corps permit. Fish and Wildlife called instead for the breaching of our 75-year-old dike system and the flooding of the same acreage which was needed to complete the filling which was authorized and commenced in 1960.

Both the U.S. Fish and Wildlife Service and the State resources agency stated that their departmental policy was for the creation of 1 acre of marshland for every acre within the fill permit area. The city stated that we felt this to be completely unreasonable.

Foster City responded that we could not mitigate in the manner prescribed and requested Fish and Wildlife to assist in locating acreage suitable for dedication to the State or Federal governments.

It was stated to Foster City that the dedication of existing marshland would not do and certain areas both within Foster City and outside her boundaries were then outlined on maps shown to the city.

Flooding the areas within the dikes would bankrupt the city and the other lands indicated were not available. Most of the land available for wildlife preservation had already been tied up. In addition to this, the agencies emphasized that the farther away the land, the less it counted as mitigation.

Foster City's position was impossible. Gradually the demands made of us were lessened, first to 180 acres, the location of which they specified, then to 68 acres of their choosing, our neighborhood 8A and a part of neighborhood 7—that 68 acres has a value of $4 million as raw land and will have a fair market value of $20 million when developed—selected not for its potential as wildlife habitat or for its value as marshland.

U.S. Fish and Wildlife has never modified their demand for this 68 acres. We now offer some 50-plus acres in a program which has merit and which can be defended on the basis of its value as wildlife habitat. And still we cannot get agreement.

The process has taken an impossible amount of time. Had we known what the procedures would entail, we would have asked the corps to forward the matter to Washington 20 years ago.

In the summer of 1975, U.S. Fish and Wildlife concurred in a settlement agreement between our neighboring city, a neighboring developer, and the State of California, calling for $30,000 as mitigation for the filling of 180 acres of which 9 acres are actual marshland and several more acres are lagoons and waterways.

Obviously, this action caused considerable consternation among Foster City officials. Why were we expected, rather ordered, to grant approximately 180 to 200 acres approximating at least $12 million in land value and up to $50 million in developed land value as mitigation for completion of a fill project which experts agree constitutes no ecosystem destruction, when at the same time our tormentors were endorsing a $30,000 settlement with our neighbor? To this day, we have not received an understandable answer to this question.

Considering the magnitude of the economic impact on present and future residents of Foster City, it is inconceivable that no acceptable method or criteria exists in either the State or Federal fish and wildlife agencies for determining what, or how much, if any, land should be required as mitigation for any given project.

This question was also asked by your colleague, Congressman Ryan, and remains unanswered to this very day.

Mitigation, what is it? What does it mean? And where does the authority exist for local fish and wildlife employees to demand it?

If I might take the same liberty that the Fish and Wildlife Service did on retitling the 1960 public notice, I would suggest that mitigation should more appropriately be labeled "economic ransom."

Literally, it means compensation for loss of fish and wildlife habitat. The form the compensation takes is land. In Foster City's case, the city does not own and must first acquire the land in order to dedicate it for any federally mandated purpose.

Keep in mind that the dedication of any amount of land in Foster City represents not merely a one-time economic loss to the city. It reflects an annual loss each and every year because of subsequent tax losses.

Our 50-plus acre offer represents a yearly tax loss of $49,600 per year. That is each and every year. This may ring of economic imperatives, but please keep in mind the realities of a planned community and its inherited attendant debt.

Do local employees of the U.S. Fish and Wildlife Service have authority to make such blackmail demands and, if so, does Congress know that apparently no explicable formulas exist?

I have touched upon one other example in this accounting of apparent inequity. I submit that the stakes are too high when mitigation is demanded not to have available in advance explicit Federal guidelines which can be made known to local governments as well as the Federal officials involved.

Another closely related facet of Foster City's dealings with Fish and Wildlife has been the lack of responsiveness to telephone calls and written memoranda—which are essential to any negotiations.

On numerous occasions, we have experienced delays of up to 2 months in receiving responses to positions expressed by the city.

On May 28, 1975, a meeting was held in Foster City at which Congressman Ryan, Assistant Secretary of the Army Victor Vesey, representatives of the Corps, the Director of State Fish and Game heard Mr. Felix Smith of U.S. Fish and Wildlife Service introduce a copy of a letter to his superior, Mr. Martinson, detailing Fish and Wildlife's latest position. In fact, Foster City had expected to receive such a response some 2 months prior to the meeting. It never arrived. Also, at a meeting on June 26, 1975, in Sacramento, Mr. Smith agreed to write Mr. Martinson in Portland and advise him of Foster City's final position on mitigation with the observation that Foster City could offer nothing more.

My original remarks, Congressman, stated that we were still awaiting the promised reply to that offer. I would be remiss if I didn't advise you that it arrived yesterday.

In addition to that, if I may depart one moment——

Mr. MOORHEAD. May I interrupt?

Mr. LAPPIN. Certainly.

Mr. MOORHEAD. Would you submit a copy of that letter so it can be made a part of the record?

Mr. LAPPIN. Yes, sir. Certainly. This document is signed by William H. Meyer who is titled Acting Regional Director. I have never met Mr. Meyer. Mr. Meyer, I am positive, has not met me.

[The letter follows:]

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Portland, Oreg., September 4, 1975.

Col. H. A. FLERTZHEIM, Jr.,
District Engineer, San Francisco District, Corps of Engineers,
100 McAllister Street,
San Francisco, Calif.

DEAR COLONEL FLERTZHEIM: This letter is to inform you that we have further reviewed the final position of Foster City relative to the establishment of the 57-acre wildlife preserve. This additional review was completed at the request of Foster City representatives, and we now present our final position relative to issuance of the requested permit. Because of misunderstanding on the part of many people and the ensuing confusion relative to the roles of the respective agencies, and the publicity this matter has received, we again believe that the position of the U.S. Fish and Wildlife Service must be clarified.

The primary responsibility of this Service in regard to the Department of the Army's Section 10 permit program is through the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). This law states in part that when any waters are to be controlled or modified for any purpose whatever by any agency under Federal permit or license, that agency shall first consult with the United States Fish and Wildlife Service, Department of the Interior, "with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development." We are therefore mandated by law to review the fish and wildlife aspects of activities proposed

under the Navigable Waters Permit Program administered by the Corps of Engineers. Upon our review, we are to make recommendations to be incorporated into the project whereby fish and wildlife resource losses can be mitigated or compensated in some way. These comments are then to be considered with all other relative aspects of the proposed project by you before a decision is made. After taking all comments into account, the Corps of Engineers then has the sole responsibility for the final determination as to whether a permit is to be issued.

Our original response to this public notice was made on January 18, 1974, with the understanding that the District would not compromise from the filling of 382 acres. With this simple understanding, we were unable to reach a middle ground and therefore objected to the entire project. We stated that in the interest of fish and wildlife, the 382 acres be reopened to tidal action. This was based on the fact that all the lands involved were below the plane of mhhw and had the potential for restoration to active tidelands, and that the proposed filling was for developments not requiring waterfront locations. Subsequent meetings with Foster City have been to no avail, and to this date meaningful mitigation or compensation programs have not been developed.

We believe the protection of existing tidelands and the restoration of historic tidelands is necessary to preserve and enhance the ecological stability of San Francisco Bay. The San Francisco Bay Conservation and Development Commission and California State Coastal Commission have similar views. We further believe that construction activities on present or former tidelands should be limited to those requiring a waterfront location. This land-water interface is in critically short supply and will be more so in the future. In view of this, it is the position of this Service that only water-dependent activities be allowed in these shoreline zones. Therefore, due to the restoration potential of these lands, the nonwater-dependent scope of activities under consideration, and the present wildlife value of these lands, we had no choice but to request permit denial.

At subsequent meetings with Foster City representatives, we became aware of their apparent financial problems, that the subject proposal was an ongoing activity previously permitted, and that the restoration of 382 acres to full tidal action was not a completely practicable goal. As a result, we reevaluated our position and presented our 68-acre mitigation proposal. This offer would allow Foster City to have the bulk of their lands for the needed development and still provide wildlife mitigation for the remaining 314 acres to be filled and developed. We believe that the wildlife values gained in the reestablishment of 68 acres of salt marsh would significantly reduce the wildlife losses incurred on the remaining 314 acres.

Foster City subsequently rejected this offer stating that they intended to fill all of the 382 acres and would provide no on-site mitigation. Their counter offer was the establishment of a 57-acre wildlife preserve along the north bank of Belmont Slough. We reviewed this offer and in a letter dated May 22, 1975, to Foster City, we indicated their offer was unacceptable to this Service.

Our position has long been that resources adversely impacted by a project should be replaced to the greatest degree reasonable and practicable. To us, mitigation or compensation is a process whereby resource losses incurred by a project are lessened or replaced. This offer by Foster City does nothing to mitigate or compensate the losses to be incurred by the proposed fill. Of the 57 acres offered, approximately 41 are now marshland and bottomland of Belmont Slough subject to daily tidal action and under the jurisdiction of both your agency and BCDC. In addition, 33 acres are State-owned but under lease to Foster City. We are confident that under existing controls, these lands are safe from development and will continue to function as natural salt marshes. The remaining 16 acres of the 57 is upland, but Foster City officials have indicated this can be graded to marsh level. In essence, we believe that the 57-acre offer is a minimal offer in terms of loss replacement or loss compensation. The resource values are already there and adequately protected from degradation. To purchase these lands and call them a wildlife preserve does little to reduce the losses to be incurred by the proposed fill.

Foster City has repeatedly failed to understand the concept of mitigation and/or compensation. Both of these measures are intended to reduce and/or replace resource values lost as the result of a project. In practice, mitigation means the altering of a proposed project to reduce losses, and compensation is related to the improvement of off-site lands to raise their value a sufficient amount to replace lost resources. This offer by Foster City does neither of the above. Their project has not been modified, nor will the resource values of the 57 acres be in-

creased. As such, their offer cannot be termed mitigation or compensation, but rather it should be classified as a minimal offering that provides little resource value replacement for the project-incurred losses.

We have never stated that the proposed 382-acre fill site has high wildlife value. However, it does have value as documented in the EIS prepared by your agency, and with the number of acres involved, we believe the total wildlife losses would be substantial. It is on this basis we maintain that realistic mitigation must be incorporated into this project before the requested permit is issued. Realistic mitigation in our view continues to be a modification of the proposed project so that a portion of the lands to be filled are restored to tidal action to the full biological productivity of which they are capable. If this is truly unworkable, then a second alternative would be a compensatory measure in the form of raising the value of off-site lands to compensate for the values being lost.

We have repeatedly been requested by Foster City to accept their offer because it is the best they can do. While this may or may not be true, we do not believe that this factor should enter into our decision. Our responsibility is to review the impacts on fish and wildlife of the proposed project and to make recommendations to your agency as to methods for conserving and preventing the loss of such resources. The obligation of the Corps of Engineers is then to take our recommendations along with those of all the other commenting agencies and interests relating to the project and then to determine what course of action would be in the best overall public interest.

If we withdrew our objection on the basis of considerations other than fish and wildlife values, we believe that we would be overstepping our legislative mandate and usurping the final decision-making responsibilities of your agency. We do realize that there are considerations to a project other than fish and wildlife values; however, we continue to maintain that it is not the prerogative of the Fish and Wildlife Service to make decisions based on these considerations. We are submitting a recommendation to you to be used in the decision-making process.

In conclusion, we maintain our position of objection to the issuance of a permit for the requested activity. Our objection, as stated previously, is based on the value of the lands involved to fish and wildlife, and until a meaningful mitigation or compensation program is established by the project sponsor, we believe we have no choice but to maintain our present position.

Sincerely yours,

WILLIAM H. MEYER,
Acting Regional Director.

Mr. LAPPIN. I have no reason to believe that Mr. Meyer has ever been to Foster City. Mr. Meyer is the third individual in succession to title himself Acting Regional Director.

The Regional Director, insofar as we know, is R. Kahler Martinson. Following him, another gentleman. Then Mr. Reese. And then Mr. Meyer. None of these latter three gentlemen have been in contact directly with any elected official in Foster City.

It is noteworthy that in the document which we got—which came to the Army Corps of Engineers—it was addressed to an ex-mayor of Foster City. That indicates how current the U.S. Fish and Wildlife Service is.

They say, in part, that "Foster City has repeatedly failed to understand the concept of mitigation and/or compensation." I submit that we understand what mitigation is, and we understand what it means when the U.S. Fish and Wildlife Service describes it to us.

I have already painted our interpretation of mitigation for you and I have called it economic blackmail and a variety of other things.

They state further that "We have never stated that the proposed 382-acre fill site has high wildlife value." And I submit—and I will submit to you additional printed material over the signature of responsible people in that department which tells us just how valuable that land really is. You saw it today. Most of it is a dust bowl.

They also say that "We have repeatedly been requested by Foster City to accept their offer because it is the best they can do."

While that may or may not be true, we do not believe that this factor should enter into our decision. How can you possibly enter into negotiations with an agency of the Federal Government, or an agency of the State government, bare your soul, address yourself to the financial realities of your position, and have them shrug that off and say it is none of their concern?

As I said, I will submit a copy of this. But I think the concluding sentence is valuable for your consideration.

Mr. RYAN. This is of the letter?

Mr. LAPPIN. Of the letter.

Mr. Meyer says:

> In conclusion, we maintain our position of objection to the issuance of a permit for the requested activity.
>
> Our objection, as stated previously, is based on the value of the lands involved to fish and wildlife. And until a meaningful mitigation or compensation program is established by the project sponsor, we believe we have no choice but to maintain our present position.

And it is signed by Mr. Meyer, Acting Regional Director.

Returning to my remarks, these delays and the cumulative effect they have had have been extremely expensive in terms of staff costs and the ultimate completion of Foster City.

We have had to assign key staff personnel to the fill permit application on an almost full-time basis. This has resulted in our inability to fulfill other important tasks which demand attention.

Throughout our negotiations with both the State of California Department of Fish and Game and the U.S. Fish and Wildlife Service, it became obvious that neither the State Resources Secretary or Federal officials felt any need to expedite the processing of the permit.

The U.S. Fish and Wildlife Service made the contention that the reported sighting of California Clapper Rails, a bird species protected under the Endangered Species Act, would make it illegal for the corps to issue the permit.

State Secretary of Resources Claire Dedrick impounded $500,000 that had been approved by the State Department of Navigation and Ocean Development for a marina for the stated purpose of allowing for additional study and review.

On February 23, 1975, Mr. E. C. Fullerton, then acting director of the California Department of Fish and Game, advised the Department of Navigation and Ocean Development of a number of concerns regarding the marina.

In 1973, the State Department of Fish and Game reviewed the marina EIR and had no comment.

On March 13, 1975, we met with Fish and Game officials in Sacramento. On March 25, 1975, the city responded to the State Department of Fish and Game in an 11-page letter that outlined mitigation measures that would protect the California Clapper Rails and improve the entire project.

We had received verbal assurances on several occasions by Mr. Fullerton and his staff that accommodation to these measures would cause the State to withdraw its opposition to the Corps of Engineers permit needed for the project and allow the impounded loan to be released and used for its designated purpose.

On April 29, 1975, in a letter from Mr. Fullerton to the acting city manager, the State accepted the previously agreed to measures, but in

a cavalier fashion explicitly raised the specter of extracting further costly and unnecessary mitigation from the taxpayers of Foster City.

This letter left the matter of additional mitigation wide open and subject to the U.S. Fish and Wildlife Service's eventual determination as to infringement, if any, on the habitat.

During this entire period, unbeknownst to Foster City officials, the State on March 28, 1975, transferred enforcement responsibility for the Endangered Species Act to the U.S. Fish and Wildlife Service.

It occurs to me that there was a great deal of unhealthy collusion between these two single-purpose agencies. The delaying tactics, quite simply, got the State off the hook for denying the marina project, but left the ultimate denial with the recalcitrant U.S. Fish and Wildlife Service.

After over 2 years of diligence and perseverance which has yielded only frustration and hopelessness, the Foster City City Council asked the Council of Mayors of San Mateo County to pass a resolution of support.

On May 30, 1975, the Council of Mayors, representing 19 cities and more than half a million citizens on this peninsula, passed such a resolution which read in part:

> Whereas, the City (Foster City) is encountering unreasonable and unwarranted opposition from the California Secretary of Resources and the U.S. Fish and Wildlife Agency; and
>
> Whereas, these agencies are charged with assisting local governments like Foster City in realizing their fullest potential and in furthering national goals such as employment, housing, and the preservation of the environment, now, therefore be it
>
> *Resolved*, That the Council of Mayors of San Mateo County, a consortium of local public officials, does hereby acknowledge the plight of Foster City and stands with her in charging both the Federal and State Governments to abandon their recently adopted policies of intervention in local affairs, their unrealistic, avaricious, excessive and seemingly insatiable demands for more and more mitigation, made without regard to local communities' needs, goals, or their very ability to ransom themselves free of bureaucratic entanglement.

In summary, this entire episode is a manifestation of a longstanding and unhealthy trend toward concentration of responsibility for the interpretation of law and the fabrication of administrative regulations which have profound impact upon local government dealings with the State and Federal Government.

The specific question is, to whom are these bureaucrats to be responsible? They certainly are not responsive or responsible to the electorate, yet they are charged with deciding what is in the public interest.

This fourth branch of government has conducted their dealings with Foster City in an all too frequently highhanded, dictatorial, capricious, procrastinating, and ill-informed manner.

In Foster City's case during the past 2½ years, the overwhelming public opinion has been supportive of continuing development and the issuance of the Corps fill permit.

However, to this day the urgent compelling reasons for completion of this city have never penetrated the minds of State and Federal bureaucrats.

A case in point has been the conspicuous misinterpretation of the Office of Management and Budget Circular A–95 which specifies that comments are to be solicited on the Corps public notice from affected agencies.

Responsible agencies have 30 days in which to comment. There is no obligation for the permit-issuing agency to achieve full concurrence of all commenting agencies. It is only necessary that comments be noted and an effort made to resolve objectionable aspects of a project.

Foster City has worked diligently and cooperatively with these agencies toward completion of the city and we have been continuously rebuked, redirected, and delayed in our efforts to have the permit issued.

Congress should either amend A–95 or specify the manner in which it could be effectively and expeditiously operated. Finally, we seek your assistance in corrective measures that will make it unnecessary for other cities in the Nation to undergo this real-life version of Catch-22.

The citizens of Foster City, I know, feel as did Red Cloud, chief of the Ogallala Sioux, when he said, "The white man made me many promises, he only kept but one. He promised to take my land and he took it."

Thank you.

Mr. MOORHEAD. Thank you, Mr. Mayor, for your very articulate statement. I can understand why you have been elected mayor.

Mr. LAPPIN. Thank you.

Mr. MOORHEAD. The subcommittee now would like to hear from Mr. Jack R. Rogoway, planning director of the city of Foster City, Calif.

Mr. ROGOWAY. Honorable Congressman Moorhead, if I might I would like to go through my complete testimony since it does tell a story of Foster City and indicates those issues that can specifically come about within the process.

Mr. MOORHEAD. You, of course, may, Mr. Rogoway. But you do have an 18-page statement. If there is any way that you can delete as you go along——

Mr. ROGOWAY. Yes, sir, the thing that I would ask, if the Congressman feels that I am covering ground that need not be covered, I would be happy then to stop at that point and go to the conclusion.

Mr. RYAN. I think that ought to be left up to you, Mr. Rogoway. We have the pressure of time here. We have got this afternoon and tomorrow morning. We are interested and anxious to get to all the witnesses that have been called and give them a chance to be heard.

And I think some of the points that you may want to cover have been covered by the mayor.

Mr. ROGOWAY. Yes, sir.

Mr. RYAN. All right.

Mr. ROGOWAY. Honorable Congressman Moorhead and members of the Committee on Government Operations, when T. Jack Foster stood overlooking Brewers Island almost 15 years ago, no one really knows whether the plan paramount in his mind was the vision of a perfect community or a gigantic scheme to make a buck. But the question is now academic.

The people—approximately 25,000 of them—who have become Foster City by living, working, and investing in her are the real concern. They and the injustice of a situation which is not necessarily typical, ordinary or normal but is, in many ways, representative of the problems which face small government and developer alike.

It happens that the city of Foster City/Estero municipal improvement district is both land developer and government.

It must be said, however, that T. Jack Foster whatever his motives were did bring together well qualified experts who created in Foster City a highly desirable, proud, and active community, a "test tube" new town worthy of care and obervation to determine which of its concepts and policies should be included into other new towns which must be built to solve some part of the Nation's problems.

One of the programs which we would recommend not be included in new-town planning is Foster City's projected $85 million front-loaded municipal debt. Over half of this debt, a debt to be repaid by the citizens of Foster City, present and future, was incurred before a single person took possession of his home.

Today with a population of 23,000, the municipal debt represents over $10,000 for the average family—before even the mortgage on their home. Ultimately, at a population of 35,000 the debt will be reduced to approximately $7,000 per family. Not until the year 2006 will the citizens of Foster City have paid their present debt for the very ground they sit upon.

The issue is not, however, undoing what has already been done. We feel that Foster City—even with its present problems—is a good and a viable community, if only it was allowed to develop as originally conceived and planned.

Sanction was given to it by the State with the unanimous passing of the Estero Act in 1960 and by San Mateo County with the adoption of Foster's general plan in 1961.

Also, in 1961 the Corps of Engineers granted permit 61–31 to "Dredge and fill in the southerly arm of San Francisco Bay adjoining the city of San Mateo, Calif., for the reclamation of Brewers Island."

With all sanctions done, how then was it possible that Foster City could be tied up in the monstrous ball of redtape which we propose to lay before you?

It started with a series of unrelated events:

In 1966, a taxpayer's suit was filed which, although it was later abandoned, successfully stopped the hydraulic fill operation which was in progress.

In 1971, the Corps of Engineers notified the Estero District of the redefinition of navigable waters to include much of Foster City even though it had all been filled to varying depths under the previous permit.

Congress passed the National Environmental Policy Act of 1969 which required an environmental impact statement with the reissued permit to fill.

Several laws were passed—Wildlife Coordination Act, Endangered Species Act, et cetera—which placed virtual veto power in the hands of many single-purpose agencies over developers or entities which came within their jurisdiction.

I would like to show you the areas under consideration in order that you can relate to them as we discuss the issues.

Mr. Chairman, I might indicate that I had some 15 slides at this time to acquaint the committee with the areas in question. The committee has flown over them and I believe probably to take the necessary time to present them would not be appropriate.

Mr. MOORHEAD. The suggestion has been made that at the conclusion of the testimony we would see what time it is, and maybe we will have time to review those slides then.

Mr. ROGOWAY. All right, sir. Or if in the cross-examination you want data brought out, we have them available.

Mr. MOORHEAD. Thank you, sir.

Mr. ROGOWAY. Taken alone, the previously outlined events do not seem, nor are they, ominous. Their cumulative effect, without your help or the help of some rational thinking institution, can and will be disastrous to Foster City and other institutions which depend on the country's rational growth.

The system we attempt to serve in this fill permit process is a multiheaded Medusa which turns whole organizations to stone. Agencies, State and Federal, issue demands and extract ransoms which actually contradict one another.

No judgment is made whether the project is good or bad, but only if it can meet the uncoordinated demands of the various agencies commenting on the EIS, most of which have little knowledge or understanding of the proposed project.

Since this goes to the very heart of the problem, let me give you some examples of the towering inconsistencies which characterize the bureaucratic morass we face.

Department of Interior—Fish and Wildlife Service—has asked us to break dikes which FHA indicates would jeopardize the city's financial and physical stability if relocated.

The State of California is presently negotiating to place many thousands of acres of tidelands in private ownership—Westbay suit—while Foster City is asked to restore lands to tidal action and public ownership which have already been filled. CalTrans is likewise trying to sell "surplus property" shown as open space on our general plan.

Mitigation of a neighboring community was accepted at $30,000 for 180 acres of land—including 9 acres of marsh and several acres of lagoon—while 68 acres of land valued at $4 million was asked of Foster City for completing fill on 384 acres of partially filled land. The sole justification is "Our policies have changed."

Foster City is a completely planned community and from its beginning in 1960 protection of the bay was built into that plan. Mitigation is required today as if over 10,000 acres of bay, lagoon, and marshland were not presently under protective zoning.

And if I might, Mr. Chairman, I would reiterate that we have at the present time 10,000 acres in Foster City under protective zoning. And this was done from the basic beginning of the plan. We can do little more than we have already done.

HEW asks that new students generated be guaranteed entrance into the district schools without bond issue even though the homes that house those students will generate substantial operating revenue to support a declining system.

Adjoining jurisdictions which vie for the same commerce and industry we seek to complete our city are invited to comment on our plan without justification or scrutiny.

Every agency involved denies the responsibility of making a judgmental decision. Each maintains only its obligation to enforce its own policies and procedures.

The whole point of our position is that Foster City should not, in fact, be in the situation we are today. We blame the tremendous amount of unnecessary paper generated and lost time of our limited technical resources on a system which should have released us long ago with our obligation deemed to have been satisfied. And, in our particular case, this is the rationale.

(*a*) Reasons why a fill permit and environmental impact statement should not be required by the U.S. Army Corps of Engineers:

One. The land mass upon which Foster City is located predates, by far, any requirements for fill permits. Official San Mateo County maps dating back to 1863 show the land mass upon which Foster City is located existing in its entirety above mean high tide.

Two. The dike system surrounding Foster City has been in existence for at least 50 years. The land was removed from tidal action and has not been in its natural state since that time.

Three. The Corps of Engineers granted a fill permit for the entire project in 1961—fill permit 61–31. The impact of the entire project was evaluated at that time and the public interest was deemed to be properly served. The project was to be completed in accordance with the requirements in effect at that time.

Four. The hydraulic fill was stopped involuntarily on the part of the Estero Municipal Improvement District. The legal action which stopped the fill program had no relation to the jurisdiction of the Corps or the propriety of the fill project itself. At the time the permit lapsed, the fill process was deemed to be completed and the Corps' interest terminated.

Five. Foster City was approved and is being completed as a master-planned community. The balance and compatibility of the entire development were considered at a regional level.

Evaluation of the improvement of all undeveloped area has been made by several subsequent environmental impact reports under the California Environmental Quality Act of 1970.

The Estero Act of May 1960, passed unanimously by the California State Legislature, established the improvement district which became Foster City with an $85 million debt service predicated on completion of the entire planned community.

That plan has not substantially changed from the beginning. Amending legislation to the Estero Act has repeatedly confirmed the intent and support of the State legislature for the development of Foster City.

(*b*) Reasons why mitigation should not be required under the Fish and Wildlife Coordination Act:

One: All lands included within both permit areas were, at least partially, filled under the original permit. No tidelands, marshlands, or wetlands—other than the temporary standing of rainwater—existed within the diked area. No streams or other bodies of water are involved.

Two: No significant animal or plant life is being destroyed or displaced. No traceable endangered species exists in Foster City. All vegetation and animal life is short term and/or transitional. Many additional resting and feeding areas are provided through the extensive Foster City open space program and lagoon system.

Three: The mitigation program sought by the Fish and Wildlife Agencies was included into the Foster City general plan when that plan was adopted. Extensive open space is incorporated in the plan as is the added 230-acre lagoon system and the Belmont Slough Wildlife Protection and Interpretive Area which alone covers far more area than the 68 acres mitigation requested.

Four: The development of Foster City is in accordance with a balanced physical-economic program. As much nontax producing area has been built into the project as possible in order that desirable amenities are a part of the total project.

Extensive wildlife areas are proposed and funded in close proximity to Foster City through the Department of Interior's 23,000-acre South Bay Wildlife Area. Other wildlife areas such as the Suisun Bay preserve make infinitely more sense than detached unplanned mitigation.

Five: Foster City, like its bigger brothers the Federal and State Government, is not a developer or despoiler of property. The city has under its own planning program required the developer to mitigate his development.

Where the Federal Government has under NEPA and the State Government has under CEQA required consideration of and mitigation to the loss of recourses, the city of Foster City has required under its master plan mitigation to the development proposed within its boundary.

Open space and parkland which was originally established at 50 acres in the general plan has been expanded to in excess of 150 acres. The lagoon system and wildlife protection areas indicated on the general plan have either been dedicated or have been designated to come into public ownership within the general plan as a cost of the private development of the project.

The city district has no funds of its own with which to purchase land for dedication or restoration to marshland, nor does it own land in its own account which could be devoted to this purpose.

The cost of acquisition of land would have to be raised through the floating of municipal bonds which would increase a tax load on properties within Foster City which is, at present, among the highest in the bay area.

Six: The impact of the suggested mitigation upon the residents of Foster City would be out of all proportions to any benefits which might be received by State and Federal agencies or the public as a whole.

In addition to the possibility that the increased tax could cause extensive foreclosure of properties in Foster City and substantially force property values down, with the resultant loss, the viability of Foster City as a successful living environment and "new town" community would be seriously threatened.

(*c*) Arguments against the assumption of jurisdiction by the U.S. Army Corps of Engineers:

One: The Corps of Engineers has assumed jurisdiction and required the second fill permit application under Public Notice No. 71-22, dated June 11, 1971. This occurred 3½ years after the Corps of Engineers had determined that the project was complete.

If this retroactive type of interpretation is pursued, it would appear that half of the buildings in the city of San Francisco and on the flatlands of the peninsula would be subject to the Corps of Engineers permits.

Two: The Fish and Wildlife Coordination Act gives the Fish and Wildlife Service authority to insure that fish and wildlife resources are given adequate consideration "whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened or the stream or other body of water otherwise controlled or modified for any purpose whatever."

To extend the meaning of this phrase to include Foster City seems somewhat ludicrous in view of her dry land with only wet season ponding due to insufficient fill to drain.

Three: The jurisdiction assumed by the corps under Public Notice No. 71–22 does not appear to be applied uniformly, that is within some areas, such as the Sacramento Delta area, the revised definition of navigable waterways is not applied.

Foster City would submit that court decisions after the fact should not apply on a project which had been deemed by the corps to have been completed particularly where it is not applied uniformly throughout the country. If neither reasonable or equitable, the process should not be required in this case.

Four: The city of Foster City and the Estero Municipal Improvement District ceased the fill program involuntarily. Work was held up pending the outcome of litigation which questioned the financing of the fill program.

The increased cost of fill from 50 cents a cubic yard to a fee in excess of $3 per cubic yard would appear to be penalty enough for cessation of the fill project where 4 million cubic yards of fill is involved, particularly in view of the fact that it was Foster City's intent to fill the entire island in one operation as was indicated in the original fill permit.

Five: All areas, including those areas which are the subject of the second permit, were filled at least partially under the original fill permit application. In the discussion with the corps, interpretation has been placed on what constitutes filling.

If the strict interpretation taken against Foster City was applied uniformly within the bay area, it would appear that many properties within previously filled areas would fall under corps permit.

If all lands lying under the extended plain of the mean higher high tide line required fill permits, it would appear that the corps would assume jurisdiction over substantially more projects than it presently does. Laws and interpretation of laws must be applied uniformly. Failure to do this in terms of jurisdiction and comparability of required mitigation is an injustice and must be seriously challenged.

(*d*) Arguments relative to the public interest as reflected in the effects and impacts upon the city of Foster City and its residents:

One: The value of the 384 acres of land within the fill permit area is set by the Foster City tax assessor at $13,325,000. The property tax from lands within this permit area is $1,333,063 from taxes levied in fiscal year 1974–75.

Denial of the fill permit would make this land unbuildable with a probable decrease in property tax revenue of nearly 25 percent re-

sulting in the necessity of a bond load redistribution which would result in havoc in Foster City, an area already overburdened with property taxes.

Two: The land which is contained within the fill permit area contains several necessary parts of the balanced community which is Foster City. Primary among the facilities contained within this area is a large regional shopping center, approximately 75 percent of the city's industrial land, schools and other necessary facilities.

Failure to complete the program in accordance with the plan would deprive the city of much of the projected revenue which is necessary to allow it to operate and provide necessary services to its inhabitants.

Approximately 75 percent of the residential portion of the city has already been completed. Those services which are contained within much of the fill area are support services which are necessary to the economic welfare of the city.

Of particular import would be the sales tax and subventions lost by failure to complete the planned program. Local fees such as building permits, water fees, sewage fees would likewise fall below the projected amounts and even though the basic design of these facilities had been for the total planned population and development the cost of the facilities could not be applied to development they were intended to support.

Three: Physical damage would also occur in terms of the lack of completion of the general plan. All systems within the plan including the street system, water, sewerage, and the neighborhood development plan were based on a total community.

The cutting out of portions of the plan would result in street systems which do not interconnect, water systems which do not loop properly, sewage systems which lack elements of their completeness or are substantially overdesigned. It appears to make little sense to take a system which is designed and has been approved to perform a specific function and arbitrarily lop off pieces.

For instance, 75 percent of the commercial area including the city's town center could not be built without the fill permit. Eighty-five percent of the planned industrial area could not be built without the granting of the fill permit.

These deletions would have a serious effect on the projected revenue of the city, the provision of the planned job market in close proximity to the homes in Foster City and would effectively destroy the advantages of a planned "new town" such as Foster City.

Four: Mitigation measures proposed by some agencies would involve a breach of the dike system which has surrounded Foster City for over 50 years and has achieved an extremely stable situation. The disadvantage brought about by breaching the system could be horrendous.

FHA has indicated that they would have to completely reexamine and reevaluate the dike system in order that they could insure loans in the city. There is a distinct possibility that the flood insurance rating which has been achieved by Foster City by virtue of its protective system would be substantially diminished.

Consultation with the city engineers indicates that extremely expensive tests would be necessary to certify the stability of the new dike system. This experience is not speculation since the Redwood Shores area has gone through a similar system of certification of dike stability.

The ability of a special purpose agency to negate 10 years of planning and work and to invalidate public improvements which have to date cost in excess of $80 million seems to be beyond the realm of reasonableness.

Five: The bonds which have been floated by the Estero Municipal Improvement District—Foster City—are against the entire land area contained within the district. Sums of money have already been spent to partially fill those areas contained within the fill permit application and the value of the land within the application is pledged against the retirement of the municipal bonds.

If the district had the ability to give away the land—which it does not—the destruction of the security for the bonds already floated would place the district in a serious legal position in terms of its bondholders. The 68 acres suggested as the last proposal for mitigation by the Fish and Wildlife Service would delete in excess of $4 million from the tax base. Fully developed, the 68 acres would represent in excess of $20 million added to the tax base.

(*e*) Suggested alternatives to mitigation which would be compatible with the Foster City general plan:

One: Within the open space and conservation element of the Foster City general plan a wildlife preservation area is alluded to in Belmont Slough. It is the city's program to formalize and preserve this very important bird nesting and feeding area and dedicate it to the State.

Presently, however, most of the land is under private ownership and no provisions are being made to protect the slough. Although the acquisition of this property by the city or other governmental agencies would remove over $40,000 per year from the Foster City tax roll, the city has been attempting to contact and negotiate with the owners of the property in order that it all can be acquired.

This action is proposed as an alternative to acquiring the 68 acres of land which has no present wildlife value and could only be restored with great effort and expense. Foster City is willing to consider any program which would place this land in public ownership and preserve it for public use. We live here too. We want the best program for all and we think we have it.

Two: The creation of additional basins for tidal action at the head of Belmont Slough has been indicated as possible mitigation and to improve the flushing action of the slough which is presently silting up due to natural causes.

Proposals have been made by both Foster City and San Mateo which will create a flow of water in Belmont Slough far in excess of that which could be achieved by the shallow basins which have been suggested and which would themselves have a natural tendency to fill with silt.

The city of Foster City proposes a 20-acre basin which would be in excess of 8 feet deep. The city of San Mateo proposes to cut a channel to Belmont Slough to increase the capacity to take water into Marina Lagoon. These two proposals would create a system which would take many times the amount of water which could be received by the proposed marshland restoration.

In addition to this, both the Foster City basin and the San Mateo channel would be maintained as a part of the project eliminating the necessity for special maintenance dredging. Foster City is also

in the process of rebuilding the interior lagoon system outfall. This modification would necessitate the passage of more water through the intake which is located also on Belmont Slough. No consideration has even been given to these programs.

Three: When compared to mitigation required for other projects in the Bay Area, the degree of mitigation for Foster City's program appears to be out of all proportion. Agreements on the Mariner's Island proposed development—about one-half the size of Foster City—indicates that approximately $30,000 has been arranged to be given to the State Resources Agency for the purchase of some remote lands in South Bay.

The comparability of this requirement to that which is placed against Foster City, particularly in view of the fact that Mariner's Island involved filling lagoon systems and actually removing approximately eight or nine acres of waterways from public use, makes the justification for the suggested mitigation in our case out of all proportion.

Four: It would seem appropriate that funds devoted to the restoration of wildlife areas and game needs should be more properly allocated through existing State or Federal programs which are based on the need for these areas and the best method of providing them, rather than penalizing development programs for things that have happened in the past.

The proposed bay fill programs are either justified or not justified in the public interest. If they are not justified, it would appear that mitigation for the 313 square miles of marshland which have been lost in San Francisco Bay certainly would not make them more acceptable.

Proper approach to the restoration of marshland is a unified one such as the State is involved in within San Francisco Bay and also such as the Federal Government is beginning with the South Bay Wildlife Refuge area presently under study and acquisition by the Department of the Interior. Other approaches could not begin to satisfy the need or restore the lost marshland.

(*f*) Other factors which should be taken into consideration in the granting of a fill permit for the completion of Foster City:

One: The halting of the fill program and the subsequent construction and completion of Foster City is in conflict with established national standards. Foster City is one of the few communities in the San Mateo area which is actively providing housing to satisfy the public need.

Building reflects as jobs, investment of money, provision of residence close to work as well as satisfying the national goals relative to making more houses available to the public for purchase.

Since Foster City is a planned community providing shopping, jobs, and other requirements in close proximity to residents, completion of the project as a balanced community also serves the needs of conservation of energy particularly as it would relate to the gasoline and transit needs.

The unemployment problem plaguing the country particularly would be served by the continuation of the project and the provision of jobs within the construction trades and with the commercial and

industrial businesses which would follow them as a planned part of the project.

Two: The wildlife needs of the bay area are being met by planned and funded Federal, State, and local programs. These programs are supported by tax contributions of the citizens of Foster City as well as others. And in this respect mitigation for the residential use of the property is being made through the contributions of our citizens present and future, as well as through the open space and conservation plan of the city of Foster City.

The Suisun Bay Wildlife Preserve and the South Bay Wildlife Refuge Area proposed by the Department of Interior are excellent examples of the programs presently under way.

Golden Gate National Recreation Area and the county park systems also reflect in large measure those programs which are underway in the provision of wildlife protective and natural areas. The Foster City mitigation program, even if the entire area were restored to marshland, would be negligible in terms of the total effort which is presently being put forth through established agencies.

Three: The apparent contradiction and conflict of goals of the various agencies involved in the fill permit process has become embarrassingly apparent to the people of Foster City who have become the brunt of this sinister "game."

The lack of resolution and coordination in the goals and programs of the various agencies which have been invited to comment and report upon the fill permit has placed a serious burden on a very small unit of government without the possibility of it being able to resolve the conflicts resulting from the cross-purposes of the various agencies.

The necessity that the city of Foster City would have to go clear to Washington to resolve local problems which have evolved from the EIS and the fill permit application is beyond reason in terms of the program proposed by Foster City which includes the filling of 384 acres of land which has previously been partly filled and the hodgepodge of policies which have enabled various agencies to intercede without substantial knowledge or study of the total program and consequences involved.

In this presentation, we have attempted to outline but a few of the difficulties Foster City has encountered with the fill permit process. Two years in time, hundreds of pounds of paper, and enormous effort have been expended in our attempts to satisfy the existing process.

We would suggest that the procedure, as it has evolved, must be modified to eliminate bureaucratic entanglement. We feel the following areas should be examined in the interest of better, more responsive, and more effective government:

One: The evaluation process should fit the project. Mutually understood parameters should be set at the beginning of the process which reflect the scope and impact of the work to be done.

Two: All participating agencies must be required to respect an established procedure and timetable. The amount of time and effort consumed by the process must be reasonable.

Three: The thrust of the evaluation must have a broader base, considering other factors—such as, social and economic effects—as well as environmental impacts.

Four: Judgment must be capable of being applied during the proc-

ess. Single purpose agencies should not be able to enforce disproportionate demands and disclaim responsibility for their effects.

Five: Acceptable data base materials should be established, wherever possible, to be included by reference rather than republished with every EIS.

Gentlemen, we do not disagree with the need for an environmental assessment process or to its intent.

We seriously object, however, to what the process has become and its effect upon Foster City.

Thank you, Mr. Chairman.

Mr. MOORHEAD. Thank you both, very much.

If my colleagues will permit me, I will put on a new hat and say that I serve the Congress on the Housing and Community Development Subcommittee which endorsed and enacted legislation for the new town concept.

And it seems to me that in your planning in Foster City you are carrying out exactly what we had intended. You have a self-contained community with opportunities for employment close to places of residence, with a saving of energy as you mentioned, Mr. Rogoway.

We also have jurisdiction over the flood-insurance program of the FHA. And these are again some concerns which are different from the jurisdiction of this subcommittee.

It does seem to me that when we are talking about new towns and planned ones, particularly when we are talking about those that are just the gleam in the eye of a planner looking forward to the future, we have to recognize changed attitudes and environmental restrictions have to be imposed.

But it does seem to me that you in Foster City have a rather unique situation. If dikes are the beginning of the destruction of the environment—let's assume that for the moment—that began either 50 years or 75 years ago, as I believe the mayor testified. This process started when there were no permits involved.

And then in 1961, you did get a permit. And as I understand it, the permit was based on the plan for the whole community. Am I correct, Mr. Mayor?

Mr. LAPPIN. That's correct.

Mr. MOORHEAD. And that, having relied on the 1961 decision, you now find the ground rules under which you had acted being changed. It seems to me that makes Foster City different from a new town which is starting from scratch.

And I don't know just how we can write in a statute of limitations, or what we call an equity laches where someone permits you to think there are certain rules and then changes them.

I do want to ask you, Mr. Mayor—I am sure that you have had your counsel look at the law in this matter—on page 7 of your statement you say that "the Endangered Species Act would make it illegal for the Corps to issue the permit."

Without having studied it carefully, that is not my understanding of the law. Is this what——

Mr. LAPPIN. It is not my understanding either. I thought it was a rather hollow threat, but I think it was made purely and simply for the purpose of reinforcing their argument without any basis. Another hurdle for us to overcome.

Mr. MOORHEAD. Mr. Mayor, do you look to one Federal or State agency or official as the central coordinating agency?

Mr. LAPPIN. I think the dominating agency is the U.S. Fish and Wildlife Service. They are, at least, the most intransigent, the toughest to get to and the hardest to reason with. And they are impossible to bargain with.

Mr. MOORHEAD. And do I understand correctly—and we are going to have witnesses from the State tomorrow—that your understanding, in effect, is that the State resources people have washed their hands of the situation and said, "We in the State will follow the Fish and Wildlife Service"? Is that——

Mr. LAPPIN. Well, when first we met in an atmosphere of let's try and resolve something, that was some 1 year ago at the office of the Army Corps of Engineers. And we were given to understand then by Felix Smith that it was almost a foregone conclusion that if we reached an understanding with the State, notwithstanding what it was, chances are the U.S. Fish and Wildlife Service would agree with it.

We have found that that is not true. To wit, their latest communication.

Mr. MOORHEAD. When you—and I realize it was before your incumbency—but when this plan for Foster City was being developed, were the environmental effects taken into consideration?

Mr. LAPPIN. Yes; they were. And I think Mr. Rogoway, in skipping over parts of his testimony, pointed out the fact that there is considerable acreage set aside in a protected manner.

We have increased the number of parks and the area of open space. And the citizens of Foster City in doing that have increased their tax burden because that property of course can no longer be built upon.

Those are accommodations that the citizens, while they're not altruistic, have been willing to make to improve the value of Foster City and to improve the area in the city in which they live.

Mr. MOORHEAD. Back in 1961 were you aware of the fact that this city was obliged to show that the proposed project would be in the public interest?

Mr. LAPPIN. Oh, yes. As a matter of fact, when the Estero Municipal Improvement Act was enacted by the State legislature, as Congressman Ryan knows, it had full and unanimous support of both houses of the legislature and the signature of the Governor.

All this was laid out in great detail. People who moved to Foster City, the first residents in 1964, knew precisely what to anticipate. Others that have moved in since then thought they knew what to anticipate.

It turns out that the dreams of many have, as it developed, turned out to be less than what they anticipated.

Mr. MOORHEAD. Do you have any recommendations for us with respect to the coordination of government agencies so that a city like Foster City could go to one agency and get an answer?

Mr. LAPPIN. Well, the planning director has spoken I think to that precise point. I think that it is incumbent on the Congress to make known exactly what the will of the Congress is, and to determine that we don't have to go from agency to agency to agency.

That the agencies are not allowed to work hand in glove, as it were, and do not approach every project as being a bad project. All projects are not bad. Every development is not inherently bad.

That is the way they approach this entire problem. It's purely and simply an opportunity, as R. Kahler Martinson said, here is a perfect chance to second-shot Foster City. We made an error 15 years ago but we can make up for that now, and we can hold up your development and bring it to a grinding halt. We can impose impossible tax burdens on the citizens. And we can force you to cave in.

And I submit that if it were not for the fact that this committee is here and that the elected officials of Foster City and the citizens have made known to God and everybody that we are hoisted on our own petard, as it were, that they might very well have forced us to cave in.

And this whole thing might very well go down the drain yet unless we can get some rapid, speedy, expeditious direction to people to get off our back and let us proceed.

The very building in which you sit is a testimony to Foster City and its residents' desire to develop this area. Twenty-three thousand of us are here. That is a little hard to get around. But the U.S. Fish and Wildlife Service has managed to do it.

Mr. MOORHEAD. Well, of course, we—I come from Pennsylvania—also have to look at this as a national problem.

Mr. LAPPIN. Certainly.

Mr. MOORHEAD. And if the situation of Foster City can be seen to be unique so that it cannot be a precedent for adverse environment effects on future new planned communities, that is one thing.

If it becomes a precedent for localities which merely want to fill in wetland, this is a different question.

Mr. LAPPIN. That is correct.

Mr. MOORHEAD. And I am glad to be here from out of State. I couldn't very well refuse with the number of Representatives from the great State of California which serve on my subcommittee.

Mr. LAPPIN. Well, we appreciate the opportunity and we appreciate your attention. We certainly do.

Mr. MOORHEAD. We are very happy to welcome our colleague from California, Mr. Burton.

Mr. Ryan?

Mr. RYAN. I don't have any questions now, Mr. Chairman. I would like to wait until we get a little further along.

I would like to make a suggestion if I can, which would be to ask at some later time to invite several of those who are involved as witnesses here in the next couple of days to come back up here as a group and see if we can't question them on the kind of alfresco basis, I guess, as we see the need. So we can get some of these conflicting points of view.

Mr. LAPPIN. We are certainly willing to accommodate to that.

Mr. RYAN. I would just like to make one observation: that is that while I was in the legislature for 10 years, I was elected in 1962 and took office in 1963, I can assure you that had I been in the legislature in 1960 the conditions under which the incorporation would have taken place as the Municipal Improvement District would have been much different.

There is no way I can believe—and I didn't believe then when I saw it going on here—that the public interest was being served by the threat of the bonded indebtedness which the City of Foster City now bears. I think this is behind the problem.

Now, let me ask you one question, as a matter of information, and I will pass on.

Can you give me any information regarding the intention of Centex to voluntarily and deliberately bypass their tax payments in the next year, their property tax payments which amount to some $1.3 or $1.4 million, I believe, a voluntary default, and thereby place the bonds of the city in some jeopardy—place the bonds in jeopardy, place every citizen's mortgage, every home in this area in serious jeopardy as far as the potential failure of the entire bonded indebtedness?

Mr. LAPPIN. Well, that is like the sword of Damocles. It forever hangs over our head. I don't know anything more about Centex's difficulties than anybody else does. But they have from time to time made noises, some of them rude noises, about forfeiting on their taxes.

And I frankly hope that never happens. And I think one way of insuring against that is to get to the point where we can proceed with the development.

If I were a Centex attorney or if I were president of Centex, I certainly would have been in court long before this on inverse condemnation, even if it came to nothing, to purely and simply advertise my plight.

They own this property and the various governmental agencies imposing restrictions on them have made it impossible for them to utilize it. All they can do is sit on it and pay taxes.

Mr. RYAN. Mr. Chairman, I think in order to give all this testimony that comes later on a sense of urgency, which I think has been lacking on the part of Federal and perhaps State agencies that are involved, I believe that the president of Centex was in my office some months ago and informed me that they intended to default upon their tax payments in November, and I believe in February when the second half comes due.

They said that they had 5 years in which to—before a tax sale would occur and they could default in each of those and subsequent years and still not lose the property until the sheriff sale finally came, at which time they figured within 5 years they would know whether this whole thing was going to go or not.

His position was that they don't see any sense in throwing millions of dollars into empty land when the potential for return is slim as it apparently is here.

Now, Centex is the owner of the largest piece of industrial property; is that right?

Mr. LAPPIN. They are.

Mr. RYAN. In the city itself. And if Centex doesn't pay up its tax obligations, the question of the service of that bonded indebtedness becomes about like New York City's, a matter of extreme concern not just to the city but to the entire State of California.

Its bonded indebtedness picture, municipal corporation bonds—or corporation bonds, municipal bonds, and the cost of bonds to every

city or public corporation in the State—the nature of the financial situation in this community becomes critical because of the length of time it has taken to try and resolve this problem.

Mr. MOORHEAD. Thank you, Mr. Ryan.

Mr. McCloskey?

Mr. MCCLOSKEY. Thank you, Mr. Chairman.

I would like to echo what Mr. Ryan said about the formation of Foster City and Redwood Shores. I think they are the only two districts in the country that have imposed this continuing need to accelerate development in order to pay for the original development.

And this is certainly no detraction from the fine planning that the Fosters did with respect to this area, but I don't think any legislature will ever again create a district like this.

You spoke of the financial realities, Mayor. Not to take your time now, but I wonder if you could submit at the end of the day to us for consideration what those financial realities are?

Mr. LAPPIN. I would be happy to.

Mr. MCCLOSKEY. What is the indebtedness per lot, for example, say opposed to the comparable sized home in San Mateo? And what is the selling price of a three-bedroom home here as compared with a three-bedroom home in San Mateo?

What are these financial realities? I would like to be absolutely sure when we write this report that we take into account the differences that exist in a community of this kind with a community under other than this kind of legislative——

Mr. LAPPIN. We can certainly give that to you no later than—I don't know if we can do it this afternoon, but certainly by tomorrow.

Mr. MCCLOSKEY. Well, I think the chairman said he is going to keep the record open 30 days. But I think the sooner we have that——

Mr. LAPPIN. Surely.

Mr. MCCLOSKEY [continuing]. It will play a part in the recommendations that we make.

[The information follows:]

STATEMENT SUBMITTED IN RESPONSE TO CONGRESSMAN MCCLOSKEY'S INQUIRY

The financial structure of Foster City/Estero Municipal Improvement District makes it difficult to compare with other "normal" communities. Financial planning to protect the homeowner and maintain his Estero taxes at about $350 per year is a basic part of District tax spread concept. The remainder of the Estero taxes are spread against the undeveloped properties which are owned by a single developer.

The bonds of the Estero Municipal Improvement District are General Obligation Bonds secured by properties throughout the District. They are not special district bonds. If any major developer did not pay his taxes, all other properties would have to be increased proportionately to pay for the principal and interest of the bonds.

The average home in Foster City is selling for $75,000 depending on the type and size. For example, a new Grant home with 4 bedrooms, 2½ baths, and 2 stories has an average sale price of $80,000. A similar new home in San Mateo would carry an average sale price of $85,000.

The total tax rate in Foster City which the homeowner paid to the County is $10.81, of which $2.6588 is Foster City's General Fund Tax. The total tax rate in San Mateo which the homeowner paid to the County is $9.40, of which $1.5816 is San Mateo General Fund Tax.

Part of the reason for the higher General Fund Tax in Foster City is less Sales Tax Revenue, Gas Tax, and all other taxes which are based on population. Foster City can increase its share of all these tax revenue if the City is allowed to proceed to completion.

In addition to the General Fund Tax, each taxpayer in Foster City also has to pay the Estero District for the bond taxes. This is $360.00 a year more than an average homeowner in San Mateo would pay.

Mr. McCLOSKEY. Bearing in mind that we are looking at this as not only a matter of congressional oversight of how the agencies are performing their functions, but we are also concerned with whether or not implicit in your recommendation there is a recommendation that the law be changed.

The basic law we are involved with here is the Fish and Wildlife Coordination Act that was passed in 1965. It was passed partly in recognition that in areas of this kind where you have 510 municipal or county jurisdictions in the bay that we have found in our previous hearings, that the bay had been filled something like a third in the 50 years because each municipality, of course, wanted a dump or garbage fill area or something of that kind.

So we set up the law that required that before the corps could grant a permit, it would have to consult with, but not necessarily be bound by the recommendation of, the other agencies.

Now, you are not objecting to that consultation process here?

Mr. LAPPIN. No, no.

Mr. McCLOSKEY. Now, you have also pointed out that the other agencies are required to solicit comments within 30 days. And presumably the corps, upon receiving those comments, can make the decision in a reasonable period of time.

Here, the recommendations of the U.S. Fish and Wildlife Service were flatly opposed to the 384-acre fill.

Now, where are you right now? What is their position and what is yours? You have offered 57 acres?

Mr. LAPPIN. Fifty-seven acres.

Mr. McCLOSKEY. They want an additional number of acres?

Mr. LAPPIN. Well, they don't even want the same acres. They want another 68.

Mr. McCLOSKEY. They want another 68 acres?

Mr. LAPPIN. That's right.

Mr. McCLOSKEY. But procedurally, you have been unable to work it out with the Fish and Wildlife Service?

Mr. LAPPIN. Yes, sir.

Mr. McCLOSKEY. Where we are procedurally is that the corps did not grant the permit, and with the requirement that you give them their 68 acres or your 57 acres or some compromise in between? Isn't that the——

Mr. LAPPIN. Well, perhaps I misunderstood, but we have not been able to work it out with the U.S. Fish and Wildlife.

Mr. McCLOSKEY. I understand that. But even though the Fish and Wildlife Service has not been able to work it out, under the law the corps could go ahead and grant a permit and could impose the imposition of that permit either on the Fish and Wildlife's position, your position, or somewhere in between?

Mr. LAPPIN. That's right.

Mr. McCLOSKEY. And the thing that has taken the time, as I understand it, is the inability of you and the Fish and Wildlife Service and these other agencies to work it out?

Mr. LAPPIN. Plus the fact that there have been inordinate delays and the carrot on the string has always been hung out that we're not that far apart, that we can get together—all you have to do is cave in, that's the way you get together.

Mr. MCCLOSKEY. I see.

Mr. LAPPIN. But the point is, if we could reach some kind of agreement, if the corps could rationalize the various differences in outlook, the corps could expedite the issuance of the permit.

Failure to do that requires their E.I.R. to go through all of the various stages and then go to Washington. If there are difficulties which are not resolved by the parties, then the Secretary of the Interior and the Secretary of the Army get together—in what manner, I don't know—and attempt to resolve them.

Mr. MCCLOSKEY. Well, I think——

Mr. LAPPIN. We're talking about an interminable period.

Mr. MCCLOSKEY. I think that you put your finger on the thing that we are interested in, as to the period of time that is involved.

Because under the agreement, I think—I am sure your attorney is aware of this—the agreement between the Secretaries of the Army and Interior, the Secretary of the Army can override the recommendations of the Interior if he feels it is appropriate to do so.

And I understand from your recommendations, you are not recommending that we change the law. But you do recommend that we do assure a faster time period in working out these resolutions and that there be some criteria that a city can weigh in advance as to how much acreage for wildlife is going to be required in mitigation so that you are not stuck with in effect what amounts to a blackmail situation from your standpoint of one agency saying first we want 380 acres—and saying we want 80 acres—then saying we want 60 acres.

I would like you to think, mayor, of what specific change that we should make in the law or recommendation. I don't think that we are there yet.

I have read your testimony and listened to it with great care, but I am not sure what we should do in Congress to remedy this situation other than ride herd on the agencies involved, which is the purpose of this hearing, to try and force a resolution.

Thank you very much, Mr. Mayor.

Mr. LAPPIN. The one comment I would make about that is that's where you people as responsible elected officials differ from the administrative people in U.S. Fish and Wildlife Service.

While you might very well not have been in favor of the creation of the Estero Municipal Improvement District and the subsequent building in Foster City, you at least recognize the fact that it is here, that there are accommodations that have to be made to that.

You don't say you did it in spite of the fact that we didn't like it. so as a consequence we are going to punish you forever.

