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MEETING  
STATE LANDS COMMISSION

STATE CAPITOL  
ROOM 6028  
SACRAMENTO, CALIFORNIA

ORIGINAL

TUESDAY, JULY 17, 1979  
10:00 A.M.

Cathleen Slocum, C.S.R.  
License No. 2822

**PETERS SHORTHAND REPORTING CORPORATION**

7700 COLLEGE TOWN DRIVE, SUITE 1209  
SACRAMENTO, CALIFORNIA 95828  
TELEPHONE (916) 383-3601

MEMBERS PRESENT

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- Mr. Kenneth Cory, State Controller, Chairperson
- Mr. Sheldon H. Lytton, representing Mike Curb,  
Lieutenant Governor
- Mr. Roy M. Bell, representing Richard T. Silberman,  
Director of Finance

MEMBERS ABSENT

NONE

STAFF PRESENT

- Mr. William Northrop, Executive Officer
- Mr. Robert C. Hight
- Mr. James Trout
- Mr. Jim De La Cruz
- Mr. Dave Hadly
- Ms. Diane Jones, Secretary

ALSO PRESENT

- Mr. Jan Stevens, Assistant Attorney General

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Agenda Item 4 - Decon Corporation; reinstatement and consent to assign and amend a commercial lease covering .61 acre parcel of tide and submerged land in Sunset Bay; Orange County

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Louis E. Oranzas

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Agenda Items 13, 14 and 15

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Adjournment

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Certificate of Reporter

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P R O C E E D I N G S

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CHAIRPERSON CORY: We'll call the meeting to order, and Mr. Bell is on his way.

We might as well start with some of our housekeeping chores.

Are there any corrections or additions to the minutes of the meeting of June 27th?

Hearing none, they'll be approved as presented.

We have a report of the Executive Officer.

EXECUTIVE OFFICER NORTHROP: Thank you, Mr. Chairman.

On July 6, 1979, the Department of Water Resources Sutter Maintenance Yard, advised the staff of the State Lands Commission of their intent to construct a temporary cofferdam in Butte Creek at its confluence with the Sacramento River in Sutter County.

The coffer dam will consist of 400 cubic yards of combined silt and clay excavated from within Butte Creek. The coffer dam will be constructed for approximately 30 days.

The purpose of the coffer dam is to create an area that can be dewatered to allow for inspection and repair of six five-foot diameter existing flap gates. Upon completion of the repairs, the cofferdam will be removed

1 from the waterway.

2 The Department of Water Resources is currently  
3 seeking immediate authorization from the State Lands  
4 Commission to construct the coffer dam in order to complete  
5 the necessary repairs prior to the draining of a number of  
6 rice fields which utilize Butte Creek. DWR has received  
7 a steamed alteration permit from the Department of Fish  
8 and Game, as well as a permit from the Corps of Engineers.  
9 The project is exempt from CEQA in that it is an emergency,  
10 as well as only a minor alteration to the land.

11 With your consent, we will advise Water Resources  
12 of approval to construct the coffer dam.

13 CHAIRPERSON CORY: Okay.

14 EXECUTIVE OFFICER NORTHROP: Thank you very kindly  
15 Mr. Chairman.

16 The second one, likewise, is urgency of the  
17 immediate. Shorecliff Properties, Incorporated, proposes  
18 to perform emergency protective structure work at the base  
19 of the Oceanside Cliff fronting its commercial property  
20 near Pismo Beach.

21 Erosion of the cliff during periods of high tide,  
22 especially during the 1978 severe winter storms, has  
23 continued to undermine the areas underlying the upland  
24 facilities.

25 The applicant has been most cooperative in

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1 providing staff with requested information, including  
 2 permit application, fees, environmental information, plans  
 3 and specifications. Staff only recently was able to advise  
 4 the applicant of permit requirements; however, the  
 5 applicant's consulting engineers advise that work must be  
 6 done immediately to ensure installation prior to next  
 7 winter's storms. Construction must begin by August 1st.

8 Staff has reviewed plans for the proposed  
 9 protective structures and concurs in the need for such  
 10 protection. The Coastal Commission has issued a permit  
 11 contingent on the applicant receiving State Lands Commission  
 12 approval. The Corps of Engineers, Fish and Game, City of  
 13 Pismo Beach, the County of San Luis Obispo, and the Office  
 14 of Historic Preservation have reviewed the project and none  
 15 of the agencies have had any adverse comments.

16 In that protective work must be completed prior  
 17 to this coming winter, staff requests permission to issue a  
 18 letter authorizing applicant entry on State lands to  
 19 proceed immediately with the project work while staff is  
 20 processing the required State Lands Commission permit.

21 We ask your approval on that project.

22 MR. LYTTON: One question. Every one of the  
 23 entities you mentioned approves this work or has no  
 24 objection?

25 EXECUTIVE OFFICER NORTHROP: They have no

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objection. In some cases --

CHAIRPERSON CORY: You have a sentence in here that I'm not sure I understand. "Staff only recently was able to advise the applicant of permit requirements..." What precluded you from advising them until recently?

EXECUTIVE OFFICER NORTHROP: We really weren't sure -- Jim, you want to talk to the scope?

MR. TROUT: Mr. Northrop is correct. The basic problem was that we were trying to analyze the design and its effect on the natural location of the shoreline and where the actual boundary was. That was our big problem. It was only recently that our engineers doing the coast and beach erosion stuff were able to find exactly where the boundary was and determine the effect on the project. The bulk of it is, I believe, is upland of the State land, the State boundary.

CHAIRPERSON CORY: Any questions?

EXECUTIVE OFFICER NORTHROP: Les Grimes from the staff.

MR. GRIMES: Only one-tenth of an acre we've been able to come up with would be on State lands.

CHAIRPERSON CORY: Any further questions?

MR. STEVENS: May I simply clarify the status. In effect, I believe you'd be authorizing an emergency permit since you're authorizing work to commence immediately



1 and any work done pursuant to this letter is validly done  
2 and cannot be undone. So it's in effect a delegation to  
3 the staff to issue an emergency permit.

4 MR. LYTTON: Under the circumstances, I have no  
5 objection.

6 MR. BELL: I have none.

7 CHAIRPERSON CORY: Okay.

8 EXECUTIVE OFFICER NORTHROP: Thank you very  
9 kindly.

10 Staff has been working with an applicant, Edwin M.  
11 Kado, on the issuance of a permit for bank protection at  
12 the applicant's residence along the Garden Highway adjacent  
13 to the Sacramento River. The applicant contracted with  
14 Basalt Rock Company to place riprap along his property upon  
15 completion of a Corps of Engineers' project upstream from  
16 the applicant's residence. Basalt has completed the Corps  
17 project ahead of schedule and wants to begin the applicant's  
18 project. Because no negative comments were received on the  
19 Corps' public notice, the applicant will receive a Corps of  
20 Engineers permit for his project this week. The applicant  
21 has cooperated with staff and supplied staff with an  
22 application, together with appropriate filing and processing  
23 fees.

24 Applicant has requested that he be allowed to  
25 begin his bank protection project prior to finalizing of a

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1 State Lands Commission permit so that he can realize  
2 substantial savings. The proposed project is exempt from  
3 CEQA as a minor alteration to land and staff expects to  
4 submit a formal permit to the Commission for approval at  
5 the Commission's August meeting.

6 With your consent, we will advise Mr. Kado that  
7 he may proceed with his project.

8 CHAIRPERSON CORY: Any objections?

9 MR. BELL: No. Fine.

10 MR. LYTTON: No.

11 EXECUTIVE OFFICER NORTHROP: Thank you very  
12 kindly.

13 Number three on the regular calendar --

14 CHAIRPERSON CORY: Pardon me, Mr. Northrop.  
15 Do you ever thank people unkindly?

16 EXECUTIVE OFFICER NORTHROP: Well, once in a  
17 while.

18 CHAIRPERSON CORY: I just thought I'd check.  
19 Go ahead.

20 EXECUTIVE OFFICER NORTHROP: Lots of them  
21 sometimes. Particularly when they -- Never mind. I won't  
22 go into that.

23 CHAIRPERSON CORY: Okay.

24 EXECUTIVE OFFICER NORTHROP: Number two will be,  
25 staff has asked to put number two over and number three

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1 off calendar and to move numbers C-13, 14 and 15 to the  
2 regular calendar.

3 CHAIRPERSON CORY: ~~13~~ 14 and 15?

4 EXECUTIVE OFFICER NORTHROP: To the regular  
5 calendar from the Consent Calendar.

6 The calendar is in reverse order this time with  
7 the consent being at the end rather than at the beginning  
8 for staff reasons.

9 CHAIRPERSON CORY: Well, I think we're going to  
10 reverse that.

11 EXECUTIVE OFFICER NORTHROP: You want to get it  
12 out of the way and do the Consent Calendar first.

13 CHAIRPERSON CORY: Items 13, 14 and 15 are on the  
14 regular calendar and not a part of the Consent Calendar.  
15 The other items designated letter C, will be C-12, 16, 17,  
16 18, 19, 20, 21, and 22 are consent items which we, unless  
17 there is someone in the audience who wishes to object to the  
18 staff recommendation, those will be approved in one motion.

19 Is there anybody in the audience on those  
20 items?

21 Without objection, the Consent Calendar will be  
22 approved as presented.

23 Okay. We forgot one thing. What about the State  
24 Coastal Commission Report?

25 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, there

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1 is no significant information to transmit at this time.

2 CHAIRPERSON CORY: I've had some of my developer  
3 friends say that for years. I've always assumed they were  
4 incorrect.

5 Okay. Going on the regular calendar, Item 1.

6 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, on Item  
7 1, the record should reflect that Assemblyman Bosco and  
8 Senator Keene have communicated with the staff and the  
9 Commission unfavorably on this calendar item and have  
10 indicated that they may wish to have either themselves or  
11 their representatives speak. Assemblyman Willie Brown  
12 has communicated with this office indicating that he takes  
13 an opposed position on this item and may or may not have  
14 someone here to speak for him.

15 CHAIRPERSON CORY: Okay. For those people who have  
16 been here before, I think if we can keep our remarks as  
17 brief as possible and on the points that are sort of  
18 outstanding that we're trying to figure out how to deal  
19 with and not general background, that would be expeditious,  
20 I think, to everyone concerned.

21 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, as we  
22 left this last time you will recall we were discussing as  
23 to where the rock should come from in handling the rock  
24 formations and staff is now ready to report where they  
25 have come in the recent conversations they've had on the

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1 rock removal.

2 CHAIRPERSON CORY: Okay.

3 EXECUTIVE OFFICER NORTHROP: Dave Hadly from our  
4 legal staff and Jim DeLaCruz will be at the maps.

5 MR. HADLY: Mr. Chairman, as you know, this item  
6 concerns the permit for the use of tide and submerged lands  
7 in Shelter Cove in Humboldt County. That area of Shelter  
8 Cove is generally between Point Delgado to the north and  
9 Point No Pass to the south. This permit would basically  
10 allow the district to manage the mooring area within  
11 Shelter Cove and also to maintain and approve an existing  
12 breakwater and, finally, to remove rocks from the intertidal  
13 zone of Deadman's Reef located one-half mile to the south  
14 for placement on that existing breakwater.

15 As you know, there's been strong public support  
16 for the project but objection by surfers to the rock-removal  
17 phase of the project.

18 Now, pursuant to the Commissioners' concerns last  
19 meeting, the staff has done the following: First of all,  
20 sought to achieve a compromise between the surfers and the  
21 district; second, examine possible intertidal zone of  
22 Deadman's Reef; third, examine the legal implications of  
23 a negative declaration; fourth, consulted with Dr. R. J.  
24 Seymour of Scripps on the consequences of rock removal in  
25 the intertidal zone; and, finally, consulted with the Corps

1 staff in San Francisco. The result of that staff work  
2 as follows: First, there appears to be no compromise  
3 possible between the parties. The surfers insist on no  
4 rock removal pending a comprehensive study of the site, and  
5 the district insists that they need some rocks from the  
6 intertidal zone. The alternatives, apparently our best  
7 information, inland sites are not practicable because of  
8 enormous costs for bringing rocks into the area and also  
9 road limitations, weight limitations on the road from  
10 Garberville to Shelter Cove. Also, the road leading down to  
11 the beach is very steep and unstable, and this would be a  
12 problem in bringing trucks in.

13 Now, the surfers have proposed, and they did it  
14 at the last meeting, certain alternative sites in the  
15 Shelter Cove area. Those sites are: First, Point Delgado  
16 to the breakwater; secondly, First Reef -- First Reef is  
17 just north of Deadman's Reef -- Third Reef, which is just  
18 south of Deadman's Reef; finally, Point No Pass which is the  
19 bottom limit of Shelter Cove.

20 Now, the best information we have in consultation  
21 with the Coastal Commission -- of course, the Commission  
22 only has jurisdiction of those sites in the area below  
23 high water in those sites. The Coastal Commission has  
24 stated that there would have to be additional environmental  
25 workup of those sites because they were not considered in the

1 initial environmental document and that there would be  
2 problems for sites above mean high tide that would have to  
3 be looked at from the standpoint of esthetics and geographical  
4 significance, and the intertidal sites would likely be a  
5 problem due to biological life and marine life in the rock  
6 areas that they have proposed.

7 The district has furthermore said that they don't  
8 think there will be enough rocks above mean high tide of  
9 those sites to complete the project.

10 As far as the legal implications of the negative  
11 declaration prepared by the district, it would not appear  
12 appropriate for the Commission to challenge the negative  
13 declaration and that's because the statute of limitations  
14 during the review period, the Commission had, the staff had  
15 the negative declaration and did not make objections at that  
16 time. And that passed in the summer of '77. Also, there's  
17 no new information of the type that was not known or could  
18 not have been known at the time.

19 This information could have been brought forth  
20 and should have been brought forth at the time that the  
21 environmental document was processed and there were public  
22 hearings on the matter. But we want to emphasize that the  
23 Commission is not bound, is not limited to the negative  
24 declaration. They do not have to make a finding on the  
25 adequacy of the negative declaration itself, and they should

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1 and must examine all information on the record in making  
2 their decision.

