

**SAFCA BOARD MEETING, NOVEMBER 13, 2009 TRANSCRIPT
FOR ITEM 6**

STAFF RESPONSES TO PUBLIC TESTIMONY

Staff Responses are numbered and shown in bold below.

1. WILLIAM CHISUM:

THANK YOU MADAM CHAIR AND MEMBERS OF THE BOARD. MY NAME IS BILL CHISUM, I AM AN ATTORNEY REPRESENTING THE HORANGIC FAMILY, I AM WITH THE FIRM OF KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD, HERE IN SACRAMENTO AT 400 CAPITOL MALL.

I WANT TO BRIEFLY ADDRESS TWO ITEMS, TWO GENERIC ITEMS: ONE IS THE CURRENT RESOLUTION PENDING BEFORE THE BOARD AND THE SECOND IS A LETTER THAT MISS HORANGIC DID RECEIVE FROM THE BOARD, ADDRESSING QUESTIONS SHE HAS RAISED REGARDING THE FAIRNESS BY WHICH SHE HAS BEEN TREATED THROUGHOUT THIS PROCESS. BY WAY OF BACKGROUND LET ME NOTE I HAVE BEEN EXTENSIVELY INVOLVED IN EMINENT DOMAIN MATTERS FOR OVER TEN YEARS NOW AND HAVE REPRESENTED NUMEROUS PUBLIC AGENCIES INCLUDING THE CITY OF SACRAMENTO.

LET ME FIRST DIRECT MY REMARKS TO THE AMENDED RESOLUTION AND WHAT WE FIND, AMONG OTHER THINGS, TROUBLING HERE IS THAT WHEN THIS FIRST CAME ABOUT, ABOUT A YEAR AND A HALF MARCH OF '08, THE DIRECTOR NOTED THAT THIS PROJECT WAS CONSTANTLY EVOLVING AND WE HAD SAID - WELL, WHY DON'T YOU WAIT UNTIL WE GET EVERYTHING STRAIGHTENED OUT, AS TO WHAT YOU NEED THE PROPERTY FOR, THE EXTENT OF THE PROPERTY, BEFORE YOU SUBJECT MY CLIENT TO THE EMINENT DOMAIN PROCESS.

1. Response: In working with property owners SAFCA seeks to keep them informed of the evolving needs of the program, while making it clear that information is preliminary and subject to change until such time as final decisions have been made. Clearly, there is an unavoidable tradeoff between transparency and finality, particularly in a fast-moving program such as NLIP. As a matter of record, SAFCA did not alter its eminent domain take lines after filing the Resolution of Necessity.

2. WE WERE ASSURED THINGS HAD BEEN SETTLED, AND YET, HERE WE ARE, A YEAR AND A HALF LATER, THE USE HAS CHANGED, AND PERHAPS EVEN MORE TROUBLING AS INDICATED IN YOUR STAFF REPORT, DURING THIS PROCESS THE WHOLE VALUATION APPROACH, WHICH SAFCA HAS USED, HAS CHANGED. THIS HAS RESULTED IN THE OFFER TO MY CLIENT BEING CUT BY MORE THAN HALF, A LOSS OF MORE THAN A MILLION DOLLARS AND SO WHILE I CAN CERTAINLY APPRECIATE THAT THIS IS A VERY COMPLEX AND DIFFICULT PROJECT, IT HAS RESULTED IN THE HORANGIC FAMILY BEING UNFAIRLY SUBJECT TO A CONSTANTLY EVOLVING AND MOVING TARGET, BOTH AS TO VALUE AND USAGE.

2. Response: Because one of SAFCA's primary objectives is to provide 100-year flood protection on a very ambitious schedule, in the Fall of 2007 SAFCA hired an appraiser to appraise approximately 20 properties to be acquired for the first phase of the NLIP, including the Horangic property.

The appraiser SAFCA hired was not a Member of the Appraisal Institute (MAI) and did not have significant litigation experience. SAFCA selected the appraiser to produce a high number of competent appraisals quickly and at an affordable cost. The appraisals were required by law to make offers to the property owners as a prerequisite to starting negotiations to purchase the property. If a voluntary purchase could not be achieved, the appraisal would also be used as a basis for the deposit with the State Treasury of probable compensation so that SAFCA could take immediate possession of the property and meet its construction schedule. If eminent domain was required, the compensation SAFCA owed the property owner would be determined at trial. For any case that could not be settled, SAFCA intended to hire an MAI appraiser with litigation experience to testify at the trial.

In this case, SAFCA's pre-eminent domain appraisal was completed in October of 2007. Based on information available at the time, the appraiser reasonably assumed that if the Horangic property were offered for sale, the property would be acceptable to The Natomas Basin Conservancy (TNBC) for mitigation of development under the Natomas Basin Habitat Conservation Plan (HCP). The appraiser valued the property at \$26,000 per acre on that basis. SAFCA made a formal offer of the full amount of the appraisal to the Horangics shortly thereafter. Unfortunately, SAFCA and the Horangics were unable to reach a settlement and the parties proceeded to trial.

In January 2009, SAFCA hired the MAI appraiser to testify at the trial in the Fall of 2008. The second appraiser did not consider the initial appraisal, but rather arrived at a separate, independent opinion of value. The second appraiser had the benefit of information developed since the first appraisal clarifying that the Horangic property would not be acceptable to TNBC for HCP mitigation due to its proximity to the Airport and its distance from TNBC's other habitat preserves. The second appraiser also independently determined that the Horangic property would not likely be developed with houses due to its close proximity to the Airport. The appraiser determined that the highest and best use of the property would be for agriculture and valued it at \$12,500 per acre. At no time did SAFCA staff or legal counsel attempt to influence the appraisal process. SAFCA is very careful to maintain the independence of the appraisers to insure that the appraisal process is fair to both property owners and the public.

The Horangic's appraisal, at \$36,000 per acre, is based on the flawed premise that the property would be acceptable for TNBC mitigation.