Mr. MCCLOSKEY. Well, I don't want to be too critical of Fish and Wildlife because we have imposed new obligations on them.

Under Federal law, whenever new obligations are imposed, as we have—in 1965 and 1968 and again in 1971—it makes it sometimes difficult for the bureaucrats to know exactly what Congress intended as to priorities between two conflicting interests. Thank you.

Mr. ROGOWAY. Congressman McCloskey, may I make a statement relative to your question or possibly amplify the Mayor's?

I would agree with several of the points that you have indicated, several of the problem spots that we have had. But I might also indicate that within the prices that we have found that it lacks any kind of judgment.

It depends only on the individual criteria of two people who are in a negotiating situation with no ability, with no control, no mediation, nothing that controls that process of negotiation.

If one of them happens to be hardheaded, he is the one that gets his way, the one that is the most persistent.

Mr. McCLOSKEY. Well, that is what we were trying to point out here, whether you are unreasonable or they are.

Mr. ROGOWAY. Right, but——

[Laughter.]

Mr. ROGOWAY [continuing]. The point that I would make is the process itself lacks judgment. In other words, there can't—it shouldn't be necessary to call a congressional hearing every time we want to find out who the bad guy is.

Mr. McCLOSKEY. No; but this is a perfect example. Because we cannot enact laws in all respects. We can't set down every criteria. That is what I ask the Mayor.

Mr. ROGOWAY. Certainly.

Mr. McCLOSKEY. The criteria we set down here is that the Corps of Engineers would issue a permit. They have the discretion; they are the final judge. But they would consult with all other agencies. And I hope we never have a situation where all other agencies necessarily agree, and we never will.

And the question here is whether the disagreement is so grave or the procedure is so difficult, it requires new legislation.

Mr. ROGOWAY. There is one other statement that I might make relative to where the judgment is made. If upon the inability to agree, the judgment then becomes far removed from the local jurisdiction—in other words, if the judgment is made, it will be made in Washington. And certainly we can't expect people in Washington to have the kind of appreciation for the situation that the local office of the corps might have.

Mr. McCLOSKEY. That is true, but you appreciate that the Federal law was passed only after local agencies throughout California had gone a long way toward destroying the California landscape.

We have lost the Santa Clara Valley, we have lost a third of the bay, all because of the determination of local jurisdiction.

Mr. ROGOWAY. Yes, sir.

Mr. McCLOSKEY. What is clearly in their best interest might not necessarily be in the best interest of the people as a whole. And this search for balance between local and Federal jurisdiction is by no means one way either way.

It is taking a balance to try to preserve the environment and also to adhere to the needs of local jurisdiction. And as I say, I can appreciate your frustration and anger and rage, but in searching for the balance between different governmental goals sometimes, these harsh words don't help much.

I think we are searching here for something that is true across the country as to what will be local land use decisions and what should be Federal.

And you have seen the coastal zone management bill overwhelmingly pass the people of this State, which was essentially to restrain the local governments that had stewardship over the coastline from destroying it by developments that issue from local governments.

But I think that I have belabored this thing too long.

Mr. ROGOWAY. The one thing that the coastal zone has that we do not have is, as you know, a commission that does make a judgment on the local level and with local knowledge, which I think is——

Mr. MCCLOSKEY. Whenever you find a Federal agency to be arrogant or abusive, that is a thing we want to know about because our job in Congress is to prevent that.

But here again, I can't tell you how impressed I am with the transition of the Corps of Engineers over the last few years from a position of administering a law of 1899 which was entirely developmental to a new posture as a guardian of the environment as well.

I am not so sure that their ultimate environmental decision might not be entirely attractive to you. But let me stop at that point.

Mr. MOORHEAD. I think you make a good point. For the community that is already totally developed and we have lost the natural environment—the law doesn't impinge on them. For the totally new ones, they know the new ground rules.

It seems to me that the problem of Foster City is that you don't fall into either category.

Mr. Burton?

Mr. BURTON. No comments, Mr. Chairman.

Mr. MOORHEAD. Well, thank you very much, Mr. Mayor and Mr. Rogoway. I hope that either you, Mr. Mayor, or Mr. Rogoway, will be here tomorrow.

Mr. LAPPIN. I will be available, yes.

Mr. MOORHEAD. I expect a few State officials and the Federal Fish and Wildlife——

Mr. LAPPIN. We wouldn't miss it for the world.

Mr. MOORHEAD. Thank you, Mr. Mayor. Thank you, Mr. Rogoway.

The subcommittee would now like to hear from Mr. James Fales, city manager of Redwood City, Calif.

Mr. Fales, would you come forward? Mr. Fales, as you know, I will administer the oath.

[The witness was duly sworn.]

STATEMENT OF JAMES M. FALES, CITY MANAGER, REDWOOD CITY, CALIF.

Mr. FALES. Thank you very much, Mr. Chairman and members of the subcommittee. I am here before you today really wearing two hats.

I have two presentations. One on behalf of the Strategic Consolidated Sewerage Plan of South San Mateo County, which is a Joint Exercise of Powers Act agency responsible for sewage treatment and disposal, of which Redwood City is a member.

And the other presentation is an experience in the same area with a different public project with the city of Redwood City itself——

Mr. MOORHEAD. Mr. Fales, could I interrupt. Do you have written copies of your statements——

Mr. FALES. Yes, we do.

Mr. MOORHEAD [continuing]. For members of the committee?

Mr. MCCLOSKEY. We have them, Mr. Chairman.

Mr. FALES. One has the heading of the Steering Committee of SCSP and the other has the letterhead of the city of Redwood City.

Please don't be frightened by the second one. Most of that, all but about five pages, is an attachment which consists of a letter from our city attorney to the counsel for the Corps of Engineers in Washington. We simply wanted to make that a part of the record and I have no intention at all of trying to read it.

Mr. MOORHEAD. We thank you, Mr. Fales, and without objection all the attachments in your full statements will be made part of the record.

Mr. FALES. Fine. Our director of public works is here and we have a map which perhaps might help members of the subcommittee to understand some of the description that I'll give it my testimony.

And with your permission, perhaps—Dick, could you bring it up? Then as I come to describe geographic features, it might be easier for you to understand where they are with that map, which incidentally the subcommittee can have for its record if it so desires.

The first matter to which I would like to address myself is the presentation by the steering committee on the steering committee stationery by the Strategic Consolidated Sewerage Plan.

It is the purpose of our presentation today to provide the subcommittee with factual background regarding the development of a major water quality improvement project proposed for south San Mateo County, and to attempt to describe the current dilemma in which the participating local agencies find themselves in attempting to achieve this project due to conflicts and contradictions between various Federal regulations and the vested attitudes, interests, and viewpoints of various Federal administrative agencies.

In 1969, the cities of Belmont, San Carlos, and Redwood City executed a Joint Exercise of Powers Act agreement which formed an agency named the Strategic Consolidated Sewerage Plan.

The immediate and direct purpose of this joint agency was to plan and construct a major sanitary sewer outfall line from the vicinity of the existing Redwood City sewage treatment facility through San Carlos and Belmont roughly parallel to the Bayshore Freeway to the Redwood Peninsula, thence easterly along the peninsula to its end, and then under the surface of San Francisco Bay to a predetermined and approved point of final effluent discharge.

It is the purpose of this sewage outfall line, which was constructed with both local funds and Federal clean water grant funds, to pick up and transport effluent for disposal in a deep portion of San Francisco Bay which is conducive to dilution and diffusion.

This method of disposal was substituted for the previous method of disposal within sloughs adjacent to the existing treatment facilities and resulted in a considerable improvement in the quality of San Francisco Bay water, especially adjacent to our shoreline areas.

This project, the total combined cost of which was $4,195,000, was completed and put into operation in 1971.

The outfall line, which was approved by the San Francisco Bay Regional Water Quality Control Board, the State Water Resources Control Board, and the pertinent Federal agencies, was oversized as

installed in order to accommodate moderate future growth in the Redwood City, Belmont, and San Carlos areas, and certain existing intervening and adjacent unincorporated areas, as well as to accommodate the addition of effluent from the Menlo Park Sanitary District in the future.

A secondary but firm and positive purpose of the SCSP joint powers agency was to provide a subregional planning vehicle for the eventual construction of a multijurisdictional wastewater treatment facility, to be located adjacent to the joint outfall line at the easterly end of the Redwood Peninsula, in keeping with the local government planning process as well as the pertinent regional, State, and Federal water quality control requirements.

The purpose of this new facility would be to consolidate and eliminate the existing obsolete treatment facilities at San Carlos-Belmont, Redwood City, and Menlo Park, which operate with partial secondary treatment processes and replace them with a single wastewater treatment facility using at least partial tertiary treatment, or in the words of the applicable Federal law, "the best practicable treatment process available," by 1978, the date that we hope it will be finished.

During the period roughly between 1968 and 1973, other studies regarding water quality control planning were developed in accordance with regional, State, and Federal guidelines.

These included the San Francisco Bay Basin Plan, covering the entire bay area, and the San Mateo County water quality management program, which dealt with San Mateo County and the interfacing of the county plan with the bay basin plan.

The San Mateo County water quality management program report published in mid-1973 specifically sited the proposed SCSP treatment facility at the easterly end of the Redwood Peninsula, as did the original report regarding the SCSP program which was published in 1968.

All of these reports, plans, and programs were reviewed and accepted by the pertinent regional, State and Federal agencies. It should also be noted that all of these reports, plans, and programs dealt with the improvement of the quality of the waters of the State, specifically San Francisco Bay.

As a result of these efforts, and due to the fact that the proposed SCSP project had been included on the Clean Water Grant Priority List, the SCSP authorized preparation, by consulting sanitary and civil engineers, of a project report for the "South Bayside System Unit," and an environmental impact report regarding the proposed project, plus related financial and organizational studies.

Incidentally, there is a copy of the final environmental impact report on this project on your desk. It is the brown covered report.

The environmental impact report was completed in September 1974 and the project report in October 1974. Both reports specifically analyzed the proposed project to be located on a specific site at the easterly end of the Redwood Peninsula, the same site proposed by the 1968 SCSP Report and the 1973 County Water Quality Management Program Report.

These reports were circulated to all interested and concerned regional, State, and Federal agencies and other interested organizations,

and a public hearing regarding the proposed project and the environmental impact report was scheduled and held by the SCSP Commission, which is made up of the governing bodies of each of the participating agencies, on October 30, 1974, in San Carlos.

No serious or specific objections were raised either in writing or orally regarding the proposed project or its proposed location by any of the responding agencies, organizations, and individuals, and no comments at all were received at that time from the Department of the Interior, Fish and Wildlife Service.

The final Environmental Impact Report, including all responses and comments, was published in November 1974. And that is the document that you have before you.

I have, incidentally, copies of all these other reports which, if the committee staff desires them—the ones I have referred to—they may have them for their files.

Parenthetically, I should indicate that the SCSP and its member agencies expended approximately $130,000 in local public funds on these required reports and studies.

Subsequently, and on the basis of the foregoing process, the SCSP filed for concept approval of the proposed project from the Environmental Protection Agency and the State Water Resources Control Board.

Concept approval was received by letter from the SWRCB under date of June 4, 1975. It should also be pointed out that a determination was made by the concerned Federal agencies that a Federal environmental impact statement would not be required for the project and that the SCSP EIR was sufficient for this purpose.

Concept approval of the project authorized the filing of a so-called step 1 (planning) clean water grant application and further affirmed the project's eligibility for a step 2 (final design) grant.

On June 27, 1975, the SCSP made formal application for step 1 and step 2 grants in the total amount of $1,384,000 for planning and final design of the SCSP project, to be funded in fiscal 1975–76. This application required the completion of final project design by March 1976 and contemplated submittal of a step 3 (construction) grant in 1976–77 with the completion of construction in 1978–79.

Under date of August 5, 1975, the State Water Resources Control Board recommended approval of the step 1 and 2 grants to region IX of the Environmental Protection Agency to the maximum allowable amount based on the eligible project cost, and granted State approval of the subject grants under the State Clean Water Bond Law of 1970.

This letter also specifically indicated that the SCSP project, as submitted, is included in the Water Quality Control Plan, San Francisco Bay Basin. The actual Federal and State step 1 and 2 grant offers are being processed for execution at this writing.

Based upon the foregoing, the SCSP authorized Jenks & Adamson, consulting sanitary and civil engineers, to complete the final design of the SCSP project.

I should add at this point that we have now received formal grant offers, one from EPA dated August 29, 1975, and one from the State dated September 5, 1975. So that the applications have been processed.

Mr. MOORHEAD. Mr. Fales, if you would submit those, without objection, they will be made part of the record.

[The informations follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY,
San Francisco, Calif., August 29, 1975.

Re C 061114 01 0.

STRATEGIC CONSOLIDATION SEWERAGE PLAN AUTHORITY,
Attention: Charles R. Allen, Secretary,
San Carlos, Calif.

GENTLEMEN: This Agency is pleased to offer the Strategic Consolidation Sewerage Plan Authority a grant of $1,038,000 to help in the planning and design of a treatment plant, interceptor, pump station and forcemain. This grant offer is based upon your application as certified to this office by the California State Water Resources Control Board.

If you wish to accept this grant offer, the original and one copy of the enclosed Grant Agreement should be signed and returned to this Office within three (3) weeks after receipt. One copy of your transmittal letter should be sent directly to the California State Water Resources Control Board.

Cheryl Seidenspinner has been assigned as the EPA project manager for your project and will be the primary point of contact for this Agency. You may contact her at (415) 556-5105.

Sincerely,

PAUL DE FALCO, Jr.,
Regional Administrator.

Enclosures: Federal Registers, 3c Grant Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY
GRANT AGREEMENT AMENDMENT

GRANT IDENTIFICATION NO.: C 0 6 1 1 1 4 0 7 1 0

CHECK APPLICABLE ITEM(S)	DATE OF AWARD (Obligation Date)
XX GRANT AGREEMENT	AUG 29 1975
GRANT AMENDMENT	TYPE OF ACTION
SUBSEQUENT RELATED PROJECT (Title)	New

PART I-GENERAL INFORMATION

1. GRANT PROGRAM	2. STATUTE REFERENCE	3. REGULATION REFERENCE
Construction Grants	PL 92-500	40 CFR 35

4. GRANTEE ORGANIZATION

a. NAME	c. ADDRESS
Strategic Consolidation Sewerage Plan Authority	666 Elm Street San Carlos CA 94070
b. EMPLOYER I.D. NO. (EIN)	

5. PROJECT MANAGER (Grantee Contact)

a. NAME	d. ADDRESS
Charles R. Allen	666 Elm Street San Carlos CA 94070
b. TITLE Secretary, SCSPA	
c. TELEPHONE NO. (Include Area Code) (415) 593-8011	

6. PROJECT OFFICER (EPA Contact)

a. NAME	d. ADDRESS
Cheryl Seidenspinner	Environmental Protection Agency 100 California Street San Francisco CA 94111
b. TITLE Grants Specialist	
c. TELEPHONE NO. (Include Area Code) (415) 556-5105	

7. PROJECT TITLE AND DESCRIPTION

Planning and design of a treatment plant, interceptor, pump station and force main.

PROJECT STEP (Int.): 2

8. DURATION

PROJECT PERIOD (Dates)	BUDGET PERIOD (Dates)
Date of award - 6/30/76	Date of award - 6/30/76

9. DOLLAR AMOUNTS

TOTAL PROJECT COSTS		EPA GRANT AMOUNT (Net this Action)	1,038,000
TOTAL ELIGIBLE COSTS (Int.)	1,384,000	UNEXPENDED PRIOR YR. BAL. (EPA Funds)	
TOTAL BUDGET PERIOD COSTS		THIS ACTION (This obligation amount)	1,038,000

10. ACCOUNTING DATA

APPROPRIATION	DOC CONTROL NO.	ACCOUNT NO.	OBJ CLASS	AMOUNT CHARGED
68X0103	C 00071	$592092BV2	41. 41.11 41.	1,038,000

11. PAYMENT METHOD	12. PAYEE (Name and mailing address, Include ZIP Code)
☐ ADVANCES ____ % of award ☒ REIMBURSEMENT ☐ OTHER _____ SEND PAYMENT REQUEST TO _____	Strategic Consolidation Sewerage Plan Authority 666 Elm Street San Carlos CA 94070

EPA Form 5700-20 (Rev. 4-75) PREVIOUS EDITION IS OBSOLETE. ALSO THIS EDITION REPLACES EPA FORM 5700-21. PAGE 1 OF 5

PART II—APPROVED BUDGET	
TABLE A - OBJECT CLASS CATEGORY (Non-construction)	TOTAL APPROVED ALLOWABLE BUDGET PERIOD COST
1. PERSONNEL	
2. FRINGE BENEFITS	
3. TRAVEL	
4. EQUIPMENT	
5. SUPPLIES	
6. CONTRACTUAL	
7. CONSTRUCTION	
8. OTHER	
9. TOTAL DIRECT CHARGES	
10. INDIRECT COSTS: RATE % BASE	
11. TOTAL (Share: Grantee ____ % Federal ____ %)	
12. TOTAL APPROVED GRANT AMOUNT	$
TABLE B - PROGRAM ELEMENT CLASSIFICATION (Non-construction)	
1. Step I (planning)	84,000
2. Step II (design)	1,300,000
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10. TOTAL (Share: Grantee 12.5 % Federal 75 %) State 12.5%	1,384,000
11. TOTAL APPROVED GRANT AMOUNT	$ 1,038,000
TABLE C - PROGRAM ELEMENT CLASSIFICATION (Construction)	
1. ADMINISTRATION EXPENSE	
2. PRELIMINARY EXPENSE	
3. LAND STRUCTURES, RIGHT-OF-WAY	
4. ARCHITECTURAL ENGINEERING BASIC FEES	
5. OTHER ARCHITECTURAL ENGINEERING FEES	
6. PROJECT INSPECTION FEES	
7. LAND DEVELOPMENT	
8. RELOCATION EXPENSES	
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES	
10. DEMOLITION AND REMOVAL	
11. CONSTRUCTION AND PROJECT IMPROVEMENT	
12. EQUIPMENT	
13. MISCELLANEOUS	
14. TOTAL (Lines 1 thru 13)	
15. ESTIMATED INCOME (If applicable)	
16. NET PROJECT AMOUNT (Line 14 minus 15)	
17. LESS: INELIGIBLE EXCLUSIONS	
18. ADD: CONTINGENCIES	
19. TOTAL (Share: Grantee ____ % Federal ____ %)	
20. TOTAL APPROVED GRANT AMOUNT	$

EPA Form 5700-20 (Rev. 4-75) PAGE 2 OF 5

PART III - GRANT CONDITIONS

B. GENERAL CONDITIONS

The grantee covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this grant, in accordance with the applicable grant provisions of 40 CFR Subchapter B. Specifically, the grantee warrants and represents that it, and its contractors, subcontractors, employees and representatives, will comply with the following General Conditions, the applicable supplemental conditions of 40 CFR Subchapter B, as amended, and any Special Conditions set forth in this grant agreement or any grant amendment.

1. Access. The grantee agrees that it will provide access to the facilities, premises and records related to the project as provided in §§30.605 and 30.805 of 40 CFR Subchapter B.

2. Audit and Records. The grantee agrees that it will maintain an adequate system for financial management, property management and grantee audit in accordance with §§30.800 and 30.910-1, and that it will maintain, preserve and make available to the Government all project records for the purpose of inspection, interim and final audit, and copying as required by §§30.605, 30.805, and 30.820 of 40 CFR Subchapter B.

3. Reports. The grantee agrees to timely file with EPA such reports as are specifically required by the grant agreement or pursuant to 40 CFR Subchapter B, including progress reports (§30.635-1), financial reports (§30.635-3), invention reports (§30.635-4), property reports (§30.635-5), relocation and acquisition reports (§30.635-6) and a final report §30.635-2, and that failure to timely file a report may cause EPA to invoke the remedies provided in 40 CFR 30.830.

4. Grant Changes: Modifications. The grantee agrees that all grant modifications will be accomplished through the provisions of 40 CFR 30.900 through 30.900-4.

5. Requirements Pertaining to Federally Assisted Construction. The grantee agrees that during the performance of the project work it will comply, and that its contractors, subcontractors, employees and representatives will comply, with the requirements pertaining to federally assisted construction identified in 40 CFR 30.415.

6. Suspension.

(a) The grantee agrees that the grant official may, at any time, require the grantee to stop all, or any part, of the work within the scope of the project for which EPA grant assistance was awarded, by a written stop-work order, for a period of not more than forty-five (45) days after the order is delivered to the grantee, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop-work order issued pursuant to this clause. Upon receipt of such an order, the grantee agrees to forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. This suspension article shall not be applicable to educational institutions or nonprofit research institutions.

(b) The grantee agrees that, within any such suspension period, EPA may either (1) cancel the stop-work order, in full or in part, or (2) initiate action to terminate the grant, in part or in full, as provided in Article 7, below.

(c) If a stop-work order is canceled or if the suspension period or any extension thereof expires, the grantee agrees to promptly resume the previously suspended project work.

(d) An equitable adjustment shall be made in the project period, budget period, or the grant amount, or all of these as appropriate, if:

(1) the stop-work order results in an increase in the time required for, or in the grantee's costs properly allocable to, the performance of any part of the project, and

(2) the grantee asserts a written claim for such adjustment within sixty (60) days after the end of the period of work stoppage, provided that if the Project Officer determines that the circumstances justify such action(for example, if the impact of cost or time factors resulting from a stop-work order could not have been ascertained prior to written submission of the claim), he may receive and act upon any such claim asserted at any time prior to final payment under this grant.

(e) If a stop-work order is not canceled and grant-related project work covered by such order is within the scope of a subsequently-issued termination order, the reasonable costs resulting from the stop-work order shall be allowed in arriving at the termination settlement.

(f) The grantee agrees that costs incurred by the grantee or its contractors, subcontractors or representatives, after a stop-work order is delivered, or within any extension of the suspension period to which the parties may have agreed, with respect to the project work suspended by such order or agreement, which are not authorized by this article or specifically authorized in writing by the Project Officer shall not be allowable costs.

PART III – GRANT CONDITIONS

a GENERAL CONDITIONS (Continued)

7. Termination.

(a) The grantee agrees that the grant award official may, at any time, after written notice and after opportunity for consultation has been afforded to the grantee, terminate the grant, in whole or in part, with the concurrence of appropriate EPA officials, through a written termination notice specifying the effective date of the termination action.

(1) Cause for termination shall include, but not be limited to, default by the grantee, or failure by the grantee to comply with grant conditions or terms.

(2) The grantee agrees that, upon such termination, it will return or credit to the United States that portion of grant funds paid or owed to the grantee and allocable to the terminated project work, except such portion as may be required by the grantee to meet commitments which had become firm prior to the effective date of termination and are otherwise allowable.

(3) Whenever feasible, the grant award official and the grantee shall enter into a termination agreement as soon as possible after any such termination action to establish the basis for settlement of grant termination costs and the amount and date of payment of any sums due to either party.

(4) Upon request of the grantee, and if the Project Officer determines with the concurrence of appropriate EPA officials that there is good cause for the termination of all or any portion of the project work for which EPA grant assistance has been awarded, the grant award official and the grantee may enter into a written termination agreement establishing the effective date of the grant and project termination, and the basis for settlement of grant termination costs, and the amount and date of payment of any sums due to either party.

(c) The grantee agrees that it will not unilaterally terminate work on the project for which EPA grant assistance has been awarded, except for good cause. The grantee further agrees:

(1) That it will promptly give written notice to the Project Officer of any complete or partial termination of the project work by the grantee, and

(2) That, if the Project Officer determines with the concurrence of appropriate EPA officials that the grantee has terminated the project work without good cause, the grant award official may annul the grant and all EPA grant funds previously paid or owing to the grantee shall be promptly returned or credited to the United States.

8. Disputes.

(a) Except as otherwise provided by law or regulations, any dispute arising under this grant agreement shall be decided by the Project Officer, who, after concurrence by appropriate EPA officials, shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the grantee. Such a decision of the Project Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the grantee mails or otherwise delivers to the Project Officer a written appeal addressed to the Administrator.

(b) The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as to imply bad faith, or not supported by substantial evidence.

(c) In connection with an appeal proceeding under this article, the grantee shall be afforded an opportunity to be heard, to be represented by legal counsel, to offer evidence and testimony in support of any appeal, and to cross-examine Government witnesses and to examine documentation or exhibits offered in evidence by the Government or admitted to the appeal record (subject to the Government's right to offer its own evidence and testimony, to cross-examine the appellant's witnesses, and to examine documentation or exhibits offered in evidence by the appellant or admitted to the appeal record). The appeal shall be determined solely upon the appeal record, in accordance with the applicable provisions of Subpart J of Part 30 of Title 40 CFR.

(d) This "Disputes" article shall not preclude consideration of any question of law in connection with decisions provided for by this article; provided, that nothing in this grant or related regulations shall be construed as making final the decision of any administrative official, representative, or Board, on a question of law.

9. Notice and Assistance Regarding Patent and Copyright Infringement.

(a) The grantee agrees to report to the Project Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee agrees to furnish to the Government, when requested by the Project Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

14. SPECIAL CONDITIONS

The grantee shall reserve capacity for and allow Emerald Lake Hills to contribute 0.2 million gallons per day average dry weather flow of wastewater into the regional wastewater facility at such time as the Emerald Lake Hills sewer system is completed.

PART IV

NOTE: The Grant Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters grant awards and to the appropriate Grants Administration Office for state and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, will result in the automatic withdrawal of the grant offer by the Agency. Any amendment to the Grant Agreement by the grantee subsequent to the document being signed by the Award Official shall void the Grant Agreement.

OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers a grant to the Strategic Consolidation Sewerage Plan Authority (GRANTEE ORGANIZATION) for 75 % of all approved costs incurred up to and not exceeding $ 1,038,000 (GRANT AMOUNT) for the support of approved budget period effort described in application (including all application modifications) Subregional Wastewater Treatment and Disposal Facilities 6/75 (TITLE AND DATE) included herein by reference.

ISSUING OFFICE (Grants Administration Office)	AWARD APPROVAL OFFICE
ORGANIZATION AND ADDRESS Grants Management Branch Environmental Protection Agency 100 California Street San Francisco CA 94111	ORGANIZATION ADDRESS Regional Administrator Environmental Protection Agency 100 California Street San Francisco CA 94111

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
Shirley M. Pannebaker for	Paul De Falco, Jr. Regional Administrator	AUG 29 1975

This Grant Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and grant regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the grantee organization, and (2) the grantee agrees (a) that the grant is subject to the provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any, found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED GRANTEE ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
	Charles R. Allen, Secretary SCSPA	

STATE WATER RESOURCES CONTROL BOARD,
DIVISION OF WATER QUALITY CONTROL,
Sacramento, Calif., September 5, 1975.

Mr. CHARLES R. ALLEN,
Secretary, Strategic Consolidation Sewerage Plan Authority,
San Carlos, Calif.:

Project C-06-1114-010, Step I & II, Clean Water Planning and Design Grant Contract.

The State Water Resources Control Board takes great pleasure in offering this Grant for Clean Water. This contract formalizes the joint effort that is being made to achieve and maintain Clean Water throughout California.

Please have the authorized representative sign. The title and date spaces should also be completed. Return the original and all copies of the enclosed grant contract to this office promptly. When returned, the contract will be signed, dated and a fully executed copy returned to you with instructions on how to request payments.

Should you have any questions, please contact this office at (916) 322-2640.

LARRY F. WALKER,
Division Chief.

Enclosures.

[Project No. C-06-114-010]

STATE OF CALIFORNIA GRANT CONTRACT

(Construction of Treatment Works)

STEP I AND II

This contract, effective upon the date executed by the State Water Resources Control Board, is made between the State of California, acting by and through the State Water Resources Control Board, hereinafter referred to as the "State Board" and the Strategic Consolidation Sewerage Plan Authority a municipality duly organized, existing and acting pursuant to the laws of the State of California, hereinafter referred to as the "Grantee";

1. The Clean Water Bond Laws of 1970 and 1974 (Chapters 13 and 14, Division 7 of the Water Code) authorize the State Board to enter into contracts with municipalities to aid in the construction of eligible projects and for reclamation of water; and

2. "Eligible project" means a project which is all of the following:

a. Eligible for federal assistance pursuant to the Federal Water Pollution Control Act (33 U.S.C., Section 1251 et seq.) and acts amendatory thereof;

b. Necessary to prevent water pollution; and

c. Certified by the State Board as entitled to priority over other treatment works, and which complies with applicable water quality standards, policies and plans; and

3. The Grantee has made application for a federal grant for an eligible project and said project has been approved and certified by the State Board acting by and through its Division of Water Quality, hereinafter referred to as the "Division"; and

4. The Division has found that the project is eligible for federal assistance, necessary to prevent water pollution, entitled to priority over other treatment works, and complies with applicable water quality standards, policies and plans;

Now, Therefore, the parties hereto agree as follows:

1. *Project Description.* The project consists of elements generally described as Planning and Design of the Treatment Plant, Interceptor, Pump Station and Forcemain.

2. *Total Estimated Cost.* The estimated reasonable cost of the project is $1,384,000.

3. *Estimated Eligible Cost.* The estimated reasonable cost of the project which is eligible for assistance from State grant funds is $1,384,000.

4. *Grant Amount.* Subject to the terms and conditions of this contract, the State Board agrees to pay to the Grantee an amount which equals 12½ percent of the actual cost of that part of the project which is eligible for assistance from State grant funds.

5. *Federal Grant.* Grantee agrees to make all reasonable efforts and to take all reasonable steps, in a timely and expeditious manner, to secure federal assistance for the project.

6. *Bid Procedures and Documents.* Grantee agrees:

a. That all bid procedures and bid documents used in carrying out this project or prepared as an element of this project, including, but not limited to, contracts for services, specifications for bids, statements of work, plans and specifications and construction contracts will comply with applicable state and federal laws, rules, regulations and guidelines.

b. That adequate methods of obtaining competitive bidding will be employed by the Grantee where required by applicable state and federal laws, rules, regulations and guidelines.

7. *Disbursement.*

a. Subsequent to execution of a federal grant agreement providing for federal assistance for the project, and upon request by the Grantee supported as required by the Division, the State Board will disburse up to 12½ percent of the eligible project costs incurred by the Grantee in one of two ways, either:

1. After submittal and approval of all project elements as described in Paragraph 1 (Project Description), above, or

2. Upon completion of specific elements as described in Paragraph 1 above, if approved by the Division.

b. Grantee understands that the final audit may be delayed until completion of the Step 3 contract, if any. Notwithstanding the foregoing, Grantee agrees that the State Board may retain an amount up to 10 percent of the grant until final audit.

c. All retained amounts due to Grantee shall be disbursed after final audit, without interest.

8. *Use of Funds and Accounting.* Grantee agrees that:

a. Grant funds will be deposited into a separate fund account or accounts.

b. Grant funds will be expended solely for the eligible project as described in paragraph 1 above.

c. Accountings and fiscal records will be in accordance with generally accepted accounting principles and practices, and records will be maintained until completion of the final audit in sufficient detail to demonstrate that grant funds were used for the purpose for which the grant was made and in accordance with the provisions of this contract.

d. The State Board, or its authorized agents, shall have access to any books, documents, papers and records of the Grantee, or the Grantee's contractors or under the possession or control of the Grantee or the Grantee's contractors, that are pertinent to this grant.

e. An acceptable final audit will be rendered by the Grantee within 90 days after completion of the project, or within such additional time as may be allowed by the Division.

f. Grantee will, upon demand, remit to the State Board any grant funds not expended on the eligible project or an amount equal to any grant funds expended by the Grantee contrary to the provisions of this contract.

9. *Grantee Assurances.* Grantee agrees that:

a. Grantee will proceed expeditiously with, and complete, the eligible project.

b. Upon completion of construction of any treatment works for which Grantee receives a Step 1 and/or Step 2 grant, Grantee agrees to commence operation of said treatment works and to properly operate and maintain said works in accordance with applicable provisions of law.

c. Grantee will, at all times, fulfill any declarations, assurances, representations and statements made by the Grantee in the application, documents, amendments and communications filed in support of its request for a grant.

d. Grantee will fulfill and comply with any special conditions which may be set forth in Exhibit A attached hereto and made a part hereof by reference.

e. Grantee will timely pay all expenses connected with the project.

f. Grantee will indemnify the State of California and the State Board, and their officers, agents, and employees against and hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, whether directly or indirectly, the preparation of the project elements described in Paragraph 1 above.

10. *Contingency.* Grantee agrees that this contract is contingent upon the Grantee receiving, executing and fulfilling a federal grant agreement providing for federal assistance for the project.

11. *Termination.*

a. This contract may be terminated by the State Board acting through the Division, at its option, where it appears that there will be lack of state funds available to fulfill this contract, provided that after such termination the Grantee shall be entitled to an amount which equals 12½ percent of eligible project costs which have actually been incurred by the Grantee prior to such termination.

b. This contract may be terminated prior to completion of the project by the State Board acting through the Division, at its option, upon any of the following grounds:

1. Failure of the Grantee to receive or to execute a federal grant agreement for federal assistance for the project.

2. Failure of the Grantee to fulfill any part of its federal grant agreement resulting in termination of the federal grant agreement.

3. Termination of the federal grant agreement for any reason.

4. Failure of the Grantee, after written notice from the Division of the nature of the failure, to comply with the terms, conditions, or provisions of this contract.

In the event of any such termination, Grantee agrees that no further grant funds shall be payable under this contract.

16. *Remedies for Breach.* In the event of breach by the Grantee of any terms, provisions or conditions of this contract prior to completion of the project, which breach results in termination of the contract by the Division, Grantee agrees to repay to the State Board, upon demand, an amount equal to any grant funds disbursed to the Grantee under this contract. Grantee agrees that this remedy is in addition to and not in derogation of any other legal or equitable remedy available to the State Board as a result of breach of this contract by the Grantee, whether such breach occurs before or after completion of the project.

17. *Amendment.* This contract may be amended by mutual written agreement of the parties hereto.

EXHIBIT A

SPECIAL CONDITIONS

Strategic Consolidation Sewerage Plan Authority, Project No. C-06-1114-010

1. This grant is approved on the condition that SCSPA reserve capacity for and allow Emerald Lakes Hills to contribute 0.2 MGD ADWF of wastewater into the regional wastewater facility at such time as the Emerald Lakes Hills sewer system is completed.

2. If the Federal grant offer on this project is made on or after May 1, 1975, the grantee agrees that a grant eligible fee of one-half of one percent may be charged in accordance with State Board Regulations and Guidelines.

Mr. FALES. Fine. Also, on July 15, 1975, the San Francisco Bay Regional Water Quality Control Board acted favorably upon the application of the SCSP for a National Pollutant Discharge Elimination System Permit (NPDES) for the project, pursuant to the provisions of section 402 of the Federal Water Pollution Control Act, Public Law 92-500.

It should be noted here that the SCSP project referred to herein will consist of a multi-jurisdictional wastewater treatment facility, having an approved capacity of 23.5 million gallons per day average daily flow, the total estimated cost of which will be $30 million.

Ancillary to and parallel with the foregoing process involving studies, applications, correspondence, meetings, and public hearings necessary to comply with the applicable Federal, State, and regional water quality control and funding laws, rules and regulations regarding the SCSP project, the SCSP under the date of August 2, 1974, applied to the U.S. Army Corps of Engineers for a permit to allow for construction of the subject wastewater treatment facility.

This permit was applied for even though the proposed site is located behind dikes which were constructed to Corps of Engineers

standards, since the corps claims disputed jurisdiction over lands below 104 feet elevation, even though such lands are behind long established dikes.

Parenthetically, it must be observed that such claim or jurisdiction on an obviously tortured definition of "navigability" works considerable mischief in that no apparent standards have been developed regarding the issuance or denial of permits for structures behind dikes.

Under date of April 22, 1975, almost 9 months after the subject permit application was filed, the Corps of Engineers published Public Notice No. 75–251–067 relative to the permit application.

Under date of July 22, 1975, the Corps of Engineers forwarded to the SCSP copies of four letters which had been received in response to the aforementioned public notice.

One of the letters was from the Resources Agency, State of California, dated July 9, 1975, which indicated that the State had no objection to the project, subject to certification by the Regional Water Quality Control Board, and issuance of a permit for the project by the Bay Conservation and Development Commission.

In response to these comments, the SCSP has indicated that an NPDES permit has been issued for the project by the Regional Water Quality Control Board and that the SCSP is in receipt of a letter from the Bay Conservation and Development Commission dated July 15, 1975, which states "a BCDC permit will not be required for the project."

The second letter dated May 17, 1975, was from a Mr. Tom Williams, chairperson, Committee on the Environment and Conservation (designate), the Audubon Society, 2327 Webster Street, Berkeley, Calif., which did not specifically object to the issuance of the subject permit, but did suggest certain modifications in the design of the project facility, and in addition, stated:

"Dispersal of existing dike and excavation materials does not indicate what is going to be done. If the materials are to be dispersed within the diked area, this forms a filling of diked lands, which in turn precludes reversibility of the project.

"Filling of any diked lands have taken on new importance by the potential, real and desired, to return diked lands to open water and mudflats/marshes."

If the dike and excavated materials are retained within the site, adequate compensation of land equivalent to that necessary for containment of the materials to MHHW should be required. Dedication could be to the San Francisco Bay Wildlife Refuge or other publicly held nature areas in the South Bay.

Without specifically responding to Mr. Williams' familiarity, or lack thereof, with the specific project being proposed, the SCSP would comment as follows:

1. The site for the proposed SCSP treatment facility, and the remainder of the Redwood Peninsula, have been indicated for future urban use on the Redwood City general plan since 1965.

In fact, existing buildings associated with Radio Station KGEI are and have been for some time located northerly of the proposed site at the easterly end of the Redwood Peninsula.

2. The proposed treatment facility site has been referred to in every written report regarding the subject since 1968, including the Environmental Impact Report referred to earlier.

It should be pointed out that a copy of the notice of the public hearing regarding the Environmental Impact Report was forwarded to the Audubon Society of San Mateo County, 1231 Hoover Street, Menlo Park, and that no comments, oral or written, were ever received regarding the project from the Society.

3. Insofar as Mr. Williams' suggestion that "mitigation" in the form of "adeqaute compensation of land equivalent to that necessary for the containment of materials to MHHW should be required," the member agencies of the SCSP would respond as follows:

a. Public agencies are not legally or morally in a position to "mitigate" for public projects in the manner suggested by Mr. Williams or in any other manner which would constitute a gift of public funds.

b. It is incredible that a responsible organization should even suggest that construction of a major San Francisco Bay environmental improvement project such as the one in question should, as part of the project, be required to apparently buy some unspecified land for dedication as a "nature area."

The whole idea of the project is to improve the quality of San Francisco Bay waters, thereby improving the natural Bay environment and the adjacent nature area.

c. If by some chance, the future should produce either a Federal or State law which would specifically require such "mitigation" as suggested by Mr. Williams for projects financed under the Clean Water grant program, and we know of no such current statute, then we feel rather strongly that the added cost of such "mitigation" either should be grant eligible and that the combined Federal-State share of such additional cost should be 87½ percent of the total, or such added costs should be fully borne by the Federal Government since such "mitigation" would be in furtherance of Federal, not local, land use policies.

Two of the four letters received by the Corps of Engineers specifically objected to the issuance of a permit for the subject project, both for the same reason.

The first is an undated letter from Mr. Douglas A. Cook, 66 Lower Crescent, Sausalito, Calif., and the second is a letter from the U.S. Department of Interior, Fish and Wildlife Service, dated June 24, 1975.

It is to this last letter that we desire to address the remainder of our comments.

The essence of the position taken by the Fish and Wildlife Service is that the location of the treatment facility should be moved in order to allow the option of returning the proposed site, which is now and has for many years been behind dikes, to tidal action or marshland.

The letter further indicates the assumption that the proposed site was selected because it was not in conflict with the planned urban development of the Redwood Peninsula, and further states as follows:

> This rationale not only assumes that residential and commercial development will continue as planned, but that the planned community is in the best public interest. Further, it completely ignores the inherent value of the peninsula to fish and wildlife and would preempt the option of returning the area to tidal action.

In response to the position expressed by the Fish and Wildlife Service, the local agencies represented on the SCSP reply as follows:

1. The proposed site for the subregional wastewater treatment facility was selected for many reasons, which are adequately covered in the many reports produced regarding the proposed project.

One of the reasons for selection of the proposed site does involve the fact that since 1965 the city of Redwood City has included the Redwood Peninsula on the city general plan and has designated this area for various urban land use purposes. Indeed, the area has already been partially developed in accordance with the general plan.

Under existing California State law, local governments are required to provide formal land use planning, are responsible for zoning, and are the agencies specifically assigned the task of determining the public interest in land use matters, not the least of which includes protection of the environment in a balanced manner throughout the entire municipal jurisdiction.

Until and unless Federal and/or State statutes are enacted which assign these responsibilities to the U.S. Fish and Wildlife Service or some other Government agency, local governments fully intend to continue carrying out these responsibilities.

However, it must be observed that such agencies are single-purpose agencies with but one, or a limited, area of concern, and are thus ill-equipped to balance the multitude of concerns and issues involved in local land use planning.

It should be added here that the existing plans for the subject area are also in conformance with existing regional plans.

2. As in all matters where a determination affecting the public interest is concerned, and particularly in the matter at immediate issue, where State and Federal, as well as local, funding is involved, great pains were taken over a long period of time to conform with all Federal, State and regional regulations and requirements which pertain to water quality control and improvement programs.

The site for the proposed SCSP facility has been well known for at least 5 years and has been included in every report produced regarding the subject since 1968.

A detailed environmental impact report was prepared regarding the project and the proposed site, public hearings were held, and all interested agencies and organizations were informed of this process.

And yet during all of this time not one comment was made by the Fish and Wildlife Service regarding either the project or the proposed site.

Indeed, the Fish and Wildlife Service waited until June 24, 1975, to comment and this in response to ancillary Corps of Engineers permit application. Unfortunately, as we have learned in other cases, this one objection from the Fish and Wildlife Service can effectively block the entire project for an indefinite period of time.

The local agencies represented on the SCSP now find themselves in the rather peculiar position of having expended thousands of man-hours and hundreds of thousands of dollars of the taxpayer's money on the project; of having received State and Federal approval and a grant of State and Federal funds amounting to over $1,300,000 for final design of the project with a deadline for design of March 1976, only to have another Federal agency at this late date attempt to block the project as planned for, in our considered opinion, the most far-fetched of reasons.

Congressman Moorhead has been quoted as saying with regard to these subcommittee hearings: "No one agency of Government can adequately address all the social, economic and environmental issues involved in a land fill such as that proposed by Foster City."

We must assure that all of the governmental agencies involved conscientiously examine such proposals to eliminate or minimize environmental and other damage.

On the other hand, we cannot allow the lack of governmental coordination to block or needlessly delay worthy and needed projects and activities.

While the member agencies of the SCSP cannot directly comment upon the Foster City proposal, we can and do strongly indicate that the lack of governmental coordination is, in the case of the SCSP project, blocking and needlessly delaying a worthy and needed environmental improvement project.

We would further respectfully suggest that action be initiated through the U.S. Congress which will insure that the case at hand will be corrected immediately and the proposed project be allowed to proceed as planned; and that such blatant abuses of administrative discretion by Federal agencies such as the Fish and Wildlife Service has exhibited in this instance will not be allowed to occur in the future.

Thank you, Mr. Chairman.

Mr. MOORHEAD. Would you like to proceed?

Mr. FALES. Yes. The second presentation, as I indicated, is shorter but does have a rather lengthy attachment which contains some legal points that the city attorney had raised with the Corps of Engineers previously and we thought should be in your files.

Incidentally, Dick has just put up an aerial photograph of the area of Redwood Peninsula and Foster City, some of the areas we have been talking about today.

That one happens to be a framed copy of this particular photograph which was taken with infrared camera at something in the neighborhood of 60,000 feet. It is very illustrative of the entire area which you flew around this morning.

If you would like a copy of this photograph for your files or records or what have you, we would be happy to make a copy available to the committee. But it would take a little while to get it reproduced.

Mr. MOORHEAD. Can it be done within 30 days?

Mr. FALES. Oh, yes, most certainly.

Mr. MOORHEAD. Then without objection, it will be retained in the subcommittee files.

Mr. FALES. Mr. Chairman, the city of Redwood City is desirous of presenting to the subcommittee by use of a specific example the city's position with respect to the processes being used by Federal agencies, and the bases for these processes, which involve the granting or withholding of Federal permission for local governments to construct needed public works projects which are in keeping with locally adopted plans and programs.

The case in point which we would like to describe involves an unsuccessful attempt by the city over a period of approximately 18 months to secure a permit from the U.S. Corps of Engineers to construct a badly needed 3.2 million gallon water storage reservoir on a

site of approximately 5 acres in an area of the city known as Redwood Shores.

The Redwood Shores area was annexed to the city of Redwood City about 1960 and was included as a part of the city general plan in 1965. The area of the Redwood Peninsula, the specific geographic area in question, was then and is still designated for various urban land uses on that general plan.

Actual development of the Redwood Peninsula commenced in the mid-1960's, including improvement of the dikes surrounding the peninsula in accordance with Corps of Engineers' standards; filling of land designated for immediate development; the construction of public improvements, including streets, sewers, water lines, and an inland waterway, and the construction of homes and the Marine World-Africa USA commercial recreation development.

In 1971, the city, due to concern primarily with a lack of adequate water storage facilities within the peninsula area, imposed a building moratorium upon the area pending the provision of a solution to this problem.

This problem was and is compounded by the fact that the area in question is served by one water supply line which originates from the Belmont County Water District system west of the Bayshore Freeway.

A study of water storage needs for the Redwood Peninsula area was subsequently completed, which indicated an ultimate need for three and perhaps four water storage reservoirs in order to serve the residential, business-professional and commercial-industrial land uses existing and planned for this area.

As a part of this study, the site for the first such reservoir was selected, based upon sound engineering, hydraulic and economic reasoning.

This site, which is the one in question, is located adjacent on the west to an existing area of single-family homes, and adjacent on the east to the so-called "Phelps Slough area," which comprises approximately 200 acres of vacant land.

The "Phelps Slough area" is, in turn, surrounded on the east by single- and multiple-family dwellings; on the north by the Marine World-Africa USA complex and other commercially zoned areas as well as single-family dwellings; and on the west by the Bayshore Freeway and existing commercial-industrial uses; and on the south by the San Carlos Airport and a dike on Steinberger Slough which is over 30 years old.

The dike contains a pipe which provides exit for the waters of Phelps Slough and storm drainage. The actual area of the former Phelps Slough bed approximates 23 acres of the 200 acres which has been indicated as the "Phelps Slough area."

In January 1974, the city made preliminary inquiries to the Corps of Engineers regarding the process by which a fill permit application could be made for the site of the first water reservoir totaling some five acres.

In February 1974, the city submitted a formal application for the subject permit, together with a draft environmental impact report regarding the project.

It should be noted that this report and the application, among other items, indicated that the subject reservoir was necessary in order to provide adequate water supply and fire-fighting capability for the existing developed area on the Redwood Peninsula.

In March 1974, the draft environmental impact report regarding the reservoir was approved by the Redwood City Planning Commission. The Corps of Engineers decided that a separate Federal environmental impact statement would not be necessary for the reservoir application. Also, in June 1974, the city entered into an agreement with Mobil Oil Estates, Ltd., who are the owners and potential developers of the Redwood Peninsula, calling for a contribution of $1.8 million by Mobil for the construction of needed public improvements within Redwood Shores, including the subject reservoir.

On July 3, 1974, the Corps of Engineers issued Public Notice No. 75–108–001, relative to the permit application. The Public Notice specifically indicated that the proposed reservoir's primary use would be to satisfy existing needs in the area and thus its secondary impacts would be small.

The notice also stated that a separate corps permit would be required in order to fill any of the remainder of the so-called "Phelps Slough area" for its planned commercial-industrial uses.

Subsequently, communications were received by the Corps of Engineers from various individuals and organizations both favoring and objecting to the city's permit application.

Two letters were also received by the Corps of Engineers from other Federal agencies requesting that the subject application be denied. These were from the U.S. Fish and Wildlife Service, dated August 8, 1974, and from the U.S. Environmental Protection Agency, dated September 13, 1974, and supplemented with another communication dated November 21, 1974.

Both the Fish and Wildlife Service and the Environmental Protection Agency suggested that an alternate reservoir site be selected, and implied that the city's reservoir application would set a precedent and represent a "foot-in-the-door" regarding the development of the "Phelps Slough area" for planned urban purposes.

The city responded to these objections, indicating that the Corps Public Notice regarding the reservoir application had stressed that a separate permit would be necessary for any other filling in the "Phelps Slough area" and indicating the reasoning which led the city to select the site in question as the best location for the initial and badly needed reservoir.

Subsequently, and during nearly all of the remainder of 1974, various meetings were held and correspondence exchanged with the corps, the Fish and Wildlife Service, and the Environmental Protection Agency.

These exchanges included meetings at which the Fish and Wildlife Service and the Environmental Protection Agency suggested alternate reservoir sites which were also within the 200-acre, so-called "Phelps Slough area."

These suggested alternate sites were evaluated from an engineering, economic, and esthetic point of view, and were rejected by the Redwood City city council in November, 1974.

Also in November, the city council took action instructing the city staff to pursue the reservoir permit application to a final point of decision, and instructing the staff to proceed with the installation of the initial reservoir upon one of the sites indicated in the original studies as being suitable for one of the later two or three reservoirs which would be necessary on the Redwood Peninsula.

This secondary site is not within the Corps of Engineers' claimed jurisdiction, and construction of the reservoir is now underway.

The original estimated cost of the initial reservoir on the originally proposed site was slightly over $1 million. While the reservoir which is now being constructed on the secondary site is not yet complete, its cost will very probably be in excess of $1.5 million.

Much of this $500,000-plus increase in the cost of this public project can, in our opinion, be attributed to the time-consuming, confusing and frustrating processes being utilized by Federal administrative agencies in considering permit applications to the Corps of Engineers.

Subsequent to the city council actions noted above, the city took its case regarding the permit application for the original reservoir site to the South Pacific Division, Corps of Engineers, in San Francisco.

During the early part of 1975, meetings were held and correspondence exchanged with Division personnel regarding the city's application.

By this time, and actually some time earlier, it had become abundantly clear that in order for the permit application to be approved, the particular objection of the Fish and Wildlife Service would have to be withdrawn.

The city is given to understand that representatives of the South Pacific Division attempted to have this objection withdrawn through conversations with the Regional Office of the Fish and Wildlife Service in Portland, Oreg.

This attempt was unsuccessful.

Subsequently, the entire matter was forwarded to the Corps of Engineers in Washington, D.C., and further correspondence ensued between the city and the Office of the Chief of Engineers, U.S. Corps of Engineers.

Finally, under date of August 4, 1975, the city received a letter from Col. H. A. Flertzheim, Jr., District Engineer, San Francisco District, Corps of Engineers, which informed the city that the requested permit had been denied "as being a proposed activity that is not a necessary alteration of a wetland resource and therefore not in the public interest."

As a result of the experience described in the foregoing narrative, the city of Redwood City would like to make the following points regarding the administrative rules, regulations and processes under which Corps of Engineers' permit applications are considered, the bases for these rules, regulations and processes, and the results of these processes, at least as far as the ability of local government to function is concerned:

1. Local government agencies in California, particularly cities, are responsible for a wide range of concerns and services which are vital to the everyday life of their citizens.

These concerns involve the economic and physical condition of the city, employment, tax base and tax equity, and a broad concern for environmental factors and conditions, among others.

The services involve a broad spectrum of planning functions, including land use and public facilities, and protection of the public health and safety, among others.

We would respectfully, but strongly, suggest that the increasing evidence of administrative delays, constraints and confusion regarding the issuance of Federal permits, as in the case we have attempted to briefly describe, are not only serving to inhibit but are threatening, in many cases, to completely halt the ability of local government to implement local planning decisions and provide adequate and necessary public facilities.

2. Underlying the position of the U.S. Fish and Wildlife Service in objecting to issuance of a Corps of Engineers' permit for the subject reservoir is the assumption that somehow the adjacent protective dikes along Steinberger Slough, which have been in place for 30 years or more, should be opened or removed, thereby allowing portions or all of the 200-acre "Phelps Slough area", including the proposed reservoir site, to become tidal in character.

This, in our opinion, is ample and critical evidence that the single-minded "tunnel vision" of a single Federal agency operating in the vacuum and anonymity of the Federal structure, can simply take a position, no matter how unreasonable or refutable that position may be, and successfully block a needed local public project or decision, no matter how deliberately or in what context that local decision was made.

We have indicated the geographic circumstances of the area in question. Incidentally, those circumstances being it is surrounded on almost all four sides by urban development. And we are in addition aware of its role in the handling of storm drainage for adjacent developed areas.

As a city, these and many other factors, economic, engineering, and human, as well as environmental, were taken into consideration in the local planning process for the subject area, and for the reservoir location.

And yet it would appear that none of these factors or considerations bear any weight at all, if and when a Federal permit is required to carry out a project, and if the U.S. Fish and Wildlife Service or some other Federal administrative agency is not, for whatever reason, favorably disposed toward it.

Our city would, respectfully but strongly, recommend that this imbalance should and must be altered by congressional legislative action if necessary in order that local communities may function as required by law, and indeed may continue to survive as viable expressions of community need and will.

And then I will simply add that attached hereto and made a part hereof is a copy of a detailed letter regarding the permit application in question from our city attorney to the U.S. Corps of Engineers in Washington, D.C., dated June 9, 1975.

This letter makes further detailed points regarding the city's position in this matter, and should be made part of the city's presentation.

Thank you very much, Mr. Chairman.

Mr. MOORHEAD. Without objection, all of these attachments will be made part of the record.

[Mr. Fales' attachment follows:]

OFFICE OF CITY ATTORNEY,
Redwood City, Calif., June 9, 1975.

OFFICE OF CHIEF OF ENGINEERS,
U.S. Corps of Engineers, Department of the Army,
Washington, D.C.

Attention: Jacobus Lankhorst, Esq., Special Assistant Counsel for Civil Works.
Re Water Reservoir Facilities—City of Redwood City (PN No. 75–108 ⁄01 of July 3, 1974).

GENTLEMEN: In connection with the pending application of the City of Redwood City (acting for and on behalf of Redwood City General Improvement District No. 1–64) for a permit to construct a 3.2 million gallon capacity covered steel water reservoir tank, we submit herein further information for your consideration. Matters discussed herein have heretofore been raised orally and/or in writing by the City at both the District and Division levels of review. However, it does not appear that such matters have been responded to, or fully considered by the objecting persons or agencies. In this connection, we are most appreciative of the advice and assistance given by Corps of Engineers personnel at all levels of review, and I wish particularly to express our appreciation to Mr. Lankhorst, Special Assistant Counsel for Civil Works of the Office of Chief of Engineers for his candid assessment of the legal aspects and related matters involving the subject application and the whole question of Corps of Engineers' jurisdiction. However, notwithstanding such complicating factors as may exist, it is respectively submitted, for the reasons hereinafter stated, that the City's application should be granted forthwith.

I. FACTUAL BACKGROUND

The proposed site comprises some 6 acres located within Redwood City General Improvement District No. 1–64, which is a special District formed for financing reclamation work and construction of public improvements through general obligation bonds, the principal and interest of which are paid from special taxes levied against land and land improvements within the District.

The approximate present population of the District is 1600. The primary purpose for the water reservoir facilities is to provide urgently needed fire protection and domestic water service to those residents. The costs of construction of the facilities are to be borne by the major landowner/developer within the District (Mobil Oil Estates [Redwood] Ltd.) pursuant to an agreement between said landowner and the City providing for said landowner to fulfill certain disputed prior obligations of its predecessor in interest amounting to 1.8 million dollars.

The proposed water reservoir site is behind, and upland of, dikes along the perimeter of Steinberger Slough, which have been in existence for a substantial number of years. Portions of the site, and the surrounding area have been partially filled in prior years, including portions of former Phelps Slough. The site, and its environs, have been subject to unauthorized use by the public as a refuse dump, and debris such as old mattresses, garden clippings, cast-off shoes, etc. are evident.

During these permit proceedings reference has been made to a larger area comprising some 200 acres, sometimes referred to as the "Phelps Slough" area. The Public Notice (No. 75–108–001) likewise refers to that larger area. However, as said Public Notice observes, the application herein applies only to the 6-acre reservoir site. It should be noted, however, that the 6-acre site as well as the entire so-called "Phelps Slough" area have been designated in the City's General Plan for commercial/industrial usage since the mid-1960's. The area is zoned consistently with the General Plan as a "CB" Zoning District, which permits such land uses as retail stores and shops, personal service shops, banks, title companies, theaters, etc. Additionally, the former "Phelps Slough" bed has been found and declared by the California State Lands Commission to have been severed from the public channels and waterways, and no longer in fact tidelands or submerged lands, and therefore freed from the public trust for such use (please see page "8" of the enclosure hereto [all references to which hereinafter shall be by the designation "encl."], hereinafter more fully discussed).