3 Now, in that light, the staff has consulted  
4 with Dr. Seymour, an expert in wave dynamics, from Scripps,  
5 whose opinion it is that limited rock removal from the  
6 intertidal zone -- now, just for your orientation, the  
7 intertidal zone is depicted on the chart in the blue area.  
8 The area above the intertidal zone, Deadman's Gulch, is  
9 to the bottom of the chart.

10 In Dr. Seymour's opinion, if limitations are  
11 placed on rock removal, that there will be no harm to  
12 surfing. In fact, he has stated that surfing could in fact  
13 be enhanced by having this carpet of small rocks on the bed  
14 of the reef.

15 Now, his conditions that he's recommended and  
16 which we have included in our current recommendation are  
17 the following: First, that the district take all suitable  
18 and accessible rocks from above the intertidal zone that  
19 they have authority to take pursuant to their 1978 Coastal  
20 permit. They do that before they take any rocks from the  
21 intertidal zone.

22 Now, once they do take rocks from the intertidal  
23 zone, they'll be limited first to the northerly one-half,  
24 that side closest to the breakwater depicted in yellow on  
25 the chart. Secondly, they'll be limited to a maximum of

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1 570 rocks which is roughly one-fourth of the estimated  
2 rocks in the intertidal zone by number. They will be  
3 limited to rocks that are 24-inch maximum. That is a  
4 word of art which fulfills engineering specifications for  
5 breakwater construction.

6 Finally, they'll be prohibited from mining rocks.  
7 In other words, not digging into the reef bed. Finally,  
8 the staff has consulted with the Corps staff in San  
9 Francisco. They favor the project and the staff at this  
10 point have stated that they will recommend approval along  
11 roughly the same conditions that are in the recommendation  
12 before you which is patterned after Dr. Seymour's opinion.

13 Also, they have personnel and equipment to  
14 enforce these conditions and they have said that State Lands  
15 could join the enforcement team. They had also stated that  
16 they would like to see State Lands take action this month.

17 Now, for the record, the staff has also received  
18 correspondence from Kimo Walker, a professional engineer  
19 and consultant to the surfers, and in his opinion rock  
20 removal as expressed in the letter could harm the surf site.  
21 However, on July 10th in a conversation with Mr. Jim  
22 DeLaCruz, he changed that position somewhat and said that  
23 in his opinion rock removal would be detrimental to surfing.  
24 There would appear to be sufficient information in the  
25 record to support the Commission's going either way on the

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1 project.

2 We also have, just before the meeting, we were  
3 given a copy of the resolution of the Humboldt County Board  
4 of Supervisors favoring the project and also correspondence  
5 from Mr. Rick Thoresen, a local surfer, who is opposed to  
6 the project on the same grounds that have been expressed  
7 before.

8 As we see it, the Commission has the following  
9 options: First, they could approve the permit, rock removal  
10 part of the permit as recommended last month without  
11 conditions; second, they could approve the permit as now  
12 recommended with the conditions that have been put in it;  
13 third, they could disapprove the permit, specifically  
14 disallowing rock removal from the intertidal zone, that  
15 phase of the permit; or, fourth, they could put the matter  
16 over. But the Commission must act prior to October 23rd to  
17 avoid the extended 884 deadline.

18 CHAIRPERSON CORY: Okay. Could you tell me what  
19 you believe those conditions mean if they were to be imposed  
20 upon the rock removal? Without reading it. You've been  
21 working with it. What can they and can they not do? How do  
22 they go about moving rocks around if they're going to do it?

23 MR. HADLY: First of all, the removal time as we  
24 understand it would be in the late fall, November, December.  
25 They would have to remove all the rocks that were suitable

1 for the breakwater and accessible at that time. At that  
2 time the sand layer will have fallen somewhat so there will  
3 be more rock exposed. They'll have to take all the rock  
4 above high tide between the breakwater and Deadman's Reef  
5 and also at the gulch itself they'll have to take all  
6 accessible rocks from above the intertidal zone that they  
7 can from the base of the gulch they can get to.

8 Okay. When they get to the intertidal rock phase,  
9 the Corps has said they have the necessary equipment and  
10 expertise to, first of all, mark the reefs so they will  
11 divide it in half. It will be a line drawn and it will be  
12 marked so the district will not be able to go to the  
13 southerly part of the reef which is the side that is used  
14 most extensively for surfing.

15 Then they will be limited to 570 rocks by count.  
16 Those rocks will have to be, to meet the specifications of  
17 the Corps, 24-inch maximum. They have a two-foot by two-  
18 foot screen that they use to determine the suitability of  
19 the rock. Finally, the district cannot mine or dig down.  
20 They will have to take the rocks from the upper level of  
21 the reef as they show at that time. They will not be able  
22 to dig down all the way to the bottom of the reef and resort  
23 to a mining operation.

24 CHAIRPERSON CORY: They've got to fit through a  
25 24 by 24-inch --

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1 MR. HADLY: They have a device that determines  
2 the suitability.

3 CHAIRPERSON CORY: And rather than 25 percent of  
4 the rock, it is a specified number of rocks?

5 MR. HADLY: Right.

6 Dr. Seymour, when I asked him specifically if  
7 his opinion included, if it was related to numbers, first  
8 of all, and if his opinion was the same if we said 570 rocks  
9 and he said, yes.

10 CHAIRPERSON CORY: I've got to ask. Did somebody  
11 count those rocks?

12 (Laughter.)

13 MR. HADLY: Apparently the rocks have been  
14 counted at one time by the Coastal Commission. That was  
15 done about the time of the --

16 CHAIRPERSON CORY: You're serious.

17 MR. HADLY: Two counts took place. They did an  
18 aerial photo and made segments and counted the rocks within  
19 each segment.

20 (Laughter.)

21 CHAIRPERSON CORY: Fine. I just think that's  
22 wonderful. That's just wonderful that we have our tax  
23 dollars doing that.

24 Okay. I do feel more comfortable about a  
25 specified number than 25 percent and then arguing later

1 as to what 25 percent was and what's a rock and what's  
2 a pebble and what's a sand grain. I can see all sorts of  
3 litigation over that.

4 Do you understand the staff's view of the  
5 situation? Do you have any questions for the staff?

6 MR. BELL: No.

7 MR. LYTTON: Yes, although I'd like to preface  
8 it by complimenting the excellent presentation we had  
9 this morning. It was very impressive to see that everyone  
10 did their homework. I'm impressed, seriously.

11 The question, on the negative declaration, what  
12 you're saying is that the evidence, if I understand your  
13 memorandum correctly, the evidence that the surfers  
14 presented should be considered like all other evidence and  
15 given the weight the Commission deems appropriate. It is  
16 not new evidence in the strictly legal sense that it  
17 attacks the negative declaration, but it is probative  
18 evidence in the sense that we should consider. Is that  
19 what this memo means?

20 MR. HADLY: Yes, sir. If it is not considered,  
21 the Commission is probably subject to a challenge if it is  
22 excluded. It's relevant and it should be considered.

23 MR. LYTTON: Okay.

24 CHAIRPERSON CORY: Okay.

25 MR. LYTTON: One other question.

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1           When you put the rocks through the screen, I  
2 assume that they're going to take the rocks off the top  
3 first and they're not going to be destroying the reef in the  
4 process of trying to find the biggest rock?

5           MR. HADLY: Correct. A Cat will be used to scrape  
6 the upper level into a pile and the larger rock, suitable  
7 rock, will be removed and at that time subject to the  
8 Corps' examination prior to there being transported to the  
9 breakwater. But it will not be --

10           MR. LYTON: And then the other rock is put back?

11           MR. HADLY: Right.

12           CHAIRPERSON CORY: Okay. I think we should  
13 probably hear from the opponents, and I don't know what  
14 order. I would guess, is it Tony Gerschler?

15           MR. GERSCHLER: We were talking before the  
16 meeting. I think Mr. Mark Hoffart also signed up to speak  
17 this morning. I think he'd like to speak first.

18           CHAIRPERSON CORY: Okay. Mark.

19           MR. HOFFART: If I may, I'd like to give the  
20 Commissioners copies of Dr. Walker's report which was  
21 submitted previously.

22           My name is Mark Hoffart and I'm a resident of  
23 San Francisco, California.

24           A month ago I came before the Commission to talk  
25 about this permit and to ask for possible conditions on the

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1 permit so that we could protect the surfing resource at  
2 Shelter Cove, specifically, at Deadman's Reef. Today we're  
3 back to address today's agenda item in light of  
4 Dr. Walker's report which I've just given to you. If you  
5 will look at page 4 of Dr. Walker's report, on the second  
6 paragraph down which starts out, "In summary," I'd like to  
7 read that to you if I may.

8 It says:

9 "In summary, removal of a significant  
10 portion of the larger rocks, would definitely  
11 alter the characteristics of the surf site.  
12 Without a detailed bathymetric survey and  
13 long-term observation of this site under  
14 different conditions, the effect of selective  
15 removal of rocks from certain areas to  
16 reshape the reef should not be done. Removal  
17 of the larger surface rocks would certainly  
18 destroy the integrity and stability of the  
19 reef. Selective removal of a small percentage  
20 of rocks protruding high above the surface,  
21 could be beneficial. Removal of rocks above  
22 mean high water should not adversely effect  
23 the surf, and may extend ride lengths at  
24 high tides. Alternate sources within one-half  
25 mile down the beach could be investigated. If

1 removal of rocks to reshape the reef is  
2 desired, this should be done only after  
3 the existing conditions have been documented  
4 and effects of alterations based on experience  
5 and theory have been evaluated."

6 I think this report essentially sets forth the  
7 dangers which the surfers describe to you of the possible  
8 damage to the surfing resource at Deadman's before. The  
9 conditions in the agenda item that were proposed to you  
10 today I don't think provide any sort of sufficient  
11 protection of the interests that we're concerned with.  
12 I think in light of Dr. Walker's report, you can see there  
13 that the removal of 570 rocks would damage the surf there  
14 and that this alternative should not be considered. I don't  
15 think that the conditions that are put forth in the  
16 calendar item are strong enough in guaranteeing that  
17 alternate sources will be exhausted before the reef is  
18 used.

19 I say that because the conditions state that prior  
20 to using intertidal rock, the district should utilize all  
21 readily accessible and suitable rocks. I think that's a  
22 pretty conditioned condition in that sense and that it pretty  
23 much is vague and allows the developers of the jetty to use  
24 virtually any rocks they want since they have asserted all  
25 along that it's not feasible for them to use the alternate

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1 sites. I think they will say that these are not readily  
2 accessible and suitable and they will go ahead and use the  
3 570 rocks from Deadman's Reef which would not be acceptable  
4 to the surfers.

5 In light of this, I think that the permit should  
6 be denied absent further conditions which would be to  
7 disallow rock removal from the reef or disallow rock removal  
8 from the reef pursuant to a study, or to simply disallow rock  
9 removal until all other sources are exhausted and, at that  
10 time, to have the developers reapply for a permit to take  
11 rocks from the reef if they are in fact proven to be  
12 necessary.

13 The status of the matter now is that there has  
14 not been a demonstrated need for the rocks, and I think  
15 that Dr. Walker's report clearly demonstrates that rocks  
16 taken from the reef will be detrimental to the surf. If  
17 we balance those interests, it's clear that the surfing  
18 interest is the more important of the two and should  
19 dominate. I think this is true also if we consider  
20 financial considerations. The surfers are willing to  
21 continue to work with the Harbor District to come up with  
22 a workable alternative, but I don't think that these  
23 conditions are such an alternative.

24 Thank you.

25 CHAIRPERSON CORY: Can I ask you a question about

1 Kimo Walker?

2 I mean, he seems to be an employee of Moffatt  
3 and Nichol Engineers.

4 MR. HOFFART: Yes.

5 CHAIRPERSON CORY: What is his professional  
6 capacity with them?

7 MR. HOFFART: Well, he's I guess what you would  
8 call a Coastal Engineer. He does bathymetries and surf  
9 site studies. His credentials are pretty well set out in  
10 the report. It states that he's done studies like this  
11 for the State of Hawaii on several occasions in the past  
12 and that, as a result of his studies, he's come out in some  
13 instances and said that projects would be detrimental to  
14 surf and in other instances he's said that projects will  
15 not be detrimental to surf. So I think he's pretty much an  
16 unbiased authority on the matter.

17 CHAIRPERSON CORY: Okay. It's on the last page.  
18 Any questions from Commissioners?

19 MR. BELL: No.

20 MR. LYTON: You retained this man as your  
21 expert?

22 MR. HOFFART: Yes.

23 MR. LYTON: Did he change his opinion from  
24 initially saying that there could be damage to the more  
25 certain opinion expressed in this letter?

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1 MR. HOFFART: Well, the only -- No. I think the  
2 only change in opinion I heard was what was mentioned  
3 earlier. In this letter is where he says the phrase that  
4 it could be damage came out of, and I think the later phone  
5 call said that it would be damaged. But I think that was  
6 a clarification. I don't think there's been any change of  
7 position, no.

8 MR. LYTTON: In the summary on page 4 that you  
9 read to us, he says in removal of a significant portion of  
10 the larger rocks, but nowhere does he tell us -- I haven't  
11 read the full letter, but in the portion you read to us --  
12 does he tell us anywhere in here what is significant?

13 MR. HOFFART: No, he doesn't. He says that that  
14 determination cannot be made without further scientific  
15 studies of the reef. But I think from the discussions that  
16 have gone back and forth, the 570 number is around somewhere  
17 from a quarter to a half of the rock volume in the reef and  
18 that would certainly be a significant number.

19 MR. LYTTON: That's your view. I mean, he  
20 doesn't say that anywhere, does he?

21 MR. HOFFART: He doesn't specifically say that,  
22 no, but he does say that from his onsite observations that  
23 he feels you could safely remove perhaps a dozen rocks which  
24 is far less than 570.

25 MR. LYTTON: I have no other questions.

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1 CHAIRPERSON CORY: Thank you very much. Okay.

2 MR. PRATTE: My name is Thomas Pratte. Good to  
3 see you folks again.

4 We have been making efforts and pursuing what  
5 we presented at the last meeting, our resolution. I would  
6 like to present, re-present copies of our resolution to the  
7 Commissioners at this time.