3. NOW SPECIFICALLY AS TO THE RESOLUTION BEFORE YOU TODAY, YOU ARE SEEKING TO ACQUIRE ALMOST A THIRD OF MY CLIENT'S PROPERTY FOR THE PURPOSE OF EXCHANGING IT WITH THE AIRPORT. AND WHILE I'M NOT CERTAINLY HERE TO ADVISE YOU, I NOTE THERE ARE SEVERAL SIGNIFICANT PROBLEMS WITH THE RESOLUTION BEING PROPOSED.

FOR ONE THING THE AIRPORT IS NOT SCHEDULED TO EXPAND FOR AT LEAST 10-20 YEARS DEPENDING UPON THE ECONOMY. WHEN THE USE IS THAT FAR OUT, THERE ARE SPECIAL FINDINGS THAT MUST BE MADE IN THE RESOLUTION AND THOSE ARE NOT THERE. IT IS CERTAINLY TROUBLING THAT THE EXCHANGE WAS COMMITTED

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TWO MONTHS AGO AND YET, HERE WE ARE PRACTICALLY ON THE EVE OF THE TRIAL, AMENDING THE RESOLUTION.

IT IS ALSO QUESTIONABLE, WHETHER A FLOOD CONTROL AGENCY IS LEGALLY AUTHORIZED TO ACQUIRE PROPERTY FOR AIRPORT PURPOSES. AS YOUR COUNSEL HAS PROBABLY TOLD YOU, THERE IS A CONCEPT CALLED 'SUBSTITUTE CONDEMNATION' WHICH ARGUABLY COULD APPLY TO THIS SITUATION. HOWEVER, THE STATUTORY FINDINGS ARE NOT MADE IN THE RESOLUTION AND IT'S QUESTIONABLE WHETHER ALL THE PREREQUISITES CAN BE MADE. THIS RESULTS IN A LEGALLY DEFECTIVE RESOLUTION AND ASSUMING THE COURT DOES NOT DISMISS THIS OUTRIGHT, THE MATTER WILL MOST LIKELY, BE ONCE AGAIN BEFORE YOU, FOR MORE CORRECTIVE ACTION, CAUSING YET MORE STRESS AND EXPENSE FOR THE HORANGIC FAMILY.

3. Response: The original Resolution of Necessity (RON) stated that a portion of the Horangic's property would be necessary to mitigate the impacts of the NLIP on habitat as required by SAFCA's EIR. SAFCA intended to use the eastern half of the property to construct a Giant Garter Snake canal and to develop Swainson's Hawk habitat. The proposed exchange with the Airport was consistent with that original finding because part of the Horangic property would simply be exchanged for superior habitat.

By challenging SAFCA's finding of necessity for mitigation, the Horangic's could be employing a common property owner strategy in eminent domain. It is SAFCA's carefully considered opinion that the Horangic's challenge had no legal merit; its purpose could have been to gain leverage on the issue of compensation; i.e., induce SAFCA to pay more to settle to avoid the expense of defending the right to take the property at trial and the risk that the court might deny SAFCA the right to take. Now that the parties have settled, the Horangics have waived any objection to SAFCA's right to take the property or exchange it with the Airport.

Mr. Chisum is also mistaken insofar as he alleges that the proposed exchange for Airport property would be for Airport expansion. The Airport strongly objects to the use of the Horangic property for habitat under any circumstances. Establishing habitat on the Horangic property in the Airport's view would increase the risk of bird strikes, which would occur regardless of the Airport's construction of a third runway.

The proposed Amended RON was merely to clarify that manner in which SAFCA intended to use a portion of the property for mitigation and would have been valid.

4. NOW SAY YOU HAVE ALSO SOLICITED SOME COMMENTS REGARDING THE FAIRNESS OF THIS PROCESS, WHICH I WOULD LIKE TO BRIEFLY ADDRESS. MY CLIENT HAS REMAINED WILLING TO ENGAGE IN SETTLEMENT NEGOTIATIONS, BUT THIS WAS FLATLY REJECTED, LESS THAN TWO MONTHS AGO, BY AGENCY COUNSEL, WHICH SAID "AT THIS POINT SAFCA IS NOT INTERESTED IN MEDIATION OR ANY OTHER ADR PROCESS." THERE HAS BEEN NO CHANGE COMMUNICATED TO ME SINCE THAT TIME.

4. Response: Agency counsel's statement above needs to be placed in the correct context. On May 19, 2008, at the outset of this eminent domain

action, SAFCA's counsel requested that the Horangic's discuss settlement of the case. At that point, SAFCA had provided the Horangic's with its comparable sales and value conclusion of \$26,000 per acre based on those sales. In response, the Horangic's demanded more than \$46,000 per acre for the property, an extremely high value. The Horangic's, however, failed to reciprocate and provide SAFCA with any market data or other information of any kind to support that value. On July 26, 2008, SAFCA's counsel requested that the Horangic's provide this information and pointed out that meaningful settlement discussions would be fruitless without such information. The Horangics refused to provide any information to support their value.

Instead of exchanging market data with SAFCA, the Horangics failed to cooperate with SAFCA to allow SAFCA's consultants entry to the property for testing and opposed SAFCA's motion for immediate possession of the property. Out of more than 30 properties SAFCA has acquired or is in the process of acquiring for the NLIP thus far, the Horangics have been the only property owner to file a written opposition to SAFCA's motion for immediate possession. Every other property owner has cooperated with SAFCA by either stipulating to immediate possession or not objecting to it. Fortunately, the court granted SAFCA's motion. Had the Horangics been successful in defeating SAFCA's immediate possession, it would have delayed the NLIP and required SAFCA to incur additional costs to work around their property. The Horangic's refusal to provide any basis for their value to SAFCA, their opposition to SAFCA's immediate possession, and their failure to withdraw the deposit in order to preserve their right to challenge SAFCA's right to acquire the property by eminent domain, collectively signaled to Staff and legal counsel that the Horangics were not interested in settlement and wished to proceed to trial.