Environmental impact review pursuant to the California Environmental Quality Act has been conducted and completed by the City of Redwood City in connection with the aforesaid zoning, and, separately, in connection with the proposed use of the 6-acre site for reservoir purposes. With respect to the latter, the environmental impact report concluded that there are no recognizable long term

commitments on the environment which may arise from the project itself. With respect to the former, the Redwood City Planning Commission determined that the final environmental impact report on the rezoning contains a wealth of information to assist in future determinations to be made by the City Council implicit in such rezoning, and that said EIR contains a range of mitigation measures that should be taken into account by any decision making body to assure that all possible adverse impacts of [any proposed] development can be ameliorated or avoided altogether. Moreover, the Association of Bay Area Governments [ABAG] for the San Francisco Bay Area determined that a proposed shopping center to be included within the larger area was, essentially, not inconsistent with ABAG's regional plan, and that the aforesaid proposed regional shopping center is of "marginal significance."

In addition to the minimal environmental effect occasioned by use of the 6-acre site, selection thereof was made by the City based upon sound engineering practices, viz, the site is hydrologically the most advantageous location. Additional water reservoirs must be, and will be constructed to serve the purposes of General Improvement District No. 1–64. The subject application relates merely to the first of such water reservoirs. Indeed, because of the delays occasioned in connection with processing the subject application, the City has determined to proceed with construction of the second such water reservoir, which is located outside any area of asserted jurisdiction of the Corps of Engineers. The foregoing observation is made so that there is no misunderstanding that the subject application must proceed in order that the requirements for water storage for the District be met, notwithstanding that construction has commenced elsewhere. (From time to time during the proceedings in connection with the subject application reference has been made to so-called "alternate" water reservoir sites. Such reference is erroneous, in that such sites are additional to the site described in the subject application).

II. PURPORTED PRINCIPAL OBJECTIONS

Objections to the subject 6-acre site have been raised by two Federal agencies, viz, the Fish and Wildlife Service of the Department of the Interior, and the Environmental Protection Agency (EPA). We discuss hereinafter those objections. However, it has been recognized throughout the proceedings relating to the application that the primary objector has been the Fish and Wildlife Service. Indeed, in a meeting held in the District Corps offices on September 19, 1974, with representatives from the objecting agencies and others present, the representative of the Fish and Wildlife Service evidenced the most vocal objection to the application, and it is to be noted that the letters of objection from the EPA (encls. 6 and 7, to District Engineer's report dated 18 February, 1975) are, in substance, repetitious of the Fish and Wildlife objections.

A. Absence of Consulting Jurisdiction

(1) *Fish and Wildlife Service.*—The Fish and Wildlife Service purports to assert jurisdiction to comment and object to the application under the provisions of the Fish and Wildlife Coordination Act, as amended (P.L. 85–624, 16 U.S.C. § 661 et seq; please see encl. 3, report of District Engineer). Moreover, the Corps of Engineers and the Fish and Wildlife Service have apparently assumed that the "Memorandum of Understanding Between the Secretary of the Interior and the Secretary of the Army", dated July 13, 1967, would apply to these proceedings in the event of the need for resolution of objections raised by the Fish and Wildlife Service.

However, consultation with the Fish and Wildlife Service is required under the Fish and Wildlife Coordination Act only. ". . . whenever the *waters* of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever . . ." (16 U.S.C. § 662(a)) [emphasis added]. Here, the site in question is not only not within the waters of any stream or other body of water presently, but it never was historically within such stream (the 6-acre site is entirely outside the bed of former Phelps Slough, is behind dikes, and is not subject to tidal action). In this regard, it should be noted that the terms "stream" and "body of water" are quite different than the term "navigable waters" used in the Rivers and Harbors Act of 1899 (33 U.S.C. § 401 et se.) and the Federal Water Pollution Control Act amendments of 1972 (hereinafter "FWPCA"; 33 U.S.C. § 1151 et seq.) and the term "waters of the United States" (also used and defined in the FWPCA [FWPCA § 502(7)]). Accordingly, the more expansive definition of "navigable waters"

(to include "navigable in law") made by the Courts in construing the Rivers and Harbors Act and the FWPCA is not necessarily applicable in construing the terms "waters of any stream or other body of water" under the Fish and Wildlife Coordination Act (cf. *United States* v. *Holland*, 373 F. Supp. 665 [1974]).

Irrespective of the aforesaid definitional limitations, the Fish and Wildlife Service does not have consulting jurisdiction in view of the fact that the site in question is less than 10 acres. Such jurisdiction is specifically excluded by the Fish and Wildlife Coordination Act when the land area being considered is less than 10 acres (16 U.S.C. § 662(h)). Therefore, the Fish and Wildlife Service is devoid of consulting jurisdiction in this matter and its objecting comments can have, at best, no greater stature than mere letters submitted by any person. Furthermore, the administratively paralyzing bureaucratic apparatus of the aforesaid Memorandum of Understanding dated July 13, 1967, is, by reason of the foregoing definitions and exclusion, likewise inapplicable.

(2) *EPA*.—The EPA purports to base its statements upon its "Administrator's Decision Statement No. 4" (encl. 6, report of District Engineer). EPA's objection therefore purports to be based upon the categorization of the proposed reservoir site as "wetlands" (id). For purposes of Corps of Engineer permit issuance, "wetlands are those land and water areas subject to regular inundation by tidal, riverine, or lacustrine flowage." (33 CFR § 209.120(g)(3)(i)). Under no stretch of the imagination can the subject proposed reservoir site be considered "wetlands" since it is behind dikes and is not subject to the aforesaid regular inundation (assertions to the contrary are discussed hereinafter).

Moreover, "Decision Statement No. 4" is, by its own terms, a policy ". . . to minimize alterations in the quantity or quality of the natural flow of water that nourishes wetlands . . . and to prevent violation of applicable water quality standards . . ." (Decision Statement No. 4, policy paragraph b.). Again, the subject reservoir site has nothing whatsoever to do with the alteration in the quantity or quality of the natural flow of water. Likewise, in no way does it violate water quality standards (see, report of District Engineer, page 5, paragraph (7): "Inasmuch as the proposed activity would involve no discharge or fill in the presently existing waterways, there would be no effects on water quality.").

Decision Statement No. 4 is obviously concerned primarily with EPA's general authority in connection with the approval and consideration of waste water treatment facilities (Decision Statement No. 4, policy paragraphs a. [relates to "decision processes" of EPA], c. [applies to Federal grants for treatment facilities], and d. [applies to Federal grants for treatment facilities]).

If EPA seriously purports to object to the subject application pursuant to Section 404 of the FWPCA, then the Administrator of the EPA must determine, after notice and opportunity for public hearings, that construction of the reservoir. ". . . will have an unacceptable adverse effect on municipal water supplies, shell fish beds and fishery areas . . . wildlife, or recreational areas." (§ 404(c), FWPCA). However, any action taken pursuant to said Section 404 must be consistent with the policies of the FWPCA, the essential thrust of which is to eliminate water pollution (§ 101, FWPCA). At no time has it ever been contended, and indeed it cannot be contended, that the water reservoir constitutes a pollutant, or has a polluting effect. In view of the primary policy considerations underlying the FWPCA, it is apparent that EPA's subject matter authority does not reach to the activities contemplated by the herein application. As to territorial jurisdiction, we note that this application has been processed with the understanding of all parties that the City does not concede such jurisdiction to the Federal agencies involved (see, encl. 2, District Engineer's report; see, also, Point IV, below).

B. Erroneous Assertions and Conclusions

The objections of the Fish and Wildlife Service (encls. 3 and 5, report of District Engineer), are conceded by the Fish and Wildlife Service to relate primarily to their concern for the 200 or so acres in the vicinity of former Phelps Slough. Initially, it must be noted that former Phelps Slough bed, proper, comprised only approximately 23 acres (page "4", encl. hereto). That expansive and unjustified concern plainly and clearly flies in the face of the specific terms of the public notice relating to the subject application, which states, in pertinent part: "It should be emphasized that the issuance of a permit for the construction of the proposed reservoir by no means implies the subsequent issuance of Corps' permits for any additional fill or construction at Phelps Slough." (page 2, PN 75-108-001).

It is incomprehensible to the applicants that the Fish and Wildlife Service, for purposes known only to itself, can consistently ignore the explicit provisions of the aforesaid public notice. For example, in its letter dated August 8, 1974 (page 2, encl. 3, District Engineer's report) the Regional Director states ". . . this project does not represent the entire development being proposed, [sic]. The placement of the water tower represents only an initial step by the applicant to completely develop the entire Phelps Slough area into a regional shopping center." Again, the Fish and Wildlife Service asserts that, "construction of the water tank represents only a minor portion of the total development proposal for Phelps Slough . . ." (page 2, encl. 5, District Engineer's report). The single-minded purpose of the Department of Interior to ignore the obviously limited character of the permit application, contrary to the explicit terms of the public notice issued by a fellow federal agency constitutes a reprehensible deliberate refusal to accept the actual facts.

That refusal and that attitude, however, has thrust the City in the impossible position of attempting to defend the separate and pending application of Mobil Oil Estates (Redwood) Ltd. for a Corps of Engineers permit with respect to the proposed regional shopping center in the so-called Phelps Slough area. The City freely admits that the proposed shopping center is consistent with the zoning for the aforesaid 200-acre area, and likewise is consistent with the City's General Plan therefore. Moreover, the City is fully aware of the environmental aspects of development of the 200-acre site. But in the context of its own application for the 6-acre site for water reservoir purposes, the City is in no position to offer mitigation or otherwise control the development of the 200-acre area. At such time as the developer-landowner of the 200-acre site comes forward with very specific proposals for development of the area, in greater detail than those which have heretofore been presented, the City will be in a position to take heed of the environmental impact report relating thereto and impose design and environmental impact mitigating criteria and conditions upon the development. But there is no way at the present time that the City can take such action, and it merely confuses the issue to raise the question of development of the 200-acre site in the context of the application for construction on the 6-acre water reservoir site.

Apparently the Fish and Wildlife Service would require the City to defend the 200-acre development, and offer mitigation which it is now in no position to do, or which, if it could, would be premature, in that no final development plans have been presented to the City. But even so, it is clear that such actions would not relate to the 6-acre site, in any event. To suggest that the 6-acre site is a "foot in the door" to the development of the 200-acre site (page 2, encl. 5, report of District Engineer) is mind-boggling when it is remembered that the application for the water reservoir was made for the purpose of serving the present population in the Redwood Shores area, and that the City has no ownership interest in the overall 200-acre site.

Stated another way, the Fish and Wildlife Service may have its day in court with respect to the proposed shopping center in the context of that application. It is crystal clear that, under the terms of Public Notice No. 75–108–001, in no way can the argument be advanced that because the water reservoir has been constructed on the 6-acre site, there must logically be shopping center development in the surrounding 200-acre area. To state such proposition is contrary not only to the specific terms of the public notice, but also to common sense.

Underlying the position of the Fish and Wildlife Service is the bold assumption that somehow the protective dikes along Steinberger Slough could be opened or removed, allowing portions of the 200-acre site to become tidal in character. That simplistic approach ignores some very crucial facts which, it is assumed, will become more evident in the proceedings on the application for the shopping center site permit. However, since the Fish and Wildlife Service has, for its single-minded purposes, raised the issue, a few essential facts should be borne in mind.

First, any proposal to breach the dikes must take into consideration that storm water drainage from the City of San Carlos, California, flows down toward the so-called Phelps Slough area, and declines to an elevation of approximately 1 foot below mean sea level near the Bayshore Freeway area. Under present circumstances, the drainage will collect within portions of the 200-acre site, which acts somewhat as a holding basin, for short periods of time. However, if the area were to become subject to tidal action, the combined effects of storm water drainage and high tides would be to cause drainage back-ups in areas of

San Carlos in proximity to the Bayshore Freeway. Those areas are presently improved, developed, and occupied for commercial and industrial use. Accordingly, under such circumstances, from time to time, said areas would become flooded, resulting in costly property damages and danger to life.

Second, the larger 200-acre site is bounded on the south by the San Carlos County Airport, and on the west and northwest by commercial and industrial development. It is bounded on the north and east by residential development. Only a relatively small portion of the subject lands fronts on Steinberger Slough from which it is separated by dikes. The lands are thus surrounded by intense and dense human usage, including commerce, industry, aircraft flights, and residential living.

Third, the City, in its obligations to its citizens, and all persons who desire to reside therein, has taken into consideration social, economic, and environmental concerns with respect to the land usage of the 200-acre area. The elected representatives of the voters of the City have, after due and lengthy deliberation, concluded that the best-overall land usage for the area is commercial. The General Improvement District, of which the 200-acre site is a portion, is essentially a financing vehicle for the construction of various public improvements. General obligation bonds have heretofore been issued, and quite likely will in the future be issued and sold, in accordance with the planned development of the area. Taxes are levied upon the owners of such lands based upon the assessed valuation thereof. It is consistent with the economic feasibility of the District to provide mixed land usage, including commercial usage, in order to establish an equitable tax base for serving the bonded debt of the District. The 200-acre site has, for many years, been designated as an area which would provide higher assessed valuations by reason of the commercial use thereof. The effect, therefore, of such commercial development, will be to ease the tax burden upon owners of smaller parcels of land, viz., residential landowners. That consideration has, obviously, been one of many considered by the City Council in designating the 200-acre site for commercial purposes.

While the Fish and Wildlife Service purports to make much of the natural assets of the land, it is apparent from the foregoing that the 200-acre site is smack in the middle of a highly populated and densely developed area. We note that there is an absence of quantitative data submitted by the Fish and Wildlife Service with respect to the wildlife population of the 200-acre site. The City does not doubt that wildlife frequents the *actual* marshlands and tidal areas within the City limits. The City Council is most mindful of such areas, and undoubtedly has greater familiarity therewith than the Fish and Wildlife Service. Moreover, it is quite likely that the City Council is far in the vanguard of any public agency with respect to the conservation and preservation of lands within the municipal boundaries. Indeed, it is precisely that over-all view of the City Council which has led it to the conclusion that the 200-acre site could, in balance, best be utilized for commercial purposes.

Somewhat petulantly, the Fish and Wildlife Service has referred to a so-called "compromise" for the water reservoir location (see, page 1, encl. 5, District Engineer's report). The reasons set forth for rejection of the "alternate" site apparently acceptable to the Fish and Wildlife Service have been heretofore enumerated (encl. 4, report of District Engineer). However, it bears emphasis that the so-called alternate site would have placed the water tank within, or in close proximity to, the present terminus of Peninsula Parkway and in the path of said Parkway's proposed extension. The tank would be visible from the home sites of currently occupied dwellings. Placing the tank thusly would tend to degrade the presently occupied residential area, and effectively interfere with, and degrade, development of the 200-acre site in accordance with the city's plans therefore.

Another so-called "alternate" site proposed by the Fish and Wildlife Service at a meeting held with representatives thereof in the field on October 16, 1974, was even worse from a human habitation standpoint, than the aforesaid alternate in that it would have been located further northwesterly from the aforesaid alternate site, and bounded on two sides by existing and occupied residences. The representatives present from the City pointed out the failings of both alternates, and indicated that, in any event, approval of any alternate site would have to be made by the City Council, and if such an alternate were acceptable, it could only be finally considered after environmental impact review. Of the two "alternates" apparently acceptable to the Fish and Wildlife Service, the City representatives indicated that the one which was presently bounded only on one side by occupied residences (i.e., the site in the pathway of future park-

way extensions) would be the one most likely to be presented to the City Council for review. Thereafter, the City Council did consider the alternate in the vicinity of Peninsula Parkway, and rejected the same on the grounds hereinabove stated. It is unfortunate if the Fish and Wildlife Service representatives assumed that a compromise had been made, but given the explicit references to the requirement for Council approval and Planning Commission review, it is patently clear that no "agreement" could have been reached in the field. Moreover, the representatives of the City present did not approve of the so-called "alternate" but raised the substance of the aforesaid objections.

It must be borne in mind that the fundamental basis of the objection of the Fish and Wildlife Service is that the 200-acre site is tidal marshland. In fact, that is not true. The entire area is behind dikes, and has been for a considerable period of time. What minor evidences there are of pickle weed growth are encouraged merely by the occasional combination of storm water drainage and the saline properties of the earth remaining after the diking. As pointed out above, the comments of the Fish and Wildlife Service with respect to evidence of wildlife relates only to the 200-acre site, and is not quantified.

The objecting comments of the Environmental Protection Agency (encls. 6 and 7, report of District Engineer) merely echo the statements of the Fish and Wildlife Service. The assertion, however, in enclosure 7 (letter dated November 21, 1974) that the proposed site is "partially in the former entrance of Steinberger Slough to Phelps Slough" is factually untrue (see, sheet 1, Public Notice No. 75–108–001). Furthermore, it is impracticable from an engineering standpoint to construct a water reservoir within the former bed of Phelps Slough, at least under the circumstances proposed in the subject application.

III. OTHER PURPORTED OBJECTIONS

A. State and Local Authorities

Reference is made in the report of the District Engineer to an observation by the California Department of Fish and Game that ". . . additional development as facilitated by that reservoir would be detrimental to possible future restoration of wildlife habitat." (Page 4, report of the District Engineer.) The Department of Fish and Game therefore appears to have made the same erroneous assumption as the Fish and Wildlife Service, with respect to the "foot in the door" approach.

However, any adverse comments by the Department of Fish and Game is extraordinary, even to the point of raising ethical considerations. Attached hereto (encl.) are reports relative to calendar items 23 and 24 of the California State Lands Commission for its meetings of August 30, 1973 and September 27, 1973. As you will note, those items consist of extensive reports relating to certain transactions entered into between the State of California, on the one hand, and Mobil Oil Estates (Redwood) Ltd. and Mobil Oil Estates (Bair Island Investments) Ltd., on the other hand. The subject transactions related to the conveyance by the State of California to Mobil Oil Estates (Redwood) Ltd. of all right, title and interest which the State allegedly had to the former bed of Phelps Slough, and environs, in return for which the State obtained approximately 5 miles of upland water frontage and fee title to approximately 132 acres of lands (plus 13 acres of residual title interest) abutting portions of Steinberger and Belmont Sloughs and San Francisco Bay (see, exhibit "B" to said calendar item 23).

Additionally, Mobil Oil Estates (Bair Island Investments) Ltd. conveyed some 800 acres to the State of California on Bair Island, and also entered into an agreement to permit the State to conduct a study over some additional 800 acres on Bair Island for environmental purposes, of which additional 800 acres, Mobil Oil Estates (Bair Island Investments) Ltd. agreed to grant to the State, at the State's option, not less than 60 acres of lands within said study area found to be "ecologically sensitive" (see, calendar item 24, and exhibit "B" thereto).

The obvious purpose of the negotiations, from the landowner/developer's standpoint, was to obtain free and clear title to the 200-acre site, including former Phelps Slough bed, in order to develop the same consistent with the City's General Plan. (Presumably the 6-acre site for the water reservoir was either not claimed by the State, or was considered within the environs of former Phelps Slough, and hence freed of State claims, also.)

It is significant to note, as evidenced by the aforesaid enclosure, that the California Department of Fish and Game participated in the negotiations leading to

the actions described in said calendar items 23 and 24, which actions were taken by the State Lands Commission at its meeting of September 27, 1973. It does not speak well of the California Department of Fish and Game, in the context of the City's application for a Corps of Engineers permit for the water reservoir, to object thereto on ecological or environmental grounds when that Department participated in the aforesaid negotiations releasing the site from State claims and leading to the conveyance to the State of California of some 945 acres, plus an additional 800 acres for study purposes, all to be used for environmental and ecological purposes.

Furthermore, we have been advised that the Fish and Wildlife Service was apprised of the aforesaid negotiations. If either the Department of Fish and Game or the Fish and Wildlife Service had designs upon, or planned uses for, the 200-acre area including former Phelps Slough, both of said agencies should have come forward at the time of the transaction with the State of California. In this connection, it is pertinent to note that the City of Redwood City did, once apprised of the transactions, present its own recommendations and requirements relating thereto, which were ultimately adopted by the negotiating parties.

How, in good faith, either the Department of Fish and Game, the Fish and Wildlife Service, or any other State or Federal agency cognizant of the aforesaid transactions can now object to the application of the City of Redwood City for the construction of the water reservoir in the vicinity of the aforesaid 200-acres on the grounds that said area is to be returned to tidal marsh simply boggles the mind. To have participated in, or have been apprised of both the City's General Plan designation of the 200-acre site, and the landowners' proposed use thereof, and to have remained silent as to their intention to seek the flooding of the 200-acre area is simply inexcusable and reprehensible conduct on the part of the agencies concerned.

B. Special Interest Groups

Certain special interest groups have objected to the subject application, again, primarily following the lead of the Fish and Wildlife Service. The California Waterfowl Association objection (encl. 8, report of the District Engineer) simply makes the conclusionary assertion that inadequate considerations were given to Fish and Wildlife resources (id). In view of the foregoing discussion, little more need to be said, except that it is interesting to note that the Redwood City Council recently enacted an ordinance permitting in season waterfowl hunting within the boundaries of the City of Redwood City, thereby advancing the interests of the aforesaid Association. One would have hoped that the Waterfowl Association would have given as much thought and consideration to the City's herein application, as the City gave to the waterfowlers.

The objection of the Loma Prieta Chapter of the Sierra Club (encl. 9, report of the District Engineer) is replete with factual errors. How the author of the letter could have concluded that the proposed reservoir infringes upon Phelps Slough proper is amazing (see. sheet 1, Public Notice No. 75–108–001). Likewise, the suggestion that the proposed site contains dense pickle weed, salt marsh flora and rye grass is debatable, at least to the extent that said conclusion suggests that such growth covers the entire area. Other statements in said letter echo the position of the Fish and Wildlife Service, and need little further comment. However, it should be noted that the reference to "illegal fill" (page 2, encl. 9, report of the District Engineer) is not relevant, although construction of the proposed water reservoir would preclude such illegal fill, since the 6-acre site would be under municipal ownership and control.

The objection of the Chairman, "conservation committee" of the Redwood City Sierra Club (encl. 10, report of the District Engineer) is repetitive of the Loma Prieta Chapter comments (encl. 9, supra). However the suggestion in said letter that Phelps Slough provides a water sanctuary for migratory shore birds and waterfowl seems debatable, since the area is subject only to storm water drainage ponding during the rainy season.

IV. ALLEGED JURISDICTION OF THE CORPS OF ENGINEERS

We have noted hereinabove that the City's application for the subject permit has been taken with a reservation of rights to contest the jurisdiction of the Corps of Engineers. As a matter of expediency, it seemed appropriate to the City to proceed with deference to the Corps' assertion of jurisdiction, notwithstanding that there are serious questions as to the propriety of such assertion.

In view of the delays occasioned in the processing of the subject permit, it now seems that expediency is a lost element.

It has been suggested that determination upon the subject application might, upon mutual agreement, be stayed until a court of competent jurisdiction had resolved the issue. We are, of course, aware of the pending action of *Leslie Salt Co.*, v. *Froehlke* (No. 73–2294–WTS, U.S.D.C., N.D., Cal.) wherein the issue of the legality of the assertion of jurisdiction by the Corps of Engineers in former tidal areas behind dikes has been raised. However, we are also aware of the fact that said action is calendared for trial in June of this year, and that it is highly probable that whomever the decision falls against in the District Court will appeal. Accordingly, it would appear that a final decision may well be years in the offing. Thus, the alternative of waiting for court determination of the Corps' jurisdiction would seem unconscionably to prolong the herein proceedings.

Furthermore, we are also aware of the pending four alternative proposals describing the jurisdictional limitations of the Corps of Engineers (40 F.R. page 19766 et seq.; May 6, 1975). While those proposals provide expansive definitions of the term "navigable waters of the United States" pursuant to order of the United States District Court for the District of Columbia (*N.R.D.C.* v. *Callaway et al.*, No. 73–124C, D.C.D.C.), such regulations do not precisely touch upon the question of Corps' jurisdiction over dry lands situated behind dikes. Indeed, it appears that the assertion of such jurisdiction is not justified (*U.S.* v. *Stoeco Homes, Inc.*, 498 F. 2d 597 [1974], cert. den., 43 L. Ed. 2d 397).

V. CONCLUSION

In a proceeding which has already become unnecessarily complex and lengthy, it is respectively submitted no further delays should be occasioned in the decision-making process (as of this writing, some 18 months have been consumed since the application was filed). We do not suggest that individuals within the Corps of Engineers and other agencies concerned have not acted responsibly or sympathetically to the City's plight. However, the bureaucratic system, and labyrinthine regulatory scheme and process involved is, at best, overwhelmingly cumbersome. It is imperative that government, if it is to function at all, must function reasonably and in timely fashion. Unfortunately, the City's application herein has been the subject of unnecessary and unconscionable delays, and has evoked the strangest and most unfounded reactions of other governmental agencies (or, at least, their appointed representatives) to the end that the operation of the municipal government on this project has been stayed. While due deliberations may well be justified, the administrative paralysis attendant upon the herein application is unbelievable.

It must be borne in mind that the objections of the Fish and Wildlife Service and the Environmental Protection Agency (as well as the special interest groups echoing their sentiments, or vice versa) represent the tunnel-vision of single purpose agencies. While that purpose, in perspective, is most laudable, it must also be recognized that the City of Redwood City, as a municipal government, must take into consideration many interests and factors, and balance the same for the health, safety, and welfare of the entire community. By legislative definition, the aforesaid single-purpose agencies do not recognize the broad spectrum of interests and public needs in our society. They must not be allowed, by reason of their single minded special interests, to paralyze governmental operation, and thwart the considered actions of elected representatives of the people.

It is respectfully submitted, in view of the foregoing discussion, that the Corps of Engineers should decide favorably upon the herein application of the City of Redwood City, independent of the objections of the Fish and Wildlife Service and the Environmental Protection Agency, both on the jurisdictional grounds and the substantive matters hereinabove discussed. It is therefore most respectfully requested that the Corps of Engineers do so act favorably, expeditiously, and upon giving applicants herein advance notice of any proposed determination in order that the City's position may be heard in connection therewith.

Very truly yours,

DAVID E. SCHRICKER,
City Attorney.

Enclosure.

EXHIBIT "B"

CALENDAR ITEM 23

Boundary Settlement and Land Exchange Agreement Between the Commission, Mobil Oil Estates (Redwood) Ltd., et al.; San Mateo County

The State Lands Division and Mobil Oil Estates (Redwood) Limited, a California corporation, have been negotiating over the nature and extent of public interests affecting approximately 23 acres within a 176-acre area claimed by Mobil in Redwood City, San Mateo County. The product of those negotiations is the subject agreement which will result in the State obtaining approximately 5 miles of upland water frontage and fee title to approximately 132 acres of lands (plus 13 acres of residual title interest) abutting portions of Steinberger and Belmont Sloughs and San Francisco Bay. Portions of the lands passing to the State are of sufficient size for appropriate structures or improvements to provide greater public utilization and appreciation of the area.

Access ways to the State lands will also be provided by 2.5 miles of roadway easements from existing dedicated public streets.

Mobil is the successor in interest to whatever title was received in the area claimed by virtue of certain swamp and overflowed land patents issued by the State, private rights to which vested prior to 1870. The State received a confirmatory patent to all swamp and overflowed lands within the area claimed by Mobil from the Federal government on August 1, 1919, pursuant to the Arkansas Swamp and Overflowed Act of September 28, 1850, as amended, confirming the title of the lands so patented which are of that character.

The area claimed by Mobil is traversed by the former and last bed of Phelps Slough, which was a navigable tributary of Steinberger Slough. For approximately 20 years the tributary has been cut off from the tidal waters of Steinberger Slough and San Francisco Bay by an extension of existing levees constructed at the intersection of Phelps Slough and Steinberger Slough. The Mobil claim area lying landward of the levees along Steinberger Slough has been subject to reclamation.

Current negotiations have dealt with the assertion by the State that the portion of Phelps Slough crossing the area claimed by Mobil is sovereign tide and submerged lands and that the State is the owner of all or portions of the slough or, in the alternative, to the extent any private rights were created therein by virtue of the aforementioned patents, that those rights are subject to an easement of commerce, navigation and fisheries.

Within the area claimed by Mobil, Phelps Slough occupied approximately 23 acres.

In 1905, the District Attorney for San Mateo County brought an action against H. M. Pearsall, S. I. Allard, et al. (San Mateo Superior Court Case No. 2802) to abate private and public nuisances arising out of the erection of dams on Phelps Slough and two tributaries thereof. The original judgment in that case, on December 19, 1905, decreed that Phelps Slough was a navigable tributary and that any obstruction thereto must be removed. The Court went on to hold at that time that the tributaries of the slough were not and never had been navigable waters and, therefore, any obstructions across them were lawful. The original judgment was modified on September 2, 1930, to find that any portion of the slough within 1500 feet of the easterly line of the old Bayshore Highway was unaffected by any navigable waters and could therefore be dammed and otherwise obstructed. The final modification of the judgment affecting Phelps Slough occurred on September 11, 1946, by which all of the original decree was found to not affect or relate to Phelps Slough landward of the intersection of Phelps with Steinberger Slough.

The State Lands Commission, in 1966, entered into a boundary agreement (BLA 68) with one of the predecessors in interest of Mobil fixing the ordinary low water mark of Steinberger Slough.

Based upon the foregoing, Mobil has asserted that the State has no interest within the subject lands it claims to own.

The principal points in the proposed boundary settlement and exchange agreement are:

1. The State by deed from Mobil will have confirmed or received fee title to approximately 132 acres (plus 13 acres of residual title interest) presently claimed by Mobil, located around the perimeter of the Redwood Shores Development in Redwood City along the edge of portions of Steinberger and Belmont Sloughs and San Francisco Bay. These lands, together with similar lands al-

ready dedicated to the public, will allow continuous public access to the slough and bay areas from approximately the county airport on Steinberger Slough to approximately the lands formerly occupied by the San Mateo Scavenger Co., on Belmont Slough, a distance of approximately 5 miles. The lands are sufficient for hiking, bicycling, wildlife habitat and public facilities for such activities as nature interpretative centers, fishing and boating, with public parking. In addition, the State shall receive relocatable access easements of several miles in length to these lands from dedicated public streets. (It should be noted that portions of these lands abut the proposed San Francisco Bay National Wildlife Refuge.)

2. The State Lands Commission agrees to transfer administration over the lands referred to in paragraph 1 above to the Department of Fish and Game by means of a 66-year lease. The Department of Fish and Game may sub-let all or portions of the lands to the Bureau of Sport Fisheries and Wildlife of the United States Department of Interior (for a part of the San Francisco Bay National Wildlife Refuge) or to local governmental agencies. Ultimate public use of the land areas depends upon the formalization of a plan based upon several alternatives available. To date, the Department of Fish and Game has informed the State Lands Commission that: "Several of the Redwood Peninsula parcels contain excellent marsh growth and provide habitat for numerous species of wildlife. They can also provide angling and boating access to Steinberger and Belmont Sloughs or simply a place for people to enjoy viewing wildlife."

The proposed lease to the Department of Fish and Game specifically provides that before the commencement of any development of the leased lands, the Department will prepare and distribute appropriate environmental impact statements as required by Public Resources Code Sections 21000 et seq., as amended, and obtain such permits as required by any governmental agency having jurisdiction over such land.

3. In exchange for the lands received by the State in paragraph 1 above, the State will patent to Mobil all of the State's right, title and interest in and to approximately 160 acres on which Phelps Slough was located which are claimed by Mobil and which lie landward of the parcels to be confirmed or conveyed to the State. The State will also terminate the public trust and easement of commerce, navigation and fisheries to the extent, if any, it exists over the lands described in the patent.

4. The State shall issue a 49-year lease to Mobil for dredging a small limited area on Belmont Slough for purposes of improved navigation, water circulation, and marina access to the adjacent deep water. The lease will also permit construction of slips, docks, piers and wharves within a specified portion of the leased area. The lease provides that all required authorizations from other governmental agencies having jurisdiction over the leased area must be obtained by Mobil before any work can be done.

5. The location of the ordinary high water mark along a portion of Steinberger Slough under current existing conditions is also fixed in the agreement.

Copies of the substantive documents necessary to accomplish the above transaction are on file in the office of the State Lands Commission and are incorporated herein by reference thereto.

Federal, State and local agencies, as well as members of the public, have been advised of the proposed agreement, during the pendency of negotiations, and their comments obtained.

The exchange of rights, titles and interests is being made pursuant to Section 6307 of the Public Resources Code. Since the State will acquire mineral interests in the lands being received in exchange for those given up, no mineral rights will be retained in State lands to be exchanged to Mobil.

Pursuant to Section 6357 of the Public Resources Code, the State Lands Commission is authorized to enter into boundary line agreements regarding the location of the ordinary high water mark.

The State Lands Commission also has the general authority, with regard to the lands in question by virtue of Sections 6102 and 6301 of the Public Resources Code, to enter into such boundary line agreements.

The 66-year term of the lease to the Department of Fish and Game is considered necessary to insure that any public use of the area is compatible with the wildlife habitat therein and to insure its protection. Section 2004 of the California Administrative Code allows the issuance of leases for such a term where the Commission finds that such is in the best interests of the State.

The proposed boundary settlement and exchange agreement is exempt from the provisions of Section 6371 of the Public Resources Code relating to environmental impact reports. As previously noted, such reports must be filed by the Department of Fish and Game prior to the use of any State lands leased to Fish and Game by State Lands.

An evaluation has been made by the State which indicates that the State will receive lands and interests in lands equal or greater in value to those lands and interests claimed by the State and to be surrendered as a result of this exchange.

This matter has been reviewed and approved by the office of the Attorney General.

Exhibits: A. Vicinity Map. B. Location Map.

It is Recommended that the Commission:

1. Find that the exchange of lands and rights set forth in the agreement referred to in paragraph 2 below, is in the best interests of the State for the improvement of navigation and to enhance the configuration of the shore line of portions of Steinberger and Belmont sloughs and San Francisco Bay for the improvement of the waters thereof and the adjacent uplands, and that it will not substantially interfere with the rights of navigation and fishing in the waters involved and in fact will enhance and enlarge public rights and utilization of said waterways for trust purposes of commerce, navigation and fisheries; and that the State will receive lands and interests in land equal to or greater in value than any such lands or interests relinquished by the State pursuant to said agreement.

2. Authorize the Execution of the Boundary Settlement and Land Exchange Agreement (BLA 141) between the commission, Mobil Oil Estates (Redwood) Limited, and those other parties which execute said agreement, said agreement being on file in the Office of the State Lands Commission and by reference made a part hereof.

3. Authorize the Execution of a State Patent without the reservation of mineral interests to Mobil Oil Estates (Redwood) Limited, and other private parties as their interest may appear of record in the Office of the County Recorder of San Mateo to the parcels of real property described in said agreement referred to in paragraph 2, above, pursuant to the terms of said agreement.

4. Authorize the acceptance and recordation of conveyances to the State without reservation of mineral interests as provided in said Boundary Settlement and Land Exchange Agreement.

5. Find and declare that upon the delivery of the patent to the parties referred to in paragraph 3 above, and the recordation thereof in the Office of the County Recorder of San Mateo County, the real property described in said patent:

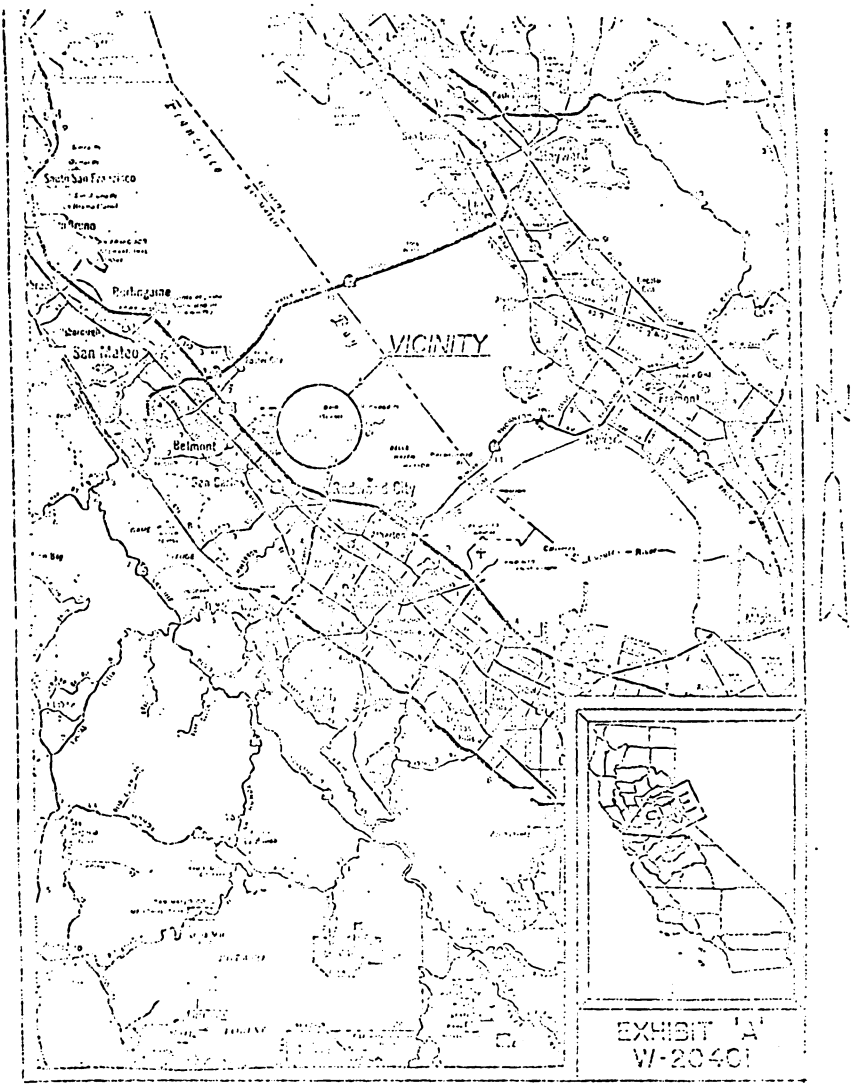
A. Has been cut off from navigable waters, improved, filled, and reclaimed by Mobil Oil Estates (Redwood) Limited, and their predecessors in interest.

B. Has thereby been severed from the public channels and waterways and is no longer available or useful or susceptible of being used for commerce, navigation and fishing, and is no longer in fact tidelands or submerged lands and therefore shall be freed from the public trust for such uses.

6. Find that the issuance of a lease for a term of 66 years to the Department of Fish and Game for purposes set forth in said lease is in the best interests of the State in that such term is necessary for the protection and preservation of the wildlife habitat in the leased area and authorize the issuance of said 66-year lease.

7. Authorize the issuance of a 49-year lease to Mobil Oil Estates (Redwood) Limited, a copy of which is attached to the agreement referred to in paragraph 2 above.

8. Authorize the State Lands Division and Office of the Attorney General to take all further steps necessary to implement the above transaction including, but not limited to appearances in any legal proceedings brought concerning the above transaction.



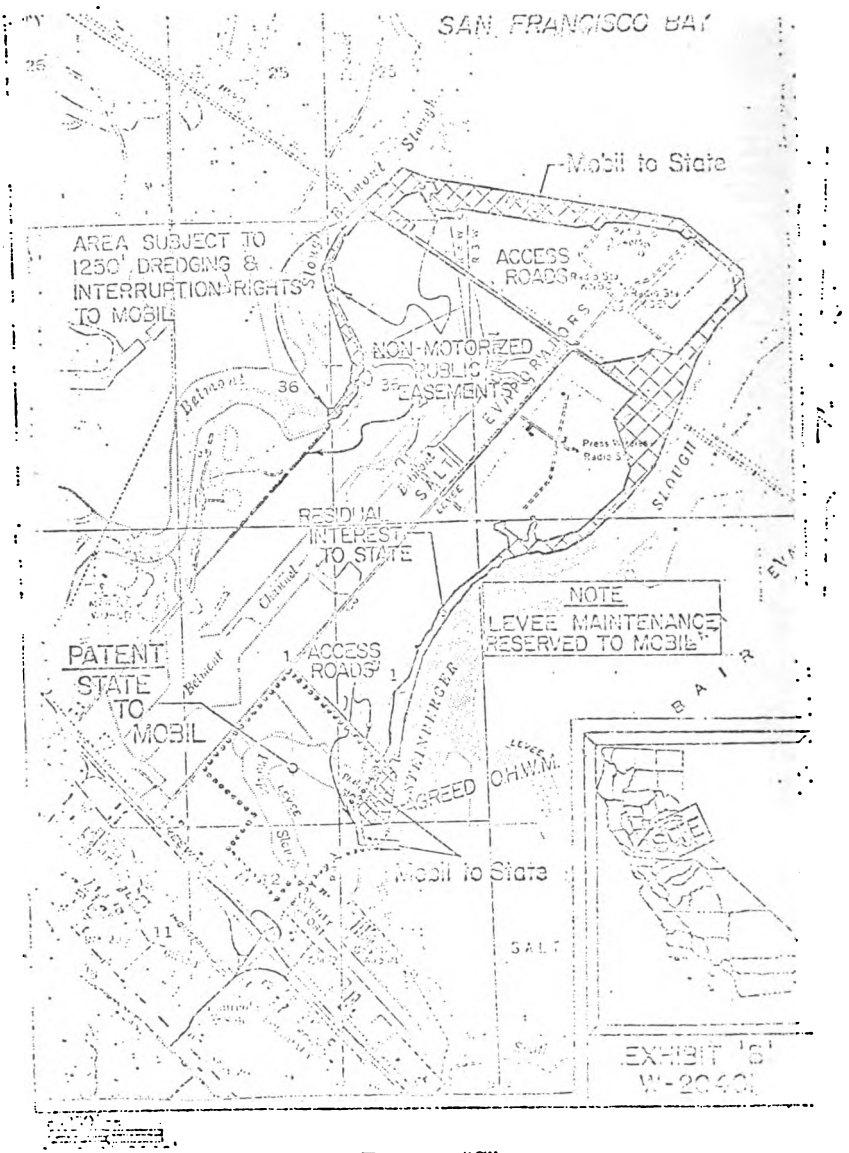


EXHIBIT "C"

CALENDAR ITEM

24.

Real Property Donation Agreement and Bair Island Environmental Study Agreement, Mobil Oil Estates (Bair Island Investments) Limited; San Mateo County

This transaction relates to portions of Bair Island which is located in Redwood City, San Mateo County, adjacent to San Francisco Bay.

The State is to receive about 800 acres by donation from Mobil and an additional portion of Bair Island of about the same area will be the subject of further study relating to its ultimate use.

Both the Department of Fish and Game and U.S. Bureau of Sport Fisheries and Wildlife have made extensive studies and inventories of wildlife existing

on Bair Island. These studies have revealed that at least three endangered species inhabit the island including the California Least Tern, California Clapper Rail and Salt Marsh Harvest Mouse. In addition, Bair Island was found to be inhabited by the Great Blue Heron, Snowy Egret, six species of water fowl, White Tailed Kite, Marsh Hawk, American Avocet, Caspian Tern, Loggerhead Shrike, San Francisco Bay Yellowthroat, and Red Winged Blackbird. It is also reported that several harbor seals have been seen in the waterways around Bair Island.

Congress, in 1972, established the San Francisco Bay National Wildlife Refuge. Initial boundaries of the refuge include only small portions of outer fringes of Bair Island. Concern was expressed by the Department of Fish and Game and the public that an insufficient portion of the island had been included in the refuge for the protection of existing wildlife. Efforts were then commenced to insure that the portions of Bair Island inhabited by the aforementioned wildlife be permanently set aside for their preservation.

I. REAL PROPERTY DONATION AGREEEMENT

During the past year, Mobil Oil Estates (Bair Island Investments) Limited, has acquired nearly all private title claims to Bair Island. Mobil has been made aware of the wildlife significance of the island and of the public's interest in permanently preserving the area for such wildlife and other compatible public uses. After a review of the reports on the island's wildlife significance and the advice of independent consultants, Mobil indicated a willingness to donate certain portions of the island to an appropriate public agency which would hold the property for the preservation of such wildlife.

In this connection, Mobil approached the State Lands Division about the possibility of accepting such lands, provided the Commission agreed to hold title to them in the same manner as it holds title to sovereign lands protected by Article XV, Section 3 of the California Constitution. During the negotiations on this entire proposal, the Department of Fish and Game, U.S. Bureau of Sport Fisheries and Wildlife, local agencies, and members of the public were advised, consulted and their comments received.

Under the proposed Real Property Donation Agreement, Mobil, on or before December 31, 1973, will grant to the State approximately 800 acres of real property on Bair Island which are partially within and immediately abutting the present proposed boundaries of the San Francisco Bay National Wildlife Refuge. This area is occupied by many of the wildlife listed above and will provide a buffer zone to protect the proposed refuge from any use which would be inconsistent therewith. Upon approval of this transaction, the Commission staff shall immediately undertake studies and negotiations for the transfer of the lands donated to an appropriate governmental agency for administration.

II. BAIR ISLAND ENVIRONMENTAL STUDY AGREEMENT

As an outgrowth of the above-mentioned negotiations, Mobil has also agreed to enter into a Bair Island Environmental Study Agreement to determine if additional portions of Bair Island have particular importance for wildlife conservation purposes or for public recreation. A copy of the agreement is on file in the office of the State Lands Commission and by reference made a part hereof. Under the provisions of the agreement, the following matters are set forth:

1. The State Lands Commission will create an inter-agency task force to conduct the above-mentioned study of the approximately 800-acre portion of Bair Island set aside by Mobil adjacent to the lands to be donated to the State above. In addition to the inclusion of various State agencies (including the Department of Fish and Game), it is anticipated that the task force shall include a representative of Redwood City, a representative of Mobil, and probably will include one representative of the U.S. Bureau of Sport Fisheries and Wildlife. (All studies by the task force shall be fully coordinated with the City of Redwood City, San Francisco Bay Conservation and Development Commission and other appropriate government agencies.)

2. The task force will have three years to complete a Comprehensive Study Plan during which time the State will have a permit and license to use the study area for study purposes.

3. Upon completion of the plan, Mobil agrees to enter into substantive negotiations with the State for the dedication of appropriate lands within the study area to implement the plan and recommendations contained therein. As a minimum Mobil agrees to grant to the State, at that time, 60 acres of ecologically sensitive real property within the study area.

Upon the advice of the Attorney General, the proposed property donation transaction is exempt from Public Resources Code Sections 21000 and 6371, et seq.

Prior to any disposition of the donated lands to an appropriate governmental agency, environmental impact statements shall be filed.

The above agreements have been reviewed and approved by the Attorney General's office.

Exhibits: A. Vicinity Map. B. Location Map.

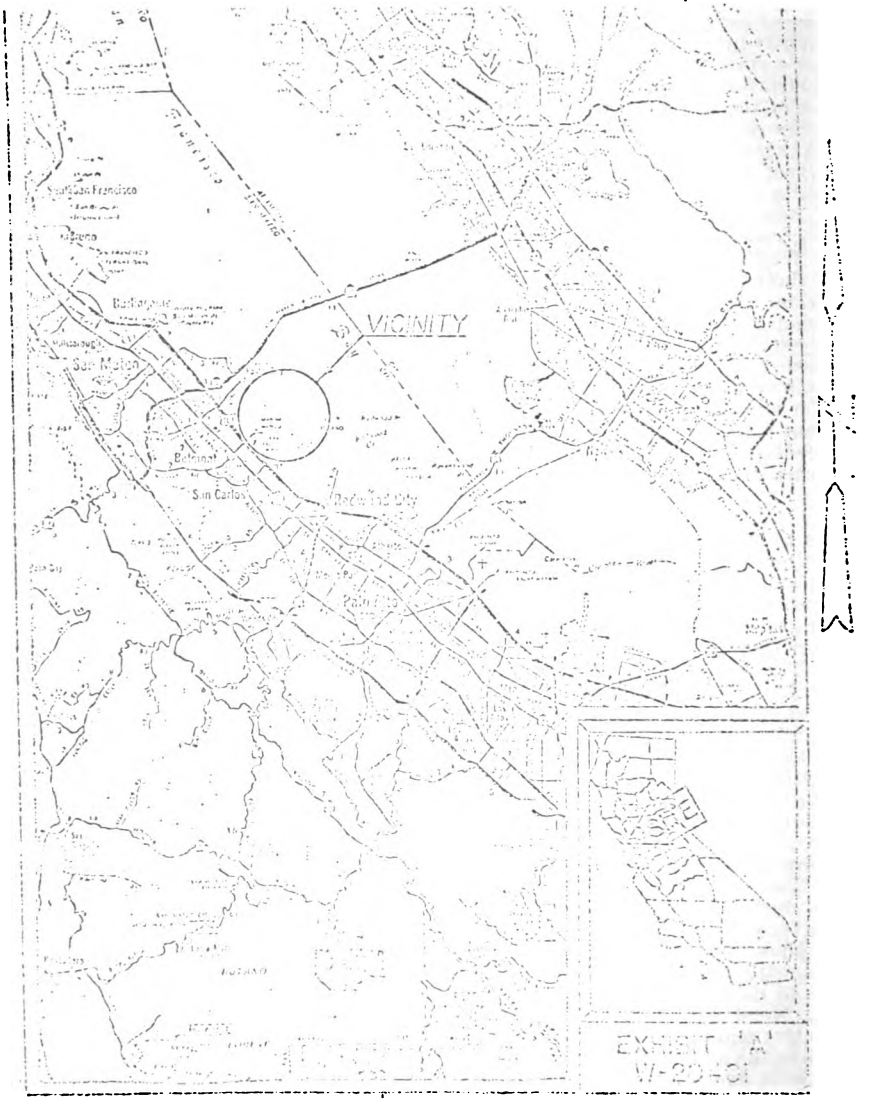
It is recommended that the Commission:

1. Authorize the execution of the real property donation agreements and Bair Island environmental study agreement with Mobil Oil Estates (Bair Island Investments) Limited, copies of which agreements are on file in the office of the State Lands Commission and by reference made a part hereof.

2. Authorize the acceptance by the State of the conveyances and permit and license as provided for in the agreements referred to herein.

3. Authorize the executive officer of the commission to establish the inter-agency task force for Bair Island and appoint the members thereof.

4. Authorize the State lands division and office of the attorney general to take all actions necessary and appropriate in connection with the agreements referred to in paragraph 1 above.



Mr. MOORHEAD. Mr. Fales, there is one thing that concerns me and that is, I am not sure whether I have it clear which is Redwood Shores and which is Redwood Peninsula. Maybe they are the same thing.

Mr. FALES. They are synonymous, except that the original boundaries of what's called Redwood Shores also includes Bair Island. That is the area that is included in the so-called General Improvement District No. 1–64 which Congressman McCloskey referred to earlier as being similar to Foster City. That's a financing vehicle.

The portion of the Redwood Shores area that is Redwood Peninsula Mr. Pusich is outlining now. So the difference between Redwood Shores and Redwood Peninsula is that we leave out Bair Island when we refer to the Redwood Peninsula.

Mr. MOORHEAD. I see. And am I correct that Redwood Peninsula—is not now developed for urban purposes but that since 1965 it has been in your plan for future development for urban purposes; is that it?

Mr. FALES. It is now partially developed for urban purposes. There are about 1,500 to 2,000 people who live there in the area—those are all homes in the area being outlined.

There is also a commercial-recreation development called Marine World—Africa U.S.A. which is built on the Redwood Peninsula.

The outboard section of the Redwood Peninsula beyond the area that—that's it, where you just indicated, Dick—that is planned for urban use but not yet actually in urban use.

Mr. MOORHEAD. And what about the other peninsula, the one to the right?

Mr. FALES. Bair Island, which was originally owned by Leslie Salt and a part of Redwood Shores. Mobil Oil has dedicated some 800 acres as mitigation to the State of California, the whole end of the peninsula, which is going to be a part of the National Wildlife Refuge. That, therefore is off the tax rolls now and has been transferred—the title of it has been transferred to the State.

They did that in exchange for clearance of the State's—any rights the State might have to that 200-acre Phelps Slough area. Now, they have a corps fill permit for the 200 acres, which is separate from the 5-acre permit of the city's for the reservoir, to use that area for a shopping center for which it was originally planned.

The Fish and Wildlife Service apparently doesn't recognize this. It states the mitigation was already given to the State. So you have to start the process all over again with the Federal Government. I don't know what the status of that permit is, because that's still being considered by the Corps of Engineers.

And Mobil, of course, being a private developer is in a position to discuss and negotiate mitigation. We haven't involved ourselves in those conversations at all.

The point I was trying to make in our first presentation is that a municipal government or a combination of municipal governments in attempting to build a wastewater treatment facility or a reservoir for that matter, are in no position legally or morally to go out and spend the taxpayers' money on land that may be clear outside the city to give away to another agency or another individual.

In our opinion, we are different than a private developer in that sense.

Mr. MOORHEAD. Well, if, for example, you knew that the presently undeveloped area within your plan could not be used for "urban development," would you nevertheless want to proceed with the reservoir in its present proposed location?

Mr. FALES. Well, yes; we would because it would be designed to serve as water storage and firefighting capability for the people who live out there now, who are only served through one line.

If that line breaks, they have no water at all and no backup storage for fire protection purposes. That's why we declared the building moratorium in 1971 until we could get those kinds of facilities constructed.

A secondary point, however, that's implied in your question, Mr. Moorhead, is what would happen if we simply stopped development altogether—Redwood Shores or at least the peninsula portion of Redwood Shores, now, forever.

The same thing that would happen to Foster City would happen to the residents and property owners that now live in Redwood Shores in that bonds have already been issued by that district in a law similar to the Estero Municipal Improvement District law and those people would be increasingly stuck, their taxes would go up, until essentially they would be driven out of their homes.

Mr. MOORHEAD. Maybe I am missing something. Mr. Fales, but—I am really taking the devil's advocate point of view to give you a chance to answer—was there any Corps of Engineers' approval of your general urban plan of 1965?

Mr. FALES. Only insofar as the dikes around the peninsula are concerned. And permits for those were secured when they were built. And they were built and reinforced under Corps of Engineers' standards.

Incidentally, this is our city attorney, Mr. Schricker.

Mr. SCHRICKER. Mr. Chairman, if I may, I might be able to add a bit to that. But I don't believe that the Corps of Engineers exercised jurisdiction behind the dikes at the time that the Redwood Shores general plan was adopted.

That was a more recent regulation or assertion of jurisdiction which occurred I think in the latter part of the sixties.

Mr. MOORHEAD. I am—understand I am not trying to take a position for Foster City and against Redwood, but it seems to me that the Foster City people come to us saying that we have got an explicit permit in 1960 or 1961 which is now attempting to be reversed.

Whereas—and also the fill inland from their development. Whereas, in your case, you don't have an explicit permit and your proposed development is going out toward the bay.

Mr. FALES. Well, both. The area in which the reservoir was proposed to be constructed is inboard of the existing development. That whole vacant area of some 200 acres in there, you see, is inboard of the existing development in Redwood Peninsula.

Mr. MOORHEAD. Would you point out the location of the reservoir?

Mr. MCCLOSKEY. Is 6 acres the size of that, Mr. Fales?

Mr. FALES. It's 5 acres-plus, it's approximate—well, between 5 and 6 acres.

I think we should say, too, that at the time we commenced development of Redwood Shores in the mid-sixties, there wasn't any require-

ment to get a permit for the plan itself, that is, for the development of the area.

Since then those rules have changed. But it was after the development had started. It was after those houses that are there now were built.

The area that is 200 acres inboard was simply left out. It wasn't even in the district at that time. It was later annexed. It was in the city but it wasn't in the general improvement district. That was annexed to the general improvement district, oh, let's see—18 months, years ago.

But it was originally also on the city's general plan. It was to be and is still indicated as an employment center, which could have been an industrial park or a large commercial development. It was meant to provide tax base for sales tax and property tax for both the district, to help pay off the district bonds, and for the city of Redwood as a whole.

The reservoir site happens to be on the edge of that large 200-acre site, the so-called "Phelps Slough area." But it's a very small part of it. And we happened to make the first application, which was for the reservoir.

Part—as I indicated in my testimony—part of the reason for the objection filed by the Fish and Wildlife Service was that approval of our little 5-acre fill permit would constitute a foot in the door for later on filling the rest of the 200 acres, which is also inboard of the existing development.

We countered by saying that the Corps public notice on our permit specifically indicated that a separate permit and a separate process altogether would be required for the rest of the 200 acres, and therefore that kind of a comment was irrelevant to our application.