8 CHAIRPERSON CORY: Okay.

9 MR. PRATTE: There's two separate pieces to each  
10 one.

11 I'd like to first comment on Dr. Walker. I first  
12 heard of Dr. Walker when Dr. Seymour referenced him in his  
13 evaluation of the surfing site back in 1974 when he  
14 recommended that removal of the whole intertidal area  
15 would have beneficial effects on the surfing site and made  
16 reference to a report done by Kimo Walker. It was his  
17 doctoral thesis conducted in Hawaii. Dr. Seymour has since  
18 stated that he believes 25 percent, something like that,  
19 could be removed without seriously affecting the bathymetry  
20 and, therefore, without seriously affecting the quality of  
21 waves for surfing. That term "seriously" has not been  
22 defined.

23 Mr. Thoresen's letter which you have there states  
24 that in his opinion removal of 570 rocks from the reef would  
25 harm surfing conditions. Rick has been surfing at Deadman's

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1 Reef for approximately 15 years and has lived all his life  
2 within 20 miles of Shelter Cove. He indicates Dr. Seymour  
3 has stated to him that removal of rocks would only have  
4 adverse effects on surfing conditions at very high tide  
5 with small swell conditions. He states further: I must  
6 make it clear that the smaller wave sizes, two to four feet,  
7 occur most frequently at Deadman's Reef and the most  
8 desirable surfing waves usually occur at high tide.

9 Deadman's Reef is predominantly a high tide surfing break.

10           Regarding the alternatives which we have  
11 proposed and which are included in our resolution, we still  
12 stand behind those alternatives. They have not been  
13 investigated and evaluated since we proposed them at the  
14 last meeting. I have discussed this situation with  
15 Mr. Rich Merritt of U.S. Fish and Wildlife Service and  
16 Ron Warner from Department of Fish and Game in Eureka and  
17 Rick Rayburn, Executive Director of the Coastal Commission.  
18 They all indicated that they can't comment yea or nay on  
19 the proposal because there's not a permit amendment  
20 application before them to consider it.

21           It's possible that all that would need to occur  
22 would be for a person from Fish and Game to go down and  
23 give a look-see and say yea or nay regarding the rocks,  
24 the alternative sources we proposed in the intertidal area.

25           I'd like to comment that the alternatives we've

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1 proposed have been tailored with considerations of esthetics  
2 in intertidal habitats as we have not recommended removal  
3 of rocks from the significant intertidal habitat in the  
4 Point Delgado area or at Point No Pass, nor have we  
5 recommended major alterations of land forms at the Point No  
6 Pass area which would have significant esthetic impacts.

7 We request that these alternatives should be  
8 evaluated with those considerations in mind. We feel that  
9 these alternatives are feasible and there's no need why  
10 they should not be evaluated. It's a possibility if the  
11 Harbor District requested an amendment to their permit by  
12 July 20th which is this Friday, they could have this before  
13 the Coastal Commission on August 8th or 9th and clarify  
14 this whole thing.

15 I would like to comment that in the staff report  
16 the interpretation of the 1978 permit about rocks above  
17 mean high water, from the beach, and above mean high water  
18 at Deadman's Gulch, it's a vague permit. Everybody I  
19 believe, State Lands staff, Coastal Commission staff, Harbor  
20 District staff, and surfers all feel that it was vague.  
21 As to what it requires at Deadman's Gulch, Dr. Walker's  
22 report indicates that there's a significant amount of rock  
23 at the mouth of the gulch aside from that which is exposed  
24 on the surface.

25 I would like to read part of his report discussing

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1 these alternatives.

2 "Based on the field observations and  
3 application of general principles of surf  
4 site mechanics, removal of rocks from mean  
5 high water and elevations above mean high  
6 water, should not adversely affect the  
7 surf site. The delta and streambed at the  
8 base of the gulch has a large volume of the  
9 same type and size of rocks that are in the  
10 surf reef. The difference is that these  
11 rocks are graded differently. Floods have  
12 deposited small material on the top of the  
13 larger rocks. Waves wash the smaller material  
14 from the reef as they become deposited on it.  
15 The stones in the streambed are more angular  
16 because they haven't been worn as much as those  
17 exposed to wave action on the reef.

18 "These stones in the stream are more  
19 suitable for breakwater construction than the  
20 ones on the reef because of their angularity.  
21 I understand the reason for taking stones from  
22 the reef is economics. A loader would have to  
23 wait for low tides in order to operate" on the reef.

24 "This limits his production and, therefore,  
25 increases costs. Working in the streambed, the

1 loader would have to sort more stones but  
2 could work at nearly all tide levels. The  
3 sources of rock of similar quality are found  
4 along the beach and in reefs further down the  
5 beach to the southeast. Rocks could be taken  
6 from these areas without any known adverse  
7 effect on surfing.

8 "Again, these 'rocks' could be removed  
9 at almost all tide levels. Therefore, other  
10 rock sources do appear to exist from which  
11 rocks can be taken without destroying a  
12 surf site. Whether permits can be obtained,  
13 is another question."

14 We request that these alternatives we have  
15 proposed should be evaluated.

16 I understand the need has not been established  
17 for removing rocks on the reef. There are approximately  
18 300 rocks sitting down right by No Pass, sitting right down  
19 on the beach that there has been no request for, and these  
20 are all above mean high water and don't have intertidal  
21 habitat on them and wouldn't affect esthetics.

22 This permit, as conditioned, we feel is  
23 arbitrary, unplanned rock removal and is irresponsible to  
24 the needs of surfers. The effects to the reef and the  
25 waves which break over the reef are not substantiated. The



1 conditions are vague and we believe unenforcible. The study  
2 which we recommend would investigate potential for rock  
3 removal for enhancement purposes. The study would map the  
4 bathymetry. Kimo Walker says the mapping of the bathymetry  
5 is essential before any consideration of rock removal from  
6 the reef. We did sit on the beach and pick out about a  
7 dozen rocks which it's obvious could be removed without  
8 adversely affecting the surfing conditions, but we're  
9 talking about a substantial amount more than this.

10 So the results of this study would come up with a  
11 carefully designed plan for removing rocks. We are opposed  
12 to the Proposition 13 era meat cleaver approach to resolving  
13 this issue.

14 We feel it should be resolved in a reasonable  
15 manner and we have indicated a willingness to cooperate on  
16 a study and agreed to the results of such a study.

17 So, at this time, without further commenting on  
18 these conditions, -- well, I could comment further that  
19 these rocks that says, Condition E says that they will be  
20 taken from the upper layer only and the staff indicated that  
21 the sand layer will drop by the time they intend to remove  
22 the rock so more rock will be exposed. Dr. Walker's report  
23 states that when we looked at the reef, there was a two- to  
24 three-foot elevation difference because of the sand layer  
25 where it is now on the northwest side of the reef. Now,

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1 after the sand layer drops, we're talking about a two to  
2 four or five-foot difference in elevation. When you start  
3 messing around with the shape of the reef and the changes  
4 in depth along the sides of the reef, this will affect the  
5 waves. As I said, this is an arbitrary number of rocks.  
6 This number came up not from a study, but from a  
7 misconceived or misinterpreted permit application.

8 I don't think anybody -- the number is totally  
9 arbitrary.

10 So at this time we would like to request that --  
11 we have no problems with the rest of this project. We feel  
12 that the State Lands could approve the rest of this project  
13 at this time. However, the rock removal, there is a lack  
14 of information at this time on the reef and on the effects.  
15 I don't believe there is substantial information upon which  
16 to make this decision as proposed in the conditions.  
17 So we would request that either this permit, rock removal  
18 be removed from this agenda item today or conditioned to  
19 reflect a real hard look at these alternatives and also  
20 conditioned on forthcoming results of a study. I believe  
21 funding for a study could be possible through the State  
22 Coastal Conservancy if the Harbor District requested it as  
23 a surf site enhancement plan.

24 The Department of Boating and Waterways has  
25 investigated studies for creating a surf site down in the

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1 El Segundo area and they would have capacity for undertaking  
2 this type of a project. If no State or Federal agencies  
3 would be willing to help undertake this study, and the  
4 Harbor District was unwilling to, perhaps either the  
5 permit should be denied outright or the surfers would be  
6 requested to undertake the study on their own provided  
7 the results would be accepted.

8 CHAIRPERSON CORY: Questions from Commissioners.

9 MR. LYTTON: Earlier on you were talking about  
10 the difficulty of dealing with the proposed compromise  
11 here in terms of enforcement. However, it's my understanding  
12 that the Army Corps of Engineers has agreed to participate  
13 in making sure that the conditions are adhered to.

14 MR. PRATTE: Well, the conditions are, I said the  
15 conditions are vague to begin with. As Condition A it says  
16 -- what is the phrase there? I don't have that before me.

17 MR. LYTTON: It's my understanding that the  
18 conditions are: One, they will take 570 rocks; two, they  
19 will take them only from the designated side of the reef as  
20 shown on the chart; and, three, they will take the maximum  
21 of 24-inch rocks, nothing larger, and, finally, before they  
22 even get to the reef, they'll take rocks that are lying on  
23 the beach or above the waterline.

24 MR. PRATTE: Within existing permits. Now, these  
25 300 rocks further down the beach are not within an existing

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1 permit and that's why we recommend pursuing these  
2 alternatives first.

3 MR. LYTTON: My question to you is simply, you  
4 were arguing that it was vague and it couldn't be enforced  
5 and I'm saying those are the terms as I understand them.  
6 Do you object to the Corps of Engineers supervising them,  
7 in effect, making sure they're adhered to?

8 MR. PRATTE: We would be in favor of the Corps  
9 of Engineers supervising a rock removal project which would  
10 be planned and well-designed following a study. However,  
11 now, we find this unacceptable, this plan because it's not  
12 a plan. It's a compromise which really doesn't resolve the  
13 issue of protecting the interests of the surfing community.  
14 The Condition A states something about readily accessible  
15 rocks which permits exist. Now, there are permits for rocks  
16 above mean high water and at the mouth of the gulch. But  
17 readily accessible, there's rock in the mouth of that gulch.  
18 But going down there with a Cat and removing around their  
19 loosely consolidated sediments which is gravel, sand, cobbles  
20 and boulders all loosely consolidated and five to ten feet  
21 high at the mouth of the gulch, there's possibility that the  
22 whole base of that is underlain by large rock which has not  
23 been investigated. There's going to be a major -- part of  
24 this project is widening that road coming down the bluffs  
25 and that is a major cut up to ten feet directly into the

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1 seacliffs and I know the district is capable of moving  
2 earth. We feel that there is an adequate amount of rock in  
3 these alternative sites and there hasn't really been an  
4 established need for going on to the reef.

5 MR. LYTTON: I have no further questions.

6 CHAIRPERSON CORY: Mr. Bell.

7 MR. BELL: No, I have no questions.

8 MR. PRATTE: Thank you.

9 CHAIRPERSON CORY: Tony Gerschler.

10 MR. GERSCHLER: My name is Tony Gerschler. I'm  
11 here representing the Western Surfing Association. I'm  
12 a resident of San Diego, California.

13 I'd like to start out by, in addition to my  
14 function here, I also am a contributing editor of Surfing  
15 Magazine, which has a paid distribution worldwide of  
16 115,000 readers.

17 I've never been to the meeting before. I haven't  
18 been really personally involved with the planning process  
19 up to now other than what I have been contacted from the  
20 local opposition, local members of our association have  
21 requested our help here.

22 So I came up today to possibly give you some  
23 additional thoughts to ponder in this decision process  
24 you're going through.

25 The WSA is the Western Surfing Association, the

1 organized voice of California's surfers. The Army Corps  
 2 some years back estimated our numbers at approximately  
 3 a half-million in the state of California. We're a growing  
 4 sport so more recent figures quote closer to 750,000 and  
 5 growing.

6 Our surf breaks, our crowded conditions attest  
 7 to that. That makes about one out of every thirty  
 8 Californians a surfer. The median age of surfers are  
 9 approximately 19 years old; however, we are really in the  
 10 infancy of modern-day surfing. As surfers grow older, they  
 11 carry their life style with them into their adult years.

12 I think the myth of surfing is a fad or a craze  
 13 is that, a myth. I think surfing is healthful. I found  
 14 it from my own experience to be an artistic and  
 15 nonpolluting recreation which takes nothing from the ocean  
 16 but a thrill of a free ride.

17 In beginning my comments here on this particular  
 18 project, I'd like to point out that every rock counts.  
 19 In regard to Dr. Walker's reputation and his credentials,  
 20 I think he was picked out basically because in Dr. Seymour's  
 21 report to deny, then the Department of Navigation and  
 22 Ocean Development cited Dr. Seymour's, Dr. Seymour's report  
 23 cited Dr. Walker's work in Hawaii oftentimes. We thought if  
 24 we were to pick an objective expert, that would be the  
 25 person to pick to hire to do the report. The fact that we

1 hired him didn't determine the outcome of the report.  
2 We simply hired the best person we knew in the field, and  
3 that was Dr. Kimo Walker. His reputation is widely known.

4 Some of the comments that I would wish to make  
5 on what occurred this morning, the Army Corps is not  
6 legally bound to enforcement. Their comments are new from  
7 the stuff that I read, the transcript and notes that I've  
8 heard from other meetings. This is the first I've heard  
9 of the Army's offer to monitor the construction or the  
10 removal of the rock off Deadman's Reef.

11 Getting to the gist of my remarks, I think, again,  
12 I'd like to outline the WSA position in opposition to this  
13 destruction of any surfing resource in California, and that's  
14 what we're doing here.

15 I direct you to the copy of Dr. Walker's report  
16 and recommend it highly. We endorse it and agree with it.

17 First of all, WSA does not oppose breakwater  
18 construction whatsoever. Surfers, many among us, are  
19 boaters, fishermen, divers. You come to love the ocean in  
20 one way, it's very easy to do it in another. In  
21 fact, Hobie Alter, one of Southern California's surfing  
22 pioneers, invented the Hobie cat. Many of the opposition,  
23 the local opposition at Shelter Cove there, there's  
24 fishermen and boaters among them who happen to also be  
25 surfers. So we don't really want to characterize it as a

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1 surfer versus boater versus anybody else type of conflict.  
2 However, we also feel that the public trust, the public  
3 tidelands goes to the benefit of both boaters and surfers.  
4 Let's put the shoe on the other foot. I was thinking on  
5 the plane on the way up here this morning, I thought, what  
6 if I was flying to Sacramento to bring to the State Lands  
7 Commission a proposal to build an artificial surfing reef  
8 taking the rock away from the breakwater that exists now  
9 at Shelter Cove. What would your reaction be to that?