In an eminent domain action, the parties are required to exchange lists of expert appraisers and statements of valuation data summarizing their appraisals 90 days before trial. When the parties exchanged statements of valuation data in this case in late August 2009, the Horangics immediately proposed mediation. Counsel for SAFCA declined mediation because at that point, the parties had not deposed one another's appraisers to determine the respective credibility of the appraisals. The depositions were scheduled for mid-October and were to be completed one day before the court's Mandatory Settlement Conference (MSC), which is essentially a mediation. The advantage of the MSC, however, is that the mediator is appointed by the court and there is no cost to the parties (private mediation can run up to \$6,000/day). Accordingly, SAFCA reasonably declined the Horangics request to mediate in late August because mediation would have been futile and wasteful prior to the depositions, and because the parties were scheduled for a no-cost court supervised mediation in any event as soon as the parties had taken depositions and thus had enough information to mediate.

5. IT'S TROUBLING IN THAT WHEN YOU ENTERED INTO THE AGREEMENT WITH THE AIRPORT, THERE WAS EXPRESS PROVISION IN THERE, THAT THERE WOULD BE AN EXCHANGE OF APPRAISALS. IF THERE WAS NO AGREEMENT, THERE WOULD BE AN INDEPENDENT APPRAISAL AND THEN THE PARTIES WOULD ENTER INTO MEDIATION.

IT'S TROUBLING THAT A PRIVATE CITIZEN IS TOLD - NO MEDIATION, AND YET WHEN A GOVERNMENT AGENCY IS INVOLVED, APPARENTLY MEDIATION IS APPROPRIATE.

5. Response: There is a distinction between the willing exchange of properties between two cooperating governmental agencies (in this case SAFCA and SCAS) and the eminent domain process which SAFCA must follow in the event that negotiations are not successful. As described in response 4, SAFCA worked in good faith through the eminent domain process, and refused mediation when it was offered for good cause.

6. WE'VE ALSO HAD CONCERNS REGARDING GETTING INFORMATION FROM SAFCA. WE'VE TRIED TO ASK BASIC BUT FACTUAL QUESTIONS, THOSE WERE REFUSED. AS A RESULT THIS AFTERNOON WE HAD TO GO TO COURT ON A MOTION TO COMPEL, TO COMPEL SAFCA STAFF TO PRODUCE BASIC, FACTUAL INFORMATION AND PRODUCE STAFF MEMBERS FOR DEPOSITIONS. THE JUDGE FLATELY REJECTED THE POSITION OF SAFCA'S ATTORNEYS AND DETERMINED THAT SAFCA WRONGLY REFUSED TO ANSWER BASIC QUESTIONS AND WRONGLY REFUSED TO PRODUCE STAFF MEMBERS, INCLUDING THE DIRECTOR AND ENGINEER FOR THEIR DEPOSITIONS.

6. Response: SCHWARTZ...Mr. Chisum is referring to court proceedings, in which SAFCA's attorney legitimately sought to limit discovery to documents and staff members directly relevant to the Horangic property acquisition process. The type of discovery the Horangics sought in their requests is almost never permitted in Eminent Domain action. Nonetheless, in the spirit of cooperation SAFCA produced Mr. Washburn and Mr. Bassett for their depositions and produced more than 7,000 pages of documents to the Horangics in response to the requests. The remaining information the Horangics sought was either duplicative of the information SAFCA already provided, or not admissible in evidence. In granting the Horangic's motion, the court noted that the evidence sought may not be admissible, but he would give the Horangics the benefit of the doubt in case they could turn up something to help their case.

The Horangic's discovery was aimed at putting SAFCA on trial, rather than its appraisal. Because the only issue for trial in an eminent domain action is the fair market value of the property as of the date of value, judges typically do not allow this evidence at trial, requiring the parties to try their appraisals, rather than each other's conduct.

7. COMPENSATIONS IS ANOTHER ISSUE THAT IS OF GREAT CONCERN TO US. AS I SAID, MID-STREAM, THE MANNER IN WHICH SAFCA DETERMINED COMPENSATION WAS CHANGED. IT WENT FROM THE INITIAL APPRAISAL BASED ON HABITAT VALUE OF \$26,000. AND, IN FACT, THAT IS THE OFFER LETTER AND THE APPRAISAL SUMMARY IS WHAT IS INCLUDED IN THIS RESOLUTION AND IN YOUR BOARD PACKET, BUT APPARENTLY THAT IS OFF THE TABLE. INSTEAD, THIS MATTER IS HEADED TO TRIAL AND A NEW APPRAISER WAS BROUGHT IN TO PRODUCE A LOW-BALL OFFER, LESS THAN HALF THE PRIOR APPRAISAL. I THINK IT IS INTERESTING TO NOTE YOUR PRIOR APPRAISAL DONE BY MR. LINDQUIST, CALLING THAT THE LAND BE VALUED AS HABITAT PURPOSES, THAT'S CONSISTENT WITH TWO

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APPRAISALS THE HORANGIC'S HAVE COMMISSIONED, AS WELL AS OTHERS THAT WE'RE AWARE OF.

SO THAT WHERE WE STAND RIGHT NOW IS, YOU HAVE YOUR NEW APPRAISER ON ONE SIDE, YOU HAVE THREE DIFFERENT APPRAISERS ON THE OTHER SIDE, ALL WITHIN THE SAME BALLPARK. SO I SUGGEST YOU CONSIDER WHERE THE WEIGHT OF EXPERT OPINION LIES IN THIS MATTER.

7. Response: See response 2.

8. IT IS ALSO TROUBLING THE WAY THAT THERE WAS A SETTLEMENT REACHED WITH THE DEYOUNG PROPERTY OWNERS, THEY ARE JUST UP THE STREET FROM THE HORANGIC PROPERTY, IT WILL BE USED FOR THE SAME BASIC PURPOSES AS THE HORANGIC PROPERTY. THAT CASE WAS SETTLED BY YOU WITHIN THIS PAST YEAR, BASED UPON THE ORIGINAL APPRAISAL DONE BY MR. LUNDQUIST. IT APPEARS THAT YOUR CURRENT APPRAISER, MR. BLASEY, WAS IN THE PROCESS OF REAPPRAISING THE DEYOUNG PROPERTY AND THAT MOST LIKELY WOULD HAVE RESULTED IN A LOWER VALUE, SIMILAR TO THE HORANGICS. HOWEVER, STAFF DIRECTED MR. BLASEY TO STOP HIS APPRAISAL AND A SETTLEMENT WAS APPROVED BASED UPON THE EARLIER APPRAISAL.