We maintained that right down to the end.

Mr. MOORHEAD. I agree with you legally, but I wonder if you wouldn't be coming back to us 5 years from now saying "when we put the reservoir in it was with contemplation of further development."

And, "True, we have to get another permit, but you really led us down the primrose path by granting the permit of the reservoir."

Mr. FALES. The reservoir is being built now in a different place that didn't need a Corps permit. It was a secondary site.

However, for the overall development of the peninsula, as we indicated, we would need three or four sites if the peninsula was fully developed. And we wanted to put, for what we thought were good and sufficient reasons, the initial reservoir on the site for which we made the application.

But because of the entanglements and the turndown finally of the fill permit application we had to build it in the area where we didn't need a fill permit from the Corps. That's the only way we could get it built.

We still desire to have a reservoir located in that area. The fact that we, however, as a public agency or an applicant for a public jurisdiction—public facility in a public jurisdiction, that's one thing.

The fact of a landowner, in this instance, applying for a fill permit for the remainder of the area in order to build a shopping center is another thing entirely. And that's what the Corps public notice said, and indeed that application has been made and is being considered, and an environmental impact statement is being prepared on it.

Now, I don't know what the outcome of that will be. But our application for the reservoir site was totally separate from that and was

considered, hopefully, separate from that. Because it was designed to serve those people and institutions that were already there and that had been there since the mid-1960's.

It is just that they had never been adequately served in the area, and we thought we had to, in order to protect their property and their lives, have adequate backup water storage in the area for fire protection purposes primarily in case that one waterline broke.

This was our whole approach. Again, it took us 18 months to get a "no" answer. And it took us about a year before we got cranked up to build the reservoir in another secondary location. And that in turn cost us money, that delay.

Mr. MOORHEAD. But the construction of the new reservoir in the area where a corps permit is not required, is it your testimony that the reservoir does not satisfy the needs of Redwood City?

Mr. FALES. Yes; it's designed to provide for the needs of those people who are now living on the Redwood Peninsula and those houses that are now there.

Other reservoirs will be required if the development is allowed to proceed to its ultimate—that is, if the peninsula is allowed to be developed. So, one reservoir will not satisfy the whole peninsula. And that was stated in the corps application and in the public notice, that the first reservoir was designed to provide for existing needs, not future needs.

And everybody understood that.

Mr. MOORHEAD. Yes; I caught that quote of the EPA about "foot in the door." That was what concerned me. I wanted to be sure that we were looking just at one reservoir, and not at a further step without knowing very well what we were going to do there.

Now I should yield to my colleagues from California who know the area better than I do.

Mr. Ryan?

Mr. RYAN. I have got a couple of questions, Mr. Chairman, that I would like to pursue. It may be worth the effort.

Mr. Fales, you have been city manager of Redwood City for what now?

Mr. FALES. A little over 4 years.

Mr. RYAN. Four years. And you were I believe in Pleasanton before that—what was it, about 11 years?

Mr. FALES. Eleven years; yes, sir.

Mr. RYAN. So, I think you probably know your cities and your colleagues and city managers and so on rather well.

And also, projects of this kind I would presume—without imputing any responsibility to any particular group, it would be an awful temptation it seems to me with the law the way it presently is for any really zealous environmental group to ignore or to avoid what seems to me to be a pattern.

Which is, if you look around the bay, you see those projects that are in the process of development. And you go to each one in turn, or you work up some kind of information sheet on it and then you by one means or another obtain some kind of stoppage of the effort by implying that somehow there is some kind of need for swapping of land.

I used the phrase the previous day and I will use it again today, and although it is a little strong, it can amount to that if the law isn't a regulation kind of thing, a kind of ecological hijacking.

I know of several instances myself here in my own district where a project like the one you have just described was suddenly held up after years of work because of a particular need suddenly for some kind of mitigation.

That is an interesting word. Although I guess the mitigation is because of that 1965 congressional legislation requiring a change in the manner in which the Corps of Engineers issues the permit.

I am not sure of the language there, but it seems to me that it would be an awfully strong temptation on the part of those interested and sincere and zealous environmental groups not to take advantage of the law like that to obtain additional land that can be turned back into open space of some kind rather than into the kind of development which we are talking about here.

Do you know of any kind of—would it be fair to ask you even—any kind of pattern such as that, such as you describe in the case of your joint sewage treatment facility, and to some extent over here?

Mr. FALES. Well, I can only speak from my experience in Redwood City which doesn't go back clear to the beginning of the Redwood Shores area.

All of the areas along the bay—we have a deepwater port facility in our area. It's part of the city organization. Also, that requires permission from the Corps of Engineers and help from the Corps of Engineers.

And the Corps of Engineers itself has to get permits and permission to do other parts of its job, such as, dredging ship channels, for example. And I'm sure they run into somewhat similar problems at times.

I think that my experience along the shoreline of the Bay and in our city has been that with respect to public projects, you simply—and the suggestion was made by an individual of the Audubon Society, not by the Fish and Wildlife Service, in terms of mitigation for the treatment facility.

What I suggested was that there's got to be a difference between what a public agency can or cannot do with respect to building a public project, which in this case is an environmental improvement project—in terms of mitigating anything with public tax funds, which we can't do, and what any agency of Government is able to negotiate out of a private developer or land owner in terms of the exchange of that—whatever it is—for governmental permission to do something else.

Quite frankly, there is a law on the books of the State of California which allows cities to adopt as part of their subdivision ordinance a requirement requiring residential developers to contribute a certain amount of land for public park and open space purposes out of their holdings on a per unit basis.

And that's been done. It's been done for quite some time by most developing cities in the State. Standards, however, have been set in the law beyond which the city cannot go. It's a flat requirement of so many acres for so many units in single-family residential subdivisions.

And the placement and configuration of those acres are known to everybody going in. The rules and regulations are clearly spelled out in writing. That's quite a different situation than the situation that seems to develop vis-a-vis the Federal process and the vast number of agencies commenting on permit applications of this type, and the way in which mitigation is handled on a very subjective—in my opinion—basis by those Federal agencies, particularly the Fish and Wildlife Service.

There aren't any real rules and regulations that I know of with respect to that. Indeed, the first time we, number one, heard of an objection by Fish and Wildlife in terms of the location of our proposed treatment plant and, number two, the suggestion by the Audubon Society that there ought to be mitigation was clear in July of this year.

And that is almost the same time we got from another Federal agency over a million dollars to design and hopefully next year build the plant.

Mr. RYAN. Well, the reason I asked the question is, it seems to me that it has never been used or never been thought of, there is a potential there of an environmental group—the Audubon Society, for example—I meant no implication of anything illegal or immoral or illicit or whatever in saying it—but for a group like that to finger a particular project and say we ought to get in there and get some of that stuff for a refuge of some kind, it is a big project, and so on, and go to the State or the Federal Fish and Wildlife people and say, how about that.

And then on the basis of some kind of objection, a very subjective basis raised by one or either of those agencies, the Corps of Engineers then is required under the law to simply delay it.

And in delaying, there is a cost which becomes then a kind of burden which has to be borne. And those who are involved have to decide whether and to what extent it is worth paying so much in order to get off the hook.

Now; whether that is used or not, the potential for doing so I think is there without anyone involved doing anything that is against their own rules or regulations or the law itself.

Mr. FALES. I can't help but agree with you. In the case of Mobil Oil, for example, they actually have given already some 800 acres of their land to the State for use as part of the wildlife refuge.

Mr. RYAN. We saw that this morning.

Mr. FALES. In just that kind of a situation.

Mr. RYAN. All right, let me ask you one more question that involves probably more Redwood Shores than anything else.

I think a possible partial solution to this problem that we are getting into would be a kind of before-after sort of a deadline where we in the law or regulations instruct Federal agencies to treat any project as such, public or private, before some arbitrary date as being already underway in effect and therefore kind of ex post facto—you can't put things back the way they were, so we let it run through.

A project started after a particular date would have to run through a different set of guidelines, a different set of rules and under much stricter environmental controls.

I think, for example—if you wanted an extreme example, let's take a rather obvious one—I don't think it would be a good idea for the Fish and Wildlife, State or Federal, to send a letter to all those owners of buildings up and down New Montgomery Street or on Montgomery Street itself in San Francisco and say unless you can show us a reason, you are going to have to vacate these premises because we are going to rip it up and put it back in the condition it was before, which was to say part of the harbor of San Francisco or part of San Francisco Bay.

I don't know why that wouldn't be possible under the present rules because after all, it would be returning that. Or if we are not going to return that to San Francisco Bay area water or tidelands, then the least

they are going to have to do is to pay in order to leave Montgomery Street the way it is by buying some kind of land elsewhere for some kind of public access or for some kind of access for use by wildlife or wildlife preservation purposes.

In other words, kind of extract suddenly on the threat of some kind of sudden change. Now that is not going to happen. I use that as an extreme example. But under the present legislation, I suppose you could try.

Now, if you don't do that, at least we are trying now to go back a few years, if not many years, and in this particular case at least as far back as the diking of Brewer Island somewhere around the turn of the century.

And we are saying to the people who live now on Brewer Island, we want you to turn that back into—or parts of it into—a different use or else give us something in mitigation.

And I think because it is as vague as it is we should have some kind of better guidelines. And I am suggesting as a partial solution some kind of cutoff date.

What effect would that have on Redwood Shores if we would say that 1965 is the cutoff date?

Mr. FALES. I don't know. I was going to say I suppose my reaction would be in terms of representing the city—it depends on the date. I guess that would be the toughest thing to try and decide.

I think you get into a situation, Congressman, where it is very difficult to delineate between the guidelines and the efforts of the individual agencies. I will give you another example of that.

In determining our concept approval for the sewage treatment facility, the Environmental Protection Agency indicated that that area in which Congressman Moorhead was interested in, which was outboard of—inside the dikes but not developed yet, out toward the bay from the existing development—was to be considered infill for the purpose of building ample capacity in the sewage treatment plant to handle that.

That was so-called population infill in their opinion, and that the developer would be allowed to buy sewage capacity on a 100-percent basis with no Federal or State funding, grant funding, involved, but that would be approved as a part of the capacity of the 23.5 million gallons per day, and that would be considered infill. That's the EPA.

The Fish and Wildlife Service's position as expressed in their letter objected to the location of the treatment facility which clearly implies that those dikes should be—at least the possibility of those dikes being removed or breached or broken at some future date—should be retained and that area possibly which is considered by another, by EPA, as infill and to be developed, that not be considered as infill from their point of view and scheduled to be developed.

And so you have an automatic conflict in results, if not guidelines and goals, in interpretation of regulations. We as local government happen in this instance to be stuck square in the middle as is, I would suspect, the Corps of Engineers in a situation like this in that we have money and approvals by every other Federal and State agency to go ahead with this——

Mr. RYAN. Well, I know that. I am just asking the question whether or not—because I think if you look at Redwood Peninsula that you

have there, I am sympathetic to the people who are already there because under policies set by the Redwood City Council in the past and approved by various State and Federal agencies they are now there.

Mr. FALES. That's right.

Mr. RYAN. But I think you make a distinction from people who are already there and must be taken care of and given the kind of reasonable expectation of services as anybody anyplace else in the city can, and those areas where they are not there yet and there is the possibility of changing public policy if it hasn't gone so far and if the financing isn't in the condition where it can't be changed to recognize up ahead a greater need for recognition of environmental needs in this area, as well as around the whole bay area—and the whole Nation, as far as that goes.

Mr. FALES. I think that's part of the crux of the problem that obviously there has been a change in the policy. I don't think that our city council objects to the law.

I think that what we're saying is there really doesn't appear to be any distinction in terms of when you turn the corner.

Mr. RYAN. Right.

Mr. FALES. And perhaps, unless there is some clear distinction made, it inhibits and threatens our ability to plan at all in the future for the completion of anything that we happen to have started.

And in some of those instances the financial implications are extremely serious.

Mr. RYAN. Yes, I know that, yes.

That is all I had, Mr. Chairman, except that just in passing I would just like to point out that it occurred to me during all this that it might be possible 15 years from now to begin passing the policies that would sort of torpedo what we are doing now.

And then where are we. I think there has to be some kind of consistency. Thank you, Mr. Chairman.

Mr. MOORHEAD. Mr. McCloskey?

Mr. MCCLOSKEY. Thank you, Mr. Chairman.

Mr. Fales, I want to thank you for a very helpful statement. I wonder if you could supplement it with the same kind of factual data that we asked from Foster City, the burden on the existing residents of Redwood Shores or the need to develop the remaining area of the shores, and a comparison of that burden on those other homeowners in the city, a comparison of the selling price of the lots, the value of the land, the bonded indebtedness that exists against them, so that in our report when we try to evaluate this we have precise information in that respect?

Mr. FALES. We'd be happy to do that. I think we have that information. It probably isn't up to date including 1974–75, but we can easily do that within a week and have that in your file.

[The information follows:]

SEPTEMBER 25, 1975.

To: James M. Fales, Jr., City Manager.
From: Jack P. Ference, City Controller.
Subject: Effect of Referral to Grant Permits by Army Engineers may have on General Improvement District 1-64 Tax Structure.

General Improvement District 1-64, also known as the Redwood Shores Area of Redwood City, was formed to provide the financing vehicle for development of certain lands within Redwood City adjacent to the San Francisco Bay on a

planned basis. The lands at the time were principally used for solar salt production by the Leslie Salt Company. The general premise in the Redwood Shores Area development for single family homes was that a planned development, with land reclamation and construction of required municipal facilities financed by use of special district general obligation bonds, the conventional home would be sold at a considerably lesser price than in nearby subdivisions which had been financed using conventional methods. Under such conditions a home buyer could qualify with less initial cash outlay and at the same time his yearly payments for taxes and principal and interest on the home loan would be less (or at least not more) than the conventionally subdivided property.

The County Assessor's records bear out that this premise is still applicable. A typical home in the Farm Hill area of Redwood City, Foster City and in the Redwood Shores area were studied for comparison. The three neighborhoods have comparable characteristics; the homes compared were on interior lots and basically of the same construction and size (1700 to 1740 square feet), three bedrooms and two baths. All three areas had been reappraised by the County Assessor as of March 1, 1975 with the same appraisal methods being used in all cases. For comparative purposes it was assumed the homes were sold the same date as the Assessor's appraisal and that financing was arranged using 20% down with a conventional 35 year mortgage at 8½%.

Location	Appraised value	Down	Yearly payment		Total year	Gross 35 years
			Principal and interest	Taxes 1975–76		
Farm Hill	64,000	12,800	4,618	1,459	6,077	228,695
Foster City	56,500	11,300	4,077	1,859	5,936	219,060
Redwood Shores	54,100	10,820	3,903	1,909	5,812	214,120

In the above example taxes were assumed to be constant over the period and were computed at 1975–76 rates for each of the respective code areas. Both Foster City and Redwood Shores areas include special district taxes for bond service which are $348.57 and $610.76 respectively. Also, due to school taxes being lesser, the Farm Hill home has the lowest City/County school tax rate. If a thirty year loan is used the savings in Redwood Shores is sufficient during that period to provide an additional 24 years of District taxes, if required.

General Improvement District 1–64 has, since inception, used independent appraisers rather than the County Assessor to determine values of property for the levying of District taxes. The reasons for using independent appraisers are:

1. Reclamation Bond service applies to land only as a result it is necessary that values assigned to land be more finite than is usually found in the type County assessment system where total value is the primary factor rather than a finite differentiation between land and improvements.

2. Changing of values due to growth within the District need to be reflected on the assessment rolls earlier than would normally happen by use of the County Assessor. Since construction of new facilities generally affect values of surrounding property, these increased values are assured of being placed upon the tax roll at an early date and all property owners then share more equitably in the assessment for District taxes.

The District, in the absence of any other development plan, is currently appraising undeveloped land based on the original development plan of 1967. This has resulted in substantial differences in valuations between the County and the District, especially in those undeveloped areas lying eastward of the present residential subdivisions and in the Bair Island area of the District. Use of County valuations would throw a greater percentage of bond service upon the developed property owner (primarily single family homeowners) than through use of district appraisers:

	District assessment	Percent of total	County assessment	Percent of total
Developed properties	8,775,338	56.0	9,293,185	72.4
Undeveloped land	6,894,236	44.0	3,541,600	27.6
Total	15,669,574	100.0	12,834,785	100.0

The District, in conformance with accepted appraisal practices, has contracted for a Market Absorption Analysis of undeveloped lands situated on the Redwood Peninsula to determine the rate which raw land in this area can be absorbed into the economy. This study being made by the District's independent appraisers, Marshall and Stevens, Incorporated, will provide the basis for adjustment to land values for the 1976–77 Assessment Year, if required.

During 1973–74 926 acres of District lands with an assessed value of $928,476 were traded and/or donated to the State of California in return for release of any claims the State might have on lands which were planned to be developed as a regional shopping area. During the same period approximately 55 acres of land within the shopping district area were annexed to the District. The annexation, which was assessed at $379,397, and inflation are the prime reasons tax rates have decreased between 1973–74 and 1975–76:

	1973–74	1974–75	1975–76
Net value land and improvements	$14,404,872	$15,945,587	$16,095,574
Tax rates per $100 assessed value:			
Reclamation bonds (land only)	4.5100	4.2208	4.1722
Facilities bonds (land and improvements)	4.4019	4.1177	3.9942
Maintenance and operation tax	.1391	.1010	.0941
Total (land only)	9.0510	8.4395	8.2605

Construction during the aforementioned periods has accounted for only minor increases. The removal of inflation as a factor shows a real increase in the tax rates which has substantially increased the tax levy to the typical single family homeowner.

	1973–74	1974–75	1975–76
Net assessed value, adjusted for inflation	$14,404,872	$13,724,060	$13,864,062
Tax rates per $100 assessed value:			
Reclamation bonds	4.5100	5.0400	4.9630
Facilities bonds	4.4019	4.8061	4.6575
Maintenance and operation	.1391	.1173	.1093
Total (land only)	9.0510	9.9634	9.7298
Taxes paid by a typical homeowner	$572.46	$627.58	$610.76

Property, for tax purposes, must be appraised at its fair market value. If the future development of the approximately 2900 acres of undeveloped property remaining in the District becomes highly doubtful, then there is no choice except to reduce its values. This will then throw a greater proportion of District taxes levied upon the developed property; possibly to the point where such could almost be considered confiscatory, or at least a real financial burden.

Removal of the undeveloped lands by transfer of title to a non-taxable governmental body or by a form of inverse condemnation which would not allow the lands to be developed would further increase the amount of taxes collected from developed property to an almost confiscatory rate:

Assessed value of developed lands, 1975–76

Land	$3,882,500
Improvements	4,892,838
	8,775,338
Tax Rates Required:	
Reclamation bonds	11.58
Facilities bonds	7.13
Maintenance and operation	.17
Total (land only)	18.88

District taxes on a typical home in this case would be $1,219.63.

As previously stated, current appraised values as set by the District Assessor are based on the 1967 development plan, which under existing conditions analysis

showed was reasonable. Although the plan could not be fully instituted in the prescribed timetable due to circumstances beyond District control, in the absence of any other plan, there has been no reason to believe that development as originally planned would not be feasible at a later date as this is practically the last of the developable bayside lands in San Mateo County. However, if permits to fill land cannot be obtained, the land becomes valueless, except possibly on a long term speculative basis. Such a move would reduce the assessed value of the 2900 acres from the current $6,894,236 to not more than $2,500,000. This would have the effect of driving the total district tax rate up from $8.26 per $100 assessed value to $12.73 per $100 assessed value, an increase of $4.47.

Reclamation bonds	7.04
Facilities bonds	5.55
Maintenance and operation	.14
Total	12.73

Again, a typical homeowners tax would increase to $888.75 from the current $610.76 while the tax on Marine World-Africa USA, the only business within the District would increase $35,381, from $74,909 to $110,290.

Possibly the more damaging possibility which could happen, if permits were not allowed, would be that the principal landholders could let taxes go delinquent. As a result there would be insufficient funds to pay the $1,064,600 yearly bond service and the District would have to default on its bonds. Not only would the District be hurt, this would also hurt the investors who have purchased district bonds as an investment. The landowner could default on taxes for up to five years to determine whether permits would be granted and whether it would be economically feasible to continue the project. At the end of five years if he determined the project was no longer economical, he could allow the property to be sold to the State. If no buyer is available, it is the understanding of the District Assessor that title of property would vest in the State as tax deeded lands and possibly never be returned to the tax roll.

Under any circumstances the refusal to grant permits for a planned development to proceed would effectively kill the viability of the District. It is very possible that due to the additional tax load, which would have to be absorbed by the owners of developed property, that the entire area would become blighted. At the very least it would place a financial hardship on the area residents which was not bargained for nor could it be foreseen at the time they purchased the property.

JACK P. FERENCE.

Mr. MCCLOSKEY. That is fine. I am intrigued with the problems that you have described. We are looking really at two questions. One, should we amend the law to more clearly define the Corps of Engineers' responsibilities and the Fish and Wildlife Service's responsibilities. And the point that you last made in your testimony, the difference between EPA's interpretation and other agencies' interpretation, is of course paramount to us.

But the difficulty of us laying down a criteria as to what should be mitigation, it seems to me in the Redwood Peninsula is fairly clear.

The 200 acres that are inboard, for example, if we were to say as we did in 1968 in the Estuary Act, we really don't want anymore wet lands filled, our tidal wet lands are of great benefit to us. We want to look at that land carefully, we want to look carefully at any Corps of Engineers permit where they fill existing wet lands.

We haven't yet made any such determination of land behind dikes that is essentially wet lands. And I think we owe every local government in the country that determination.

But to try to establish a criteria, for example, as to what the mitigation should be for giving up 200 acres inboard of existing development, it would clearly be different than giving up 200 acres out on the edge of the Bay, would it not?

Mr. FALES. It would probably be much easier the closer to the Bay from the planning point of view. I think it becomes more difficult when you get what essentially are holes that have been planned to be filled in and all of a suddent cannot be.

I don't—I'm thinking in terms of building public facilities, in terms of traffic networks, in terms of sewer and water lines—we can't, you know, just build streets and they don't go anywhere.

Mr. MCCLOSKEY. Can you give me a rough idea of what we are talking about in the difference in the value of the land for which a permit is granted and before the permit is granted?

We had a case I think in our last hearings where land worth $3,000 became worth $900,000 if a fill permit were granted. Do you have appraisal data on it? What is this land worth if no permit is granted, and what is it worth per acre after a fill permit has been granted?

What are we talking about here in the value of this governmental discretionary decision?

Mr. FALES. Well, it's difficult—as perhaps Mr. Schricker can answer—it's difficult to get an appraisal on the speculative value of the land because the issuance of the permit is speculative.

Mr. MCCLOSKEY. Well, what did Mobil pay per acre for this land in which it was not known whether they could get a permit or not?

Mr. FALES. I really don't know.

Mr. SCHRICKER. Mr. Chairman, if I may again—City Attorney Schricker?

Congressman, we are not of course party to any of the land exchange agreements or the agreement by Mobil for the purchase of these lands.

In point of fact, however, we were given to understand the acquisition——

Mr. MCCLOSKEY. Well, certain of this is in the tax records. They have to show on the stamps on the deed what the price is they paid. Surely somebody knows what the price is.

Mr. SCHRICKER. Well, those stamps are not necessarily reflective of the true value, because the circumstances——

Mr. MCCLOSKEY. But they show the tax on the land, don't they?

Mr. SCHRICKER [continuing]. The circumstances were so unusual because Leslie was bankrupt.

Mr. MCCLOSKEY. That is my understanding, that the land without a fill permit may be worth zero. But land with a fill permit is worth a rather substantial sum of money.

Mr. SCHRICKER. That sort—set of occurrences, however, came before the question of fill permits arose. In other words, I don't think the question of whether there was or was not a fill permit was relevant as to the valuation of the transaction between Leslie and Mobil—the valuation of the lands at that time.

Mr. MCCLOSKEY. Well, you appreciate our problem that in imposing a discretionary power on the Government to make land that is worthless into land that is worth millions of dollars, the burden may be greater on us to lay down criteria under which that permit is granted to avoid the possibility of graft in the Government officials that ultimately make that decision.

I was wondering if you could give us any help here?

Mr. FALES. Well, as a general——

Mr. MCCLOSKEY. As to Mobil getting this permit?

Mr. FALES. Well, I would say as a general statement I really can't cite the actual statistics involved. Obviously, if land on the one hand, for whatever reason, cannot be developed at all, it has much less value, maybe even zero, than land which can be developed for some urban purpose, whether it is a high land use or low land use.

Mr. MCCLOSKEY. I refer specifically to that square of red land that is inboard. It is located right adjacent to the Bayshore Highway. It is next to an airport on one side, and it is bounded by residential area on the other.

Presumably, if it can't be developed for any purpose because the Fish and Wildlife Service feels the Clapper Rail ought to nest there, it has very little value to its owner.

What I would like to know, and if we could get it for the record from the city assessor or whoever determines land value in Redwood City, what will its value be for a 200-acre shopping center in that particular area?

I think our records should include what we are talking about monetarily because it plays a very major part in legislation——

Mr. FALES. We can get the value now and the estimated value of the improvements that would be put on it if it were developed in the way in which it was planned, yes. We would be happy to do that.

I might add that if the Clapper Rail were to attempt to nest there, it would be very difficult because of the aircraft and the motorcycles and the garbage that's involved in that particular area.

Unfortunately, that is one of the aspects of human nature, particularly when we're talking about an area that's surrounded by human endeaver at this point. It's that kind of an environment and that is what's going on in that particular area.

The area outboard, however, in the same context of your question, it provides us a little bit different example in that this is a water treatment facility which—wastewater treatment facility, which in itself is an environmental improvement which we have been mandated by Federal and State requirement to accomplish.

And when you start talking about value in that sense, we are not talking about value in a private sense, then it starts to take on a little bit different context, it seemed to us.

Mr. MCCLOSKEY. I agree, and I think you made the point very well in your testimony.

Thank you very much.

Mr. MOORHEAD. Mr. Burton?

Mr. BURTON. Just two comments. Mr. Chairman.

First of all, I would like to say that I have known Mr. Fales for many years. We went to high school together. And during the time I was in the State legislature, he was regarded by all members as one of the more efficient spokesmen and administrators in local government. I would like to say that for the record.

Just one question on the Mobil land. They made a switch with the State, right? It wasn't mitigation, it was property for property.

Mr. FALES. No, it was a claimed right by the State Lands Commission in the bed of former Phelps Slough. Phelps Slough had been diked off for many years. The State Lands Commission asserted that they had certain underlying rights—"they" meaning the State of California.

Mr. BURTON. Yes.

Mr. FALES. The transaction was, the quid pro quo in that instance, was the exchange of the 800 acres of land for the State's removing any further or future claim that they might have——

Mr. BURTON. Like a real estate transaction in exchange for a quit-claim deed or something, right?

Mr. SCHRICKER. Mr. Chairman, if I might clarify that one bit.

The city was informed of the transaction in its planning capacity. Actually, 126 acres or thereabouts around the perimeter of Redwood Peninsula was swapped or exchanged with the State for the quit-claim deed to the bed of Phelps Slough. That is 126 acres.

Then we understand that the 800 acres is an additional mitigation factor or acreage. But the quid pro quo presumably was the 126 acres for the release of the claim to Phelps Slough.

So, you have, in addition to that, the 800 acres which is over on Bair Island. This is, I might point out, indicated in the attachment to the testimony relative to the watertank. There are some documents from the State Lands Commission proceedings which outline this transaction.

Mr. BURTON. When they made the switch on the quit-claim and they made the mitigation—although you are not here really speaking for Mobil, but in a way I think the two permits, although they are together in a way could well be together as the basis for future permit if one was granted, and 5 acres and a sewer, what is the difference and you grant it, you know, you let us fill in this nonfillable area.

So, therefore it is no longer a nonfillable area. I mean, when Mobil got that property, the quit-claim on the mitigation, they still knew they had it subject to the type of limitations you are running into, say, except for the bureaucratic redtape. At least, they figured to get a decision.

Mr. FALES. Well, they did get a decision from the State. I think—and I certainly don't want to speak for Mobil, but I think that they thought that the mitigation and the quid pro quo, the 126 acres along the edge of the peninsula, would satisfy everybody, State and Federal agencies.

And they were obviously mistaken in that assumption.

Mr. BURTON. Yes.

Mr. FALES. They made a deal with the State of California essentially, not with anybody else or the Fish and Wildlife Service. I don't know what will be required further, if anything, in mitigation because they are now in the permit process with the Corps of Engineers.

And that whole thing is yet to be resolved.

Mr. SCHRICKER. On that point, Mr. Congressman, we are advised that the Federal agencies were apprised of the transaction that was being made between the State of California and Mobil.

Mr. BURTON. Yes, well, I would say Mobil Oil's attorney blew it, myself. I mean, it is not Federal Government agencies' business.

When we hear that Mobil Oil and the State of California made a deal I guess we ought to go in and abide by it or kibitz a bit. And you know there are three jurisdictions involved. It makes a lot more sense to deal with all of them than make an assumption. But that is not relevant.

Thank you, I have no further questions, Mr. Chairman.

Mr. MOORHEAD. Thank you very much, Mr. Fales and Mr. Schricker.

I did have some other questions about the procedure of things, but

I think they have been brought out by other witnesses. If you want to add anything for the record later, we would be glad to receive it.

Thank you both very much for an excellent presentation.

Mr. FALES. Thank you, Mr. Chairman.

[Letter submitted subsequent to hearings follows:]

OFFICE OF CITY MANAGER,
Redwood City, Calif., September 26, 1975.

Mr. NORMAN G. CORNISH,
Staff Director, Conservation, Energy and Natural Resources Subcommittee, Government Operations Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. CORNISH:

* * * * * * *

Finally, we would like to add some comments for consideration by the Subcommittee which are based upon the testimony of others during the subject hearings, as follows:

1. If we understood the comments of Mr. Felix Smith, U.S. Fish and Wildlife Service, correctly, he suggested to the Subcommittee that the existing review process regarding the issuance of Corps of Engineer's permits be modified in order to provide for even earlier involvement by the Fish and Wildlife Service than is now the case, in order presumably to allow that agency more time to consider its position relative to various permit applications.

While, in our opinion, such a suggestion would appear on the surface to be positive in nature, upon reflection some other ramifications of such a modification in procedure should also be considered.

First, as is evidenced in our testimony on behalf of the SCSP, the Fish and Wildlife Service had more than ample time and information with which to consider and articulate a position with regard to the location of the proposed sewage treatment facility, but did not choose to do so until very late in what was already a laborious and tedious review and approval process by various Federal and State agencies.

It would seem to us that, rather than place an additional burden upon permit applicants, particularly local governments, the Fish and Wildlife Service should be made to conform to some reasonable review schedule applicable to all agencies. We believe that the existing status of the Fish and Wildlife Service in blocking local government programs and decisions is distorted and out of proportion, and that status should, if anything, be reduced rather than enhanced.

Second, and again with reference to our testimony on behalf of the SCSP, we would suggest that the terms and conditions of the "Memorandum of Understanding" between the Department of Interior and the Department of the Army be modified in order to allow a Corps of Engineer's District or Division Engineer to overrule a Fish and Wildlife Service objection to a permit application in certain situations. The SCSP permit application and its status is an example of such a situation.

As matters now stand, the SCSP has signed contracts for Federal and State funds to plan and design a wastewater treatment facility. The SCSP cannot proceed with any certainty, however, without a Corps of Engineer's fill permit for the site of the treatment facility.

It is our understanding that, unless the Fish and Wildlife Service objection to the SCSP permit application is withdrawn, under the subject "Memorandum of Understanding" the District Engineer cannot issue said permit, but can only make recommendations to the Division Engineer and thence to Corps Headquarters in Washington, D.C.

As indicated in my testimony on behalf of the City of Redwood City, the only experience we have had with this process, under similar circumstances but with a different permit application, resulted in a delay of approximately eighteen months before a final response was received from the Corps of Engineers.

In the case of the SCSP application, a delay of such magnitude would be a great disservice to the effort to improve the water quality of San Francisco Bay and would result in a considerable increase in the cost of the project. This increased cost would be shared by the Federal, State and local governments involved.

If, as appears to be the case, the Corps of Engineers is more environmentally sensitive now in the processing and issuance of permits, then it would appear reasonable that more authority can be safely delegated to the Corps at the District and Division level.

We wish to once again thank the Subcommittee and staff for considering our testimony regarding these matters, and hope the additional documentation submitted is useful and relevant.

In the event any further information is required, please do not hesitate to contact this office.

Sincerely,

JAMES M. FALES, Jr.,
City Manager.

Mr. MOORHEAD. The subcommittee would like now to hear from Col. H. A. Flertzheim, Jr., U.S. Army Corps of Engineers, District of San Francisco.

Colonel, will you come forward, sir? I will administer the oath of office.

[The witness was duly sworn.]

STATEMENT OF COL. H. A. FLERTZHEIM, JR., DISTRICT ENGINEER, U.S. ARMY ENGINEER DISTRICT, SAN FRANCISCO, CALIF.

Colonel FLERTZHEIM. Thank you, Mr. Chairman.

Mr. MOORHEAD. Before you proceed, Colonel, I think the subcommittee wants to extend its thanks to you for that very interesting helicopter overfly of the southern bay area. We are sorry you didn't turn the sun on the way you did this afternoon.

Colonel FLERTZHEIM. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, in the interest of time I will summarize somewhat from my testimony I have provided you.

Mr. MOORHEAD. And without objection, the full statement will be made part of the record.

Colonel FLERTZHEIM. Thank you. I am Col. H. A. Flertzheim, Jr., District Engineer, U.S. Army Engineer District, San Francisco.

My district extends from the coastal watershed of the Smith and Klamath Rivers on the Oregon border to the Salinas River watershed near San Luis Obispo. It includes the San Francisco and Suisun Bays to the approximate confluence of the Sacramento and San Joaquin Rivers.

I appreciate the opportunity to testify before this committee for I believe that such hearings are essential in their contribution to legislation which protects both the public and our national resources from exploitation.

My purpose is to give you my views—as requested by your staff—on how, specifically, environmental law is being applied in the bay region, the results of that application and suggestions for improved procedures.

Before I do this, I would like to explain the context in which environmental laws are applied.

It is not possible to write legislation which reflects public interest in all sections of the country unless it can be applied in a local context. For the public interest being decided by the local people attaches different weights in different areas to national objectives in the fields of the environment, the economy and the social impact of what we do.

For example, the residents of Foster City are not overly concerned with Marin County's open space plan and yet they would both agree

that a coordinated effort for the proper use of land and water must be made for all the people of the bay region.

A regional approach usually results in decisions that are wholly satisfactory to no one, but generally approved by most.

To illustrate how the environmental process works, I will use as examples the applications for the Foster City fill and the Consolidated Sewage Plant at Redwood Shores.

The bay region was one of the early arenas in which the environmentalists fought to control development. The initial objections were to aesthetic degradation. These escalated into a campaign against environmental alteration, ecological damage, and menaces to the health of the citizens.

Peace has been only partially restored by legislation designed to resolve different views as to the degree of protection to be afforded to both people and resources.

The corps has been an integral part of this process and in 1958 my district published a volume called "Future Development of the San Francisco Bay Area 1960–2020."

It was this study that drew attention to the bay fill problem and mapped the large areas of irreplaceable marshland which had been lost forever through unregulated development.

Further studies and tests on our San Francisco Bay model in Sausalito showed the physical dangers attendant on continuance of this policy, and gave reason and force to the conservationist's plea that the bay be cleaned up and procedures for controlling fill be established.

The maps and data resulting from our investigations, which were first authorized by the Congress in 1950, were used in the historic efforts of the Save San Francisco Bay Association and supported the creation of the State Bay Conservation and Development Commission. I am, by State law, a member of that commission.

The studies also supported a regional approach to the resolution of environmental problems and reinforced the trend toward establishment of regional control exercised through regional governmental bodies.

One of the consequences has been the creation of regional environmental standards which are not so strong as some conservationists would wish but are far more stringent than others believe necessary.

The environmental movement in the bay area has undergone an accelerated evolution which has produced a far more powerful and vocal component of our society than existed 10 or 20 years ago.

The San Francisco district kept pace with this interest, not only through the environmental studies it was conducting at the direction of Congress, but in its application of the authorities contained in section 10 of the River and Harbor Act of 1899.

Over a period of about 10 years, from 1955 to 1965, the Corps expanded the definition of the Federal interest in connection with permit applications from one which considered only the protection of navigation to one which included the protection of the public interest in all its aspects.

In 1958, the Chief of Engineers affirmed and defined the extent of our concern under the River and Harbor Act to include all elements comprising the public interest.

As a result of these expanded concerns, the area in which our jurisdiction was exercised was specifically defined in our Public Notice

71–22 to extend to the plane of the mean higher high water, with an addendum, No. 71–22(A), to include areas behind dikes.

During this same period, congressional intent was further defined, additional legislation passed, and judicial interpretation expanded so that the conditions under which one may have sought a permit in 1961 and the conditions existing 10 years later were vastly different.

The environmental interest has grown, obviously, as a reflection of public interest. It has resulted in a cleaner bay, cleaner fresh water, and cleaner air. It has established a collection of watch dog agencies to prevent a recurrence of ecological insensitivity.

It has, on the whole, improved the way we live and the circumstances in which we live. Concomitant with its rapid growth, however, there have been undesirable side effects, unwarranted delays, standards, criteria, and conclusions based on inadequate or erroneous data, the creation of adversary positions not conducive to compromise, and the pursuit of objectives by single-purpose agencies, groups and individuals which have sometimes resulted in neglect of certain aspects of the public interest such as economic, health, and, equally important, social well-being.

I earlier used the date 1961 through no coincidence, for it was in that year that this district issued Mr. T. Jack Foster a permit to build levees around Brewer Island.

Among the many problems with which this project has been beset, changing environmental law and requirements have not been the least.

As I stated earlier, in 1968, the Corps of Engineers adopted the general public interest criteria in the evaluation of permit applications. It was not until later that the first judicial decision upheld the denial of a permit application for factors other than anchorage and navigation.

In evaluating the public interest, the Corps must give consideration to all factors, the desires of local interests, the views of Federal and State agencies mandated to evaluate the effects of the proposed authority on water quality, fish and wildlife, archeology, living conditions, and many more, the views of environmental organizations, the views of the general public at large, and last but not least, the desires and concerns of the applicant.

When the multitude of public interest considerations are combined with time-consuming requirements to prepare an environmental impact statement, the Corps is often placed in a difficult position.

The procedure is lengthy, permit applicants become impatient, and in many cases major delays in projects have resulted. This is what has happened in the case of Foster City.

However, the Corps is charged with determining what should be done in the public interest, and in order to make this determination, all factors and issues must be raised and evaluated. By its very nature, this process takes time.

At the time we issued the Foster City permit in 1961, the Corps did not require permits for work behind the dikes for which the permit was granted.

Our records reveal few protests from the public, and we considered these not germane to the issues of the right of navigation, which was the only basis on which applications were evaluated at that time.

Twelve years later, on May 9, 1973, application was made for the current fill project as a result of Public Notice 71–22(A). In the in-

terim, both Federal and State legislation had created numerous agencies which were required to comment on the proposal and had strengthened the authority of existing agencies whose concurrence was required.

This, in turn, required coordination with the Environmental Protection Agency, Department of Commerce, Department of Interior and its subsidiary, U.S. Fish and Wildlife Service, and other regional, State, and Federal agencies, such as the State Resources Agency and two of its components, the Regional Water Quality Control Board and the Department of Fish and Game.

Anticipating many of the requirements of these other agencies, this district asked for a great deal of data from Foster City.

It was not, therefore, until August 27, 1973, that our Public Notice 74–0–22 was issued with the understanding that an environmental impact statement had to be prepared by the district with Foster City providing the basic information.

On September 12, 1973, the U.S. Fish and Wildlife Service requested more time for comment. And from September 14 to October 11, concerns were expressed by the city of San Mateo and San Mateo County on various aspects of the project including water quality, fill hauling, and an apparent conflict with the county's open space plan.

On October 29, EPA comments were received regarding preservation of water quality, and on November 12, the State Resources Agency asked for an extension of time.

On December 10, 1973, we met with Foster City officials to explain the requirements for the EIS procedures involved. This was followed by a letter telling them to stop the current filling operation until the permit requirements were fulfilled.

From this date through June 13, 1974, numerous actions took place relevant to the EIS and the stop work order. On July 23, 1974, the Department of Health, Education, and Welfare requested denial of the permit and expressed concern for effects of the proposal on public service and physical resources, traffic overloads, loss of wildlife habitats, and increased demands on educational services.

I might interject at this point that throughout the procedure and continuing until the present time, all significant comments were sent to Foster City officials and their consultants for reply and resolution.

I might also say that from the sequence of dates that has been given, it can be seen that the Corps is not blameless in the delays occasioned by our procedure.

This is also true of Foster City for it was difficult for their officials to understand the necessity for prompt reply to the comments, objections, and mitigation measures required by other State and Federal agencies.

This District became neither judge nor jury, but an impersonal observer seeking to identify either a compromise acceptable to all parties or unreconcilable differences.

A compromise agreement with State agencies was not achieved until the third of this month. In the interim, requirements for mitigation and water quality were received from State Water Quality Control Board, State Resources Agency, and others.

As Congressman Ryan recalls, we met with him, State Senator Arlen Gregorio, and Assemblyman Arnet on November 1, 1974, to define problems and seek measures for their resolution.

On February 8, 1975, I again met at Congressman Ryan's office to report progress, and on May 28, we met with Congressman Ryan, Foster City officials, General Connell, our South Pacific division engineer, and Mr. Veysey, Assistant Secretary of the Army for Civil Works.

During that same period, we had seven meetings with Foster City officials and met three times in Sacramento on State objections.

On July 28 of this year, the water quality certification was received and on the third of this month, as I mentioned earlier, all State objections were withdrawn provided their recommendations were followed.

There are obvious lessons to be learned from this experience. These will be reviewed following a discussion of the Redwood Shores sewage plant application.

The application for a permit for a consolidated sewage plant at Redwood Shores was received August 2, 1974. This District, in anticipation of requirements of other agencies, conducted an environmental assessment which was not completed until March 13, 1975.

On April 22, 1975, Public Notice 75–251–067, covering the Redwood Shores application, was published and distributed.

On May 17, the Audubon Society requested wildlife habitat replacement. On June 24 of this year, the comments of Fish and Wildlife Service were received from their Portland office. I would like to quote relevant excerpts:

> We believe those areas below the plane of MHHW should be reserved for uses which require a waterfront location. All other works should be located on upland sites unless it can be demonstrated that there are no alternative sites available, all other options have been exhausted, and the impact on fish and wildlife and uses thereof is insignificant.
>
> While the proposed consolidation of wastewater treatment facilities and sewage treatment should improve the quality of the discharged effluent, we question the need to construct the treatment plant in an area which is readily restorable to tidal action.
>
> In summary, we do not oppose the construction of a wastewater treatment plant but object to the issuance of a permit for the project at the proposed site and recommend the use of an alternate site.

We transmitted these comments to the applicant on July 22 and suggested that they attempt to resolve this objection through discussions with Fish and Wildlife.

Again, some of our problems are exemplified in this specific action. As Congressman Ryan is aware, it is the general policy of the regional Fish and Wildlife office to require 1 acre of mitigation land for each acre developed in a project.

The mitigation applies not only to marshland but also to former tidelands and marshlands susceptible of restoration. To quote from the letter, "As the proposed project is to be constructed on former tidelands, it will eliminate the option of restoring the area to tidal action."

These same restrictions and problems govern the application of the Port of Redwood City for developing a dredge disposal area. The three cases—Foster City, Redwood Shores, and the Port of Redwood City—will illustrate some of the points I would like to make in concluding this testimony.

There are obviously both strengths and weaknesses in the present system. The laws and regulations accomplish their purpose: environmental protection.

The way in which they do this, with the consequent costs in time, money, and social disruption, could be improved.

Among the advantages of the system is the provision for wide participation, including that of the public, in the evaluation of proposals and decisions taken. This usually results in a project which meets the demands both of the present and of the future as envisioned by local citizens.

The process does, in the bay region, prevent unacceptable degradation of the environment and therefore accomplishes the main purpose of the legislation. I would say that in the majority of instances we are reasonably sure that the final decision is in the best interest—overall public interest.

The weaknesses of the present system lie more in the application of the law than in the law itself. This is particularly true when we have a case, such as Foster City, which was in effect conceived in one era and brought to fruition in another.

The climate of public opinion has changed, legislation reflecting that climate has been adopted, and the agencies given responsibility for exercising authority under the law have not yet evolved all the necessary efficient procedures, criteria for evaluation, nor uniform objectives.

The actions taken on the applications I have used as examples confirm this. Both the applicant and the agencies involved must learn what is required and how to do it.

As reflected in the chronology, we attempted to get the applicant's reply to objections and comments from other agencies as soon as possible, but the necessity was not fully understood.

We, ourselves, faced with a deluge of applications, did not respond to each as quickly as we should, nor as fast as the law anticipated.

Delays are, however, inherent in the laws themselves. These are probably necessary to accomplish the objectives, but procedures on the part of Federal agencies could be improved, particularly if these agencies were given notice that this is the intent of the Congress.

At the present time, we cannot establish deadlines for submission of comments from other agencies because the law requires comments from the State, EPA, and the Department of the Interior, including the U.S. Fish and Wildlife Service, before the permit can be processed.

These comments often, as in the case of Foster City, take the form of extended dialogs between the agency and the applicant, with the corps as an impartial observer and third-party facilitator.

As things stand now, if we did not act in that capacity, but simply noted or logged the exchange of correspondence, few permits would be granted. It is, however, a time and manpower consuming chore which was not fully anticipated.

We do not think it furthers either efficiency or democracy to tell the applicant to "take it or leave it," nor could we be sure that an arbitrary decision would reflect the public interest.

The general public interest is very difficult to define, and one reason for delays is that each reviewing agency may have a different concept of the term.

This is particularly true of agencies or other commenting groups which have been formed and operate for a single or limited purpose. The professional orientation of both people and agencies colors their concept of public interest.

Section 209 of the River and Harbor Act of 1970 says the intent of Congress is that the objectives of environmental protection, the national economy, and well-being of people be considered in every project.

We have proponents of each consideration, but few proponents prepared to balance all of them. This makes the overall public interest extremely difficult to define.

Another defect in the system is that relatively minor applications are processed and may receive the same objections as those projects of major significance.

This means that the large industry which can afford additional studies or an educational and public relations campaign and which can afford the delays now built into the system has an advantage over the small entrepreneur and businessman.

A 6 months' delay to a large enterprise means slightly higher prices. To the small businessman, it could be disaster.

A further defect is that there are no standard criteria nor evaluation procedures to actually establish the effect of a proposed action on the environment. Dredging is an outstanding example of this.

One reason for this lack is that we don't always know what the environment is. We haven't yet taken sufficient inventories, gathered sufficient data, to know what we stand to gain or lose by accepting or rejecting a proposal.

The corps and Federal Government are attempting to remedy this defect by assembling a body of environmental knowledge on the areas in which we have jurisdiction. This could speed processing applications.

Once we have cleared the backlog of major applications, such as Foster City, which have been caught by the changing currents of legislation and public opinion, and by the confusion attendant on establishing new standards and procedures, the future should see less controversy and delay.

To reach that point, certain things must be done.

First, we must speed up processing. About 3 years ago we began to develop a joint application form which would serve both Federal and State agencies, including BCDC and the Water Quality Control Board.

In title 40, CFR 209.120(f)(3), of the new regulations published on July 25, the corps makes provision for this. If we want joint application forms, joint public notices, and public hearings, and concurrent rather than consecutive consideration of comments, the process could be greatly accelerated.

We are currently engaged in a pilot program on dredging permits with BCDC and the Regional Water Control Board. Second, we must establish more uniform criteria and procedures for evaluating the environmental effects of a project. We must also evaluate the economic and social effects. This involves accumulation of a data base, including the one for the environment, for each area.

Third, applicants are now being encouraged to contact all commenting agencies as early as possible so that their concerns will be reflected in the proposal that goes out on public notice. This is reducing the number of objections received.

In summation, I see no requirement for major legislative change. The contributions of other agencies are essential for environmental protection.

To achieve this, a certain amount of delay is necessary. But some of the delay is attributable to cumbersome procedures which should be modified, to single-purpose objectives, and to lack of a framework including standards and methods of evaluation in which proposals can be placed and decisions made.

I am grateful for the opportunity you have given me to submit these views before your committee. I can assure you that my district is doing and will do everything it can to facilitate and speed up the permit process.

Thank you.

Mr. MOORHEAD. Thank you very much, colonel. I want to first join with Mr. McCloskey on commending the corps for adapting to the changed legislation which has developed since the River and Harbor Act of 1899. Now we are in the year 1975 and the ground rules have changed. And I think the corps has adjusted.

But I would say to you, sir, in absolute candor, that I have been impressed more with your balanced viewpoint and presentation than I have by any other witnesses from the corps. I think you are doing an excellent job in this area. And the San Francisco Bay area is fortunate to have you as a district engineer. I truly mean that.

Let me say that in your testimony you make one understatement. That is, you say, "The corps is often placed in a difficult position." I think that must be one of the understatements of the hearing today.

The Congress, as I understand it, requires you to seek comments from other agencies, then, as you said, to be an arbitrator or maybe a broker between conflicting parties.

But is it not correct that in the ultimate, in the extreme case where all of the other agencies oppose a particular thing, the corps may grant a permit, is that correct, sir?

Colonel FLERTZHEIM. That is correct, sir. But I could not grant a permit. Under certain memoranda of understanding if there are objections from certain agencies, I can only make a recommendation. And the actual granting or denial of the permit, the actual decision, goes on to a higher level of authority.

Mr. MOORHEAD. So when you say on top of page 7 of your statement, "the authority of existing agencies whose concurrence was required," you really mean that at your level their concurrence is required.

But ultimately when it gets to the top of the corps, their concurrence is not legally required, is that correct?

Colonel FLERTZHEIM. That is correct, sir. This had led to some of the problems. The district engineer cannot deny a permit, he can only recommend denial. And it must be approved at least by my next higher headquarters.

In the case of——

Mr. MOORHEAD. The district engineer may not grant the approval?

Colonel FLERTZHEIM. No, sir. If there are unresolved objections, I may not grant a permit at my level. I can only recommend granting it, if that is my recommendation.

But under the memorandum of understanding procedures, specifically the Department of Interior, it then goes to my next higher level who tries to resolve with their appropriate level.

And ultimately it may go as high as the Secretary of the Army and the Secretary of the Interior. At that point, the Secretary of the Army could make a ruling.

Mr. RYAN. If the chairman would yield for just a moment?

Mr. MOORHEAD. Yes, of course.

Mr. RYAN. Colonel, wouldn't you say though that the recommendation of the district engineer is pretty generally what happens?

That is, how often are the recommendations of the District Corps of Engineers, the district engineer himself, overturned?

Colonel FLERTZHEIM. I can't really speak generally, sir.

Mr. RYAN. From your experience?

Colonel FLERTZHEIM. From my personal experience, I have had three reports go out with unresolved objections. In one case, the first one, I got the thing back saying we didn't have jurisdiction and I was improperly proceeding.

In the second case——

Mr. RYAN. Was that the Hahn Shopping Center?

Colonel FLERTZHEIM. Yes. The Hahn Shopping Center.

In the second case, I was upheld. That is the Redwood Shores Reservoir which Mr. Fales spoke about. In the third case I haven't received an answer yet.

Mr. RYAN. Thank you, Mr. Chairman.

Mr. MOORHEAD. Mayor Lappin, in his testimony, said that the U.S. Fish and Wildlife Service made the contention that in the case of the Clapper Rail or any other endangered species, the law makes it illegal for the corps to issue a permit.

That is not my understanding of the law. Is it your understanding of the law?

Colonel FLERTZHEIM. That is rather a gross oversimplification, I believe, sir. The law deals with a substantial and significant portion of the habitat. There could be certain conditions affecting an endangered species where I couldn't issue a permit.

But that again would go back to the Fish and Wildlife objections to that. And I think that under the Endangered Species Act, if it were really a significant or critical portion of their habitat, then I couldn't issue a permit.

But to say that any and all cases obtain is not correct, in my opinion.

Mr. MOORHEAD. Well, just take that particular endangered species—have you made a study on the effect of the Foster City project on that species and what significance did you give it?

Colonel FLERTZHEIM. Yes, sir. With regard to that, there is a Clapper habitat on the other side of Belmont Slough which has been documented. There have been a few sightings on the Foster City side of the Belmont Slough, but largely confined to the area outside the dikes. As a matter of fact, I believe entirely confined to the area outside the dikes of Foster City.

So that there is no established habitat within the Foster City area with which the fill permit deals.

Mr. MOORHEAD. I think you have testified that the San Francisco Bay has decreased in area over the past 25 or 50 years.

Do you believe that an area once diked off should remain dry and not be returned to its tidal condition?

Colonel FLERTZHEIM. I would say that that would depend on a number of factors. First, many of the diked areas still have water on them,

either from storm runoff, from rain, from inundation by particularly high tides or from other reasons, and, therefore, many of the areas behind dikes actually support aquatic vegetation and function as marshlands, either seasonal marshlands or in some cases throughout the year.

Other areas behind dikes, for instance, include the salt ponds we saw this morning which serve a very valuable ecological function although technically speaking they are behind dikes.

Other land is pretty much high and dry and may be in the middle of San Francisco or San Rafael or something, and probably serves no ecological purpose. So, I think you have got to weigh what the value is of any particular parcel of land.

Again, whether that should be returned to tideland or not would depend on the location, its proximity to other areas of higher value, and also whether funds were available to put it in some kind of State or Federal refuge or trust.

Mr. MOORHEAD. So, you don't have a rigid position, it is more of a case-by-case basis as to whether a particular dike should be or should not be reopened?

Colonel FLERTZHEIM. Yes, sir, I would be required to examine the overall public interest. And I feel the only way you can do that is on a case-by-case basis. Because you have to balance environment, economics, social well-being, health, and a lot of other considerations altogether.

And one can't do that by a set of rigid standards.

Mr. MOORHEAD. In our subcommittee's report of 1970 concerning San Francisco Bay, it was recommended that a determination be sought of the Geological Survey as to the seismic safety of any lands which were filled for the purpose of building sites.

Was the advice of the Geological Survey sought in the case of the Foster City fill?

Colonel FLERTZHEIM. Not specifically, because so much of Foster City is already built on fill. The dikes were examined and the FHA is satisfied with their condition as far as protecting the houses.

There are ways of solving the seismic problem with regard to small structures such as dwellings and so forth generally in the Bay area, and so in that regard we satisfied ourselves that this was not an unusual problem.

Mr. MOORHEAD. So you see no difference in the new fill from the fill for the area on which this meeting is now being held?

Colonel FLERTZHEIM. Well, it would have to undergo certain proper engineering considerations, time to settle out and compaction and that sort of thing. But without knowing the source of the fill, I couldn't evaluate further at this time.

It may not be hydraulic fill as the earlier one was. It may be brought in from some upland source which would change its character rather considerably.

Mr. MOORHEAD. Dry fill rather than ——

Colonel FLERTZHEIM. Hydraulic, yes, sir.

Mr. MOORHEAD. I understand the Corps has recently published new regulations under section 404 of the Federal Water Pollution Control Act concerning permits for dredge and fill.

What impact, if any, would these regulations have on projects such as the Foster City fill applications?

Colonel FLERTZHEIM. Our older Corps regulations had a wetlands policy that the wetlands would be in general preserved. However, the new regulations enunciate the policy a good deal stronger, in my opinion, than the old ones. Also they increase the extent of our jurisdiction.

Whereas before we dealt with lands below mean higher high water, possibly behind dikes, now the policy extends to all wetlands, both fresh, brackish and salt, which means subject to tidal influence or not subject to tidal influence.

Although it is a phased program and we won't have jurisdiction over all areas immediately, we will ultimately have jurisdiction even over wetlands which are alongside of rivers and so forth which are tributaries to navigable waters.

So, we have greatly expanded our wetlands jurisdiction. Parenthetically, I might add, I think new additional policies expressed in the national regulations both confirm and validate what the San Francisco district has been trying to do for some time as far as exercising control over wetlands behind dikes.

Mr. MOORHEAD. Does the law permit you to, and do you take into account what I consider to be the different situations of an entirely new proposal, starting right from scratch today, on the one hand, and one where there has been reliance upon previous approval, previous action taken, plans made, even some structures erected on the other hand, in granting or denying permits?

Colonel FLERTZHEIM. The law only—I should say the regulations—partly instruct me in that area. There are certain considerations as to things—for example, when the new regulations came out this summer, things which had been started before that and were an ongoing project would be able to go.