10 CHAIRPERSON CORY: Pretty good --

11 MR. GERSCHLER: Well, that's our situation in the  
12 converse. From our point of view, we're a valid  
13 recreational pasttime and it's just as ludicrous in our  
14 view to harm surfing to the benefit of any other sport  
15 or pasttime, especially in consideration of some of the  
16 alternative sources of rock. We feel that the project, as  
17 Dr. Walker has pointed out, would lessen and perhaps destroy  
18 surfing at medium or high tides which seem to, in looking  
19 at this, removing of the rocks, those big rocks are not  
20 going to affect the surfing, that's just not true. The  
21 rocks are what make the wave break and that's what gets  
22 you the surfing. The shallower the shoaling conditions,  
23 the better the surfing. And this situation moving  
24 significant amounts of rocks and, again, we use that word  
25 rather loosely, but a quarter of the reef is going to alter



1 the surfing in that immediate area and, secondly, it's  
2 going to affect surfing by all probability on the remainder  
3 of the reef because the effects of tide and wash on and off  
4 the reef. These are the things that were pointed out before  
5 as needing more study.

6 It's just not a throwaway line we need another  
7 study, we really do. You don't know how the water is going  
8 to move across that reef. You don't know how it's going to  
9 affect sand flow on to the existing breakwater. All these  
10 things, besides the surfing considerations, do need further  
11 study and that's why we're asking for them at this time.

12 I think somebody mentioned to me the idea of a  
13 compromise of taking the 25 percent or 578 rocks off one side  
14 of the reef and, regardless of who enforces it or didn't  
15 enforce it, I think it constitutes a noncompromise. I think  
16 it tears the child in half. You can't split -- it's not a  
17 compromise -- you can't split it without having an impact  
18 on what remains.

19 I think the loss of compromise, detrimental  
20 compromise of Deadman's Reef as a surfing resource would be  
21 an unconscionable violation of the public trust I mentioned  
22 before.

23 I guess I'd like to wrap up my comments by saying  
24 that the whole world is rock. Okay. And this breakwater,  
25 if it needs to be built, it must not be at the expense of

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1 other recreational resources, especially surfing because in  
2 this sense we stand to lose it all. Deadman's is a  
3 significant surfing break in the area. The growth of  
4 surfing will not decline, the demand for surfing in that  
5 area will not decline in the years to come. It will grow  
6 with the spread of modern-day wet suits and modern-day  
7 equipment and leashes and what not, it will continue to  
8 grow in this area. If you were to approve this permit,  
9 it would be compromising a significant surfing resource in  
10 that area.

11 Finally, the WSA -- I've spoken with the  
12 Executive Director and the President last night -- and they  
13 gave me an endorsement to come here this morning and to  
14 request you to deny the applicant's permit insofar as it's  
15 been presented. We oppose any removal of any rock from  
16 Deadman's Reef without an exhaustive and definitive study  
17 outlining direct impacts upon surfing. That in the  
18 alternative, a binding precondition be imposed upon the  
19 applicant and the State to mitigate any harmful effects  
20 upon surfing by constructing an artificial surfing  
21 structure in the immediate area to mitigate the loss of  
22 surfing at Deadman's Reef.

23 Just echoing my colleagues, the WSA does not  
24 object to any reasonable alternative plan which does not  
25 take rocks from below mean high water and in good faith will

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1 assist the applicant in investigating these possibilities.  
2 I thank the Commission. I'll answer any questions you  
3 might have.

4 CHAIRPERSON CORY: Questions?

5 MR. BELL: Not really.

6 MR. LYTTON: I'm again, we've gotten into, you're  
7 right, the whole world is rocks, and you'd think these were  
8 the only rocks left. But in terms of numbers of rocks, is  
9 there some magic number that would be acceptable? In other  
10 words, right now we're talking about 570 rocks. Suppose  
11 you cut that in half. What would happen if you limited  
12 removal to only 285 rocks beating these criteria, you know,  
13 fit through the screen?

14 MR. GERSCHLER: Yes, sir. Well, I would say at  
15 this point 570, going out as far as they propose, even if  
16 enforced and strictly supervised would have a significant  
17 impact on the surfing and would not be acceptable. The  
18 12 rocks that were mentioned before in Dr. Walker's report  
19 which are almost entirely out of the water, they're only  
20 partially submerged, I would say definitely would not have  
21 an impact on the surfing. In between, there is a gray area  
22 which would require more study. That's why I'm saying we're  
23 not just asking for a gratuitous type of study. If they come  
24 out with a report, a reasonable, thoroughly exhaustive  
25 report that says 450 rocks is the number and that's been

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1 done with surfing considerations taken into mind  
2 scientifically, then we can't help but support that. We  
3 can't help but endorse that. That's all we're asking for  
4 and that's all we're saying is at this time that study  
5 has not been made, that information is not available.

6 MR. LYTTON: Have you given any thoughts to how  
7 we might pay for that study or how that study might be paid  
8 for?

9 MR. GERSCHLER: No. Well, we've entertained  
10 thoughts. But I think in that regard --

11 MR. LYTTON: Your colleague mentioned some  
12 possibilities. I guess what I'm driving at is are you  
13 also endorsing the concept that as a last resort the  
14 surfing organization would be willing to help undertake that  
15 study by raising the money to pay for it?

16 MR. GERSCHLER: I suppose in theory we would,  
17 however, I don't think we're at the last resort. We're  
18 not the moving party in this issue and I feel that the  
19 burden for study is upon the moving party and that until  
20 they have completely exhausted their studies and their  
21 possibilities, that the burden is upon them. We're really  
22 not asking for anything that shouldn't have been there in  
23 the first place we feel.

24 MR. LYTTON: Thank you.

25 MR. GERSCHLER: Thank you.

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1 CHAIRPERSON CORY: Okay. Mr. Zeke Grader, you  
2 wish to speak?

3 MR. GRADER: Yes, Mr. Chairman, Members of the  
4 Commission, my name is Zeke Grader and I'm here to speak in  
5 support of the proposal.

6 I'm the General Manager for the Pacific Coast  
7 Federation of Fishermen's Association. We represent 15  
8 California fishermen's associations from Crescent City in  
9 the north to San Diego in the south. Among our members are  
10 the Salmon Trollers Marketing Association from Fort Bragg  
11 and Humboldt Fishermen's Marketing Association out of  
12 Eureka. Members of both these associations use and have  
13 used for a period of over 50 years Shelter Cove as an  
14 anchorage. It's very near some very excellent shipping  
15 grounds.

16 In your mentioning of the letters today that have  
17 been received on this project, one that I think was  
18 overlooked was a recent letter of July 14 to this  
19 Commission from the Salmon Trollers Marketing Association  
20 in support of this. I think there are reasons for support  
21 outlined in it. I don't know if this Commission has  
22 received that letter yet or has had a chance to look at it.  
23 I do have a copy here. It is my only copy, but I think it  
24 points out some of their concerns.

25 As I say, these people have been using their

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1 breakwater for, well, been using Shelter Cove for over 50  
2 years now as commercial fishing. It's probably been the  
3 longest ongoing activity at Shelter Cove is this use as  
4 an anchorage.

5           Essentially what I'd like to do, since we did  
6 testify here last time, is just reiterate our concerns that  
7 we need to have an improved breakwater at Shelter Cove and,  
8 secondly, our concern with the moorings that have been  
9 placed there. We feel it's urgent that some control be  
10 placed over some of the engine block moorings. In  
11 reference to that, this Commission was sent a letter on the  
12 2nd of March on our concerns, a copy of a letter we sent  
13 to Mr. Alderson who is the Chief Executive Officer for the  
14 Humboldt Bay Harbor Recreation Conservation District. We  
15 did not at that time, nor have we ever, received a response  
16 from the Commission in regard to the problem of the  
17 breakwater.

18           We did, however, receive a response from both  
19 Mr. Alderson and the Corps of Engineers in this regard.  
20 What I'm talking about, what our concern is here, too, is  
21 that in addition to an approved breakwater, of course, that  
22 somebody have control over the engine blocks that have been  
23 placed down there as moorings for the last three or four  
24 years and what they have caused to happen there is a fouling  
25 of the anchorage where it's increasingly dangerous for

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1 larger vessels.

2 CHAIRPERSON CORY: How many do you estimate are  
3 there? Anywhere near 570?

4 (Laughter.)

5 MR. GRADER: It's interesting we considered that  
6 because we thought, somebody said in jest, but I'm not sure  
7 it was in jest, that we collect those engine blocks and make  
8 the breakwater out of those which is something perhaps  
9 to consider. I don't know if they meet the criteria of  
10 the 24 inches or not, but perhaps they could be used to  
11 enhance the surfing.

12 (Laughter.)

13 MR. GRADER: Perhaps some of the people from the  
14 Surfing Association can speak to the use of engine blocks  
15 for enhancing surfing, I don't know. But in any event,  
16 what we would like is for some control over the placing of  
17 these anchorages. The Harbor District has said that yes,  
18 they do want to have control over the moorings there so that  
19 we can again have some order there. Absent their having  
20 some sort of jurisdiction, I think it really lies with the  
21 State Lands Commission. So far from what I've understood  
22 from your staff is that you really don't have the personnel  
23 or the financial wherewithal to monitor, police this.

24 So, like I say, we do support this project very  
25 strongly and welcome any questions the Commission might

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1 have.

2 CHAIRPERSON CORY: Questions?

3 MR. LYTTON: Is your support contingent on  
4 removing these engine blocks or do you support it  
5 regardless of what happens to the engine blocks?

6 MR. GRADER: I think we support it probably no  
7 matter what, but we do want to have control over the engine  
8 blocks and I think this has been a concern of the district  
9 of control over the moorings there.

10 MR. LYTTON: Who's got jurisdiction over the  
11 engine blocks?

12 CHAIRPERSON CORY: Obviously, the Car Dealers'  
13 Repair Board.

14 MR. LYTTON: The New Motor Vehicle Board.

15 CHAIRPERSON CORY: It's one of those things.

16 MR. BELL: The Harbor Recreation, Conservation --

17 CHAIRPERSON CORY: Trespassers have violated in  
18 essence State law by placing them there and we're not in a  
19 position to have somebody watching every inch of --

20 EXECUTIVE OFFICER NORTHROP: Also it should be  
21 pointed out it's within the grant. The Legislature in its  
22 wisdom, they didn't.

23 CHAIRPERSON CORY: They have not granted it?

24 MR. BELL: Is it within jurisdiction of the  
25 Harbor Recreation, --



1 EXECUTIVE OFFICER NORTHROP: It's within our  
2 jurisdiction.

3 CHAIRPERSON CORY: It's our jurisdiction, but  
4 what you've got is somebody comes through and they cut the  
5 line when they're through at the end of the season and  
6 leave the block there.

7 MR. GRADER: Right.

8 CHAIRPERSON CORY: They haul it in and use it as  
9 a mooring device and they leave it and it's there. You've  
10 got some theory of salvage, law of salvage if you want to  
11 go that way or you could argue, I guess, the other side of  
12 the case that it's a nuisance that the landowner should  
13 abate. Then we would invoke the sovereign and not do it,  
14 I would guess.

15 It's an interesting problem that we don't have the  
16 money to solve.

17 MR. BELL: You could make it a condition of the  
18 assignment that the Harbor District remove them.

19 CHAIRPERSON CORY: Is it feasible? How many are  
20 there?

21 EXECUTIVE OFFICER NORTHROP: Geez, I was worried  
22 about counting rocks, now I'm counting engine blocks.

23 CHAIRPERSON CORY: Why did you spend all that  
24 time counting rocks when you should have been counting  
25 engine blocks? Why didn't the staff anticipate our needs?

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1 (Laughter.)

2 EXECUTIVE OFFICER NORTHROP: I really don't know.

3 MR. LYTTON: Send down a diver with one of those  
4 suits with the helmet on it and everything.

5 EXECUTIVE OFFICER NORTHROP: Maybe there's a  
6 surfer that in another pursuit is a diver that could help us  
7 on that.

8 CHAIRPERSON CORY: I would think electromagnets  
9 would be the real way to go about that.

10 EXECUTIVE OFFICER NORTHROP: I have no reason to  
11 disbelieve. In fact, I'm certain that there is a large  
12 number of engine blocks because that is the SOB of putting  
13 in a temporary mooring.

14 CHAIRPERSON CORY: Okay.

15 MR. LYTTON: Thank you.

16 CHAIRPERSON CORY: Okay. Is there anyone else  
17 in the audience who would like to comment?

18 Good morning.

19 MR. SCOTT: Good morning.

20 CHAIRPERSON CORY: Identify yourself for the  
21 record.

22 MR. SCOTT: My name is Jerry Scott. I'm counsel  
23 for the Humboldt Bay Harbor Recreation Conservation  
24 District, and this is Jack Alderson, Chief Executive  
25 Officer.

1 I would like to, for the record, give to you a  
2 copy of the letter dated June 27, 1979, signed by  
3 Assemblyman Bosco and Assemblyman Keene supporting the  
4 project which was referred to by Mr. Hadly. I'm sorry,  
5 I just have one copy.

6 CHAIRPERSON CORY: There was one that was  
7 distributed around to my office this week.

8 MR. SCOTT: Thank you.

9 We support and concur with the conditions in  
10 writing set forth by your staff in the staff report. We  
11 will abide by conditions set forth in your written staff  
12 report, paragraph 8-A through D.

13 During the discussion there was a reference to  
14 24 inches, the size of the rocks being 24 inches. That is  
15 not included in your written staff report and I'd like to  
16 call on Mr. Alderson to allude to that reference, please.

17 MR. ALDERSON: In working with your staff, it was  
18 my understanding during this time that 24-inch was the  
19 average size rock. To limit it to the maximum of 24 inches  
20 is a little unrealistic when you're trying to build a  
21 breakwater and trying to get the biggest possible rock you  
22 can moving it into the breakwater. It was our understanding  
23 that it was average size 24 inches, not maximum size.