APPARENTLY IT WAS DEEMED THAT WAS IN THE BEST INTEREST OF THE TAXPAYER, IT WAS A FAIR SETTLEMENT AND YET WHEN IT COMES TO CONSIDERATION OF THE HORANGIC PROPERTY - THAT IS COMPLETELY OFF THE TABLE.

8. Response: SAFCA's appraisal of the De Young property was \$29,000 per acre. The appraiser gave the De Young property a higher value per acre than the nearby Horangic property because the De Young property was smaller. Smaller properties are typically value at a higher unit value than larger properties. SAFCA deposited the \$29,000 per acre probable compensation with the State Treasurer. Ms. Christine Binford De Young withdrew the funds on March 5, 2009 and did not oppose SAFCA's right to take the property. Sensing that Ms. De Young was amenable to settlement, in late March 2009, SAFCA reiterated its offer of \$29,000 per acre. Ms. De Young accepted SAFCA's initial offer on May 6, 2009 and SAFCA purchased the property on that basis. Although there had been a growing realization at about this time that the De Young property may not be acceptable to TNBC for HCP mitigation, SAFCA had only the initial appraisal on which to base a settlement with Ms. De Young. More importantly, SAFCA had recently reiterated its offer based on the initial appraisal, and Ms. De Young had accepted it. It would have been unreasonable and inappropriate for SAFCA to renege on a completed agreement. SAFCA makes every effort to honor its commitments.

9. AS I'M SURE COUNSEL HAS TOLD YOU SOME OF THE CONSEQUENCES HERE. IF WE GO TO TRIAL AND A JURY EVEN SPLITS THE DIFFERENCE BETWEEN YOUR CURRENT APPRAISAL, CURRENT OFFER AND WHERE WE ARE AT, THERE IS A VERY REAL POSSIBILITY THAT THE JUDGE WILL ORDER THAT SAFCA PAY NOT ONLY THEIR OWN ATTORNEY FEES, BUT THAT THE JUDGE ALSO ORDER THE AGENCY TO PAY THE HORANGIC'S ATTORNEYS FEES. SO THERE IS A SIGNIFICANT COST INVOLVED TO THE AGENCY PROCEEDING IN THIS MANNER.

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AND, I WOULD JUST LIKE TO SUMMARIZE AND FINISH THIS UP AND I KNOW THE TIME IS SHORT, WE SIMPLY ASK THAT YOU RECONSIDER YOUR POSITION AS TO THESE PROPERTY OWNERS, I URGE YOU TO DIRECT STAFF TO WORK TO RESOLVE THIS MATTER IN A MUTUALLY AGREEABLE MANNER, PERHAPS BY SITTING DOWN IN GOOD FAITH, WITH A SKILLED AND KNOWLEDGEABLE MEDIATOR.

9. Response: SAFCA has worked in good faith to achieve a just settlement with the Horangic family from the beginning of the process. Three separate appraisals have been completed for this acquisition. Each of the opinions of value were dramatically different. SAFCA staff has continued to work in good faith with the Horangics to achieve a settlement, and a settlement has been reached.

THAT YOU SHOULD CERTAINLY KEEP IN MIND THE WEIGHT OF EXPERT OPINION IN THIS MATTER, WHICH IS CONTRARY TO THE CURRENT APPRAISAL. AND THAT YOU CONSIDER THE SETTLEMENT REACHED BY YOU, AS TO THE NEIGHBORING DEYOUNG PROPERTY, WHICH HAS A USE, WHICH IS ALMOST EXACTLY THE SAME AS THE HORANGIC PROPERTY.

THANK YOU.

CHAIR SUSAN PETERS:

ANY QUESTIONS? THANK YOU.

CRAIG HORANGIC.

CRAIG HORANGIC:

10. MADAM CHAIR, MEMBERS OF THE BOARD, I AM REPRESENTING THE HORANGIC FAMILY. SITTING IN THE AUDIENCE IS MY MOTHER AND MY FAMILY. I WOULD LIKE TO TELL YOU WHAT IT'S BEEN LIKE BEING ON THE RECEIVING END OF THIS PARTICULAR CONDEMNATION PROCESS AND WHAT SAFCA STAFF AND HIRED COUNSEL HAS DONE TO MAKE IT AS UNFAIR AND MISERABLE AS POSSIBLE.

SAFCA'S DEALINGS WITH MOM HAVE BEEN DIFFERENT FROM THE DEALINGS WITH OTHER PROPERTY OWNERS AND TRAGICALLY THIS PROCESS HAS TAKEN A TERRIBLE TOLL ON MY MOTHER'S PHYSICAL AND EMOTIONAL HEALTH. FIRST I'D LIKE TO ADDRESS SAFCA'S RATIONALE FOR TAKING MOM'S LAND. IN THE FALL OF 2007 WE WERE TOLD BY TIM WASHBURN THAT SAFCA WAS GOING TO BE IMPROVING THE LEVEE AND WOULD NEED ABOUT 20 ACRES AND A MONTH LATER WE WERE TOLD BY SAFCA THEY REALLY NEEDED MORE LAND, WEEKS AFTER THAT WE WERE TOLD THEY'D BE TAKING ALL OF MOM'S LAND IN ORDER TO WIDEN THE LEVEE, TO BUILD A GARTER SNAKE CHANNEL AND FOR MITIGATION.

