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October 17, 2011

VIA ELECTRONIC MAIL & HAND DELIVERY

Department of Water Resources
California Water Commission
P.O. Box 942836
Sacramento, California 94236-001
cwc@water.ca.gov

Re: Negotiation Status Update For Islands, Inc.

Honorable Commission Members:

The Department of Water Resources (DWR) has submitted a "Negotiation Fact Sheet" which purports to summarize the history and present status of its negotiations with Islands, Inc. for acquisition of easements to conduct subsurface explorations. Because the DWR's "Fact Sheet" appears to omit or mischaracterize some aspects of these negotiations, for the benefit of the Commission, Islands, Inc. hereby provides the following response and clarification.

Following the Commission's last meeting on September 21, 2011, Islands, Inc. and the DWR have continued to negotiate terms under which the DWR may conduct its desired subsurface explorations on the Islands, Inc. property identified as both Assessor's Parcel No. 0177-040-040 and DWR Parcel No. DCAS-506. Through an October 4, 2011 letter from its land agent, Mr. Daniel Vasquez, the DWR has affirmed its willingness to forego the 16-square-foot permanent easement originally requested in favor of a similarly-sized temporary non-exclusive easement. This is a preferable alternative for Islands, Inc. and the DWR's written commitment to it has moved negotiations meaningfully closer towards an agreement. As the DWR appears to acknowledge, however, there are still several obstacles that must be overcome before a final agreement can be reached.

First, the DWR has not identified an exact location for the easements. In its October 4, 2011 offer, the DWR provided revised contract terms for the temporary non-exclusive drill hole easement, the temporary construction easement, and the temporary access easement, but did not include documentation describing where these easements would be located. The DWR subsequently provided Islands, Inc. with a map labeled "Exhibit A" that appears to depict the general location of the proposed easements as being near the border of a crop field and a Ryer Island levee. Unfortunately, the "Exhibit A" map is of insufficient scale. As is apparent from the copy of the original map and the enlargement enclosed with this letter, "Exhibit A" lacks sufficient precision to adequately describe the true boundaries of the proposed easements. On October 11, 2011, Islands, Inc. requested but has not yet received a legal description of the proposed easements. This fact is not mentioned in the DWR's "Fact Sheet." While the location reflected on the DWR's map appears unlikely to result in major obstruction of crop land, without a precise description of the easement boundaries, this is a matter of mere speculation. Property

owners cannot be expected to agree to a proposed easement without being informed of its precise boundaries by use of a legal description.

Second, the DWR has thus far been unable or unwilling to specify adequately when it plans to make use of the easements. In its "Fact Sheet," the DWR alludes that it has "already made time frame modifications to the contract," but I am unaware of any specific evidence in the written documents supporting this claim. The DWR's most recent offer on October 4, 2011 still seeks access for 14 days occurring anytime between May and October of both 2012 and 2013. Because the DWR could exercise its access rights at any time, under those terms Islands, Inc. would have to plan on being unable to plant crops in the easement areas during each 6-month period. Moreover, due to the seasonal timing of the 6-month periods, the DWR's proposal would effectively take the easement areas out of production for a full two years. Again, because Islands, Inc. has not been provided with the exact boundaries of the DWR's proposed easements, Islands, Inc. cannot accurately determine whether and to what extent this result will be problematic. Further, as Islands, Inc. has made clear in its discussions with the DWR and in its communications with this Commission, such a large window of uncertainty not only substantially increases the potential disruption to Islands, Inc.'s agricultural operations, it also appears to exceed the scope of what should be reasonably necessary for the mere 14 days of access that the DWR estimates its explorations would at most require.

Third, as noted at the Commission's September 21, 2011 meeting, Islands, Inc. has exercised its right under Code of Civil Procedure section 1263.025(a) to receive a state-funded independent appraisal of the property at issue. Since that meeting, the DWR has provided Islands, Inc. with the necessary paperwork to obtain the appraisal. However, because the DWR has not specified the boundaries of the proposed easements, the DWR has not provided sufficient information for an appraisal to actually occur. As Mr. Vasquez acknowledged during his discussion with Islands, Inc.'s counsel on October 11, 2011, it is difficult to appraise the value of property rights when one does not know exactly what property is to be evaluated. Allowing Islands, Inc. the opportunity to obtain and contemplate the results of an independent appraisal is a necessary component of the DWR's obligation under Government Code section 7267.1 to make "every reasonable effort" at acquisition via negotiated sale.

Fourth, also as noted at the September 21, 2011 meeting, the DWR appears to be requesting an easement over property that is subject to a pre-existing easement held by Reclamation District 501 for maintenance of Ryer Island levees. This raises the potential for conflict between the DWR's subsurface exploration activities and Reclamation District 501's levee maintenance objectives, particularly given that the proposed drill site itself appears to be located at the foot of a levee. Ultimately this is an issue to be resolved through discussions with Reclamation District 501 and not Islands, Inc. However, to my knowledge this issue has not yet been resolved to the satisfaction of Reclamation District 501, and thus it remains a matter of concern for Islands, Inc., as well.

While some progress has been made, statutory procedures for fair valuation of the property rights at issue still have not been completed, and negotiations remain ongoing as to the timing and location of the temporary easements. Until the DWR articulates in writing exactly what it wants, a final agreement cannot be achieved. Nonetheless, Islands, Inc. remains optimistic that mutually acceptable terms for temporary easements can and will be reached in the near future. Islands, Inc. does not agree with the DWR's pessimistic conclusion that an immediate resort to

eminent domain is necessary. If negotiations truly are at an impasse, it is only because the DWR has decided not to strictly adhere to its statutory obligations. Accordingly, Islands, Inc. respectfully urges that the Commission not grant the DWR's request to adopt a Resolution of Necessity at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy D. Findley". The signature is fluid and cursive, with the first name being the most prominent.

Timothy D. Findley

Enclosures:

Delta Habitat Conservation and Conveyance Program Exhibit A
Enlargement of proposed easement shown in "Exhibit A"

cc: Tom Hester, Islands, Inc.
Theodore A. Kolb, Esq.
Michael J. Van Zandt, Esq.
Sophia B. Belloli, Esq.



- Temporary 10' Wide Access Road (2,290 sq ft)
- Temporary Construction Easement (10,000 sq ft)
- 4'x4' Drill Hole Easement

0177-040-040
DCAS-506



N.T.S.

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
DIVISION OF ENGINEERING - GEODETIC BRANCH

This exhibit does not represent a Survey and is for informational purposes only

Solano County

DELTA HABITAT CONSERVATION AND CONVEYANCE PROGRAM EXHIBIT A



Enlargement of: Delta Habitat Conservation and Conveyance Program Exhibit A