24 MR. HADLY: Mr. Chairman, David Hadly again,  
25 staff counsel.

1           It's our understanding that the Corps of  
2 Engineers have specified requirement as a technical -- they  
3 mention 24-inch rock before. I think there was some  
4 confusion over whether they meant diameter or circumference  
5 or what it was. But in clarification of that issue, as a  
6 technical term, the Corps has a device to measure this.  
7 This is a standard breakwater size and apparently the Corps  
8 doesn't want rock that's too big because if it's a large  
9 rock that's impermeable, it could be knocked off. So  
10 there's a balance between being too big and too small and  
11 this balance is achieved by use of the 24-inch  
12 specification.

13           But that apparently will be part of their  
14 conditions and we feel that's a reasonable condition.

15           CHAIRPERSON CORY: And the engine block is bigger  
16 or smaller than 24 inches?

17           MR. ALDERSON: Depends on whether you put it  
18 through this way or this way (indicating).

19           CHAIRPERSON CORY: Okay.

20           MR. ALDERSON: I certainly will talk it over with,  
21 if that is going to be a condition of the Corps of  
22 Engineers, I will discuss it with them. But I just wanted  
23 to make sure for clarity here, I hadn't heard maximum size  
24 from here because it was not part of this before and I  
25 wanted to make sure we had everything out front.

1 Otherwise, if you have any questions about --

2 CHAIRPERSON CORY: Any questions from members of  
3 the Commission?

4 MR. BELL: No, I have no further questions.

5 MR. LYTTON: No, I have no additional questions.

6 CHAIRPERSON CORY: Okay. Read them and weep.  
7 What's the wish of the Commissioners?

8 MR. LYTTON: I'm waiting for the Chairman.

9 CHAIRPERSON CORY: I'm just sitting here. That's  
10 the advantage of the gavel. I'm waiting for a motion.  
11 If there's none, lacking a motion, there is no action and  
12 the permit will die.

13 MR. BELL: Then I will move that we approve the  
14 assignment of Mario Machi, assignee, to the Humboldt Bay  
15 Harbor Recreation Conservation District, so that we may have  
16 a motion before us.

17 CHAIRPERSON CORY: Is that with the staff  
18 recommendations?

19 MR. BELL: With the staff recommended conditions  
20 and with the understanding that I heard that at least takes  
21 into account the Corps of Engineers condition.

22 MR. LYTTON: If I might, with Mr. Bell's  
23 permission, just for the sake of clarity, propose a minor  
24 amendment; and that --

25 MR. BELL: Of course.

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1 MR. LYTTON: -- is, at least in the memorandum  
2 I received from staff which outlines what the staff  
3 position and the Corps position, the conditions are, number  
4 one, that there be a maximum of 570 rocks; two, that the  
5 side of the intertidal zone closest to the breakwater be  
6 limited to that; three, that the rock be subject to the  
7 maximum 24-inch size and be measured by the sieving device,  
8 whatever it is that the Corps of Engineers has; and, four,  
9 as I understand the memo here, rocks taken on the reef  
10 without resort to mining; and there was a fifth condition  
11 which was that rocks be taken from above the mean high --

12 MR. BELL: Tide.

13 MR. LYTTON: -- tide first before ever getting  
14 to the intertidal zone.

15 MR. TROUT: Mr. Chairman, these are in  
16 Recommendation 8, Items A, B, C, and D on page 8.

17 CHAIRPERSON CORY: Question on page 8, Item 8,  
18 subpart a, the term "should utilize all readily assessible  
19 and suitable rocks" and so forth. If readily --

20 MR. TROUT: It should be "accessible."

21 CHAIRPERSON CORY: If "readily" were deleted --  
22 you've got two easel words there. Can you get by with one?  
23 What is the significance of that in terms of trying to say  
24 to the world in terms of this charge of lack of  
25 specificity of the requirements because I would think that

1 the district should make a real serious effort to take those  
2 that are there on the beach first before you go out; and  
3 the purpose of that is to sort of draw attention that we're  
4 serious about trying to minimize if you can get by with  
5 something less than 570 --

6 MR. BELL: Mr. Chairman, let's make this very  
7 specific and say that the motion as amended or at least  
8 enlarged, if you will, say that under 8-A we eliminate the  
9 word "readily" and instead of "assessible," it's  
10 "accessible." That makes it very clear that it is all  
11 accessible to the --

12 MR. PRATTE: I would like to recommend that they  
13 take both of those words out.

14 EXECUTIVE OFFICER NORTHROP: Your name for the  
15 record, please.

16 MR. PRATTE: Tom Pratte.

17 CHAIRPERSON CORY: What does that do to your  
18 work?

19 MR. ALDERSON: We have been in a position of  
20 trying to discuss compromise with the surfers and with your  
21 staff and with the staff of the United States Army Corps of  
22 Engineers. During that time, of course, in any bargaining  
23 position it depends on who's got the gun to the head of  
24 the other person. That's the way it goes as you shift  
25 back and forth. "Readily accessible" indicates those rocks

1 the reference to making sure there is no monopoly there.

2 MR. GRADER: This is a concern that was voiced by  
3 our people that no one individual land owner would have a  
4 monopoly on the fishing operations there if indeed there were  
5 some restrictions placed on people coming in and out of  
6 there or using the facilities there. It really doesn't  
7 directly concern us, but this is one of the overall concerns,  
8 I think, on the creation of an enlarged facility there.

9 CHAIRPERSON CORY: It's my understanding from the  
10 representations -- and I'd like to clear it up if I am  
11 incorrect -- that there is a dedication of public access,  
12 which is one of the public benefits. Does that overcome  
13 your difficulty? I would presume that Mr. Machi would use  
14 his own private property for his own private personal gain,  
15 as he should.

16 MR. GRADER: Right. This concern is more of an  
17 ongoing, long-range one. I just wanted to briefly touch  
18 on it here today, but it's not one that directly concerns  
19 this here.

20 CHAIRPERSON CORY: I'm not sure I understand. I  
21 think I've got the same questions you've got (addressing  
22 Commissioner Lytton).

23 There are certain benefits to Mr. Machi having  
24 fee title. He clearly owns the land adjacent to it. To the  
25 extent he wishes to use his property in a commercial vein --

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1 I don't know what he's doing there, whether he's selling  
2 fuel, food, bait, supplies, whatever -- that's his property,  
3 and he should be allowed to do that, I think. You're not  
4 objecting to that?

5 MR. GRADER: No, not on his property. Just so that  
6 we're not using public funding or allowing state lands to  
7 be used somehow in the creation of a monopoly. Like I say,  
8 this is more of a long-range thing to keep in mind. That  
9 is one of the concerns I was asked to voice here today.

10 CHAIRPERSON CORY: The harbor district will have  
11 a monopoly on the mooring sites, I would presume, but that's  
12 a public agency.

13 MR. GRADER: Right. We understand that.

14 CHAIRPERSON CORY: I just wanted to make sure we've  
15 got the cards on the table and are not misunderstanding one  
16 another.

17 MR. GRADER: Sure.

18 CHAIRPERSON CORY: If I may address the harbor  
19 district, am I understanding the issues correctly concerning  
20 private property and who is going to have what kind of  
21 monopoly?

22 MR. SCOTT: You have stated the issue correctly.  
23 Mr. Machi owns the access. I believe there's some reference  
24 to access by children swimming, little old ladies, and ladies.  
25 Without that access over private property, those people won't

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1 get to the beach. The only other access to the beach is  
2 over rough terrain. My wife and children, perhaps, could  
3 not navigate that.

4 So we are asking in summary as the proponent of  
5 this project -- that is the Humboldt Bay Conservation  
6 District -- that you confirm and approve your staff  
7 recommendation. It's been clear by the testimony these last  
8 two meetings that the public benefit would far exceed the  
9 utility of a few surfers that would utilize the area --  
10 especially as you have heard the public access. We request  
11 that you approve the recommendation of your staff.

12 Thank you. If you have any further questions after  
13 one or two surfers make comments, we're here to answer them  
14 to the best of our knowledge.

15 CHAIRPERSON CORY: Okay. We've heard all those  
16 people who are in favor of the project and the permit. Those  
17 people who are opposed to it, could they come forward?  
18 Mr. Galati?

19 MR. GALATI: We would like to have a couple of  
20 other individuals speak before I speak.

21 CHAIRPERSON CORY: Fine.

22 MR. HOFFERT: My name is Mark Hoffert, and I'm  
23 a resident of San Francisco. I'm a surfer, and a member of  
24 the Western Surfing Association since 1971. I am active  
25 in their environmental division, and I have occasionally

1 worked as a spokesman for the WSA on this project.

2           What I'd like to say is that we've talked about  
3 a lot of issues of priorities here that the fishermen brought  
4 up and the value of the harbor. The surfers do not contest  
5 the value of the harbor. We think it's good that it will  
6 be beneficial to the fishermen and to the recreational  
7 boaters, and in that sense I think it's a worthy project  
8 that they should go ahead with.

9           But as far as other priorities go, I think you can  
10 take our definitions or the definitions of the proponents  
11 of the project, but I think maybe we should look at  
12 definitions as set forth in NEPA and CEQA, which require  
13 government agencies to look at alternatives, when doing  
14 projects, and to construct the project in the least  
15 environmentally harmful method. That is what the surfers  
16 are essentially asking the harbor commission and the State  
17 Lands Commission and the Army Corps of Engineers in this  
18 case.

19           Now as far as recreational interests are concerned,  
20 I think that surfing is a very important recreational interest  
21 within the state and also within Shelter Cove. I know that  
22 I have personally been surfing at Shelter Cove for a couple  
23 of years now. I only occasionally go there, because it's  
24 five hours away from my home, but I know I speak for a  
25 lot of other surfers who occasionally make the trip up there

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1 too. Since we're talking about a 25-year lease here, I  
2 think it's very important to consider the growth of surfing  
3 in the future.

4 Contrary to what Mr. Machi said before, I think  
5 there's a prospect of great increased growth for surfing in  
6 the Lost Coast area in future years. My basis for that is  
7 comparing the growth over the rest of the coast in the last  
8 few years. I think surfing has only really been a sport  
9 since about 1960, when lightweight surfboards were first  
10 available. In a period of 20 years you can see how it's  
11 grown, particularly on the Southern California coast, where  
12 the estimate is that there are approximately half a million  
13 surfers now.

14 In about the last five to eight years, there has  
15 been another significant technological breakthrough, which  
16 has been the creation of superior wet suits, which have  
17 made it possible for surfers to surf in colder water areas,  
18 such as Northern California and even Oregon and Washington,  
19 and this has led to growth in those areas and will continue  
20 to lead to growth in the future. I think an excellent  
21 example of that has been the growth of surfing in Santa Cruz,  
22 which now has thousands of surfers every weekend, since they  
23 are able to withstand the cold waters.

24 Within the period of this 25-year lease, I think  
25 it's inevitable that we will see massive increases in surfing

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1 growth along the northern coast, including at Shelter Cove,  
2 which happens to be one of the best surfing areas in  
3 Northern California -- for the same reason that it's a good  
4 site for a harbor of refuge: it's protected from the  
5 prevailing northwest winds. This creates a calm water  
6 surface, which is conducive to surfing, which can be found  
7 in few other places along that coast. I think you could  
8 count them on one hand, and access in each case is usually  
9 more difficult than access is at Shelter Cove, where there's  
10 at least a road going out to the beach. Also --

11 CHAIRPERSON CORY: Can I stop you on that point?  
12 One of the countervailing problems is that the road going  
13 out to the beach is currently privately owned.

14 MR. HOFFERT: I wasn't speaking just of the easement  
15 which goes down the cliff there. I was thinking of the  
16 county road which runs from Highway 101 out to Shelter Cove.  
17 Even without the easement there are other access ways that  
18 surfers can get to Dead Man's Reef.

19 CHAIRPERSON CORY: Okay. Go ahead.

20 MR. HOFFERT: Also, I would like to state that  
21 the surf potential for this one particular reef is a lot  
22 more than the proponents would tend to make it appear.  
23 Mr. Machi stated that only one surfer could stand up on  
24 a wave at a time. That's not true. I can show you a picture  
25 just taken last week of two surfers on a wave at one time.

1 I would also like to point out that waves generally come  
2 through in periods of ten to fifteen seconds. So even if  
3 you only had one per wave, there is a potential of having  
4 hundreds of surfers ride a wave in one hour.

5 Now in order to protect this interest, I don't  
6 think that it's necessary that any other interests have to  
7 suffer. I think that what we should do here is we have  
8 a rare opportunity to construct a plan such that all these  
9 interests can be accommodated, which is what the surfers  
10 have suggested, the use of alternate rock sites. This doesn't  
11 necessarily require any of the problems which the proponents  
12 have suggested, such as taking the rocks over the county  
13 roads and requiring a permit for that, because most of the  
14 sites that the surfers have suggested be used first, before  
15 the Dead Man's Reef site, are right there along the beach,  
16 along the same stretch of beach, and could be almost as  
17 easily or more easily obtained as the rocks at Dead Man's,  
18 and they wouldn't require any trucks being on any roads  
19 at all.

20 I think until these alternate sites have been  
21 considered and exhausted, there's really no reason to even  
22 consider the use of the site at Dead Man's Reef. I think  
23 there's an excellent chance that the surf will be  
24 detrimentally harmed if the rocks are taken from that site.  
25 There is expert opinion on both sides. I was at a meeting

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1 at the Army Corps of Engineers. Their wave experts, George  
2 Demurat and Doug Pirie, both said that definitely if the  
3 rocks were taken it would affect the surf there detrimentally.

4 The surfing is done on both the north and south  
5 sides -- or the west and east sides, depending upon how you  
6 interpret it -- of the reef: in other words on both sides  
7 of the reef. It's not done just on the south side, as  
8 indicated by Mr. Machi. And surfing is done at both low  
9 and high tides, and the better surfing from my experience  
10 and from what other surfers have told me that surf the  
11 area frequently, is at the higher tides. This is the  
12 surf that will be detrimentally affected if the rocks  
13 are taken from the exposed rocks at low tide at Dead Man's.