10. See response to 1.

11. THE NEXT THING WE KNEW, WITHOUT OUR KNOWLEDGE, SAFCA WAS TALKING TO OUR FARMER AND OUR TENANT, ENCOURAGED THEM TO CEASE OPERATIONS AND MOVE. MOM WAS OBVIOUSLY CONCERNED ABOUT THE LOSS OF INCOME, SO SAFCA'S AGENTS AT THE TIME, COMMITTED IN WRITING, TO PAY HER LOST RENT. ALTHOUGH PROMISED, SHE HASN'T RECEIVED A PENNY.

11. Response: SAFCA only encouraged the Horangic's farmer tenant to move by the date of SAFCA's immediate possession on August 22, 2008, when SAFCA needed the property to start work on the project. SAFCA

allowed the farmer to continue harvesting alfalfa up to August 22 without any interference. (SAFCA and the farmer agreed on the farmer's future crop loss, and SAFCA has paid the farmer.) From that date that SAFCA took possession of the property, August 22, 2008, up to a judgment, the Horangics are entitled to interest on the compensation to be awarded in the eminent domain action. Under California's Eminent Domain Law, the interest on the compensation and the right to immediately withdraw the compensation on deposit substitute for lost rent and make the property owner whole. The settlement with the Horangics included an amount for this interest, so the Horangic's have been compensated for 100% of any lost rental income.

The Horangics have alleged that their *residential* tenant moved from the property before SAFCA needed the property for the project, and that SAFCA caused such premature move. The Horangics have never presented any evidence to SAFCA to support that claim. SAFCA's relocation contact records show that the residential tenant had moved from the property prior to any contact from SAFCA's consultants. The lost rent, if any, is negligible in any event and has been fully compensated in the settlement.

12. IN MARCH 2008, MOM SPOKE TO THE BOARD WHEN IT CONSIDERED THE ORIGINAL RESOLUTION OF NECESSITY. SHE MADE THREE POINTS. SHE SUPPORTED THE FLOOD CONTROL EFFORTS AND SHE UNDERSTOOD THE NEED TO TAKE SOME OF HER LAND. SHE PROTESTED THE DISRESPECTFUL TREATMENT SHE'D BEEN SUBJECTED TO AND SHE STATED SHE DIDN'T UNDERSTAND THE NEED TO TAKE ALL OF HER LAND.

12. Response: According to the transcript from the March 20, 2008 meeting, Ms. Horangic stated in part, "...Now with the crisis of the levee situation it is understandable taking a portion of this land immediately. But, and this is the key thing for me, the break down of the remaining land is what is difficult to accept. I feel this is convenient, uncaring, and a lack of regard for the property owner." It is noteworthy that Ms. Horangic cites no specific example of disrespectful treatment. She interprets SAFCA's determination that it needs full take to be basis for her assertion that SAFCA is "uncaring and lack regard for the property owner. Craig Horangic testified at the same meeting that "this process has not only been insensitive, but it has been disrespectful to us." He cites the haste of the process, the changing take lines, the issue of the land's suitability for mitigation, his concern that water rights were not appropriately accounted for, and the offer SAFCA made for the land. Mr. Horangic's testimony reflects the fact that SAFCA staff freely communicated with the Horangics regarding the evolving planning and design process from the earliest opportunity. Obviously there is a tradeoff between open, early communication and finality in terms of SAFCA's needs. Mr. Buer explained the urgency of the project and the need to conduct parallel actions on project design and right-of-way acquisition in order to keep the process from dragging on for years and years.

13. MR. BASSETT AND MR. BUER EXPLAINED THAT THE PROPERTY WAS NEEDED FOR MITIGATION AND WITHOUT IT, WE WERE TOLD, SAFCA WOULD HAVE TO

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QUICKLY ACQUIRE OTHER MITIGATION LAND THAT THE PROPERTY WAS NEEDED TO ADDRESS ENDANGERED SPECIES CONCERNED AND THAT FAILURE TO ACQUIRE LAND WOULD RESULT IN AN EXTENSION OF ENDANGERED SPECIES CONSULTATIONS, WHICH WOULD DELAY THE ENTIRE PROJECT.

13. Response: Mr. Bassett explained in the March 20, 2008 meeting the specific technical reasons for the property take requested in the RON, which were based on the location of the property relative to the Airport and the levee system.

14. OUR ATTORNEY CHALLENGED THE MOTIVATION FOR THE TAKE AND SUGGESTED THAT THE REAL REASON FOR THE TAKE MIGHT BE FOR FUTURE AIRPORT EXPANSION. SUPERVISOR DICKINSON ASKED MR. BASSETT FOR CLARIFICATION ABOUT THE AIRPORT'S ROLE ASKING IF HIS UNDERSTANDING WAS CORRECT AND I QUOTE "THAT THERE WAS NO CONNECTION BETWEEN AIRPORT EXPANSION AND THIS ACQUISITION, IS MY IMPRESSION MISTAKEN?" MR. BASSETT REPLIED AND AGAIN I QUOTE "NO YOU ARE NOT MISTAKEN. THESE TWO PARCELS ARE NOT IN THE AIRPORT'S REALM OF ACQUISITIONS, THEY ARE PROPOSING."

14. Response: The quoted exchange is incomplete. According to the meeting transcript, the actual exchange was as follows:

"Director Dickinson: To my knowledge here, there is no connection between the airport expansion, or terminal modernization program and this acquisition for mitigation purposes. Is my impression mistaken?

Mr. Bassett: No, it is not mistaken. If you actually look at the airport's master plan document, the last one that I have seen, these two parcels are not in the airport's realm of acquisitions that they are proposing. So this is...

Director Dickinson: Okay. I didn't know if I misheard or misunderstood that comment but if it...

Mr. Bassett: I think Mr. Churchill made that implication."

The proposed exchange of a part of the Horangic property for Airport property was not to facilitate expansion of the Airport, but rather to obtain for SAFCA superior mitigation property and to accommodate the Airport's desire that the Horangic property not be developed with habitat that might attract birds.