In the case of long, continuing projects, such as running a sanitary landfill or something, the Corps of Engineers in Washington has determined that that is not necessarily an ongoing project forever, that there has got to be a finite limit.

In other cases, such as what do you do with something that was conceived a long time ago but now is attempting to be brought to fruition, even if only in a certain part, the regulations really don't speak to that.

I find that it is my responsibility to weigh that as one of the factors of the overall public interest that has to be considered in making a decision.

Mr. MCCLOSKEY. Mr. Chairman?

Mr. MOORHEAD. Yes, Mr. McCloskey.

Mr. MCCLOSKEY. If I could interject, I would just like to put in the record at this time the fact that for the first time its predecessors in this area——

VOICES. We can't hear you. We can't hear you.

Mr. MCCLOSKEY [continuing]. In almost every city on the peninsula with respect to these plans, have received some time ago projects that were developed many years ago. Palo Alto has had its bayside problem, East Palo Alto, East Menlo Park, they have had problems on the shoreline—there is a similar problem in every case.

I have respected—I have not always agreed with the judgment of the Corps of Engineers—but I have respected the discretion and the equity that they apply to the issues in question.

If I might just ask one question. Because the two examples before us——

Voices. We can't hear you.

Mr. McCloskey. I am sorry. The issues are fairly complicated. But I wanted to ask the Colonel if with respect to these two particular districts which were passed by the California legislature under somewhat peculiar circumstances—the man who was the father legislatively has since been indicted and convicted——

Mr. Burton. Let the record show it wasn't involved with this legislation.

Mr. McCloskey. Not at all. The record might show that he was a Republican, with due respect.

Mr. Burton. And a friend of mine.

Mr. McCloskey. If I may ask this question, has the Corps given any different criteria in point of equity to this kind of district which was faced with a different problem than the cities that are described otherwise?

Colonel Flertzheim. Yes, sir. With regard to Redwood Shores, we have not received an application from them to proceed with further housing development, so I can't answer that.

With regard to the shopping center, we are just drafting up the environmental impact statement, so we are not to that point in the procedure yet.

With regard to Foster City, that's one of the points in my mind that has to receive very careful consideration of rather significant weight, the fact that the city had been planned as a total community, had assumed heavy financial obligations, and this certainly had to be balanced off against other things when considering the overall public interest.

Mr. McCloskey. Thank you, Mr. Chairman.

Mr. Moorhead. Colonel, as you know, the people of America are always concerned about delays in governmental action. And I think your suggestion on page 15 about concurrent commenting procedures is an excellent one.

If you need any encouragement, I am quite confident that this member of this subcommittee will give you encouragement.

Colonel Flertzheim. Thank you. That's just something new and we are kind of feeling our way, but it could solve the sort of thing Mr. Fales mentioned where he had gone through the EIR process without objection and then suddenly finds himself in a lot of trouble.

Mr. Moorhead. Mr. Ryan?

Mr. Ryan. Thank you, Mr. Chairman.

Colonel, I would like to join my colleagues in concurring with their respect for your job and the work that you do. And your immediate predecessor, too, I might add, whom I worked with for several years.

It is good to know that there is someone on the job who can be objective and who can, I think, resist the pressures—the terrible pressures—there are from different directions. Although I confess that sometimes—and I have said it here very publicly—I sure would like to pressure you some more in my direction.

But I think you have done an excellent job of maintaining the integrity of the job which you have and yourself in the process. Under very difficult conditions in some occasions.

First of all, do you think as a matter of opinion yourself that it is equitable to have it as the present law and the rules state that any organization or any agency can exercise a kind of veto power?

In the sense that every other agency—we have a single example here in the case that Mr. Fales mentioned—every agency for several years said, "yes, yes, yes, yes, yes." And then, bang, one person or one agency says, "No." And you have to back off then—or the rules require you to back off, I guess I should say—from recommending the thing to go through or pushing it on.

I just wonder if we haven't placed too high a premium on the value of a single objection.

Colonel FLERTZHEIM. I think my response to that would be, I would rather have seen that objection get into the process much earlier so that it could have been considered along with all the other things at a reasonable point in time.

Mr. RYAN. All right, that is why I wonder about rewriting perhaps the regulations to provide for, at least in two instances, some deadline. I wonder if we should have some deadline for bringing forth an objection if there is going to be one so that you don't face this prospect of suddenly, after coming that far along, one Federal agency telling the local government no while other agencies say go ahead, which is totally frustrating.

Now, can we set some kind of deadline for objection, No. 1? And two, in connection with deadlines, do you think we could set a deadline within which time you have to issue the permit?

Colonel FLERTZHEIM. Well, let me address first——

Mr. RYAN. Or fail to do so?

Colonel FLERTZHEIM [continuing]. Setting deadlines for comment. We have tried to do that. When we have sent out notices or we send out draft environmental impact statements for comment, we say we want the comments back in 45 or 60 days or something.

Mr. RYAN. Yes.

Colonel FLERTZHEIM. As often as not, we don't get them in that length of time. And if they are from a key agency which may have a very valid objection, I really don't feel that I can say, well, you didn't get your comment in in 45 days so I am just going to go ahead and——

Mr. RYAN. Why don't you feel that way?

Colonel FLERTZHEIM. Because, one, some of the projects are quite complex. They may not have the necessary time to review them adequately. And second——

Mr. RYAN. Couldn't we write the rules and say that unless there is some objection, which may be temporarily filed—in other words, if it is going to take longer they may request an extension of time, and give reasons for doing so?

Colonel FLERTZHEIM. I would think that would be a much more reasonable approach. I think that with most of the regulatory agencies, the position they find themselves in—just as I do—is that our jurisdiction has expanded so rapidly that we are always behind the power curve or trying to hire more people and process things faster.

And yet, my jurisdiction just expanded again when the new 404 regulations came out, just as I am about to try and get a little caught up. I think to a certain extent the other State and Federal agencies are somewhat in the same position.

With response to the second——

Mr. RYAN. May I pursue that point just a little further then. The underlying theme, not just here at this particular hearing so far, but I think on a much broader scale, is that it just takes too much time to get something through.

And I think we should try everything we can to force, to precipitate decision. I know that certainly the legislative process is as guilty as anybody. I don't care how long we are in session, if it is a month or 2 months or 6 months, I can guarantee you the last few weeks we are in session we will be in session from noon until probably after midnight getting the work and finally forcing some kind of conclusion, forcing some kind of decision, because it has to be done.

Now, I would like to see as a result of this, Mr. Chairman, if I could—on that particular point, if you could file with this committee some kind of suggested recommendation as to what we might do and what kind of amendment might be made to regulations, wherever they are, that would set some kind of deadline, with the right from an agency where the case is particularly complex to request an extension, and that they must state the length of the extension and the amount of time required, what they want.

And I suppose we might have some kind of thing in there, if you think it is worthwhile, for the Corps of Engineers where the district engineer comes back and says you can have X number of days as opposed to the number that you requested. So that the Corps of Engineers has the control over the amount of time rather than the agency that is requesting the extension.

Colonel FLERTZHEIM. Yes, sir. There would be one problem in connection with that. And that is, it is sometimes the applicant who doesn't always respond in a timely manner either. And for people with smaller resources—I'm speaking of individuals, we also deal with them—if we need more adequate plans or a description of what they want to do or something, it sometimes is a matter of joggling them, too——

Mr. RYAN. That could be. But what I am more concerned about as a Federal official myself and with you as a Federal official is at least our responsibility in our area of keeping it up as tight as we can.

Now, the second point, if you could mention that, I would appreciate it.

Colonel FLERTZHEIM. Well, within the second point of my making a decision, I think—I believe it was Mr. Rogoway who touched on one of the central problems. That was that they were concerned that if the objections were not resolved the decision would be made in Washington by people who had never probably seen Foster City.

This is one thing that tends to drag out permit applications, where there are unresolved differences. Because if it means going to Washington or some level removed from the people they have dealt with and who they know and have at least formed an opinion of, many applicants are reluctant to finally commit themselves and say this is where I stand.

There is a very strong incentive to keep going and solve the problem. And it is hard to put a time limit on something like that because it might be counter——

Mr. RYAN. And you don't think it would be a good idea to set some kind of——

Colonel FLERTZHEIM. My position up until now has been to try and push the thing forward and say to both parties let's try to either resolve it or to find that there are irreconcilable differences.

I am inhibited a little bit in this extent because my personal policy is not to become involved in negotiations on, say, mitigation. I think that has got to be arrived at between the objectors and the applicant.

So that I can make an independent judgment as to who has adequately addressed——

Mr. RYAN. I understand.

Colonel FLERTZHEIM. And then decide whichever way I want to——

Mr. RYAN. I think you are right.

Colonel FLERTZHEIM [continuing]. Not having been a party to all the things that went on previously.

Mr. RYAN. Yes; I think you are right. I think that is the proper procedure.

Well, if you, in considering it after the hearing is over, if you think there is any kind of recommendation you may have along that line, I would appreciate it if you would inform the committee staff. It will be included in the report.

I have got one other area here. I am just kind of curious, under the new definition of that Public Notice 71–22 I believe you referred to, how far back in time can you go with the new rules and open any kind of a question?

Colonel FLERTZHEIM. I am not sure I understand your question. But it would be——

Mr. RYAN. Well, you have got substantially broader jurisdiction now, vastly broader, in fact, jurisdiction now than you had before?

Colonel FLERTZHEIM. Yes, sir. If there were a project that had already been completed, then they came in to do some additional work or extend the project or something, it would have to fall under the new rules.

Mr. RYAN. What does completed mean now? Foster City had a permit, and it was not completed, not as far as the Corps of Engineers was concerned, but as far as some financing problems I believe I am right that right here in the project itself as a consequence they had voluntarily suspended fill and then began to fill again.

At which time the Corps said, "Whoop!" Now, is that a new fill? Or is that a continuation of the old? It may seem like a narrow point but we are now, millions of dollars later and a great deal of time later, involved in all this simply because the Corps decided—or appears to have decided—that this was a separate fill.

Colonel FLERTZHEIM. Yes, sir. And that is a very gray area where a lot of judgment is necessary and obviously a lot of discretion is given to the individual district engineer. I don't have any real guidance on it.

Normally——

Mr. RYAN. That is why I asked the question.

Colonel FLERTZHEIM [continuing]. You conceive of a project as going, as being pursued to some completion. Where there is a halt to this sort of thing of a long magnitude of time such as occurred here or other places, that's really where you get into a gray area.

We look at building a building. You start the building, you finish the building, and that project is complete. If you are going to go and

build five more buildings down the street, those are really separate projects.

To that extent, that is kind of how we looked at Foster City. The neighborhoods that were filled, houses were built on them and developed. Those neighborhoods were kind of done.

We really saw the new neighborhoods yet to be filled as kind of new subprojects.

It is the same problem with a garbage dump. A man says I am going to run a garbage dump, but you can't let him go on forever just because he started running a sanitary land fill. You have got to have some point where you say now you stop there. Now, you come in with a plan on what you are going to do, so I can have some reasonable control.

Mr. RYAN. Well, without any disrespect to the high degree of probity you bring to this job, I would question the broad latitude of your capacity to make a decision about what you can be involved in and what you can't, without any kind of appeal.

Colonel FLERTZHEIM. Certainly; it is a very—it is probably the most difficult area we have to decide on.

Mr. RYAN. And it means millions, literally millions of dollars of loss or gain to those who are involved.

Colonel FLERTZHEIM. Yes, sir.

Mr. RYAN. You must have thought of this because it is a pretty heavy responsibility. Do we go into this, or do we stay out?

Colonel FLERTZHEIM. That's correct. In the case of Foster City, that decision was made by my predecessor so I really can't——

Mr. RYAN. I am aware of that.

Colonel FLERTZHEIM [continuing]. Give you the details of how he made the decision. In the case of any projects that would come to my attention, I have to go by my guidelines and my rationale. BCDC faces a similar problem, and they have a grandfathering clause. I sit through a number of those hearings. They can go back and look at was the thing really planned and going on or was it kind of some just vague general plan which wasn't really defined in any length or detail.

I have the same sort of problem. I try——

Mr. RYAN. Do you have any written guidelines for yourself and instruction for your staff regarding this? Or do you just kind of fly by the seat of your pants? Do you just hiball it yourself and decide to just do the best you can? Or what—this is an enormous amount of power.

Colonel FLERTZHEIM. Actually, none of these have come up since I have been the district engineer that I can recall.

Mr. RYAN. Well, you will get some more besides this.

Colonel FLERTZHEIM. I am sure I will. But we will have to take them as they come and go back in the history of the individual project and see to what extent it was laid out or not.

Mr. RYAN. Do you think there should be any appellate procedure beyond your decision before the decision is actually final?

Colonel FLERTZHEIM. Well, I am—actually, the decision would only be to require a permit. And I would think that any applicant, if he had a real case for disagreement, could certainly appeal to my superior who is General Connell of the South Pacific Division, and that General Connell would hear him whether or not there is explicit provision for that.

Because certainly in all of the jurisdictional—the new jurisdictional areas we are going into, there are going to be judgments as to whether or not the particular thing falls within that jurisdiction.

Mr. RYAN. And you think that the appeal then should be within the Corps of Engineers? I was thinking outside the corps.

Colonel FLERTZHEIM. Well, that is certainly another possibility.

Mr. RYAN. Yes.

Mr. BURTON. Will you yield on that?

Mr. RYAN. I would be glad to.

Mr. BURTON. The only point I would like to make in connection with that is, that again postpones the decision. Because, let's say you grant the permit. The objectors then get the same appellate right as the other. And again you are tied up.

I think that one of the things that people want, even if it is not the right answer, they would like to get the wrong answer as early as possible so they can either bail out or do something else. And that is really one of the problems.

But when you get into the appellate process, it is going to cut both ways too. The person, when the permit gets turned down, gets another shot. But those who are against it also get another shot. And that swings us right back into some form of delay.

So, I don't know. I mean, it is a tough one to figure out what is right.

Mr. RYAN. May I——

Colonel FLERTZHEIM. Excuse me, there is an appellate procedure. The Leslie Salt litigation is an obvious example of that one.

Mr. RYAN. Yes, of course.

Colonel FLERTZHEIM. We asserted jurisdiction over the lands and they challenged that in court, as Mr. Burton pointed out. That suit has been going on for quite some time and we still don't have any resolution.

Mr. RYAN. Right.

Colonel FLERTZHEIM. So at least there is an appeal through the courts.

Mr. RYAN. May I ask just in passing, just for the record, if the mayor of Foster City could get together with his attorney and make some kind of recommendation for this committee hearing on that particular point?

Based on your experience, how could it have been done better than it was done? I don't raise any questions about the ability of the previous district engineer, but I wonder if—that decision was so fateful—I wonder if there was a better way from your point of view?

It is the city's point of view here that it might have been accomplished.

Now, let's see, you say on page 12 of your statement that, "Delays are, however, inherent in the law themselves. These are probably necessary to accomplish the objectives, but procedures on the part of Federal agencies could be improved, particularly if these agencies were given notice that this is the intent of Congress."

Now, one of the problems we have had in this thing is what is the intent of Congress in regard to the Fish and Wildlife Service and the acts that we have passed so far.

What suggestions did you have in mind more specifically when you made that comment?

Colonel FLERTZHEIM. Well, I had in mind, first of all, some of the joint procedures we could develop and so forth which we have now been authorized to do very recently.

Mr. RYAN. Yes, with the other agencies?

Colonel FLERTZHEIM. Yes, sir. But also with respect to perhaps not only Fish and Wildlife Coordination Act, but the Endangered Species Act, the Archeological Preservation Act and other things.

What is the intent of Congress that an agency making comments under these various acts—and the marine fisheries protection law—how narrowly or how broadly does Congress intend that they should look at a permit application?

I certainly don't know the answer. And it may be that the people or the appropriate agencies don't either.

Mr. RYAN. So do you think that either the legislative history of the legislation itself or some kind of clarification of the laws itself might be a good idea?

Colonel FLERTZHEIM. Possibly. I would really leave that more up to the agencies to whom those laws apply directly, rather than myself to which they apply only indirectly.

Mr. RYAN. Yes, all right.

Thank you, Mr. Chairman.

Mr. MOORHEAD. Mr. McCloskey?

Mr. MCCLOSKEY. Thank you, Mr. Chairman.

Looking at your combat decorations, Colonel, I wonder if you would agree with Oliver Wendell Holmes that the stresses of combat are not nearly as great as those of civil strife? [Laughter.]

Colonel FLERTZHEIM. Touché.

Mr. MCCLOSKEY. You have suggested that we not change the law. And in your testimony, if I understand the procedures you follow, an application is filed, then you publish a notice of that application to everyone whom you feel might be interested.

That would include the Audubon Society——

Colonel FLERTZHEIM. Yes, sir.

Mr. MCCLOSKEY [continuing]. And conservation groups. And you solicit comments that you ask for within 45 days.

The people from whom you solicit those comments then may have questions to the applicant, I take it?

Colonel FLERTZHEIM. We normally refer the letter to the applicant for their addressal or nonaddressal, as they find appropriate.

Mr. MCCLOSKEY. And then if an objection is raised in the comments of an agency, you set up an environment where the objector and the applicant hopefully can negotiate the problems. So then when you finally make your decision, all problems have been resolved between the applicant and the various agencies that may object.

Colonel FLERTZHEIM. When it comes to Federal or State agencies, that's basically correct. But with regard to the objections of individuals or groups, they are something that I have to take into account but they don't necessarily have to be resolved.

Actually, the objections of the agencies don't have to be resolved either. But that then invokes an additional administrative procedure which removes the decisionmaking from my purview and goes on up to some higher level.

Mr. MCCLOSKEY. Well, there were two major thrusts to the Foster City objections. One, of the delays in the procedure that this entails.

And I gather from your testimony that some of those delays may have occurred because the applicant did not respond to inquiries of the effective agencies?

Colonel FLERTZHEIM. Yes, sir. As a matter of fact, some of the HEW and EPA objections on more technical grounds were only resolved within the last couple of weeks.

Mr. MCCLOSKEY. And second, the Foster City people are concerned with the degree of discretion on the part of some of the agencies, say, like the Fish and Wildlife Service, that can go from asking 380 acres in mitigation to 60 acres in mitigation.

Now, using these four applications before us as a case study, Foster City, a 382-acre application, Redwood City watertank, a reservoir with 6-acre application, the Redwood City Shopping Center which is now before you, and the Combined Sewerage District application, none of those have yet been resolved except for the Redwood City Watertank application which has been denied.

Colonel FLERTZHEIM. That's correct.

Mr. MCCLOSKEY. Is that correct?

Colonel FLERTZHEIM. Yes.

Mr. MCCLOSKEY. Are you able to give us, to back up your general testimony, a chronological order of when the application was submitted, the notice, when the comments were received, when they were referred to the agencies for resolution with the applicants for controversy involved, when you submitted them—at least in the case of the Redwood City reservoir—to the district engineer in Washington, when the results were actually handed down?

Colonel FLERTZHEIM. Yes, sir. Your staff has those.

Mr. MCCLOSKEY. We have those already?

Colonel FLERTZHEIM. Yes.

Mr. MCCLOSKEY. The committee staff?

Colonel FLERTZHEIM. Yes, sir.

Mr. MCCLOSKEY. And can you break down this problem you mentioned of a Federal office staff faced with new applications and the work hours and the cost of processing these applications?

Colonel FLERTZHEIM. The cost varies widely depending upon the complexity of a project. If you have to write an environmental impact statement, then our cost is quite high and we do that as a Federal cost.

Mr. MCCLOSKEY. But then in these four actions in front of us, are you able to break down in the various steps the man-hours involved and the cost to the Corps of Engineers in processing the application?

Colonel FLERTZHEIM. I believe we have the timecards that we could go back and reconstitute that. But I am not positive how long we—it's done by a computer sort of thing. I don't know how far back our cards go.

[The following was submitted subsequent to the hearings:]

The four activities in question are: Redwood Shores Fill, PN 75-251-067; Consolidated Sewage Treatment Plant at Redwood Shores, PN 75-251-067; Redwood Shores Reservoir, PN 75-108-001; and, Foster City Fill, PN 74-0-22.

My Regulatory Functions Branch personnel do not keep exact records of the time spent on individual permit applications. Because of the numerous, relatively routine actions accomplished by this Branch, personnel hours are recorded according to function, i.e., permit processing, inspecting, etc. As a result, some of the costs have been reconstructed based on estimates made by individuals

who did the work. Also, it would be well to note that none of these permit applications are typical because of the controversy involved and the concern expressed by the public and other agencies. I have made no attempt to estimate the costs to other agencies.

Permit name	Regulatory functions branch		Engineering division		Overhead repro. and miscellaneous	Total
	Amount	Man-days	Amount	Man-days		
Redwood Shores fill [1]	$2,180	27	$5,100	72	$1,593	$8,873
Sewage treatment plant [1]	420	5	170	2	161	751
Redwood Shores Reservoir	$4,560	56	2,940	34	2,460	9,960
Foster City fill [1]	6,040	72	18,500	260	9,856	34,396

[1] This is an incomplete action.

Mr. McCloskey. I don't want to add to the cost that has already gone into this procedure, but I think it would be helpful to this committee when we make our report if we had some idea of the relevant costs to the taxpayer of undergoing these various procedures.

I am wondering, in a situation where you have land that is worth nothing before an application is made and then land which becomes worth perhaps millions of dollars if the permit application is granted, if these should not be a means of procedure whereby the taxpayers recover the costs of the processing, both by the city and the local governments and all of the governmental agencies involved, and the ultimate value of the land is increased by the granting of the application.

We are constantly searching for some means to reduce the cost of Government and here someone ultimately gets the benefit of the granting of a permit, which may be millions of dollars.

And yet, from the testimony in front of us, as I recall, Redwood City's costs to date have been, what, over $150,000?

Mr. Fales. On the treatment facility, yes.

[The following statement by Colonel Flertzheim was submitted subsequent to the hearings:]

To the best of my knowledge this subject has not been addressed in the United States; however, the British have taken into account the impact of governmental actions on land values since as early as 1947. For your information I have enclosed an extract of a British Government publication, Central Office of Information Reference Pamphlet 9, *Town and Country Planning in Britain*, dated 1972, which deals with this subject. [Enclosure is in the subcommittee files.]

Mr. McCloskey. Mr. Chairman, I wonder in this connection if our staff might direct an inquiry by letter to each of the agencies involved and ask them for a breakdown of man hours and costs in these various procedures that have occurred, so we can compare the value of the land against the value of the cost of the process?

Mr. Moorhead. I think that is an excellent suggestion, Mr. McCloskey.

Mr. Burton. Would you yield on that one moment?

Mr. McCloskey. Certainly.

Mr. Burton. The only fear that I have is that it is then going to become in the Government's pecuniary interest to grant every fill or every project in the country because we are going to have a piece of the action over and above the increased tax base.

I mean, I know what you are saying. I am not against it, but I can see—you know, in other words, all you have to do is twist the arm of one guy in Fish and Wildlife and the Government gets a quarter of a million bucks or something.

Mr. McCLOSKEY. I appreciate that point. But then again we have the obligation to lay down the statutory criteria.

In the case of the preservation of the wetlands, we have laid down very strong criteria that we want them preserved unless good reason is shown.

I don't think I have any other questions at this time, Colonel, except to again repeat that all of the decisions that I have seen the corps make have been those of discretion and judgment although I haven't personally agreed with them all.

And I can't recall a governmental agency in the last 10 years that has shown more growth and increasing maturity as has the corps. And I think particularly your own district here has led the Nation.

And perhaps some of the standards you have applied here have indeed, as you testified, become national standards as a result of the quality of your work here.

Thank you.

Mr. MOORHEAD. Mr. Burton?

Mr. BURTON. No, I have no questions. But I would just like to associate myself with Mr. McCloskey's comments concerning the growth of the corps and being sensitive to new directions within the country and the cooperation that they have given local jurisdictions within the district that I represent.

It also is on the Bay. And I would just like to commend you for that and hope you might grab jurisdiction back over the Hahn Shopping Center.

Thank you very much, Mr. Chairman.

Mr. MOORHEAD. Thank you very much, Colonel, for an excellent statement. We appreciate your help and advice.

[Colonel Flertzheim's prepared statement follows:]

PREPARED STATEMENT OF COL. H. A. FLERTZHEIM, JR., DISTRICT ENGINEER, U.S. ARMY ENGINEER DISTRICT, SAN FRANCISCO, CALIF.

Mr. Chairman, members of the committee, I am Colonel H. A. Flertzheim, Jr., District Engineer, U.S. Army Engineer District, San Francisco. My District extends from the coastal watershed of the Smith and Klamath Rivers on the Oregon border to the Salinas River watershed near San Luis Obispo. It includes the San Francisco and Suisun Bays to the approximate confluence of the Sacramento and San Joaquin Rivers.

I appreciate the opportunity to testify before this Committee for I believe that such hearings are essential in their contribution to legislation which protects both the public and our national resources from exploitation.

My purpose is to give you my views—as requested by your staff—on how, specifically, environmental law is being applied in the Bay Region, the results of that application, and suggestions for improved procedures. Before I do this, I would like to explain the context in which environmental laws are applied.

It is not possible to write legislation which reflects public interest in all sections of the country unless it can be applied in a local context, for the public interest, being decided by the local people, attaches different weights in different areas to national objectives in the fields of the environment, the economy and the social impact of what we do. For example, the residents of Foster City are not overly concerned with Marin County's Open Space Plan and yet they would both agree

that a coordinated effort for the proper use of land and water must be made for all the people of the Bay Region. A regional approach usually results in decisions that are wholly satisfactory to no one, but generally approved by most.

To illustrate how the environmental process works, I will use as examples the applications for the Foster City fill and the Consolidated Sewage Plant at Redwood Shores.

The Bay Region has one of the early arenas in which the environmentalists fought to control development. The initial objections were to aesthetic degradation; these escalated into a campaign against environmental alteration, ecological damage, and menaces to the health of the citizens. Peace has been only partially restored by legislation designed to resolve different views as to the degree of protection to be afforded to both people and resources.

The Corps has been an integral part of this process and in 1958 my District published a volume called Future Development of the San Francisco Bay Area 1960–2020. It was this study that drew attention to the bay fill problem and mapped the large areas of irreplaceable marshland which had been lost forever through unregulated development. Further studies and tests on our San Francisco Bay Model in Sausalito showed the physical dangers attendant on continuance of this policy, and gave reason and force to the conservationist's plea that the bay be cleaned up and procedures for controlling fill be established.

The maps and data resulting from our investigations, which were first authorized by the Congress in 1950, were used in the historic efforts of the Save San Francisco Bay Association and supported the creation of the State Bay Conservation and Development Commission. I am, by State Law, a member of that Commission.

The studies also supported a regional approach to the resolution of environmental problems and reinforced the trend toward establishment of regional control exercised through regional governmental bodies. One of the consequences has been the creation of regional environmental standards which are not so strong as some conservationists would wish but are far more stringent than others believe necessary. The environmental movement in the Bay Area has undergone an accelerated evolution which has produced a far more powerful and vocal component of our society than existed 10 or 20 years ago.

The San Francisco District kept pace with this interest, not only through the environmental studies it was conducting at the direction of Congress, but in its application of the authorities contained in Section 10 of the River and Harbor Act of 1899. Over a period of about 10 years, from 1955 to 1965, the Corps expanded the definition of the Federal interest in connection with permit applications from one which considered only the protection of navigation to one which included the protection of the public interest in all its aspects. In 1968 the Chief of Engineers affirmed and defined the extent of our concern under the River and Harbor Act to include all elements comprising the public interest. As a result of these expanded concerns, the area in which our jurisdiction was exercised was specifically defined in our Public Notice 71–22 to extend to the plane of the mean higher high water, with an addendum, No. 71–22(a), to include areas behind dikes.

During this same period Congressional intent was further defined, additional legislation passed, and judicial interpretation expanded so that the conditions under which one may have sought a permit in 1961 and the conditions existing 10 years later were vastly different.

The environmental interest has grown, obviously, as a reflection of public interest. It has resulted in a cleaner bay, cleaner fresh water, and cleaner air. It has established a collection of watch dog agencies to prevent a recurrence of ecological insensitivity. It has, on the whole, improved the way we live and the circumstances in which we live. Concomitant with its rapid growth, however, there have been undesirable side effects: unwarranted delays; standards, criteria, and conclusions based on inadequate or erroneous data; the creation of adversary positions not conducive to compromise; and the pursuit of objectives by single purpose agencies, groups, and individuals which have sometimes resulted in neglect of certain aspects of the public interest such as economic, health, and, equally important, social well-being.

I earlier used the date 1961 through no coincidence for it was that year that this District issued Mr. T. Jack Foster a permit to build levees around Brewer Island. Among the many problems with which this project has been beset, changing environmental law and requirements has not been the least. As I stated

Earlier in 1968 the Corps of Engineers adopted the general public interest criteria in the evaluation of permit applications. It was not until later that the first judicial decision upheld the denial of a permit application for factors other than anchorage and navigation. In evaluating the public interest the Corps must give consideration to all factors—the desires of local interests; the views of Federal and State agencies mandated to evaluate the effects of the proposed authority on water quality, fish and wildlife, archaeology, living conditions and many more; the views of environmental organizations; the views of the general public at large and last but not least, the desires and concerns of the applicant.

When the multitude of public interest considerations are combined with time consuming requirements to prepare an Environmental Impact Statement, the Corps is often placed in a difficult position. The procedure is lengthy, permit applicants become impatient, and in many cases major delays in projects have resulted. This is what has happened in the case of Foster City. However, the Corps is charged with determining what should be done in the public interest, and in order to make this determination all factors and issues must be raised and evaluated. By its very nature this process takes time.

At the time we issued the Foster City permit in 1961, the Corps did not require permits for work behind the dikes for which the permit was granted. Our records reveal few protests from the public, and we considered these not germane to the issue of the right of navigation, which was the only basis on which applications were evaluated at that time.

Twelve years later, on 9 May 1973, application was made for the current fill project as a result of Public Notice 71–11(a). In the interim both Federal and State legislation had created numerous agencies which were required to comment on the proposal and had strengthened the authority of existing agencies whose concurrence was required.

This, in turn, required coordination with the Environmental Protection Agency, Department of Commerce, Department of Interior and its subsidiary, U.S. Fish and Wildlife Service, and other regional, State, and Federal agencies, such as the State Resources Agency and two of its components: the Regional Water Quality Control Board and the Department of Fish & Game. Anticipating many of the requirements of these other agencies, this District asked for a great deal of data from Foster City. It was not, therefore, until August 27, 1973, that our Public Notice 74–0–22 was issued with the understanding that an Environmental Impact Statement had to be prepared by the District with Foster City providing the basic information. On September 12, 1973 the U.S. Fish & Wildlife Service requested more time for comment. And from September 14–October 11 concerns were expressed by the City of San Mateo and San Mateo County on various aspects of the project including water quality, fill hauling, and an apparent conflict with the County's Open Space Plan. On October 29 EPA comments were received regarding preservation of water quality and on November 12 the State Resources Agency asked for an extension of time.

On December 10, 1973, we met with Foster City officials to explain the requirements for the EIS and procedures involved: this was followed by a letter telling them to stop the current filling operation until the permit requirements were fulfilled. From this date through June 13, 1974, numerous actions took place relevant to the EIS and the stop work order. On July 23rd, 1974, the Department of Health, Education and Welfare requested denial of the permit and expressed concern for effects of the proposal on public service and physical resources, traffic overloads, loss of wildlife habitats and increased demands on educational services.

I might interject at this point that throughout the procedure, and continuing until the present time, all significant comments were sent to Foster City officials and their consultants for reply and resolution. I might also say that, from the sequence of dates that has been given, it can be seen that the Corps is not blameless in the delays occasioned by our procedure. This is also true of Foster City for it was difficult for their officials to understand the necessity for prompt reply to the comments, objections, and mitigation measures required by other State and Federal agencies. This District became neither judge nor jury but an impersonal observer seeking to identify either a compromise acceptable to all parties or unreconcilable differences.

A compromise agreement with State agencies was not achieved until the 3rd of this month. In the interim, requirements for mitigation and water quality were received from State Water Quality Control Board, State Resources Agency and others. As Congressman Ryan recalls, we met with him, State Senator Arlen

Gregorio and Assemblyman Arnett on November 1st, 1974 to define problems and seek measures for their resolution. On February 8, 1975, I again met at Congressman Ryan's office to report progress and on May 28 we met with Congressman Ryan, Foster City officials, General Connell, our South Pacific Division Engineer, and Mr. Veysey, Assistant Secretary of the Army for Civil Works. During that same period we had seven meetings with Foster City officials and met three times in Sacramento on State objections. On July 28 this year the water quality certification was received and on the 3rd of this month, as I mentioned earlier, all State objections were withdrawn provided their recommendations were followed.

There are obvious lessons to be learned from this experience. These will be reviewed following a discussion of the Redwood Shores Sewage plant application.

The application for a permit for a consolidated sewage plant at Redwood Shores was received August 2nd, 1974. This District, in anticipation of requirements of other agencies, conducted an environmental assessment which was not completed until March 13, 1975. On April 22, 1975 Public Notice 75-251-067, covering the Redwood Shores application, was published and distributed.

On May 17 the Audubon Society requested wildlife habitat replacement. On June 24 of this year the comments of Fish and Wildlife Service were received from their Portland office. I would like to quote relevant excerpts. "We believe those areas below the plane of MHHW should be reserved for uses which require a waterfront location. All other works should be located on upland sites unless it can be demonstrated that there are no alternate sites available, all other options have been exhausted, and the impact on fish and wildlife and uses thereof is insignificant.

"While the proposed consolidation of wastewater treatment facilities and sewage treatment should improve the quality of the discharged effluent, we question the need to construct the treatment plant in an area which is readily restorable to tidal action." (Emphasis added.)

"In summary, we do not oppose the construction of a wastewater treatment plant but object to the issuance of a permit for the project at the proposed site and recommend the use of an alternate site."

We transmitted these comments to the applicant on July 22nd and suggested that they attempt to resolve this objection through discussions with Fish & Wildlife. Again, some of our problems are exemplified in this specific action. As Congressman Ryan is aware, it is the general policy of the regional fish and wildlife office to require one acre of mitigation land for each acre developed in a project. The mitigation applies not only to marshland but also to former tidelands and marshlands susceptible of restoration. To quote from the letter, "as the proposed project is to be constructed on former tidelands, it will eliminate the option of restoring the area to tidal action."

These same restrictions and problems govern the application of the Port of Redwood City for developing a dredge disposal area. The three cases—Foster City, Redwood Shores, and the Port of Redwood City—will illustrate some of the points I would like to make in concluding this testimony.

There are obviously both strengths and weaknesses in the present system. The laws and regulations accomplish their purpose: Environmental protection. The way in which they do this, with the consequent costs in time, money, and social disruption, could be improved.

Among the advantages of the system is, the provision for wide participation, including that of the public, in the evaluation of proposals and decisions taken. This usually results in a project which meets the demands both of the present and of the future as envisioned by local citizens. The process does, in the Bay Region, prevent unacceptable degradation of the environment and therefore accomplishes the main purpose of the legislation. I would say that, in the majority of instances, we are reasonably sure that the final decision is in the best overall public interest.

The weaknesses of the present system lie more in the application of the law than in the law itself. This is particularly true when we have a case, such as Foster City, which was, in effect conceived in one era and brought to fruition in another. The climate of public opinion has changed, legislation reflecting that climate has been adopted, and the agencies given responsibility for exercising authority under the law have not yet evolved all the necessary efficient procedures, criteria for evaluation, nor uniform objectives.

The actions taken on the applications I have used as examples confirm this. Both the applicant and the agencies involved must learn what is required and

how to do it. As reflected in the chronology, we attempted to get the applicants to reply to objections and comments from other agencies as soon as possible, but the necessity was not fully understood.

We, ourselves, faced with a deluge of applications, did not respond to each as quickly as we should, nor as fast as the law anticipated.

Delays are, however, inherent in the laws themselves. These are probably necessary to accomplish the objectives, but procedures on the part of Federal agencies could be improved, particularly if these agencies were given notice that this is the intent of the Congress. At the present time, we cannot establish deadlines for submission of comments from other agencies, because the law requires comments from the State, EPA, and the Department of the Interior, including the U.S. Fish and Wildlife Service, before the permit can be processed. These comments often, as in the case of Foster City, take the form of extended dialogues between the agency and the applicant, with the Corps as an impartial observer and third party facilitator. As things stand now, if we did not act in that capacity, but simply noted or logged the exchange of correspondence, few permits would be granted. It is, however, a time and manpower consuming chore which was not fully anticipated.

We do not think it furthers either efficiency or democracy to tell the applicant to "take it or leave it," nor could we be sure that an arbitrary decision would reflect the public interest. The general public interest is very difficult to define, and one reason for delays is that each reviewing agency may have a different concept of the term.

That is particularly true of agencies or other commenting groups which have been formed and operate for a single or limited purpose. The professional orientation of both people and agencies colors their concept of public interest. Section 209 of the River and Harbor Act of 1970 says the intent of Congress is that the objectives of environmental protection, the national economy and well-being of people be considered in every project. We have proponents of each consideration, but few proponents prepared to balance all of them. This makes the overall public interest extremely difficult to define.

Another defect in the system is that relatively minor applications are processed and may receive the same objections, as those projects of major significance. This means that the large industry which can afford additional studies or an educational and public relations campaign, and which can afford the delays now built into the system, has an advantage over the small entrepreneur and business man.

A six months delay to a large enterprise means slightly higher prices; to the small businessman, it could be disaster.

A further defect is that there are no standard criteria nor evaluation procedures to actually establish the effect of a proposed action on the environment. Dredging is an outstanding example of this.

One reason for this lack is that we don't always know what the environment is. We haven't yet taken sufficient inventories, gathered sufficient data, to know what we stand to gain or lose by accepting or rejecting a proposal. The Corps and Federal government are attempting to remedy this defect by assembling a body of environmental knowldege on the areas in which we have jurisdiction. This could speed processing applications.

Once we have cleared the backlog of major applications, such as Foster City, which have been caught by the changing currents of legislation and public opinion, and by the confusion attendant on establishing new standards and procedures, the future should see less controversy and delay.

To reach that point, certain things must be done.

First, we must speed up processing. About three years ago we began to develop a joint application form which would serve both Federal and State agencies, including BCDC and the Water Quality Control Board. In Title 40, CFR 209. 120(f)(3) of the new regulations published on July 25th, the Corps makes provision for this. If we want joint application forms, joint public notices and public hearings, and concurrent, rather than consecutive consideration of comments, the process could be greatly accelerated. We are currently engaged in a pilot program on dredging permits with BCDC and the Regional Water Quality Control Board. Second, we must establish more uniform criteria and procedures for evaluating the environmental effects of a project. We must also evaluate the economic and social effects. This involves accumulation of a data base, including the one for the environment for each area.

Third, applicants are now being encouraged to contact all commenting agencies as early as possible so that their concerns will be reflected in the proposal that goes out on public notice. This is reducing the number of objections received.

In summation, I see no requirement for major legislative change. The contributions of other agencies are essential for environmental protection. To achieve this, a certain amount of delay is necessary, but some of the delay is attributable to cumbersome procedures which should be modified; to single-purpose objectives; and to lack of a framework, including standards and methods of evaluation, in which proposals can be placed and decisions made.

I am grateful you have given me the opportunity to submit these views before your committee. I can assure you that my District is and will do everything it can to facilitate and speed up the permit process.

[A quick sidebar conference of the subcommittee members was held.]

Mr. MOORHEAD. As a result of this sidebar conference, the subcommittee has determined to recess until tomorrow morning.

We had intended to finish at 4:30 and hear one more witness, but it is now 10 minutes of 5. So that when the committee adjourns, it will adjourn to meet in this room tomorrow morning at 9:30 at which time we will hear first from Mr. Paul DeFalco, regional administrator of the Environmental Protection Agency, San Francisco, Calif.

And then a panel of State witnesses consisting of Mr. Charles Fullerton, director of fish and game, State of California; the Honorable Claire T. Dedrick, secretary for resources, Resources Agency, Sacramento; and Mr. Lawrence Walker, chief, Division of Water Quality, Water Resources Control Board, Sacramento.

After that, we will then hear from a panel of two Federal officers, Mr. R. Kahler Martinson, west regional director, Fish and Wildlife Service, Portland, Oreg.; and Mr. Felix Smith, field supervisor, Fish and Wildlife Service Division of River Basin Studies, Sacramento, Calif.

The subcommittee is adjourned.

[Whereupon, at 4:50 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Saturday, September 13, 1975.]

ROLES OF THE CORPS OF ENGINEERS AND U.S. FISH AND WILDLIFE SERVICE IN FOSTER CITY, CALIF.

SATURDAY, SEPTEMBER 13, 1975

HOUSE OF REPRESENTATIVES,
CONSERVATION, ENERGY,
AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Foster City, Calif.

The subcommittee met, pursuant to recess, at 9:30 a.m., in the Foster City Recreation Center, Foster City, Calif., Hon. William S. Moorhead (chairman of the subcommittee) presiding.

Present: Representatives William S. Moorhead and Leo J. Ryan.

Also present: Norman G. Cornish, staff director; David A. Schuenke, counsel; and Stephen M. Daniels, minority professional staff, Committee on Government Operations.

Mr. MOORHEAD. The Conservation, Energy, and Natural Resources Subcommittee will please come to order.

This is our second day of hearings at Foster City where we are examining the efficiency with which agencies of the Federal, State, and local governments address and resolve questions of environmental protection and orderly growth.

Yesterday we heard from representatives of several local community governments, a representative of the U.S. Army Corps of Engineers.

I must say the high quality of all the testimony we have heard will be of great assistance to the subcommittee. I want to express my own personal sincere thanks to all of the witnesses.

Today we will hear from representatives of the Environmental Protection Agency, the State of California Resources, Wildlife and Water Quality agencies, and the U.S. Fish and Wildlife Service of the Department of the Interior.

We are sorry that many of you had to return today. As a matter of fact, I am a little sorry myself that we couldn't finish yesterday. But there was no way that we could calculate the time of your appearances and we wanted all of you to hear the testimony of the others so that you could respond to it as appropriate.

We sincerely appreciate your cooperation with the work of the subcommittee, which is really another aspect of your own work.

I will repeat our procedure so you can all understand the ground rules of this hearing.

The witnesses, all of whom represent government entities, will present their oral testimony. Questioning will be limited to members of the subcommittee. We are not able to permit questions or statements from the audience or from the press or others during the hearing.

The prepared statements of today's witnesses are available for members of the press. If anyone would like to offer a written statement for consideration for inclusion in the record of the hearing, we will be pleased to have them.

Such statements may be given to me or to our staff director, Mr. Cornish, or they may be sent to us in Washington. We will keep the record of the hearing open for 1 month for that purpose.

Since we are an investigative subcommittee, we will ask each witness to be sworn and to answer questions under oath.

Do you have any statements, Mr. Ryan?

Mr. RYAN. No, Mr. Chairman.

Mr. MOORHEAD. The first witness will be Mr. Paul De Falco, Regional Administrator, Environmental Protection Agency, San Francisco, Calif.

Mr. De Falco, would you come forward, sir.

[The witness was duly sworn.]

Mr. MOORHEAD. Mr. De Falco, as I said, I thought we might get to you yesterday, but time was running out on us. You have a brief statement, so you may proceed with it.

STATEMENT OF PAUL DE FALCO, JR., REGIONAL ADMINISTRATOR, REGION IX, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. DE FALCO. Thank you, Mr. Chairman.

Good morning, Mr. Chairman and members of the subcommittee. I have a very brief statement since much of our participation in this particular situation would have been duplicative of the Corps' statement.

I am Paul De Falco, Jr., Regional Administrator, Region IX, of the U.S. Environmental Protection Agency. I am pleased to have the opportunity to appear before you today to examine the coordination of Federal and State agencies involved in the issuance of a permit by the Corps of Engineers to Foster City, Calif., for land fill operations.

EPA derives its operating authority regarding this particular issue in accordance with Executive Order 11752, Prevention Control and Abatement of Environmental Pollution at Federal Facilities (December 17, 1973), to provide technical assistance and advice to the Corps of Engineers regarding the water quality effects of construction in navigable waters.

Permit granting decisions by the District Engineer under section 10 of the River and Harbor Act must be made after consideration of the recommendations of the Regional Administrator of EPA.

In addition, EPA reviews Environmental Impact Statements (EIS) required by section 102, National Environmental Policy Act (NEPA).

NEPA requires each Federal agency to prepare a statement of environmental impact in advance of each major action, recommendation or report on legislation that may significantly affect the quality of the human environment.

EPA's obligation to review proposed Federal actions extends beyond that of other agencies because of its role as the principal Federal regulator of pollution control matters. Generally, EPA acts in an advisory capacity, which is consistent with the full disclosure philosophy of the National Environmental Policy Act.

Mr. Chairman, I am submitting for the record a detailed Chronology of Events regarding this request for a permit to fill. At this time I will discuss briefly EPA's principal involvement in this case.

On October 29, 1973, we forwarded to the Corps of Engineers our response to their public notice of August 27, 1973, regarding the Estero Municipal Improvement District application for a permit to fill 382 acres of land in Foster City, Calif.

At that time we requested that the issuance of the subject permit be delayed until the applicant provided assurances and detailed descriptions to the regional office regarding the following issues:

1. Sedimentation traps will be provided and periodically cleaned;
2. Stabilized ground cover to be provided to alleviate the erosion problem;
3. Only clean dry fill be used for the project, and we have had an opportunity to review the information submitted.

We indicated we would comment further after review of the above information and the Corps of Engineers' Environmental Impact Statement, and recommended that the statement cover the following aspects of the project:

1. Air Implementation Plan proposed for the resulting complex air source (i.e., increased automobile activity);
2. The sewage system and resulting sewage treatment;
3. Storm water runoff; what measures will be taken to insure that only storm water and no industrial discharges enter the system.

Copies of our response were forwarded to all of the involved agencies.

On May 24, 1974, EPA received the Corps' draft environmental impact statement for the proposed project. We forwarded our comments on July 29, 1974. The draft EIS was classified as category ER–2, indicating environmental reservations—insufficient information, indicating our reservations concerning:

1. The availability of sewage treatment facilities.
2. The mobile source emissions that will be generated by the traffic associated with the project.
3. And probable cumulative impacts (e.g., traffic generation and air pollutant emissions) from further bay fill development adjacent to the Foster City project area.

On August 28, 1975, the Estero Municipal Improvement District responded to the concerns expressed in our letter to the Corps of October 29, 1973.

As a result, on September 8, 1975, we withdrew our objections to the project, having determined that our concerns had been adequately addressed.

This has been the scope of our involvement in the Corps permit process. We have not received the final EIS for review, but would expect to review it and provide our comments promptly.

That concludes my prepared remarks. And I would be happy to answer any questions which the committee may have.

Mr. MOORHEAD. First, Mr. De Falco, let me commend you for the brevity of your statement which is always appreciated here.

Mr. De Falco, what formal and informal arrangements has EPA made to coordinate and review the Corps' dredge and fill permit applications, particularly with the Corps, Fish and Wildlife Service, HEW,

with the State Resources Agency, the Water Resources Control Board, and with local communities?

Mr. DE FALCO. Sir, EPA together with the Corps of Engineers is first a member of the Bay Conservation and Development Commission, a regional agency with responsibility for controlling bay fill.

Most applicants for Corps of Engineers' section 10 permits must also obtain a BCDC permit. And this situation provides an excellent opportunity for an exchange of views on the permitted work amongst the various responsible Federal and State agencies, they for the most part all being members of the Bay Conservation and Development Commission.

Also EPA participates with other State, Federal, and regional agencies concerning the Corps permit review. We serve in an informal group referred to as the San Francisco Bay Regional Interagency Coordinating Committee, which meets monthly at a staff level to review matters of common interest in the bay area including specifically Corps permits.

The need for coordination and review of Corps permits was in fact one of the principal reasons why this group was formed. It has been very effective in promoting coordination in this area.

Another mechanism which has been useful in achieving coordination is the Federal Regional Council. EPA region IX is represented at the monthly meetings also of the Corps of Engineers dredging advisory group.

Informal contracts are maintained by phone or amongst the staff almost on a day-to-day basis between the various staffs. And correspondence, meetings, and telephone calls all serve to meet the needs for coordination.

Mr. MOORHEAD. Let me ask you this, sir. What, if any, concern does EPA have with respect to protecting fish and wildlife? I consider that part of the environment, that is why I ask.

Mr. DE FALCO. We have concern in that much of our activity is required to conform with the Fish and Wildlife Act and other environmental legislation.

The grant-making activities of the agency and the permitting activities of the agency are all made to conform to other agencies' legislation much in the same manner that the Corps solicits comments from us on dredging. We in turn solicit comments on any of our activities from other agencies.

In particular there is a published policy by EPA, Administrator's Decision Statement No. 4, which states an EPA policy in terms of the protection of the Nation's wetlands.

I could submit a copy of that for the record if you desire, sir.

Mr. MOORHEAD. I think that would be helpful.

[The information follows:]

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., February 21, 1973.

ADMINISTRATOR'S DECISION STATEMENT NO. 4 (REVISED)

Subject: EPA policy to protect the nation's wetlands.

Purpose. The purpose of this statement is to establish EPA policy to preserve the wetland ecosystems and to protect them from destruction through waste water or non-point source discharges and their treatment or control or the development and construction of waste water treatment facilities or by other physical, chemical, or biological means.

The wetland resource

a. Wetlands represent an ecosystem of unique and major importance to the citizens of this Nation and, as a result, they require extraordinary protection. Comparable destructive forces would be expected to inflict more lasting damage to them than to other ecosystems. Through this policy statement, EPA establishes appropriate safeguards for the preservation and protection of the wetland resource.

b. The Nation's wetlands, including marshes, swamps, bogs, and other low-lying areas, which during some period of the year will be covered in part by natural non-flood waters, are a unique, valuable, irreplaceable water resource. They serve as a habitat for important fur-bearing mammals, many species of fish, and waterfowl. Such areas moderate extremes in water flow, aid in the natural purification of water, and maintain and recharge the groundwater resource. They are the nursery areas for a great number of wildlife and aquatic species and serve at times as the source of valuable harvestable timber. They are unique recreational areas, high in aesthetic value, that contain delicate and irreplaceable specimens of fauna and flora and support fishing, as well as wildfowl and other hunting.

c. Fresh-water wetlands support the adjacent or downstream aquatic ecosystem in addition to the complex web of life that has developed within the wetland environment. The relationship of the fresh-water wetland to the subsurface environment is symbiotic, intricate, and fragile. In the tidal wetland areas the tides tend to redistribute the nutrients and sediments throughout the tidal marsh and these in turn form a substrate for the life supported by the tidal marsh. These marshes produce large quantities of plant life that are the source of much of the organic matter consumed by shellfish and other aquatic life in associated estuaries.

d. Protection of wetland areas requires the proper placement and management of any construction activities and controls of non-point sources to prevent disturbing significantly the terrain and impairing the quality of the wetland area. Alteration in quantity or quality of the natural flow of water, which nourishes the ecosystem, should be minimized. The addition of harmful waste waters or nutrients contained in such waters should be kept below a level that will alter the natural, physical, chemical, or biological integrity of the wetland area and that will insure no significant increase in nuisance organisms through biostimulation.

Policy

a. In its decision processes, it shall be the Agency's policy to give particular cognizance and consideration to any proposal that has the potential to damage wetlands, to recognize the irreplaceable value and man's dependence on them to maintain an environment acceptable to society, and to preserve and protect them from damaging misuses.

b. It shall be the Agency's policy to minimize alterations in the quantity or quality of the natural flow of water that nourishes wetlands and to protect wetlands from adverse dredging or filling practices, solid waste management practices, siltation or the addition of pesticides, salts, or toxic materials arising from non-point source wastes and through construction activities, and to prevent violation of applicable water quality standards from such environmental insults.

c. In compliance with the National Environmental Policy Act of 1969, it shall be the policy of this Agency not to grant Federal funds for the construction of municipal waste water treatment facilities or other waste-treatment-associated appurtenances which may interfere with the existing wetland ecosystem except where no other alternative of lesser environmental damage is found to be feasible. In the application for such Federal funds where there is reason to believe that wetlands will be damaged, an assessment will be requested from the applicant that delineates the various alternatives that have been investigated for the control or treatment of the waste water, including the reasons for rejecting those alternatives not used. A cost-benefit appraisal should be included where appropriate.

d. To promote the most environmentally protective measures, it shall be the EPA policy to advise those applicants who install waste treatment facilities under a Federal grant program or as a result of a Federal permit that the selection of the most environmentally protective alternative should be made. The Department of the Interior and the Department of Commerce will be consulted to aid in the determination of the probable impact of the pollution abatement

program on the pertinent fish and wildlife resources of wetlands. In the event of projected significant adverse environmental impact, a public hearing on the wetlands issue may be held to aid in the selection of the most appropriate action, and EPA may recommend against the issuance of a Section 10 Corps of Engineers permit.

Implementation. EPA will apply this policy to the extent of its authorities in conducting all program activities, including regulatory activities, research, development and demonstration, technical assistance, control of pollution from Federal institutions, and the administration of the construction and demonstration grants, State program grants, and planning grants programs.

WILLIAM D. RUCKELSHAUS,
Administrator.

CHRONOLOGY OF EVENTS—ESTERO MUNICIPAL UTILITY DISTRICT APPLICATION TO THE CORPS OF ENGINEERS FOR A PERMIT TO FILL

August 27, 1973—Corps issued public notice.
October 29, 1973—EPA reviewed public notice and requested Corps to delay issuance until EIS was completed. Requested assurances regarding erosion control, etc. carbon copy to Estero.
December 26, 1973—State Water Resources Control Board denied certification until after waste discharge requirements were issued.
January 18, 1974—BSFW objects to Corps permit—no mitigation for loss of habitat.
May 24, 1974—Corps requested review and comment on draft EIS.
July 26, 1974—EPA submitted comments.
August 16, 1974—Corps issued public notice of proposed public hearing.
September 17, 1974—Corps held public hearing in Foster City.
June 1975—Corps informally provided draft final EIS to EPA.
July 28, 1975—State Water Quality Control Board issued certification.
August 29, 1975—Estero MUD provided EPA with information previously requested of Corps in October 1973 which was needed for review of the proposed Corps permit.
September 8, 1975—EPA sent letters to Corps approving project but recommended applicant obtain reaffirmation of certification from Regional WQCB.

CHRONOLOGY OF EVENTS—ESTERO MUNICIPAL UTILITY DISTRICT NPDES PERMIT

July 16, 1974—San Francisco Bay Regional Water Quality Control Board issued NPDES permit. Permit required submittal of conceptual plan by September 2, 1974 and compliance with the plan by October 29, 1974.
May 13, 1975—EPA issued request for information letter (308).
May 30, 1975—Estero MUD sent letter to SF Bay Regional WQCB with alibi for failure to have complied with the NPDES permit.
June 19, 1975—Estero MUD replied similarly to EPA.
July 16, 1975—SF Bay Regional WQCB notified Estero MUD of inadequacy of their May 30, 1975 letter.
July 16, 1975—Meeting of EPA, SF Bay Regional WQCB, and Estero MUD.
July 31, 1975—EPA issued Notice of Violation (309 letter).
August 12, 1975—Estero MUD submitted conceptual plan to SF Bay Regional WQCB.
August 27, 1975—SF Bay Regional WQCB approved Estero MUD conceptual plan of public hearing to consider Estero NPDES permit violations.

Mr. MOORHEAD. Now, with respect to water pollution discharge in this area, I understand that EPA has passed its permit authority to the State of California.

Does EPA have any continuing role in the permit process?

Mr. DE FALCO. EPA has delegated authority to the State of California for the issuance of permits.

EPA does maintain review authority over the State program to insure that it complies with the guidelines and requirements of the act. The State furnishes EPA all pertinent documentation much as it does to any other citizen. And we reserve a right to comment on the permit much as any other citizen.

But the State actually does the permitting and the issuance of a permit.

Mr. MOORHEAD. Does EPA have any position with respect to, let's say, making cuts through or eliminating existing dikes in the area for environmental purposes?

Mr. DE FALCO. No. EPA does not have any position as to the cutting per se, unless it would adversely affect water quality, in which case there would be water quality considerations to review.

Now, in many cases this might be so.

Mr. MOORHEAD. Mr. De Falco, understandably you have limited your testimony to the Foster City situation. Has EPA examined the two problems in the Redwood City applications?

Mr. DE FALCO. Yes. EPA was involved in both of the issues that were raised yesterday.

In the Redwood Shores issue, the so-called Strategic Consolidated Sewerage Plan Authority, EPA has made a step 2 grant as of August 29 to the authority for the design of a facility to consolidate treatment plants in Menlo Park, Redwood City, Belmont, and San Carlos in the Redwood Shores area.