14 So in essence, I ask the State Lands Commission,  
15 as a condition to issuing any permit, to require the use of  
16 alternative rock sources instead of the Dead Man's source;  
17 and I ask them to require a performance bond, if any rocks  
18 will be taken from the surfing area, to guarantee no  
19 detrimental effects to surfing. They've stated that there's  
20 going to be no harm to the surfing if they carry out their  
21 plans. I think that since their basic motivation for using  
22 this plan is financial motivation, they should be financially  
23 motivated to not harm surfing if they go ahead and use that  
24 plan.

25 Further, I would ask you that if you are going to

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1 rely on the Army Corps of Engineers to make the most  
2 restrictive permit and rely on those restrictions in order  
3 to guarantee the preservation of the surfing resource at  
4 Dead Man's Reef, that you postpone your permit until after  
5 the Army Corps has made a decision so it will be definite  
6 that the resource will be protected.

7 That's all.

8 COMMISSIONER LYTTON: I have no questions.

9 COMMISSIONER BELL: I have no questions.

10 CHAIRPERSON CORY: Okay.

11 MR. PRATTE: My name is Thomas Pratte. I live  
12 in Trinidad, Northern California. I am a Northern California  
13 representative for Western Surfing Association, and I am  
14 speaking as their representative today.

15 WSA (Western Surfing Association) considers this  
16 proposed rock removal at Dead Man's Reef at Shelter Cove  
17 a high priority on the California coast at this time. We ask  
18 the administrators of this public trust land at Dead Man's  
19 Reef to exercise foresight in granting this 25-year lease  
20 agreement to the harbor district because we are concerned  
21 about the surfing opportunities at Dead Man's Reef throughout  
22 this 25-year lease period.

23 I'd like to point out that at low tides, both  
24 the breakwater site and the intertidal reef at Dead Man's  
25 Gulch are both high and dry, the breakwater and the reef.

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1 At higher tides the intertidal reef, Dead Man's Reef, is  
2 submerged, and waves break along and across this reef,  
3 providing excellent surfing opportunities. Also, at higher  
4 tides the breakwater is nearly submerged, and that causes  
5 boat launching and landing difficulties because of wave  
6 overtopping at high tides.

7 This is an experimental breakwater. It's phase  
8 three, actually. Two attempts have been made, and this is  
9 phase three of an experimental breakwater. All the rocks  
10 being requested for the project are substandard to begin  
11 with. We recommend alternative sources in the area.

12 This breakwater will have questionable effects  
13 due to sand buildup and periodic wave damage, and the extent  
14 of these effects and their severity are expected to increase  
15 with the increasing size of the breakwater. A small increase  
16 in the breakwater height, about six feet above mean sea  
17 level or three feet above mean high water, may improve  
18 both launching conditions by preventing overtopping of  
19 waves at higher tides over a significant range of commonly  
20 occurring adverse conditions to boat launching.

21 However, the plans presented by the harbor district  
22 propose the design as 12 feet above mean sea level or 9 feet  
23 above mean high water. The harbor district's contract with  
24 their engineers states that the design will be prepared as  
25 built plans following construction to reflect what has

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1 actually been constructed.

2 We met with representatives of the harbor district  
3 the day before yesterday to discuss the issues, and it was  
4 reported to us that the harbor district doesn't have the  
5 money to build this optimum, large-size breakwater, that  
6 they have \$10,000 to \$12,000 to move rock, and that the  
7 amount of rocks to be used has not been decided yet, and  
8 that they wish to build it the best way they can with the  
9 amount of money available. If that is not enough, then  
10 they will have to acquire more money. Essentially, they  
11 want to use available resources to do the most effective  
12 job possible.

13 We are not opposed to improvement to boat launching  
14 conditions. However, we strongly feel that improvements  
15 are not dependent on degradation of the surfing resource at  
16 Dead Man's Reef. Western Surfing Association has come up  
17 with a resolution, in cooperation with the Dead Man's  
18 Defense Committee, which will be proposed by the next  
19 speaker. Thank you.

20 CHAIRPERSON CORY: Okay.

21 MR. GALATI: Good morning. My name is Douglas  
22 Galati, and I am a resident, a home owner, and a taxpayer  
23 of the northern coast of California. I am also a resident  
24 surfer of the area. I come here for myself and as a  
25 representative of the local surfing population.

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1           The only thing I want to say from the very beginning  
2 is that the surfing population is here to contest the  
3 condition in calendar item number 21 as we received last  
4 time, the condition marked "D":

5           "Removal of rock from the intertidal  
6 zone in" (I believe the word should be)  
7 "front of Dead Man's Gulch."

8 This is listed on page seven of last month's calendar item.

9           MR. NORTHROP: It's item number 7 on page 179,  
10 Mr. Chairman and members, of this month's calendar item.

11           MR. GALATI: As a matter of fact -- and I am going  
12 to reiterate it here for all parties present, and it was  
13 made public at the Army Corps of Engineers public hearing  
14 in Garberville by all the individual surfers that got up  
15 and spoke before the populace -- the surfing population has  
16 no objections to improvement of the breakwater facility.

17           With that in mind, I would like to pass out this  
18 resolution to the Commissioners and staff, and a copy here  
19 for the harbor district. We have formulated this, and I'd  
20 like to read it, please.

21           "We submit this resolution to the  
22 State Lands Commission as a reasonable  
23 and equitable accommodation to the  
24 public's interest in surfing and boating  
25 at Shelter Cove.

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1 "A. Based on factual information,  
2 the following recommendations represent  
3 realistic and feasible alternatives  
4 to rock removal from Dead Man's Reef.  
5 The Humboldt Bay Harbor Recreation and  
6 Conservation District shall pursue the  
7 following alternative rock sources rather  
8 than rock removal from Dead Man's Reef:

9 "(1) Point Delgada to the break-  
10 water site: utilization of rocks, and  
11 previous breakwater materials in the  
12 vicinity of the breakwater.

13 "(2) First Reef: lower intertidal;  
14 remnants of previous rock quarry site.

15 "(3) Dead Man's Gulch above mean  
16 high water.

17 "(4) Third Reef above and below  
18 mean high water, beach and intertidal  
19 rock.

20 "(5) Point No Pass: beach rock  
21 above mean high water, and upper-  
22 intertidal shoreline rocks.

23 "These available alternatives --"

24 CHAIRPERSON CORY: Pardon me for interrupting.

25 MR. GALATI: Yes, sir.

1 CHAIRPERSON CORY: Can somebody show us on this  
2 photograph where these things are?

3 MR. PRATTE: Yes. I will need both photographs,  
4 please.

5 MR. GALATI: Let's go over them again from the  
6 beginning.

7 MR. M. MACHI: Do you mind if I take a look at  
8 those as he points them out?

9 CHAIRPERSON CORY: Fine. You can stand over there.

10 MR. GALATI: The first alternative is Point Delgada  
11 to the breakwater site. We are claiming utilization of rocks  
12 and previous breakwater materials in this vicinity of the  
13 breakwater.

14 First Reef lower intertidal, remnants of the  
15 previous breakwater quarry sites. The majority of rock for  
16 the existing breakwater was taken from that site, and there  
17 are still remnants left there.

18 Third, Dead Man's Gulch above mean high water.  
19 This is an area above the high water line. I don't know  
20 how to further explain it.

21 CHAIRPERSON CORY: That's the rocks on the beach  
22 that haven't come down into the water yet?

23 MR. GALATI: Right. Third Reef above and below  
24 mean high water, beach and intertidal rock.

25 MR. PRATTE: That's right in here (indicating),

1 submerged at high tide and exposed at low tide.

2 Here it is right here (indicating). There's an  
3 overlap.

4 MR. M. MACHI: Am I allowed to say something on  
5 this?

6 CHAIRPERSON CORY: Let them finish.

7 MR. GALATI: Finally, Point No Pass: beach rock  
8 above mean high water, and upper-intertidal shoreline rocks.

9 "These available alternatives should  
10 be a sufficient amount of rock to complete  
11 necessary breakwater improvements without  
12 violating the integrity of the surf site  
13 at Dead Man's Reef.

14 "Only after all the above alternative  
15 rock sources have been exhausted shall there  
16 be any consideration for rock removal from  
17 Dead Man's Reef.

18 "Any consideration of rock removal  
19 from Dead Man's Reef shall be subject to  
20 the following condition:

21 "A comprehensive study of  
22 the surf site at Dead Man's Reef  
23 shall be required, utilizing  
24 techniques for surf site analy-  
25 sis as set forth by Dr. James R.

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1 Walker in 'Recreational Surf  
2 Parameters'. This analysis  
3 shall be undertaken by repre-  
4 sentatives of the surfing  
5 community in cooperation with  
6 Humboldt Bay Harbor Recreation  
7 and Conservation District.

8 "The purpose of such a study would  
9 be to identify the characteristics of the  
10 surf break at Dead Man's Reef and to inves-  
11 tigate potential for rock removal for  
12 enhancement purposes only.

13 "It shall be further understood that  
14 such a study does not guarantee any  
15 numbers or volume of rock. The surfing  
16 community would be supportive for the  
17 harbor district to obtain additional  
18 funding if necessary for alternative rock  
19 quarry sites.

20 "Dead Man's Defense Committee and  
21 Western Surfing Association agree to  
22 abide by the results of such a compre-  
23 hensive analysis. The surfing community  
24 is seriously opposed to tampering with  
25 Dead Man's Reef without a study.

1 "If no comprehensive surf site analysis  
2 is deemed necessary as a condition to rock  
3 removal from Dead Man's Reef, then the surf-  
4 ing population demands that a performance  
5 bond in an amount equal to the cost of break-  
6 water improvements shall be placed by the  
7 Humboldt Bay Harbor Recreation and Conserva-  
8 tion District to guarantee no adverse effects  
9 to the quality of waves for surfing at Dead  
10 Man's Reef.

11 "In conclusion, we request the State  
12 Lands Commission to incorporate into the  
13 lease agreement a restriction preserving  
14 these surfing resources in the public trust  
15 at Shelter Cove: Dead Man's Reef, Third  
16 Reef, and Point No Pass."

17 I will accept questions.

18 COMMISSIONER LYTTON: I have no questions.

19 COMMISSIONER BELL: I have none.

20 CHAIRPERSON CORY: I have some questions of the  
21 staff.

22 How in the hell can we get into this mess on a  
23 negative declaration? It seems to me the whole issue here  
24 is environmental considerations, and that's the whole  
25 purpose of an environmental impact statement. Somehow we



1 got to this point, and part of our findings are that there  
2 is no environmental impact, and it seems to me that the  
3 arguments that both sides are presenting to us relates to  
4 the fact of what's going to happen to the environment if  
5 we allow this to go ahead.

6 MR. TROUT: Mr. Chairman, that's precisely the  
7 case. It's my understanding -- and if our staff can, they  
8 can verify it -- that the negative declaration was put out  
9 and there were no comments during the consideration period  
10 of the negative declaration. It was only after the negative  
11 declaration was circulated and adopted by the harbor  
12 district that any environmental concerns were expressed.  
13 I think that's part of the problem. During the circulation  
14 there was just no response.

15 Perhaps we should verify that, but that's my  
16 understanding.

17 MR. DE LA CRUZ: Yes. There were no adverse  
18 comments received during the meetings that were held in  
19 Garberville when the project was developed by the district.  
20 Also, it was circulated through the State Clearinghouse, and  
21 it was extended an additional 15 days, and there were no  
22 adverse comments.

23 CHAIRPERSON CORY: Let me ask the lawyers where  
24 we are on that issue. We've heard a lot of argument. I'm  
25 not a wind and wave expert. I don't know whether the other

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1 Commissioners are. I don't know whether rocks cause surf  
2 to be there or not be there. Apparently the issue was not  
3 resolved at the Corps of Engineers meeting.

4 If we approve this, the staff is recommending that  
5 we determine that an EIR has not been prepared for this  
6 project. Okay. That's factually true. But we also are  
7 determining that a negative declaration has been prepared in  
8 this case. We are also asked to certify that we have reviewed  
9 and considered the information contained in the negative  
10 declaration. Does that mean we accept it and there isn't  
11 any impact? I'm not so sure that I can in good conscience  
12 certify that.

13 MR. GALATI: If I may say something here --

14 CHAIRPERSON CORY: Let's hear from the staff first.

15 MR. HIGHT: Mr. Chairman, you are being asked  
16 to determine that the project will not have a significant  
17 effect upon the environment based upon the negative declara-  
18 tion. The facts that were presented during the negative  
19 declaration would be the facts that you could --

20 CHAIRPERSON CORY: And those are the only ones  
21 I can look at?

22 MR. HIGHT: No. You can look at anything else.

23 CHAIRPERSON CORY: If Skylab is falling --

24 MR. HIGHT: And wipes out the reef --

25 CHAIRPERSON CORY: Can we consider that suddenly

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1 somebody is telling us something new, like that Skylab is  
2 going to fall? I presume that people would not have put  
3 it up there if they thought this thing through a little  
4 further.

5 I'm just curious: where are we legally?

6 MR. TROUT: There are a couple of points.

7 CHAIRPERSON CORY: I'd like to hear from the  
8 lawyers. I want to know from you guys where we are legally.  
9 I just really am puzzled.

10 COMMISSIONER LYTTON: Let me say, before you  
11 answer the question, that I am equally concerned with the  
12 Chairman. If there is a procedural defect in that comments  
13 didn't come in during the period of circulation, are we  
14 now being told we should ignore new facts and new evidence  
15 being presented to us and just go on the fact that there's  
16 been a procedural defect? I join the Chairman. I am deeply  
17 troubled with how we proceed.

18 MR. STEVENS: Mr. Chairman, the Commission would  
19 have several alternatives available. It could accept the  
20 district as the lead agency. The record appears to have  
21 sufficient facts to support the negative declaration filed  
22 by the district. No evidence contrary was received at that  
23 time, and the 30-day statute for attacking that declaration  
24 has passed.

25 However, I don't believe the Commission is

1 foreclosed from accepting additional evidence with respect  
2 to environmental effects and from requiring a separate  
3 evaluation.