15. WE WERE HORRIFIED TO LEARN IN DISCOVERY THAT A FORMAL DEAL FOR SAFCA TO SELL MOM'S LAND TO THE AIRPORT WAS APPARENTLY IN THE WORKS JUST ABOUT THE SAME TIME. A WHITE PAPER PRESENTED TO THE BOARD IN DECEMBER OF 2008 STATES AND AGAIN I QUOTE "IN MARCH 2008, THE TWO AGENCIES, SACRAMENTO COUNTY AIRPORT AND SAFCA, COOPERATED IN PRODUCING A DRAFT WHITE PAPER. THE ARRANGEMENT WOULD ALLOW FOR THE SACRAMENTO COUNTY AIRPORT AND SAFCA TO INCORPORATE A LAND EXCHANGE COMPONENT THAT WILL FACILITATE THE LONG-TERM OPERATION AND MAINTENANCE NEEDS OF THE AIRPORT.

AN EMAIL FROM SACRAMENTO COUNTY AIRPORT AUTHORITY DATED APRIL 23rd, 2008, FIVE WEEKS AFTER THE CONDEMNATION DISCUSSES THE SALE OF MOM'S LAND, NOTING THAT THEY HAD BEEN DISCUSSING IT WITH SAFCA FOR SEVERAL

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WEEKS. SO NOW WE UNDERSTAND THAT ALTHOUGH MR. BUER AND MR. BASSETT CLEARLY STATED TO THE BOARD THAT MOM'S LAND WAS NEEDED FOR HABITAT MITIGATION AND THERE WAS NO AIRPORT CONNECTION, THEY WERE IN DISCUSSIONS WITH THE AIRPORT TO SELL MOM'S LAND FOR FUTURE AIRPORT EXPANSION DAYS AFTER THE CONDEMNATION. DIRECTLY CONTRARY TO WHAT SAFCA STAFF SAID IN RESPONSE TO MR. DICKINSON'S VERY POINTED QUESTION.

I GUESS WE'RE SUPPOSED TO BELIEVE THAT THE IDEA OF THE LAND SWAP CAME TO SAFCA STAFF AS THEY WERE WALKING BACK TO THEIR OFFICES, FROM THE MARCH 2008 BOARD MEETING.

15. Response: As the documents produced in discovery demonstrate, the concept of a land swap with the Airport had not been conceived at the time of the March 20, 2008 RON action. As documented in Item 6 of the November 13 SAFCA Board meeting materials, the subsequently identified opportunity to simultaneously advance the public safety goals and habitat mitigation needs of both SAFCA and SCAS represents good planning and in no way negates the original justification for the Horangic property RON.

16. JUST A COUPLE OF WEEKS AGO WE FOUND OUT SAFCA WAS GOING TO AMEND ITS ORIGINAL RESOLUTION OF NECESSITY, BUT WE WERE LEFT IN THE DARK UNTIL JUST YESTERDAY ABOUT THE NATURE OF THE AMENDMENT. THE UNCERTAINTY HAS BEEN EXTREMELY STRESSFUL. SO YESTERDAY WE LEARNED THAT THE SPECIFICS OF THE NEW RESOLUTION, REASON FOR THE CONDEMNATION, A YEAR AND A HALF AFTER THE FIRST RESOLUTION AND THREE DAYS BEFORE OUR SCHEDULED TRIAL DATE, WAS AN AMENDMENT DESIGNED TO LEGALLY COVER SAFCA STAFF'S DECEPTION AND ABUSE OF THE EMINENT DOMAIN PROCESS.

16. Response: As discussed under Response 3, the original RON is fully legally sufficient to initiate the eminent domain process. Staff presented the amended RON in order to clarify for the Board the manner in which SAFCA intended to use a portion of the property, provide the Board with an opportunity to review the history and status of the Horangic property acquisition process in the context of the overall NLIP program planning process, and allow the Board an opportunity to provide additional policy guidance to staff if it so chose.

17. BOTH MOM AND THIS BOARD HAVE BEEN DECEIVED. IT'S CRITICAL THAT I MENTION THE LAND VALUE BECAUSE IT IS INTERWOVEN WITH THE REASONS FOR THE TAKE. IN EARLY 2008, WE AGAIN MET WITH SAFCA STAFF AT THE RANCH AND THIS TIME SAFCA'S APPRAISER JOINED US. MR. LUNDQUIST DETERMINED THAT THE PROPERTY'S HIGHEST AND BEST USE WAS MITIGATION, BUT HE CAME UP WITH WHAT WE THOUGHT WAS AN EXPLOITABLY LOW VALUE, SOME \$26,000/ACRE. NEVERTHELESS, FUNDS BASED ON THAT APPRAISAL WERE DEPOSITED IN THE STATE TREASUREY FOR MOM.

WE OF COURSE HIRED OUR OWN APPRAISERS, WHO DETERMINED A MUCH HIGHER VALUE, SOME \$36,000 PER ACRE. WE ASSUMED WE COULD NEGOTIATE AND FIND A MIDDLE VALUE.

OF COURSE THE LEGALLY REQUIRED REIMBURSEMENT FOR OUR APPRAISAL WAS NEVER MADE BY SAFCA.

17. Response: To date the Horangics have not submitted a request for payment. Under the law, SAFCA can not reimburse the Horangics in the absence of such a request, with adequate supporting documentation. The requirements for reimbursement of an independent appraisal are clearly outlined in the initial offer letter presented to the property owner.

18. WE WERE TOLD NEGOTIATION IS A STANDARD PROCEDURE IN THESE MATTERS, BUT SAFCA HAS REFUSED. NEARLY A YEAR WENT BY WITH NO RESPONSE TO OUR REPEATED OVERTURES.

18. Response: SAFCA's representatives have sought to negotiate in good faith with the Horangics throughout the history of this action, as documented in the Negotiator's Diary (Attachment D, Item 6, SAFCA Board Agenda of November 13, 2009) and as further described under Response 4.