EPA filed a negative declaration back in May of this year and had at that time received no adverse comments on the proposal. In filing that negative declaration, we had reviewed all of the A–95 comments, and the negative declaration itself is published in the Federal Register and no granting action was taken for a minimum of 15 days. In this case, it was the better part of several months.

We had no adverse comments at the time the grant was made. Since the grant was made, we have been made aware of the issue. As far as we are concerned, the facility can be moved backward along the sewer line if it would avert an adverse situation. We have so advised the engineers representing the authority.

Mr. MOORHEAD. Are you and the corps in accord on the Redwood situation?

Mr. DE FALCO. Our grant is made subject to the obtaining of a BCDC and a Corps of Engineers permit for the outfall line and for any filling that may be necessary. BCDC in the A–95 comments indicated that they had authority to permit in this area.

Mr. MOORHEAD. In giving your advice on individual projects in the bay area, do you take into consideration the overall effect on the total San Francisco Bay area?

Mr. DE FALCO. Yes, sir, as much as we can. We seek to develop a broad process which essentially takes into consideration the balancing of the various efforts in various sections of the bay.

There is under the Federal Water Pollution Control Act a basin plan requirement. The State has developed a basin plan for the San Francisco Bay area. The facilities that are granted are granted in the context of that broad basin plan.

Mr. MOORHEAD. My final point before I yield to Mr. Ryan is that insofar as Foster City is concerned, you have withdrawn your objections to the Foster City proposal; is that correct?

Mr. DE FALCO. Yes, sir.

Mr. MOORHEAD. Thank you, Mr. De Falco.

Mr. DE FALCO. Thank you, sir.

Mr. MOORHEAD. Mr. Ryan?

Mr. RYAN. Thank you, Mr. Chairman.

I have only one area of concern and it really doesn't have to do with Foster City in particular. But as long as you are here and I am here, Mr. De Falco, I would like to go into it.

I know somewhat the jurisdiction of your agency and the work that you do. You can't help but be involved in a controversy, I realize that too.

I guess what puzzles me is that the agency has attempted to strike off in different directions on a number of occasions and sometimes I agree and sometimes I haven't. But I am curious about one area that I believe the agency hasn't really gotten into that by a process of logic in my own mind anyway makes me wonder why there hasn't been more done.

You are, I guess, charged more than any other agency with responsibility for cleaning up water and air. Certainly one of the greatest pollutants of the air is the automobile.

In the last 30 years, this congressional district is mute witness to the policies, among other things, of the Federal Government wherein with the FHA and the VA and so forth we have granted loans by the millions to allow the construction of essentially three-quarters of the housing in this county.

In the process of which we allowed a great many people to move out of San Francisco, to move into San Mateo County and to live in a more open kind of life than was possible under the circumstances that existed in San Francisco, where the living conditions were much more crowded and still are.

One of the results was, along with the Federal Highway Construction Act which produced all of the Interstate freeways to make it easy to commute, that we spawned a whole generation of commuters each one with an automobile, and you know the results of that.

If, as I believe, housing was a prime cause or housing policies at the Federal level were a prime cause of the present situation, does your agency involve itself at all in housing policy today that would reverse that trend on a long-range basis?

Mr. De Falco. I know at the regional level, sir, I do get involved with Housing and Urban Development at the Federal Regional Council level. And on a number of occasions I have taken positions on their environmental impact statements vis-a-vis the transportation air-pollution related aspects of some of the proposed developments.

And in turn Housing and Urban Development have assisted us in some areas, particularly in water pollution situations.

Mr. Ryan. But do you involve yourself in policy that relates to the way that San Francisco is built, downtown San Francisco? Does it concern you when they build the Bank of America building 62 stories high that has no possible way of having any life in it except for 40 hours a week?

Mr. De Falco. Yes, sir, as best any Federal agency can get involved——

Mr. Ryan. The Transamerica Pyramid——

Mr. De Falco [continuing]. In a commercial building.

Mr. Ryan. Yes. The Transamerica Building, as soon as you build a building, the two World Trade Center Towers in New York—they are monstrosities and they breed of course the need for millions if not billions of passenger miles per year in an automobile, additionally.

And I hear no complaint from any particular Federal agency about those kinds of policies. At least they aren't audible to me. And I wonder if there is any kind of move out now to begin to make our present structures more attractive, or are you concerned about it?

Mr. DE FALCO. We are concerned, sir, and I think you are aware that we took the initiative in the development of the standards implementation plans for the air situation here in California, and sought out transportation controls including parking management and other related control mechanisms.

And we have been advised by the Congress that this wasn't an appropriate area to act in.

Mr. Ryan. Well, you see, you are trying to legislate after the fact. After the baby is born is no time to discuss whether to have a baby; it is already done. We have already got the babies born, we are here.

I guess what I am concerned about is the next generation.

And you can't force these parking lots out. We have created this—the Federal Government has created this situation. And you can't on the blackboard simply erase it.

Mr. DE FALCO. Much of the parking management plan spoke to the development of new parking lots and to the control of those, not to the existing facilties.

Mr. RYAN. How about creating different housing patterns so that they don't need to use the automobile?

Mr. DE FALCO. There is no real link in existing legislation that would give EPA any entree into the development of a private commercial development.

Mr. RYAN. All right; that is what I was hoping you would say. In other words, what you are saying is, there is no present recognition or not enough recognition at the Federal level in the legislation of the link between housing policies on a long-range basis and on a large basis, and water pollution, water quality, air pollution quality, and so on?

Mr. DE FALCO. That is correct, sir.

Mr. RYAN. And they are directly related as far as long-range planning is concerned?

Mr. DEFALCO. Yes, sir.

Mr. RYAN. Mr. Chairman, whatever else, out of the mud grows the lotus; out of the problems grow the answers. Perhaps whatever this committee recommends, I would like to suggest that we take at least an ancillary or tangential swipe at this particular problem going by.

It doesn't relate specifically to Foster City today, but if our housing policies haven't changed in the development of cities in the next 10 or 15 years, we are not going to do much in the way of resolving our automobile problem.

Mr. DE FALCO. If I could amplify a little, Congressman?

Mr. RYAN. Please do.

Mr. DE FALCO. There is an area in the Water Pollution Control Act currently under consideration as an amendment to the Clean Air Act which may provide some assistance in this area, and that is section 208 of the FWPLA, which is areawide water quality management planning which essentially delegates to the local-regional level the ability to develop a water quality management plan commensurate with the basic planning process in the area.

There is a parallel process under consideration in Congress for the Air Act which would essentially require the development of an environmental element to every general plan. And in that process, the local and the regional governments could balance off or trade off environmental impacts versus the growth impacts.

I think that is what you are trying to get at, essentially.

Mr. RYAN. I think so. I think where the Federal Government tries to order the citizen out of his car either by taxing him out of it or by some other means without providing a more comfortable alternative so he doesn't have to be ordered out but wants to get out, wants to leave the car behind because he doesn't need it anymore.

You don't push people; you pull them. That should be the difference in our legislation.

That is all the questions I have, Mr. Chairman.

Mr. MOORHEAD. Thank you.

Thank you, Mr. De Falco.

Mr. DE FALCO. Thank you very much.

Mr. MOORHEAD. We appreciate very much your testimony and helpful suggestions.

The subcommittee would now like to hear from representatives of the State of California, Mr. Charles Fullerton, director of fish and game, State of California, Sacramento, Calif.

Mr. Fullerton, would you come forward please.

Mr. Fullerton, do you know if there are other representatives of the State? We had some others listed on our witness schedule. Are there any other State officials present?

Mr. FULLERTON. I don't know of any, sir.

Mr. MOORHEAD. Mr. Fullerton, please raise your right hand.

[The witness was duly sworn.]

STATEMENT OF CHARLES FULLERTON, DIRECTOR, CALIFORNIA DEPARTMENT OF FISH AND GAME

Mr. FULLERTON. Mr. Chairman and Congressman Ryan, first I would like to apologize for Mrs. Claire Dedrick, secretary for resources, not being here. She had a death in her immediate family 2 days ago and is attending a funeral today, so could not be here. It was in Utah, so there was no possibility——

Mr. MOORHEAD. We understand that. Extend our sympathy to Mrs. Dedrick.

Mr. FULLERTON. Thank you, sir.

Mr. Chairman, committee members, my name is Charles Fullerton, director of the California Department of Fish and Game.

I am speaking today in response to the committee's letter of September 5, 1975, asking for my "views and comments as to the adequacy of the Government agencies' actions to identify, review, and resolve the issues in the Foster City permit application."

Before proceeding further, I believe it would be in order for me to describe the administrative procedures we follow when reviewing Corps of Engineers' public notices.

Requests for project review are distributed by the State of California Resources Agency to appropriate functions within the agency, including my department. We review the proposal and submit our comments to the Resources Agency which, in turn, coordinates them

with other agency comments and submits a coordinated response to the Corps of Engineers.

The Corps' public notice and review procedure is in compliance with provisions of the Federal Fish and Wildlife Coordination Act, which requires that whenever the waters of any stream or other body of water are proposed or authorized to be impounded or diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license (such as a Corps of Engineers permit), the agency (Corps of Engineers):

"First shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over wildlife resources of that particular State"—in which the work is to be done.

The Fish and Wildlife Coordination Act also requires that:

"Recommendations of the Secretary of the Interior (U.S. Fish and Wildlife Service) shall be as specific as practicable—and shall describe the damage to wildlife attributed to the project and measures proposed for mitigating or compensating for damages."

It is under this authority that mitigation measures are proposed to project sponsors. When, as often happens, the project sponsor doesn't agree with State or Federal mitigation proposals—as in the case of the Foster City issue—the sponsor and involved State and Federal agencies get together to try to resolve their differences.

If differences can be resolved, the corps is so notified. If differences cannot be resolved, the corps must determine a solution and subsequently either approve or deny the permit request.

I wish to emphasize that in both instances, protagonists reaching agreement or through the corps reaching a separate conclusion, public values are taken into consideration.

In the first instance, agencies with different public responsibilities try to resolve their differences. In the second instance, the corps must weigh the various interests involved, including the public interest, and make a decision.

With regard to the Foster City issue, a series of meetings were held with Foster City representatives, and agreement on mitigative measures has been reached between the California Department of Fish and Game and Foster City. The corps has been notified of this agreement.

If environmental and fish and wildlife values are to be protected, information on which decisions are based must be available to the public. In some instances, there are competing interests.

Regardless, a decision must eventually be made which hopefully will best accommodate the competing public values. In my opinion, public interest is usually better represented if protagonists can resolve their differences than if one agency draws a conclusion based on written and verbal comments.

However, I also recognize that there must be a final referee in matters under dispute, and occasionally it may be necessary to refer the matter to that entity for resolution.

I believe that the arguments of the Foster City issue and others of a similar nature are not with law or procedure, but with competing public and private values which are most difficult to resolve but must be done.

Everyone cannot always get all that he wants. Our responsibility is to protect the public resources of fish and wildlife. The public interest in these values requires adequate consideration and representation.

We recommend that in cases such as this, despite the obvious need and desirability for negotiation of the differences among the parties involved, the matter be given adequate public review.

In situations such as the Foster City matter, the procedures should require a permit from the corps, the preparation of an environmental impact report which sets forth the fish and wildlife and wetland values of the lands involved, as well as the measures proposed for protection or mitigation of the losses in those values, and a public hearing to obtain public input.

If the parties can agree and the public interest is adequately served, then there will be little difficulty in arriving at a decision. If there is controversy, the present process still provides a basis for a decision in the national interest.

Is the present procedure followed in California for the issuance of the corps permits adequate? Yes. We feel that the present procedure and law are adequate and do a very good job in accomplishing the intent of the law.

Would we suggest any changes? No. We feel that even though in some individual cases the process may seem bureaucratic, in most cases it has worked very well.

Generally speaking, we feel that the corps, operating under the present procedures and law, has done an outstanding job in making decisions which resulted in protection of the environment and still allowed development without undue restriction.

Mr. MOORHEAD. Thank you very much, Mr. Fullerton. Did your Department of Fish and Game take a stand on the Foster City proposal?

Mr. FULLERTON. Yes; we did, sir.

Mr. MOORHEAD. What was that stand?

Mr. FULLERTON. Well, it changed from the original stand we took to the one we negotiated at the present time, which is mitigation of some 57 plus or minus acres.

Mr. MOORHEAD. Then do I understand that the Foster City proposal as it now stands meets the approval of your department?

Mr. FULLERTON. That is correct, sir.

Mr. MOORHEAD. And did you review this proposal from the environmental point of view?

Mr. FULLERTON. Yes, sir. That was our total review.

Mr. MOORHEAD. When you make such a review, do you consider other factors than merely fish and game, such as economic and social benefits?

Mr. FULLERTON. We consider, of course, fish and game factors totally. You cannot consider any of them without looking into and considering the economic and other factors which do have some forces in the decision you make, surely.

Mr. MOORHEAD. Considerable questions have been raised about the long-term effect on the total bay area of proposals such as the Foster City one for filling in area.

Do you have a policy with respect to the total San Francisco Bay area?

Mr. FULLERTON. Of course. Our policy is to save as much of the wetlands that are—or restore those that are possible, as many as we can.

Mr. MOORHEAD. That leads me to the next question, do you believe that dike areas should be returned to wetlands, if at all possible?

Mr. FULLERTON. I think you have to look at that in an individual case. Where there are marshlands behind that dike and it is a wet area that is sustaining a viable population of wildlife, we could consider it much different than one, say, that has been partially filled and was bare and nothing there.

So, I think it has to be done on an individual case. Wherever possible, where we can return or protect present wetlands in the San Francisco Bay area, we should. They are very critical to the total environment of the bay, not only the bird life but the fish life in the bay.

And I think we should do everything we can to maintain that balance.

Mr. MOORHEAD. There is a great deal of concern about the number of State agencies that need to be involved in reviewing applications such as the Foster City application.

Do you believe that there are too many State agencies involved?

Mr. FULLERTON. No; I think those State agencies that have some input in that type of decision should be considered. I think the State clearinghouse process takes care of that pretty well.

In this case, because we were the major one involved, I handled it mostly for the State. The other agencies weren't quite as concerned as we were at this point.

Mr. MOORHEAD. Now, are the criteria which your agency and other State agencies apply consistent with or in contradiction with the Federal policies of Federal agencies involved?

Mr. FULLERTON. Well, I must say we don't always agree on what should be taken as mitigation. We sometimes don't read the results of our investigation exactly the same. But generally we are headed toward the same direction, yes.

Mr. MOORHEAD. And I take it from your testimony that in your judgment the procedures and the coordination between State and Federal agencies are adequate for the purposes, do not impose too much bureaucratic redtape, and are working reasonably well?

In other words, you had no recommendations to the subcommittee for changes in legislation or procedures, is that correct?

Mr. FULLERTON. That is correct, sir. I think many of the problems you are having with the implementation is not with the present procedure as is outlined or the law, but the kind of the implementation and the individuals doing it.

We shouldn't change laws just to take care of those kinds of problems, I believe.

Mr. MOORHEAD. Do you consider the Foster City situation unique in the problems that you face in the bay area? Or is it pretty much a standard situation?

Mr. FULLERTON. No, I think each case is unique in itself. The Foster City case and the Redwood Shores case are quite unique from any of the others because of the things that we must take into consideration, the economics, the way that the districts were formed, the problems they have in the funding, and many other situations.

The fact is that it was a permit that was granted way before this jurisdiction came on top of it, so I think we have to look at each one on a different and individual case basis.

What concerns me about some of the testimony is that we need a criteria that covered everything. I think this would be hardship on some and would not be a hardship on the others.

And I think it would be more—really, it would be more equitable by looking at it on an individual case basis because the cases are much different.

Mr. RYAN. Mr. Chairman, would you yield?

Mr. MOORHEAD. Certainly.

Mr. RYAN. About this one point. You do consider, in a case like this where there is such an extreme aggravated problem, you do consider the economics of the situation as part of the mitigation procedure?

Mr. FULLERTON. I would say that our primary concern is the fish and wildlife and those benefits, but you can't sit there and not consider the economic impacts.

Mr. RYAN. Well, mitigation itself is an economic consideration.

Mr. FULLERTON. That is correct, sir.

Mr. RYAN. All right, that is all I have.

Mr. FULLERTON. I think in this case the mitigation that we accepted was the fact that we looked at it in the long range as being more beneficial than the short-range effect of some of the other proposed mitigation.

We look at Belmont Slough as being the key to a lot of the real environmental concerns in this area. And the fact that through this mitigation this will lock it up so that our department will have control over Belmont Slough completely. Then we can protect it for the future without other inroads into it.

It is a very vital key in the total environmental picture in this end of the Bay.

Mr. MOORHEAD. You mentioned a State clearinghouse agency. What is that? How does it work? And can that experience be applied on the Federal level?

Mr. FULLERTON. I don't know. Our State clearinghouse procedure is when a corps permit notice comes out, it goes to our State clearinghouse. They in turn send it to each department concerned in that notice.

Then the coordinated responses are put together into one notice going back to the Corps of Engineers. And as a result then you don't deal with seven departments separately, but you are dealing really with one—the State clearinghouse.

Mr. MOORHEAD. That is an interesting concept. Is that mandated by law? Does it have a particular body——

Mr. FULLERTON. No, it is not mandated by law. But it is one of the administrative procedures set up by the administration.

Mr. MOORHEAD. And what office or department heads the State clearinghouse?

Mr. FULLERTON. I wish I could give you the man's name at this time, but there have been so many changes. But it is a separate piece of government in California that's set aside for that purpose.

Mr. MOORHEAD. Maybe you know about it, Mr Ryan?

Mr. RYAN. I know the structure but I don't know the individual.

Mr. MOORHEAD. Well, I don't need the name of any individual. But I am wondering if that structure wouldn't serve as a model for Federal agencies.

Mr. RYAN. Mr. Chairman, without blushing, there are many things we do in California that would serve as a model for the Federal Government.

Mr. MOORHEAD. Modesty has never been your long suit when California is concerned.

[Laughter.]

Mr. MOORHEAD. Mr. Fullerton, did your agency involve itself in the Redwood City situations? And if so, did they take a position one way or the other?

Mr. FULLERTON. Yes, we did. We were involved in it.

Mr. MOORHEAD. And what position did you take?

Mr. FULLERTON. In the case of the sewer project, we have no problem with that project. In the case of the one with the reservoir, yes, we had recommended the permit be denied in this case.

There is something I would like to clear up on that. There was—there seemed like a lot of confusion on the land exchanges and some of the so-called things that went with the land exchange.

There are two land exchanges and they are separate, separate completely. The first one was the exchange for the area that was concerned with the reservoir site that's being proposed. And this was done by the State lands commission to clear title for the people that wanted to develop it.

And it was done strictly on a basis by law which means you have to exchange equal value lands. And this was done with some 126 acres, I believe, along the shore of the present Redwood development.

And then an entirely separate land exchange was that one for 800 acres of Bair Island. This was a gift by Mobil Oil to the State of California. I do not know their reasons for this gift. I believe it is tax purposes.

But it was a gift to the State of California State Lands Commission with no string tied to it on anything that may occur from their developments in the future in the same area.

As a result, then the State Lands Commission leased it to our agency for 66 years. We have control of it now.

Mr. MOORHEAD. Are you familiar with the Redwood City overall development program?

Mr. FULLERTON. Yes, fairly familiar with it.

Mr. MOORHEAD. And has your agency taken any position with respect to the further development of the peninsula at Redwood?

Mr. FULLERTON. We are very concerned that that development will not further reduce the present wetlands area in the South San Francisco Bay, yes.

Mr. MOORHEAD. And have you reached a conclusion as to whether it will further deteriorate the environmental situation in the bay?

Mr. FULLERTON. I wish I could answer that because I am sure that as their development goes forward, we will begin negotiating with them and there may be mitigation proposals by them that we could accept that would not further deteriorate the Southern Bay.

But until we get to that point, I couldn't answer that question, sir.

Mr. MOORHEAD. Thank you, Mr. Fullerton.

Mr. Ryan?

Mr. RYAN. I don't have any questions. I would just like to commend Mr. Fullerton for his efforts in trying to help resolve these very difficult problems in both these cases.

Your efforts are appreciated. Thank you.

Mr. FULLERTON. Thank you, sir.

Mr. MOORHEAD. Thank you, Mr. Fullerton.

The subcommittee would now like to hear from Mr. R. Kahler Martinson, West Regional Director, Fish and Wildlife Service, Portland, Oreg., and from Mr. Felix Smith, Field Supervisor, Bureau of Sport Fishery and Wildlife, Division of River Basin Studies, Sacramento, Calif.

Mr. MARTINSON. I am Kahler Martinson, Mr. Chairman. Felix Smith is coming. He just stepped out. I think he anticipated a little more questions on the last one.

Mr. MOORHEAD. Mr. Martinson, it was requested that Mr. Meyer who signed one final letter be here. Do you know if he is here?

Mr. MARTINSON. No. Mr. Meyer is not coming. He is relatively new, he is my deputy as of about 30 days now. He signed a letter in my absence.

Mr. MOORHEAD. Thank you, gentlemen.

[The witnesses were duly sworn.]

Mr. MOORHEAD. I think we might hear from you first, Mr. Martinson, then Mr. Smith.

Mr. MARTINSON. All right, my testimony is going to be relatively short, and Mr. Smith will handle the details.

STATEMENT OF R. KAHLER MARTINSON, REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

Mr. MARTINSON. Mr. Chairman and member of the subcommittee, being under oath I guess I can't say I am really happy to be testifying here, but I am happy if it is a chance to make a few points on San Francisco Bay.

As you are no doubt aware, our service has an intense interest in the bay as evidenced by our efforts to establish the San Francisco Bay National Wildlife Refuge.

The bay estuary is a wintering area for hundreds of thousands of waterfowl and is of particular value to diving ducks—that segment of our duck population that has suffered most from loss of habitat.

The San Francisco Bay, as I see it, is one of the three major estuaries in this country. It is a gem, and I would urge Congressman Ryan to look after it. It is suffering. It has been chipped away——

Mr. MOORHEAD. Mr. Martinson, let me assure you that Mr. Ryan as a member of my subcommittee has been badgering the Chair very effectively to look out for the interests of the bay area.

Mr. MARTINSON. Well, again, as you know, the bay has been chipped away by developers for many years, and the coastal marshes have been reduced from an area of about 300 square miles to 75 square miles.

These marshes and mudflats that are being filled are the guts of the estuarine system, and they are the areas which we are most concerned about.

I would like to read a paragraph from the Defenders of Wildlife magazine, an article by Raymond Davis called Ravaged San Francisco

Bay, which does a pretty good job of summarizing what filling can do to the bay and has done to it. It does a better job than I can do.

Mr. MOORHEAD. If you would like, we could have the entire article made part of the record if you think it would be helpful.

Mr. MARTINSON. I think it might be.

Mr. MOORHEAD. Without objection, it will be made part of the record.

[The document follows:]

RAVAGED SAN FRANCISCO BAY

CAN THE QUEEN OF BAYS SURVIVE MORE "PROGRESS"?

(By Field Editor Raymond "Sandy" Davis)

The north side of the Golden Gate is a bold promontory separating the Pacific Ocean from San Francisco Bay. It was near here, just inside the bay, that Richard Henry Dana made some observations from the deck of the brig *Pilgrim* on a winter's day in 1835. In *Two Years Before the Mast*, he writes:

> The tide leaving us, we came to anchor near the mouth of the bay, under a high and beautifully sloping hill, upon which herds of hundreds and hundreds of red deer, and the stag, with his high branching antlers, were bounding about, looking at us for a moment, and then starting off, affrighted at the noises which we made for the purpose of seeing the variety of their beautiful attitudes and motions.

Dana had seen a herd of Roosevelt elk, a race long since vanished from Marin County. But the hillsides he saw have changed little. They were the battleground in a recent confrontation between environmentalists and developers.

In the middle 1960s, the Gulf Oil Corporation announced plans to convert these hills to a tract development capable of housing 25,000 people. The legal battle that followed was bitter and prolonged, but finally Gulf conceded defeat and sold its holdings to the Nature Conservancy, a private environmental group specializing in land acquisition. Last May, the Conservancy turned over more than 2,000 acres of this area to the National Park Service, to be added to the Golden Gate National Recreation Area.

Before the days of the Gold Rush, when there were no lighthouses or buoys in the bay, ships entering the Golden Gate avoided certain shoals by lining up on stands of giant redwoods visible 16 miles away in the hills behind the present site of Oakland. In those days the East Bay hills were mostly grass-covered and treeless except for a few areas where conditions favored the growth of *Sequoia sempervirens*. The trees did not last beyond the early 1850s; they were logged out to help build Oakland and San Francisco. The groves were reduced to "melancholy ruins," and notables like John Muir and Asa Gray used to marvel at what was left. One stump near the summit of Redwood Peak measured 33½ feet in diameter and may have been the largest coast redwood ever known.

Today, Redwood Regional Park, an area of 2,000 acres, protects a new forest of redwoods growing on the same location as the long-gone patriarchs. These trees are only five to six feet in diameter and about 100 feet tall. But already the groves impart an air of stateliness and durability—an assurance that in a thousand years, man and nature willing, the giants will have returned.

The hillside town of Sausalito, which faces the bay just north of the Golden Gate, has been described as the closest thing in America to a Mediterranean village. Its shops and restaurants have been an enduring tourist attraction over the years, but on a sunny day last February I watched the wildlife of the region help ease the task of the local Chamber of Commerce. For a couple of hours in the middle of the day a herd of California sea lions basked and dived just a few feet off the breakwater. People arrived in droves to watch the performance, lining the shore and crowding onto the observation decks of the restaurants. Here and there among the sea lions, lone harbor seals surfaced, their round, shiny pates giving them the appearance of little old men out for a swim.

As many as 20,000 California sea lions migrate twice a year past the Golden Gate. Most of them stay on the open Pacific but for some reason that isn't clear yet, herds of bachelor bulls pay a side visit to San Francisco Bay, as if on a lark. They stay a short time, then return to sea. No females ever join these excursions. Last spring, 800 bulls were counted in the waters off Angel Island.

About three miles north of Sausalito, near the base of Mount Tamalpais, a narrow peninsula forms one side of a sheltered cove called Richardson Bay. This promontory, named Strawberry Point, has been turned into a high-income housing development—an unlikely setting for a crucial conservation victory. But it was the scene for a protracted confrontation between harbor seals and developers.

Until the early 1960s as many as 125 harbor seals at a time hauled out in winter on Strawberry Point and neighboring islets created by the dumping of dredge spoils. In 1964 a developer cut off the top of the Point and dumped it into Richardson Bay to form what is now Strawberry Spit. His idea was to create a large landfill before legislation restricting this type of activity went into effect.

In 1971 Paul Paulbitski, a biologist at California State University, gained permission to tag harbor seals at Strawberry Spit. The animals were hauling out around a small pool near the center of the spit. As Paulbitski proceeded with his tagging program, plans were drawn for a marina on the spit. Its construction would have driven the seals away for good.

"The only people in the area who even knew the seals existed were a few joggers," Paulbitski told me. "They would run along the spit in the early morning, usually with their dogs. The dogs would chase the seals into the water.

"I stopped one man and tried to explain the consequences of his action, but he just went right on jogging. But another time a woman with a dog did turn back.

"The seals now haul out at night to avoid human activity on the spit. They just don't like contact with people. This is abnormal behavior, and it changes their feeding and sleeping schedules."

Paulbitski's efforts to alert the community about the plight of the seals paid off. The Strawberry Recreation District, through lectures and slide presentations, aroused strong sentiment in favor of a seal refuge. Citizens in the vicinity of the spit banded together to defeat plans for the marina, and last year a bond issue of $500,000 was passed to purchase open space.

While the Strawberry community was taking on the developers, young biologist Dana Chapman was conducting a one-man compaign to regulate boating near the split. He observed that boat propellers were injuring or killing many seals. Chapman went to the Corps of Engineers, which has jurisdiction over all tidal waters, and received permission to erect a five-mile-per-hour speed sign in the navigation channel opposite Strawberry Spit. The Corps also approved a physical barrier to keep boats well away from the waters most frequently used by the seals.

By now a dramatic development had taken place. Coinciding with the approval of the bond issue, the Marin Aubudon Society offered the Strawberry Recreation District up to $25,000 toward the purchase of the spit. Marin County also entered the picture by changing the zoning regulations so that development of Strawberry Point became more difficult and less lucrative. The owner of the point, the American Savings and Loan Association, filed suit against the county, claiming that the value of its land on the spit had been markedly reduced, and asked nearly $5 million in damages. The Association, stating they were not interested in helping set aside a sanctuary for harbor seals, rejected an appeal by Dana Chapman to restrict human activity on the spit.

When the Association refused to erect protective signs or fencing on the spit, residents of the Strawberry District announced plans to boycott American Savings and Loan. Confronted with the boycott, the Association softened its stand, agreeing to cooperate with efforts to save the spit. A fence shielding the seal hauling area was approved. The Association still plans to sue Marin County, however, believing that their holdings were virtually confiscated without compensation. If they win the lawsuit, development of the spit would still be a possibility. But the Association, in all likelihood, would be taken to court for violation of the Marine Mammal Protection Act of 1972.

The problem of Strawberry Spit is just one aspect of a larger issue involving harbor seals in San Francisco Bay. Of all the marine mammals that have been reported in the bay, only the harbor seal (*Phoca vitulina*) is commonly seen the year round. Sea otters have been gone for more than a century, and sea lions stay near the Golden Gate on their brief incursions. Formerly abundant, the little harbor porpoise (*Phocoena vomerina*) is now occasionally observed between Treasure Island and the Golden Gate.

Before 1890 harbor seals were killed in large numbers by commercial fur hunters, but they have held their own in the bay since then. Harassment on the remaining hauling and pupping grounds has been a major threat in recent years.

Dr. Kent Dedrick, a physicist at the Stanford Research Institute and a leading Bay Area conservationist, talked about seals at his home in Menlo Park. "I can remember when harbor seals were all over the South Bay. They would haul out right in the port of Redwood City. There was a piece of marsh partly elevated by spoils that used to be a major hauling ground. In the middle 1950s the connecting slough was dammed off, and the seals have not been able to reach the marsh since then."

The most important seal rookery remaining is marshy Mowry Slough, at the south end of the bay. As many as 330 seals have been seen here at one time. Unfortunately, problems of jurisdiction have delayed the implementation of protective measures, since Mowry Slough will not be included in the new San Francisco Bay National Wildlife Refuge. The slough is under tidal influence in state navigable waters, suggesting that the California Fish and Game Department should be guarding the seals, but so far little has been done.

"The situation down there is bad," commented Bob Jones, a mammalogist at the University of California, Berkeley. "A lot of people with boats carry guns for entertainment. If they can't find a floating beer can to shoot at, they're perfectly happy to use a seal for target practice instead."

Paul Paulbitski had more to add. "The seals at Mowry Slough are the hardest to approach of any in the bay. They'll bolt if they see a man 300 yards away. During the pupping season this whole area should be off limits to boat and land traffic. Boats in particular have a bad effect on the seals.

"Airplanes also skim low over the seals when they are hauled out at Mowry Slough. It's all intolerable and has to be stopped."

To add to the ordeal of the harbor seals, there is a shooting range not far from Mowry Slough. Employees of the Leslie Salt Company and other shoreline industries indulge in target practice during their time off. Some take motorcycles out on levees to get within rifle range of the area around Mowry Slough. A number of seals have been found there dead of gunshot wounds; undoubtedly there are others that have not been recovered.

Biologists interested in the harbor seals of San Francisco Bay suspect that part of the population moves out through the Golden Gate to spend several months of the year on the Pacific coast, but studies have not yet confirmed this. It is known that some of the seals leave Mowry Slough after the pupping season and work their way to the north end of the bay, where they remain until early spring. Timing their arrival with herring runs, the seals build up over the winter at Strawberry Spit. It was here that a stillborn pup was found in 1971—an event that introduces another phase in the drama of the harbor seal.

While in Berkeley, I called on Dr. A. Starker Leopold, one of the world's eminent wildlife biologists, at the University of California. Our conversation soon got around to seals. "I'm hoping the Marine Mammal Commission will fund a study that will look into the matter of premature pup births in the bay," Dr. Leopold remarked. "A number of people were very impressed with the article in DEFENDERS about research on this problem in Puget Sound.[1] That article was largely responsible for getting our study here on San Francisco Bay set up."

The projected study, which will be under the general direction of Dr. Robert Risebrough of the University of California, will investigate the possible implication of chlorinated hydrocarbons, PCBs, and heavy metals in the food chain of which the harbor seal is a part. Primarily bottom feeders, harbor seals consume small rockfish, perch, and octopi. Shrimp and sculpin are also relished. In the bay, seals often prey on small schooling fish such as smelt and herring. So far, data from earlier investigations indicate that while mercury has reached high levels in seal livers, small amounts of lead, cadmium, and copper exist in other tissues. The effects of disease and oil pollution on seals will also be examined and an effort made to isolate all the mortality factors.

At the time of the Gold Rush some 750 square miles of marshland rimmed San Francisco Bay, making it one of the most productive estuaries in the world. The marshes were always regarded as a wasteland, but "reclamation," mainly for agricultural purposes, was a difficult process at first. Dikes and levees were easily constructed, but when the normal tidal flow was cut off, the natural plant cover died, and a salty hardpan formed. It was not until well into the 20th century that developers began leveling hills and filling in tidal flats with the spoil. Replaced by subdivisions, airports, and factories, the original saltmarsh acreage has been reduced by more than 80%. "Most accepted figures put the remaining salt marshes at 125 square miles," Kent Dedrick stated, "but I haven't

[1] See "Hard Facts of Gertrude," by Delphine Haley; Defenders, February, 1975.

counted that much. If you run a planimeter around these areas, you'll find that much of it is dry and diked off, except in winter when rain floods them. There's no tidal exchange with the bay, which means that no productivity is getting out to mix with the open waters."

When a salt marsh is filled or dried out, it may take 50 or 100 years before plants begin to grow again. One tract in Redwood City was cleared half a century ago for a development that was never constructed. The site is just as barren today as it was when the marsh plants were first removed.

Now that it is almost too late, scientists have begun to understand the crucial ecological role performed by salt marshes. In the lower parts of the intertidal zone, green shoots of a common plant called cord grass begin to emerge in the spring. They are covered twice a day by the tides at first, but by late summer they are three or four feet tall and crowned by plumes of golden grass flowers. When cord grass dies it falls into the water to decompose into tiny particles full of proteins, carbohydrates, and vitamins. These fragments feed the microscopic animals that in turn become the food of larger animals. Without cord grass, there would be no shrimp, sturgeon, canvasbacks, or harbor seals. This humble plant is the very foundation of the food chain, not only in San Francisco Bay, but in the coastal seas just beyond the Golden Gate. In fact, the ocean is as rich as it is because of the outflow of nutrients from salt marshes. Estuaries like San Francisco Bay are the nurseries that produce plankton for the oceanic food chains.

While producing 20,000 pounds of dry organic matter an acre—about seven times the yield of wheat—cord grass performs a vital function as an air purifier. The species removes more carbon dioxide from the air and gives off more oxygen while making its own food than any other known plant. Furthermore, cord grass and other marsh plants are able to oxidize a common air pollutant, carbon monoxide, converting it to carbon dioxide. When one realizes that about 6,600 tons of carbon monoxide are released into the air over San Francisco Bay each day by man's activities, it seems increasingly prudent to bring all salt marsh destruction to an immediate halt.

The impetus to save what remains of the marshes on San Francisco Bay comes from three directions: the federal government, the State of California, and private land acquisition programs. Largest in scope is the San Francisco Bay National Wildlife Refuge, which is now in the process of being formed. Support for this idea was promoted for nearly 20 years by citizen groups in the Bay Area, despite strong opposition by business interests that still regard salt marshes as worthless unless converted to real estate. Finally, on June 30, 1972, Congress passed a bill establishing the refuge. It will consist of two parts: 11,700 acres in the north, on San Pablo Bay, and 23,000 acres in the South Bay region.

A diverse ecological system, the refuge will protect areas of brackish marsh, characterized by dense growths of cattails and tules, salt marsh, mud flats, open water, and salt ponds. Some 70% of all the shorebirds using the Pacific flyway depend, during migration, on the South Bay region alone.

While not aesthetically pleasing, the mud flats of San Francisco Bay draw food from nearby marshes and from the incoming tides. These nutrients provide the basis for a food chain utilized by clams, mussels, and worms, which in turn are fed on by shorebirds at low tide and a variety of fish that follow the incoming tides. In addition to providing food, the algae in the mud flats expel an abundance of oxygen into the water and air.

One small area of mud flats near Palo Alto has been observed to support a wintering population of more than a million shorebirds. There seems little doubt that if the 45,000 acres of mud flats on San Francisco Bay were to disappear, most of the shorebirds of the Pacific flyway would vanish along with them. Yet on a considerable expanse of mud flats near Pittsburg and Antioch, no oxygen at all is being produced because of industrial pollutants. Consequently, in the absence of food, these flats at low tide are totally devoid of birds.

Starting about 1800, the Spanish Mission Fathers began diking off marsh areas and flooding them with bay waters to manufacture salt by solar evaporation. This process has continued ever since, and today some 47,000 acres of former wetlands have been converted to salt ponds. Though not as valuable a habitat as the original marshes would have been, the salt ponds are used extensively as resting areas by shorebirds and waterfowl. Brine shrimp are plentiful in these ponds, and they furnish a valuable food source for diving ducks like scaup, redheads, and canvasbacks.

The San Francisco Bay National Wildlife Refuge will provide sanctuary for an abundance of wildlife, some of it rare or endangered. In the South Bay section alone, 142 species of birds have been identified, along with 21 mammals and 15 fish. One of these is the California least tern, which is virtually extinct in the southern part of the state. Depending on the year, the refuge area supports between ten and 50 pairs. Least terns now nest only near the Oakland airport and on the bottoms of dry salt ponds on Bair Island, a 130-acre expanse of elevated dredge spoils. A cover of coyote bush on the island also provides nesting sites for great blue herons, snowy egrets, and black-crowned night herons.

In the far northeastern arm of San Francisco Bay, where the San Joaquin and Sacramento river from a delta, the largest remaining area of coastal marshes in California faces an uncertain future. Covering 55,000 acres of wetlands and another 30,000 acres of waterways, the Suisun Marsh is absolutely essential to the survival of the waterfowl that use the Pacific flyway. The California legislature recognizes this fact, and in 1974 it authorized the creation of a buffer zone around the marsh to exclude urban and industrial development from the area. Nevertheless, the lawmakers are under constantly increasing pressure to open the marsh to a variety of exploitation. One scheme calls for using the waterways as a route for barges carrying solid wastes to a proposed dump on the edge of the Potrero Hills. The Pacific Gas and Electric Company wants to put a nuclear power plant in the marsh. A developer has drawn up plans for a new city of 30,000 people. Industrialists feel that the marsh is an excellent site for a steel plant.

Right now, only 10,487 acres of Suisun Marsh are owned by the State of California. The rest belongs to farmers, ranchers, and duck hunting clubs. One official of the California Fish and Game Department summed up the situation with this comment: "Solano County is continuing to push for development, so land values escalate. Landowners who really want to save the marshes can't afford to pay the taxes. So they sell out to industrial exploiters."

Even before California was admitted to the Union in 1850, beach and waterfront lots on San Francisco Bay were being sold at public auction, sometimes for as little as a dollar an acre. The state, which had title to the land, regarded it as a civic duty to treat all tidelands and marshlands as worthless until "reclaimed." At the time of statehood, the surface of the bay at mean high tide covered about 700 square miles. This area is now 400 square miles. It was reduced not only by filling, but by the extensive diking process that cuts marshes off from tidal action, leaving them to die. Today half the bay is in private hands or owned by cities and counties. A vast amount of this area belongs to four corporations: Santa Fe Railroad, Standard Oil, Leslie Salt, and Westbay Associates. Of the 276 miles of bay shoreline, only about ten miles are open to the public.

In 1963 a study by the Corps of Engineers indicated that if diking and filling continued at the same rate as in the past, the bay would be reduced to a narrow ship channel within 100 years.

The high point of the fever to eliminate the bay was in the early 1960s. Land speculators planned immense landfills gouged from the bayside hills, to be covered with houses, shopping centers, and factories. To city and county officials, water had to be replaced by industrial parks. Garbage disposal contractors saw the bay as an ideal sink for solid wastes (by 1965 garbage was being shoveled into the water from 32 dumps around the bay). "The bay has always been regarded as a rug to sweep your dirt under," remarked Kent Dedrick. "It's a combination compost heap and junkyard."

A cultural side effect of development with tragic overtones has been the wanton destruction of archeological sites. In 1908 there were 450 Indian shell mounds in good shape around the bay. There are now about six that have escaped damage. In the summer of 1969 a construction project in San Pablo began turning up burials and artifacts; the site turned out to be a giant shell mound representing some 2,000 years of human occupation. Student volunteers from Bay Area colleges rushed to the site to salvage what they could. The contractor frustrated their efforts, and students and workers nearly came to blows. Despite expressions of public outrage, the site was destroyed by the developer.

The location of the Sherwin-Williams Paint Company plant in Emeryville was once a shell mound 1,000 feet long and 300 feet wide; it stood 22 feet above the surrounding plain. It too was demolished before proper studies could be initiated. To date there is no state law protecting such sites from depredation.

From an ecological viewpoint, further filling of the bay would have several consequences. San Francisco Bay, unlike most bays, depends on tidal movement through a very narrow opening to flush and mix the otherwise landlocked waters. Every new fill shrinks the surface area controlled by the tides and thus reduces the total strength of the bay currents. Oxygen, in addition to being produced by salt marsh plants, is made available in water by wave turbulence due to wind and tidal action. Continued bay shrinkage would lead to a critical loss of oxygen, killing all fish and creating a biological desert. Lastly, the danger of pollution would be markedly increased if shallow parts of the bay are filled. The surface area of the bay and the volume of its waters both play an important role in determining the ability of the bay to assimilate wastes. Loss of tidal flow would make it impossible to flush wastes from the bay.

Another point to consider is the role of the bay in determining climate. The large water surface allows wind circulation, lessens humidity, and moderates temperature. It also combats smog by absorbing air pollutants and disposing of tons of dirt particles. The Bay Area without the bay would be a natural smog basin.

Probably the turning point in the destiny of San Francisco Bay took place in 1961, when the city of Berkeley, in league with the Santa Fe Railroad, announced plans to fill in 4,000 acres of offshore waters. This scheme, involving the construction of industries and airports on a massive landfill, would have doubled the size of the city. The move outraged Bay Area residents, who decided that it was time for some changes. The result was the formation of a group called the Save San Francisco Bay Association. This organization, which now numbers 87,000 members worldwide, not only blocked the Berkeley plan but exerted such effective political counter pressure on the developers that in 1965 the California legislature established the San Francisco Bay Conservation and Development Commission. The primary goal set for the Commission was to consider both ecological and economic factors in coming up with a conservation plan for San Francisco Bay. Just as important, BCDC was empowered to "issue or deny permits . . . for any proposed project that involves placing fill in the Bay or extracting submerged materials from the Bay." However, the jurisdiction exercised by BCDC over fills was limited. The Commission still has no authority in areas beyond tidal action—in other words, behind the dikes. This meant that anyone with a salt pond who wanted to convert it to a housing development was perferctly free to do so.

At this point a most unlikely agency entered the picture as a strong right arm of the environmentalists. Led by Mrs. Clark Kerr, wife of the president of the University of California, the Save San Francisco Bay Association put strong pressure on the Army Corps of Enginers to join BCDC as a regulatory force. The Corps has always performed a historic function as caretaker of the nation's navigable waters, in addition to its dam-building activities. Under the River and Harbor Act of 1899, Congress gave it the power to issue or deny a permit to a developer intending to carry out a project within navigable waters. Between 1899 and 1970 only one permit application in the country was turned down. But within the past five years alone, all major fill activities on San Francisco Bay have come to a complete halt. The muscle demonstrated by the Corps as a police force is based on a survey extending its authority to the line of mean higher high water. This point is based on an average of all possible ranges of tides over a period of 18.6 years. And it puts the Corps right behind the dikes and into the salt ponds where BCDC cannot go.

Working in tandem, BCDC and the Corps of Engineers have maintained a continuous vigil over the bay. Patrols are conducted by helicopters, boats, cars, and even people on foot, all looking for evidence of illegal fill activities. Nevertheless, cities, counties, and business interests are constantly probing the regulatons for weak points. The Corps of Engineers has a list of at least 75 illegal operations for which it is preparing legal actions.

Two recent incidents point to the fact that the Corps of Engineers is vulnerable to political arm-twisting. Last year the Corps stopped an illegal development on a slough in Monterey County. Unfortunately for wetlands in California, the husband of the developer's daughter turned out to be the son of Congressman Burt Talcott. His influence resulted in new regulations being drafted, which removed 70,000 acres of northern California marshes from protective jurisdiction.

Last spring another event in Marin County indicated that the Corps' unfamiliar tenure as a good steward of the environment might be coming to a close. A Los Angeles developer named Ernest Hahn applied to the Corps for a permit to build a shopping center on 45 acres of diked marshland on the bay at Corte Madera. Normally, it would have been routine for the Corps to deny a permit in a case like this. But Hahn has connections in high places and was a business partner of John Conally, a former member of the Nixon cabinet.

Hahn got his way. The Corps washed its hands of the affair, referring to a court decision in Philadelphia which ruled that developers need no permits to exploit land that became "fast," or dry, before the Corps issued its first guidelines covering diked areas. As one Corps official in the San Francisco District Office (who prefers to remain anonymous) views the situation, "This case could reopen Pandora's Box. If the Corps gives up its regulatory function on the bay, up to 180,000 acres of diked wetlands would be left with no protection whatsoever from developers. This would leave a vast area open to subdivisions and shopping centers."

If the Corps of Engineers withdraws its protection from San Francisco Bay, there is still a bright spot in the picture. It is quite likely that more salt marsh is now being restored than is being destroyed. For this turn of events the credit must go to Dr. Thomas Harvey, a botanist at San Jose State University, who pioneered a revolutionary wetlands rehabilitation program. Basic to Dr. Harvey's approach is planting the right vegetation at the right tidal elevation in the right substrate. Pickleweed and cord grass are both being used, with the latter being particularly important because of its high productivity. At four sites on the South Bay, clumps of cord grass with root systems intact have been taken from existing marshes and replanted in areas being restored (seeds must be protected from wave action and don't work as well). An ideal location consists of an old salt pond filled to the desired level by dredge spoils. Then dikes are removed, the tides get back in, and a viable marsh is functioning in two or three years.

San Francisco Bay is an integral part of a vast system of rivers, bay, and ocean that drain 40% of California. Large quantities of freshwater from the rivers are absolutely essential to the well-being of the plants and animals adapted to the brackish areas. As part of a perpetual circulation pattern, the lighter freshwaters, which carry most of the oxygen, tend to stay on the surface and flow toward the ocean. The heavier saline currents form the bottom layer and usually move in the direction of the delta. In the summer when there is less flow from the rivers, the bay becomes saltier. The coming of the winter rains swells the rivers, reversing the trend.

Thus San Francisco Bay is a transition zone between the cold, productive waters of the Pacific Ocean and the nutrient-laden outflow from the Sacramento and San Joaquin river systems. The part of the bay north and east of the Bay Bridge is generally considered an estuary or drowned river mouth, while the South Bay is regarded as a lagoon or arm of the sea. Twice a day the powerful Pacific tides sweep through the Golden Gate to spread out over the entire bay. The resulting water movements transport food to natural communities, remove wastes, renew mineral nutrients, maintain high levels of dissolved oxygen, and disperse the eggs, larvae, and sometimes adults of many fish and invertebrates. San Francisco Bay is a vital nursery and feeding ground for such flatfish as English sole, as well as for the dwindling populations of market crabs. It is also the pathway used by salmon and steelhead trout on the way to the rivers to spawn.

Every year about 440,000 adult king salmon enter San Francisco Bay on their way to freshwater breeding grounds. This is a pathetic remnant of the millions that used to cross the bay before the appearance of the white man.

Adult salmon do not feed while crossing the bay on their way to the rivers. But young fish on their maiden voyage toward the ocean spread out to most of the shallow parts of the bay looking for food. If there should be an upsurge in pollution effecting mud flats, the consequences could be grievous for the salmon. As it is there is now only one spawning run a year, in the fall, whereas they formerly took place in winter, spring, and fall.

During the era of the Gold Rush and the construction of the Transcontinental Railroad, salmon was a basic item in the California diet. In 1850 salmon sold briskly in San Francisco's markets at $5 apiece. The world's first salmon cannery was established in 1864 in Sacramento. Yet as early as 1870 the fish had declined to a catastrophic degree. Hydraulic gold mining operations and railroad crews using dynamite wiped out scores of spawning areas (three major rivers—the

Every new fill shrinks the surface area controlled by the tides and thus reduces the total strength of the Bay currents. Oxygen, in addition to being produced by salt marsh plants, is made available in water by wave turbulence due to wind and tidal action.

Continued Bay shrinkage would lead to a critical loss of oxygen, killing fish and creating a biological desert. Lastly, the danger of pollution would be markedly increased if shallow parts of the Bay are filled.

The surface area of the Bay and the volume of its waters both play an important role in determining the ability of the Bay to assimilate waste. Loss of tidal flow would make it impossible to flush waste from the Bay.

Mr. Chairman, I think it is a fair statement to say that we are competing with developers for estuarine space, and I sincerely believe if we were to take any other tack we would not be fulfilling our delegated responsibilities.

And I might add that we would come in for justifiable criticism from a sizeable segment of the public who enjoy fish and wildlife and those who feel that decisions on development have been made for too long without adequate consideration to environmental costs.

I mentioned "our delegated responsibilities." There is a host of legislation charging the Fish and Wildlife Service to protect, preserve, and enhance fish and wildlife resources.

I won't go into them by chapter and verse since I am sure that will be covered in Mr. Felix Smith's testimony.

I would, however, like to quote from one of the most recent pieces of legislation, the Coastal Zone Management Act of 1972. It starts out with a congressional declaration of policy and reads as follows:

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations.

Gentlemen, I submit that is what our position on the Foster City applications and in San Francisco Bay in general is all about.

We have experienced a considerable amount of difficulty in achieving public understanding of what the Fish and Wildlife Service role is in the corps permit process. We are advocates for fish and wildlife, using the terms "fish and wildlife" in their broadest context. Nothing more.

We are a single-purpose agency with tunnel vision operating in a vacuum, as we heard yesterday in many of the statements. And, yes, we are zealous. I would suggest too that Mayor Lappin is as zealous for his cause. And I think that is his business. I think our business is on the other side.

Our recommendations as to whether an application should be approved or denied are based solely on the impact of the proposed construction on the fish and wildlife resources, not economics, not hardship on the applicant, not any other reason.

This permit process has really been well discussed by several people and I am going to omit discussion of it in my statement. It is long and it's tortuous. However, most permits don't go into the long period of negotiation that the ones we've been hearing about in the last 2 days have.

And there is a question also in my mind at least whether or not getting a section 10 permit should be a simple process. I don't think it should. And perhaps one of the best things that happens, even in difficult ones like this, is that it does get out to the public. The decision-making process expands.

There are no ready answers yet to this puzzle, but some interesting observations are being made. One of these came from Dr. Fred Tarp of Contra Costa College, a biologist who has devoted a lifetime to studying the ecology of San Francisco Bay. "Oil pollution is an increasing problem," he pointed out. "At the same time, we are getting a heavy load of pesticides and herbicides from rivers and runoff. Oil tends to concentrate these chlorinated hydrocarbons in what I like to call the 'popcorn effect.' The chlorinated hydrocarbons are highly soluble in oil, and at the same time they tend to adhere to clay particles in the water. The oil and the clay come together and concentrate the chlorinated hydrocarbons. Then the whole mess settles down on the crab breeding grounds in the bay."

Dr. Tarp helped initiate Project Mer, a high school program in Contra Costa and Alameda counties. For more than four years, students from 120 classes have been involved in a variety of projects on the bay. One of these involves gathering data on market crabs for the Fish and Game Department. One crab tagged by students walked from Carquinez Strait, on the east side of the bay, to Bodega, a small port on the Pacific Ocean—a total distance of 60 miles.

The primary study of the market crab is now under way at the marine laboratories of the California Fish and Game Department in Menlo Park. The supervisor, Walter Dahlstrom, reflected on the task that lay ahead of his staff of research biologists. "The larval crabs just aren't surviving," he said. "The crabs don't stay very long in the bay, but this is the nursery. It's where they begin. We do know that the English sole, which also uses the bay shallows as a nursery area, is coming down with sores all over the body. We think that pollution is the probable answer, but we haven't worked it out yet."

Meanwhile, some 400,000,000 gallons of treated sewage and industrial wastes are poured into the bay each day. About 60.000,000 gallons come from the city of San Jose alone. Yet the situation is probably better in some respects than it was before 1950, which may have been the low point in the bay's pollution record. Fisheries were nearly dead, and the residents of Alameda and Contra Costa counties had learned to live with a phenomenon called "East Bay Stink."

"The cost of cleanup is staggering," Mike Rugg said. "Economics is the big problem where the bay is concerned. But some changes are being made. Wastes are being taken to the middle of the bay where there is better mixing with ocean currents. Heavy metals discharge into the South Bay has nearly been stopped. But sewage and toxic chemicals like chlorine and ammonia are still a problem there."

The Water Quality Control Board has the awesome job of policing waste discharges from a megalopolis of six million people. Pollution in the bay comes in part from more than 200 municipal sources, over 100 from industry, and about 60 miscellaneous sources, including dumps. Runoffs and rivers add pesticides, herbicides, and fertilizers from an immense agricultural complex. Working closely with the Fish and Game Department, Board personnel constantly cruise the bay, sampling water for chemical analysis. Some 20 to 30 aircraft patrol for overt signs of pollution.

"We can go straight to the attorney general when an enforcement problem comes up," said Richard Condit, a staff consultant to the Board. "An offender gets an immediate cleanup and abatement notice. Then we take him to court if we have to.

"Our big problem now is controlling storm water runoff and agricultural inflow. PCBs are also bad, but some of the worst toxins are being controlled. Gross pollutants aren't as bad as they used to be. The subliminal metals and compounds have to be watched. They are more subtle. There are hundreds of chemical compounds in the bay now, and it is very expensive to have them constantly analyzed.

"Storage and treatment of storm waters is vital. More and more land is being paved over, and the situation is serious."

When I asked Fred Tarp for a prognosis concerning San Francisco Bay, he shook his mop of white hair and said, "I am a pessimist."

Mr. MOORHEAD. But proceed with your quotation.

Mr. MARTINSON. All right. Reading from the article:

From an ecological viewpoint, further filling of the bay would have several consequences.

San Francisco Bay, unlike most bays, depends on tidal movement through a very narrow opening to flush and mix the otherwise landlocked waters.

Every new fill shrinks the surface area controlled by the tides and thus reduces the total strength of the Bay currents. Oxygen, in addition to being produced by salt marsh plants, is made available in water by wave turbulence due to wind and tidal action.

Continued Bay shrinkage would lead to a critical loss of oxygen, killing fish and creating a biological desert. Lastly, the danger of pollution would be markedly increased if shallow parts of the Bay are filled.

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In these types of decisions, we are talking, we believe, about public rights being "permitted off" to individuals or groups of individuals.

Mr. Chairman, in your invitation to testify at this hearing, you asked for my views and comments as to the adequacy of the Government agencies' actions to identify, review, and resolve the issues involved in the Foster City permit application.

I believe—I think looking above me and toward the Corps of Engineers, the coordination they have achieved among the agencies has been adequate. At least, to the initial steps of the process.

The problem has been simply in agreement between Fish and Wildlife Service and Foster City. The compromise the Corps of Engineers has asked us to come to some way, somehow has ended up with us in different ball parks, so far.

I hope you can understand that, that it is the—it's kind of like it's the low-level decisions, not the process. I think the corps has done well keeping us moving, keeping us together.

I will end my statement and Mr. Smith can give us a lot of the who-struck-John details of the process.

Mr. MOORHEAD. Before we do that, I would just like to vary the procedure. Under the law, as I understand it, the corps is given the final decision. As you say, you look at this one aspect, and they are to look at broader interests.

Do you think the corps is the proper institution to make that final decision?

Mr. MARTINSON. Mr. Chairman, I'm not sure who the proper agency would be. But, you know, it's certainly not us as you can see from my statement where the decision would be.

I don't know, there may be another agency that would be better to make the decision. But we find no problem at the present time with the corps with my limited experience in this business.

Mr. MOORHEAD. Having violated my rules of listening to both witnesses first, I now yield to you, Mr. Ryan.

Mr. RYAN. Mr. Chairman, if you are going to ask questions of both witnesses after they are both through, perhaps it would be more convenient for them if they both make their statements.