4           There is a third potential issue here, too, in  
5 that apparently the source of rocks that was proposed by  
6 the district was reviewed environmentally with respect to  
7 algae growth, effect on fish and wildlife, and other  
8 consequences. If the alternatives which are being proposed  
9 as sources for these materials are to be considered by  
10 the Commission, I think an additional supplemental environ-  
11 mental evaluation would have to be made of those sources, too,  
12 to ascertain what effect their removal would have on the  
13 environment.

14           CHAIRPERSON CORY: So you are saying that  
15 procedurally the time for anybody to attack the EIR has  
16 expired, so that is not available to people, so that's why  
17 we're being put in the position of having to try after the  
18 fact the EIR?

19           MR. STEVEN: It is in the context of the district  
20 acting as lead agency. The extent to which the Commission  
21 can make an independent determination on this is another  
22 question. I believe the Commission has the authority to  
23 do so. But it would have to take additional evidence and  
24 make a new environmental evaluation.

25           COMMISSIONER LYTTON: Let me ask the question again.

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1 From the legal perspective, must we exclude the contrary  
2 evidence that's been presented in this hearing?

3 MR. STEVENS: No.

4 COMMISSIONER LYTTON: We have the discretion  
5 to consider it?

6 MR. STEVENS: Yes.

7 COMMISSIONER LYTTON: The final question, going  
8 through the circuit, is: Must we consider it? Are we  
9 obligated to consider this evidence?

10 COMMISSIONER BELL: It's our best judgment.

11 MR. STEVENS: The Commission does have an  
12 independent determination to make. That's an interesting  
13 question, because the issue you've raised is the extent  
14 to which the Commission can displace an agency that has  
15 assumed the role of lead agency in the environmental  
16 assessment process. I believe the Commission does have the  
17 authority to accept additional evidence and to make a  
18 separate determination. Whether this determination has  
19 to take the form of a separate or independent EIR or whether  
20 this can be made supplemental is a question I couldn't  
21 answer right now.

22 But I believe that the Commission does have the  
23 authority and, actually, the duty to exercise its discretion  
24 and consider any relevant evidence that comes before it with  
25 respect to its own responsibility in issuing a permit. The

1 Commission has independent authority outside the CEQA  
2 process to do so.

3 COMMISSIONER BELL: It's a judgment call, and we  
4 have discretion to consider it. We might judge it to be  
5 sufficient.

6 CHAIRPERSON CORY: Another question I have of  
7 the staff: Has the county board of supervisors taken a  
8 position on this project?

9 MR. ALDERSON: May I answer that one?

10 CHAIRPERSON CORY: Certainly.

11 MR. ALDERSON: Jack Alderson from the Humboldt  
12 Bay Harbor District.

13 Yes, sir, they have taken a position on it. They  
14 are in support of it. In fact, part of the free parking lot  
15 up on top of the bluff required a land transfer between  
16 BLM and the county board of supervisors.

17 COMMISSIONER BELL: Have they passed a resolution  
18 in favor of it?

19 MR. ALDERSON: My memory indicates: yes, sir,  
20 about two years ago. But they have taken positive action  
21 in turning over property to us for this project.

22 COMMISSIONER BELL: Thank you.

23 CHAIRPERSON CORY: In my recollection of the last  
24 meeting we had on this subject, there was a discussion of  
25 some limitation on the amount of rock to be removed. I don't

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1 see that in the calendar item today.

2 MR. HIGHT: That was an erroneous statement, which  
3 did not appear in any permit. I think that statement came  
4 from the harbor district, I believe.

5 MR. GALATI: May I address that issue?

6 CHAIRPERSON CORY: Somewhere I recall a discussion  
7 that no more than 25 percent of the rocks may be removed.

8 MR. SCOTT: May I address that?

9 CHAIRPERSON CORY: Go ahead.

10 MR. SCOTT: The permit issued by the Regional  
11 and State Coastal Commissions to the harbor district this  
12 past year provides that the rock from the area in question  
13 to the breakwater shall be taken from above the high water  
14 mark. That's the restriction as far as the harbor district  
15 is concerned as to the new permit.

16 The district is asking that you approve the  
17 assignment of the Machi permit, which was issued in 1973,  
18 I believe, by the Coastal Commission. The Machi permit  
19 provided in '73, according to the Coastal Commission, in  
20 the Coastal Commission permit that only up to 25 percent of  
21 the rock could be removed from the reef.

22 We're merely asking that you approve the assignment  
23 of the Machi permit to the district.

24 CHAIRPERSON CORY: So you are, by your statement,  
25 accepting those two conditions as well, that you will only

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1 be removing rock from above mean high tide? Is that correct?

2 MR. SCOTT: No. The district's permit provides  
3 that we shall only remove above the high water mark. The  
4 Machi permit under the Coastal Commission provided that up  
5 to 25 percent of the rock could be removed between the  
6 low and the high. So we're willing to live by the prior  
7 permits that were issued to Machi of removal of up to 25 per-  
8 cent only between the low and the high.

9 MR. GALATI: If I may address that issue, I feel  
10 that the surfing population --

11 CHAIRPERSON CORY: Let me just let that soak in  
12 so I understand the significance. You are unwilling to  
13 live with the conditions that you have, but you are willing  
14 to live with the conditions of the Machi permit?

15 MR. SCOTT: We are willing to live with the  
16 express conditions of the Machi permit and our permit.

17 CHAIRPERSON CORY: Well, if you took them in the  
18 conjunctive, it would seem to me that you would only be  
19 allowed to remove 25 percent of those above the high water  
20 mark.

21 MR. SCOTT: That is not correct. Our permit --

22 CHAIRPERSON CORY: If you have one condition that  
23 you can only remove above high water, and another one that  
24 you can only remove 25 percent, if you accept both conditions  
25 you've got a problem, I think.



1 MR. SCOTT: No. The 25 percent limitation  
2 applies between the low and the high water mark.

3 MR. ALDERSON: At Dead Man's Reef only.

4 MR. SCOTT: On the reef only.

5 CHAIRPERSON CORY: But if you have a further  
6 condition upon you -- it depends on whether it's conjunctive  
7 or alternative. That would be relatively important to the  
8 wording, I think.

9 MR. HIGHT: Mr. Chairman, Dave Hadly on my  
10 staff could address that issue.

11 MR. HADLY: Mr. Chairman, there apparently is  
12 a difference of opinion between the Commission staff and  
13 the district staff on the interpretation of the '74 permit.  
14 The '74 permit does allow the removal of rock from the  
15 intertidal zone. The district believes it's restricted  
16 to 25 percent of those rocks. We believe that they are  
17 not restricted to that amount, that they could take up  
18 to 50 percent of the rocks, which would be approximately  
19 12,000 rocks.

20 The misunderstanding is based on -- at the hearing  
21 itself, the '74 hearing and the appeal, the North Coast  
22 commissioners were concerned with the jetty itself, whether  
23 it would be disrupted significantly by heavy storms. They  
24 were concerned that if the jetty was knocked out more than  
25 25 percent, they didn't want the district to go back

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1 continually to dead Man's Reef to get rocks.

2 Our reading of that permit is that if more than  
3 25 percent of the breakwater is disrupted and knocked out,  
4 they can't go back to the reef as a source of rocks without  
5 an additional Coastal Commission permit. I believe that  
6 the Corps staff also reads the permit in that context,  
7 but apparently the district is willing to limit themselves  
8 to 25 percent of the intertidal zone rocks.

9 MR. SCOTT: That last statement is correct. The  
10 district is willing to accept the condition which we believe  
11 is the present condition on the Coastal permit, of taking  
12 25 percent of the rock from Dead Man's Reef between the low  
13 and the high water mark in the intertidal zone.

14 MR. GALATI: I have comments on this. First of all,  
15 the surfing population is willing to abide by the '78 permit  
16 and its condition that rock removal above mean high water  
17 take place. As it states in the permit -- I have a copy --  
18 "rock for construction of the breakwater shall be obtained  
19 above mean high water from rocks on the beach and Dead Man's  
20 Gulch."

21 Regarding the '74 permit, myself and other concerned  
22 surfers have filed suit against the California Coastal  
23 Commission and the harbor district based on this '74 permit,  
24 which we feel was wrongfully assigned based on its own  
25 conditions. I refer to number 7 on page 2: "Terms and

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1 conditions of this permit herein authorized and granted:  
2 one year." It is again reiterated later on in the permit,  
3 condition 11(c): "Said development shall be commenced on  
4 or before (no time specified) and shall be completed on  
5 or before August 7, 1975." That's in black and white.

6 There were no quotations from administrative  
7 codes given at the regional coastal commission. We feel  
8 it was an arbitrary judgment assigning a permit that had  
9 already expired.

10 So therefore we feel that the rocks below the  
11 high water line are still our concern, and they have no  
12 claims on them.

13 CHAIRPERSON CORY: That's a separate issue that  
14 we can't necessarily deal with here. We will take notice  
15 of it, but I'm not sure we can really resolve that issue  
16 for you.

17 MR. GALATI: I'm not here to ask that.

18 CHAIRPERSON CORY: I'm somewhat confused as to where  
19 people think they are.

20 COMMISSIONER LYTTON: I guess I'd feel better if  
21 somebody had prepared a memorandum on what our options are.

22 CHAIRPERSON CORY: Currently the Corps is conducting  
23 some sort of study and coming out with their recommendations  
24 on what they want done?

25 MR. NORTHROP: True, Mr. Chairman.

1 CHAIRPERSON CORY: It's the surfers' opinion that  
2 if 25 percent of the rocks between low and high water are  
3 taken the surf will be disrupted?

4 MR. PRATTE: Yes. Also, I would like to point out  
5 that the estimate is 25 percent of the number of rocks on  
6 the reef. There has been a rough estimate made that there  
7 are 2,000 rocks on the reef, so 25 percent would be  
8 approximately 600 rocks. These 600 rocks the harbor district  
9 requests are the large rocks from the reef, so 25 percent  
10 of the larger rocks from the reef equals 50 percent of the  
11 volume.

12 CHAIRPERSON CORY: Are we talking about 25 percent  
13 of the number, 25 percent of the volume, or 25 percent of  
14 the weight? What does the district think?

15 MR. SCOTT: The Coastal Commission staff in its  
16 report -- my recollection is it was in a report orally or  
17 in writing to the commission, the regional commission --  
18 was that the number of rocks -- I believe use of the word  
19 "visible" was made.

20 MR. ALDERSON: It's 2,400.

21 MR. SCOTT: It's 2,400 rocks. Visible?  
22 Anyway, 2,400 rocks, and up to 25 percent could be removed,  
23 which would allow the removal of 600 rocks.

24 CHAIRPERSON CORY: So your interpretation of that  
25 25 percent is number?

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1 MR. SCOTT: It's not my interpretation. I am  
2 echoing what the Coastal Commission staff told the --

3 CHAIRPERSON CORY: Counselor, let me tell you:  
4 I want to understand what you believe --

5 MR. SCOTT: Number. Number.

6 CHAIRPERSON CORY: -- what you believe your  
7 obligation is. If I vote for this thing, it's going to have  
8 some recitation of that, and I don't think it's going to be  
9 number.

10 MR. SCOTT: Well, that's fine.

11 CHAIRPERSON CORY: Can you live if you take 25  
12 percent of the volume or the weight? Can you live with that?  
13 Or do you have to take a fourth of the number of rocks?  
14 That to me seems to be bizzare. I guess the Coastal  
15 Commission, if they are looking at viewsheds, might think  
16 that had some relevance.

17 MR. SCOTT: We are bound already by the Coastal  
18 Commission permits, and it's my understanding that their  
19 position is it's number, so it's number.

20 The district has budgeted \$10,000 for the placement  
21 of the rocks on the breakwater. Obviously, we are not going  
22 to be able to move nearly that number, but --

23 CHAIRPERSON CORY: You could probably for \$14 pick  
24 up 600 rocks that size (indicating) but it wouldn't do you  
25 any good.

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1 MR. SCOTT: I assume the contractor and the  
2 engineer would try to get the larger rocks.

3 CHAIRPERSON CORY: Ah! We've got something on  
4 the table.

5 (Laughter.)

6 CHAIRPERSON CORY: It would be a lot easier if  
7 we could put the issues on the table a little quicker. We'd  
8 know what we're doing.

9 MR. SCOTT: If it's larger rocks, it would require  
10 the removal of less rocks.

11 I hope, gentlemen, that you have not lost sight  
12 of the basic issue, and that is the improvement of the  
13 commercial and recreational boating facilities, and --  
14 probably most important to this body -- the acquisition of  
15 a public easement that now does not exist.

16 I think it was Mr. Pratte that said the surfers  
17 can get down to the reef by some other method. Well, the  
18 surfers may be able to traverse rough terrain and cliff  
19 terrain, but children may not be able to. Mothers may not  
20 be able to. This is what the district is providing.

21 MR. M. MACHI: May I say one word that might help  
22 a little here?

23 CHAIRPERSON CORY: Just a minute. The Commissioners  
24 have some questions.

25 COMMISSIONER LYTTON: Everyone here is in favor

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1 of improving the breakwater and improving the harbor  
2 conditions. The only question is how to go about it. The  
3 dilemma that at least I'm in is I don't feel that I'm doing  
4 this on a solid legal foundation until counsel gives us  
5 some analysis as to what we ought to do about new evidence  
6 that has been introduced. I understand what Commissioner Bell  
7 is saying about us having the discretion to give weight to  
8 that evidence. My question is whether we should even take  
9 it under submission. In that case, we're back to the  
10 Chairman's dilemma: What do we do? Do we override the EIR?

11 I think it's a complex problem. I don't mean  
12 to exaggerate it, but to me it's a rather complex problem.

13 COMMISSIONER BELL: I also have a little problem  
14 in that I would like to know, if at all possible, what the  
15 Corps of Engineers is going to come up with. Even though  
16 it may not be necessary for making this decision, it would  
17 be helpful to me.

18 CHAIRPERSON CORY: Should we hold off until  
19 then? I'm willing to hold off until then. Maybe people  
20 can get their act together. I've got some serious reserva-  
21 tions about what we're doing on the EIR. The other question  
22 is the 25 percent by number. I can believe that a  
23 governmental agency would put that in there, but I cannot  
24 believe that's what they had in mind.