19. IN APRIL 2008 YOU PAID OUR NEIGHBOR, CHRISTINE DEYOUNG, WHO OWNED THE OTHER PROPERTY BEING SOLD TO THE AIRPORT, \$29,000 PER ACRE. IT SHOULD COME AS NO SURPRISE THAT I DISCUSSED THE MATTER WITH CHRIS, PARTICULARLY ABOUT HER DECISION TO ACCEPT SAFCA'S OFFER. SHE WAS TERRIBLY DISTRESSED ABOUT WHAT SHE DESCRIBED AS BEING ROBBED BY SAFCA, BUT SHE SAID HER OAKLAND-BASED ATTORNEY, ETHAN FRIEDMAN, ADVISED HER TO ACCEPT THIS OFFER. IF SHE DIDN'T, SHE WAS TOLD SAFCA WAS GOING TO PLAY HARDBALL. I THOUGHT CHRIS WAS TOO TIMID TO STAND UP FOR HER RIGHTS, BUT IN HIND SIGHT I SUSPECT ATTORNEY SCHWARTZ TOLD HIS BAY AREA COLLEAGUE ABOUT WHAT WAS IN THE WORKS.

19. Response: The allegation that Andrew Schwartz told Ethan Friedman that SAFCA "would play hardball" is false. Mr. Schwartz did tell Ms. De Young's attorney that, in his view, SAFCA's offer of \$29,000 per acre was generous in light of recent information that property values in the Natomas Basin had declined more than had previously been believed. Mr. Friedman presumably subsequently advised Ms. De Young to accept SAFCA's offer because Mr. Friedman agreed that Ms. De Young was not likely to obtain more than that amount at trial.

20. SO THEN OUT OF THE BLUE, SAFCA DECIDED TO REAPPRAISE MOM'S PROPERTY AND IF THAT WASN'T ENOUGH, THEY DECIDED TO CHANGE THE HIGHEST AND BEST DETERMINATION. SAFCA'S HAS ONLY MADE SURE - SAFCA HAS ONLY REAPPRAISED ONE OTHER PROPERTY, THE LAUPPES, BUT NO ONE OTHER THAN MOM HAS HAD THE HIGHEST AND BEST USE CHANGED AND THE VALUE DRAMATICALLY LOWERED. THE NEW VALUE WAS LESS THAN HALF OF THE FIRST VALUE, AND NOW THE LAND WAS NO LONGER SUITABLE FOR MITIGATION. NOW IT'S JUST SUITABLE FOR AGRICULTURE OR IS IT AIRPORT EXPANSION. AND NOW IT'S ONLY WORTH \$12,000 AN ACRE, BUT BACK IN 2008, DURING THE RESOLUTION OF NECESSITY PRESENTATION YOUR STAFF TOLD YOU THE PROJECT WAS HANGING IN THE BALANCE. THE LAND WAS DESPERATELY NEEDED TO MITIGATE THE PROJECT AND WITHOUT IT, SAFCA RISKED A CATASTROPHIC EXTENSION OF THE ENDANGERED SPECIES CONSULTATIONS.

SAFCA IS NOW CLEARLY MISREPRESENTING THE HIGHEST AND BEST USE OF THE LAND. A USE THEY THEMSELVES ESTABLISHED, TO SAVE A MILLION DOLLARS, AT MOM'S EXPENSE. THIS IS A PRETTY RUTHLESS MOVE. WE HAD NO IDEA THAT A DECREASE IN VALUE, OR THAT A DECREASE IN THE OFFER WAS EVEN A

POSSIBILITY. WE'RE TOLD BY EVERY EMINENT DOMAIN ATTORNEY WE'VE HAVE SPOKEN TO, THAT THEY HAVE NEVER WITNESSED ANYTHING LIKE THIS. SAFCA'S NEW ARRAYSOR HAD TO GO TO SUTTER COUNTY TO COME UP WITH A LOW-BALL COMPARISON AND HAD TO IGNORE MULTIPLE SALES CLOSE TO MOM'S LAND THAT UNDERMINED HIS CONCLUSION.

20. Response: The sequence of events related to the Horangic appraisal is described in Response 2, with further context provided by SAFCA Board Agenda Item 19, December 10, 2009. SAFCA's independent pre-eminent domain appraisal was completed in the Fall of 2007. A formal offer was presented to the Horangics shortly thereafter. Unfortunately, SAFCA and the Horangics were unable to reach a settlement.

The Horangic's theory that going to litigation would increase the value of SAFCA's appraisal was not correct. A more experienced appraiser was chosen as an expert witness for the eminent domain portion of the acquisition. The new appraiser established a separate, independent opinion of value that differed from the pre-eminent domain appraisal. The difference in values is directly attributed to the availability of additional information as to TNBC's priorities and a difference in opinions as to the highest and best use between the pre-eminent domain appraisal and the trial appraisal. The trial appraiser's opinion of highest and best use was based on months of research. The appraiser discussed the property with County Planning, the Airport, and TNBC. He reviewed the HCP and the Joint Vision Plan, and discussed every sale with individuals involved in each transaction. At no time did SAFCA staff or its counsel attempt to influence or instruct the trial appraiser to change his opinion of highest and best use or opinion of value.

The trial appraiser used several land sales from outside the Natomas Basin to establish his opinion of value because, due to the recession, there has been very little market activity inside the Natomas Basin since 2005. The appraiser made a strong case that these sales were comparable because prices paid for agricultural land are not as sensitive to location as land with other highest and best use.