Mr. MOORHEAD. That was my original intention. I just got carried away there.

Mr. RYAN. With all due respect, the Chairman is enthusiastic too.

Mr. MOORHEAD. The subcommittee would now like to hear from Mr. Felix Smith, Field Supervisor, Division of Ecological Services, U.S. Fish and Wildlife Service.

Mr. Smith, you may proceed, sir.

STATEMENT OF FELIX E. SMITH, FIELD SUPERVISOR, DIVISION OF ECOLOGICAL SERVICES, U.S. FISH AND WILDLIFE SERVICE

Mr. SMITH. Thank you, Mr. Chairman.

This is in response to Congressman Moorhead's September 5 request. I take this opportunity to provide you with a résumé of Fish and Wildlife Service's general policy on our actions regarding the Foster City permit application, Public Notice 74-0-22, and to suggest a procedure for handling applications for section 10 permits involving filling or dredging.

Conservation and management of the Nation's fish and wildlife resources is the responsibility of the U.S. Fish and Wildlife Service and State fish and game agencies. This conservation and management is to be in the public interest for all the people, present as well as future generations.

The management of wildlife resources is basically management of their habitat. Where favorable practices occur, these resources flourish. Where practices are adverse, these resources suffer.

The quality of the habitat found in our coastal waters and adjacent wetlands is within the jurisdiction and control of State and Federal regulatory agencies.

Therefore, the future abundance of those species dependent on such areas rests directly with State land commissions, water quality control boards, reclamation boards, and environmental control agencies and their Federal counterparts, including the Corps of Engineers.

It can then be stated that the future abundance of the living resources found in and associated with our rivers, bays, and coastal waters rests directly with the various State and Federal agencies. In summary then, the resources are truly public resources.

The U.S. Fish and Wildlife Service of the Department of the Interior has long been concerned with piecemeal development and continued encroachment by landfills and structures into the open space, wetlands, and waters of the Nation's coastal waters, bays, rivers, and lakes.

The Department of the Interior has responsibilities arising from laws, treaties, Executive orders, and related interdepartmental agreements.

Some of these are the Fish and Wildlife Act of 1956, the Fish and Wildlife Coordination Act, the July 13, 1967, Memorandum of Understanding between the Secretary of the Interior and the Secretary of the Army, the Estuary Protection Act (Public Law 90–454), and the National Enivornmental Policy Act (Public Law 91–190), to name just a few.

It is often difficult to carry out our responsibilities and mandates which are to protect and if possible enhance the Nation's fish and wildlife resources. As a matter of definition, the term wildlife must be understood in its broadest sense.

Wildlife as defined in section 8 of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661–666, et seq.) includes birds, fishes, mammals, and all classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.

All lands, no matter how sparse the vegetative cover or how shallow or permanent the water, have wildlife value. Lands not considered as fast lands are of deep concern to us because of their seasonal wetland character and their susceptibility to filling and conversion to urban development.

Our concern is for both the immediate and the cumulative long-term effects of developments and activities on the nation's water, adjacent wetlands, and their natural resources.

There is a growing awareness of the need to protect our dwindling wildlife heritage and all too often conservation of fish and wildlife is in direct conflict with urban sprawl and development.

These wildlife resources that contribute to the economy and quality

of life can be maintained or increased with proper management, but are equally capable of being destroyed if unwisely exploited.

Past records indicate that our wildlife has been abused through the destruction of habitat. Correcting these wrongs today is difficult and costly but in a long-term analysis is worth it.

The primary responsibility of the service in regard to the Department of the Army's Section 10 permit program is through this Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

This law states in part that when any waters are to be controlled or modified for any purpose whatever by any agency under Federal permit or license, that agency shall first consult with the U.S. Fish and Wildlife Service, Department of the Interior, "with a view to the conservation of wildlife resources by preventing loss or damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development."

We are therefore mandated by law to review the fish and wildlife aspects of activities proposed under the Navigable Waters Permit program administered by the Corps of Engineers.

Upon completion of our review, we make recommedations to be incorporated into the project whereby fish and wildlife resource losses can be mitigated or compensated or replaced in some way.

Our comments are then submitted to the Corps of Engineers. That agency has the final responsibility to weigh all factors relevant to the proposed activity.

These factors include conservation, economics, esthetics, environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use classification, navigation, recreation, water supply, water quality, and in general the need and general welfare of all the people.

Our comments are then considered along with all other comments and concerns of the proposed project by the Corps of Engineers before a decision is made.

After taking all comments into account, the Corps of Engineers, acting in behalf of the United States, then has the sole responsibility for the final determination as to whether a permit is to be issued.

We believe the protection of existing tidelands and the restoration of historic tidelands is necessary to preserve and enhance the ecological stability of San Francisco Bay. The San Francisco Bay Conservation and Development Commission and California State Coastal Commission have similar views.

We further believe that construction activities on present and former tidelands should be limited to those requiring a waterfront location. This land-water interface is in critically short supply and will be more so in the future.

In view of this, it is the position of this Service that only water-dependent activities should be allowed in these shoreline zones.

Our original response to Public Notice 74–0–22 permit application by Foster City was made on January 18, 1974, with the understanding that Foster City would not compromise from the filling of 382 acres.

With this simple understanding, we, therefore, objected to the entire project. We stated that in the interest of fish and wildlife, the 382 acres be reopened to tidal action.

This was based on the fact that all the lands are not fast lands but are below the plane of MHHW and had the potential for restoration to active tidelands, and that the proposed filling was for development not requiring waterfront locations.

Subsequent meetings with Foster City have been to no avail, and to this date meaningful mitigation or compensation programs have not been developed.

At a meeting on September 9, 1974, and subsequent meetings with Foster City representatives, we became aware of their apparent financial problems, that the subject proposal was an ongoing activity previously permitted, and that the restoration of 382 acres to full tidal action was not a completely practicable goal.

As a result, we reevaulated our position and presented our 68-acre mitigation proposal. This offer would allow Foster City to have the bulk of their lands for the needed development and still provide wildlife mitigation for the remaining 314 acres to be filled and developed.

We believe that the wildlife values gained in the reestablishment of 68 acres of salt marsh would significantly reduce the wildlife losses incurred on the remaining 314 acres.

Foster City subsequently rejected this offer, stating that they intended to fill all of the 382 acres and would provide no onsite mitigation. Their counteroffer was the establishment of a 57-acre wildlife preserve along the north bank of Belmont Slough.

We reviewed this offer, and in a letter dated May 2, 1975, to Foster City, we indicated their offer was unacceptable to this Service. At their request, we reevaluated our position, and on September 4 of this year presented this same and final position to the Corps of Engineers.

Our position has long been that fish and wildlife resources adversely impacted by a project should be replaced to the greatest degree reasonable and practicable.

To us, mitigation or compensation is a process whereby resource losses incurred by a project are lessened or replaced. The offer by Foster City does nothing to mitigate or compensate the losses to be incurred by the proposed fill.

Foster City apparently does not understand the concept of mitigation and/or compensation. Both of these measures are intended to reduce and/or replace resources values lost as the result of a project.

In practice, mitigation means the altering of a proposed project to reduce losses, and the compensation is related to the improvement of offsite lands to raise their value a sufficient amount to replace lost resources.

This offer by Foster City does neither of these. Their project has not been modified, nor will the resource values of the 57 acres be increased.

As such, their offer cannot be termed mitigation or compensation, but rather it should be classified as a minimal offering that provides little resource value replacement for the project-incurred losses.

We have never stated that every acre of the proposed 382-acre fill site has high wildlife value. However, it does have value as documented in the environmental impact statement prepared by the Corps of Engineers, and with the number of acres involved, we believe the total wildlife losses would be substantial.

It is on this basis that we maintain realistic mitigation must be incorporated into this project before the requested permit is issued.

Realistic mitigation in our view continues to be a modification of the proposed project so that a portion of the lands to be filled are restored to tidal action and thus to the full biological productivity of which they are capable.

If this is truly unworkable, then a second alternative would be a compensatory measure in the form of raising the value of offsite lands to compensate for the values being lost.

We have repeatedly been requested by Foster City to accept their offer because it is the best they can do. While this may or may not be true, we do not believe that this factor should enter into our decision.

Our responsibility is to review the impacts on fish and wildlife of the proposed project and to make recommendations to the Corps of Engineers as to methods for conserving and preventing the loss of such resources.

The obligation of the Corps of Engineers is then to take our recommendation along with those of all the other commenting agencies and interests relating to the project and then to determine what course of action would be in the best overall public interest.

If we withdrew our objection on the basis of considerations other than fish and wildlife values, we believe that we would be overstepping responsibilities of the Corps of Engineers.

We realize that there are other considerations to a project than fish and wildlife values. However, we continue to maintain that it is not the prerogative of the Fish and Wildlife Service to make decisions based on these considerations.

The preceding is our résumé of the Fish and Wildlife Service involvement with the Foster City permit application.

At this time, I address actions to help resolve or prevent future issues brought to light by the Foster City permit application. The Fish and Wildlife Coordination Act, section 2, states:

> * * * whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State * * * with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof.

It is a rare instance that an applicant proposing to dredge or fill will contact us or the California Department of Fish and Game during the early planning stage of project formulation with the view of reducing project impact on fish and wildlife resources.

I believe that it is now time to institute a change in the application procedure for section 10 permits, River and Harbor Act, relative to activities that involve dredging and filling of wetlands, tidelands, and submerged lands as extended by section 404 of the Federal Water Pollution Control Act, Public Law 92-500.

I believe that as an integral part of permit processing the applicant should be required to prepare a plan for the conservation of fish and wildlife resources to be affected by the proposed activity.

The plan should describe the effects of the project upon fish and wildlife resources and their support habitat in the project and adjacent areas, and measures considered necessary to protect, compensate, or replace these resources.

The plan should contain proposals for project modification, land acquisition, facilities, and other developments as may be necessary for the mitigation of fish and wildlife losses, their restoration, conservation, and improvement.

The plan would be prepared by the applicant based on studies made after consultation and in cooperation with the Fish and Wildlife Service and the California Department of Fish and Game. And in the case of public lands or public trust easements reserved in such lands, the State lands commission also should be involved.

This plan would be a part of an environmental impact statement prepared for such activity. The basic fish and wildlife and other resource information, as well as project data, would be available to all interested concerns early in the project formulation.

This was not the case with the Foster City application. Foster City representatives have strongly maintained that the land to be filled had absolutely no fish or wildlife value. We disagreed.

I believe that such a plan would expedite the processing of section 10 permit applications for dredge and fill activities by identifying problems with respect to fish and wildlife resources and their support habitat, and suggest possible solutions to prevent losses of or damages to these resources early in the course of permit processing.

It should also facilitate the applicant's and Corps of Engineers' compliance with the requirements of the Fish and Wildlife Service and the California Department of Fish and Game on the conservation of fish and wildlife resources affected by the proposed activity.

This procedure is similar to the requirements of the Federal Power Commission, Exhibit S, that have stood the test for over 8 years.

This concludes my statement. I hope this clarifies our position on the Foster City permit application to fill 382 acres of former tidelands and marshlands of San Francisco Bay, and I believe that the modified procedure for section 10 permits involving dredging and filling has considerable merit.

Mr. MOORHEAD. Thank you very much. It is a very interesting proposal. I take it that you would agree that your proposal which in effect is to bring fish and wildlife into any proposal at a much earlier stage of the proceedings would be prospective rather than affecting the Foster City case?

Mr. SMITH. It's too late for that, apparently. This is where we differed right away. I think it is very important that we have the same information available to all sides at the same time.

If we can agree on what information is basic data, from there on it's just a matter of decisionmaking.

Mr. MOORHEAD. I think this is a suggestion that has considerable merit because what we want to do—I can assure you this subcommittee doesn't want to travel around and review every proposal that is made in the United States——

What we want to do is set up machinery that would avoid or at least resolve disputes of this kind without congressional oversight committees coming out here.

I think that your proposal has some merit. Maybe we can subsequently ask Colonal Flertzheim to come back on the stand to comment on that proposal, because we certainly do want to preserve wetlands and wildlife resources as much as possible.

And if this change of procedure would resolve disputes better in the future, we want to consider it.

Mr. SMITH. Yes, I think it's vastly important that—waterfront space is limited no matter where you're located, at least in places I've worked in Western United States, particularly the Pacific coast.

And the Fish and Wildlife Service has been expending a considerable amount of effort to try and get some things understood regarding waterfront development.

What we are saying is basically that water-dependent usage should come first in the coastal zone. If there is going to be any area set aside, let's set aside those waterfront spaces for uses that need it for their physical function.

We have said that such uses are the transportation of goods and services on water. We also would emphasize that multipurpose and shared use facilities should be stressed over single-purpose facilities.

In other words, we don't believe that filling in tidelands, filling in marshlands, for housing developments is in fact a water-oriented or water-dependent or water-related use.

So, therefore, at the preliminary stages of a permit application involving a dredge or a filling project of that nature, we would probably tell the applicant that from the Fish and Wildlife Service standpoint we would object to it right out.

Mr. MOORHEAD. You used a term that is new to me. You referred to "fast land." What do you mean by that?

Mr. SMITH. Well, that was a term that apparently came out of the Hahn property. And as I understand it, it is land that is below mean higher high water. Not necessarily dry, but not necessarily wet either, but can be seasonally flooded, does hold water periodically, does contain water periodically.

This supplemental information will better clarify my understanding of fast land and the Foster City situation. There is no doubt that this area now called Foster City—once Brewer Island—was laced with meandering sloughs of tidal origin and that it was a portion of the navigable waters of the United States. Maps and charts confirm this. The position that the area is behind dikes and is fast land is only partly true. The area is behind dikes. However, by Foster City's own admission, it must be ringed with dikes to keep tidal waters out. In addition, the water level in the interior lagoon system converted from tidal channels must be kept low during the winter to prevent flooding of the residential community by heavy runoff. Low-lying areas retain water throughout much of the late fall, winter, and spring months. By no stretch of the imagination can the area be fast land. To me, fast land is land that has been filled above the line of mean higher high water. Even the mayor of Foster City admits that most of the area to be filled, while having received some fill, is still below mean higher high water. Therefore, it is reasonable to believe that a major portion of the 382 acres of Foster City to be filled is not fast land. The fact is these lands are or have been a portion of navigable waters of the United States. I believe that the courts have decided that the navi-

gational servitude of the waters of the United States, extended to meet today's needs, cannot be surrendered by any administrative decision or action.

Mr. MOORHEAD. Would you object if, apparently, Colonel Flertzheim has a different definition? All I want to do is get the terminology correct.

Colonel Flertzheim. Yes, sir, if I could clarify that. Fast land is land considered to be above the ordinary high water mark. Or in the case of bay lands, it would be above the mean higher high water, which means it is not normally, generally, usually inundated.

Mr. SMITH. I misunderstood the question.

Mr. MOORHEAD. It is a matter of terminology. I had never heard the words, "fast lands."

Mr. SMITH. I, for some reason, put "not fast land" in the middle when I heard the question, I'm sorry. He is correct. I am wrong.

Mr. MOORHEAD. Taking the existing procedure, I understand that Fish and Wildlife was given notice in August of 1973 of the Foster City proposal, but you didn't respond until January of 1974.

When I ask this question, either Mr. Martinson or you, Mr. Smith, can answer it. Why the delay?

Mr. SMITH. Yes. Well, I can't really say why the delay. Most of the delay is involved with the permit process. We, of course, are involved with responding, not just for the Fish and Wildlife Service, but many times we respond for the Department of the Interior.

But the response is prepared here in Sacramento based on our field studies as best we can. And we try to meet a 30- or 45-day deadline which has been established by the Corps of Engineers in the application. We don't always meet it that way.

So, this stands for a report went in, it was processed in Portland, and it went to you, as I understand it, in January—on January 18, 1974.

Our first comments were in a letter dated September 12, 1973, signed by Regional Director Martinson in Portland, Oreg., requesting that the corps withhold action until we had sufficient time to complete our review of this project.

Mr. MOORHEAD. Do you know if there was a reason? Was this proposal more complex than others and that is why you required additional time?

Mr. SMITH. Yes, it went out of Portland on September 12, 1973—we said, "We request that you withhold action on this public notice until we have had sufficient time to complete our review of this project."

This has been a complex project. This was, and I don't really understand all the facts. I'm sure that the Colonel could relay them better than I can—about the permit process.

But as I understand it the permit actually lapsed and we were advised by our counsel from the solicitor's office that we should look at this particular permit as if it was a brand new permit.

And that is the reason why we did. It then changed our way of doing business, so to speak. We had new laws invloved that were not involved in 1961.

Mr. MOORHEAD. Your testimony indicated that part of your duties pertain to restoration of historic tidelands. Would that——

Mr. SMITH. Say that again, I missed part of it.

Mr. MOORHEAD. Your testimony was that you believe in the protection of existing tidelands and the restoration of historic tidelands.

Would that include all of the lands on Brewer Island, which were once upon a time tidal areas?

Should they be returned to that state?

Mr. SMITH. Our original position was that a portion of Brewer Island should be restored. This was contained in our letter report of January 18, 1974. To my knowledge there was little if any contact between Foster City officials from that date until October 1974. It was during several meetings that we received new facts. Based on the inherent wildlife habitat values and restorability of the lands to be filled, we then recommended an area adjacent to Belmont Slough that should be set aside or restored for filling the remaining areas.

We are not saying that every area has to be restored. There are many marshes adjacent to the Bay that are serving valuable purposes right now, and they should probably stay that way. Some of these are serving agricultural needs as well as wildlife needs.

Mr. MOORHEAD. I am advised that the major filling of Brewer Island was accomplished in 1961. And at that time your predecessor agency, the Bureau of Sport Fisheries and Wildlife, made no objection.

Mr. SMITH. I think this is correct. This is correct, as I understand it.

Mr. MOORHEAD. Do you happen to know why no objection was made at that time? I know it isn't your responsibility, but I just wondered if you know.

Mr. SMITH. I can only surmise that at about that period there was a tremendous move or public awareness to look at what was going on in and around San Francisco Bay.

It was about that same time period—time frame, 1961, 1962, 1963, along in there where a huge fill was proposed which is now south of the San Francisco airport by—I think it's called Anza Pacific now. It is now a shuttle—a parking lot for shuttles to the airport.

There were several fills in the San Rafael Bay that were involved in that area. This is what stimulated the development of a report by the Service in 1963—"Fish and Wildlife Habitat in Relation to the Reclamation of Tidelands and Marshes in the San Francisco Bay Area, California"—that was put out by the Fish and Wildlife Service which brought concern to the public on tidelands reclamation in San Francisco Bay.

It helped, I'm sure——

Mr. MARTINSON. Mr. Chairman, I think part of it is the change in environmental awareness. We are working for a different constituency now than we were 15 years ago even.

And it is kind of like our predecessor sometimes didn't get the time of day on this sort of thing. But the world's changing. I think that's about it.

Mr. MOORHEAD. Well, I think Mr. Ryan and I recognize the fact that we have to respond to changed attitudes in our constituencies.

Mr. MARTINSON. Yes; more than we, maybe.

Mr. MOORHEAD. Mr. Smith, you charactize the 57-acre mitigation offered by Foster City as a kind of a "nothing" offer. And yet, Mr. Fullerton, representing the same kind of constituency that you represent, seemed to indicate that this was really significant.

Can you explain, if you know, why there would be differences of

opinion between a State wildlife and fisheries group and their Federal counterparts? Why would they reach a different conclusion from a Federal group?

Mr. SMITH. [No response.]

Mr. MOORHEAD. Mr. Martinson?

Mr. MARTINSON. I don't know, maybe we're just a little more on the eco-freak side of things. I'm not sure I can explain from a professional standpoint.

Mr. MOORHEAD. That puts it back pretty much to us, in effect, who are not experts in the field but who are, I can assure you, dedicated. Conservation is the first word in our subcommittee's title, and we are concerned that——

Mr. MARTINSON. I understand that.

Mr. MOORHEAD. We have objected to such things as transfers of wildlife areas from the Bureau of Sport Fisheries Wildlife to the Bureau of Land Management.

We truly believe in conservation objectives. But, sometimes compromises have to be made because of unfortunate practices in the past. And I think that, if I can speak for the subcommittee and myself, the Corps should issue the permit in this case. We would certainly not want it to set any precedent for the future.

Because I think we can take a much more rigid stand in support of natural resources and to preserving that which is going to be damaged in the future. We recognize that, unfortunately, practices of the past sometimes cannot be reversed.

Mr. MARTINSON. Sure. Mr. Chairman, let me expand on that just a little bit. I think, maybe, Mr. Fullerton carries a little more responsibility on his shoulders than I do. He is the top fish and wildlife man in the State of California.

I am a regional director for the Fish and Wildlife Service within the Department of the Interior. So, I have a little more leeway in being straight fish and wildlife than he does.

As he mentioned in his testimony, he can't really completely divorce himself from some considerations of economics, and so forth. In my testimony, I, of course, point out that this is what I did. It's a luxury that I can afford.

And I do it, and I think that my job is not to make that compromise. I don't resent the fact that someone at a higher level does. And I appreciate the problem—his making it.

Mr. MOORHEAD. You are an advocate, that is what you are saying.

Mr. MARTINSON. Yes.

Mr. MOORHEAD. Mr. Ryan?

Mr. RYAN. Thank you, Mr. Chairman.

Mr. Martinson, I am interested in what you have to say about that because I don't see your job that way at all. The effect of your decision is the same as Mr. Fullerton's. It's a veto.

Except for your consideration, a project could go ahead. So, you bear the responsibility, sitting there, for holding the whole thing up. And you say that you are a little more of an eco-freak on that point because you believe that is your role.

Is that opinion shared by other regional directors and by the Director of the Service itself?

Mr. MARTINSON. Well, Congressman Ryan, I hope it is. I'll be in trouble if it isn't.

Mr. RYAN. You don't feel it is your job to compromise, then? It is to take a stand and simply to maintain it?

Mr. MARTINSON. Take a stand for fish and wildlife, yes. That's where I agree with you.

Mr. RYAN. What do you mean by fish and wildlife?

Mr. MARTINSON. Well, I mean the creatures and their habitats.

Mr. RYAN. Without regard to people?

Mr. MARTINSON. Well, I think you can stretch to the folks who enjoy the fish and wildlife. And we're working for people, I guess.

Mr. RYAN. What kind of people?

Mr. MARTINSON. Well, all sorts of kinds.

Mr. RYAN. Does it involve the people in this area?

Mr. MARTINSON. Well, I would hope so, yes. I would hope that it involved a lot—almost everybody in your area, but it's a matter of degree.

Mr. RYAN. Well, what I am trying to get out of you, I guess, is whether you are concerned about what happens to these people who are here.

Mr. MARTINSON. Well, I am concerned not only about them, Congressman, but a lot of other people.

Mr. RYAN. It doesn't trouble you then that everybody else except you can reach an agreement, including those who are equally concerned about the preservation of wildlife and the natural environment—and you remain the only one outside?

Mr. MARTINSON. Sure, it troubles me. I'd like to limit myself to fish and wildlife. But as you know, on any issue you are going to have problems.

On the other hand, I feel like somebody has to make the stand at this level. You know, if I was interested in grappling with the problems of the world, as you and the chairman are, I'd run for Congress or something.

I'm not sure I'm up to that.

Mr. RYAN. Yes. But you still have the power under the present law not to compromise and thereby exercise a veto over this particular project—or any project like it?

Mr. MARTINSON. Congressman, I don't think—I don't really think it is a veto. I learned yesterday, with some surprise, that the Chief of Engineers went along with our stand on—what was it, the Redwood Shores watertank situation.

But I must assure you we usually lose when this decision is elevated. It is much to our advantage to reach a good compromise position at the field level.

Mr. RYAN. You talk here about restoration of historic lands and so forth. How far back do you go, how far back is historic as opposed to future?

Is this particular project, which is 75 years or at least the turn of the century dry land, not restoration land? How far back do you go?

Mr. MARTINSON. Can I ask Mr. Smith to answer that?

Mr. RYAN. Surely.

Mr. MARTINSON. From a technical standpoint, at least.

Mr. SMITH. There are many areas behind dikes that can be restored to tidal action with very little cost. They would then become a productive part of San Francisco Bay.

The time that it was diked really doesn't make much difference. It's the restorability of the particular land that we are looking at. In each case it's going to have to be looked at on a case-by-case basis.

We normally don't look at these lands with just members of our own agency. We often have representatives from the California Department of Fish and Game involved. Frequently we have people from EPA involved.

Mr. RYAN. Am I right in assuming then that—from what you have said, both of you, in your testimony here—that you place very little weight on economic matters in connection with a decision as it relates to fish and wildlife?

Mr. MARTINSON. That's right.

Mr. RYAN. Do you subscribe to the whole idea of the theory of mitigation and so on?

Mr. MARTINSON. Well, I'm not sure what we mean by subscribe to mitigation——

Mr. RYAN. Well, in the law, mitigation——

Mr. MARTINSON. Mitigation is not a very satisfactory alternative for us, really. I think it's—I think he mentioned what the technical definition of mitigation is, but it is almost always something less than—we think we are losing.

Mr. RYAN. True, and it's almost always something more than somebody else thinks they are gaining.

Mr. MARTINSON. True.

Mr. RYAN. The reason I ask you is because mitigation involves economic matters, does it not?

Mr. MARTINSON. Well, I think fish and wildlife are an economic matter. And the environment. You can't——

Mr. RYAN. Doesn't that——

Mr. MARTINSON [continuing]. Put dollars and cents on some of these things.

Mr. RYAN. But we do put a dollars and cents on it, you do put a dollars and cents on it. And in fact, this whole negotiation so far has been a dollars and cents matter—acres and dollars and cents.

Doesn't it come down to that?

Mr. MARTINSON. I think you can boil it down to that. I'm not quite smart enough to. But I darned well think you are right.

Mr. RYAN. What do you mean, you are not smart enough to?

Mr. MARTINSON. Well, really, we've grappled throughout my short history and long before that trying to put some dollars and cents figures on fish and wildlife, on the environment. And it's doggone hard to do.

Mr. RYAN. But we are talking about a disagreement that involves how many acres. Now, the original offer was 382 acres. That is dollars and cents, isn't it?

Mr. MARTINSON. Sure it is.

Mr. RYAN. You made the offer, how much was it? The original offer—382 acres, January 18, 1974, is that right? And then it was changed.

What was the second revised offer you made?

Mr. MARTINSON. Well, that was—I think essentially this. There were about five parcels, as I recall, in the meeting that I attended down here with the mayor and some of the council members was that parcels A,

B, and C would be OK if they filled them, but we'd like to have parcel—I think it was E—correct me if I'm wrong, Felix,

Mr. SMITH. That's about right.

Mr. MARTINSON. And part of parcel D not filled.

Mr. RYAN. Did you ask this——

Mr. MARTINSON. I guess that was it.

Mr. RYAN. At the time you wanted parcel E instead of parcel A and so on, did you know the value of parcel E, the dollar value?

Mr. MARTINSON. No, I didn't.

Mr. RYAN. Did you ask?

Mr. MARTINSON. I still don't know the dollar value of all these things.

Mr. RYAN. Are you concerned about it?

Mr. SMITH. I don't know it either.

Mr. MARTINSON. Yes, I'm concerned about the dollar value of the fish and wildlife values that are lost.

Mr. RYAN. I didn't ask you that. I said, are you concerned about the dollar value of the lands that are——

Mr. MARTINSON. I'm more concerned about the dollar value of the——

Mr. RYAN. I didn't ask you what you are more concerned about. I asked you if you were concerned at all about it.

Mr. MARTINSON. Congressman Ryan, I pointed out in my statement that I really wasn't involved in the economics of the situation as far as——

Mr. RYAN. Would you care——

Mr. MARTINSON [continuing]. The fish and wildlife.

Mr. RYAN. Would you care, do you care if this thing is settled?

Mr. MARTINSON. I do care.

Mr. RYAN. Well, what it comes down to then is a matter of how much the city can pay. These people have to shell out the dollars. They are trying to resolve this thing. We are trying to get it down to a point where it is possible to be resolved.

Mr. MARTINSON. I understand that and I wish I could put a dollar sign on the environmental costs here too, so we could maybe—so you or whoever gets this thing in the end can make a better decision on it.

Mr. RYAN. Wouldn't it be better really, from a national policy standpoint, if you considered the costs? Because it would probably enable you to make better arrangements to allow for development of natural areas and to restore natural environmental areas.

Mr. MARTINSON. It would be very helpful in many ways, but I think we could work out costs on San Francisco Bay and end up with no natural shoreline.

Mr. RYAN. You live in Portland, I presume?

Mr. MARTINSON. Yes.

Mr. RYAN. Are you familiar with San Francisco Bay?

Mr. MARTINSON. I'm really not.

Mr. RYAN. Well, that is part of the problem.

Mr. MARTINSON. No; I don't think it is. I've seen a little bit of it, Congressman.

Mr. RYAN. Well, with all due respect, I think part of the problem is that you feel yourself in a kind of embattled position of battling forces that are much larger than your own agency, and that wherever you can strike a blow for the fish and game you do it.

But I think part of the problem, it seems to me, is that the difference between your agency and your agency's actions from the actions of the State agency is that Mr. Fullerton and Mrs. Dedrick know this area to the point where they could talk about the Belmont Slough as an effective means of making some kind of substantive change and still be able to get at some of the preservation policies that they have while resolving some of the difficulties that occur.

Mr. Chairman, I don't know. All I can say is that I think that the policies that the Federal Government has ought to relate to people as well as to fish and wildlife.

I don't care what your department or agency is, you can't—I disagree with your particular interpretation of your role. I think you have an emphasis, obviously, on the preservation of natural life in this country, on the west coast.

But to imply that you don't also have a significant responsibility to assist the people who live in this area or who live in the Portland area, who live in the Seattle area, in resolving the grinding crunch that occurs in trying to adjust an industrial society to the fragility of an estuarian marsh—and you can't just simply take a position for the marshes and let everybody else take care of the rest of it.

You have to be involved in it.

Mr. MARTINSON. Well, but you will take that position then. My point is that I shouldn't be compromising very much at this level.

Mr. RYAN. Would you mind if I sort of volunteered for that? When you sat down, you began by saying, "I hope you look after San Francisco Bay."

My friend, I have lived here for 25 years. I will live here and they will bury me in this place. There is no place finer in the world and I am interested as much as anybody—I give ground to no one in trying to restore and to recreate new land.

As a matter of fact, I advocate tearing down some of those buildings in San Francisco and letting the water back in. But the problem is money, it is too expensive.

Mr. MARTINSON. Congressman, I'm all for you and I'll give you that decision if you just get it out to the public and then make up your mind.

Mr. RYAN. But the point is——

Mr. MARTINSON. I still feel part of my role is to be an advocate for fish and wildlife. So you can hear me——

Mr. RYAN. Well, all I can say is that the effect that you have, because you take too narrow a view, is that you have cost this city and its people a great deal of grief. And that is a subjective judgment on my part.

Mr. Chairman, that is all I have. I would like to suggest though that if it is possible, can we get—is it a possibiilty that here, while you are all here—to resolve this issue?

I am told that you are 3.2 acres apart. Has an accord been reached between the various elements in connection with applying for this fill permit? Who can speak on it?

Mr. MOORHEAD. I think only the colonel can address himself to that question.

Mr. RYAN. Well, thank you. I don't have any more questions of the Federal Fish and Wildlife people.

But I would like to find out from the colonel if we have reached an accord.

Mr. MOORHEAD. Colonel, why don't you come up to the witness stand. If you want to give us your summary of what you think has emerged from the hearing, we would welcome hearing from you since you seem to be the man on the spot who has to ultimately make a decision.

Colonel FLERTZHEIM. Yes, sir. As to whether or not an accord has been reached, I would only comment that all the objections we have received from other State and Federal agencies have been resolved, with the exception of the Fish and Wildlife objection which Mr. Martinson and Mr. Smith just reviewed for you.

At that point, then, I can neither issue nor deny a permit because I am not empowered to make that decision.

Mr. MOORHEAD. But you are empowered to make a recommendation?

Colonel FLERTZHEIM. That is correct, sir. It's in the form of a long report called a paragraph 20 report, because it involves paragraph 20 of our regulations.

It comes up with findings and conclusions and ultimately a recommendation, and the final environmental impact statement also has to go along with that.

It is then forwarded up the line, first to the south Pacific division and then on to Washington ultimately, if it can't be resolved at the south Pacific division level.

I have prepared a report of such a nature, along with the environmental impact statement. It is currently at the south Pacific division being reviewed. Exactly what action will be taken on that, I don't know because it is still in the process of review as far as I'm aware.

That is the current status at this time.

Mr. RYAN. So where are we now?

Colonel FLERTZHEIM. Where we are is my report has been forwarded to my next higher headquarters, and they are currently reviewing both the report and the final environmental impact statement which accompanies it.

And I am not sure whether they will be able to resolve it at their level, or whether it will ultimately have to go to Washington.

In a previous matter of this sort, I was requested by Washington headquarters not to make public what my recommendation was until the final decision had been made.

So, unless there is a specific question on that point, I would rather not say what my recommendation has been. But I have made a recommendation with regard to the permit.

Mr. RYAN. Do you think it would be against public interest for me to ask you that? I am very sincere about that because it may involve land values and a lot of things like that. It is kind of important.

I don't intend to cause anyone any difficulty by asking, if it would do so.

Colonel FLERTZHEIM. When the actions are complete in themselves and the final decision has been made on whatever level is appropriate, the reports are then made available to the public under the Freedom of Information Act.

I think the caution in revealing the recommendation prior to the final decision being made is that it then opens the way for whatever groups wanted to apply pressure at various points along the line.

It might not actually, but it might at least appear to, compromise whatever decision is made. So, I guess I do have some reservations about revealing——

Mr. RYAN. All right, then I won't ask. I think that your point is a good one.

I have said from the beginning that while I have strong feelings myself, I don't believe the decision can be made on anything but an objective basis.

And I commend you again for what you have done so far. I also want to sympathize with you. I dropped by that other meeting last night. You were not drawing overtime I don't think, but you were pretty hard at work and it looked like you had some time to go. So, your job is not necessarily the softest one in the world.

And for that, I thank you.

That is all I have, Mr. Chairman.

Mr. MOORHEAD. While we have you here, you heard Mr. Smith's proposal for a change in procedures for the future which would bring the Fish and Wildlife Service into the decisionmaking process at an earlier stage of the proceedings.

Do you have any comment pro or con on that proposal?

Colonel FLERTZHEIM. Yes, sir. About 10 days ago, I received a letter from Mr. Smith which, in essence, outlined a proposal such as mentioned here today. I received it the last day before I left for Washington for a week, so I read the letter but I have not really had time to study it.

I forwarded it to my staff for their review, and I haven't had a chance to get back to them because I just returned from Washington. However, I do have some initial comment because I've given it some thought.

I think the idea has some merit, but I also have some concern that would have to be resolved. First of all, as I indicated in my testimony yesterday, I am careful to keep the corps out of any negotiation process between the applicant and any objecting agency.

I would want to make sure we kept it that way. Even though some plan would be an integral part of the permit application, there should be some mechanism that ultimately I could judge the efficacy of the plan or perhaps even differences between what the applicant's plan might be and what the objecting agency might think the plan should be. There would have to be some kind of safeguard built in there.

With regard to another point. We have two classes of applicants, large firms seeking to develop, say, Foster City or Redwood Shores or something like that, and somebody who comes in and wants to put in a couple of pilings to tie up his boat or build a small dock or somethink like that.

With regard to the small applicant, I have some reservations that would have to be worked out. First of all, what the cost of preparing such a plan would be and whether that is appropriate to what the resources of the small applicants would be.

Also, their capability to prepare such a plan, because a lot of them obviously don't have any environmental background to do much unless they hire a consultant, which gets back to the cost.

And perhaps also, for a very small project, whether there is really a need to do that sort of thing or not. I haven't had a chance to talk

to the Fish and Wildlife Service as to whether that agency could fund studies necessary to prepare these plans.

In the case of applicants to the corps, other than for dredging permits, there isn't any charge for the service. We prepare the EIS's and that sort of thing at no cost to them although as the subcommittee explored yesterday, there might be other alternatives in the future. I think we would have to look at how the costs would be born by the applicant, particularly the small applicant, and what the costs and benefits were relative to the need for going through a formalized plan like that.

With regard to large agencies, a lot of them already do that. They realize the environmental movement is upon us and things have changed, and at least some of them are trying to prepare plans early.

We do refer, now, all applicants, when we see an environmental problem, to Fish and Game or other appropriate agencies, and say, "I think you had better get with them early."

For example, in the Redwood Shores development, Mobil Oil's representative, Mr. Smith, came in to see me some time last fall and said, "What are my chances of getting a permit for this project?"

My reply to him was that the Fish and Wildlife Service and the Fish and Game Department can answer that question at this point far better than I can, and I suggested he go talk to them and explain what he proposes to do and see how they view it. Because I am the one that makes the final judgment, I don't have any judgment at this time.

So, we tend to send those kinds of people to them, and that's really how the Federal Power Commission Program works. Those are big projects where there are resources to do the necessary environmental studies. And of course, they have a big impact.

So, I think that for the larger projects, there is perhaps one study going on already, and two or more that may possibly accomplish something similar to that idea.

That's about where we are at this point. I haven't heard what my staff has to say about the proposal, but I plan to discuss it with Mr. Smith in the future after I finish my business in Washington.

[The letters referred to follow:]

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
DIVISION OF RIVER BASIN STUDIES,
Sacramento, Calif., August 28, 1975.

Col. H. A. FLEETZHEIM, Jr.,
District Engineer, San Francisco District, Corps of Engineers, 100 McAllister Street, San Francisco, Calif.

DEAR COLONEL FLEETZHEIM: I am becoming increasingly concerned over the misunderstanding of the Fish and Wildlife Service's role in the Section 10 permit program as seen in the eyes of an applicant, individual developer or agency, wanting to dredge or fill the wetlands adjacent to and waters of San Francisco Bay and Delta.

The Fish and Wildlife Coordination Act, Section 2, states:

". . . whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, *such department or agency first shall consult with the United States Fish and Wildlife Service*, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State . . . with a view to the conservation of wildlife resources by preventing loss of and

damage to such resources as well as providing for the development and improvement thereof . . ." (emphasis added)

It is a rare instance that an applicant proposing to dredge or fill will contact, or is advised to contact, us or the California Department of Fish and Game with the view of reducing project impact on fish and wildlife resources during the early planning stage of project formulation.

I believe that it is now time to institute a change in the application procedure for Section 10 permits, Rivers & Harbors Act, relative to activities that involve dredging and filling of wetlands, tidelands, and submerged lands as extended by Section 404 of the Federal Water Pollution Control Act P.L. 92-500.

I believe that as an integral part of permit processing the applicant should be required to prepare a plan for the conservation of fish and wildlife resources to be affected by the proposed activity. The plan should describe the effects of the project upon fish and wildlife resources and their support habitat in the project and adjacent areas and measures considered necessary to protect, restore, compensate or replace these resources. The plan should contain proposals for project modification, land acquisition, facilities and other developments as may be necessary for the mitigation of fish and wildlife losses, their restoration, conservation, and improvement.

The plan would be prepared by the applicant based on studies made after consultation and in cooperation with the Fish and Wildlife Service and the California Department of Fish and Game; and in the case of public lands or public trust easements reserved in such lands, the State Lands Commission also should be involved. This plan also would be a part of an Environmental Impact Statement prepared for such activity.

We believe that such a plan would expedite the processing of Section 10 permit applications for dredge and fill activities by identifying problems with respect to fish and wildlife resources and their support habitat and suggest possible solutions to prevent losses of or damages to these resources early in the course of permit processing. It should also facilitate the applicant's and your agency's compliance with the requirements of the Fish and Wildlife Coordination Act for consultation with the Fish and Wildlife Service and the California Department of Fish and Game on the conservation of fish and wildlife resources affected by the proposed activity.

This procedure is similar to the requirements of the Federal Power Commission that have stood the test for over eight years.

I would appreciate your comments relative to incorporating a plan for fish and wildlife conservation as an integral part of Department of the Army permit applications.

Because of the wide interest in such a proposal as it affects lands and waters of the San Francisco Bay-Delta ecosystem, I have taken the liberty of sending copies to several interested agencies and conservation organizations to get their comments.

Sincerely yours,

FELIX E. SMITH,
Field Supervisor.

DEPARTMENT OF THE ARMY,
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS,
San Francisco, Calif., October 23, 1975.

Mr. FELIX SMITH,
Field Supervisor, U.S. Fish & Wildlife Service, Division of River Basin Studies, Sacramento, Calif.

DEAR MR. SMITH: This responds to your letter of 28 August 1975 in which you proposed that applicants submit a plan for the conservation of fish and wildlife resources which are to be affected by a proposed activity at the time they apply for a Corps of Engineers permit.

As you recall, I responded to your suggestion during my testimony before the Congressional Subcommittee hearings held in Foster City on 13 September 1975. This letter will serve to amplify my thoughts on your proposal.

As I stated at the Foster City hearings, I believe your idea has merit. In fact, we generally now refer major applicants for Corps permits to your agency as soon as we become aware of their project. For major projects I believe that the development of a plan for conservation of fish and wildlife resources early in the planning process would help detect and avoid planning shortcomings which could affect other aspects of the planning, design and construction sequence. It might also encourage better analysis of project impacts and concomitant financial commitments earlier in the planning phase and thus assure

the project was viable when it was submitted for permit. Thus, a major project when submitted should include measures for conservation of fish and wildlife resources.

Conversely, however, a rigid requirement for a plan might complicate an otherwise simple and straightforward project development and permit application sequence. If "Fish and Wildlife Conservation" Plans were to evolve into lengthy and highly stylized documents, they might serve to delay a project and add substantial costs without achieving the desired purposes.

As stated at the hearings, I want to make absolutely sure that the Corps stays out of any negotiation process between the applicant and any other Federal, State or regional agency, including yours, which might subsequently object to a specific project proposed for permit. To do otherwise would threaten my objectivity in making the final decision as to whether or not a permit should be granted in the overall public interest.

Accordingly, for major projects, I propose the following:

a. That your office, possibly in coordination with the California Department of Fish and Game, issue a general public notice encouraging applicants or sponsors of major projects to contact your organization early in their planning cycle to develop a plan for conservation of fish and wildlife resources. Development of such a plan would then be worked out between yourselves and the project sponsor and the results of such a plan would be included within the project description at the time it was submitted for Corps of Engineers permit processing.

b. In line with the above, the Corps will refer all major project applicants to your agency as soon as we become aware of their project plans. In the event an applicant does not desire or refuses to work with your agency, the Corps would still be required to accept his permit application and we would then consult with your agency on an agency-to-agency basis. However, lack of a fish and wildlife conservation plan could not be grounds for refusing to accept a permit application, since there are no such provisions in our regulations.

As I also stated at the hearings, I am concerned over the cost and time delay of a fish and wildlife conservation plan for a small project, since such applicants often have limited resources and planning capabilities. In the case of small projects, it is my belief a formal plan is neither needed nor productive and that proper planning for fish and wildlife conservation can be incorporated into the project proposals on an informal basis, or through our currently existing procedures for obtaining agency comments. I believe that to require a formal plan from smaller applicants would be economically prohibitive and prejudicial to the rights of the individual applicant.

While we also recommend that small project applicants consult with your agency early in their planning process, it appears likely that few will need or be able to develop any sort of separate, detailed conservation plan. For projects of smaller impacts and sponsors of limited means, I would propose that our agency refer their permit applications to your agency for such studies or plans as are necessary. Since the Corps processes permits at no cost to the applicant, including preparation of EIS's, where appropriate, it would appear proper for your agency to furnish planning advice and/or studies and plans to small project applicants at no cost to the applicant in keeping with the Federal philosophy of serving the public.

In summary, I believe that any procedures which cause a planner or designer to recognize unacceptable or adverse impacts on fish and wildlife early in the planning stage and thereby help avoid losses in time and money are useful. However, I do not believe that a firm requirement for a plan for fish and wildlife conservation to be incorporated as an integral part of a Department of the Army permit application is either within the purview of my authority or productive in the case of smaller applicants. Accordingly, as the agency which must make the final decision on the overall public interest, we will refer permit applicants to your agency as early as possible and encourage them to make adequate provisions in coordination with your agency and other appropriate agencies for preservation of fish and wildlife, while reserving final decisions to ourselves after processing is complete.

If you would like to discuss this matter further, I shall be glad to meet with you at any time.

Sincerely yours,

H. A. FLEETZHEIM, Jr.,
Colonel, CE;
District Engineer.

Mr. MOORHEAD. Well, as we announced earlier, the record of the hearings will be open for 30 days. If you want to submit any comments on that, we would certainly welcome them.

It does sound like a kissing cousin to your recommendation about concurrent requests for objections or comments. And I think we are working toward the procedure.

My concluding observation is that, yes, Foster City is important, particularly to Mr. Ryan and all of the residents of Foster City that he represents.

But the subcommittee is interested in this as an example of procedures that can be improved upon for the national interest, on the east coast, the south coast, and the interior. We understand that the people of America are now very much properly concerned about the environment, and they want our subcommittee to oversee the procedures so that the best interests of the people living today and future generations will be protected.

Any help you can give us will be greatly appreciated because I think your experience here can be translated into national policy that will be good for the United States as a whole.

Colonel FLERTZHEIM. Thank you, sir. In that sense I would say the idea of getting together early with any agency that might have an objection certainly has a lot of merit. That is what Mr. Smith's proposal was driving at.

I think it's really more thinking of how and the detail level that should be implemented that needs some more discussion, rather than the idea of as early as possible getting a coordinated position for either surfacing objections or identifying that there are none.

Mr. MOORHEAD. Let me say, Colonel, that I hope that we can take you up on your invitation to visit your model of the entire San Francisco Bay area.

Because while we are using this as an example, I think the entire people of America are interested in preserving this great San Francisco Bay area, in addition to the people of California, of course, who have more immediate interests. So we can look forward to that.

Mr. Ryan, if you have no further questions?

Mr. RYAN. No, Mr. Chairman.

Mr. MOORHEAD. The subcommittee wants to thank each and every witness who appeared and any who will submit statements for the record. And we appreciate the help that has been given to us.

Thank you very much.

The subcommittee is now adjourned.

[Whereupon, at 11:30 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

Additional Statements Submitted for the Record

Redwood City, Calif., *September 23, 1975.*

Re San Francisco Bay Fill Subcommittee Hearing.

Hon. William S. Moorhead,

House Conservation, Energy, and Natural Resources Subcommittee, Rayburn House Office Building, Washington, D.C.

Dear Sir: I wish to thank you and the members of your Committee for the opportunity of attending a public hearing held in Foster City. The hearing brought out many of the frustrations which local people feel about the seemingly unreasonable attitudes of reviewing Agencies regarding permits to do work in San Francisco Bay.

As I listened to some of the prepared statements by local City officials it occurred to me that many of the issues may be avoided by making the following modifications to the regulatory procedures related to permit processing.

1. MAKE THE LIMITS OF JURISDICTION OF THE CORPS OF ENGINEERS AND THE STATE BAY CONSERVATION AND DEVELOPMENT COMMISSION IDENTICAL

The Corps of Engineers defines their sphere of jurisdiction as the limits of navigable waters within the Bay. The District Engineer has determined, perhaps arbitrarily, that the boundary shall be the high water line which would be formed if all levees and dikes were removed and the Bay waters attempted to return to the areas covered by tidal water at the time of legislation of the River and Harbor Act. The District Engineer, by such a finding, grants exemption to tide land filled above high water which has occurred in the interim and penalizes filled land which happens to be below high water, even if only a few inches.

The only logic behind this finding appears to be one of economics. It is easier to breach a levee and flood low land than it is to remove a real fill which has been placed above high tide. Whether the flooding produces a navigable waterway is not an issue.

B.C.D.C., on the other hand, defines their jurisdiction as the current high water line plus an inboard shoreline strip one hundred feet wide. The shoreline strip effectively controls development along the levees. It would seem this is a more practical limit of jurisdiction which would be more acceptable to municipalities such as Foster City.

2. DELEGATE THE CORPS' PERMIT PROCESSING TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

In B.C.D.C., there already exists a well established State Commission which is charged with the preservation of the natural resources of San Francisco Bay. It performs a similar function to the one which you require the Corps of Engineers to undertake. It can resolve local disputes and clashes of interest in a more expeditious manner. Why not require B.C.D.C. to consult with the Corps regarding matters concerning Rivers and Harbors Act and let the Commission make the final decision? The Corps of Engineers during the Foster City hearings did not appear too comfortable in its role as arbitrator and is in a tough position to make a judgment. The Corps tends to delay decision in all issues of major dispute and encourages the applicant to appease all parties objecting to the proposed project.

In conclusion I would like to observe that the present system of permit processing is not working well. As a taxpayer I am interested in reducing duplication of regulatory agencies. If an opportunity exists to consolidate State and Federal processing, it should certainly be considered. The E.P.A. stated during the hearing that it has delegated some of its responsibilities to the State level.

San Francisco Bay issues present a unique opportunity to do more efficient regulation.

Thank you for your invitation for local residents like myself to submit written comments to your subcommittee. I look forward to hearing your recommendations at the conclusion of your investigation.

Sincerely,

KENNETH W. HERDMAN.

SIERRA CLUB—LOMA PRIETA CHAPTER,
Palo Alto, Calif., October 10, 1975.

Re Subcommittee hearings of September 12–13, 1975 at Foster City, Calif.

Hon. WILLIAM S. MOORHEAD,
Chairman, Subcommittee on Conservation, Energy and Natural Resources, Committee on Government Operations, U.S. House of Representatives, Washington, D.C.

DEAR MR. MOORHEAD: We respectfully submit the following statement for inclusion in the record of hearings held by the Subcommittee on Conservation, Energy and Natural Resources on September 12–13, 1975, in Foster City, California.

We believe a description of existing Corps permits in both Brewer Island (Foster City) and Redwood Peninsula (Redwood Shores) is helpful in understanding the prior exercise of Federal authority in these two areas.

Sincerely,

MARJORIE S. SUTTON,
Chairwoman, Loma Prieta Chapter.
JESSIE D. VOSTI,
Chairman, Baylands Task Force.

Enclosure.

STATEMENT OF SIERRA CLUB—LOMA PRIETA CHAPTER

To: Conservation, Energy, and Natural Resources Subcommittee of the Committee on Government Operations; U.S. House of Representatives; Hon. William S. Moorhead, Chairman.

Re: Subcommittee hearings held September 12–13, 1975, at Foster City, Calif.

Subject: U.S. Army Corps of Engineers permits for work in the Foster City and Redwood Peninsula Areas (San Mateo County) in the Baylands of San Francisco Bay, Calif.

1. GENERAL INTRODUCTION

For about a decade, the Sierra Club and other environmental groups and individuals have closely monitored the progress of land fill development of Foster City and its neighbor, Redwood Shores.

Both developments were created by means of special acts of the California Legislature in the early 1960's, and have subsequently been the subjects of study by the Assembly Interim Committee on Municipal and County Government, and by the Special Studies Subcommittee of the House Committee on Government Operations. Issues of financing, government control, the environment, and soils problems have dominated most prior discussions of these developments. While some of these issues have been resolved in part, the basic problems of excessive taxes in order to retire reclamation and facilities bonds will remain for many years.

During the initial development phase of Foster City, citizens were denied the advantage of local governmental control of their own destinies. The Board of Directors of the Estero Municipal Improvement District (the board of control of District funding and government) were elected on the basis of *one vote per one dollar* of assessed property valuation. For district taxes, properties were assessed by a special assessor, who in turn served at the pleasure of the Board of Directors. The result was that it was possible for the major landowner to issue new bonds, set the tax rate, etc., without the consent of the majority of the citizens. The citizens could only carry their grievances to the Legislature or the courts, which is the course of action they finally adopted.

This feudal arrangement was finally dismembered in 1971 when Foster City incorporated with a directly elected City Council which also serves a dual role

as the Board of Directors of the Estero Municipal Improvement District. It is to the credit of those early residents that this has come to pass. This same arrangement is served by the Redwood City Council which also acts as the Board of Directors for General Improvement District I–64 (Redwood Shores)

Sizeable portions of both developments lie within an area of a controversial land exchange executed in 1968 between the State of California (represented by the State Lands Commission) and Leslie Salt Company—the main private claimant to over 35,000 acres of former south bay tidal marshlands. Parts of the area of the presently disputed Corps permit application by Foster City and the bulk of the lands of Redwood Shores (now controlled by Mobil Oil Estates, Ltd.) were included in the 1968 transaction. However, on Redwood Peninsula the Phelps Slough area where Redwood City wished to construct a water reservoir tank and where Mobil wants to locate a regional shopping center was not part of the 1968 transaction between the State and Leslie; but, is within the area of an entirely separate land title transaction between the State and Mobil that was consummated in 1973.

The physical setting of both baylands developments continues to be an important factor and is briefly described in Section 2. A description of existing Corps permits in both developments is helpful in understanding the prior exercise of Federal authority; permits known to us are described in Section 3 and listed chronologically in the Appendix.

Wildlife surveys, indicating the ecological value of lands proposed to be filled and developed under Foster City's pending permit application are noted in Section 4. Section 5 is devoted to comments on testimony given at the September 12–13 hearings in Foster City. Our concluding statements are summarized in Section 6.

2. PHYSICAL SETTING

The lands of Foster City and Redwood Peninsula have similar basic physical characteristics. Both areas are within the wide band of estuarine saltmarsh and tidal sloughs that once rimmed South San Francisco Bay. In some places the marshland band was as much as four miles wide. The bayward boundary of this band was marked by the open waters of the Bay (often exposing mudflats at low tide), and the landward side of marsh was contiguous to the upland alluvial plain. The soft muds—commonly referred to as "younger bay mud"—underlying these marshlands were initially deposited when San Francisco Bay was formed about 7000 years ago following a 400 foot rise in sea level due to glacial ice melt.[1] The deposition of these younger bay mud deposits continues to the present day.

In the first few years following the 1850 admission of California to the Union, the U.S. Coast Survey conducted both topographic and hydrographic surveys of San Francisco Bay. The resulting topographic series of maps show the marshlands and sloughs in great detail—including the landward edge of the marsh. These maps were subsequently used by the U.S. Geological Survey, along with modern quadrangle maps, to compose a composite map that shows the historic marshland and slough margins in relation to present-day urban improvements such as subdivisions and freeways.[2]

From the composite map series, it is readily seen that Foster City and Redwood Peninsula are both bayward of the historical inner marshland margin. With few exceptions, this inner margin is virtually identical to the meandered bayward boundary of the old Mexican Rancho land grants that have been confirmed to claimants through the Treaty of Guadalupe Hidalgo between the United States and Mexico.

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[1] The U.S. Geological Survey notes the origin of the younger bay mud deposits are from the waters of San Francisco Bay and that none of these deposits date prior to the time when there was no San Francisco Bay—some 7000 years ago. As the sea level rose and the bay basin was inundated, the younger bay mud was deposited beneath the Bay waters. In the intertidal zone between mean sea level and the high tideline (+8′), younger bay mud deposits are formed in brackish and saltwater marshes along the margins of the Bay. Below mean sea level younger bay mud deposits are formed on tidally exposed mudflats and beneath the shallow waters of the Bay. (From: Lajoie, K. E. Kelley, E. J., Nichols, D. R., and Burke, D. B. (1974) Geologic Map of Unconsolidated and Moderately Consolidated Deposits of San Mateo County, California. U.S. Geological Survey Map MF–575)

[2] Historically, in the entire San Francisco-Suisun Bay estuarine complex, there were 313 square miles of tidal marshlands and sloughs. Of this area, at least 188 square miles of marsh and slough has been cut off from tidal action through diking and filling. By contrast, of the original 476 square miles of the "open water" area of the Bay, 53 square miles of the "open water" area of the Bay, 53 square miles have been filled. (See descriptive summary included with: "Preliminary Map of Historic Margins of Marshland, San Francisco Bay, California." (1971) Nichols, D. R. and Wright, N. A. U.S. Geological Survey Open File Map)

Since 1850, but primarily within the last fifty years, most of the historic south bay marshlands have been diked to form salt evaporators, and a lesser fraction converted to agriculture for hay, grain and livestock grazing. The areas that subsequently became Foster City and Redwood Shores were each used for both agriculture and salt production.

Soil problems are a continuing source of difficulty in former marshlands. Generally, these lands have a surface deposit known as "younger bay mud"—a water saturated soil with high clay content—which is further subdivided into two classes: the "semiconsolidated member" and the "soft member." These muds are characterized as having "fair" to "poor" foundation characteristics, respectively. By contrast, the "older bay mud" that generally underlies the younger bay mud, has "good" foundation characteristics. However, all bay muds often contain lenses or bands of potentially liquefiable sands and silts within them, resulting in increased seismic hazards of a magnitude that can only be determined by detailed core sampling and analysis.