25 I don't know what that means, and I don't know

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1 what people can live with, but that seems to me to be a  
2 nonsubstantive requirement. If it's a viewshed, they want  
3 to be able to see 25 percent of the rock area visually  
4 that they saw before or something like that.

5 COMMISSIONER BELL: They may want to see sand beach  
6 instead of rocks.

7 CHAIRPERSON CORY: What do the Commissioners want  
8 to do? Put it over?

9 MR. ALDERSON: Mr. Chairman, I would like to say  
10 something, having been with this project right from the  
11 very start. It went through the complete CEQA process.  
12 It was advertised in newspapers, on television, on the radio.  
13 One of the persons who is now in the process of suing us  
14 at the Coastal Commission level was quoted in the paper well  
15 before the CEQA process was over saying that they were going  
16 to watch the project very carefully.

17 We went through the CEQA process, public hearings  
18 in Garberville, Shelter Cove, and in Eureka. The negative  
19 declaration was passed and nothing was found wrong with it  
20 through the clearinghouse.

21 By the same token, we have appeared before the  
22 regional commission, and the Regional Coastal Commission  
23 voted unanimously in support of this project. There were  
24 some negative comments brought forth at that meeting by the  
25 surfers, so I don't necessarily feel that the evidence that



1 you are hearing is being heard here for the first time.

2 This was reviewed by the Regional Coastal Commission.

3 By the same token, they had the chance and they  
4 appealed this to the State Coastal Commission, which we  
5 appeared before. Again, unanimously, no substantial issue  
6 was found by the State Coastal Commission.

7 So I feel we have more than one time been confronted  
8 with these series of arguments.

9 Yes, they did say the number of rocks. I think  
10 it's kind of important to say that the report of Dr. Seymour,  
11 after going down to the site, indicated that the removal  
12 of the large rocks would probably enhance the surfing. In  
13 other words, taking away some of those large hard lumps  
14 the surfers may run into and furnishing an even plateau/field  
15 effect of small rocks, which would maintain the disposition  
16 of the reef and its present characteristics.

17 CHAIRPERSON CORY: I have some problems with this  
18 whole thing. I don't know what the hell I'm doing. There  
19 are these conflicting reports.

20 You seem to be a reasonable man. You've made  
21 a reasonable statement. But if you take in the abstract the  
22 statement that you can take 25 percent of the rocks, which  
23 25 percent (volume, number, or weight) and from whence you  
24 take them is obviously going to have a different impact on  
25 the environment. Is that not an obvious statement?

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1 MR. ALDERSON: Yes, sir.

2 CHAIRPERSON CORY: I sit here and I keep hearing  
3 some animosities between surfers and the district, and I  
4 am being asked to judge something having come in in the  
5 middle of the movie, and I don't know what you're going to  
6 do in terms of which of those items --

7 MR. SCOTT: I would like to make one additional  
8 reference to that. You say you don't know what to do.  
9 You've got a staff. They're a million-dollar staff. They  
10 are experts in the field. They have recommended a certain  
11 action. If you are ignorant of the situation or misinformed  
12 or don't know, your staff went up there to Garberville.  
13 Ninety-two percent of the 200 people were in favor of it.  
14 The staff people are aware of the facts, and they are recom-  
15 mending to you --

16 CHAIRPERSON CORY: Counsel, I am hesitant to do  
17 this, but I am going to do it. You are an impediment to  
18 your client's interest.

19 (Addressing Mr. Alderson) Could I talk to you,  
20 sir?

21 MR. SCOTT: You may, certainly.

22 CHAIRPERSON CORY: I will.

23 (Addressing Mr. Alderson) The last time you  
24 were here you talked about concern for the environment. What  
25 is it you really want to take? Twenty-five percent of what?

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1 What do you envision those permits limiting you to, and what  
2 do you want to take?

3 MR. ALDERSON: There are two permits. One says  
4 that we can take the rocks above the mean high water mark  
5 throughout the Shelter Cove beach area. That is the permit  
6 to the harbor district.

7 The harbor district is also after a second permit:  
8 namely, the assignment of the Machi permit to the harbor  
9 district. It indicated that there should be 600 rocks or  
10 25 percent of the rocks from the Dead Man's Gulch area that  
11 could be removed under the Coastal Commission permit.

12 This is what we want. Obviously, we want the  
13 larger ones. We could get 600 rocks in a little paper  
14 sack and it's not going to make a breakwater. We could take  
15 the larger rocks and move them down and put them into the  
16 breakwater. These larger rocks will also remove some very  
17 hard lumps from the surf break.

18 We have talked with surfers on Scane down there  
19 who have said to us that they will work with us, and we have  
20 promised to work with them, on the removal of some of those  
21 larger rocks. One surfer indicated he used to be a choker  
22 setter, the guy who goes out with the wire and wraps it  
23 around the log to bring it in. He will go out there and  
24 wrap it around the rock and let us bring in some of those  
25 big rocks that are an impediment to their surfing. We have

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1 indicated at least to that surfer who lives there, that  
2 we will help him, and I will say that again.

3 CHAIRPERSON CORY: What's the wish of the  
4 Commission?

5 COMMISSIONER LYTTON: Let me ask a question, if  
6 I may. On the basis of the evidence that's been presented,  
7 leaving aside the legal difficulties and the snarl of red tape  
8 that has caught us up today, it's seems like, based on the  
9 evidence we've heard, the project is a good idea. Everybody  
10 is in favor of it. The breakwater will improve recreational  
11 facilities for families and for seniors and for fishermen,  
12 and all the surfers are asking is that it not be done in  
13 such a way that it destroys their surfing rights. I will  
14 stand corrected, but that seems to be the sense of what we've  
15 heard today. I'm convinced that's what the evidence shows.

16 (Addressing Mr. Alderson) You just told us you  
17 can take the rocks above the mean high tide. If I understand  
18 the surfers' testimony, that's perfectly acceptable to them.

19 MR. GALATI: Yes, that is. That is proposed in  
20 our resolution.

21 COMMISSIONER LYTTON: From the district's point  
22 of view, does that make the project not feasible? If you  
23 were limited to your own permit -- not the Machi permit, but  
24 your permit -- which said you can take all the rocks, but  
25 only above the mean high tide, could you do the project?

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1 MR. ALDERSON: We don't believe there is a  
2 sufficiency of rocks. Now there is a sufficiency of rocks  
3 further up Dead Man's Gulch, which Mother Nature will  
4 continually bring down and will replenish that reef, because  
5 that's the way nature works. Even if some rocks are removed,  
6 it will just be a short span of years, and Mother Nature will  
7 have brought more rocks to that reef.

8 COMMISSIONER LYTTON: So you're saying you cannot  
9 do the project unless you can take some rocks in addition  
10 to the ones that are not in contest.

11 MR. ALDERSON: That is correct, sir.

12 COMMISSIONER LYTTON: I would not object to  
13 approving it with limitations or to putting it over and  
14 getting more thorough staff appraisal.

15 (Thereupon a brief recess was taken.)

16 CHAIRPERSON CORY: Have we had communication from  
17 any of the legislators?

18 MR. NORTHROP: On this issue, no. We had a  
19 communication, but it was on an item that's already passed,  
20 Mr. Chairman.

21 MR. GALATI: Pardon me for interrupting. I think  
22 we have. I submitted last time --

23 MR. NORTHROP: Excuse me. There may well be some  
24 in the record.

25 MR. GALATI: There is a letter from Assemblyman Bosco,

1 if I can find it.

2 MR. NORTHROP: It was addressed to us?

3 MR. GALATI: No. It was in reply to correspondence  
4 from us.

5 MR. NORTHROP: Mr. Chairman, we have nothing that  
6 has come in to the Commission.

7 CHAIRPERSON CORY: I remember that letter. I  
8 think you showed it to us at the last meeting. It was  
9 something less than totally definitive.

10 MR. GALATI: That's what I told Assemblyman Bosco  
11 when I talked to him later.

12 CHAIRPERSON CORY: He could move either way from  
13 that.

14 MR. GALATI: If I might just say something, please,  
15 I don't want to extend this issue any more than it has.  
16 I think Commissioner Lytton had an accurate assessment of  
17 the situation. I believe there is unanimous agreement for  
18 the improvements to the breakwater and the project to go  
19 ahead as planned.

20 As far as the rock removal from above the high water  
21 mark and the alternatives, we feel these are fair alternatives  
22 to the proposal. If the State Lands Commission is going to  
23 consider rock removal below the high tide mark on the reef --  
24 and this is where we get into the numbers of the 25 percent,  
25 large, small; everybody has opinions floating around. We're

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1 saying we're willing to cooperate with the harbor district  
2 in performance of a study to look the situation over, but we  
3 can't guarantee numbers or volume, and we'd like to see the  
4 surfing site improved for enhancement. We're willing to  
5 abide by those results.

6 But we are also asking, as a wrapup, that the  
7 State Lands Commission and the State of California recognize  
8 surfing and the resource that it is as a sport of the  
9 native sons. I'd like to see something in this agreement  
10 that if they do allow rock removal, this be the last time  
11 the area is mined for it, and that it be reserved. I don't  
12 think that we're being unreasonable. I'd like to see a  
13 decision.

14 COMMISSIONER LYTTON: I would like to vote for  
15 the project, and I therefore express great dismay that  
16 everybody here hasn't been able to get their act together.

17 I have at least one suggestion that I would offer  
18 the Chairman, the possibility that if we put it over for  
19 30 days, perhaps all concerned can get their acts together,  
20 including the district, so that we can have some understanding  
21 of how much rock you want to take and whether there isn't  
22 a way to reconcile number with volume so we have some concept  
23 of what's going on there.

24 MR. ALDERSON: We have pictures of the reef.

25 COMMISSIONER LYTTON: We would like some assurances

1 in that area. If we could get something from the staff so  
2 we would understand the implications of the EIR process --  
3 if those two concerns of mine are solved, I'd like to vote  
4 in favor of the project.

5 My suggestion would be that we put it over for 30  
6 days, and maybe those two concerns can be addressed.

7 COMMISSIONER BELL: I would second that motion.

8 CHAIRPERSON CORY: Without objection, it is  
9 over for 30 days.

10 MR. NORTHROP: Okay.

11 CHAIRPERSON CORY: There is, I think, a strong  
12 belief up here that if the proponents and opponents can  
13 figure out a way to communicate and pick out which rocks  
14 you can live with and which ones you can't, maybe we can  
15 get out of the issue.

16 COMMISSIONER LYNN: I'd like to vote for the  
17 project.

18 MR. NORTHROP: Mr. Chairman, before you close  
19 the record on this, the next meeting will be within a 30-day  
20 period. The next meeting is set for July 17th.

21 CHAIRPERSON CORY: It would be the August meeting.

22 MR. NORTHROP: Thank you.

23 MR. SCOTT: What would be the date of that meeting?

24 MR. NORTHROP: August 23rd is the date we're looking  
25 at now. We have to work around the schedules of three very

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1 busy men.

2 MR. SCOTT: Could we put it over until July?

3 MR. NORTHROP: No, it's already passed. July 17th  
4 is gone. We're talking about August.

5 MR. SCOTT: How about July 17th?

6 MR. TROUT: We understand the Corps would not  
7 have completed their study and be ready to act on a permit  
8 by the 17th of July.

9 COMMISSIONER LYTTON: The Corps is not necessary  
10 to me. I'd like to get these other two things.

11 COMMISSIONER BELL: Mr. Northrop, if there is  
12 any possibility at all of these warring factions getting  
13 together, I would like to see it taken up in July.

14 COMMISSIONER LYTTON: I concur with Mr. Bell.

15 MR. NORTHROP: Fine. We will hold their feet  
16 to the fire, as they say, and attempt to get them together.

17 COMMISSIONER BELL: I would also like to find out  
18 from our attorneys if in their opinion the inclusion of  
19 the assignment in our motion is an idle act.

20 MR. NORTHROP: If you would want to inject  
21 staff in this, staff would be happy to act as moderators  
22 in this dispute. It's better than counting rocks,  
23 Mr. Chairman.

24 MR. TROUT: There are two assignments involved.  
25 There's an assignment of the Coastal Commission permit from

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1 Mr. Machi to the district, but the Commission is not acting  
2 on that. What the Commission is acting on is an assignment  
3 of the Lands Commission permit to Mr. Machi to the district.

4 COMMISSIONER BELL: I withdraw my comment.

5 MR. NORTHROP: We will attempt to get them together  
6 and be back on July 17th with whatever results we have, if  
7 that's agreeable to both parties.

8 MR. PRATTE: Yes, it is.

9 CHAIRPERSON CORY: Do we have any other items?

10 MR. NORTHROP: Item 42, Mr. Chairman.

11 CHAIRPERSON CORY: Item 42.

12 MR. NORTHROP: Modifying the land exchange  
13 with the National Park Service.

14 CHAIRPERSON CORY: Anybody in the audience on  
15 Item 42? Any questions from the Commissioners?

16 Without objection.

17 MR. NORTHROP: Mr. Chairman, there is some  
18 litigation on the possible NOPV from the Department of  
19 Energy. We will discuss that in executive session,  
20 Mr. Chairman.

21 The next meeting is 7/17/79 in Sacramento.

22 CHAIRPERSON CORY: We will now adjourn the public  
23 session and go into executive session here on a litigation  
24 matter.

25 (Thereupon the public session of this

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meeting of the State Lands Commission  
was adjourned at 12:15 p.m.

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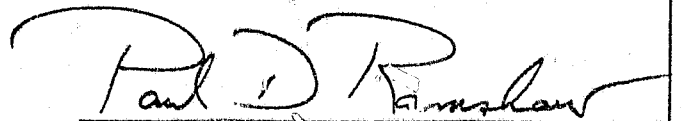
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3 I, PAUL D. RAMSHAW, a Certified Shorthand  
4 Reporter of the State of California, do hereby  
5 certify:

6 That I am a disinterested person herein; that  
7 the foregoing State Lands Commission public hearing was  
8 reported in shorthand by me, Paul D. Ramshaw, and there-  
9 after transcribed into typewriting.

10 I further certify that I am not of counsel  
11 or attorney for any of the parties to said hearing, nor  
12 in any way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this 9<sup>th</sup> day of July, 1979.

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