21. SAFCA'S STAFF CLAIMED THAT THEY WERE JUST DOING WHAT IS RIGHT FOR THE TAXPAYER, IS TRULY A DECEPTION. IF THAT WERE THE CASE, IF YOU TRULY BELIEVED THE FIRST AMOUNT WAS AN ERROR, WHY WOULD YOU PAY DEYOUNG THE \$29,000 PER ACRE VALUE? I DON'T THINK THE TAXPAYERS EXPECT THE GOVERNMENT TO CHEAT LANDOWNERS SO THAT SAVINGS COULD BE SWEEPED INTO THE PUBLIC COFFERS. TO CALL THIS PROCESS BADLY BUNGELED IS GENEROUS. SAFCA'S ACTIONS HAS BEEN REPREHENSABLE BOTH WITH RESPECT TO BOTH THE TAKE AND THE VALUATION. YOU HAVE SINGLED MOM OUT FOR PARTICULARLY HARSH TREATMENT, NO OTHER LAND HAS HAD AN APPRAISAL REVISED DOWNWARD BY MORE THAN 50%. NO OTHER LAND WAS TAKEN FOR THE PURPOSE OF MITIGATION AND THEN SAID NOT TO BE SUITABLE FOR MITIGATION FOR VALUATION PURPOSES. NO OTHER LANDOWNER WAS APPARENTLY LIED TO ABOUT THE REASON FOR THE TAKE AND THEN HAD TO REASON FOR THE TAKING OF THE LAND OFFICIALLY AMENDED A YEAR AND A HALF AFTER THE INITIAL CONDEMNATION AND THEN ONLY AFTER THE TRUTH CAME OUT IN THE DISCOVERY PROCESS.

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YOUR AGENTS ARE ENGAGING IN EVERY LEGAL MANIPULATION POSSIBLE TO HIDE THE FACTS FROM BOTH US AND A POTENTIAL JURY TO COVER THEIR TRACKS. SAFCA HAS CHANGED DIRECTION AGAIN AND AGAIN AND IT JOCKEYS FOR POSITION AND MOM IS PUT THROUGH THE WRINGER EACH TIME AN ANXIETY-PROVOKING CHANGE IS MADE. SO HERE WE ARE, FIGHTING FOR OUR RIGHTS AND HIRING LAWYERS AND EXPERTS IN DISCOVERY AND GOING TO COURT TO FORCE SAFCA TO RESPOND TO DISCOVERY REQUESTS AND SPENDING TENS OF THOUSANDS OF DOLLARS TO DEAL WITH SAFCA'S LACK OF INTEGRITY. THE SADDEST PART IS THAT MOM IS SUFFERING FROM A TERRIBLY SERIOUS HEALTH ISSUE AND INSTEAD OF SPENDING PEACEFUL TIME WITH HER FAMILY, WE'RE DEALING WITH THIS ISSUE.

IN CONCLUSION THE TAXPAYERS AND CITIZENS DESERVE INTEGRITY FROM THEIR GOVERNMENT, SAFCA HAS FALLEN FAR SHORT OF THAT EXPECTATION. YOU EXPRESS CONFIDENCE THAT THE MATTER OF VALUATION WILL BE WORKED OUT IN COURT, BUT YOUR'S STAFF IS DOING EVERYTHING IT CAN TO MAKE SURE THAT A JURY DOESN'T HEAR ANYTHING ABOUT THE BACKROOM MANUEVERS, HIDING THE FIRST APPRAISAL AND OFFER; HIDING YOUR INTENDED USE; HIDING THE FACT THAT THE TAKE WAS INITIALLY FOR MITIGATION; HIDING THE AIRPORT DEAL.

THERE IS ABSOLUTELY NO INTEGRITY OR FAIRNESS IN ANY OF THAT. WE SIMPLY ASK THAT YOU TREAT MOM NO DIFFERENTLY THAN YOU TREATED CHRISTINE DEYOUNG, AFTER ALL, HER LAND IS ALSO BEING SOLD TO THE AIRPORT. IF THAT WASN'T A VIOLATION OF YOUR OBLIGATION TO THE TAXPAYER, TO PAY CHRISTINE DEYOUNG \$29,000/ACRE, LAND NEARLY IDENTICAL TO MOM'S AND ONLY SEPERATED BY A SINGLE PARCEL, IT'S CERTAINLY FAIR TO DO THE SAME FOR MOM.

THANK YOU FOR YOUR TIME.

21. Response: The allegations of deception and unfair dealings are simply false. The March 20, 2008 RON was accurate and complete at the time the Board acted on it. As SAFCA's records indicate, our appraisers, land agents, attorneys, and managers have sought to achieve a fair and speedy resolution to the Horangic property acquisition process. The challenges of a rapidly moving planning and design process and a complex, declining real-estate process, the specific issues related to the location of the Horangic property near the Airport, and the Horangics' unwillingness to share meaningful information in support of negotiations prior to trial have made this acquisition particularly difficult. Staff responses 1-20, plus documents produced in discovery demonstrate that SAFCA has worked in good faith throughout this process.

CHAIR SUSAN PETERS:

MR. HORANGIC, THANK YOU. YOU HAVE SENT SEVERAL LETTERS AND I THINK AT THE LEAST THIS PROCESS HAS BEEN EXTREMELY CONFUSING, AND THERE ARE A LOT OF THINGS THAT HAVE CHANGED IN THE AMOUNT OF TIME THAT HAS GONE ON SINCE THE BEGINNING AND TODAY AND I HOPE THAT NEGOTIATIONS IN THE NEXT MONTH WILL SOLVE SOME OF THESE PROBLEMS.

CRAIG HORANGIC:

I HOPE SO. THANK YOU.

MR. BUER, MR. WASHBURN, DO YOU HAVE ANY COMMENT?

STEIN BUER:

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I WOULD LIKE TO MAKE ONE COMMENT. I THINK AS YOU SAID, MADAM CHAIR, THE FACTS OF THIS CASE INDICATE THAT THERE HAS BEEN SOME UPS AND DOWNS IN TERMS OF APPRAISALS AND THERE HAS BEEN A LOT OF UNCERTAINTY IN THE PROCESS. THIS IS A RAPIDLY EVOLVING PROGRAM, AND THE ASSUMPTIONS MADE BY THE HORANGIC FAMILY THAT EACH AND EVERY TWIST AND TURN IS BASED ON A CONSPIRACY BY SAFCA STAFF IS SIMPLY WRONG. IT IS TRUE THAT A LOT OF THINGS HAVE CHANGED AND THAT WE HAVE HAD AN EVOLVING PROCESS, BUT I WANT TO ASSURE THIS BOARD THAT WE'RE ACTING IN GOOD FAITH AND TRYING TO BRING A RESOLUTION TO THIS SITUATION.