From data compiled by the U.S. Army Corps of Engineers, the U.S. Geological Survey, and the California Division of Mines and Geology, the thickness of younger bay mud varies from 20 to 80 feet in Foster City and from about 10 to 60 feet on the Redwood Peninsula. In both areas, the greater thickness is found at the bayward edges of the projects. Bedrock may be as much as 650 feet below the surface at the bayward tip of Redwood Peninsula and nearly that deep in parts of Foster City.[3]

Many details of geologic and engineering aspects of these soils are widely known. The U.S. Geological Survey, in cooperation with the Department of Housing and Urban Development (HUD), has been engaged in a continuing study of these matters, stimulated in part by findings following hearings before the Special Studies Subcommittee of the Government Operations Committee and a prior report by the General Accounting Office.[4]

The oldest topographic survey by the U.S. Coast Survey showing the Foster City area is T–433 (1853), and shows Brewer Island and its environs to be marshland, heavily cut-up by sloughs. No dikes or other improvements are shown in the marshlands.

A similar situation existed on Redwood Peninsula. Topographic survey sheet T–664 (1857) shows Redwood Peninsula as marshland, heavily cut-up by countless sloughs. No improvements can be seen. T–655 (1857) covers the Phelps Slough area, and also shows many sloughs and no improvements other than a landing on Smith Slough and the port at Redwood City. A re-survey of the same area is shown on T–2311 (1897) and shows no improvements on Redwood Peninsula or in the Phelps Slough area except for a dike at the landward edge of the marshlands.

A re-survey of the Brewer Island area by the U.S. Coast & Geodetic Survey (USC&GS) in 1898 (map T–2310) shows some dikes at the landward edge of marsh and a portion of the marsh at Hayward's Landing near San Mateo is shown as diked. However, no part of Brewer Island itself was diked at that time, nor was any part of Redwood Peninsula or Phelps Slough shown to be diked.

USC&GS hydrographic survey H–2412 (1898) shows soundings taken in both the Foster City and Redwood Peninsula areas. Soundings were taken in Angelo Slough, San Mateo Slough, Belmont Slough, and O'Neill Slough or Brewer Island. Soundings are also shown in Phelps Slough and other sloughs that then meandered across the Redwood Peninsula.

USC&GS again re-surveyed the Foster City area in 1931 and is shown on topographic sheet T–4605 (1931). This survey shows several areas denoted as "evaporating ponds" southerly of Angelo Slough and westerly of San Mateo Slough. The Brewer Island area appears to be diked and carries the notation "grass," as does most of Redwood Peninsula. Phelps Slough is shown open to the Bay, but with dikes lining its sides.

USC&GS hydrographic survey H–5133 (1931) shows soundings in Angelo Slough, San Mateo Slough, Belmont Slough, and O'Neill Slough in the Foster City area. Phelps Slough shows no soundings but is shown as open to the Bay. The sloughs that crossed Redwood Peninsula in the 1898 surveys are not shown,

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[3] See, e.g., "Geologic and Engineering Aspects of San Francisco Bay Fill." (1969) Harold B. Goldman, Editor. California Division of Mines and Geology Special Report 97.

[4] "Federal Involvement in Hazardous Geologic Areas." Hearings May 7–8, 1969. Special Studies Subcommittee of the Committee on Government Operations. U.S. House of Representatives.

"Federal Involvement in Construction in Hazardous Geologic Areas." 7th Rpt by the Committee on Government Operations. House Report 91–429; Aug. 6, 1969.

probably because these sloughs had been crossed by dams or dikes due to the work done on the short-lived "Port San Francisco" development in the area.

Physical features of these areas and similar baylands areas can be found elsewhere. Other sources of considerable value are old Corps permits, reports of the San Francisco Bay Conservation and Development Commission, studies by the Bayland Subcommittee of the Santa Clara County Planning Policy Committee, studies of the Hayward Area Shoreline Planning Agency, and information compiled by the State Lands Division.

3. CORPS PERMIT INVENTORY

The areas where the Foster City and Redwood Shores developments have been constructed are the subjects of several Corps of Engineers permits, covering the time span from 1905 to the present. Other permit applications are currently being processed in these areas as well. It is the purpose of this section to provide a listing of all permit activity in these areas that is known to us. For some of the older permits, summaries of material in Corps correspondence files are given in the Appendix.

The development of Foster City has proceeded mainly under one basic dredge and fill permit issued on January 3, 1961 under Section 10 of the River and Harbor Act of 1899 (see Public Notice No. 61-31). In the case of Redwood Shores on Redwood Peninsula, there appears to have been no basic fill permit; however, a large portion of the Redwood Peninsula has been noted in various permits as an area authorized for the disposal of dredge spoils.

3.a—Foster City

The earliest permit for work in the Foster City area was issued on Dec. 28, 1925, under Section 9 of the 1899 River and Harbor Act. This permit authorized the construction of two dams to be placed at the extremities of Angelo Slough, a tidal waterway as wide as 400 feet that once passed through Brewer Island between Belmont Slough and San Mateo Slough. Evidence shows, however, that the dams were not constructed until well after this permit had expired in 1928. Angelo Slough was dammed at other locations sometime prior to 1946, and heavier dams were placed in 1952. As the result of strong citizen protest, the firm responsible for the 1952 dams applied for a Corps permit in 1954. However, the Chief of Engineers refused to grant a Section 9 permit for the work, but did not order the dams removed.[5]

The basic Foster City permit issued in 1961 (PN 61-31) shows that Angelo Slough would be greatly altered by the work. Today, part of the old slough bed is part of Foster City's interior waterway system, while the remainder of Angelo Slough has been filled and is now the site of streets and many private residences. Drawings attached to the 1961 permit also show the notation "NEW DIKE" in some parts of the proposed work on Brewer Island.

Because of work done to build new dikes under the basic Section 10 permit issued in 1961, and because of the history of prior Corps interest in Angelo Slough relative to Section 9, it appears that a case can be made for the view that Foster City is not properly permitted under the River and Harbor Act of 1899.

Although the basic Foster City permit (PN 61-31) authorized the dredging of fill materials from San Bruno Shoal in San Francisco Bay, the State Lands Division had earlier applied for and received a Corps permit for the same dredging operation. The application by the State was to dredge "approximately 22,000,000 cubic yards" of material to be used as "fill soil in the development of tidelands in San Mateo County" (PN 60-21); the permit was issued in 1959. The object of the State was to lease the dredge area to "the highest qualified bidder." State Lands Division correspondence suggests that such a lease was consummated with the Estero Municipal Improvement District on July 28, 1960, and will expire on July 27, 1980, and does "not provide for a maximum of material which may be extracted."

An extension of time on the State dredging permit (PN 60-21) was requested and approved in 1962 (PN 62-100), and a second request was approved in 1967 (PN 68-13). The extension of time on the latter permit expired on December 31, 1970.

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[5] Section 9 of the 1899 River and Harbor Act (33 USC 401) states, in part: "It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States . . . until the plans for the same have been submitted to and approved by the Chief of Engineers and by the Secretary of the Army."

In view of the State lease, it may not seem surprising that the State Lands Division registered "no objection" to the issuance of the basic Foster City permit (PN 61–31). However, at that time the State had not purported to relinquish its right, title, and interest to parts of Foster City, as it did later in 1968.

The basic Foster City permit (PN 61–31) expired at the end of 1967. On December 8 of that year, the Estero Municipal Improvement District wrote to the Corps that "it is our understanding" that work may proceed in the areas interior of the dikes that had been built under the permit authority. The letter stated the fill would be completed "under the authorization granted the State Lands Division." The Estero District asked that the work be regarded as complete under both PN 61–31 and PN 62–34A.

In addition to the above noted permits, there have been three other relatively minor permits and two letters of permission issued by the Corps to the Estero Municipal Improvement District. A description of these follows.

In September 1961, the Estero Municipal Improvement District applied for a permit to dredge 2.5 million cubic yards from Belmont Slough and adjacent areas of San Francisco Bay; the spoils to be deposited on Redwood Peninsula. The permit was based upon PN 62–34A and issued under Section 10 of the 1899 River and Harbor Act. It expired at the end of 1967.

In 1961 also, the Estero Municipal Improvement District requested a permit to construct "levees" for the purpose of forming additional areas to be filled. The proposed levees (PN 62–58) would be located along the northerly side of Belmont Slough and also on the San Francisco Bay shore just south of the San Mateo-Hayward Bridge. In 1962, the permit was granted under Section 10 of the River and Harbor Act of 1899 and authorized some 9000 feet of levee construction and about 100 acres of fill. This permit expired at the end of 1965. Since "new levees" were proposed in tidal waters of San Francisco Bay, a case can be made—as with the work authorized under PN 61–31—that the work should be authorized under Section 9 of the 1899 River and Harbor Act.

Another Corps permit (PN 63–30) issued to the Estero Municipal Improvement District under Section 10 of the 1899 Act authorized the placing of 25,000 cubic yards of dredge spoils in the open waters of San Francisco Bay. Additionally, two Corps letters of permission were granted to the Estero District to place temporary pilings in the San Bruno Shoal dredging site. These are listed in the Corps files as: LOP No. 64–18 (Nov 4, 1963) and LOP No. 65–1 (July 8, 1964).

3.b—Redwood Peninsula (Redwood Shores)

Redwood Peninsula is an area of former marshlands and tidal sloughs bounded northwesterly by Belmont Slough, southeasterly by Steinberger Slough, southwesterly by Bayshore Freeway (Rte 101), and northeasterly by open waters of San Francisco Bay.

To our knowledge the earliest Corps permit in this area was granted to H. M. Pearsall and S. I. Allard for two dams across Phelps Slough on June 16, 1905. These dams were apparently built, but in December 1905 the Superior Court of San Mateo County (Case No. 2802) ruled that any obstruction to Phelps Slough must be removed. One dam blocked the entrance of Phelps Slough, and Corps records reveal that James H. Budd, the former Governor of California, led a party that "caused the dam to be blown out."

U.S. Coast and Geodetic Survey (USC&GS) topographic and hydrographic surveys of 1931 and 1952 and U.S. Geological Survey aerial photographs of 1946 show no dam at the entrance of Phelps Slough. However, some time after 1952 such a dam was constructed—apparently without a Corps permit of any kind—and is still in existence today.

No other Corps permits have been found by us permitting any activity whatsoever in the Phelps Slough area. As noted previously, this is the area where Redwood City applied for a Corps permit to construct a 3.2 million gallon water tank (PN 75–108–001) which was subsequently denied by the Corps; and where Mobil Oil Estates, Ltd., now seeks a Corps permit to construct a regional shopping center (PN 10354–49).

In the remainder of the Redwood Peninsula, various permits authorize the placement of dredge spoils. The basic Foster City permit (PN 61–31) issued in 1961 authorized the Estero Municipal District "to dispose of waste material . . . on tidelands between Steinberger and Belmont Sloughs." Another permit (PN 62–34A) also issued in 1961 authorized the Estero District to dredge 2.5 million cubic yards of material and place the spoils in the same area as used for PN 61–31.

Finally, a permit under Section 10 of the River and Harbor Act of 1899 was issued to Redwood City General Improvement District 1–64 (Redwood Shores) on March 22, 1967 (PN 67–34) to dredge some 400,000 cubic yards of material from Belmont Slough with the spoils "to be used for levee improvements and/or placed shoreward of the levee" in the same area of Redwood Peninsula noted in both Foster City permits (PN 61–31 & PN 62–34A). These permits excluded the Phelps Slough area and the property on Redwood Peninsula claimed by the San Mateo County Scavenger Company. This permit was to expire on December 31, 1970, and we find no record that any extension of time was requested or granted.

None of the above permits purport to authorize the placement of fill materials obtained from upland sources upon the lands of Redwood Peninsula. Furthermore, we have found no record that a Corps permit was ever issued to the San Mateo County Scavenger Company—or its predecessors—to fill lands they claim on Redwood Peninsula with garbage. This garbage dump filled a tributary of Belmont Slough, shown on USC&GS hydrographic survey H–2412 (1898), that once had water depths of as much as 4 feet below MLLW datum, and which once connected with Phelps Slough. In addition, the dump may well have encroached upon the channel of Belmont Slough itself.

4. WILDLIFE VALUE

An assessment of wildlife values in Foster City is important in the understanding and judging by others of the actions ultimately taken by the California Department of Fish & Game and the U.S. Fish & Wildlife Service regarding Foster City's current permit application (PN 74–0–22).

Generally throughout the Nation, diking and filling of wetlands has resulted in significant losses in fisheries and wildlife resources. However, in California—and in San Francisco Bay in particular—the basic estuarine marsh and tideland habitat lost has been more severe than that lost in any other two states in the Union combined.[6] This activity was effective in removing not only basic habitat but also food supplies to the estuarine system. We can assume that these dike and fill activities—including that which occurred on both Brewer Island and Redwood Peninsula—contributed to the decline of such endangered or threatened species as the California clapper rail, the California black rail, the California least tern, and the saltmarsh harvest mouse.

Wildlife authorities recognize the role the San Francisco Bay complex plays in supporting the vast majority of the wintering migratory wildlife that fly the Pacific Flyway. In addition, Federal investigations indicate the 80% basic estuarine habitat already lost in San Francisco Bay also resulted in equal losses in wintering migratory wildlife populations. According to extracts of a California State report included in your subcommittee hearings on San Francisco Bay-Delta in 1969, further marsh habitat loss within California will lead to further depletion of wildlife stocks along the entire Pacific Flyway. The acute concern regarding wetland loss in San Francisco Bay—and California as a whole—is real for very valid reasons.

According to the September 12th testimony of Mr. Rogoway (Foster City's Planning Director) before your Subcommittee, he states (p 6): "no marshlands or wetlands exist within the diked area" of Foster City and "no significant animal or plant life is being destroyed or displaced" by the proposed fill project.

However, from our own observations and from data compiled in two environmental impact reports on the project it is apparent that marshlands and wetlands do exist within Foster City's diked areas and that significant animal and plant life will be destroyed or displaced by the proposed fill project.

The only justification, we believe, for Mr. Rogoway's statement might be found in Section 4.300 of the draft Environmental Impact Report (EIR) prepared by Wilsey-Ham Planning & Engineering of Foster City for the Centex West, Inc., development for which Foster City seeks this disputed permit from the Corps. Based on the findings of the EIR, Section 4.300 concludes that the adverse environmental effects on wildlife due to the project, would be as follows:

"It appears that wildlife does not exist in that portion of the industrial

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[6] See "National Estuary Study," (1970) U.S. Department of the Interior, U.S. Fish and Wildlife Service, (especially Vol. 5).
"Estuarine Areas," Hearings of Mar. 6, 8–9, 1967, Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, House Document No. 90–3.
"The National Estuarine Pollution Study," Senate Document No. 91–58, Mar. 25, 1970.

project development northeast of 19th Avenue Freeway. However, development of the proposed Town Center site would result in the loss of certain types of fowl and small field animals.

"The planned development of Neighborhoods 7 and 8A at the southern end of Foster City adjoining the saltmarsh area may result in the loss of some waterfowl which are absolutely intolerant of human disturbances, but for the majority of waterfowl in this area, human activities can be tolerated at a distance."

No mention is made in Section 4.300 of possible adverse environmental impacts on wildlife resources in that portion of the proposed industrial development northwest (Area B in Exhibit A) of 19th Avenue Freeway. Neither do the conclusions of Section 4.300 agree with the findings contained in Section 2.330.

The Wilsey-Ham EIR notes in Figure 6 that an early June 1973 survey found 32 migratory waterfowl in Area B at sites 1 & 2 (see Exhibit A). Although this number may seem insignificant, it should be mentioned that there were "overwintering" birds; generally by June, the migratory waterfowl have already abandoned San Francisco Bay for their summer grounds in the North.

The EIR noted (Section 2.336) that "the majority of bird species seen on the project site were engaged in nesting activity." The findings in Section 2.330 relates directly to wildlife values of the proposed industrial site (Area B of Exhibit A), and states:

"There are three small saltwater ponds in the southern portion of the industrial area west of Foster City Boulevard which still retain qualities of the former saltmarsh habitat. These ponds are presently used as nesting sites by cinnamon teal, pintail and mallard ducks. It is assumed that these saltwater ponds are fed by underground seepage of saltwater and are relatively stable bodies of water. Maintenance of these ponds could enhance the ecological value of the site."

However, no mention is made in the conclusions of the Wilsey-Ham EIR (Section 4.300) relative to these findings. We note that the final EIR of Wilsey-Ham notes in the Table of Contents that Section 4.300 was subsequently revised. However, the revision for this section was not included in our copy of the final report.

Wildlife surveys undertaken during the winter months when waters pond from October to May, indicate that the proposed industrial area (Area B of Exhibit A) is heavily utilized by wintering migratory waterfowl. A wildlife survey taken by Mr. Lyman Francher, a biology instructor from Hayward State University, is given in Table 1 below. His complete survey is detailed in Exhibit B. A Sequoia Audubon Society survey is given in Table 2. We believe the 500–600 waterfowl—predominantly pintails—observed utilizing Area B during these censuses represents a significant concentration of wildlife which will be lost to the fill project.

	Area B			
	Site 1	Site 2	Site 3	Total area B
Mallard	2	2		4
Pintail		408	73	481
Common scoter	1			1
Scaup	2			2
Shoveler			5	5
Widgeon			2	2
Total waterfowl	5	410	80	495

TABLE 2.—WILDLIFE SURVEY OF PROPOSED FILL SITES IN FOSTER CITY, AUDUBON SOCIETY SURVEY

	Area B [1]			Total area B [1]	Area C [1]	Area E [1]
	Site 1	Site 2	Site 3			
Pintail	176	150	125	451	30	
Mallard	26	30	12	68		
Widgeon	25	20	10	55		
Shoveler	11			11		
Cinnamon teal	12			12		
Bufflehead	2			2		
Total	252	200	147	599	30	
Willet						60
Avocet						10
Black-necked stilt						5
Western sandpiper						73
Killdeer	2		2	4		5
Common egret	4	1		5	1	1
Great blue heron	1			1		
Black crowned night heron			1	1		
Greater yellowlegs			2	2		
Black-bellied plover	1		1	2		
Meadowlark	7		1	8		
Horned lark			3	3		
Red-winged blackbird	40	10	Yes	50+	Yes	
Ring-billed gulls						90
Burrowing owl	4	2	2	8	2	
White-tailed kite	2	2		4		
Sparrow hawk	2		2	4	1	
Red-tailed hawk	2			2		
Rough-legged hawk	1			1		
Total birds	318	215	261+	794+	34+	244

[1] See exhibit A for location of survey sites.

An inventory of the project sites indicates that the northern portion of Area B (site 1 of Exhibit A) and all of Area E consists of pickleweed saltmarsh flora. Additional stands of pickleweed are found elsewhere in Area B and in Area D adjacent to, an inboard from, the Belmont Slough levee.

The Corps draft Environmental Impact Statement (EIS) on this project concluded that:

(a) Large numbers of migratory waterfowl will be denied wetland habitat which now serve as feeding and resting sites;

(b) Raptors, such as the white-tailed kite, will suffer loss of feeding territory;

(c) The loss of nesting sites will lower the number of waterfowl that nest in the Bay Area, such as pintails and mallards;

(d) Burrowing owls may lose their denning sites:

(e) Development of Areas D and E adjacent to Belmont Slough may cause the California clapper rail to lose their habitat due to urban noises and intrusions, and competition from invading house cats and house mice.

Christmas birdcounts conducted by Sequoia Audubon Society show Belmont Slough to be prime habitat of the California clapper.

A final EIS has been prepared by the Corps on this fill project but has not yet been released to the public, so we cannot comment upon the facts and findings that have been expressed there. However, we are aware that the Corps' biologists have done extensive work in the proposed landfill area since the release of the draft EIS. We expect these findings would support previous conclusions that portions of the project site do contain significant wildlife habitat.

Although the State of California accepted Foster City's offer of 57 acres of existing tidelands and tidal marsh rims in Belmont Slough as mitigation for wildlife resources due to be lost to the proposed fill project, we believe the acceptance of the lands as mitigation is a misapplication of the word. We believe this proposal neither mitigates nor compensates for wildlife resources which will be lost.

As we understand the term, "to mitigate" means to alter the design of the project—either through redesign or not developing certain areas—in order to minimize the impacts on wildlife. "To compensate" is to improve, enhance, or create wildlife habitat either onsite or offsite of the project. Because Foster City intends to neither redesign their project either by providing a buffer-zone be-

tween the urban areas and Belmont Slough or by not developing certain areas which could be utilized by wildlife, there is no mitigation or compensation involved in this proposal.

The existing tidelands and marsh rims involved in the 57 acre proposal are already prime habitat heavily utilized by wildlife and cannot be substantially further improved to absorb the additional wildlife populations which will be displaced.

Additionally, 33 acres of Foster City's offer are already State-owned lands which some years ago were leased back to Foster City under a life-in-structure permit from the State Lands Commission. This permit has about a 38-year life left.

Also, there are plans under consideration for the construction of a Federal channel for recreational watercraft which could ultimately allow the establishment of three marinas with a total capacity in excess of 1200 berths. Hence, the value of these tidelands and marsh rims as wildlife habitat may be in serious jeopardy should this Federal channel be built.

5. REMARKS ON PRIOR TESTIMONY

(September 12th Hearing)

Mr. Rogoway, Foster City's Planning Director, states on pg 3 of his testimony: "The State of California is presently negotiating to place many thousands of acres of tidelands in private ownership (Westbay suit) while Foster City is asked to restore lands to tidal action and public ownership . . .". Mr. Rogoway is misinformed regarding the issues in the Westbay suit.

"Westbay" (State of Calif. v. Westbay Community Associates, et al) was filed by the State in 1969 contesting ownership and public trust rights in 882 acres of submerged lands and tidelands claimed by Westbay Associates in San Francisco Bay. This suit was later expanded by Westbay to include the firm's entire claims (over 10,000 acres) in San Mateo County. The case is still in litigation.

Although Mr. Rogoway (at p. 4) and Mayor Lappin of Foster City (at p. 5 of his testimony) believe the $30,000 agreement consummated by the State of California and a neighboring developer on Mariners Island (as compensation for wildlife losses due to a 180 acre fill proposal) is unjust compared to wildlife mitigation measures requested of Foster City, we believe the two cases are quite different.

In the Mariners Island case, a special supplemental biological report prepared by Jones & Stokes Associates concluded that migratory wildlife resources lost to the project could be compensated through the creation of new offsite marsh habitat. This recommendation was primarily in consideration of the marginal character of habitat on the project site.

The agreement was entered into by the California Department of Fish & Game under a previous Administration. The U.S. Fish & Wildlife Service was not a party to the agreement and did *not* endorse it, contrary to indications given by Mr. Lappin (at pg 5).

In the Foster City case, significant wildlife habitat exists and is heavily utilized by migratory wildlife in season for resting and feeding.

Mr. Rogoway indicates on page 4 of his testimony that Foster City has over 10.000 acres of Bay, lagoon and marshland under protective zoning; we assume this zoning is a part of Foster City's open-space element in the General Plan.

However, according to the Environmental Impact Report prepared by Wilsey-Ham for this project, Foster City's adopted Master Plan includes only 156.8 acres of parks (of which 43 acres are presently developed) and 184 acres of interior lagoons.

Considering the size of Brewer Island (2200+ acres), this is a far cry from the 10,000 acres cited by Mr. Rogoway. We can only assume these 10,000 acres include the tidal waters of Belmont Slough and the open waters of San Francisco Bay which lie within Foster City's city limits; these are navigable waters of the United States with the State of California being claimant to the soil.

We believe Foster City's claim to 10,000 acres of protectively zoned lands is misleading. The only marshlands offered this zoning protection are those marshes in Belmont Slough which are proposed to be transferred to the State in connection with Foster City's Corps permit application.

Mr. Rogoway (at p 5) states: 'Official San Mateo County maps dating back to 1863 show the land mass upon which Foster City is located, existing in its entirety above mean high tide."

However, as we have pointed out in a previous section of this report (see pp 5–6), the topographic surveys of 1853 (T–664) and 1898 (T–2310) show Brewer Island to be undiked marsh heavily cut up by sloughs.

Also on page 5, Mr. Rogoway states: "The dike system surrounding Foster City has been in existence for at least 50 years."

As we have noted in our section on "Corps Permit Inventory" (see pp 7–8) and in the Appendix, extensive "NEW DIKE" work was done on Brewer Island relative to Corps permits issued to Estero Municipal Improvement District since 1961. Additionally, 1946 U.S. Geological Survey aerial photographs indicate all of Area E (see Exhibit A) and portions of Area D contiguous to Belmont Slough were undiked tidal marshlands.

Mr. Rogoway (at p 10) asserts that the Corps of Engineers does not apply its jurisdictional authority over areas lying below the plane of MHHW uniformly throughout the San Francisco Bay area.

We do not agree with this statement. From our experience with the Corps of Engineers' permit program in San Francisco Bay, the Corps has been consistent in requiring new projects on baylands lying below the plane of MHHW to apply for a Corps permit. The Corps has also been diligent in requiring unauthorized fill projects to file for permit applications.

At page 14, Mr. Rogoway states that proposals which have been made by both Foster City and San Mateo "will create a flow of water in Belmont Slough far in excess of that which could be achieved by the shallow basins" which would result if 68 acres were returned to tidal action as proposed by the U.S. Fish & Wildlife Service.

This statement by Mr. Rogoway is not supported by any engineering studies that we know of, and we do not believe his conclusion to be correct (see, e.g., measurements and analysis re Ravenswood Slough by G. K. Gilbert in "Hydraulic Mining Debris in the Sierra Nevada." U.S. Geo. Surv. Prof. Paper No. 105. 1917).

The basin Foster City would create is only 20 acres in size, and poorly located near the mouth of Belmont Slough to be of much value in flushing out the slough by tidal exchange. The fact that it is planned to be 8 feet deep at Mean Lower Low Water has no effect upon flushing whatsoever, for it is the area of the tidal basin between a high tide level and a low tide level that determines the extent of flushing that will occur each time the tide floods and ebbs.

Mr. Lappin, Mayor of Foster City, on page 1 of his testimony requested that "your Committee take steps to compel Federal agencies, specifically U.S. Fish and Wildlife, (to) publish procedures and standardized criteria for evaluating environmental impacts . . . and to curb the personalized proliferation of 'administrative' judgments (guidelines)."

We wish to state that the U.S. Fish & Wildlife Service published these guidelines in the Federal Register on August 15, 1974, and are titled: "Guidelines for the Review of Fish & Wildlife Aspects of Proposals in or Affecting Navigable Waters." To our knowledge, these guidelines are currently in force.

Mr. Lappin's testimony (at pp. 7–8) devotes considerable space to Foster City's proposed marina development. We believe this issue should be excluded from this hearing record inasmuch as it is not a part of the present Foster City Corps permit application, nor has a permit application notice been issued for this project by the Corps.

As stated previously, the U.S. Army Corps of Engineers is currently investigating the feasibility of dredging a Federal channel in Belmont Slough which could ultimately allow the establishment of three marinas with a total capacity in excess of 1200 berths. Foster City's proposed marina site would involve a 1.7 mile dredge to the deeper waters of San Francisco Bay. Still to be determined are dredge spoil disposal sites, siltation rates, and effects on fisheries and wildlife.

Both Foster City officials, Mr. Lappin and Mr. Rogoway, imply in their testimony that the U.S. Fish & Wildlife Service specifically has prevented the issuance of a Corps Section 10 permit for this project primarily through delaying tactics.

Yet, we note it took Foster City two years to respond to the Environmental Protection Agency's original letter to the Corps on this permit application. In a letter to the Corps dated Sept. 8, 1975, Mr. R. L. O'Connell of EPA's Enforcement Division states: "Since our initial comment letter to the Corps of Engineers on October 29, 1973 we have received from the applicant by letter dated August 28, 1975 additional information which satisfactorily addresses the concerns expressed in our letter." We believe Foster City has also been dilatory on this permit applications.

6. SUMMARY AND CONCLUSIONS

1. Foster City and Redwood Shores are constructed upon former marshlands and tidal sloughs of San Francisco Bay. Fill material has been obtained from both marine and upland sources.

2. In both developments, public credit has been used to finance the reclamation of land claimed in private ownership. This financing method is still operative.

3. Angelo Slough in Foster City has been dammed without benefit of an active Corps permit under Section 9 of the River and Harbor Act of 1899.

4. The basic permit for Foster City construction, issued in 1961 under Section 10 of the 1899 River and Harbor Act, purports to authorize the construction of new dikes in the waters of San Francisco Bay. The proper vehicle for such work is Section 9 authorization, and requires more stringent review than for Section 10.

5. Phelps Slough on Redwood Peninsula has been dammned without benefit of an active Corps permit of any kind. Phelps Slough has historically been used for transporting commerce by water.

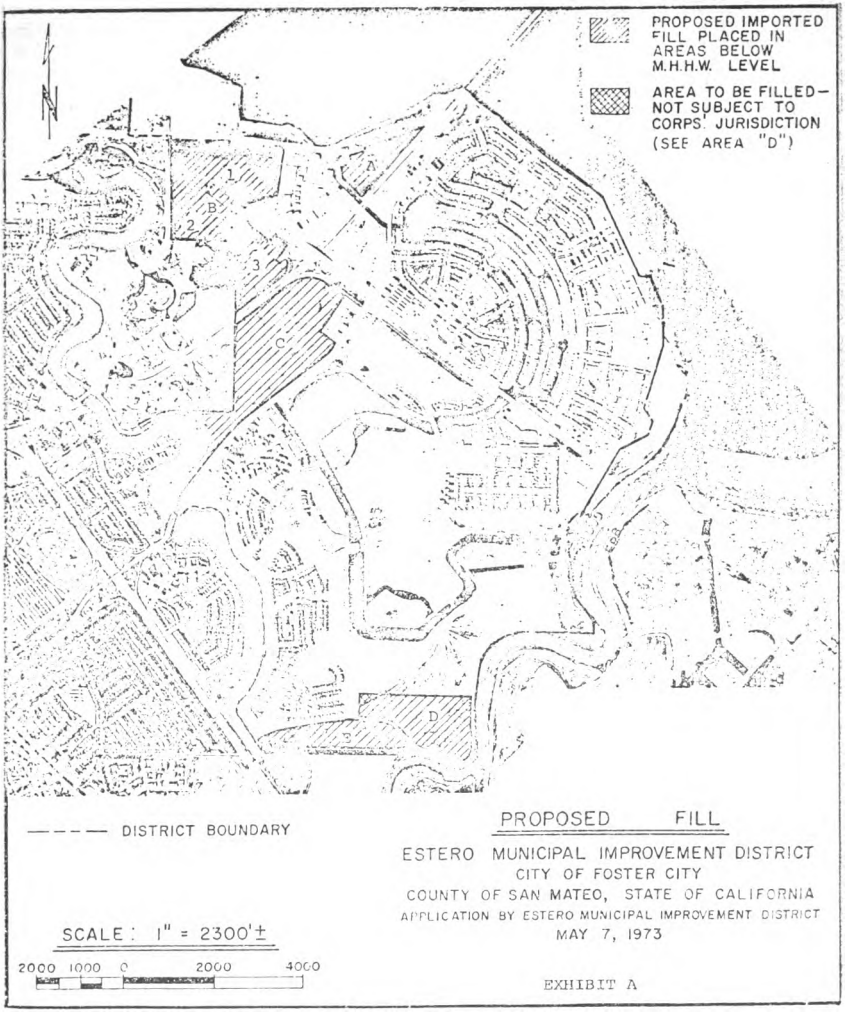
6. No Corps permit appears to have been issued to the San Mateo Scavenger Company—or its predecessors—to fill lands they claim on Redwood Peninsula with garbage. This garbage dump filled a major tributary of Belmont Slough.

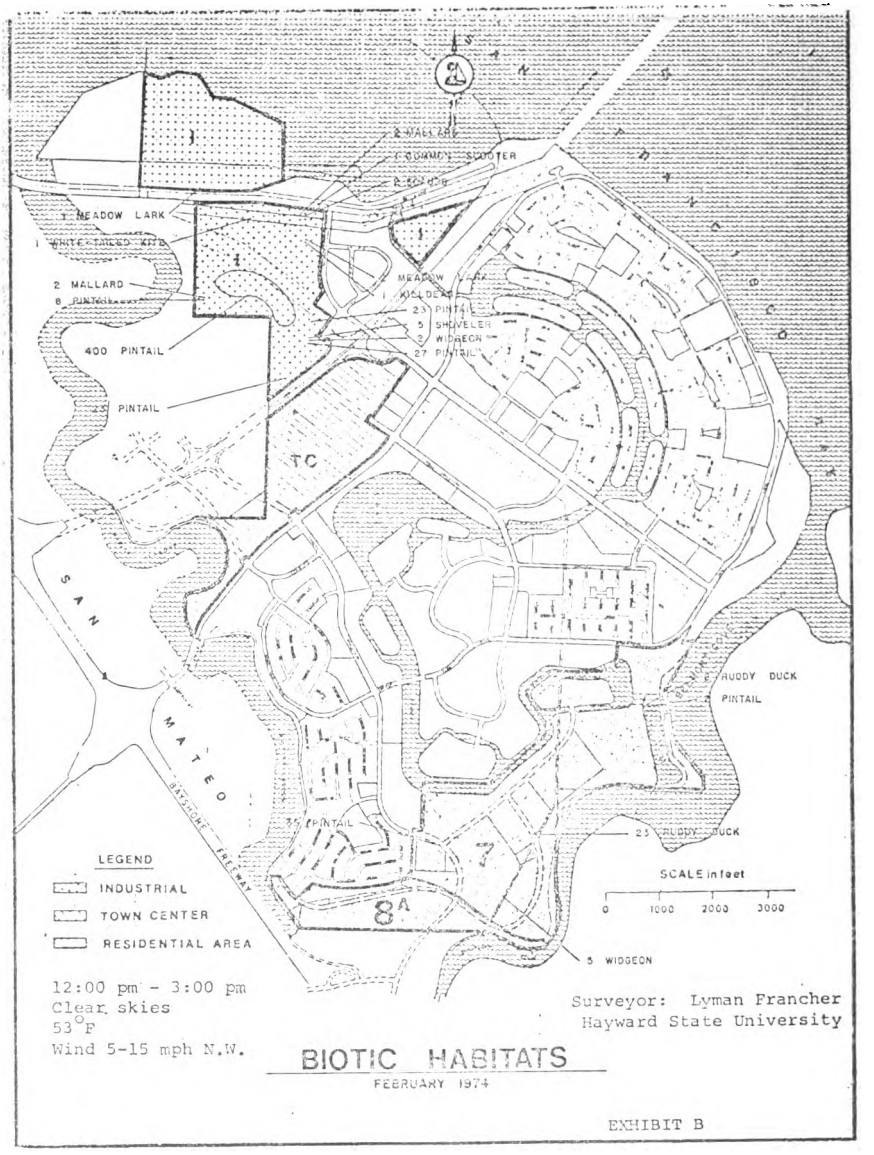
7. The major portion of Redwood Peninsula was filled as an authorized dredge spoil disposal site under various Foster City permits "to dispose of waste material . . . on tidelands between Steinberger and Belmont Sloughs."

8. Diked areas within Foster City contain significant wildlife habitat, particularly that area proposed for industrial development (Area B of Exhibit A).

9. The State of California's acceptance of Foster City's offer of 57 acres of tidelands and tidal marsh rims in Belmont Slough should not be viewed as mitigation or compensation for wildlife resources due to be lost to the proposed project. These 57 acres neither mitigate nor compensate wildlife resources due to be lost.

10. Of Foster City's 57 acre offer, 33 acres are State-owned lands under lease to Foster City.





Appendix

Chronological Inventory of Corps Permits in Foster City and Redwood Peninsula

The following is a chronological history of permits issued by the U.S. Army Corps of Engineers for work in Foster City and Redwood Peninsula.

Foster City

December 28, 1925

The earliest permit known for work on Brewer Island. Issued to Leslie Salt Refining Company for two dams across the extremities of Angelo Slough under Section 9 of the River and Harbor Act of 1899; permit expired on Dec. 31, 1928.

U.S. Coast and Geodetic Survey (USC&GS) hydographic survey of 1898 shows Angelo Slough to be between 250 to 400 feet wide and as deep as 6½ feet at Mean Lower Low Water (MLLW).

All evidence indicates these dams were never built under this permit authority. Fairchild aerial photographs of 1929 show no dams on Angelo Slough. USC&GS hydrographic survey of 1931 (H–5133) shows no dams and shows continuous soundings within the area that was to have been dammed. However, 1946 U.S. Geological Survey aerial photographs shows two dams across Angelo Slough not in the locations authorized in the 1925 Corps permit. In the Corps permit, one dam was to have been located at the junction of Angelo Slough with Belmont Slough; the 1946 photographs show this dam constructed about one-half mile westerly of this junction. Leslie Salt Company surmises these two dams were constructed in 1941 or earlier—after the expiration of the Corps permit.

1952

Leslie Salt Company constructs major dams across Angelo Slough. No Corps permit.

January 12, 1954

Protest against the dams filed with the Corps by David R. Sears, M.D., other individuals, organizations, and the Belmont City Council. Dr. Sears stated that as a result of the damming of Angelo Slough: "Within six months to one year of the time the dam was built the (boat) channel (in Belmont Slough) disappeared completely."

November 24, 1954

Leslie Salt Company applied for a Corps permit for the existing dams.

March 21, 1955

The Chief of Engineers refused the granting of a permit under Section 9 of the River & Harbor Act of 1899. He also stated that no action was contemplated to order the dams removed.

August 31, 1959—State Lands Division Permit—PN 60–21

The California State Lands Division applied to Corps for a permit to dredge material at San Bruno Shoal—an area north of the San Mateo-Hayward Bridge and located to the east of the main shipping channel of South San Francisco Bay.

The application states: "Dredged material will be used in the development of tidelands in San Mateo County .The area in which dredging operations are proposed to be conducted is not within the corporate limits of a municipality. The area will be offered for lease pursuant to competitive bidding and a lease issued to the highest qualified bidder."

September 3, 1959

Letter from Corps to State Lands Division requesting clarification.

September 15, 1959

Letter from State Lands Division to Corps answering: "Approximately 22,000,000 cubic yards of material would be removed by dredging to maximum depths of between elevation —30 to —50 (MLLW). The material to be obtained will be used as fill soil in the development of tidelands in San Mateo County. . . . That portion of the mud overburden material, which is not used for fill in the contemplated development, will be redeposited in the borrow area."

September 18, 1959

Corps issued Public Notice 60–21 for dredging work as requested by the State Lands Division. Objections to be filed with Corps within 30 days.

October 20, 1959

Corps issued permit under Section 10 of the River and Harbor Act of 1899 to the California State Lands Division for dredging work described in PN 60–21. Permit expires on Dec. 31, 1962.

October 21, 1959

The San Mateo County Planning Commission requests of the Corps "a 90 day delay in the consideration of issuing a permit to dredge approximately 22,000,000 cubic yards of material from San Bruno Shoal." The Planning Commission makes the same request in a letter to the State Lands Division, stating that "there was not sufficient information in hand at this time to properly evaluate the scope of this vast project."

The letters noted, the San Mateo County Board of Supervisors also concurred in requesting the delay.

October 27, 1959

Letter from Corps to San Mateo County Planning Commission stating the permit was filed before the request for a 90 day delay was received. The Corps also stated: "In the event it is proposed to utilize this (dredged) material for the reclamation of San Mateo County tidelands the developer will be required to obtain an additional permit from the Department of the Army."

Two extensions to this permit were later issued and are described in PN 62–100 dated Jun 27, 1962 and PN 68–13 dated Oct 2, 1967.

September 23, 1960

Main Foster City Permit—PN 61–31 Wilsey, Ham & Blair, Engineers and Planners, Millbrae, Calif., in behalf of Estero Mounicipal Improvement District (Foster City), applied for a Corps permit stating in their letter of application. "The work is necessary to accomplish the reclamation of the property known as Brewer Island. . . . The work consists of construction of new levees, placing of approximately twenty million cubic yards of sandfill on Brewer Island. . . . Waste mud from dredging operations may be deposited within a disposal area located immediately southeast of Brewer Island."

October 4, 1960

Corps issued PN 61–31 for work described by Wilsey, Ham & Blair. The Public Notice also stated "the sandfill is to be obtained from San Bruno Shoal, San Francisco Bay, California, as described in our Public Notice No. 60–21 dated 18 September 1959." Objections to be filed with the Corps within 30 days.

October 14, 1960

Letter to Corps from F. J. Hortig, Executive Officer of the State Lands Division stating: "The State Lands Division interposes no objection to the application . . . as outlined in the subject Public Notice." There is no mention of official action by the California State Lands Commission with respect to this permit application.

November 9, 1960

Letter from California Division of Highways to Corps registering "no objection" provided work does not encroach on highway right-of-way and drainage is not impaired.

November 18, 1960

Letter to Corps from George C. Shannon, District Manager, Estero Municipal Improvement District, requesting the permit be issued for six years rather than the usual three years.

The letter states: "Additional site preparation and preliminary work will involve a massive land leveling operation over the entire development area, filing of existing major sloughs and channels with excavated mud from the proposed interior lagoon (approximately 1.5 million cubic yards)." After stating that 20,000,000 cubic yards of sand from San Bruno Shoal would be the fill source, EMID's letter continues that there is "approximately the same amount of mud overburden in the borrow area which must be disposed of. . . ."

It is our understanding that this 20,000,000 cubic yards of mud overburden was pumped into San Francisco Bay causing sediment problems throughout South San Francisco Bay.

December 2, 1960

Report by District Engineer to Division Engineer stating: "It is recommended that the District Engineer be authorized to issue the permit for a construction period of 6 years."

Inclosures to this report show no report on the project from the California Department of Fish & Game.

December 7, 1960

Letter from U.S. Bureau of Sport Fisheries & Wildlife to Corps stating "no objection" to granting this permit. The Bureau stated further that the project "has been thoroughly explored and discussed" with the California Department of Fish & Game.

December 23, 1960

Division Engineer authorizes six year construction period for the permit described in PN 61–31.

January 3, 1961

Corps permit issued for work described in PN 61–31 under Section 10 of the River and Harbor Act of 1899 to "dredge and fill in the southerly arm of San Francisco Bay adjoining the City of San Mateo, California, for the reclamation of Brewer Island, and to dispose of waste material removed from said island on tidelands between Steinberger and Belmont Sloughs." The permit continues: "That if the structure or work herein authorized is not completed on or before the thirty-first (31st) day of December, 1967, this permit, if not previously revoked or specifically extended, shall cease and be null and void."

Drawings attached to the permit show the notation "New Dike" in an area of open water of San Francisco Bay at the northerly side of Brewer Island. "New Dike" also appears in part of the area near Belmont Slough. These drawings also show the waste material disposal area between Steinberger and Belmont Sloughs to be Redwood Peninsula which is now part of the Redwood Shores development.

Not included in the disposal area is the land parcel surrounding the last and remaining bed of Phelps Slough where Redwood City wished to construct a water reservoir and Mobil Oil Estates, Ltd. (the successor to Leslie Properties, Inc.) wishes to build a regional shopping center.

September 11, 1961—Belmont Slough Dredging—PN 62–34 & 62–34A

Estero Municipal Improvement District (Foster City) requested a Corps permit "to excavate and increase the depth of water, for navigation purposes, within the confines of Belmont Slough and extending Eastward to connect with the existing deep water channel in San Francisco Bay;" adding, "we will dispose of the silty mud material on adjoining lands."

October 2, 1961

Corps issued PN 62–34 for the project, stating that "all of the dredged material, amounting to approximately 2,500,000 cubic yards, would be placed behind a leveed area located between Belmont Slough and Steinberger Slough."

It should be noted, this area described in the Public Notice is the present Redwood Shores development on Redwood Peninsula.

October 25, 1961

Letter to Corps from F. J. Hortig, Executive Officer of State Lands Division stating: "The State Lands Division interposes no objection" to issuance of the permit regarding work described in PN 62–34.

As in a similar letter regarding PN 61–31, this letter makes no mention of any official action by the State Lands Commission itself with respect to this request.

October 31, 1961

Corps issued PN 62–34A: this Public Notice supercedes PN 62–34. The only difference being in regard to details of the turning basin and dry dock on Foster City's bayfront near the mouth of Belmont Slough.

December 21, 1961

Corps permit under Section 10 of the River and Harbor Act of 1899 issued to Estero Municipal Imrovement District (Foster City) for work described in PN 62–34A. This is a six year permit set to expire on Dec. 31, 1967.

December 21, 1961—Levee Construction on Brewer Island—PN 62–58

Corps Public Notice No. 62–58 issued regarding request of Estero Municipal Improvement District (Foster City) for a permit "for two disposal areas" on the shore of Brewer Island. "Levees would be constructed . . . to contain some of the material to be dredged from South San Francisco Bay and Belmont Slough under a previous authorization."

January 9, 1962

Corps permit under Section 10 of River and Harbor Act of 1899 issued to Estero Municipal Improvement District "to construct levees to an elevation of 12± feet above MLLW so as to form disposal areas in South San Francisco Bay and Belmont Slough." Expiration date of permit is Dec. 31, 1965.

Both areas affected by the Corps permit appear relatively small as shown in the permit. One area lies along the north bank toward the mouth of Belmont Slough: the other area is located along the northeasterly shore of Brewer Island just south of the San Mateo-Hayward Bridge.

January 17, 1963—Dredge Spoils Permit—PN 63–30

Corps Public Notice No. 63–30 issued regarding application of Estero Municipal Improvement District to "place approximately 25,000 cubic yards of dredged

material adjacent to the westerly side of the entrance channel to Belmont Slough," an area lying in open waters of South San Francisco Bay.

January 29, 1963

Corps permit under Section 10 of the River and Harbor Act of 1899 issued to Estero Municipal Improvement District (Foster City) for work described in PN 63-30. Permit expires on Dec. 31, 1966.

June 27, 1962—Requests for Extensions of Time on Corps Permits

Corps PN 62-100 issued for extension of time on the California State Lands Division's permit issued on Oct. 20, 1959 which was due to expire on Dec. 31, 1962.

The original permit allowed the removal of 22,000,000 cubic yards of material from San Bruno Shoal in San Francisco Bay for use in the development of tidelands in San Mateo County. This work was originally described in PN 60-21 issued on Sep. 18, 1959.

The letter of application from the State Lands Division and the Corps permit issued for work described in PN 62-100 were missing from the Corps files.

August 14, 1967

Letter from Corps to Estero Municipal Improvement District (Foster City) advising EMID that the permit issued for work described in PN 61-31 "will expire on December 31, 1967 and that applications for extension of time should be submitted in the near future if any work waterward of the mean higher high water line is projected beyond that date."

PN 61-31 issued October 4, 1960 requested authorization from the Corps to construct new levees and to place 20,000,000 cubic yards of fill on Brewer Island behind these levees.

August 23, 1967

Letter from Estero Municipal Improvement District to Corps requesting a two year extension of their fill permit.

September 18, 1967

Letter from California State Lands Division to Corps requesting a further extension of time on their dredging permit. (See PN 62-100 issued on June 27 1962 and PN 60-21 issued September 18, 1959).

The State Lands Division letter states that the dredging permit "applies to State Lease for Mineral Extraction P.R.C. 2613.1. issued July 28, 1960, expiring July 27, 1980. . . . Although approximately 13,000,000 of the estimated 22,000,000 cubic yards of material required for completion of the project have been extracted, the lease does not provide for a maximum of material which may be extracted."

October 2, 1967

Corps PN 68-13 issued requesting an extension of time on the dredging permit issued to the State Lands Division for 22.000.000 cubic yards of materials.

The Public Notice states: "Approximately 13,000,000 cubic yards of material have been extracted to date under the authorization. This material has been used for the reclamation of Brewer Island located at the westerly end of the San Mateo-Hayward Bridge. Of the remaining 9,000.000 cubic yards authorized to be dredged, it is estimated that only about 3,000,000 cubic yards will actually be required to complete the reclamation project."

November 3, 1967

Letter from California Resources Agency to Corps stating that State agencies find no objections to the issuance of an extension of time for the State Lands Division permit and requesting approval of the extension.

November 9, 1967

Letter from U.S. Federal Water Pollution Control Administration to Corps recommending that the dredging work should meet "all requirements set for this project by the San Francisco Bay Regional Water Quality Control Board." The FWPCA also recommended that the dredging work be conducted to minimize the effects "on water clarity, smothering of adjacent bottom areas, dissolved oxygen concentrations, and muddying of adjacent shorelines."

December 8, 1967

Corps issued extension of time on dredging permit to State Lands Division, adding the conditions recommended by the U.S. Federal Water Pollution Control

Administration in their letter of November 9, 1967. The permit expires on December 31, 1970.

December 8, 1967

Letter to Corps from Estero Municipal Improvement District (Foster City) cancelling their request for an extension of time for work described under PN 61–31 (Oct. 4, 1960) and PN 62–34A (Oct. 31, 1961).

EMID's letter states: "While there remains some interior work yet to be accomplished, it is our understanding that the completed perimeter levee system has removed the interior area from your jurisdiction and that an extension of the time limits of the permits is not required." The letter states that material from San Bruno Shoal will be used to complete the fill and that "this work will be accomplished under the authorization granted the State Lands Division as outlined in your Public Notice No. *68–13* dated October 2, 1967." The letter concludes that the Corps "kindly consider this letter as a report of completion of work under the permits."

May 17, 1968

Marginal note in Corps files by J. G. Collins stating: "All dredging suspended spring of 1968. All additional fill to be accomplished using imported dry materials."

August 27, 1973

Corps issued PN–74–0–22 requesting permission by the Estero Municipal Improvement District (Foster City) to place approximately 2,470,000 cubic yards of fill on 382 acres of land lying below the plane of MHHW. Source of material unknown.

This permit application is the subject of the present Subcommittee hearings.

REDWOOD PENINSULA

June 16, 1905

Corps permit granted to H. M. Pearsall and S. I. Allard for two dams; one dam was to be located across Phelps Slough at its junction with Steinberger Slough.

In 1907, a Corps inspector reported to his superiors that "the northerly one of these two dams was found to be completed" and to be "about 400 feet in length." The inspector reported that "the southerly one of these two dams, if it was ever built, has entirely disappeared" and that an investigation revealed that "certain parties led by ex-Governor Budd in person made protest and subsequently caused the dam to be blown out and the channel to be reestablished in its original condition."

The inspector also reported: "At the present time there is a schooner-landing on Phelps Slough some half a mile landward from the dam-site for which the permit was granted." An 1873 map of the region adjacent to the Bay of San Francisco prepared by the State Geological Survey of California, shows a landing named "Phelps' Landing" on the course of Phelps Slough.

U.S. Coast and Geodetic Survey (USC&GS) topographic survey of 1931 (#T–4605), USC&GS hydrographic survey of 1931 (#H–5133), USC&GS Shoreline Manuscript of 1952 (#T–11072), and U.S. Geological Survey aerial photographs of 1946 show no dam at the junction of Phelps Slough with Steinberger Slough. At some unknown date subsequently, a dam was constructed at the mouth of Phelps Slough, apparently without a Corps permit.

March 22, 1967

A Corps permit was issued to Redwood City General Improvement District 1–64 under Section 10 of the River and Harbor Act of 1899 "to dredge a channel approximately 8800 feet in length, 80 feet wide, and 8 feet deep at MLLW, the dredged material, approximately 400,000 cubic yards, to be used for levee improvements and/or placed shoreward of the levee, in Belmont Slough at Redwood City, San Mateo County, California."

The drawing attached to the permit shows the boundary of the dredge disposal area to be the bulk of Redwood Peninsula. The permit expired on Dec. 31, 1970.

Excluded from the permit authorization is the Phelps Slough area where Redwood City wished to construct a water reservoir tank and Mobil Oil Estates, Ltd., wishes to construct a regional shopping center.

July 3, 1974

Corps issued Public Notice No. 75–108–001 regarding application by City of

Redwood City to construct a "3.2 million gallon steel water reservoir and for the associated earthworks, including approximately 5,000 cubic yards of imported fill for a proposed landscaped peripheral berm." The Public Notice noted several other sites were considered for the construction of this water tank; locations of these other sites were not included in the notice.

The site selected was a pickleweed marsh area adjacent to the former mouth of Phelps Slough at its junction with Steinberger Slough.

This permit application was subsequently denied by the Corps and the water tank is under construction at an alternate site.

March 21, 1975

Corps issued Public Notice No. 10354–49 on application of Mobil Oil Estates, Ltd., "to fill and do storm drainage improvement at an approximate 210-acre area between the north side of Steinberger Slough and the existing Redwood Shores interior waterway and to improve an existing dike along Steinberger Slough. . . . Within the project area the former bed of Phelps Slough comprises 32 acres." The notice continues: "The purpose of the fill is the development of a regional shopping center and/or other commercial land use. Approximately 925,000 cubic yards of dry earth from construction sites (as yet unidentified) . . . will be required."

The notice also states: "In the 1950's, Phelps Slough was diked off and a tide gate installed for drainage." However, we could not find a permit in the Corps files authorizing the "diking" of Phelps Slough during the 1950's.

The permit application is still pending subject to EIS review.

April 22, 1975

Public Notice No. 75–251–067 issued by Corps on application of Jenks and Adamson, Consulting Sanitary and Civil Engineers, Palo Alto, California, acting as agent for the Strategic Consolidation Sewerage Plan Authority (SCSP), San Carlos, Calif., to construct a 22,000,000 gallons per day wastewater treatment plant in the Redwood Shores area of Redwood City, San Francisco Bay, San Mateo County, California. The Public Notice states: "Sewage will receive secondary treatment (activated sludge process) at the plant before being discharged to San Francisco Bay . . .".

Attached drawings to the Public Notice show the plant site to be located at the northeasterly corner of Redwood Peninsula adjacent to San Francisco Bay and the mouth of Steinberger Slough.

This permit application is the subject of the present Subcommittee hearings.

TESTIMONY OF THE BAY AREA SEWAGE SERVICES AGENCY BEFORE CONSERVATION, ENERGY AND NATURAL RESOURCES SUBCOMMITTEE OF COMMITTEE ON GOVERNMENT OPERATIONS

The Bay Area Sewage Services Agency is the nine-county regional entity responsible for development and implementation of regional water quality management planning in the San Francisco Bay Area. The Agency's Board of Trustees, consisting of 21 elected officials representing local wastewater discharges, has been especially concerned for the successful accomplishment of cleaning up the waters of California and the San Francisco Bay Region in the face of increasingly complex governmental regulations and policies which often conflict with each other.

The Agency has met within the past month with representatives of the Congressional delegation from the San Francisco Bay Region, at which meeting an issue paper was submitted which noted that water pollution control programs in the San Francisco Bay Area are being unduly and unreasonably delayed due to conflicting federal laws and regulations. The intent of Congress when it enacted Public Law 92–500, the amendments to the Federal Water Pollution Control Act, was to restore and maintain the chemical, physical and biological integrity of the nation's waters. The law further states that, "It is the national policy that, to the maximum extent possible, procedures utilized for implementing this Act shall encourage the drastic minimization of paper work and interagency decision procedures and make the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government."

We have found in many cases throughout the San Francisco Bay Region that the foregoing goals are not being met and that programs intended to

protect and preserve the environment are being hamstrung by environmental process procedures. I am not going to speak in detail on the problems which the Bay Region has been facing. I have brought copies of the Agency's August 20, 1975 presentation for the information of the Committee.

The meeting of wastewater treatment and disposal needs for the Cities of Redwood City, San Carlos and Belmont and for the Menlo Park Sanitary District is an integral part of the Bay Area Sewage Services Agency's Regional Water Quality Management Plan. The program prepared by the Strategic Consolidation Plan Authority, which proposes a new wastewater treatment plant in the Redwood Shores area, has been extensively studied and has been proceeding on schedule in a satisfactory manner. Accordingly, we are extremely distressed to find that despite extensive investigation in the environmental impact process a federal agency at this late date can effectively block the issuance of necessary permits required for development of the plant site. We strongly support the work which fisheries and wildlife protection agencies have done in their programs to enhance the vital resources of the Region. However, we believe that this problem should have been resolved in other ways and at a much earlier date. Further, in arriving at practical decisions in the broad public interest, all factors must be given due consideration, including economics and timely accomplishment. The present problem whereby objections of the U.S. Fish and Wildlife Service are postponing issuance of filling permits by the U.S. Army Corps of Engineers in an area previously deemed to be environmentally satisfactory is giving, in our opinion, undue weight to a narrow segment of the public concern.

I am grateful for this opportunity to state the views of the Bay Area Sewage Services Agency to the Committee and would be pleased to answer any questions and to offer the assistance of the Agency to all parties involved so that our clean water and environmental goals can be achieved.